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Either effective or democratic?

Considerations on the accountability of the European Central Bank

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Prologue

In 1985, in his speech on the Single European Act before the first Inter-Governmental Conference, the then President of the European Commission Jacques Délors warned: "we must face the fact that in 30 or 40 years Europe will constitute a UPO – a sort of 'unidentified political object' – *unless we weld it into an entity enabling each of our countries to benefit from the European dimension and to prosper internally as well as hold its own externally*" (Commission of the European Communities 1985: 8, emphasis added). The common Europe would thus have found a self-standing political legitimation in its capacity of securing benefits through its actions, first to its Members.

Its foundation on "output legitimacy" (Scharpf 1997) is implied by the same subsidiarity principle established in article 5 of the Treaty on European Union, which sets "effectiveness" as the guiding criterion for adjudicating on the proper level of intervention. In the 1990s, a robust scholarly discourse has portrayed this special legitimacy as both a necessity and a natural element of the European institutional architecture. Intentionally designed without the power to lay and collect taxes, the Union was defined as a form of "regulatory state" – in which the production of goods is left to providers beyond direct political command, while policy goals, from sustainability to security and growth, lie with independent agencies, following strict mandates to set consistent standards to producers and prevent risky behavior on the basis of expert knowledge (Majone 1994). As the argument went, the delegation of policy competences to such supranational regulators would have provided the Member states with a twofold gain: credible decisions that the vagaries of the domestic political cycle usually make hard or impossible, and the same rules as the committed partners.

The argument generalized and supported the skepticism toward active macroeconomic policies as an effective strategy for growth, and summarized the lowest common denominator that the Member states in the same decade found to give life to the Délors Report on the European and Monetary Union (hereafter, EMU). The new European Central Bank (hereafter, ECB) indeed epitomized the ideal of the regulatory agency – designed to be independent of direct political control, yet constrained in its actions by a clear mandate on inflation that, moreover, explicitly excluded the direct purchasing of sovereign debt (Eichengreen 2012). Such an institutional minimalism was complemented on the financial side with some power of coordination of national regulatory and oversight competences on the bank system. The fiscal side, too, remained an individual responsibility of each Member – formalized in the Stability and Growth Pact as deficit and debt targets, patrolled by the European Commission, yet adjudicated by the partner governments in the Council.

Once in place, the mandate seemed to work despite the clear "suboptimality" of the new currency area – in which a core of Northern, export-led, coordinated economies proved remarkably different from the assorted group of Southern economies, which relied more on domestic demand than on investments as a channel to growth. With the Monetary Union, the former had obtained that the Southern partners could not utilize competitive devaluation, while the latter were given low real interest rates, expected to attract freed capitals and boost demand (Iversen *et al.* 2016). In its first decade, the aggregate indicators portrayed the currency area as a success; at the national level, however, inflation performance revealed that lending and trade had been flowing North to South, leaving the core with increasing surpluses and the periphery with increasing deficits (Carlin and Soskice 2015). The dynamics was far from uncommon among demand-driven economies with credible monetary policies (Baccaro and Pontusson 2016); in the early Euro-area, however, it had become a structural part of its fortune, with the side effect of tempering the economic pressures for fiscal convergence.

The dualism turned into a weakness when the financial crisis hit and escalated through the banking systems into a sovereign debt crisis of the peripheral countries. It also exposed the limits of the Union minimalist design as the absence of risk-sharing mechanisms and of a lender of last resort (Schelkle 2014). From 2008, the European Central Bank has been making up for these missing elements, getting increasingly involved in financial stability policies. "Unorthodox" instruments, the Securities Markets Program, the Long-Term Refinancing Operation and the Outright Monetary Transactions – all have been set as relief measures conditioned on the implementation of responsible fiscal plans. Even further has the ECB been

pushed by the new competencies in the microprudential supervision of the largest banks in the Euro-area – that gives the institute the right to evaluate the appropriateness of their reserves, and to define resolution mechanisms to deal with insolvency (Ioannu *et al*. 2015). A channel for financial instability contagion, banks have long been granted some forbearance from the national regulators due to the costs of cleanup – economic, because the recapitalization may lead to turmoil and absorb more public resources than available; but also political, because banks have increasingly funded governments and their industrial policies, and recapitalization may imply a retrenchment of such activities (Admati and Hellwig 2013).

With stronger oversight competences, the ECB has thus built a direct responsibility in domestic distributional effects. The new position serves the wider explicit intention to relaunch European integration from the financial and the fiscal ground. The joint report issued in 2012 by the Presidents of the European Council "in close collaboration with" the Presidents of the Commission, of the Eurogroup, and of the ECB, stated that: "The euro area needs stronger mechanisms to ensure sound national policies so that Member States can reap the full benefits of the EMU. This is essential to ensure trust in the effectiveness of European and national policies, to fulfil vital public functions, such as stabilisation of economies and banking systems, to protect *citizens* from the effects of unsound economic and fiscal policies, and to ensure high level of growth and social welfare." Few periods below, the report specifies that "'More Europe' is not an end in itself, but rather a means for *serving the citizens of Europe and increasing their prosperity*" (van Rompuy *et al.* 2012:3, emphasis added). The implicit theory in these statements again recalls the argument of the regulatory state: domestic policies can prove irresponsible when molded by consensus-seeking governments; the European regulators can provide the "external constraints" suitable to bring about domestic responsible decisions. The theory finds a well-known limit in the legitimacy that a regulator can claim while its interventions curb the preferences of elected politicians – as highlighted by a stream of literature on the existence of a "democratic deficit" mainly flourished around the effects of the Stability and Growth Pact, but that also applies to any European regulatory policy with a clear effect on governments' discretion (Bang *et al.* 2015). The four Presidents' report acknowledges the issue, and overcome the problem with a notable twist in the rationale of legitimation. The justification still lies on the output side; yet, the reference is to citizens' prosperity – not Member states' or countries'.

It therefore entails that the policies of the EMU's regulators could be responsive to the "true preferences" of the European voters ahead of the interpretation provided by national

governments – and possibly against it in implementation. The entailment is daring, yet is worked out quite conventionally: the ECB is committed to account for its decisions to the European Parliament, and to circulate information to national Parliaments – provided that this does not undermine the "ability to take rapid executive decisions to improve crisis management in bad times and economic policymaking in good times" (van Rompuy *et al.* 2012:17). The report thus reduces accountability into the obligation to answer. In itself, this kind of relationship can span from a symbolic mutual acknowledgement to open confrontation, yet it can hardly threaten the independence of the regulator.

The open question from this design asks whether answerability to the Parliament is enough to qualify the ECB policy decisions as democratic – and, more generally, how institutions designed to protect decisions from the pressures from consensus can deal with the charges of poorly democratic decisions. Far from unknown, the question recalls a long-honored puzzle in political science about democratic accountability in delegation. This perspective allows to shed some new light on the dilemma, and treat expertise as a resource of effective democracy instead of a threat. This, as far as democratic legitimacy is considered a requisite of policy decisions instead of the bodies who issue them; and is not reduced to a connection with voters' consensus alone – but widened to include the legal dimension, a knowledge dimension, and consideration of affected interests' consensus, too, as crucially qualifying standards (Majone 2009).

1. Legitimacy, delegation, and accountability

Even in the scholarships the more skeptical about the intrinsic virtues of government, political systems are necessary to securing that crucial goods are produced and delivered, and democracies are the kind of political system designed for making such a production responsive to the needs and concerns of the members of the political community (Buchanan 1984). Ideally, a democracy allows citizens as voters to cast a ballot for the policy agenda that better matches their preferences. According to some shared principle of representation, the voting system aggregates these many preferences into an electoral mandate that the government later details and administrative bodies put into action. The system thus basically consists in a chain of delegation relationships; as the argument goes, the straighter the chain, the more responsive the system to citizens' policy preferences.

In practice, however, the perfectly responsive system is hardly attainable, as any act of delegation is inevitably plagued by some kind of "democratic deficit". A vote cannot generate precise indications on the contents of all future policies. Once in government, elected politicians may lack clear ideas about what and how their policies have to deliver so as to meet voters' demands; even in the case they know, they experience constraints and incentives that may slip policy mandates away from the voters' preferences. Administrative bodies know how to design policies for implementation; yet, their special competences and rationales can impart idiosyncratic twists to the content of the mandate. Moreover, administrative bodies hardly are the last link in the chain: more often, they shape and maintain special instruments – regulations, taxations, expenditures, information – aimed at steering the behavior of the actual producers in the field, and instruments may easily lead policies to unwelcome effects when producers can bypass or bend them to serve personal goals against policy intentions. So, the probability is quite low that citizens will really get the response that they voted for – even assuming that they have very clear and stable preferences over time (Fung 2008). The chain of delegation is therefore likely to turn into a chain of abdication, unless some device is provided to hold each in the chain accountable for their contribution to policy-making.

.1. Retaining vs entrusting

The standard Principal-Agent discourse in political science assumes that the right to be accounted has to be given to the immediate "principal" along the chain, so as to compensate their loss of decision-making power when delegating to an "agent". Thus, in representative democracies, voters should have the right to hold politicians accountable, and politicians should hold administrative bodies accountable. If each right is given strict enforcement, the voters' signal can travel straight along the chain – which is expected to improve the system's overall responsiveness. Following this line of reasoning, the good accountability design is the one securing a tight grip of the political bodies on the decisions of the administrative bodies, so that voters in the next elections can hold politicians accountable for the past performance of the system and reward them with a further mandate or punish them by choosing the incumbent instead (Becher and Donnelly 2013). The accountability perspective on the political system so slightly changes the usual portrayal of its functioning. Elections become the crucial device to convey discontent for what the system has delivered so far, rather than to push clear policy preferences forward. Politicians are held accountable *ex-post*, on the basis of the information that voters get about how they carried out their

responsibility while in office. Thus, it becomes crucial that information is accurate and reliable about the responsibilities of politicians and policy performance. As the literature on accountability underlines, here a paradox arises, as designs that better embody normative expectations about accountability can prove fairly counterproductive from a positive perspective (Hood 2011). The paradox revolves around responsibilities for policy decision and implementation, and arises from the interplay between political principal, administrative agents, voters, and affected interests – all endowed with some crucial policy resource. In the relationship between political principal and administrative agent, it is the latter who owns the major knowledge for designing the appropriate instruments – although not even all of it. Key information remains with the interests in the field, many of whom are eager to mobilize and pressure so as to bend the instrument in their favor. Faced with this asymmetry, the political principal has two options. He can either retain the bulk of the decision on instruments and leave the mere execution to the administrative body, or delegate the agent with the task of designing and implementing the instrument on his behalf (Mulgan 2014, Gains and Stoker 2009).

The "retaining" principal apparently has the stronger control, and better reasons for claiming policy success as his own achievement in next elections. Yet, in this way he also lays himself open to the unbalanced pressures of the affected interests, which he can hardly resist given his need for consensus, and which may so lead to spoiled instrument decisions. Moreover, the retaining principal dispenses with the knowledge of the agent, who is only required to carry out the principal's instructions and held accountable for truthful enforcement alone. As implementation unfolds and the instrument hits the field, instructions always prove incomplete, become dysfunctional depending on contexts, or reveal some unexpected biases: but, especially when backed by penalties, accountability makes the agent to prefer compliance in behavior rather than venturing into discretionary adjustments, although the latter could improve results and benefit the principal's reputation (Behn 2001, Tetlock and Mellers 2011). Thus, the principal finds himself engaged in a relentless re-regulation which absorbs resources and attention; as far as it is fueled by competing pressures from the field, it also signals the little credibility of the decisions about the instruments in force. When "the public" cannot rapidly be "convinced that new policies have been adopted when this is the case" (Cuckierman and Meltzer 1986:1100), that is to say because of a mounting policy problem, they will distrust the indications coming from the instrument in force, and their response will further weaken its effectiveness. In the end, the strong grip

approach meets the normative requirements of democratic accountability, but paves the way for poor performance and leaves politicians to take the whole of the blame for it. If we assume that politicians are strategic actors that would avoid as blame as possible, we have to conclude that electoral accountability provides quite little incentives for tight-grip principals to circulate reliable information about the performance of their policies, or even for them to address truly daring problems in production and delivery (Holland 2016, Canes-Wrone *et al.* 2001).

The "entrusting" principal instead follows a less heroic yet more promising approach to policymaking, based on a loose grip on agents so as to guarantee that her decision will be as flexible as needed, and that her full knowledge will be applied to solve problems of poor performance. This kind of principal does maintain the power and the legitimacy for policy initiation and change, and mandates the agent with the task of shaping and implementing the proper instrument on his behalf (Kiewiet and McCubbins 1991). Yet, this does not necessarily imply the principal's abdication to expert bureaucracies. Rather, it requires a subtler approach to control, in which accountability plays as a potent steering device (Gailmard and Patty 2013; Majone 2009; McCubbins et al. 1999, 1989). Instead of using direct behavioral instructions, the entrusting approach to control intervenes on the environment of the agent. So, it leaves her discretionary power intact – only, it constraints its application while providing direction.

.2. Accountability for entrusted agents

Direction is set by the principal in his mandate to the agent, and consists in a policy goal that the agent is committed to deliver. The goal also provides the yardstick against which the effectiveness of the agent's policy decisions will be assessed, and the major "political" ground of accountability. Of course, accountability for goals may prove as dodgy as that for behavior. Performance can become disappointing if the obligation to get a result falls on top of further and contradicting requirements (Schillemans 2008). But goals can also prove deceptive when are conveyed through the wrong measure of the right performance, or attached the wrong performance tout court — a likely case when they narrow on short term achievements alone (Behn 2001). Indeed, when goals are rendered as some output under the full control of the agent, they may foster some unbalanced provision of goods of none's interest – though, when they are gauged as outcomes outside the control of the implementers, they may simply reward the "lucky ones" (Bertrand and Mullainathan 2001). Moreover, unsteady targets again may rise expectations of laxer decisions that undermine the credibility

of the intervention to the eyes of the affected interests (Kydland and Prescott 1977). Sanctions for missing targets again can sort perverse effects, leading to the obstinate pursuit of actions despite looming failure in the hope of a change of fortune, or to "playing with numbers" and waste of resources in the effort of "looking good" (Behn 2001, Mulgan 2003). Thus, given stable, proper, realistic yet still stimulating measures for goals, the literature highlights how effective accountability can be secured as a public, periodic, extensive explanation that the agent renders to the democratic principal of the possible reasons that led the performance to stray from the target, of the decisions made to mitigate them, and of possible future remedies – all backed by convincing evidence.

The obligation to justify her decisions is considered as a mechanism for improving the consistency of the rule-making with those concerns that the principal can recognize as "proper". The provision alone, however, does not amount to an effective accountability design. Being run as an *ex-post* justification, it can only give the entrusting principal the retrospective elements to assess the goodwill of the agent and the consistency of her motivations. After decisions have been made, slippages may have already occurred, and a new status quo established despite of the preferences of the principal. The threat of sanction may once again prove counterproductive, inducing the agent to play it safer than intended by the principal, or to conceal failures, thus curbing the possibility of learning. Better and full-fledged accountability designs are those which can reduce harmful slippages through indirect constraints – by further "vectors" of accountability pointing to the general public, as well as to courts and to experts (Majone 1999). These vectors are engineered by the principal in procedures that regulate and protect citizens' and institutional bodies' right to know and scrutinize the content of the agent's decisions *before* they are enacted. In so doing, the principal secures that his agent is surrounded by the same kind of pressures that the he would experience had he retained the power to shape instrument – and that these pressures are properly exerted. Moreover, he can also give special weights to each vectors, by making each scrutiny more or less consequential on decision.

Experts can be given a standing through special assessment procedures so as to compel considerations from the agent about the distributional consequences of her decision on "deserving" groups of addressees (Kirkpatrick and Parker 2004, Radaelli 2010). Courts can be entitled to judicial reviews, and to check whether agent's decisions do not exceed the mandate or otherwise represent an abuse of rulemaking power against crucial principles; possibly, they can also be entitled with the power to override inconsistent decisions (Tate

1990). The public themselves can be recognized the right to know, to be notified of rulemaking initiation and intention, to comment the content of new proposals, and to be answered. This latter set of rights has been paid special attention from the US scholars first, where it plays as a key specification of the administrative procedure as lied down in the related federal statute (McCubbins *et al.* 1987, 1989; Bingham *et al.* 2005). The combination of these main constraints is deemed capable of improving the quality of the agent's rulemaking as far as they together effectively air special concerns which can improve the viability of decisions. Indeed, legal, expert, and public scrutiny questions the very rationale of the agent's decision, and pinpoint elements that looks as weaknesses. The agent that cannot justify it may incur in reputational damages, and her decision can lose its momentum. The mechanism of scrutiny and justification so induces the agent to anticipate the concerns and arguments from the "account-holders" while drafting decision.

This design thus fetches a fourfold gain to the principal. It let him save on the costs of oversight, as far as legal, expert, and societal "account-holders" check the agent on his behalf. It keeps the agent sensitive to values and preferences of key actors and constituencies. It can improve the viability of the instrument, as it compels drafts that fix or pre-empt contentious issues and provide justifications for the balance. It shields the principal from administrative failures while allowing him to rake in the credibility of good performance in next elections. The advantages are not limited to the principals however. The affected interests get a share of "political property rights" (Moe 1990) on public intervention as "account-takers". Although such a position cannot secure their most preferred instrument will put in place, it opens the opportunity for each to get credible policy information, and to mobilize for preventing unreasonable worst-case scenarios. Finally, the agent also gains from this accountability design. Scrutiny obligates her to make decisions that fit principles of administrative action, criteria of financial sustainability; standards of professional appropriateness, and that are backed with better arguments about the distributive effects of concern to an array of actual and latent constituencies (Scott 2000). As each of these "accountability vectors" also entails a special facet of democratic legitimacy– the legal, the technical, and that of the affected interests (Majone 2009) –, decisions that pass through these many assessments can also claim some higher legitimation. Finally, the design does maintain the basic connection with the electoral mandate: the political principal always sets the game, keeps his position, and can repeal political property rights by changing statute and mandate. The process hence always

unfolds "in the shadow of hierarchy" (Schillemans 2008, Scharpf 1997) – although the restoration of the principals' command would imply a loss of policy effectiveness.

The ecology of direction and control, however, is expected to work under condition that the constraints are all active, timely, and open. The transparency of the agent, as the kind and amount of information that she circulates about new rulemaking, indeed plays as a crucial feature for the accountability mechanism to trigger properly. First, it lowers the information costs for the affected interests, thus avoiding that resourceful groups alone can seize the opportunity to mobilize – which spreads distrust for the rules so issued. Second, it reinforces the reputational incentives for the agent to support proposals with rock-solid justifications, thus improving its acceptability. Third, it can work as a supplementary instrument that aligns the different expectations about the intended effects of rules, thus smoothing their application (Romzek and Dubnik 1987). The relevance of these points has been especially acknowledged by financial *fora* vested with *de facto* rulemaking powers with an actual impact on people's lives. Since the 1990s, as influential bodies as the Basel Committee on Banking Supervision of the Bank for International Settlement, the International Association of Insurance Supervisors, and the International Financial Reporting Standards foundation all have formalized their rulemaking along the lines of a "due process", and institutionalized the principles of transparency in decisions and open consultation on their drafts with the aim of "democratizing" their agreements. The effort to mend the democratic deficit in international regulation may prove symbolic and incomplete; yet, the more we walk down the layers of financial governance – where standards are adopted and actual distributional effects are molded, but also where the institutional resources exist for a full-fledged accountability design – the higher the institutional diversity that we can find, and seldom in the direction of a more balanced rulemaking.

2. Can transparency make Central Banks accountable?

Irrespective of their legal nature, Central Banks' responsibilities in financial stability have since long made them so close to the idea of government executive agency that a common question in political science asks why governments delegate monetary and financial decisions to such bodies instead of retaining the full control over them. Well-known explanations point at the rationality of governments interested in improving policy credibility – that is, in

providing solid ground to people's expectation that the policies will be kept "consistent" over time.

The related assumption maintains that governments who directly exert the power to set monetary and fiscal instruments cannot secure their credibility. Their voters have an interest in high economic growth rates as much as in low inflation rates, and electoral accountability set incentives for results in the short run. So, governments may be tempted to boost growth with slightly inflationary interventions: but producers and lenders knows it and tend to anticipate the move. Ahead of government intervention they hence build an "inflationary bias" in the contracts that they sign, pushing inflation higher than intended, and spoiling the effect of interventions on growth. The more the game is repeated, the worse the policy outcome – meaning that, when crises occur, government countermeasures may prove extremely burdensome. A government with a reputation of credibility can mitigate the dynamics, but hardly overcome the expectation game. Better results are proven to follow when the responsibility for achieving these goals is mandated to a different decision-maker independent from government, and whose decisions cannot be overridden. Credibility becomes a feature of the policy because of a design of the decision-maker that weakens the direct control of principal (Kydland and Prescott 1977, Barro and Gordon 1983, Rogoff 1985, Grilli *et al.* 1991).

Implicit in the trade-off between credibility and democratic accountability is the assumption that democratic accountability exists when the government can exert its tight grip alone (Cukierman 2001). Being it proven unwise, the scholarship has explored the hypothesis that transparency can restore some accountability toward the political principal while maintaining reputation and independence. Analyses have increasingly included transparency in the good governance designs for Central Banks, where is considered the hallmark of effective independent institutions under flexible exchange rate regimes (Crowe and Meade 2008, Dincera and Eichengreen 2014).

This literature however mainly justifies transparency as a way of reducing informational asymmetries between policymakers and other players (Geraats 2002), as far as disclosure lowers the "noise" in the "regulatory signal" that follows when the Bank's target, view, or strategy become uncertain to the addressees. Transparency, otherwise said, is first understood as an element in the set of institutional devices that plays as the functional equivalent of fixed exchange rates in securing the credibility of rulemaking even when the Central Banker is given discretion on instruments and the policy is not conservative (Nolan

and Schaling 1996). The true question of interest to this literature thus asks *which* information the Central Bank can disclose so as to improve regulatory effects. Empirical analyses often specify this information following Geraats (2000, Eijffinger and Geraats 2006, Dincer and Eichengreen 2014). His framework identifies five main types: political, economic, procedural, policy, and operational transparency – as summarized in Figure 1 below.

– FIG 1 about here –

Political transparency refers to all these institutional elements that can make out clear the actual independence of the Central Bank – as defined by (1) precise priorities as numeric targets, from either mandate or commitment, as well as by (2) appointment of the Central Banker by the Board and government minor participation to the board, decoupling of the Central Banker's mandate and the government mandate, and the absence of overriding powers. Policy transparency unveils the rationale and content of the intervention, as well as future inclinations. Operational transparency corrects the players' guesses about the true nature of the policy in force. The combination of the three allows the players to sort intentional "policy surprises" from "errors", and to assess the consistency of the rulemaking. Political, policy and operational disclosure can lock the institution into reliable paths of behavior over time – so that expectations induce the players to adjust their behavior to the known pattern ahead of actual interventions. Anticipation may however prove counterproductive, as much as economic dynamics are partly endogenous and unfold self-fulfilling prophecies – which lead to the issue of economic and procedural transparency. When made public, the selection of economic data and models that the Central Bank relies on as its knowledge base can reinforce both welcome and unwelcome anticipation, while procedural disclosure may add noise to the policy signal when it exposes dissent within the Board. In the end, the consensus is high that disclosure – especially of economic and operational information – contributes to shape expectations, although the positive contribution of shaped expectations to policy effectiveness is still a matter of debate (Ehrmann *et al.* 2012, Crowe and Meade 2008). Yet, if the transparency-effectiveness link provides a fruitful question for empirical probation, it is often given for granted that transparency contributes to the legitimacy of the Central Bank operation because it qualifies it as accountable.

Disclosure of information may be enough to secure "accountable" Central Banks only when the institute is constrained by a strict mandate, pursues a single priority, and is given the only instrument of conventional standard-setting. In that case, the Central Bank really

becomes an enforcer with little discretion. The solution certainly improves the "expectability" of the policy and reduce the drifts from the political mandate: yet, it also trades this all for flexibility, so laying the policy open to ineffectiveness. This, alike in the standard tight-grip scenario, would undermine the ultimate function of accountability – i.e., policy responsiveness to the demands of the voting political community as ultimate political principal. Moreover, that targets can only be properly achieved with conventional instruments such as standard setting is a very questionable assumption: as the evolution of the ECB proves, over time the need can arise for a wider tool-box, so as to provide the institution with the capacity to fulfil its mandate under changing conditions. When new instruments, or the terms of their implementation, have to be defined, the agent's discretion becomes a crucial resource, and the democratic deficit arises. The deficit so poses a wicked problem to the "economic" understanding of accountability as dependence from the political principal – which can become quite treatable in the light of the alternative understanding, of accountability for entrusted agents.

3. Elements for a different tale

The alternative assumption that accountability, as much as democracy, is a compound concept built on complementary legitimacies has an effect on the concept of independence of a Central Bank first. Independence still means the capacity of defining its policy stance without the previous approval of the political principal: yet, this does not entail absolute discretion or insulation. Instead, it requires the opening of the rulemaking process to the active scrutiny from selected public and private interests enfranchised as account-holders, each bringing a special concern to the Central Bank's attention – that the mandate is not overstepped, that the knowledge base is adequate, that the distribution of costs and benefits among the affected interests follows some criteria suitable to the capacity and the instruments of the Central Bank. Yet again, scrutiny cannot happen in a vacuum; instead, it becomes legitimized and legitimating when regulated through procedures. Accountability studies in domestic contexts identify four of them: judicial review, regulating the scrutiny from Courts; impact assessment, regulating the scrutiny from experts; right of information and notice and comment, regulating the scrutiny from societal actors and the general public.

Thus, the judicial review of operational frameworks can certify that the rule-making of the Central Bank is consistent with the principles ingrained in the fundamental law and in

the mandate of the institute, or provide suggestions for improving their fitting to the existing institutional frame. When issued before the new regulation coming in force, the expected gains would stem from possible lower levels of litigation – especially if the judicial review is run not just in abstract terms, but on material bases, following the possible objections from the affected interests – but also from the "judicial entrenchment" of the basic institutional regime even in presence of fragmentation. Concerns of excessive judicial activism (Hirschl 2004) can nevertheless be mitigated by constraining the veto effect of judicial review on the Central Bank's rulemaking – provided that the review is public, it can still provide constraint through reputation, and by indicating the direction of possible future adjudication.

The need of an "expert" scrutiny may sound as a weird claim when related to a technical body, yet at a closer look it may prove not. Instead, it gains a twofold meaning. On the one side, it calls for a wider debate on the suitability of models and data that guide orientation and intentions: the contestability of the knowledge base may improve the stakeholders' understanding and trust in operations, and in the long run lead to more meaningful indicators to supplement the analysis. On the other side, it recalls the more conventional application of assessment analyses. Policies of financial stability come with distributional effects that may harm the future capacity of the Central Bank to fulfil its mandate. Supporting the rulemaking with arguments about the possible distributional consequences of alternatives, and accounting for the structural limits of the available instruments in properly addressing them, may again improve the expectations about the Central Bank's operations, and a more proper identification of policy responsibilities.

Finally, the notice and comment procedure, and the right to know. The latter has become an increasingly diffuse feature of the institutional landscape for Central Banks, furthering the issue of the proper balance between confidentiality and transparency – usually sorted on a case-by case basis, sometimes tackled with embargo rules, yet possibly appealable to a different body within or outside the Central Bank governance system. Even within these limits, the right provides a necessary condition to enforce the wider scope of notice and comment. In its extensive form, the latter procedure entails the obligation of the Central Bank to notify that a new regulation is in the making, to make the draft available together with background documents clarifying reasons and intentions, to call for comments, and to provide answers that explain how the proposal takes the comments into account, or why it cannot. Being the issue especially contentious, the procedure can be organized in different rounds with increasing degrees of openness; anyhow, it can hardly revert the

rationale of the proposal. Still, it proves useful in eliciting information about possible viability problems or unintended effects from later stages that can be used for improving the content.

The application of "domestic" accountability devices, even on voluntary basis, could make a notable difference in the perception of the democratic deficit that to many observers affect the functioning of a crucial institution of the European governance as the ECB. The opening of these accountability vectors may also strengthen the reputation of the institute and its positioning within the European System of Central Banks, as far as the operations of its members would be conditioned to similar suitable practices. Although these vectors more properly belong to the US context, it is also true that they are far from unknown in the European context. At the supranational level, some informal example of judicial review has already been witnessed during the crisis (Heidemann and Thomas 2016); the distributional dimension is mentioned in the ECB macroeconomic reports, although not presented or discussed; the right to know has been increasingly recognized due to its introduction in domestic constituencies as much as, more recently, to Decision 2015/529 – although the latter in the direction of establishing a right to discretion, given that it "has proven to be of crucial importance for the ECB to be in a position to convey pertinent and candid messages to European and Member States' authorities so as to most effectively serve the public interest in the fulfilment of its mandate. This could entail that effective informal and confidential communication must also be possible and should not be undermined by the prospect of disclosure" (preamble, point 7). Although a justified and usual practice, confidentiality can curb the possibility that the general public appreciate the ECB's service to the public interest, and distrust it despite the relative satisfaction with its overall policy (Horvath and Katuscakova 2016, Ehrmann *et al.* 2013). Finally: consultations are an accepted practice of both the Commission and of the international standard-setting *fora* for financial markets – although the latter are deemed little convincing, due to their decoupling from any jurisdiction (Bradley 2011). Indeed, the ECB could contribute to funneling comments, hopefully for more considerate contents.

The need for more robust accountability of Central Banks and, more generally, of market supervisory bodies and regulators can hardly be ignored. Markets are institutional constructs which can derange more easily than it is desirable due to both excessively tight or loose regulation, while their proper functioning has become central to the production of many

"public goods", summarized in the ambition of a sustainable growth. Their maintenance has inevitably gained a political dimension that can hardly be managed from insulation. Accountability can open a political window on the strategy that governs the operations of the Central Bank without threatening its capacity – simply because it does not imply heroic institutional designs of political control. As a concept, accountability neither assumes that policy decisions can be fully transparent, nor that anybody can be in full control of a policy and its effects. Rather, it moves from the opposite starting point. A level of opacity and a degree of unintended results are inevitable aspects of a complex field in which changes in preferences, behaviors, interventions and effects are entangled beyond analytic models, and which can be steered from within (Schedler 1999). The motivation for accountability rather lies in building trust through procedures (Shapiro et al. 1992) that allow the disclosure and debate of decisions' content before they are enforced. In so doing, it secures that the operational capacity of the agent is not hindered, yet that its resolutions have considered basic concerns, and that biases do not cumulate systematically in the same direction – unless justified in the light of some basic values established in the political domain and formalized in mandates. The underlying belief maintains that such an institutional design can improve framework decisions, better define responsibilities, and increase the legitimacy of policies in the direction envisaged by the "four Presidents", as service to the citizens of Europe. Institutional innovation is often an uncertain endeavor; still, it may deserve an attempt.

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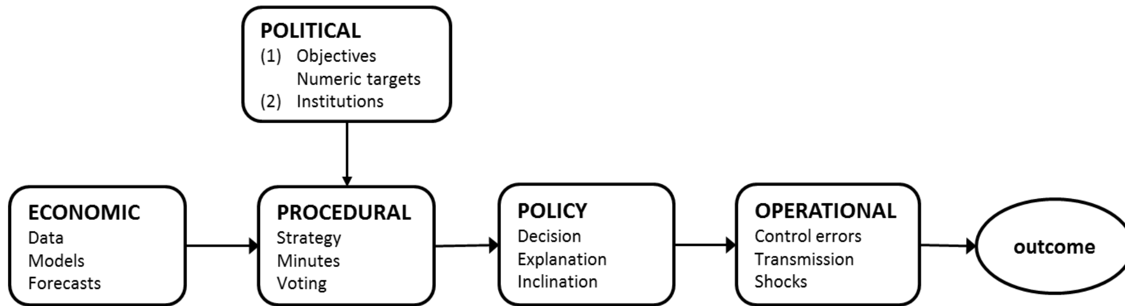
The European Central Bank before the European Parliament: theory and practice after ten years of monetary dialogue

Fig. 1. Central banks' information for disclosure



Source: Geraats (2002:F541).