

The central bank's role and tasks after the crisis

Presentation by Professor René Smits
at the the seminar organised by *Narodowy Bank Polski*

Legal aspects of central bank's tasks

Starawieś (PL), 21 October 2014

Disclosure

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Overview

1. Introduction – disclosure – Eurocentric perspective
2. Terms used: crisis, mandate, objective, task, functions and operations
3. Express versus implicit mandates
4. Traditional central bank roles
5. Modern central bank roles
6. Independence and accountability
7. Concluding remarks: central banks as bulwarks of stability & examples of diversity and cooperation

.... “after the crisis” - 1

Which crisis?

- environmental crisis: CO₂ emissions, climate change, plastic waste in the oceans (do look at <http://www.theoceancleanup.com/> and [Boyan Slot](#), and <http://www.plasticoceans.net/>)
- political crises: Ukraine, South Sudan, Darfur, Israel/Palestine, Syria/Iraq [IS]
- debt and euro crisis: is it over?
- health crisis: Ebola, and other [neglected tropical diseases](#) (NTDs)

.... “after the crisis” - 2

- inequality crisis: the 1% getting richer – share of humanity living on less than \$2 per day

[World Bank, October 2014:](#)

“2.2 billion people [out of 7.2 billion, RS] lived on less than US \$2 a day in 2011, the average poverty line in developing countries and another common **measurement of deep deprivation**. That is only a slight decline from 2.59 billion in 1981.”

- societal crisis: receding trust in politicians, business, each other; alienation
- spiritual crisis: rising intolerance, anti-Semitism, Islamophobia, Roma exclusion, xenophobia, Europe-aversion, intolerance towards (religious, cultural, linguistic) minorities
- Focus here on euro area debt crisis: tasks grouped after this issue
- Euro-centric approach: ECB-related legal texts in the right-hand corner

Terms for mandate

” Objective: over-arching goal of the central bank, its *‘raison d’être’*

” Tasks: ‘basic tasks’  ‘other tasks’ (ESCB)

” ‘functions and operations’ (ESCB)

- primary objective: maintaining price stability
- secondary objective: support of general economic policies in EU (EA)
 - link to objectives of European Union
- open market economy with free competition, favouring efficient allocation of resources
(Article 127 (1) TFEU, Article 2 ESCB Statute)

Express versus implicit mandates

Express versus implicit mandates (1)

- “ Traditionally, central bank mandates not always made explicit
- “ In past decades, trend towards ‘juridification’ of central banking
 - “ No ‘judicialisation’ of monetary policy, pleads Portugal before European Court of Justice in Case C-62/14 (*Gauweiler*) on the ECB’s OMT
- “ Trend due to monetary union development in Europe...
- “ ... EU enlargement and neighbourhood programmes ...
- “ ... and spreading of central bank legislation by IMF:

[FSAPs](#), [Article IV consultations](#), [technical assistance](#), [Joint Vienna Institute](#)

– see [factsheet The IMF and Legislators](#)

Express versus implicit mandates (2)

□ Express mandates

○ US Federal Reserve System

maximum employment, stable prices, and moderate long-term interest rates

○ European Central Bank (ESCB, Eurosystem)

primary, overriding objective: to maintain price stability

secondary objective: to support the economic policies in the Euro Area (EU) with a view to contributing to the achievement of the general objectives of the EU. Among these: peace, the EU's values, the well-being of its peoples, an internal market, full employment, and a high-quality environment.

○ Swiss National Bank

to pursue a monetary policy that serves the interests of the country as a whole. The SNB Act also mandates the Swiss central bank to pursue price stability whilst taking due account of the development of the economy.

Crisis impact on central banks' mandates

□ *Central banks' mandates*

The financial crisis has led to mandates of central banks being stretched to their limits in crisis resolution. Also, mandates have been amended during and after the crisis to better adapt the central bank to future crisis management and to strengthen their functioning so as to avoid any future crisis from emerging. In Europe, of course, such changes have been most profound as the financial crisis was followed by a sovereign debt crisis and euro existential crisis.

'Mandate creep'

- ❑ Development of mandate that is not made explicit, e.g.
 - systemic stability ('macro-prudential supervision')
 - LOLR, ELA widened to previously unacceptable counterparties or collateral
 - financial sanctions
 - guardian of the currency
- ❑ Mandates often made explicit afterwards

Traditional central bank roles

Bank note issuance



- “ Traditionally, among first functions besides banker of the government
- “ NB anti-counterfeiting and printing
- “ Exclusivity of bank note issuance usually attributed later
 - “ Or not completely: Scottish and Ulster bank notes in the UK

➤ Article 128 TFEU, Article 16 ESCB Statute

➤ [Guideline ECB/2004/18, 16 September 2004 on the procurement of euro banknotes, as amended](#)



Fiscal agent role – monetary financing

” Privileged banker to the government

” Monetary financing

Permitted

Outlawed

Central Bank Credit to the Government: What Can We Learn from International Practices?, [IMF WP/12/16](#), prepared by Luis I. Jácome, Marcela Matamoros-Indorf, Mrinalini Sharma, and Simon Townsend, January 2012

➤ Article 123 TFEU, Article 21.1 and 21.3 ESCB Statute

➤ Article 21.2 ESCB Statute

OMT reference *BVerfG*



- Scope of the prohibition of monetary financing at issue before courts
- Case C-62/14 (*Gauweiler and Others v ECB*) on ECB's announced OMT
- Many issues, including relationship between Union and State law – German constitutional law – EMU law issues – judicial restraint
- Notably, did monetary policy task require announcing outright monetary transactions in sovereign debt of distressed Member States?
- And, constitutes linking such purchases to EFSF/ESM conditionality an encroachment by ECB on economic policy prerogative of States and other EU institutions?
- And: does buying sovereign debt on secondary markets constitute a circumvention of the prohibition of monetary financing?

LOLR or ELA - origin of term

- ❑ Lender of last resort (LOLR) to commercial banks
- ❑ The term “lender of last resort” owes its origins to Sir Francis Baring, who in 1797 referred to the Bank of England as the “*dernier resort*” from which all banks could obtain liquidity in times of crisis (Rosa Lastra, *Lender of Last Resort, an International Perspective*, *International & Comparative Law Quarterly* (1999), 48:340-361)

” Rosa Lastra calls ELA ‘missing pillar of banking union’
[see later slides on prudential supervision]

LOLR: meaning

- “ **Generic** LOLR: provision of liquidity to the financial system in case of liquidity squeeze (‘**market** liquidity’)
- “ **Special** LOLR: provision of liquidity to individual financial institution in liquidity need (‘**individual** or **institution-specific** liquidity’)
- “ Financial stability concerns may be relevant for both types of LOLR
- “ Special LOLR to be distinguished from solvency support / guarantees / bail-out
- “ General and special LOLR – limitation by primary central bank objective: price stability

LOLR = ELA

“ Emergency Liquidity Assistance (ELA):

- providing liquidity **support**
- in **exceptional** circumstances
- to a **temporarily**
- **illiquid**
- **credit institution (CA)**
- which cannot obtain liquidity through either the **market** or participation in **monetary policy operations**

“ ECB Monthly Bulletin, February 2007, pp. 73-84

“The EU arrangements for financial crisis management”

“ Plus: provision of liquidity to sector as a whole

ELA under ESCB responsibilities

- ” “private sector solution is preferable whenever possible”
- ” “the provision of ELA is within the discretion of the national central bank, which will consider the relevant factors that may justify the access to this lending of last resort”
 (“constructive ambiguity”)
- ” “the Eurosystem also has procedures in place regarding the provision of ELA to individual credit institutions in the euro area, which are under the responsibility of the national central banks (NCBs)”
- ” ECB Monthly Bulletin, February 2007

ELA competences and procedures - 1

- ❑ Clear that Treaty and Statute give ECB competence to grant LOLR / ELA
 - ❑ Self-imposed restriction to NCBs only
 - ❑ Internal procedure for notification and, above a threshold, authorisation of assistance because of impact on monetary policy
 - ❑ Link with follow-on action: bail-out with taxpayers' money (national Treasuries)
-
- ❑ Publication of ESCB procedures (18 October 2013) on [ECB website](#)

ELA competences and procedures - 2

- ❑ Intra-ESCB procedures probably based on **erroneous interpretation of LOLR competence as being outside ESCB field of activities**
- ❑ **Financial stability and link with monetary policy make LOLR an ESCB function:** ECB and NCBs are competent – decentralisation principle applies (Article 12.1 ESCB Statute: ECB to have recourse to NCBs “to the extent deemed possible and appropriate”)

➤ Article 14.4 ESCB Statute:

“National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB”

NY Times disclosure of Governing Council minutes

- Cypriot central bank LOLR assistance to Cyprus Popular Bank in 2013
- Divulged by [NY Times](#), 17 October 2014
- ECB [rebuttal](#), 17 October 2014

Monetary policy

- ❑ Objective: maintaining (restoring) price stability
- ❑ Rationale for independence: attribution to body with long-term exclusive task, beyond vicissitudes of short-term politics (cf. judiciary)
- ❑ Means: open market operations, lending to commercial banks, setting of interest rates, minimum reserves, forex operations

➤ Articles 127 (2), 1st indent, TFEU

➤ Articles 3.1, 1st indent, 17-24 ESCB Statute

Collateral

- ❑ Monetary policy lending transactions require collateral
- ❑ Adequate collateral prescribed by law (Article 18 ESCB Statute)
- ❑ Euro Area-wide collateral mechanism established (*Correspondent Central Banking Model*) and eligible securities may be used as collateral using *eligible* (i.e., positively assessed by Eurosystem) *links* between Securities Settlement Systems (SSSs)
- ❑ Eligibility of collateral relied on outside (CRA) assessment – crisis and downgrading necessitated widening of eligibility criteria

Monetary policy transmission mechanism in monetary union

- ❑ Since 1999, national economies became more and more intertwined
- ❑ Crisis ended that: retreat of banks within national boundaries
- ❑ Deleveraging: retreat from lending
- ❑ Re-capitalisation: less risky assets and activities
- ❑ Supervisory call to withdraw within national lines
- ❑ Schemes to promote lending to national economy
- ❑ Monetary policy decisions didn't translate anymore in 'periphery'
- ❑ Legal challenges in Germany – referred by German Constitutional Court in Frankfurt to EU Court of Justice in Luxembourg

A dance between judges in Karlsruhe and Luxembourg

René Smits



Het Financieele Dagblad, on-line edition,

[Thursday 6 March 2014, 12:34](#)

The German constitutional complaints against the European Central Bank (ECB)'s Outright Monetary Transactions (OMT) programme have led to a unique reference by the German Constitutional Court (*Bundesverfassungsgericht: BVerfG*) to the European Union's top court. The Karlsruhe judges request an interpretation of EU law by the Luxembourg-based Court of Justice of the EU (CJEU).

Exchange rate policy

- ❑ Sometimes, concomitant to monetary policy
- ❑ Usually, no formal power to enact exchange rate policy
- ❑ Setting exchange rate, and decisions on re- and devaluation government tasks
- ❑ EU view: external value derives from market forces
- ❑ Foreign reserve management (gold, dollars, SDRs)
 - Article IV Articles of Agreement, IMF
 - Articles 138 and 219 TFEU
 - Article 127 (2), 2nd and 3^d indent, TFEU
 - Articles 3.1, 2nd and 3^d indent, 6, 30-31 ESCB Statute
- [Resolution of the European Council, of 13 December 1997](#), on economic policy coordination in stage 3 of EMU and on Treaty Articles 109 and 109b of the EC Treaty (Articles 114, 138 and 219 TFEU)

External representation

- ❑ Close relation with foreign exchange reserve management, other tasks
- ❑ IMF operates through central banks mainly

Article V, section 1: “Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies.”

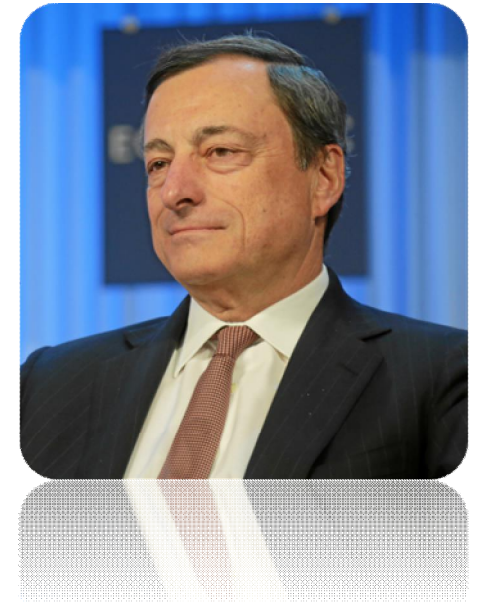
- ❑ Bank for International Settlements (BIS)
- ❑ Basle Committee on Banking Supervision (banking regulation and supervision)
- ❑ G10 Governors (GAB, NAB: lending arrangements to IMF)
 - Articles V section 1 and XIII section 1 (a), IMF Articles of Agreement
 - Articles 138 and 219 TFEU
 - Article 127 (2) TFEU
 - Article 6 ESCB Statute

‘Guardian of the currency’

- “ Measures to ensure proper functioning of the currency
- “ Safeguard in stress and other situations of danger

ECB announcement, 26 July 2012

“Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough.”



ECB President Mario Draghi,
London, 26 July 2012

Payment systems oversight

- ❑ Not always an explicit central bank task but related to monetary policy (transmission mechanism) and financial stability (of the financial sector)
- ❑ Large-value and retail payment systems
- ❑ Provision of large-value payment system (TARGET2)
- ❑ Oversight of retail payment systems – [SEPA](#) (harmonized domestic EA payments)
- ❑ Central powers and decentralised (national) competences
- ❑ ECB lead overseer for TARGET2, EURO 1, STEP 2 and CLS (for € transactions)
 - “to promote the smooth operation of payment systems” (Article 127(2), 4th indent, TFEU; Article 3.1, 4th indent, ESCB Statute)
 - Article 22 ESCB Statute: facilities (ECB and NCBs) and regulations (ECB)



Advisor to the government - 1

- ❑ Traditional role relating to professional expertise
- ❑ Economic policy advisor (critique)
- ❑ Advocacy for issues in core competences
- ❑ ECB privileged advisor to EU and national legislator

- Article 127(4) TFEU; Article 4 ESCB Statute
 - [Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions \(98/415/EC\)](#)
 - [Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions \(ECB publication\)](#)

Advisor to the government - 2

- ❑ Traditional role further increased in crisis
- ❑ Extensive unsolicited advice by ECB on fiscal and structural policies of Member States
- ❑ Involvement in assessment of economic policy
- ❑ Notably vis-à-vis 'programme States': 'troika'
- ❑ Codified in Regulation 472/2013 ('two-pack'): 'enhanced surveillance' in respect of financial sector stability and sustainability of public debt
 - Regulation 472/2013 of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability

Prudential supervision of commercial banks

- ❑ Traditional market knowledge: ‘best placed’ to supervise
- ❑ Formerly, ‘nod and wink’ approach (Bank of England)
- ❑ Recurring debate about combination of prudential supervision and monetary policy in one institution
- ❑ Variation in central bank involvement (cf. *Bundesbank* and *BaFin*)
- ❑ Tides against and in favour of direct central bank involvement

➤ Article 127(5) TFEU; Article 25.1 ESCB Statute

Exchange control (capital restrictions)

- ❑ Central banks or separate exchange control agencies
- ❑ Exchange control abolished erga omnes in EU since Stage 2 EMU
- ❑ But (due to the crisis): [Cypriot exchange control](#)



➤ Articles 63-66, 75 and 215 TFEU

Modern central bank roles

Macro-prudential supervisory role - 1

- ❑ Oversight of financial stability
- ❑ Systems-focused
- ❑ Implicit task made explicit

[Macroprudential policy can be a useful tool](#)

Sam Fleming, *Financial Times*, 9 October 2014

The macroprudential armoury

- Regulators can adjust the so-called countercyclical capital buffer, which is part of the Basel III regime and sets capital held against lenders' assets
- Officials can also change risk weights for lending to particular asset types, for example residential mortgages or commercial property, in order to build up resilience
- The Bank of England is looking at varying the leverage ratio – which sets the overall indebtedness of banks – to curb booms and busts
- Instead of focusing on banks, the authorities can target their customers. For example, ceilings can be imposed on the size of mortgages people can take out relative to income or to a property's value.
- Supervisors could attempt to reduce banks' exposure to liquidity crises, for example by reducing reliance on short-term funding.

Macro-prudential supervisory role - 2

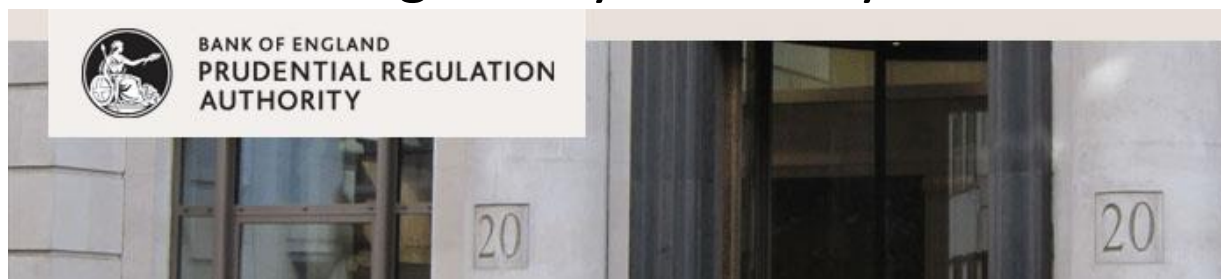
- ❑ USA: [Financial Stability Oversight Council](#) (part of the US Treasury)
- ❑ EU: [European Systemic Risk Board](#) (part of the European System of Financial Supervisors – other Authorities: EBA, ESMA, EIOPA)



European Insurance and Occupational Pensions Authority

Prudential supervision of commercial banks

- ❑ The tide has turned
- ❑ Prudential Regulatory Authority within the Bank of England



- ❑ ECB & national competent authorities: SSM (as of 4 November)



➤ Article 127(6) TFEU; Article 25.2 ESCB Statute

'Banking union'

- 'Banking union'= joint supervision by ECB and NCAs with ECB in the lead, plus EU-level resolution of banks, single rule book and deposit insurance; hence:
 - ✓ Single Supervisory Mechanism (ECB + NCAs) – Regulation 1024/2013
 - ✓ Single Resolution Mechanism – Regulation 806/2014 (and Agreement on the Single Resolution Fund [mutualisation of banks' own contribution to resolution])
 - ✓ Single rulebook: CRR 575/2013 and CRD IV 2013/36 (plus BRRD and more)
 - ❑ Harmonised deposit insurance: Deposit Guarantee Directive 2014/49

Oversight of settlement systems

- ❑ Close relation with monetary policy, payment system oversight and systemic financial stability functions
- ❑ SSS oversight: ECB Recommendations ([2014](#)) and ([2009](#))
- ❑ T2S [platform](#) ('settling without borders')

- Article 127(2), 1st indent, TFEU; Article 3.1, 1st indent. ESCB Statute
 - Articles 22 and 34 ESCB Statute



Last resort for the economy

- ❑ Last resort in kick-starting economy (budget resources limited and stretched)
- ✓ US and UK: QE (tapering), aimed at stimulating the economy
- ✓ UK: [Funding for Lending Scheme](#) to increase lending to businesses by lowering interest rates and increasing access to credit refinancing operations
- ✓ EU: [targeted longer-term refinancing operations](#) (TLTROs; Decision [ECB/2014/34](#)) aimed at improving bank lending to the euro area non-financial private sector, [asset-backed securities purchase programme](#) (ABSPP) and [covered bond purchase programme](#) (CBPP3; Decision [ECB/2014/40](#))

Sanctions

- ❑ Implementation of financial sanctions vis-à-vis countries and/or targeted individuals
- ❑ Often a Treasury responsibility
- ❑ Until 2007: Financial Sanctions Unit, Bank of England
- ❑ Own experience with mixed sanctions authorities

➤ Articles 75 and 215 TFEU

AML/ATF – PEP

- ❑ Anti-money laundering
- ❑ Anti-terrorist financing
- ❑ International forum: [Financial Action Task Force](#)
- ❑ Politically exposed persons ([FATF Guidance](#))
- ❑ Close link with integrity of financial sector & with external relations

➤ Directive 2005/60/EC, as amended

Statistical function

- ❑ Auxiliary function for monetary policy and prudential supervision
- ❑ Also, contribution to statistics of relevant jurisdiction
- ❑ Direct or indirect collection of statistics
- ❑ Central bank's contribution to banking supervisory agencies' data requirements

➤ Article 5 ESCB Statute

Independence and accountability

Independence and accountability

- ❑ Central bank independence versus regulatory autonomy
- ❑ Accountability and transparency
 - Judgment of 29 November 2012 in Case T-590/10 (*Gabi Thesing and Bloomberg Finance LP v ECB*); appeal dismissed by Order of 6 February 2014 (Case C-28/13 P)

Independence and autonomy (1)

□ *Central banks' independence*

- Widely drawn: independent from short-term focused politics, serving society's long-term interest in price stability
- Supported, as from the 1980s, by IMF and 'global consensus' ('Washington consensus')
- Also independent from commercial banks, when in supervisory role

Independence and autonomy (2)

□ *Central banks' independence*

- Institutional independence
- Personal independence
- Functional independence
- Financial independence

Independence and autonomy (3)

□ *Supervisory authority's 'independence': regulatory autonomy*

- Traditionally more limited: keeping at bay both political influence and private interests (supervised entities and their shareholders), serving society's interest in a well-regulated financial sector
serving society's long-term interest in price and financial stability
- Similar autonomy for other administrative agencies (competition, energy, telecom, railways, etcetera)
- Lately in Europe, increasingly CB independence legal terms used for other autonomous administrative agencies

Accountability mechanisms

- “ Ex ante authorisation (need to substantiate reason for measure)
- “ Ex post reporting (‘giving reasons requirements’)
- “ ‘Comply or explain’ approach in multi-jurisdictional context

Transparency: theoretical issues

- ❑ Independence and accountability: weighing exercise
- ❑ Central bank tasks need confidentiality of discussion
- ❑ Transparency precedes accountability (democratic legitimacy)
- ❑ Transparency enhances effectiveness (purely instrumental)
- ❑ Transparency and liability
 - ❑ Micro prudential supervision: supervisors' dilemma
 - Early intervention: potential liability vis-à-vis shareholders
 - Late interventions: potential liability vis-à-vis depositors

Mario Draghi's promised transparency



- ❑ Mario Draghi, press conference, 1 August 2013:
“(..) it would be wise to have (...) a richer communication of the rationale behind [the ECB's] decisions”
- ❑ Mario Draghi, Amsterdam speech (22 April 2014):
 - unconventional measures require enhanced communication;
 - “releasing a more complete account of the main arguments considered in our monetary policy deliberations, in a non-attributed form, will on balance serve to strengthen the Governing Council’s collegiate decision-making and communication. Such a release should naturally complement the real-time messages conveyed in the press conferences. It should offer additional information that improves understanding of our reaction function, with respect to the relevant medium-term horizon, while taking care to avoid triggering short-term market noise.”
- ❑ ECB press release, 3 July 2014: “the ECB announces its commitment to publish regular accounts of the Governing Council’s monetary policy meetings, which is intended to start with the January 2015 meeting. The publication of the accounts will be timed so that the account of the previous meeting is published before the date of the next one.”
- ❑ Focus on monetary policy: transparency instrumental to effectiveness of ECB monetary policy

ESCB Statute on transparency

- ❑ Article 10.4: “The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.”
- ❑ Background: multi-national environment, young central bank
- ❑ Central bank governors subject to diverse media and home base
- ❑ Governing Council is to act in European public interest only

Transparency and accountability

- Far-reaching accountability mechanisms in MoU with Ecofin Council and Interinstitutional Agreement with EP
- Due respect for professional secrecy and business secrets
- Chair-to-Chair confidential oral discussions behind closed doors
- EP gets “a comprehensive and meaningful record of the proceedings of the Supervisory Board that enables an understanding of the discussions, including an annotated list of decisions” and GC objections to SB draft decisions to be reported
- Cooperation with a Parliamentary inquiry regulated in advance



Accountability breeds
response-ability.

- Stephen R. Covey

'Banking union' transparency requirements (1)

Accountability and reporting: Article 20 SSM Regulation 1024/2013

1. Annual report to EP, Council, Commission, Eurogroup on supervision
2. Chair Supervisory Board to appear in public before EP and Eurogroup
3. EP and Eurogroup may invite Chair Sup. Board to explain supervision
4. ECB to reply to questions from EP or Eurogroup
5. Court of Auditors to include supervision in its examination of ECB's operational efficiency
6. Confidential oral discussions between Chair Sup. Board and EP behind closed doors
7. '[S]incere cooperation' with EP investigations

6 & 7 to be regulated in EP-ECB agreement / arrangements

'Banking union' transparency requirements (2)

Accountability and reporting: Article 21 SSM Regulation 1024/2013

1. Annual report to be sent to national parliaments
2. National parliaments may submit reasoned observations to ECB
3. National parliament may invite Chair or member Supervisory Board for exchange of views on supervision bank in that State together with the National Competent Authority (NCA) of that State
4. National accountability mechanisms remain affective vis-à-vis NCAs for tasks not attributed to ECB and for NCA activity in context of Article 6 SSM Regulation (cooperation within SSM)

Assessment of ECB transparency

- Voluntary openness in one area (monetary policy) and required openness in another (prudential supervision) require across-the-board transparency (payment systems oversight, bank notes issuance, foreign exchange reserve management)
- Balancing act between legislative requirements and policy injunctions

NB Transparency of (commercial) banking data: diverse or absent in 'banking union' – see Christopher Gandrud and Mark Hillerberg, *Supervisory transparency in the European Banking Union*, Bruegel Policy Contribution, 2014/01, January 2014

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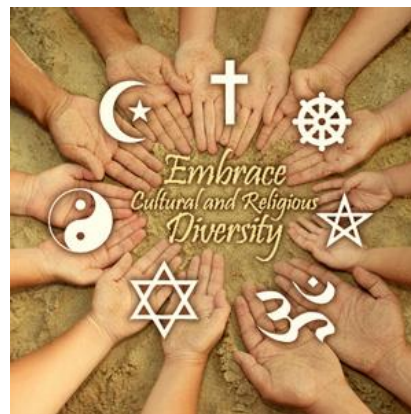
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– see Christopher Gandrud and Mark Hillerberg, *Supervisory transparency in the European Banking Union*, Bruegel Policy Contribution, 2014/01, January 2014

Central banks and the courts

- ❑ Supervisory liability and limitation of supervisory liability
- ❑ Central bank measures before the courts
 - ❑ OMTs reference to CJEU by German Constitutional Court
 - Case C-62/14 (*Peter Gauweiler and Others v Germany*), pending
 - ❑ Challenges of ECB measures before CJEU
 - Order of the General Court of 16 December 2011 in Case T-532/11 (*Städter v ECB*), appeal rejected by Order of the Court of 15 November 2012 in Case C-102/12P
 - Order of the General Court of 10 December 2013 in Case T 492/12 (*Sven A. von Storch and Others v ECB*)
 - Order of the General Court of 25 June 2014 in Case T-224/12 (*Alessandro Accorinti and Others v ECB*)
- ❑ Constitutional courts assessing crisis measures (i.a., Germany, Portugal, Estonia)
- ❑ New York courts vs. Argentina ('vulture fund' saga – sovereign default – CACs)

Central banks: bulwarks of stability & examples of diversity and cooperation

- “ Central banks often best functioning in public administration
- “ High levels of professionalism, expertise, ethos, ethics
- “ Therefore: bulwarks of stability....
- “ ... and shining examples of diversity and cooperation



IMF panel- The Future of Finance - Session 1: Ethics and Finance, 12 October 2014

- ❑ “IMF director of legal affairs Sean Hagan, who moderated the debate, argued that by "focus[ing] too much on carrots and sticks" regulators risk creating a "culture of compliance" that is often associated with "circumvention".”
- ❑ Moving away from a culture of compliance towards a culture of individual responsibility and accountability
- ❑ Limits of regulation – personal transformation



Anne Frank
1929, Frankfurt am Main – 1945, Bergen-Belsen



I must uphold my ideals, for perhaps the time will come when I shall be able to carry them out.

Everyone has inside of him a piece of good news. The good news is that you don't know how great you can be! How much you can love! What you can accomplish! And what your potential is!



RS Law & Society Consulting B.V.

**EMU law and EU banking regulation
and supervision**