The democratic deficit and European Central Bank crisis monetary policies

Anna-Lena Högenauer and David Howarth
University of Luxembourg, Belval-Esch-sur-Alzette, Luxembourg

Paper presented at the EUSA Denver Conference, May 2019, on the panel:
'Power and Accountability of the European Central Bank'

Abstract
This paper presents the argument that European Central Bank (ECB) policy-making from the start of the sovereign debt crisis in 2010 undermined the democratic legitimacy of the ECB. We start with the argument – defended by a number of scholars including Majone and Moravcsik – that where European Union (EU) policy-making is technocratic and does not have significant redistributive implications it can benefit from depoliticization that does not undermine the democratic legitimacy of this policy-making. This is notably the case where EU institutions have narrow mandates and are constrained by super-majoritarian decision-making. Prior to the international financial crisis, the ECB's monetary policies were shaped entirely by the interpretation that its mandate was primarily to ensure low inflation. From the outbreak of the sovereign debt crisis, the ECB adopted a range of policies which pushed its role well beyond that interpretation and engaged in a form of redistribution that directly undermined treaty provisions.

I. Introduction

From 2010, the European Central Bank (ECB) adopted a range of nonconventional monetary policies in its efforts to tackle the euro area sovereign debt crisis, a number of national banking crises and widespread economic stagnation/recession. These policies represent a radical departure from the ECB's pre-crisis focus upon interest rates and money supply designed to meet its low inflation mandate established in the Maastricht Treaty (Treaty on European Union, TEU). The central role played by the ECB during the sovereign debt crisis also attracted considerable public attention. Both the economic impact and the legality of ECB nonconventional monetary policies became topics of considerable academic and public debate. Our contribution to this panel on the ECB's power and accountability is to present the argument that the ECB's use of nonconventional monetary policies since the outbreak of the euro area sovereign debt crisis significantly undermined both its democratic legitimacy and the legitimacy of the Economic and Monetary Union (EMU) project more generally.

The remainder of this introduction summarizes the most influential arguments that defend the democratic legitimacy of the European Union (EU) and, more specifically, the EMU project and the ECB's role. It sets out the main premises of our argument. In the following three sections, we discuss how the ECB's nonconventional monetary policies and the perception thereof increasingly undermined the traditional basis of its legitimacy: the clarity and transparency of the central bank's mandate; the redistributive implications of its policies; and the non-politicization of its policy-making. This paper concludes by summarizing how the strength of most of the key arguments that can be used to defend the ECB's democratic legitimacy were weakened in the course of the crisis. We finish by discussing potential future developments that could work to reinforce ECB legitimacy. This paper focuses upon the direct and indirect implications of the ECB's nonconventional monetary policy but also considers the implications of the ECB's Emergency Liquidity Assistance (ELA), which is not a monetary policy tool. We lack the space to examine the implications of the ECB's role in the so-called 'Troika' – along with the European Commission and International Monetary Fund (IMF) – which imposed fiscal policy reforms upon programme countries seeking European-level financial assistance.[1]

The EU is often accused of having a democratic deficit, because the European Parliament (EP) and national parliaments are perceived to be too weak in a range of policy areas and because delegation to executive agencies (even further removed from parliaments) is high.[2] These critiques have been countered by a number of authors who have come out in defense of the EU's political system. Many of these counterarguments are particularly relevant for the ECB. Majone argues that the democratic standards that should be applied to the EU depend largely on the nature of integration: If the European project is viewed as comprising political integration, the standards should come close to those of a parliamentary democracy.[3] If, by contrast, integration is mainly economic, then economics and politics should be 'kept as separate as possible'[4] and European policy-making should be depoliticized. In addition, Majone contends that criticisms of technocracy, non-transparency, insufficient public participation and limited mechanisms of control would equally apply to non-majoritarian institutions outside the EU, such as national central banks and regulatory agencies.[5] Majone argues that institutions such as the ECB are legitimate if their mandate is specified, their decision-making processes well defined, their decisions justified, the policy outcomes sound, and if they have the necessary expertise and a willingness to protect diffuse interests. In the case of the ECB, Majone perceives

low inflation to be a clear mandate and considers ECB independence as necessary to overcome the diversity of national views on monetary policy.[6]

Moravcsik shares the view that EU policy-making is technocratic and benefits from depolitization.[7] He argues that the EU's functions – for example central banking – have often a lower electoral salience and are also delegated by states to national central banks, courts or agencies in order to 'insulate' them from politics. In addition, the EU's institutions are limited by narrow mandates and constrained by super-majoritarian decision-making, for example in the Council of Ministers. Moravcsik thus defends the high degree of 'insulation' of EU policy-making,[8] insofar as:

- Most EU policies are regulatory and economic with only limited (re)distributive effects. Most 'political' policies (for example, migration) remain largely intergovernmental and draw their legitimacy directly from elected national governments.
- The EU lacks a range of more politicized competences, including fiscal priorities, social welfare provision and taxation.
- The political system with its multi-level structure, plural executive and distribution of power across several institutions is geared towards the protection of minorities.
- Legitimacy stems from a variety of sources, such as elected national governments and the EP.
- Semi-autonomous judges and technocrats require insulation to produce policy outcomes in the general interest based on expertise 'in areas where most citizens remain "rationally ignorant" or non-participatory.'[9]

Overall, neither Majone nor Moravcsik see the role of the ECB in EU monetary policy as a problem because they both perceive monetary policy as a policy area that should best be dealt with by experts in a depoliticized manner with powers delegated to them by elected governments. Even more remarkably, a number of authors who are concerned about the state of EU democracy and who find political participation desirable often only mention EMU in passing without problematizing the role of the ECB.[10] However, the view that monetary policy can be depoliticized has been undermined by the euro area crisis, with Bellamy and Weale, for example, questioning the assumption of 'the normative value of the depoliticization of money'.[11]

Therefore, in the following sections, we examine to what extent key arguments about the ECB's legitimacy continued to apply in the context of the ECB's policies during the sovereign debt crisis. Based on the literature, we identify three elements of the ECB's legitimacy that need to be examined:

- the presence of (and adherence to) a clear mandate assigned by national governments;
- the absence of (highly visible) redistributive effects;
- the low political salience of ECB policies.

II. Undermining the clarity of the ECB's mandate

As discussed above, the ECB's legitimacy is often seen as unproblematic in the literature, based on a firm assumption that its actions are framed by a clear and narrow mandate that had been defined by elected national governments in the process of Treaty negotiations. Top ECB officials have also frequently defended the legitimacy of its policy-making in these terms.[12] The Maastricht Treaty and the Statute establishing the ECB and European System of Central Banks stipulate that the ECB must give primacy to the pursuit of low inflation, only after the achievement of which it can seek to achieve other goals, including economic growth. Second, the ECB cannot be a 'lender of last resort' for sovereigns (Member State governments) – a prohibition established by provisions blocking the ECB from monetizing government debt (Article 101 TEU, Article 123 Treaty on the Functioning of the European Union (TFEU)) and the 'no bail out' rule (Article 103 TEU, Article 125 TFEU). The aim of the prohibition of monetary financing was to ensure 'monetary dominance' and exclude the possibility of 'fiscal dominance' – that is, a situation where Member State fiscal policy becomes so untenable that the ECB is forced into deficit financing.[13]

It can be argued that the ECB strayed from its mandate by pursuing policies that may have undermined the central bank's pursuit of price stability – although this is of secondary importance to our argument, especially given that inflation for almost all of the five-year period from early 2013 to early 2018 was well below the ECB's official target. Second, and more significantly, ECB policy had in effect an indirect fiscal policy role, potentially contradicting the Maastricht Treaty's prohibition of the monetization of Member State debt and 'no bail-out' rules.

With the outbreak of the international financial and then sovereign debt crises, the inflationary effects of the ECB's nonconventional monetary policies became the subject of intense

disagreement among economists, governments and even ECB Governing Council members (see below). For 2008 and in 2011–2012, euro area inflation remained well above the 2% target. The ECB argued repeatedly that its medium-term goal was consistently respected.[14] These claims, however, did not stop criticism of the potential inflationary implications of nonconventional monetary policies from a range of credible observers.[15] We argue that the economic reality of the inflationary impact of the ECB's nonconventional monetary policy mattered less than the perception of potential inflationary impact for the central bank's legitimacy.

Debates initially focused on the inflationary impact of the ECB's liquidity boosting measures – notably, the purchase of covered bank bonds – and the ECB's Securities Markets Programme (SMP) – specifically, the purchase of sovereign debt on secondary markets of those euro area Member States most at risk of default and facing high bond yields. The ECB consistently argued that the SMP would not create inflation – that it could 'sterilize' the purchase of sovereign debt.[16] A number of economists argued that the amounts involved in the debt purchases were very small in relation to the ECB's overall operations.[17] Nonetheless, the ECB's repeated insistence upon 'sterilization' was an important political message directed notably at the German government, central bank and population that the bank's actions would not create inflation.[18] The political salience of low inflation was particularly significant in Germany given both the population's longstanding inflation aversion – and prioritization of low inflation over other socioeconomic goals – and the Christian Democrat Party's longstanding efforts to associate the EMU project with the pursuit of low inflation and broader macroeconomic policy stability.[19] Thus, the economic argument that the SMP did not in itself fundamentally undermine inflation was less important than the very real perception that it could do so – especially if widened to include the sovereign debt of a larger range of Member States. The diversion from the pursuit of low inflation thus, in itself, politicized ECB monetary policy for a large section of the German political class and public (see below).

The repeated inability of the ECB to neutralize fully the inflationary impact of its sovereign debt purchases through 'sterilization' fueled scrutiny and criticism. Between October 2010 and May 2011, the ECB failed five times to neutralize fully the inflationary effect of its debt purchases,[20] revealing the tensions between the two ECB goals of ensuring euro area stability and combating inflation and attracting criticism from the German Bundesbank among other interested parties. The extension of ECB sovereign debt purchases to Italy and Spain from

August 2011 undermined further the thrust of the ECB's anti-inflation message and caused considerable frustration throughout the German political class (see below). The failure to 'sterilize' bond purchases continued into 2012 but came to assume less political significance as euro area inflation eased and then dropped below the 2% target from late 2012. Later when inflation dropped well below target, the ECB justified Quantitative Easing (QE) as a mechanism to raise inflation[21] – and never in terms of supporting the purchase of sovereign debt which the QE policy included. The ECB's communications strategy was to place emphasis on its treaty-assigned primary goal and the legitimacy of its controversial nonconventional monetary policy.

III. The redistributive implications of ECB monetary policy: on national fiscal policy, savers and financial systems

Four elements of ECB monetary policy since the outbreak of the sovereign debt crisis in 2010 can be seen as having had significant fiscal implications, indirectly contradicting the Maastricht Treaty's prohibition of the monetizing of Member State debt and of 'bail-out' – the Securities Markets Programme (SMP), the Long Term Repurchase Operations (LTRO), the announced but yet to be activated Outright Monetary Transactions (OMT) programme, and Quantitative Easing (QE). With the exception of the OMT programme, both the transparency of national fiscal and macroeconomic policy and the strength of national structural reform efforts were undermined.

In response to rising sovereign debt yields in a number of Member States and notably Greece, the ECB adopted the SMP (2010–2012). The logic behind the policy was that by purchasing the sovereign debt of specific euro periphery Member States on secondary markets, the ECB would help bring down debt yields, thus enabling governments to fund themselves at lower rates. Economic studies[22] suggest a short-term effect of the SMP, notably in terms lowering yields. The ECB made clear publicly that it would hold these bonds to maturity – without revealing those maturities. Under the SMP, the ECB purchased approximately €220 billion worth of Greek, Irish, Portuguese, Italian and Spanish government bonds. The SMP was widely criticized for breaking the ban on the monetary financing of debt and transforming the ECB into, de facto, a 'lender of last resort'. The Bundesbank held firm in its opposition. Jens Weidmann publicly queried the legality of the ECB's de facto 'monetary financing' of debt as contrary to EU Treaty provisions.[23] In 2012, Peter Gauweiler, the deputy head of the Bavarian Christian Social Union, joined with Bruno Bandulet, Roman Huber, Johann Heinrich von Stein

and the German political party Die Linke to bring a case against the ECB to the German Constitutional Court that was subsequently referred to the European Court of Justice.[24]
In early August 2011, the ECB stepped up – considerably – its sovereign bond-buying programme, extending this to cover Italian and Spanish government debt. The shift was important because, the SMP was extended to lower the bond yields not only of 'Programme countries' – that is, the three euro area Member States that were subject to macroeconomic policy programmes managed and monitored by a 'Troika' of the ECB, the European Commission and the IMF – but also of two countries that were not subject to 'Troika' involvement. Thus, through the extension of the SMP, the ECB acted as a de facto 'lender of last resort' without the quid pro quo of fiscal/macroeconomic policy constraint. Jean-Claude Trichet performed a delicate balancing act, insisting publicly that the ECB was not a 'lender of last resort' and that the SMP was not driven by the goal of maintaining government solvency but rather was a 'temporary and limited' measure adopted for monetary policy reasons and, specifically, the need to restore a better transmission of the bank's interest rate decisions – a claim made necessary for legal reasons.[25] The SMP was ended in September 2012 when the ECB announced its OMT programme.

The ECB engaged in Long-Term Refinancing Operations (LTRO), at a very attractive 1% fixed rate and full-allotment basis, meaning that banks had significantly increased access to central bank liquidity, on the basis of the provision of adequate collateral. However, collateral requirements were in turn eased a number of times and, moreover, the maturity of LTROs – originally of only three months – was lengthened, to six months and then one year. Then the ECB engaged in two massive LTROs in December 2011 and February 2012 which amounted to approximately €1 trillion. The effect of the LTROs was that euro area banks – especially those in the euro area periphery – borrowed funds to purchase sovereign debt with higher yields – notably the debt of periphery governments. In addition to contributing very directly to the dangerous sovereign debt-bank doom loop, the ECB's LTRO operations effectively helped to lower sovereign debt yields by increasing demand, thus allowing the cheaper financing of governments.

On 26 July 2012, ECB President Mario Draghi announced that the ECB would do 'whatever it takes to preserve the euro', with the aim of reducing bond yields for a number of euro area countries. This was followed in September 2012, with the announcement of the OMT programme which consists principally of a promise to conduct unlimited interventions in

secondary sovereign debt markets to purchase the sovereign debt of a euro area country on the condition that its government accepts the conditions of a European Financial Stability Facility (EFSF)/European Stability Mechanism (ESM) programme. Officially, the ECB justified this policy in terms of safeguarding the appropriate transmission of its monetary policy throughout the euro area. In effect, OMT allows the ECB to act potentially as a 'lender of last resort' in government bond markets.[26] Draghi's July announcement and the subsequent launch of the OMT programme contributed significantly to restoring financial market confidence, even though no OMT was subsequently conducted (up to May 2019). Officially, the ECB's decision to replace the SMP by the OMT demonstrated the adoption of a more aggressive approach to conditionality. The OMT undermined less forcefully the ECB's mandate – notably the primacy assigned to its pursuit of low inflation – in that unlimited ECB purchase of sovereign debt could only come with (promises of) significant national structural reform designed to help governments meet their macroeconomic commitments embedded in the Maastricht Treaty, notably on public spending deficits and debt levels. However, the OMT amounted to a significant unilateral extension of the potential fiscal policy powers that the ECB assigned to itself – albeit via the EFSF/ESM – without much consultation with Member State governments. Specifically, the ECB assigned itself influence over the imposition of fiscal and macroeconomic policy commitments upon governments and an indirect monitoring role – with the EFSF/ESM – of their progress in meeting these commitments.

On 22 January 2015, the ECB launched its QE programme with a promise to buy, from March of that year, €60bn worth per month of mostly government bonds purchased on secondary markets until at least September 2016 – a total of €1.1 trillion. The programme was not completely new, in the sense that it included two existing programmes – the asset-backed securities purchase programme (ABSPP) and the covered bond purchase programme (CBPP3), which were both launched in late 2014. Officially, the ECB sought to stimulate euro area credit markets (bank lending) and economic growth and to diminish the risk of deflation. It intended to continue the programme until it saw 'a sustained adjustment in the path of inflation that is consistent with its aim of achieving inflation rates below, but close to, 2 [per cent] over the medium term'.[27] Yet again, the desired and real effect of ECB policy was to lower government bond yields – albeit this time throughout the euro area. Importantly, the impact on different Member State sovereign debt varied, with yields on German bunds already at historic lows.

The perceived (distributive) impact of these policies upon savers and financial firms in a number of countries – particularly in Germany – became a major political issue. For the German

federal transport minister, Alexander Dobrindt, ‘the disappearance of interest rates [created] a gaping hole in citizens’ old age preparations’, a particularly sensitive topic in a country with a rapidly ageing population.[28] Negative interest rates undermined the core business models of German pension funds, life insurers and a large section of the German banking system – specifically small savings banks and cooperatives – which were legally required to guarantee a fixed rate of return.[29] ECB President Mario Draghi fought back against this kind of criticism, arguing that the German government had to assume responsibility for the difficulties facing its savings and cooperative banks, while the ECB’s legal obligation was to bring inflation closer to target.[30]

IV. The political salience of ECB policies and their perceived redistributive effects

As the ECB’s crisis policies pushed against the boundaries of its mandate, they became politicized in three ways. First, dissent within the Governing Council became increasingly apparent – exposing deeper fundamental divisions in the euro area. Second, a number of governments moved to politicize monetary policy. Third, the public took a greater critical interest in ECB policy-making and national political debate intensified.

For the first time, the adoption of crisis policies resulted in public disagreement among ECB Governing Council members. Despite the ad personam rule assigned to Governing Council members, several from ‘Northern’ European countries expressed concerns with nonconventional monetary policies that corresponded closely to those of their national governments. Notably, they argued that these policies risked reducing pressures upon Member State governments – and above all those in the euro area periphery – to adopt structural reforms.[31] Although the full details cannot be known because of ECB secrecy, a growing number of unilateral public announcements by specific Executive Board members and National Central Bank governors that criticized ECB policy can be seen as the clearest indication of discord.[32] Bundesbank president Axel Weber and ECB Chief Economist, Jurgen Stark both resigned in 2011 because of their opposition to the SMP – Weber explicitly and Stark implicitly.[33] Bundesbank President Jens Weidmann subsequently led the opposition to the ECB’s nonconventional monetary policies. He described sovereign debt purchases ‘as being tantamount to financing governments by printing banknotes’ and argued that the announced OMT Programme carried ‘the additional danger that the central bank may ultimately redistribute considerable risks among various countries’ taxpayers’.[34] More generally, Weidmann argued that ECB action would have distributive effects – the opposite of what the

surrender of national monetary policy and the adoption of an explicit low inflation goal in EMU were meant to achieve.

The interest of governments, political parties and the general public in ECB monetary policy also increased from start of the sovereign debt crisis, at least in part due to the greater visibility of the impact – or at least the perceived impact – of this policy. On the one hand, the extremely low interest rates affected negatively some economic models. On the other hand, the provision of Emergency Liquidity Assistance (ELA) to euro area countries unable to access bond markets gave the ECB considerable power to interfere directly in Member State macroeconomic policy-making and thus indirectly created distributive effects within countries. The ECB's intervention in Ireland is a good example of the significant power that the central bank could wield in relation to euro area national governments in need of emergency funding. The ECB agreed to provide ELA to Irish financial institutions only if the Irish government sought a bailout from euro area Member States in November 2010 – which it did shortly afterwards.[35] In addition, the ECB demanded that the Irish government accept fiscal consolidation and structural reform, and that it recapitalize and restructure Irish banks. Such ECB demands became more frequent as the sovereign debt crisis intensified in 2011 and were also made of non-programme Member State governments – notably Italy and Spain. The ECB's decision to limit the level of emergency liquidity to Greek banks in June 2015 – forcing the Greek government to close banks and impose capital controls – put into the spotlight both the power of the ECB but also its exposed position as a non-majoritarian body with such power.[36] The ECB Governing Council took the decision without warning at an emergency meeting on a Sunday and a week prior to the Greek referendum on bail-out terms.

A number of euro area Member State governments publicly challenged ECB monetary policy. Criticism was not new. From senior French politicians – including the president – there had previously been regular criticisms of the low inflation-focus of the ECB when the euro was perceived to be too strong in relation to the dollar and other major international currencies, which had a perceived negative impact on exports.[37] However, government criticism of ECB policy-making following the outbreak of the sovereign debt crisis was far greater and owed to both nonconventional monetary policies and the ECB's role in the 'Troika'.[38]

The German government was loudest in its criticism of nonconventional monetary policies. In April 2016, Finance Minister Wolfgang Schäuble, and a number of other senior German

politicians, called for the end of the QE programme and the policy of low interest rates given the claimed impact on pensions, savers and small savings banks and cooperatives.[39] Schäuble specifically accused the ECB's nonconventional monetary policies (notably QE) for contributing significantly to the rise of the German populist right-wing party (AfD). For Schäuble 'excessive liquidity [was] more a cause than a solution to the problem'.[40]

Third, European national publics and parliamentarians became increasingly aware of the salience of ECB policy-making and public debate intensified. Public awareness of the ECB rose from 71% in the autumn of 2007 to 85% in the spring of 2015. In the meantime, public trust in the ECB – almost always marginally lower than trust in the Commission and significantly lower than trust in the European Parliament – declined from a high of 53% in the Spring of 2007 to a low of 31% in the Spring of 2014.[41] The trust:distrust ratio for the ECB was consistently negative, reaching a high of 10 percentage points in the spring of 2015 – when the trust:distrust ratio for the Commission was no longer negative. In Germany, trust in the ECB (in the spring of 2015) reached 32% while distrust reached 54% for a record differential of 22 percentage points – the highest of any euro area Member State with the notable exceptions of Greece, Spain and Cyprus. Public demonstrations against the ECB were taking place above all in the countries most affected by austerity policies (notably Greece, Italy and Spain) and focusing principally upon the ECB's role as part of the 'Troika'.[42] However, the violent demonstrations directed at the ECB in Frankfurt at the opening of its new headquarters in March 2015 provided the most mediatized evidence to date of public mistrust in the ECB and the politicization of its role.[43]
Increased political salience is also reflected in the evolution of parliamentary interest in ECB policy-making, which rose markedly following the outbreak of the sovereign debt crisis. The number of MEP written questions to the ECB president increased significantly. In the first year and a half of the European Parliament's eighth term (to the end of 2015) there were 195 written questions to the ECB – significantly more than the number of questions during all of the seventh term (149 from 2009-2014) and more than three times the level of the fifth term (62 from 2004–2009).[44] During the 2009–2015 period, 31% of questions to the ECB focused on monetary policy, 9% on 'economic governance and surveillance', and 21% on the 'Troika'.[45] In debates, many national and European parliamentarians praised the ECB's nonconventional monetary policies, but there were also strong voices of opposition and concern as to their distorting effects. In a resolution on the ECB's 2011 Annual Report, the European Parliament warned 'that in the absence of proper conditionality, non-standard measures such as three year LTROs may fall short of producing the desired effects.'[46] In a resolution on the 2012 Annual Report,

the European Parliament stressed that LTROs 'did not provide a fundamental solution to the crisis,' expressed concern 'about the transfer of risks from struggling banks and governments onto the ECB's balance sheet as a result of the ECB's decision to buy "unlimited" amounts of short-term government debt' through the OMT programme, and noted the potential impact of very low interest rates which 'may cause distortions in the business sector and harm private savings and pension plans.'[47]

V. Conclusion

Over the course of the sovereign debt crisis, the ECB's nonconventional monetary policies blurred the boundaries of the central bank's mandate and undermined the transparency of both its own monetary policy and the implications of this monetary policy for national macroeconomic policy. As a result of these changes, many arguments that had been used to support the democratic legitimacy of the ECB's policies became less obviously valid. Notably, the ideas that ECB independence is legitimate as it is framed by a clear mandate, that ECB policy-making is non-distributive and that it is technocratic and depoliticized were undermined.

1. ECB independence is unproblematic in the context of a clear mandate.

In the course of the crisis, the ECB's mandate became stretched and blurred. While the ECB never officially renounced its original mandate, it adopted a number of monetary policies where it is clear that price stability was neither the primary objective nor the intended effect. Similarly, while the European Court of Justice ruled that ECB policies did not break the treaty provision that prohibits the monetary financing of sovereign debt, the ECB rubbed against the boundaries of legality on this matter. Moreover, the stretching and blurring of mandates and the use of justifications that appeared not to explain in full the objective of policies created a lack of transparency and reduced the ECB's legitimacy.

2. The ECB does not require close political oversight, as its policies are not (re)distributive. (Re)distributive effects are minor and secondary.

The Treaty provisions on the primacy assigned to low inflation and the ban on the monetary financing and bail-out of governments clearly defined and delimited the ECB's redistributive role. From the outbreak of the sovereign debt crisis, nonconventional monetary policies involved de facto 'distribution' to euro periphery countries – by lowering unsustainably high bond yields – albeit with no clearly defined 'redistribution' from other Member States. However, the impact of low and then negative real interest rates upon some national financial

systems and savers created the widespread perception of a de facto redistribution. While changes in interest rates always have distributive effects, the move to negative real interest rates in a number of euro area Member States made those effects particularly visible. ECB action during the crisis also had potentially massive distributive implications among Member State central banks (and thus Member States) – which was contained within the Target II system. But this is a secondary consideration. Finally, the ECB's role in the 'Troika' – not discussed in this analysis – and in relation to ELA had a direct impact on national fiscal policy and thus (re)distributive policies within Member States.[48] We are left with an apparent contradiction. On the one hand, the ECB's nonconventional monetary policy enabled euro area periphery governments to maintain levels of public spending – or to diminish these levels less than they would have had to – which had implications on social welfare provision, taxation and the pursuit of other structural reforms. On the other hand, the bulk of ECB communication on macroeconomic policy almost always pushed in favour of structural reform.

3. Delegation of decision-making powers to technocratic institutions is legitimate where policy outcomes require high levels of expertise, are in the general interest and are 'in areas where most citizens remain "rationally ignorant" or non-participatory'.[49]
ECB policy-making requires, without a doubt, high levels of expertise. But it is questionable whether this 'area' was one where most citizens remained passive – at least at the height of the euro area sovereign debt crisis. The legitimacy of both the ECB's indirect fiscal policy role – through its nonconventional monetary policies – and direct fiscal/macroeconomic policy role – through its participation in the 'Troika' and ELA – were challenged publicly by ECB Governing Council members themselves, Member State governments, national and European parliaments, 'credible' and controversial academic economists and legal scholars, and a number of other technocratic institutions – including the IMF. The extensive debates on ECB policy in the media and the rapid decline in public trust are also evidence of public interest in ECB decisions. The very notion of 'the general interest' in this 'area' remains problematic.

The European Central Bank is at a crossroads. Its original mandate was to be an independent technocratic institution, the legitimacy and credibility of which was set in terms of its price stability mandate. However, from the outbreak of the sovereign debt crisis, ECB nonconventional monetary policies had significant, if indirect, impact upon the direction of macroeconomic policy in euro area Member States – and in a manner that contradicted the terms of the central bank's delegation as outlined in the Maastricht Treaty. In light of the

political salience of these policies and their impact, it is questionable whether the independence of the ECB remains democratically viable. ECB policy-making became problematically controversial and politicized. The temporary absence of economic crisis in the euro area – at the time of writing in late 2018 – reduces the political focus placed upon the ECB and diminishes the political pressure for reform. With treaty reform unlikely, unilateral ECB efforts to improve its accountability to the European and national parliaments – in the context of broader efforts to reinforce the accountability of euro area economic governance – is the best we can hope for prior to the outbreak of the next crisis.

References

1 P. Dermine, 'Out of the comfort zone? The ECB, financial assistance, independence and accountability, 26 *Maastricht Journal of Comparative and European Law* (2019); K. Tuori, 'The ECB's quantitative easing programme as a constitutional game changer', 26 *Maastricht Journal of Comparative and European Law* (2019).

2 D. Chryssochoou, 'Europe's Contested Democracy', in M. Cini and N. Perez-Solorzano Borragan (eds.), *European Union Politics* (Oxford University Press, 2010), p. 377–389; A. Moravcsik, 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union', 40 *Journal of Common Market Studies* (2002), p. 603; A. Follesdal and S. Hix, 'Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', *European Governance Papers* No. C-05-01 (2005), https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-5965.2006.00650.x.

3 Compare G. Majone, 'Europe's "Democratic Deficit": The Question of Standards', 4 *European Law Journal* (1998), p. 5.

4 Compare: ibid., p. 5.

5 Compare: Ibid., p. 14–15; R. Bandura, R. Mendoza and B. Sidikou-Sow, 'Central Bank Independence and Accountability: A Literature Review', *UNDP* (2006), http://www.undp.org/content/dam/undp/library/corporate/Development%20Studies/central_bank_review_2006.pdf; A. Blinder, *Central Banking in Theory and Practice* (MIT Press, 1998).

6 Compare: G. Majone, 4 *European Law Journal*, (1998), p. 5; D. Howarth and P. Loedel, *The European Central Bank: The New European Leviathan?* (Palgrave Macmillan, 2005).

7 Compare: A. Moravcsik, 40 *Journal of Common Market Studies* (2002), p. 603.

8 Ibid.

9 Ibid., p. 613, 614

10 Compare: A. Follesdal and S. Hix, *European Governance Papers* No. C-05-01 (2005). D. Chryssochoou, 'Europe's Contested Democracy', in M. Cini and N. Perez-Solorzano Borragan (eds.), *European Union Politics* (Oxford University Press, 2010), p. 377–389.

11 Compare: R. Bellamy and A. Weale, 'Political Legitimacy and European Monetary Union: Contracts, Constitutionalism and the Normative Logic of Two-Level Games', 22 *Journal of European Public Policy* (2015), p. 257–274.

12 Compare: for example, J. Trichet, 'Speech by Jean-Claude Trichet at the 38th Economic Conference of the Oesterreichische Nationalbank', *European Central Bank* (2010), http://www.ecb.int/press/key/date/2010/html/sp100531_2.en.html.

13 Compare T.J. Sargent and N. Wallace, 'Some unpleasant monetarist arithmetic', 5 *Federal Reserve Bank of Minneapolis Quarterly Review* (1981), p. 1; European Central Bank, 'Ten years of the stability and growth pact', *ECB Monthly Bulletin* (2008), https://www.ecb.europa.eu/pub/pdf/other/10thanniversaryoftheecbmb200806en.pdf, p. 53.

14 Compare European Central Bank, 'Annual Report 2011', *European Central Bank* (2012), https://www.ecb.europa.eu/pub/pdf/annrep/ar2011en.pdf, p. 55; R. Atkins, 'Trichet defends "impeccable" ECB record', *Financial Times,* (2011), https://www.ft.com/content/10102952-da3e-11e0-bc99-00144feabdc0

15 S. Kaiser, 'Bond-Buying Perils: ECB Risks Inflation and Loss of Independence', *Spiegel Online International* (2011), http://www.spiegel.de/international/europe/bond-buying-perils-ecb-risks-inflation-and-loss-of-independence-a-779183.html; R. Atkins, 'Bundesbank opposed ECB bond-buying', *Financial Times*, (2011), https://www.ft.com/content/d1cd36b4-ccc6-11e0-b923-00144feabdc0.

16 Compare: J. Trichet, Speech by Jean-Claude Trichet at the 38th Economic Conference of the Oesterreichische Nationalbank', *European Central Bank* (2010); 'Sterilization' refers to the process of a central bank taking in fixed term deposits from banks of the same amount spent on the SMP purchases with the aim of neutralizing the liquidity created by the bond purchases; See also R. Atkins, 'ECB's "sterilising" operation hit by overnight rate snag', *Financial Times*, (2011), https://www.ft.com/content/cd5372e0-2e26-11e0-8733-00144feabdc0

17 Compare, for example, W. Buiter and E. Rahbari, 'Looking into the Deep Pockets of the ECB, Global Economics View', *Citi Investment Research & Analysis (2012)*,

http://blogs.ft.com/money-supply/files/2012/02/citi-Looking-into-the-Deep-Pockets-of-the-ECB.pdf.
18 J. Wilson, 'Bundesbank repeats hostility to ECB bond buying', *Financial Times*, (2012), https://www.ft.com/content/0cfab5c4-d7cd-11e1-80a8-00144feabdc0.
19 D. Howarth, and C. Rommerskirchen, 'A Panacea for all Times? The German Stability Culture as Strategic Political Resource', 36 *West European Politics* (2012), p. 750.
20 C. Jones, 'European Central Bank unleashes quantitative easing', *Financial Times* (2015), https://www.ft.com/content/aedf6a66-a231-11e4-bbb8-00144feab7de
21 Ibid.
22 S. Manganelli, 'The impact of the Securities Markets Programme', *ECB Research Bulletin* (2012), https://www.ecb.europa.eu/pub/pdf/other/researchbulletin17en.pdf; M. De Pooter, R. F. Martin and S. Pruitt, 'The effects of special bond market intervention in Europe', *Federal Reserve Board of Governors* (2012), http://www.efmaefm.org/0EFMAMEETINGS/EFMA%20ANNUAL%20MEETINGS/2013-Reading/papers/EFMA2013_0533_fullpaper.pdf; E. Ghysels et al., 'A high frequency assessment of the ECB Securities Markets Programme', *ECB Working Paper* Series No. 1642 (2012), https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1642.pdf.
23 Financial Times, 'FT interview transcript: Jens Weidmann', *Financial Times* (2011), https://www.ft.com/content/b3a2d19e-0de4-11e1-9d40-00144feabdc0
24 EURACTIV, 'Top German court refers ECB bond-buying case to EU judges', *EURACTIV* (2014), https://www.euractiv.com/section/euro-finance/news/top-german-court-refers-ecb-bond-buying-case-to-eu-judges/. Compare: Case C-62/14 *Peter Gauweiler and Others v. Deutscher Bundestag* EU:C:2015:400.
25 Compare: J. Trichet, Speech by Jean-Claude Trichet at the 38th Economic Conference of the Oesterreichische Nationalbank', *European Central Bank* (2010); H. Siekmann and V. Wieland, 'The European Central Bank's outright monetary transactions and the Federal Constitutional Court of Germany', *Safe White Paper Series* No. 4 (2013), http://nbn-resolving.de/urn:nbn:de:hebis:30:3-315547.
26 A. Winkler, 'The ECB as Lender of Last Resort: Banks versus Governments', *LSE Financial Markets Group Special Paper* No. 228 (2014), http://www.lse.ac.uk/fmg/assets/documents/papers/special-papers/SP228.pdf.
27 Compare: European Central Bank, 'ECB announces expanded asset purchase programme', press release from 22.01.2015, *European Central Bank* (2015), https://www.ecb.europa.eu/press/pr/date/2015/html/pr150122_1.en.html.

28 S. Wagstyl and C. Jones, 'Germany blames Mario Draghi for rise of rightwing AfD party', *Financial Times* (2016), https://www.ft.com/content/bc0175c4-ff2b-11e5-9cc4-27926f2b110c
29 W. Münchau, 'Real danger lies in Mitteleuropa's financial sector' *Financial Times*, (2015), http://www.ft.com/cms/s/0/a64ffef8-c3f4-11e4-9019-00144feab7de.html#ixzz3pyLMUx2Y; J. Shotter, 'German banks at risk of "alarming" profit fall' *Financial Times*, (2015), https://www.ft.com/content/ccf1948c-5dfe-11e5-a28b-50226830d644 ; C. Jones, 'Mario Draghi defends ECB independence and ultra-low interest rates', *Financial Times* (2016), https://www.ft.com/content/62c513c6-07b4-11e6-a623-b84d06a39ec2; Compare: International Monetary Fund, 'Global Financial Stability Report: Potent Policies for a Successful Normalisation', *IMF* (2016), http://www.imf.org/external/pubs/ft/gfsr/2016/01/pdf/c1_v3.pdf.
30 C. Jones, 'Mario Draghi defends ECB independence and ultra-low interest rates', *Financial Times* (2016), https://www.ft.com/content/62c513c6-07b4-11e6-a623-b84d06a39ec2.
31 Financial Times, 'Day that tested limits of the Union' *Financial Times*, (2010), https://www.ft.com/content/84595150-5c70-11df-93f6-00144feab.
32 D. Howarth, 'Defending the euro: Unity and disunity among Europe's central bankers', in J. Hayward and R. Würzel (eds.), *European Disunion: Between Sovereignty and Solidarity* (Palgrave Macmillan, 2012), p. 131.
33 Ibid. A.L. Högenauer and D. Howarth, 'Unconventional Monetary Policies and the European Central Bank's problematic democratic legitimacy', 71 *Zeitschrift für öffentliches Recht* (2016), p.438.
34 M. Steen, 'Weidmann isolated as ECB plan approved', *Financial Times* (2012), https://www.ft.com/content/3651b028-f846-11e1-b0e1-00144feabdc0; J. Weidmann, 'Eingangserklärung anlässlich der mündlichen Verhandlung im Hauptsacheverfahren ESM/EZB, Opening Statement at the Oral Hearing in the ESM/ECB Principal Proceedings 11.06.2013', *Bundesbank* (2013), https://www.bundesbank.de/de/presse/stellungnahmen/eingangserklaerung-anlaesslich-der-muendlichen-verhandlung-im-hauptsacheverfahren-esm-ezb-662878; M. Steen, 'Weidmann isolated as ECB plan approved', *Financial Times* (2012), https://www.ft.com/content/3651b028-f846-11e1-b0e1-00144feabdc0;
35 V. Boland and P. Spiegel, 'ECB threatened to end funding unless Ireland sought bailout', *Financial Times* (2014), https://www.ft.com/content/1f4ed1fa-65ac-11e4-aba7-00144feabdc0; K. Cardiff, *Recap: Inside Ireland's Financial Crisis* (The Liffey Press, 2016).

36 B. Blackstone, N. Stamouli and C. Forelle, ‘Greece Orders Banks Closed, Imposes Capital Controls to Stem Deposit Flight’, *Wall Street Journal* (2015), https://www.wsj.com/articles/SB11064341213388534269604581075703841095260.
37 D. Howarth, ‘France in the Euro-Zone: the management of paradoxical interests’, in K. Dyson (ed.) *The Euro at Ten* (Oxford University Press, 2008), p. 111.
38 A full analysis of the degree to which government criticism of ECB policy-making increased following the outbreak of the international financial and then sovereign debt crisis is beyond the scope of this paper.
39 S. Wagstyl and C. Jones, ‘Germany blames Mario Draghi for rise of rightwing AfD party’, *Financial Times* (2016), https://www.ft.com/content/bc0175c4-ff2b-11e5-9cc4-27926f2b110c
40 Ibid.
41 Compare: European Commission, ‘Standard Eurobarometer 83: Public opinion in the European Union’, *European Commission* (2015), http://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb83/eb83_en.htm; C. Koop, and C. Reh, ‘Europe’s Bank and Europe’s Citizens: Accountability, Transparency – Legitimacy?’, 26 *Maastricht Journal of Comparative and European Law* (2019).
42 K. Hope, ‘Europe May Day protests target austerity’, *Financial Times*, (2013), https://www.ft.com/content/8b50c3d4-b263-11e2-a388-00144feabdc0
43 C. Jones, ‘Anti-capitalist protesters target ECB in Frankfurt’, *Financial Times*, (2015), https://www.ft.com/content/2491d4c8-cd53-11e4-a15a-00144feab7de; C. Jones, ‘ECB adjusts to life amid the protests’, *Financial Times*, (2015), https://www.ft.com/content/60032fc2-e8db-11e4-b7e8-00144feab7de.
44 Figures from A. Giovannini, M. Jahning and M. Salines, ‘The Evolution of the ECB’s Accountability in Light of the Euro Area Crisis’, *ECPR Joint Sessions* (2016), https://www.ecb.europa.eu/pub/economic-bulletin/articles/2018/html/ecb.ebart201805_01.en.html.
45 Ibid.
46 European Parliament, ‘European Parliament resolution of 17 April 2013 on 2011 Annual Report of the European Central Bank (2012/2304(INI))’, *European Parliament* (2013), http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0176&language=EN.
47 European Parliament, ‘European Parliament resolution of 12 December 2013 on the European Central Bank Annual report for 2012 (2013/2076(INI))’, *European Parliament*

(2013), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013IP0601&from=EN.

48 P. Dermine*,* ‘Out of the comfort zone? The ECB, financial assistance, independence and accountability’, 26 *Maastricht Journal of Comparative and European Law* (2019).

49 Compare A. Moravcsik, 40 *Journal of Common Market Studies* (2002), p. 614.