New strategy, new accountability? The European Central Bank and the European Parliament after the strategy review

Grünewald, S.; van 't Klooster, J.

Publication date
2023

Document Version
Final published version

Published in
Common Market Law Review

Common Market Law Review **60**: 959–998, 2023.

NEW STRATEGY, NEW ACCOUNTABILITY? THE EUROPEAN CENTRAL BANK AND THE EUROPEAN PARLIAMENT AFTER THE STRATEGY REVIEW

SERAINA GRÜNEWALD & JENS VAN 'T KLOOSTER*

Abstract

A striking asymmetry defines the European Central Bank (ECB)'s approach to democratic accountability. Although the post-2008 era saw the ECB move dramatically beyond the narrow role envisaged for it by the 1992 Maastricht Treaty, the central bank has continued to hew closely to its scarce accountability provisions. This article documents the much more complex and discretionary nature of today's ECB policymaking by comparing the frameworks informing Governing Council deliberations according to the 1998, 2003 and 2021 strategies. It shows that the transformation of the ECB's monetary policy strategy has not been matched with enhanced accountability arrangements between the ECB and the European Parliament. The article concludes with ambitious, but concrete policy proposals – both in substance and form – for new ways of informing the public about monetary policy, instruments to improve accountability and coordinating monetary policy with other European policymakers.

1. Introduction

A striking asymmetry defines the European Central Bank (ECB)'s approach to democratic accountability. Although the post-2008 era saw the ECB move dramatically beyond the narrow role envisaged for it by the 1992 Maastricht Treaty, the central bank has continued to hew closely to its scarce accountability provisions. This asymmetry reflects an outdated conception of

* Seraina Grünewald is Professor of European and Comparative Financial Law at Radboud University Nijmegen. Jens van 't Klooster is Assistant Professor in Political Economy at the Department of Political Science, University of Amsterdam. This article builds on a study of the authors commissioned by the Green and Social Economy cluster of the Greens/EFA Group in the European Parliament: Van 't Klooster and Grünewald, "An EP-ECB interinstitutional agreement on monetary policy" (22 Sept. 2022), available at <https://www.greens-efa.eu/en/article/study/an-ep-ecb-interinstitutional-agreement-on-monetary-policy>. The views expressed in this article are those of the authors alone.

independence and accountability, which is incompatible with the ECB's new self-understanding, formalized in its 2021 strategy review.

Although the legal text always provided ample scope for interpretation, the drafters of the Maastricht Treaty sought to design a central bank whose monetary policy focused on price stability.[1] In the 1990s and early 2000s, the ECB's monetary policy strategies saw the central bank use one tool to achieve one objective: by steering interest rates in money markets, it aimed to keep inflation close to but below 2%. Its analytical framework was narrowly focused on predicting consumer price inflation over a medium-term horizon. Reflecting the technical nature of this task, democratic accountability focused on how the ECB used interest rates to achieve its price stability objective.[2]

The ECB's 2021 review of its monetary policy strategy formalizes a much broader and more complex role for the ECB. It introduces a new analytical framework, which covers the transmission mechanism of monetary policy, long-term risks to price stability, and a larger set of instruments. The ECB will also expressly assess the proportionality of its programmes and monitor undesired side effects. To this end, it broadens the concept of price stability to encompass not only medium-term (2–5 year) inflation as measured by the Harmonized Index of Consumer Prices, but also the more nebulous notion of long-term price stability.[3] As a result, the ECB has effectively come to pursue a range of intermediate or "secondary" objectives such as financial stability, supporting government bond markets and, more recently, mitigating climate

1. Smits, *The European Central Bank, Institutional Aspects* (Kluwer Law International, 1997); McNamara, *The Currency of Ideas: Monetary Politics in the European Union* (Cornell University Press, 1998); Dyson and Featherstone, *The Road to Maastricht: Negotiating Economic and Monetary Union* (OUP, 1999); James, *Making the European Monetary Union* (Harvard University Press, 2013); van den Berg, *The Making of the Statute of the European System of Central Banks* (Dutch University Press, 2004); de Boer and van 't Klooster, "The ECB, the courts and the issue of democratic legitimacy after Weiss", 57 CML Rev. (2020), 1689–1724.

2. On the "old" ECB's definition of accountability see Lastra, "The independence of the European system of central banks", 33 *The Harvard International Law Journal* (1992), 475–520; Amtenbrink, *The Democratic Accountability of Central Banks: A Comparative Study of the European Central Bank* (Hart, 1999); Magnette, "Towards 'accountable independence'? Parliamentary controls of the European Central Bank and the rise of a new democratic model", 6 ELJ (2000), 326–340; ECB, "The accountability of the ECB", *ECB Monthly Bulletin* (Nov. 2002), 45–57, <www.ecb.europa.eu/pub/pdf/other/pp45_57_mb200211en.pdf> (all websites last visited 13 June 2023); Fraccaroli, Giovannini, and Jamet, "The evolution of the ECB's accountability practices during the crisis", *ECB Economic Bulletin* Issue 5/2018, 47–71; Fromage, Dermine, Nicolaides and Tuori, "ECB independence and accountability today: Towards a (necessary) redefinition?", 26 *Maastricht Journal of European and Comparative Law* (2019), 3–16.

3. See ECB, "The ECB's monetary policy strategy statement", (8 July 2021), <www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_statement.en.html>, and the accompanying "Overview note", <www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_overview.en.html>.

change. However, it was the ECB's announcement of its Climate Agenda in July 2022 that revealed the full magnitude of the strategy shift. The ECB broke with a long-lasting taboo: it introduced measures incorporating climate change considerations into its operational framework, justified insofar as they support general economic policies in the EU, rather than as only being geared towards maintaining price stability.[4] For the first time, the ECB expressly relied on its secondary objective according to Article 127(1) TFEU read in conjunction with Article 3 TEU when making policy decisions. Measures taken since the July 2022 announcement have followed the same logic.[5]

Despite these fundamental transformations, the ECB's accountability relationship with the European Parliament (EP) has not changed much since the late 1990s.[6] While channels of "dialogue" have been added to the pre-existing ones, the underlying logic of ECB accountability has largely remained the same: the ECB continues to explain how it has made use of its instruments to achieve its medium-term price stability objective. It gives little

4. ECB Press Release, "ECB takes further steps to incorporate climate change into its monetary policy operations", (4 July 2022), <www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704~4f48a72462.en.html>.

5. These include a stronger tilting of corporate bond purchases towards issuers with a better climate performance during quantitative tightening. See ECB Press Release, "ECB decides on detailed modalities for reducing asset purchase programme holdings" (2 Feb. 2023), <www.ecb.europa.eu/press/pr/date/2023/html/ecb.pr230202~1a4ecbe398.en.html>.

6. On the accountability practices of the European Parliament see Amtenbrink and van Duin, "The European Central Bank before the European Parliament: Theory and practice after 10 years of monetary dialogue", 34 EL Rev. (2009), 561–583; Beukers, "The new ECB and its relationship with the Eurozone Member States: Between central bank independence and central bank intervention", 50 CML Rev. (2013), 1579–1620; Collignon and Diessner, "The ECB's monetary dialogue with the European Parliament: Efficiency and accountability during the euro crisis?", 54 JCMS (2016), 1296–1312; Braun, *Two Sides of the Same Coin? Independence and Accountability of the European Central Bank* (Transparency International EU, 2017); Chang and Hodson, "Reforming the European Parliament's monetary and economic dialogues: Creating accountability through a euro area oversight subcommittee" in Costa (Ed.), *The European Parliament in Times of EU Crisis: Dynamics and Transformations* (Springer International, 2019), pp. 343–364; Lastra, "Accountability mechanisms of the Bank of England and of the European Central Bank", *European Parliament Monetary Dialogue Papers* (Sept. 2020); Jourdan and Diessner, "From Dialogue to Scrutiny: Strengthening the Parliamentary Oversight of the European Central Bank", Report for Positive Money Europe (Apr. 2019); Petit, "Balancing Independence with Accountability: A Third-Metre Waltz?", 26 *Maastricht Journal of European and Comparative Law* (2019), 17–34; Dawson, Maricut-Akbik and Bobić, "Reconciling independence and accountability at the European Central Bank: The false promise of proceduralism", 1 ELJ (2019), 75–93; Claeys and Domínguez-Jiménez, "How Can the European Parliament Better Oversee the European Central Bank?", *European Parliament Monetary Dialogue Papers* (Sept. 2020); Manger-Nestler and Gentzsch, *Democratic Legitimation of Central Bank Independence in the European Union* (Springer, 2021); Massoc, "How do Members of the European Parliament (MEPs) hold the European Central Bank (ECB) accountable? A descriptive quantitative analysis of three accountability forums (2014–2021)", LawFin Working Paper No. 40 (June 2022).

insight into the complex considerations, prioritization, and balancing that have led to the monetary policy decisions taken as well as alternative courses of action that it discarded.

This article builds upon previous literature discussing the legality and appropriateness of the more complex and discretionary role of today's ECB.[7] Without engaging further in this discussion, the article takes this new role as a given, a new reality, and focuses on its implications with a view to the ECB's accountability. It is argued that the ECB's fundamental transformation – now formalized with the 2021 strategy review – must be counterbalanced by a strengthening of the institutional structures for its democratic accountability.

This article makes proposals for improving the accountability relationship with the EP and sets out a case for enhanced interinstitutional coordination. While acknowledging that the ECB's accountability towards other EU institutions may also need to improve, the proposals address its relationship with the EP and focus on the democratic legitimacy of ECB policies under its new strategy.

We identify three general areas for improvement in substance. The first relates to *information*. The ECB's current (discretionary) disclosure practices provide little insight into the complex choices made and balancing conducted by the ECB. Based on new documents released by the ECB in response to our request, we chart its restrictive confidentiality regime. New instruments and information channels should ensure that Members of the European Parliament (MEPs) can accurately assess the many new considerations that inform the ECB's deliberations.

The second area for improvement concerns *justification*. The ECB has become concerned with a range of objectives alongside price stability, but how they are balanced and how the ECB makes trade-offs remains profoundly unclear. Any adequate justification should not only explain why choices were made, but also why the ECB did not choose feasible alternatives which were equally compatible with its mandate.

As a third improvement, *coordination* is proposed. The ECB balances new objectives and incorporates the objectives of broader EU policies into its operations. While justifying these choices increases accountability, it does not change the fact that the ECB's mandate does not specify its objectives or provide a clear prioritization (beyond the ordering of primary and secondary objectives). Accordingly, more coordination on secondary objectives is

7. See e.g. Ioannidis and Zilioli, "Climate change and the mandate of the ECB", 59 CML Rev. (2022), 363–394; van 't Klooster and de Boer, "What to do with the ECB's secondary mandate", 61 JCMS (2022). Critical, e.g. Steinbach, "The greening of the Economic and Monetary Union", 59 CML Rev. (2022), 329–362; Dietz, "Green monetary policy between market neutrality and market efficiency", 59 CML Rev. (2022), 395–432; Tortola, "The politicization of the European Central Bank: What is it, and how to study it?", 58 JCMS (2020), 501–513.

needed through input from the political actors, in particular the EP, to mitigate the ECB's democratic deficit and the litigation risk it continues to be exposed to.[8]

For improvement in form, this article reflects on the negotiations between the EP and the ECB since 2021 to establish a formal interinstitutional agreement for enhanced accountability practices in monetary policy matters. As our proposals go beyond a gradual update of existing practices, it is suggested that they should be matched by a more formal arrangement for ECB-EP accountability relations going forward. An exchange of letters between ECB President Christine Lagarde and EP President Roberta Metsola of 5 June 2023 made a step towards formalization, confirming both institutions' common understanding of the accountability arrangements for monetary policy.[9] However, that common understanding remains limited to the *existing* accountability arrangements.

The article proceeds as follows. Section 2 analyses the ECB's evolving monetary policy strategy to highlight the break introduced by the 2021 strategy review. Section 3 then turns to the existing parliamentary accountability practices and discusses how these have failed to keep up with the ECB's new role. Section 4 sets out detailed institutional proposals to address the asymmetry between ECB policymaking and accountability practices. Section 5 concludes.

2. ECB strategy, deliberation, and monetary policy[10]

Defining its monetary policy, and redefining it if warranted, is one of the basic tasks of the ECB.[11] It does so in its monetary policy strategy, which it

8. Case C-62/14, *Gauweiler and Others*, EU:C:2015:400; Case C-493/17, *Weiss and Others*, EU:C:2018:1000. A case against the Pandemic Emergency Purchase Programme (PEPP) is pending before the German Bundesverfassungsgericht. On coordination see already de Boer and van 't Klooster, "The ECB's Neglected Secondary Mandate: An Inter-Institutional Solution", Report for Positive Money Europe (Oct. 2021); van 't Klooster and de Boer, op. cit. *supra* note 7.

9. Available at <https://www.ecb.europa.eu/pub/pdf/other/Exchange_of_Letters_ECB_European_Parliament_central_banking230605~87aa8ed4a3.en.pdf>.

10. This section builds on van 't Klooster, "The European Central Bank's Strategy, Environmental Policy and the New Inflation: A Case for Interest Rate Differentiation" Report for Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science (July 2022).

11. Article 127(2), first indent, TFEU: "The basic tasks to be carried out through the [ECB] shall be: to *define* and implement the monetary policy of the Union…" (emphasis added).

established in 1998 and has reviewed twice – in 2003 and 2021. The ECB's 1998 and 2003 strategies saw monetary policy focus on the identification of shocks and resulting threats to price stability.[12] However, since 2008, the ECB's role has undeniably become more complex. These developments predate the ECB's 2021 strategy, but were formalized and solidified with this new account. The new strategy makes clear that the nature of monetary policy has shifted. The ECB expressly pursues new objectives, assesses the proportionality of its decisions, and monitors undesirable side-effects of its policies. These changes raise new questions, which often do not have a straightforward answer in the ECB's legal mandate. To prepare the ground for reviewing the existing structures of democratic accountability, this section first sets out the ECB's 1998 and 2003 strategies. We then turn to the 2021 strategy to analyse the new choices that the ECB faces.

2.1. *The old ECB and its focus on price stability*

The democratic legitimacy of the ECB's monetary policy rests predominantly on its legal mandate. Although the legal text itself allows for many interpretations, the 1998 and 2003 strategies of the ECB relied on an interpretation that specifies a well-defined set of powers and conditions for their use. Accordingly, the ECB's accountability to the EP and European citizens consisted, first and foremost, in explaining how the ECB had implemented the legal mandate assigned to it.

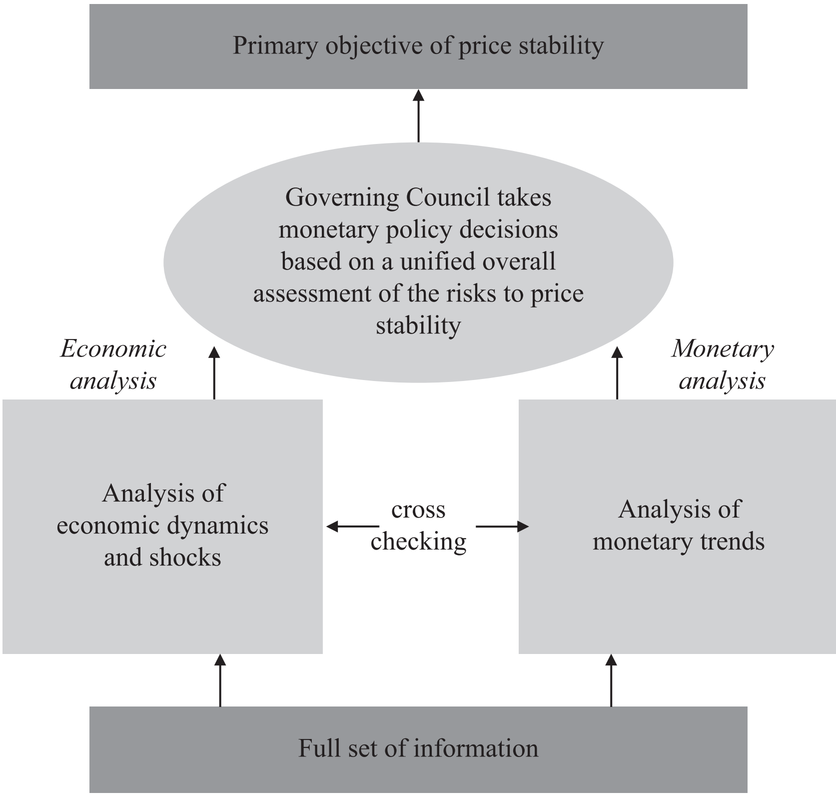
In its early strategies, the ECB saw itself as using one instrument to pursue one well-defined objective, namely "price stability" as set out in Article 127(1) TFEU.[13] As a consequence, its discretion in exercising powers was limited. The price stability objective was spelt out as consumer price inflation below 2%, ultimately settling on "below, but close to, 2% over the medium term".[14] Before 2008, the ECB also used a narrowly defined toolbox to achieve that objective. Its open market operations and standing facilities were geared to steering interbank lending rates, which in turn were meant to influence wider financial market rates.

12. ECB Press Release, "A Stability-Oriented Monetary Policy Strategy for the ESCB", (13 Oct. 1998), <www.ecb.europa.eu/press/pr/date/1998/html/pr981013_1.en.html>; ECB, "The outcome of the ECB's evaluation of its monetary policy strategy", *ECB Monthly Bulletin* (June 2023), 79–92.

13. ECB Press Release, cited *supra* note 12.

14. ECB Monthly Bulletin, cited *supra* note 12, at 79.

Figure 1 The 2003 decision structure of the ECB (Source: ECB[15]*)*



As visible in Figure 1, the ECB's early strategies involved a relatively simple decision-making procedure. The role of the Governing Council was to interpret the evidence from economic and monetary analyses, and decide what monetary policy measures were justified on that basis. If the economy operated below its potential output, the ECB would do nothing or seek to stimulate the economy by lowering rates. If it was seen to be at risk of operating above potential, the ECB would pull the brake by raising interest rates. Establishing how to set interest rates was understood to be a technical, not a political, challenge. Since there is only one value of the instrument that is compatible with achieving the long-term potential of the economy, the discretion of the ECB was seen as limited.

15. ECB Monthly Bulletin, cited *supra* note 12, at 92.

The ECB's self-conception always rested on a particular interpretation of a central bank's role rather than the letter of the law.[16] The ECB's mandate was formulated to allow the central bank to adapt its strategy to economic developments and the needs of the time.[17] Key provisions are vague and defy strict interpretation. For example, the ECB has more objectives than just price stability. Its mandate states that "without prejudice to the objective of price stability, the [ECB] shall support the general economic policies in the Union" (Article 127(1) TFEU). The sentence continues to specify that the ECB should support those broader economic policies to contribute to the objectives of the EU as outlined in Article 3 TEU. Complementing these provisions, the ECB also has the task of contributing to the "smooth operation of payment systems" (Article 127(2) TFEU), must "contribute to . . . the stability of the financial system" (Article 127(6) TFEU), and is required to integrate "environmental protection requirements . . . into the definition and implementation" of its monetary policy (Article 11 TFEU). The openness of this mandate is also reflected in the account of the ECB's task in Article 127(2) TFEU, which leaves it to the ECB to not just "implement", but in fact "define" monetary policy.

The Treaty provisions covering the ECB's instruments similarly provide almost no guidance on its use of instruments. In its Statute, the very general provision of Article 18 allows the ECB to engage in financial market transactions and lending, the latter subject to the requirement that the central bank receives "adequate collateral". Article 20 also permits "the use of such other operational methods of monetary control as it sees fit", although this provision requires a two-thirds majority in the Governing Council. Article 123 TFEU prohibits the direct purchase of public debt, but was drafted explicitly to

16. Smits, op. cit. *supra* note 1; Amtenbrink, op. cit. *supra* note 2. Among the critics, for example, Grund and Grle, "The European Central Bank's Public Sector Purchasing Programme (PSPP), the prohibition of monetary financing and the sovereign debt restructuring scenarios", 41 EL Rev. (2016), 781–803, at 802 noting that "… the unprecedented expansion of monetary policy has undoubtedly been a development which was not foreseen in the initial conception of the Maastricht Treaty". For evidence that the drafters did foresee monetary financing transactions by the ECB, see Bateman and van 't Klooster, "The dysfunctional taboo: Monetary financing at the Bank of England, the Federal Reserve and the European Central bank", *Review of International Political Economy* (forthcoming), <https://doi.org/10.1080/09692290.2023.2205656>.

17. The commentary published with the ECB's Statute explains that the operational provisions were drafted "with due regard to the evolutionary nature of financial markets" thereby seeking to ensure that the central bank could "respond adequately to changing market conditions". See Council of Governors of the Central Banks of the Member States of the European Economic Community, *Draft statutes of the European System of Central Banks and the European Central Bank with an introductory report and a commentary* (Europe Agence, 1990) at 16.

allow for the purchase of government bonds in financial markets.[18] Article 127(1) TFEU also contains the general provision that the ECB should act "in accordance with the principle of an open market economy".

In light of the monetarist ideas that shaped the ECB at its creation, the central bank was meant to achieve the well-defined objective of price stability by using one simple tool: setting interest rates. Higher rates reduce demand by constraining funding to the economy, which imposes an economic cost in terms of lost output. That cost, however, was held to be transient as it would serve to maintain the economy on its long-term growth trajectory as determined by supply-side forces. In the long run, money should be "neutral". However, the time horizon over which the ECB pursues price stability can be adjusted to support broader economic priorities beyond price stability. In particular, in the face of a supply shock, its medium-term orientation is meant to allow for inflation above target because the cost of an aggressive pursuit of price stability would be large. As the ECB explained in the 2003 strategy review:

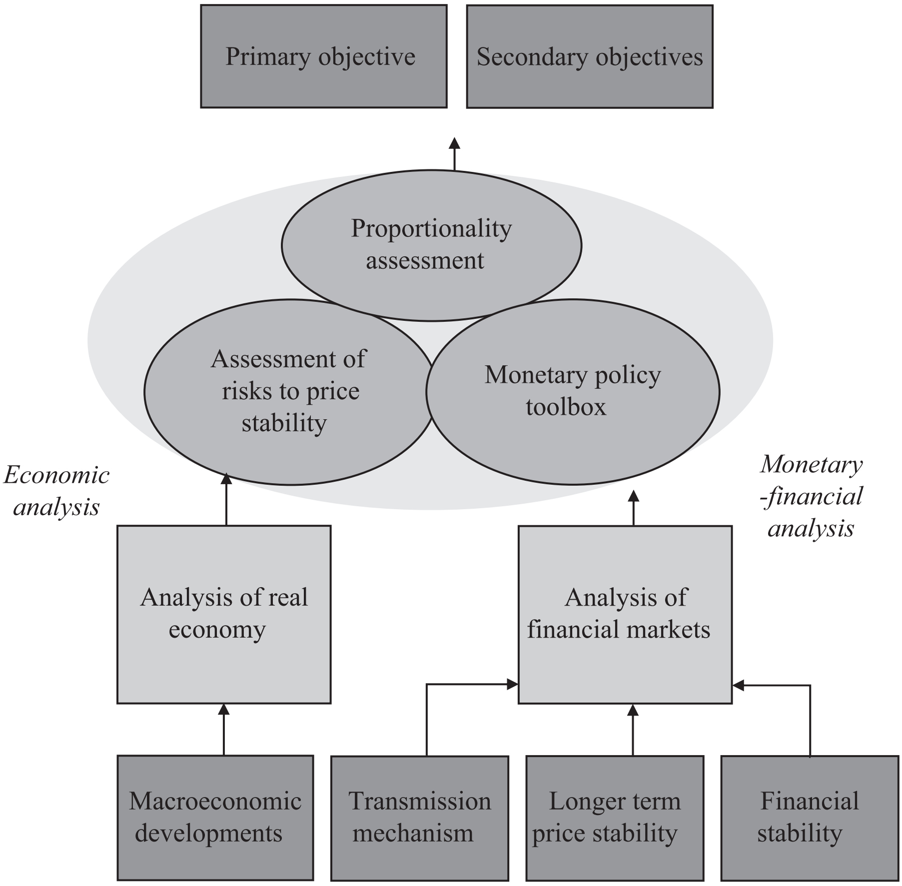
> "monetary policy needs to be tailored to the nature of the shocks hitting the economy, and their size, source and potential for propagation. On this basis, the key ECB interest rates must evolve in such a way that the path of future inflation remains in line with the ECB's objective of price stability over the medium term."[19]

Reflecting a two-pillar structure, the Governing Council took account of two types of analysis that were considered to be of importance for future inflation developments (see Figure 1). First, an *economic analysis* that focused on the business cycle and economic output. To determine potential output, the ECB sought to assess the extent to which changes of (actual) economic output are a consequence of long-term supply-side factors such as structural and frictional unemployment and changing technology, and identify what deviations are merely the result of short-term fluctuations in nominal demand and commodity prices. Over time, this became by far the most important element in the analyses. Second, reflecting its first chief economist Otmar Issing's conviction that monetary aggregates were crucial to price developments, the ECB also conducted a *monetary analysis*. This analysis saw private sector money creation by banks and other financial institutions primarily as an indicator of future price developments for consumer goods. The early analytical frameworks accordingly reflected the belief that developments in financial markets were only relevant for a central bank from a price stability

18. Van den Berg, op. cit. *supra* note 1, at pp. 89, 146, 151.
19. ECB Monthly Bulletin cited *supra* note 12, at 88.

perspective. The secondary mandate went unmentioned, while the provisions for financial stability were not interpreted as relevant for the monetary policy task.[20]

Figure 2 The current decision structure of the ECB (Source: authors)



2.2. *The ECB's new strategy*

The era that followed the Great Financial Crisis saw the role of the ECB change dramatically, confronting it with choices far beyond medium-term

20. Lo Schiavo, *The Role of Financial Stability in EU Law and Policy* (Wolters Kluwer, 2017); Smoleńska and Beukers, "The ECB and financial stability", in Beukers, Fromage and Monti (Eds.), *The New European Central Bank: Taking Stock and Looking Ahead* (OUP, 2022), pp. 105–135; van 't Klooster and de Boer, op. cit. *supra* note 7.

price developments.[21] The ECB's new decision structure has been transformed with regard to both the elements feeding into Governing Council decision-making and the underlying analytical framework. To compare the nature of deliberation in the Governing Council under the 2003 and the 2021 strategies, we have mapped key changes onto the 2003 flow chart (Figure 2).

2.2.1. *The new analytical framework*

The first major change to the ECB's decision structure concerns the analytical framework. When deciding how to pursue price stability, the ECB now reflects extensively on a range of new economic and financial market effects of its policies. Compared to the 2003 strategy review, the medium-term orientation of the 2021 review is a lot more cryptic. The ECB will not only consider "the appropriate monetary policy response to a deviation of inflation from the target" but also "cater for other considerations relevant to the pursuit of price stability."[22]

Although the 2021 analytical framework looks superficially continuous with the two-pillar structure that preceded it, the two could not be more distinct. While in 2003 both pillars were focused on predicting price stability within the medium-term time horizon, this is now relegated to only the first pillar of economic analysis. Under this first pillar, the ECB considers what used to be the whole of its strategy: risks to medium-term price stability. Complementing this macroeconomic focus, the new *monetary-financial pillar* treats financial market dynamics as significant in their own right. By giving these considerations a role in decision-making, they now inform deliberation independently of medium-term price stability.

The ECB's new analytical framework takes into account three entirely distinct ways in which conditions in financial markets may shape its policy. First, financial markets are analysed because they serve to transmit monetary policy interventions to the real economy. Disturbances in markets and spreads between the bonds of individual Member States can hamper the effects of interventions. The Governing Council now takes those effects on monetary transmission into account in how it pursues the price stability objective. Second, the ECB looks at longer-term financial market dynamics as a potential factor impacting price developments. Investment in financial assets, housing, and sectors exposed to climate risk can undermine longer-term price stability. Accordingly, these developments are now monitored more closely

21. Pisani-Ferry, *The Euro Crisis and Its Aftermath* (OUP, 2014); Tooze, *Crashed: How a Decade of Financial Crises Changed the World* (Penguin Publishing Group, 2018); de Boer and van 't Klooster, op. cit. *supra* note 1.

22. ECB, "An overview of the ECB's monetary policy strategy" *ECB Economic Bulletin*, Issue 5/2021 (8 July 2021), <www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_overview.en.html>.

and discussed by the Governing Council. And third, the ECB also considers financial stability of interest in its own right, entirely distinct from price stability. The exact status of these considerations, however, remains hard to gauge. As ECB Executive Board member Isabel Schnabel explained, the ECB refrained from raising rates in December 2020 because this would have "further fuelled emerging overvaluations in parts of euro area financial and real estate markets". She went on to explain the trade-off the ECB made:

> "By tolerating a potential lengthening of the medium-term horizon, we effectively mitigated risks to financial stability which could have arisen from a more intense use of our policy instruments."[23]

By March 2023, however, and despite the resolution of a major European bank only a few days earlier, the Governing Council decided to go through with raising interest rates by 50 basis points,[24] seeing "no trade-off between price stability and financial stability".[25]

2.2.2. *Decision-making on instruments, proportionality, and new objectives*

The changes to the analytical framework are key to understanding the new and much more complex choices that the Governing Council faces. The ECB still decides on its general monetary policy stance with an eye to achieving its medium-term price stability objective. However, three new elements have become pivotal to deliberation: instruments, a proportionality review, and new objectives.

The first type of new choice facing the ECB concerns the many different instruments now at its disposal. Until recently, the ECB's main refinancing rate had been below 1% (since 2012) and stuck at 0% (since 2016). For that reason, the ECB relied extensively on three types of additional instruments: (i) forward guidance; (ii) asset purchases; and (iii) (targeted) longer-term refinancing operations (LTROs and TLTROs).[26] While the ECB ended net

23. Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the fifth annual conference of the European Systemic Risk Board, "Monetary Policy and Financial Stability" (8 Dec. 2021), <www.ecb.europa.eu/press/key/date/2021/html/ecb.sp211208_2~97c82f5cfb.en.html>.

24. ECB Press Release, "Monetary Policy Decisions" (16 March 2023), <www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230316~aad5249f30.en.html>.

25. ECB Press Conference with Christine Lagarde, President of the ECB, and Luis de Guindos, Vice-President of the ECB (16 March 2023), <www.ecb.europa.eu/press/pressconf/2023/html/ecb.is230316~6c10b087b5.en.html>.

26. LTROs are liquidity-providing open market operations in euro with a maturity of three months. They are meant to complement the Eurosystem's main refinancing operations by providing counterparties with additional longer-term refinancing. TLRTOs provide financing to

asset purchases and recalibrated the TLTRO programme in the face of the 2022 inflation,[27] these instruments remain in the toolbox and new instruments could be added at any time. Because the central bank has a range of instruments at its disposal, it faces a choice in terms of which combination of instruments to use to pursue price stability. Each of these instruments, in turn, raises complex choices in the design and calibration of the instrument: how to communicate, what assets to include in the purchase programmes, and how to set the conditions of the TLTROs, amongst others. The ECB also faces entirely new questions concerning the monetary objects it issues, such as whether it could and should issue a digital form of central bank money available to the public and what design features such a digital euro would have.[28]

A second type of new choice emerges in the context of the ECB's new proportionality assessment. Because its choice and design of instruments may have further economic policy effects, the ECB assesses whether these undesired side-effects are outweighed by their benefits in achieving price stability. As the ECB explains:

> "the Governing Council recognises the need to limit possible side effects of the new policy instruments and therefore remains committed to continuing to perform careful proportionality assessments and to adapting the design of measures related to these instruments with a view to minimising side effects, without compromising price stability."[29]

Low interest rates have had a range of undesirable economic side-effects. Rather than just promoting investment, they have boosted the value of existing financial asset and real estate prices.[30] Where the money did reach firms, they

counterparties for up to four years at attractive conditions to stimulate real-economy lending. See ECB, "Open Market Operations", <www.ecb.europa.eu/mopo/implement/omo/html/index.en.html>.

27. The end of net asset purchases was announced on 9 June 2022, see ECB, "Monetary policy decisions" (9 June 2022) <www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp220609~122666c272.en.html>. The recalibration of the TLTRO III programme was announced on 7 October 2022, see ECB, "ECB recalibrates targeted lending operations to help restore price stability over the medium term", <www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221027_1~c8005660b0.en.html>.

28. E.g. Grünewald, Zellweger-Gutknecht and Geva, "Digital euro and ECB powers", 58 CML Rev. (2021), 1029–1056; Grünewald, "A legal framework for the digital euro – An assessment of the ECB's first three progress reports", In-depth analysis requested by the ECON Committee of the European Parliament, PE 741.518, (May 2023)

29. ECB cited *supra* note 22, at 9.

30. Domanski, Scatigna and Zabai, "Wealth inequality and monetary policy", *BIS Quarterly Review* (March 2016), 45–64.

have often used it to buy their own shares and boost dividends.[31] Accordingly, the benefits of these measures have landed disproportionately with Europe's wealthiest citizens.[32]

Now that the ECB has turned to raising interest rates, potential side-effects could be even worse. Higher rates not only cause unemployment, which increases economic inequality, they also reduce the value of fixed-income instruments and thereby impact bank balance sheets and the volume of collateral available within the financial system.[33] As the March 2023 collapses of Silicon Valley Bank and Credit Suisse illustrated, high rates can also trigger financial market panic. Moreover, raising rates negatively affects long-term investments, disproportionately harming renewable energy projects.[34] For the ECB, conducting a proportionality assessment means that it seeks to design operations that are most effective, while minimizing negative and maximizing positive side-effects, but so far it has largely decided to look past these side-effects.[35]

The ECB's acknowledgement of side-effects reflects its turn to asset purchases as an instrument of monetary policy. However, the ECB has also made new choices in how to deal with the side-effects of its *conventional* refinancing operations. In 2014, it introduced targeted long-term refinancing operations (TLTROs), which make low refinancing costs of banks conditional

31. Cohen, Gómez-Puig and Sosvilla-Rivero, "Has the ECB's monetary policy prompted companies to invest, or pay dividends?", 51 *Applied Economics* (2019), 4920–4938; Todorov, "Quantify the quantitative easing: Impact on Bonds and Corporate Debt Issuance", 135 *Journal of Financial Economics* (2020), 340–358.

32. Schnabel, cited *supra* note 23; Pereira da Silva et al., "Inequality hysteresis and the effectiveness of macroeconomic stabilisation policies", Report for the Bank for International Settlements (May 2022).

33. On unemployment and inequality effects, see Coibion et al., "Innocent bystanders? monetary policy and inequality", 88 *Journal of Monetary Economics* (2017), 70–89; Guerello, "Conventional and unconventional monetary policy vs. households income distribution: An empirical analysis for the euro area", 86 *Journal of International Money and Finance* (2018), 187–214; Pereira da Silva et al., op. cit. *supra* note 31. On financial stability see Albertazzi et al., "The role of financial stability considerations in monetary policy and the interaction with macroprudential policy in the euro area", *ECB Occasional Paper Series* No 272/Sept. 2021.

34. Van 't Klooster, op. cit. *supra* note 10. In contrast to energy production that runs on oil and gas, the variable costs of renewable energy is low and stable. Renewable energy projects, however, often have high upfront costs and repayment can stretch out over multiple decades. Raising interest rates strikes these investments the hardest. Schmidt, Steffen, Egli, Pahle, Tietjen and Edenhofer, "Adverse effects of rising interest rates on sustainable energy transitions", 2 *Nature Sustainability* (2019), 879–885. The insulation of houses and energy-efficient manufacturing techniques have similarly high upfront costs.

35. Alexander and Grünewald, "All else equal? Economic inequality and the ECB's mandate", *EBI Working Paper* (forthcoming).

on sufficient “real economy” lending.[36] This is meant to channel money directly to the real economy while reducing the financial market effect. In September 2019, the ECB introduced a programme of deposit tiering, which provided banks with a rebate on the negative interest rates.[37] Conversely, now that interest rates are going up, discussion is ongoing about reducing remuneration on ECB reserves.

As a third new element, the 2021 strategy review formalizes an explicit role for new objectives. In recent years, the ECB’s decision-making has increasingly featured new considerations that it pursues without prejudice to its 2% inflation target, but that are to some extent independent of this narrow notion of price stability. These considerations are sometimes characterized as “preconditions” of price stability, but increasingly also as secondary objectives.[38]

In this regard, the 2021 strategy clearly contrasts with the 2003 strategy: the ECB now analyses and takes into account the monetary and financial impacts of its operations in ways that are not merely instrumental towards achieving the medium-term inflation objective. In the new strategy, financial market transmission, long-term price stability, and financial stability are not formally designated as secondary objectives of the ECB. However, they are objectives that the ECB pursues alongside (but without prejudice to) its medium-term inflation objective. The ECB announced that it would actively monitor and reduce unintended side-effects of its policies where these disproportionately benefit unsustainable sectors of the economy,[39] leading the ECB to revise the

36. ECB, “Targeted longer-term refinancing operations (TLTROs)”, <www.ecb.europa.eu/mopo/implement/omo/tltro/html/index.en.html>. Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, “Monetary policy tightening and the green transition” (10 Jan. 2023) <www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110~21c89bef1b.en.html>.

37. ECB Press Release, “ECB introduces two-tier system for remunerating excess liquidity holdings”, <www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190912_2~a0b47cd62a.en.html>. De Grauwe and Yi, “Monetary policies that do not subsidize banks”, *VOXEU CEPR* (9 Jan. 2023) <cepr.org/voxeu/columns/monetary-policies-do-not-subsidise-banks>.

38. ECB cited *supra* note 22, at 12.

39. Matikainen, Campiglio and Zenghelis, “The Climate Impact of Quantitative Easing”, Policy Paper for Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy, London School of Economics and Political Science (May 2017); Greenpeace, “Bankrolling the Climate Crisis. European Central Bank injects over €7 billion into fossil fuels since COVID-19 crisis”, (3 June 2020); van ’t Klooster and Fontan, “The myth of market neutrality: A comparative study of the European Central Bank’s and the Swiss National Bank’s corporate security purchases”, 25 *New Political Economy* (2020), 865–879.

rules of its corporate sector purchase programme (CSPP).[40] With its 2022 climate agenda, it went from observing secondary objectives *de facto* to pursuing them *de jure*. In fact, the changes to the ECB's operational framework are now described as "in accordance" with the price stability objective, but their aims are specified as reducing risk on the ECB's balance sheet and supporting the EU's climate objectives.[41] All in all, the narrow medium-term focus of the 2003 strategy is unlikely to return any time soon.

3. Current accountability arrangements and the limitations of "independent accountability"

Adequate mechanisms of accountability are at the core of democratic systems since they serve to ensure that political actors remain sensitive to the interests and views of citizens. According to the most widely used definition in EU law, accountability is understood as:

> "a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences."[42]

A key feature of accountability is that it goes beyond merely explaining policy, what is typically described as transparency. Transparency is a necessary, but not sufficient, precondition of accountability. For genuine accountability, the actor must explicitly address the forum to which it is accountable by responding to its concerns and priorities. It should explain why it took one course of action over feasible alternatives. The forum should, in turn, be able to express its evaluation of the actions taken and express discontent if its priorities have not been met in light of the account given.

Adequate accountability practices need to do at least three things. First, with regard to *information*, they must ensure that those who exercise power provide citizens and their representatives with the information needed to evaluate their performance and the motivations for their decisions. Second, with regard to *justification*, adequate accountability practices provide citizens

40. ECB cited *supra* note 22; ECB, "ECB climate agenda 2022" (4 July 2022), <www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704_annex~cb39c2dcbb.en.pdf>; ECB Press Release, "ECB provides details on how it aims to decarbonise its corporate bond holdings", (19 Sept. 2022), <www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919~fae53c59bd.en.html>.

41. ECB Press Release cited *supra* note 4.

42. Bovens, "Analysing and assessing accountability: A conceptual framework", 13 ELJ (2007), 447–468, at 450.

and their representatives with a full account of why specific choices were made and why they were chosen over feasible alternatives. Third, where the actor faces fundamentally new choices, the prior legislative act of delegation loses much of its legitimizing force. Here, *coordination* between the actor and the forum may reassure citizens that the powers that have been entrusted to the actor are still used in ways that align with their views and interests.

Turning to the ECB's accountability framework, we find a striking asymmetry. After 2008, the ECB has moved far beyond the narrow inflation-fighting role envisaged at its creation, introducing new objectives and a range of instruments. Meanwhile, despite formalizing these changes in the 2021 strategy review, the objectives and instruments of its accountability framework have remained almost unchanged. This asymmetry reflects assumptions that no longer hold that setting monetary policy is a fundamentally technical task, which pursues the sole objective of price stability. This section argues that as the ECB is taking more discretionary decisions, it needs to be better embedded in the democratic system of the EU.

3.1. *Independent accountability*

The fundamental basis for the ECB's democratic legitimacy is the legal mandate conferred upon it by the 1992 Maastricht Treaty. The Treaty constitutes the act of democratic consent that confers the power to define and implement monetary policy upon the ECB.[43] Article 130 TFEU grants the ECB far-reaching independence when exercising its tasks and powers, shielding it from "instructions" from Union institutions or bodies, any Member State government, or any other body that might distract it from its price stability objective. To counterbalance this far-reaching independence, the Treaty subjects ECB decisions to judicial review by the ECJ and designates the EP as the ECB's primary accountability forum, yet without granting the EP legal powers to sanction the central bank.[44] The focus on the Treaty as the basis for the ECB's democratic legitimacy reflects the special character of monetary policy, which was considered to require a degree of insulation from democratic politics.[45]

The ECB has historically asigned a narrow interpretation to the requirements of democratic accountability as laid down in the Treaty. In 2002,

43. We outlined the content of the mandate in section 2.1.
44. See Art. 284(3) TFEU and Art. 15(3) ESCB Statute.
45. Kydland and Prescott, "Rules rather than discretion: The inconsistency of optimal plans", 85 *Journal of Political Economy* (1977), 473–491; Rogoff, "The optimal degree of commitment to an intermediate monetary target", 100 *The Quarterly Journal of Economics* (1985), 1169–1189.

it defined accountability as "being held responsible for one's decisions and being required to justify and explain them".[46] As the ECB explained:

> "a measurement of the central bank's performance always requires a balanced and differentiated assessment. While the use of formal sanction mechanisms would be too blunt and would have potentially negative implications for the efficient fulfilment of the central bank's mandate, constant scrutiny of the central bank's actions by the parliament and the public at large seems the appropriate method for holding an independent central bank accountable."[47]

Theorized as "independent accountability", the ECB has long understood the accountability framework as primarily requiring it to demonstrate that its actions, as a matter of fact, realize its price stability objective.[48] The ECB's inflation metric was held to provide an objective standard by which to evaluate the ECB's actions. The EP's task could then be limited to verifying whether the ECB has succeeded in achieving that objective and asking how it has sought to use its instruments to do so. If the ECB had met its target, the EP could ask for more detail in how it has done so. If not, the ECB could be asked to explain how it will improve. The information that the ECB provided primarily concerned the instruments that were used and a careful account of how these impacted the macroeconomic outcomes that it had sought to influence. However, because this understanding of accountability was inherently limited, the pressure on the ECB to provide a genuine justification remained relatively low – a fact repeatedly criticized in earlier literature.[49]

Recent improvements to the ECB-EP accountability framework have stayed within this "independent accountability" frame (see Table 1). ECB parliamentary accountability takes place through three broad instruments. First, the ECB publishes an annual report that sets out its tasks, the activities of the European System of Central Banks (ESCB), and the Eurosystem's monetary policy. Second, the ECB's President and other Executive Board members participate in public hearings before the EP plenary and the Committee on Economic and Monetary Affairs (ECON Committee) respectively – a practice commonly referred to as "monetary dialogue". And third, the ECB answers written questions from MEPs and responds to the EP's annual resolution on the ECB annual report. Across these three instruments,

46. ECB, "The accountability of the ECB", (2002) *ECB Monthly Bulletin*, 45–57, at 48. See also Fraccaroli et al., op. cit. *supra* note 2.

47. ECB Monthly Bulletin, op. cit. *supra* note 46, at 47.

48. Lastra, op. cit. *supra* note 2.

49. Amongst others, Amtenbrink and van Duin, op. cit. *supra* note 6; Dawson, Maricut-Akbik and Bobić, op. cit. *supra* note 6.

the emphasis is on the ECB explaining how it has used its instruments to achieve its inflation target.

Table 1 ECB-EP accountability framework (Source: authors)

Accountability instrument	*Description*	*Legal basis*
Annual report	ECB submits an annual report on its tasks, the activities of the ESCB and the Eurosystem's monetary policy to the EP, Council, Commission and European Council.	Art. 284(3) TFEU, Art. 15.3 ESCB Statute
	The ECB President presents the annual report on the occasion of the plenary debate on the EP resolution on the ECB.	Art. 284(3) TFEU, Art. 15.3 ESCB Statute The legal basis for EP resolutions (own-initiative reports) is Art. 54 RoP[50]
	Members of the Executive Board may be heard by competent committees of the EP.	Art. 284(3) TFEU
	The ECB Vice-President presents the annual report to the ECON Committee in a dedicated session.	Conventional practice
"Monetary dialogue"	The ECB President participates in the public quarterly hearings before the ECON Committee, where she delivers a statement and answers questions from MEPs.[51,52]	Art. 284(3) TFEU, Art. 15.3 ESCB Statute, Art. 135(3) and (5) RoP
	ECB Executive Board members participate in hearings of the ECON Committee to explain the ECB's reasoning and decisions on specific topics.[53]	Art. 284(3) TFEU, Art. 15.3 ESCB Statute, Art. 135(4) and (5) RoP

50. European Parliament, Rules of Procedure – 9th parliamentary term – July 2019, O.J. 2019, L 302/1.

51. Hearings are livestreamed and the text of the statement as well as a verbatim report of the Q&A sessions are published on the websites of both institutions.

52. Before each meeting, the EP assembles a panel of external experts to prepare and present reports on relevant monetary policy topics, published on the EP's website.

53. Publication of a verbatim report of the meeting.

Accountability instrument	*Description*	*Legal basis*
Other communications with the EP	MEPs can address written questions to the ECB.[54]	Conventional practice since early 2000 Art. 140 and Annex III RoP
	ECB responds to EP resolution on its annual report ("feedback").	Conventional practice since 2016 (2014 annual report)

The ECB's current accountability practices assume that MEPs do not possess any additional information beyond what is known to the public at large. The EP discharges its scrutiny of ECB policies and decisions (e.g. asking questions at the quarterly hearings or in written form) on the basis of information that the ECB makes publicly available. Due to the important role of central bank communication as a policy instrument, this is information that is shaped strategically by the ECB to influence financial market outcomes.[55] Besides the annual report presented to the EP, the ECB publicly disseminates information through press conferences after monetary policy meetings, the accounts of these meetings, and further publication channels (see Table 2). In recent years, the ECB has improved communication on internal scientific background work, including through the release of some background papers concerning the 2021 strategy review. However, the sharing of such background information remains occasional and is not targeted at the EP's needs specifically. Accordingly, the accountability framework is supported by information that the ECB makes available to the public via different information channels, including its own publications and the media.

Table 2 Information to the public (Source: authors)

Information channel	*Description*	*Legal basis*
Press conference after each monetary policy meeting	Every 6 weeks	Conventional practice

54. Answers are signed by the ECB President and published on the ECB's and the EP's websites.

55. Braun, "Governing the future: The European Central Bank's expectation management during the Great Moderation", 44 *Economy and Society* (2015), 367–391.

Information channel	*Description*	*Legal basis*
Publication of Economic Bulletin	8 times a year Contains the economic and monetary analysis that informed the Governing Council's policy decisions.	Art. 284(3) TFEU, Art. 15.1 ESCB Statute
Publication of weekly financial statement of the Eurosystem	Provides information on monetary policy and foreign exchange operations as well as investment activities.	Art. 15.2 ESCB Statute
Publication of accounts of monetary policy meetings	Since February 2015, 4 weeks after each meeting. *No publication of verbatim minutes nor of individual votes by Governing Council members. Viewpoints are kept impersonal.*	Art. 132(2) TFEU, Art. 10.4 ESCB Statute
Occasional papers, interviews, speeches and other scientific communications	Published on the ECB's website.	Conventional practice
ECB blog	Since March 2020 Blog posts by members of the Governing Council provide insights into recent policy decisions and specific timely topics relating to the euro area economy.	Conventional practice

3.2. *Rethinking accountability after the strategy review*

The ECB's historical framework of "independent accountability" is premised on two assumptions that are no longer tenable. The first is that the ECB's choices are of a largely technical nature, so that its parliamentary justification can focus on how the ECB used its simple toolbox to achieve price stability. As section 2 demonstrated, the ECB's early strategies centred around a relatively technical task focused on identifying economic shocks that would affect medium-term price developments. The second assumption that informed the choice for "independent accountability" was that the ECB's mandate was given to it once and for all. The mandate was read as containing a narrow price stability objective, which the ECB specified in 1998 and 2003 by choosing its inflation metric. This meant that the democratic authorization for the pursuit of the ECB's objectives could be situated in a prior act of delegation through the ECB's legal mandate as set out in the Maastricht Treaty. Accountability would be limited to explaining how the price stability objective had been achieved. There would be no fundamentally new choices on which citizens and their elected representatives could be expected to have a say. However, over the past fifteen years, the ECB's self-understanding and role in practice gradually moved beyond the narrow reading of its mandate that formed the basis for an "independent accountability" framework.

The 2021 strategy review reveals that neither of the long-standing assumptions that informed the ECB's accountability practices still hold today. The ECB no longer applies just one instrument to achieve one objective, but rather faces a set of new trade-offs between multiple objectives. It has broadened its understanding of price stability to cover, amongst others, interventions in sovereign bond markets and supporting the EU's climate agenda. It has also introduced financial stability concerns and secondary objectives into its deliberations, alongside a complex toolbox, where each instrument involves intricate design choices. While official ECB language still insists that all its policies ultimately pursue price stability, it is undeniable that the ECB today routinely faces much more complex policy choices.

As the premises of "independent accountability" no longer hold, a rethinking of the ECB's accountability is in order. The ECB's new role calls for an enhanced justification of choices made in the design of its operations. The ECB's ongoing efforts to bring down inflation provide a relevant example. Already, on the most basic level of operations, the ECB needs to sequence and coordinate changes to its asset purchase programmes with changes to the refinancing conditions for banks. So far it has announced the end of net purchases, meaning that the ECB will not allow its quantitative easing portfolio to grow. However, to keep its quantitative easing portfolio (consisting of the Asset Purchase Programme and the Pandemic Emergency Purchase Programme) at its current size of EUR 4.9 trillion, funds that become available when bonds mature need to be re-invested into new assets. In July 2022, the ECB also announced a new Transmission Protection Instrument (TPI).[56] All these programmes have design parameters that can be tweaked and have a range of further financial market effects. Similarly, when it comes to the ECB's bank refinancing operations, existing TLTRO programmes allow for considerable differentiation with regard to the forms of lending that the

56. ECB Press Release, "The Transmission Protection Instrument" (21 July 2022), <www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220721~973e6e7273.en.html>.

ECB wants to influence. A justification that fails to indicate why one measure or design is chosen instead of feasible alternatives does not provide an adequate account of ECB decision-making.

However, when the ECB pursues secondary objectives, a justification is inherently insufficient. While giving an explicit account of secondary objectives enhances the ECB's accountability,[57] it cannot solve the reality that the ECB's legal mandate provides little guidance on the precise meaning and prioritization of these objectives.[58] The Treaties assign a supporting role to the ECB with a view to a vast range of economic policy objectives, as enshrined in Article 127(1) TFEU read in conjunction with Article 3 TEU. While the ECB has started invoking these objectives explicitly when designing its instruments,[59] they remain inherently underdefined.[60] The ECB can and, under certain circumstances, arguably must support the general economic policies in the Union. However, it is for other, democratically accountable actors, including the EP, to *make* these policies. After all, the prerogative to select and prioritize the objectives set out in Article 3(3) TEU lies with these democratically accountable actors, not with the ECB.[61]

The current ECB-EP accountability framework must thus be extended to include elements of interinstitutional coordination. Such coordination would not impair ECB independence as enshrined in Articles 130 and 282(3) TFEU. Article 127(1) TFEU explicitly confines the ECB's role to *supporting* the general economic policies in the Union, implying that the ECB must defer to the policies made by political actors and their interpretation of the Union objectives that these policies pursue. What remains for the ECB to decide is whether and how these objectives relate to its primary objective. Only if they

57. It allows for specifying and communicating the weight assigned to considerations beyond price stability when the central bank faces choices between different courses of action that are equally effective in shaping price developments.

58. Claeys and Domínguez-Jiménez, op. cit. *supra* note 6; de Boer and van 't Klooster, op. cit. *supra* note 6.

59. For climate change see ECB Press Release, cited *supra* note 4: "[The measures] aim to better take into account climate-related financial risk in the Eurosystem balance sheet and, *with reference to our secondary objective*, support the green transition of the economy in line with the EU's climate neutrality objectives." (emphasis added).

60. On the ECB's secondary objectives see Ioannidis, Hlásková and Zilioli, "The mandate of the ECB: Legal considerations in the ECB's monetary policy strategy review", *ECB Occasional Paper Series* No 272/Sept. 2021, 13–17; Ioannidis and Zilioli, op. cit. *supra* note 7; Steinbach, op. cit. *supra* note 7.

61. We focus in this article on guidance from the EP. For a proposal of a European Credit Council, including the European Commission, the European Investment Bank, the ECB, the European Systemic Risk Board and private actors, to coordinate European policies related to financial issues more generally see Monnet, "New central banking calls for a European Credit Council", *VOXEU CEPR* (26 March 2021) <cepr.org/voxeu/columns/new-central-banking-calls-european-credit-council>.

are "without prejudice to price stability", the ECB is empowered to pursue its secondary objectives. Guidance provided by the EP to the ECB on the Parliament's interpretation of the secondary objectives would not amount to "instructions" according to Article 130 TFEU, as it would remain for the ECB to decide whether there is a conflict with its primary objective. The ECB could always decide not to act on the guidance, invoking price stability concerns and issues of monetary policy implementation.

4. Enhancing the ECB's democratic accountability

Our comparative analysis of the ECB's 2003 and 2021 strategies highlights major developments in the type of deliberation that occurs in the Governing Council. At the same time, the ECB's accountability practices have remained largely centred on explaining a simple, technical choice: how to use the central bank's control over interest rates to achieve medium-term price stability. These practices no longer suffice to ensure adequate democratic accountability for the new choices that the ECB faces. This section turns to proposing concrete steps to enhance ECB parliamentary accountability. Our proposals address shortcomings of the current ECB accountability framework with regard to information, justification, and coordination.

The first proposal relates to improving access to *information* available to the EP and the broader public (section 4.1). Due to the extensive secrecy attached to relevant ECB documentation, the information available to MEPs remains limited. In particular, the EP needs to have better access to economic, financial, and legal analysis that feeds into deliberation in the Governing Council. The ECB's analytical framework has been significantly extended, but many of the documents that inform internal debate and decision-making remain confidential at the discretion of the ECB.

A second area where the ECB could improve its accountability practices concerns the *justification* of decisions (section 4.2). An adequate justification must not only explain why one particular (set of) policy was chosen to pursue price stability and/or secondary objectives. It should also explain why alternative options were *not* taken. To this end, we propose three mutually reinforcing accountability instruments: an ECB self-evaluation through the publication of impact assessments (section 4.2.1); the establishment of an Independent Evaluation Office (IEO) at the ECB to provide independent evaluations of ECB policies (section 4.2.2); and enhanced evaluation of ECB policies by the EP through *ex post* investigations of big events (section 4.2.3).

The third proposal suggests establishing *interinstitutional coordination* between the ECB and EP regarding the ECB's secondary objectives (section

4.3). While this is the most difficult area for an independent central bank to navigate, we see room for improvement through the EP expressly giving its interpretation of the Union objectives enshrined in Article 3 TEU that the ECB pursues in a supporting role. As the ECB assumes new tasks on the basis of its secondary objectives, where its role is not properly defined in its legal mandate, the central bank needs guidance from other competent institutions to ensure democratic accountability, respect for the mandates of other authorities, and policy consistency according to Article 7 TFEU.[62] Such express interinstitutional coordination is currently lacking and its establishment would introduce a new dimension to ECB-EP accountability arrangements. Eventually, such coordination will have to include other actors, in particular the Council. This article, however, focuses on relations between the ECB and the EP.

4.1. *Reducing information gaps*

Without adequate information, the EP cannot hold the ECB to account. The limited information currently available to MEPs (see Table 2) reflects the ECB's restrictive approach to confidentiality. The Governing Council enjoys almost unlimited discretion as to which information is made public or not, and in which form. While the ECB has undoubtedly become more transparent over the last years, it still observes a restrictive disclosure regime, with the vast majority of ECB internal documents classified as ECB-RESTRICTED, ECB-CONFIDENTIAL or ECB-SECRET.[63] Public access to ECB documents is governed by an ECB Decision,[64] as the EU's access to documents regime does not apply to the ECB in its capacity as a monetary policy-maker.[65] The ECB classifies information according to the likely negative impact it could have on its business, reputation, and finances.[66] The impact is graded according to a scale from 1 (lowest) to 5 (highest) and

62. A contribution to the recent review of the ECB's monetary policy strategy by members of the ECB Legal Services suggests that coordination on the interpretation of the secondary objectives is not only legally permissible, but also desirable: Ioannidis, Hlásková and Zilioli, op. cit. *supra* note 60. See also Ioannidis and Zilioli, op. cit. *supra* note 7.

63. Curtin, "'Accountable independence' of the European Central Bank: Seeing the logics of transparency", 23 ELJ (2017), 28–44.

64. Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3), O.J. 2004, L 80/42. See also Art. 23.2 Decision of the European Central Bank of 19 Feb. 2004 adopting the Rules of Procedure of the European Central Bank (ECB/2004/2), O.J. 2004, L 080/33 (as amended).

65. Art. 15(3), fourth subparagraph, TFEU.

66. See ECB, "Operational risk incident reporting", published on 13 Sept. 2022 following our request for public access: <www.ecb.europa.eu/ecb/access_to_documents/document/pa_document/shared/data/ecb.dr.par2022_0052ORM_grading_scale.en.pdf>.

determines the labelling of each document[67] as well as the modalities of its distribution, storage and disposal.[68]

Several public interests may warrant secrecy, at least for a certain sensitive time period.[69] Withholding certain information from the market and public at large may be justified in some instances to ensure the effectiveness of monetary policy and limit the risk of triggering market turbulences.[70] The ECB's classification system refers to the objective of avoiding the "[f]ailure or inadequacy of output of ECB tasks, business process(es) or project(s) which affects its ability to achieve its key objectives (as enshrined in the Treaty and the ECB Statute)".[71] It also states that the impact on ECB business objectives must be assessed with regard to both the ECB's ability to perform its processes and potential market reactions that the release of ECB documentation may trigger. Examples may include internal memos by the ECB's Legal Services and other ECB Directorates prepared in anticipation of the introduction of new monetary policy measures or a change in the monetary stance. Typically, these cannot be shared publicly for some time after the monetary policy measure was introduced or the monetary stance changed. However, it is often precisely that information on the practical implementation, design, or legal feasibility of specific monetary policy measures that would enable the EP to properly assess the reasons and proportionality of the ECB's decisions and actions.

The ECB might also refrain from making information public due to fears of reputational damage, i.e. "[t]he risk of deterioration of the reputation, credibility or public image of the ECB towards different external stakeholders (e.g. general public, financial sector, etc.)".[72] This is problematic from an accountability point of view, as it may keep the ECB from making information available to the public indefinitely. Documents that may expose errors of judgment, a change of opinion, or significant disagreement within the ECB will likely be classified as significantly impacting the good reputation of the ECB. However, secrecy on precisely these issues conflicts with effective democratic accountability.

67. ECB-PUBLIC, ECB-UNRESTRICTED, ECB-RESTRICTED, ECB-CONFIDENTIAL or ECB-SECRET; see Annex of the Decision of the European Central Bank of 17 Sept. 2014 on the implementation of separation between the monetary policy and supervision functions of the European Central Bank (ECB/2014/39), O.J. 2014, L 300/62, p. 57.

68. See ECB, "ECB Confidentiality Regime – How to classify", published on 13 Sept. 2022 following our request for public access: <www.ecb.europa.eu/ecb/access_to_documents/document/pa_document/shared/data/ecb.dr.par2022_0052ECB_confidentiality_regime.en.pdf>.

69. See Art. (1)(a) Decision ECB/2004/3 cited *supra* note 64.

70. See Art. 4(1)(a), second indent, Decision ECB/2004/3 cited *supra* note 64.

71. ECB, cited *supra* note 65.

72. Ibid.

We see three main ways to reduce existing information gaps. First, in line with other scholars,[73] we argue that more detailed information should be available regarding deliberations within the Governing Council. Unlike at the Bank of England and the Federal Reserve, deliberation within the Governing Council remains partially secret. The ECB has always argued that confidentiality of individual viewpoints protects the members of the Governing Council from undue pressure from their respective Member States. The Treaties provide for the possibility of greater transparency regarding Governing Council deliberations but leave the decision to the ECB.[74] Clearly, the publication of verbatim minutes and/or votes of individual members e.g. after five years would benefit ECB accountability, while limiting the risk to the personal independence of Governing Council members.

Second, MEPs should have confidential access to relevant documents to improve their ability to scrutinize the information withheld from the public. To this end, documents could be made available to MEPs on a confidential basis or even within secret reading rooms, if strictly necessary, with full disclosure only after an appropriate time has passed to account for ECB market impact and/or reputational concerns. This practice already applies in the context of ECB Banking Supervision accountability arrangements[75] and would require the establishment of new classification categories by the ECB (i.e. ECB-EP-RESTRICTED, ECB-EP-CONFIDENTIAL and ECB-EP-SECRET). Clearly, this would not allow the EP to hold the ECB to account under the eyes of its constituent citizens, as is the ultimate objective of parliamentary accountability. Accordingly, the motivation of MEPs to engage in a meaningful in-chamber exchange with the ECB may be limited. The main benefit of such confidential access would be in evaluating the reasons for withholding information from citizens, adding some democratic checks to the ECB's vast discretion in defining the need for secrecy of documentation

73. E.g. Buiter, "Central banks: Powerful, political and unaccountable?", 2 *Journal of the British Academy* (2014), 269–303, at 293–294; Jourdan and Diessner, op. cit. *supra* note 6, 21; Amtenbrink, "On the legitimacy and democratic accountability of the European Central Bank" in Arnull and Wincott (Eds.), *Accountability and Legitimacy in the European Union* (OUP, 2002), pp. 147–163, at pp. 156–157. See, however, Lastra, op. cit. *supra* note 6, at 30, arguing that secrecy regarding voting records protects the personal independence of Governing Council members.

74. Art. 132(2) TFEU ("The European Central Bank may decide to publish its decisions, recommendations and opinions"); Art. 10.4 ESCB Statute ("The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public").

75. See Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism, O.J. 2013, L 320/1.

informing its (in)actions. It could be combined with an EP-specific procedure to request disclosure of relevant documents.

Third, more informed parliamentary scrutiny would also be facilitated by direct involvement of the Parliament's ECON Committee in the meetings of the ECB's decision-making bodies. Although the Treaties do not explicitly provide for an observer status for a Member of the EP, EP participation in Governing and General Council meetings would be both legally permissible and desirable. The President of the Council and a member of the Commission may participate as observers in meetings of the ECB's Governing Council.[76] That does not necessarily exclude that such observer status be granted to a member of the EP on the basis of interinstitutional practice or agreement. Participation as an observer in Governing Council meetings, for example represented through the chair of the ECON Committee, could happen upon invitation by the ECB and be governed by the ECB's confidentiality regime, limiting ECB concerns of undue or untimely information leakage.[77] A similar arrangement could allow the ECON Committee to be involved in General Council meetings.[78] Alternatively, members of the ECON Committee could meet with ECB experts after each monetary policy meeting of the Governing Council and each meeting of the General Council to discuss the reasons for the outcome of the deliberations. Involvement of the ECON Committee is particularly relevant when Governing (and General) Council meetings are expected to deliberate changes to the monetary policy stance or other issues of great economic and societal importance (e.g. the design of the digital euro) or during exceptional or large-scale events.

4.2. *Justifying policies against alternative policy options*

The reduction of information gaps is a precondition for better justification of policy, but it cannot replace an adequate giving of account. When engaging in monetary dialogue with the EP, the ECB provides limited explanations on how it makes choices concerning the proportionality assessment, its larger set of instruments, and its objectives.[79] In particular, secondary objectives are mentioned as part of the 2021 strategy, but how they factor into deliberation and how the ECB navigates potential trade-offs should become more transparent. For any monetary policy decision, the Governing Council now

76. Art. 284(1) TFEU. The President of the Council may even submit a motion for deliberation to the Governing Council.

77. Art. 3.5 Decision ECB/2004/2 cited *supra* note 63 which allows the Governing Council to invite "other persons (…) if it deems it appropriate to do so." See also Jourdan and Diessner, op. cit. *supra* note 6, at 20.

78. Art. 3.5 Decision ECB/2004/12 cited *supra* note 63.

79. See Dawson, Maricut-Akbik and Bobić, op. cit. *supra* note 6.

faces a range of alternative courses of action, but it typically remains unclear why a decision was made in lieu of other feasible alternatives. Accordingly, it is argued that there is a need for more sophisticated and elaborate practices for the ECB to justify its decisions to the EP.

To that end, this section proposes three mutually reinforcing accountability instruments: ECB self-evaluation through the publication of impact assessments; establishment of an Independent Evaluation Office (IEO) at the ECB to provide independent evaluations of ECB policies; and enhanced evaluation of ECB policies by the EP through *ex post* investigations of big events.

4.2.1. *Monetary policy impact assessments*

Our first proposal is that the ECB develop detailed self-evaluations through the publication of impact assessments for new or reassessed monetary policies. Under the current accountability arrangements, the ECB provides a justification for the monetary policy measures it has adopted, but not for measures (or designs of measures) it decided *not* to adopt. Given that there are many different ways in which the ECB could pursue its medium-term inflation objective, and potentially secondary objectives, this significantly limits the EP's ability to scrutinize ECB choices. Since the 2021 strategy introduced much more discretion for the ECB in making policy choices, holding the ECB accountable for adopting proportional monetary policy measures has also become a much more complex exercise for the EP. However, there is little information available on how a chosen design or measure compares to other contemplated designs or measures, rendering it difficult for the EP to assess whether the monetary policies ultimately adopted are underpinned by a solid and balanced account of alternative policy options.

A meaningful dialogue between the ECB and the EP would be effectively facilitated if the ECB provided an easily accessible assessment of the expected impacts of different policy options. The ECB's new decision structure (see Figure 2) already constitutes a form of impact assessment to conduct analyses and help structure internal reflection on policy design. What is lacking is external reporting on these internal processes and their key findings in a structured, comprehensive, and yet comprehensible manner.

Accordingly, we propose that the introduction of new monetary policy measures or reassessment of existing measures be accompanied by a public impact assessment of these measures. ECB impact assessments could be structured along the lines of the impact assessments that the Commission conducts for certain legislative and non-legislative proposals.[80] Impact

80. European Commission Staff Working Document, Better Regulation Guidelines, SWD(2021)305 final.

assessments collect evidence to assess whether measures are warranted "and, if so, how they can best be designed to achieve relevant policy objectives."[81] They include a number of key steps, the precise design of which may depend on the individual measure at stake: (i) problem identification; (ii) identification of relevant secondary objectives; (iii) identification of options for achieving the primary and relevant secondary objectives; (iv) identification of impacts and potential side-effects of each policy option; (v) comparison of the options.[82] In line with these requirements, ECB impact assessments would give an overview of different policy options with their estimated positive and negative impacts on price stability and relevant secondary objectives. They would also discuss potential undesired side- and second-round-effects and how these can (or cannot) be offset or mitigated. If necessary, an impact assessment could be conducted for a combination of policy measures to take into account their mutually reinforcing impact.

Clearly, impact assessments are not without flaws.[83] In particular, complexity involved in monetary policy decision-making may render impact assessments a challenging task. The precise workings of measures are often not entirely clear upfront and cannot be substantiated with unambiguous analysis. The U.K. House of Lords' investigation into the Bank of England's conducting of quantitative easing revealed, for example, that significant "knowledge gaps" existed (and continue to exist) with a view to the effectiveness of quantitative easing and its distributional consequences.[84] Making ambiguities or "knowledge gaps" transparent, the House of Lords report concludes, will likely stimulate a learning process:

81. European Commission Staff Working Document cited *supra* note 80, at p.10.

82. European Commission Staff Working Document cited *supra* note 80, at pp. 31–33; European Commission, "Better Regulation Toolbox" (Nov. 2021), ch. 2 <commission.europa.eu/system/files/2023-02/br_toolbox-nov_2021_en.pdf>.

83. In particular, they are subject to strong institutional biases manifesting themselves in the consideration of only a few alternative policy options chosen at an early stage of the process, an issue we address further below. For critical accounts of the Commission's process of impact assessment see e.g. Meuwese and Senden, "European impact assessment and the choice of alternative regulatory instruments" in Verschuuren (Ed.), *The Impact of Legislation* (Brill, 2009), pp. 135–174; European Parliament, "Appraising the quality of the European Commission's impact assessments – trends and developments from 2015 to 2018", Study by the European Parliamentary Research Service (Dec. 2019), <www.europarl.europa.eu/RegData/etudes/STUD/2019/642807/EPRS_STU(2019)642807_EN.pdf>.

84. U.K. House of Lords, "Quantitative easing: A dangerous addiction?", 1st Report of Session 2019-21 (16 July 2021), <publications.parliament.uk/pa/ld5802/ldselect/ldeconaf/42/4202.htm>.

> "We recognize that the quality of data on the effects of quantitative easing is limited but we believe that greater transparency will lead to improvements over time."[85]

Impact assessments would expose these "knowledge gaps" and give the ECB the task of explaining why taking a certain measure, despite limited knowledge of its potential effects, is more conducive to its objectives than the *status quo* (i.e. doing nothing). That comes with a certain reputational risk for the ECB, which is expected to "know what it is doing". On the other hand, impact assessments would protect the ECB from being blamed for policy actions or inactions with the benefit of the hindsight, as more knowledge becomes available.

Impact assessments would not be a one-time endeavour, but a continuous process requiring regular updating based on improved data availability, in-house research, and real-life experience with monetary policy measures taken. As such, they would provide an account of the proportionality assessments made by the Governing Council when exercising its increased discretion and would go a long way towards informing the EP on possible policy alternatives.

4.2.2. *Independent evaluations by an ECB Independent Evaluation Office*

Our second proposal relates to the establishment of an Independent Evaluation Office (IEO) at the ECB to provide and publish independent evaluations of ECB policies. While giving the public an insight into the ECB's own assessment of the effects, potential side-effects and second-round-effects of monetary policies, impact assessments, by definition, lack independent review. This lack of independence of ECB-internal impact assessments creates a risk of reinforcing institutional biases. External evaluation by the EP (see section 4.2.3 below) alone cannot solve the problem. Asymmetries in terms of information and expertise unavoidably limit the EP's ability to meaningfully engage with the ECB concerning the proportionality of its monetary policy measures. An IEO at the ECB would overcome these limitations. It would provide an objective and independent analysis of the effectiveness and efficiency of ECB's monetary policy in achieving its objectives, including potential alternative policy choices, based on internal information and carried out by highly skilled staff. Its reports would give the EP a powerful tool to scrutinize the ECB's internal analysis and policy making.

85. U.K. House of Lords report cited *supra* note 84, para 90.

Although it is a far-reaching proposal that requires a balanced design, an ECB IEO is not without precedent. It could be modeled after similar offices at the International Monetary Fund (IMF) and/or the Bank of England, with adjustments tailored to the ECB's mandate and unique level of independence. The Bank of England was the first of the major central banks to establish an IEO as an independent unit operating at arm's length from other units within the Bank.[86] Since its inception in 2014, the IEO has produced several reports on the Bank of England's operation across all of its functions (not just monetary policy), including reports on forecasting (in 2015) and on quantitative easing (in 2021). The IEO of the Bank of England is modelled after that of the IMF, established in 2001. Both existing IEOs were launched to increase public trust in their respective institutions and improve their learning culture as well as public accountability. Their main objective is thus to bridge internal analysis and external evaluation with an intermediate step of independent review.

The IMF IEO's terms of reference stipulate the following purpose of the IEO:[87]

> "The Independent Evaluation Office (IEO) has been established to systematically conduct objective and independent evaluations on issues, and on the basis of criteria, of relevance to the mandate of the Fund. It is intended to serve as a means to enhance the *learning culture* within the Fund, strengthen the Fund's *external credibility*, and support the Executive Board's institutional governance and oversight responsibilities. IEO has been designed to complement the review and evaluation work within the Fund and should, therefore, improve the institution's *ability to draw lessons from its experience* and more quickly *integrate improvements* into its future work."

As IEOs are independent of the decision-making bodies and staff of their institutions, they provide *ad hoc* objective evaluations on issues related to the workings of these institutions. To conduct their assessments, they have access to the records as they consider necessary and are free to engage with relevant staff members. The Bank of England's Chair of Court determines the IEO's remit and work programme, with the expectation that the IEO conducts two

86. See Lastra, op. cit. *supra* note 6, 15–16, for a brief description of the Bank of England's IEO.

87. International Monetary Fund, "Terms of reference for the Independent Evaluation Office of the International Monetary Fund" (revised 3 Sept. 2015), <ieo.imf.org/en/our-mandate/Terms-of-Reference>, para 1 (emphases added).

in-depth evaluations of the Bank's work per year.[88] In the case of the IMF, the work programme of the IEO is prepared by its director.[89]

An ECB IEO could produce publicly available reports on monetary policy measures taken by the ECB in light of alternative policy options. This may help the EP to assess these alternative options through an independent lens. The Bank of England's IEO provides a relevant example. In 2019, the Bank of England's Court commissioned the IEO to conduct an evaluation of the central bank's approach to quantitative easing. The report, published in January 2021, gives a critical assessment of the Bank of England's Asset Purchase Programme and is accessible to the interested public.[90] It directly fed into the U.K. House of Lords' investigation on quantitative easing by the Bank of England.[91] The House of Lords cites the IEO report several times and also questioned Melissa Davey, Director of the IEO, as a witness on the matter.

In light of the potential benefits for the ECB's democratic accountability, the establishment of an IEO is not merely an ECB-internal concern. On the one hand, an IEO would help the ECB draw lessons from past experience and improve the effectiveness of its work. On the other hand, it would provide the EP with objective and independent insight into the ECB's workings, improving – at least indirectly – the effectiveness of ECB-EP accountability arrangements. The IEO's inter-institutional relevance could be reflected in its institutional design, with different possible levels of EP involvement. The EP could, for example, be consulted on the IEO's work programme or the appointment of its chair or other staff members. The stronger the involvement of the EP, even if non-binding, the more the IEO would become a formal instrument of ECB accountability.

4.2.3. *EP evaluation through ex post investigations*

Our third proposal encourages the EP to take a view to the long-term development of monetary policy through *ex post* investigations of big events. Impact assessments by the ECB (section 4.2.1. above) and independent evaluations by an ECB IEO (section 4.2.2. above) would go a long way towards enabling the EP to understand and assess alternative monetary policy options. They would allow the EP to more effectively hold the ECB

88. Bank of England, "Terms of reference for the Independent Evaluation Office" (Feb. 2016), <www.bankofengland.co.uk/-/media/boe/files/independent-evaluation-office/ieo-terms-of-reference.pdf?la=en&hash=56F0B9BF86E318A691155FC741DF7E856303A6B0>.

89. International Monetary Fund cited *supra* note 87, para 1.

90. Bank of England Independent Evaluation Office, "IEO evaluation of the Bank of England's approach to quantitative easing" (13 Jan. 2021), <www.bankofengland.co.uk/independent-evaluation-office/ieo-report-january-2021%20/ieo-evaluation-of-the-bank-of-englands-approach-to-quantitative-easing>.

91. U.K. House of Lords report cited *supra* note 84, para 90.

accountable for the policies chosen through existing channels of accountability, such as "monetary dialogue" and written questions, on an *ongoing* basis.

However, exceptional or large-impact events or periods may warrant more targeted *ex post* investigations by the EP into the decisions, actions, and omissions of the ECB.[92] Examples of *ex post* thematic investigations of central bank actions include the inquiry into the causes of the financial and economic crisis in the U.S. and the 2021 inquiry by the U.K.'s House of Lords into quantitative easing.[93] Admittedly, they are time-consuming and costly, but allow for much broader scrutiny of the issues at stake. In 2013/2014, the EP's ECON Committee conducted an inquiry into the impact of Troika measures, which also covered the role of the ECB in the Troika, leading to the EP resolution of 13 March 2014.[94] The ECB contributed to the investigations by responding to a questionnaire addressed to it by the ECON Committee.[95] Also, former ECB President Jean-Claude Trichet agreed to participate in a special hearing on the matter on 14 January 2014. However, the ECB did not disclose any internal minutes and other relevant documentation to facilitate the reconstruction of its decision-making and reasoning, or of potential alternative courses of action.

Ex post investigations, by definition, take place after the investigated event has occurred. The risk of creating market turbulences or undermining the effectiveness of ECB monetary policy through disclosure of details on the reasons and considerations that made the ECB adopt a certain policy (mix) and not another is thus limited. So are risks of damage to the reputation of decision-makers within the ECB. In principle, this would allow for transparent and open communication between the ECB and the EP in the course of such investigations. However, if compelling public interests demand it, the ECON Committee and the ECB may mutually agree on more confidential ways of communication (e.g. through in-chamber hearings) on certain sensitive aspects of the investigation.[96] In addition to the use of written questionnaires and invitations of (former) members of the Executive Board to special

92. An obvious example for a possible future investigation would be the ECB's reaction in response to the COVID-19 shock.

93. Financial Crisis Inquiry Commission, "The financial crisis inquiry report: Final report of the National Commission on the causes of the financial and economic crisis in the United States", Official Government Edition Pursuant to Public Law 111-21 (Jan. 2011), <www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>; U.K. House of Lords report cited *supra* note 84.

94. European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission, and IMF) with regard to the euro area programme countries (2013/2277 (INI)), O.J. 2017, C 378/182.

95. <www.ecb.europa.eu/pub/pdf/other/140110_ecb_response_troika_questionnaireen.pdf>.

96. On secrecy more generally see 4.1 above.

hearings, such investigations may include requests addressed to the ECB for additional documentation. The ECB would be expected to contribute to the investigations in line with the principle of sincere cooperation between EU institutions,[97] as it has partially done in the past, following the requests of the EP or the ECON Committee, respectively. EP investigations may also rely on public calls for written evidence to add independent views on ECB actions and inactions.[98]

4.3. *Introducing interinstitutional coordination on the ECB's supporting role*

The proposals discussed so far rely on the existing framing of accountability, according to which the ECB explains and justifies its policies *ex post*. However, we also see the start of a more fundamental rethinking of the relationship between the ECB and the EU's political institutions, as the ECB increasingly bases its policy making on secondary objectives. While the ECB finds itself in a supporting role when it comes to the "general economic policies in the Union", the EP is one of the institutions that actually *makes* these policies.[99] It is, therefore, natural to assume a role for the EP in giving guidance to the ECB on the EU objectives that inform the general economic policies in the Union, the political priorities in their further development, and the hierarchy between the different objectives pursued by these policies.

Such interinstitutional coordination on the ECB's supporting role first and foremost requires an open dialogue and flow of information. The EP can only give meaningful guidance if it has sufficient and adequate information on the ECB's choices in juggling the secondary objectives. Impact assessments (section 4.2.) would go a long way towards providing the information needed. They would also allow the EP to scrutinize whether the ECB has followed the guidance given on its secondary objectives and, if not, why.

Interinstitutional coordination could take place through the existing means of monetary dialogue. In its most recent resolution on the ECB's 2022 annual report, the EP for the first time dedicated special sections to the ECB's secondary objectives and action against climate change. It also called on the ECB "to devote a specific chapter in its annual report to explaining how it has

97. Art. 13(2), second sentence, TEU.

98. For the practice of the U.K. Parliament's Economic Affairs Committee see <committees.parliament.uk/call-for-evidence/381/>.

99. We refer here to the role of the EP as a co-legislator under a broad interpretation of "general economic policies in the Union", covering all EU and national policies with an economic, social, and/or environmental dimension(s) in line with the objectives set out in Art. 3 TEU. On the concept of "general economic policies" see Ioannidis, Hlásková and Zilioli, op. cit. *supra* note 60, at 13–14.

interpreted and acted upon its secondary objectives and to presenting the effects of its monetary policy on the EU's general economic policies".[100]

Going forward, the EP may expand more on its interpretation and prioritization of the ECB's secondary objectives. The guidance could identify current and future legislation that might be relevant for the implementation of monetary policy and outline – in broad terms – ways in which the legislation may affect the ECB's supporting role. Examples of relevant and high-priority legal acts may include the Taxonomy Regulation,[101] the Sustainable Finance Disclosure Regulation (SFDR)[102] and the Corporate Sustainability Reporting Directive (CSRD).[103] The EP could later assess whether the ECB has succeeded in meeting priorities as set out in earlier resolutions and, if not, for what reasons. In its feedback on the EP's resolution, the ECB could engage with the guidance given. It could explain which secondary objectives were taken into account with a view to a specific measure or decision, how this was done, and how their prioritization is in line (or not) with the guidance received from the EP.

Moreover, the ECB could formally consult the EP regarding its interpretation of the secondary objectives and their relevance for the ECB whenever the ECB contemplates strategy changes. Consultations could take place in the context of regular reviews every five years, but also with a view to *ad hoc* reorientations within the strategy considered by the Governing Council. Participation of the EP in Governing Council meetings (see section 4.1.) may prove essential to facilitate dialogue between the two institutions on the secondary objectives.

4.4. *Enhancement in form: An interinstitutional agreement on monetary policy?*

The proposals made so far concern the substance of ECB-EP accountability relations and suggest an updating of these relations, given the increased discretion of ECB decision-making as a consequence of its 2021 strategy review. But how should these proposals be implemented in form? Should they

100. European Parliament Report on the European Central Bank – annual report 2022 (6 Feb. 2023), <www.europarl.europa.eu/doceo/document/A-9-2023-0022_EN.html#_ftnref8>.

101. Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation 2019/2088, O.J. 2020, L 198/13.

102. Regulation 2019/2088 on sustainability-related disclosures in the financial services sector, O.J. 2019, L 317/1.

103. Directive 2022/2464 mending Regulation 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, O.J. 2022, L 322/15. The ECB makes explicit reference to the CSRD in its climate agenda, see ECB cited *supra* note 40.

follow the previous path of evolving conventional practice, or do they require a more formal arrangement going forward?

The interinstitutional cooperation between the EP and the ECB has a long history. Table 1 sets out that some conventional practices have evolved beyond what is strictly required by the Treaties to accommodate, to some extent, changed market and political circumstances as well as a dynamic institutional self-understanding of the ECB.[104] While these conventional practices constitute a form of interinstitutional agreement between the ECB and the EP, they have remained informal in nature. They developed organically, rather than as the result of any formal negotiation process. Their basis is simply the conviction of the EP and ECB that these practices are both necessary and appropriate to establish effective dialogue and eventually ensure that the ECB is accountable for its monetary policy to the citizens of the Eurozone.

In principle, the enhancements this article proposes could follow the informal path of previous changes to ECB-EP accountability relations by simply adapting the conventional practice of the two institutions. For example, the ECB could start publishing impact assessments when announcing new monetary policy measures or changes to existing measures and the EP could start including its interpretation of the ECB's secondary objectives in its resolutions on the ECB annual report. None of these changes *require* a formalized arrangement to be effective.

However, there are reasons that suggest that the future ECB-EP accountability relationship *should* rely on a more formalized arrangement. The first is that the enhancements we propose go beyond a gradual evolution of existing practices. They are a landmark change in that they establish more explicit and systematic interinstitutional coordination regarding the ECB's secondary objectives. The proposed establishment of an ECB IEO also implies institutional cooperation and interdependence, in particular if the EP were given a (non-binding) say in the work programme of the IEO or the choice of its staff. These are novelties that do not lend themselves to unilateral adoption but require concerted action and some level of joint drafting.

A second reason relates to the enhanced level of commitment a formalized interinstitutional agreement on EP-ECB accountability relations would entail.[105] Even if not designed as binding in a strict legal sense, such an agreement would underline that the ECB and EP both agree on the need for strengthened ECB accountability after the 2021 strategy review. It would be perceived as morally or politically binding and may exhibit certain indirect

104. See also Amtenbrink and van Duin, op. cit. *supra* note 6.

105. Fundamentally on interinstitutional agreements see Beukers, *Law, Practice and Convention in the Constitution of the European Union,* PhD thesis (UvA Digital Academic Repository, 2011), pp. 201–290.

legal effects. The duty of sincere cooperation[106] and the principle of legitimate expectations imply that the parties to an interinstitutional agreement are prohibited from unilateral or arbitrary termination.[107] Both the ECB and the EP would be expected to renegotiate the contents of a formal interinstitutional agreement before terminating the agreed accountability arrangements and to give justification to the other party for doing so.

Vice versa, a formal interinstitutional agreement may reduce the flexibility of the ECB and EP to adapt to future developments in an *ad hoc* manner, as further enhancements of the formalized accountability arrangements would require renegotiation of the agreement, or would otherwise remain outside of its framework. Such negotiations are resource-intense for both institutions, which may hamper further enhancements. A formal commitment to renegotiate in good faith upon the request of one party may mitigate these concerns. Flexibility could also be improved if the interinstitutional agreement were subject to regular joint reviews regarding its effectiveness and appropriateness, for example in the context of monetary dialogue.

In February 2021, the EP launched an effort to agree on a formal interinstitutional agreement on monetary policy matters with the ECB. In its resolution on the ECB's 2020 annual report, the EP called on the ECB to negotiate such an agreement "to formalize and go beyond the existing accountability practices regarding monetary functions".[108] A formal EP-ECB interinstitutional agreement exists for ECB Banking Supervision within the Single Supervisory Mechanism (SSM),[109] concluded on the basis of secondary law.[110] For the monetary policy pillar of the ECB, it would be a

106. Art. 4(3) TEU.

107. Jacqué, "La pratique des institutions communautaires et le développement de la structure institutionnelle Communautaire" in Bieber and Hess (Eds.), *Die Dynamik des Europäischen Gemeinschaftsrechts* (Nomos Verlagsgesellschaft, 1987), pp. 377–405, at p. 400.

108. European Parliament resolution of 10 February 2010 on the European Central Bank – annual report 2020 (2020/2123(INI)), O.J. 2021, C 465/4.

109. Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism, O.J. 2013, L 320/1.

110. Art. 20(9) Council Regulation 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, O.J. 2013, L 287/63. On the accountability framework for the Banking Union see Fromage and Ibrido, "The 'banking dialogue' as a model to improve parliamentary involvement in the monetary dialogue?", 40 J. Eur. Int. (2018), 295–308; Amtenbrink and Markakis, "Towards a meaningful prudential supervision dialogue in the euro area? A study of the interaction between the European Parliament and the European Central Bank in the Single Supervisory Mechanism", 44 EL Rev. (2019), 3–23; Maricut-Akbik, "Contesting the European Central Bank in banking supervision: Accountability in practice at the European Parliament", 58 JCMS (2020), 1199–1214.

novelty – one which would reflect the growing importance of EP-ECB relations and be in line with the proposals for enhancements put forward in this article. A conversation between the ECB and the ECON Committee of the EP started at the beginning of 2022. After pausing the negotiations due to the war in Ukraine, the ECB and EP published on 5 June 2023 an exchange of letters between ECB President Christine Lagarde and EP President Roberta Metsola. In these letters, the two institutions confirm their common understanding of the accountability arrangements for monetary policy, referring to the *existing* accountability arrangements as listed in the Annex to the letters.[111] This exchange of letters is a welcome step to formalize ECB-EP accountability relations.[112] In terms of substantive enhancements of these relations, however, they stay far behind the proposals set out in this article.

5. Conclusions

The ECB's 2021 strategy review formalized a development that had been ongoing since 2008: a shift from a one-objective-one-instrument policy towards the pursuit of different (intermediate) objectives with several instruments used by the ECB. How this shift is playing out in practice has become more tangible recently with the announcement of the ECB's climate agenda and the publication of a detailed roadmap for adapting monetary policy to the reality of climate change in July 2022.[113] Besides invoking price stability, the ECB now relies explicitly on its secondary objective in support of "a high level of protection and improvement of the quality of the environment" in the announcement of these measures.[114]

In this article, a comparison of the ECB's 2003 and 2021 strategies was conducted to highlight the dramatic change of the ECB's monetary policy that happened in past years. The analysis revealed that today's Governing Council deliberations include more objectives, more instruments, and an explicit proportionality assessment concerning (undesired) side- and second-round-effects of monetary policy. The much more complex and discretionary nature of these deliberations, however, has not been matched with more sophisticated parliamentary accountability arrangements.

111. See <https://www.ecb.europa.eu/pub/pdf/other/Exchange_of_Letters_ECB_European_Parliament_central_banking230605~87aa8ed4a3.en.pdf>.

112. The letters refer to "interaction practices", including also the EP's consideration of ECB opinions on proposed Union acts.

113. ECB cited *supra* note 40; ECB, "Detailed roadmap of climate change-related actions" (4 July 2022), <www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210708_1_annex~f84ab35968.en.pdf>.

114. Art. 127(1) TFEU read in conjunction with Art. 3(3) TEU.

Accommodating the ECB's new role, we argued, requires improvement to the information provided to MEPs and citizens, as well as to the justifications that the ECB provides for its policy choices. This article put forward concrete proposals to that end, including the publication of impact assessments of monetary policy measures, the establishment of an IEO at the ECB, and *ex post* investigations by the EP into ECB actions during big events. However, accountability must go beyond information and justification when the ECB acts upon its secondary objectives. In this supporting role, the ECB needs guidance in terms of the precise meaning of these objectives and their prioritization. Interinstitutional coordination with the EP, we argued can help provide that guidance.

The proposals set out here go further than any of the gradual updates to the ECB-EP accountability relations through conventional practice that took place in the aftermath of the Maastricht Treaty. It is suggested, therefore, that form should match substance through a more formalized interinstitutional agreement between the ECB and the EP with regard to monetary policy. A recent exchange of letters between the EP and the ECB does take a step towards formalizing their accountability relationship, but refrains from enhancing the existing accountability arrangements in substance. History will tell whether the ECB's new strategy will indeed be followed by a new accountability.