

HOLDING THE SUPERVISOR TO ACCOUNT: THE EUROPEAN PARLIAMENT AND THE EUROPEAN CENTRAL BANK IN BANKING SUPERVISION¹

Executive summary

■ ADINA MARICUT-AKBIK
Guest Author, Jacques
Delors Institute Berlin

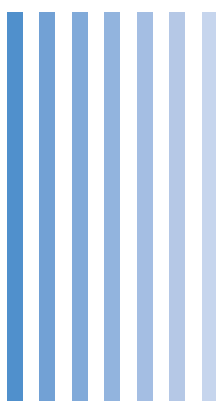
In the aftermath of the euro crisis, the European Central Bank (ECB) took over responsibilities for banking supervision in the euro area in the framework of the Single Supervisory Mechanism (SSM). This expansion of the original ECB mandate in monetary policy was coupled with the establishment of additional accountability mechanisms to balance the newly acquired competences. In terms of political accountability, the relationship with the European Parliament (EP) was placed front and centre – with regular interactions between the two institutions since late 2013.

This paper analyses the accountability interactions between the EP's Economic and Monetary Affairs (ECON) Committee and ECB Banking Supervision in the first 4.5 years of the functioning of the SSM. In particular, it aims to: 1) situate the relationship between the ECB and the EP in the broader context of political accountability in banking supervision; 2) provide an overview of the frequency and patterns of interactions between the two institutions, describing types of questions asked and answers provided; and 3) identify strengths and weaknesses in the process, with a forward-looking focus on prospects for improvement.

Key takeaways:

1. The track record of Members of the European Parliament (MEPs) in holding the ECB to account is rather poor: too often their questions simply request policy views or address issues outside the competence of the ECB in banking supervision. Moreover, the format of public hearings does not facilitate a coordinated agenda of questions and follow-ups, organised by topic and raised in sequence.
2. The ECB shows openness to address requests for information and justification of conduct when it comes to the internal organisation of the SSM and the general decision-making process. In the few cases where MEPs demanded changes in supervisory policy, the ECB demonstrated its willingness to take their requests into consideration and act accordingly.

1. The research behind this policy paper was conducted within the framework of the LEVIATHAN project 'Legal and Political Accountability in 'Post-Crisis' EU Economic Governance' (2017–2021), led by Professor Mark Dawson and hosted at the Hertie School of Governance in Berlin, Germany. The project is funded by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement no 716923). Adina Maricut-Akbik is Postdoctoral Researcher on the LEVIATHAN project. Contact: maricut-akbik@hertie-school.org.



- 3.** However, there is a tension between the subject of questions raised most often – regarding the situation at specific banks – and the professional secrecy requirements of the SSM legal framework, which keep individual supervisory decisions confidential. Consequently, the performance of the ECB as a bank supervisor is rarely questioned, although some MEPs are eager to contest supervisory conduct.
- 4.** The accountability relationship between the two institutions can be improved in several ways. For its part, the EP needs to alter the format of public hearings so as to streamline the process of addressing questions and consolidate in-house expertise on various aspects of the Banking Union. ECB Banking Supervision should devote more time to explaining how it answers questions from MEPs and how its role differs from other institutions in the Banking Union. Moreover, the accountability relationship could benefit from clear benchmarks to assess the ECB's performance as a bank supervisor. Finally, reform of the confidentiality regime should also be considered in order to identify specific circumstances where previous supervisory decisions could be disclosed, for the benefit of the public at large.

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BACKGROUND



THE SSM ESTABLISHED
 NEW ACCOUNTABILITY
 OBLIGATIONS FOR THE ECB

In November 2014, the European Central Bank (ECB) became responsible for banking supervision in the euro area in the framework of the Single Supervisory Mechanism (SSM). The SSM was one of the key institutional reforms adopted at the European level in response to the euro crisis. Its rationale was twofold: a) pre-crisis banking supervision at the national level in Member States was often seen as too lenient, and b) a European system of banking supervision was portrayed as the necessary counterpart to the potential direct recapitalisation of banks through the European Stability Mechanism,² although the latter never materialised. In June 2012, Member States agreed in principle to delegate the microprudential supervision of banks in the euro area to the ECB. This political commitment was then translated into legislation through the SSM Regulation, adopted in 2013.

The SSM Regulation specifies the ECB's supervisory objective, namely **'the safety and soundness of credit institutions and the stability of the financial system** within the Union and each Member State' (Article 1). It thus makes clear that the ECB is supposed to conduct prudential supervision as opposed to other functions such as consumer protection or the prosecution of financial crimes. **Consistent supervision and financial integration** are also cited among the main goals of the SSM. So far, the ECB has not provided measurable indicators for each objective, as it did in monetary policy with the inflation target. Nevertheless, the first Chair of the Supervisory Board, Danièle Nouy, often refers in speeches to the need to **act as a 'tough and fair' bank supervisor**.³

To balance the expansion of ECB powers in banking supervision, separate accountability obligations were put in place at the political, legal, and administrative levels, hence adding to the already existing accountability toolbox on the monetary policy side of the ECB. In terms of political accountability, the relationship with the European Parliament (EP) became central—in a similar way to the already established Monetary Dialogue. Unlike in monetary policy, ECB Banking Supervision has additional political accountability obligations towards the Eurogroup and national parliaments (Articles 20–21 of the SSM Regulation). However, interactions with the Eurogroup are confidential, while visits to national parliaments take place on an ad hoc basis, so it is very difficult to assess their functioning in a systematic manner. In contrast, EP hearings with the Chair of the Supervisory Board and the exchange of documents between the two institutions are public and occur regularly.

The accountability obligations of ECB Banking Supervision towards the EP are detailed in a **first-time Interinstitutional Agreement between the two institutions**, signed in 2013. In line with the SSM Regulation, this requires:

² Euro Area Summit Statement 29 June 2012, accessed 5 July 2018.

³ Danièle Nouy, *The Banking Union, One Year On* (Speech at the Center for European Reform, London, 21 October 2015), accessed 29 June 2018.

- the publication of an annual report on the execution of tasks conferred by the SSM Regulation;
- participation of the Chair of the Supervisory Board in ordinary and ad hoc public hearings at the EP's Economic and Monetary Affairs (ECON) Committee and, upon request, in confidential meetings with Members of the Committee;
- responding in writing and within five weeks to written questions on the SSM put by Members of the European Parliament (MEPs);
- the transmission of confidential, annotated Records of Proceedings of the Supervisory Board that allow ECON Members to understand the substance of the discussions and decisions taken (Articles 1–4).



ACCOUNTABILITY INTER-ACTIONS WITH THE EUROPEAN PARLIAMENT ARE FREQUENT

Against this background, the present paper sets out to **investigate how the EP holds the ECB to account in banking supervision**. The goal is to evaluate the patterns of accountability interactions between the ECB and its main political interlocutor in banking supervision—the EP's ECON Committee. To achieve this goal, the paper focuses on the type of questions and answers exchanged by the two institutions in both written letters and public hearings.

The analysis is based on 283 letters and 13 public hearings that took place at the ECON Committee from October 2013 (since the adoption of the SSM Regulation) until April 2018. All documents are publicly available on the websites of ECB Banking Supervision and of the EP (under 'ECON Committee meetings' and MEPs' 'parliamentary activities'). A total of 1,412 questions and answers have been identified and categorised using the qualitative research software Atlas.ti. Before presenting its findings, the paper provides an overview of the key issues at stake in the accountability relationship between the EP and ECB Banking Supervision.

1 . POLITICAL ACCOUNTABILITY IN BANKING SUPERVISION: KEY ISSUES

The accountability interactions between the ECB and the EP in banking supervision can be placed in the broader context of executive-legislative relations, specifically the extent to which a specialised independent agency can be held accountable by a parliamentary body. In the academic literature, a common definition of accountability describes the term as 'the relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences.'⁴ According to the Interinstitutional Agreement between the ECB and the EP, the actor (i.e. the ECB) has to share information on a regular basis and justify its conduct through annual reports and the transmission of confidential records of proceedings, while the forum (i.e. the EP) can ask questions in public hearings, confidential meetings, as well as in writing. The potential for formal consequences is more limited: the EP must approve the appointment of the Chair and Vice-Chair of the Supervisory Board, and it may set up 'Committees of Inquiry' in which the ECB has to 'cooperate sincerely.'

4. Mark Bovens, *Analysing and Assessing Accountability: A Conceptual Framework* (2007) 13 *European Law Journal* 447, 450.



THE EP'S FORMAL POWERS TO HOLD THE ECB TO ACCOUNT ARE LIMITED

The EP's powers as an accountability forum are restricted by the general independence of the ECB as well as by the legal framework of the SSM. On the one hand, **ECB independence severely limits the EP's influence on ECB decision-making: both the Treaty (Article 130 TFEU) and the SSM Regulation (Article 19) prohibit the ECB from taking instructions from other Union institutions.** This means that any recommendations made by the EP in its Annual Reports on the Banking Union are not legally binding; they allow the EP 'to pass judgment' on the conduct of the ECB without formal consequences. On the other hand, the EP on its own cannot change the legal framework in which the ECB operates as a bank supervisor. The SSM Regulation is a Council Regulation adopted through a special legislative procedure on which the EP was only consulted. Even if it wanted to, the EP does not have the power to unilaterally sanction the past conduct of ECB Banking Supervision through a change in the legal framework.

Furthermore, the accountability challenges faced by the two institutions are characteristic of relationships between parliaments and specialised independent agencies. Most significantly, there are problems of 1) asymmetric information, as the ECB is an expert body possessing much more knowledge in the field of banking supervision than the EP, and 2) hidden action, given that ECB supervisory decisions remain unseen by MEPs.⁵ **Banking supervision is a highly technical area that requires financial, legal and accounting expertise; moreover, there are strict confidentiality requirements that prevent the disclosure of sensitive supervisory data and decisions.** However, the risk of 'agency drift' – the independent agency diverging from its mandate – is not the same as in monetary policy. The difference lies not only in selection procedures, as the EP can veto the appointment of the Chair of the Supervisory Board while unable to do the same for Members of the ECB Executive Board,⁶ but also in the nature of the mandate itself. In monetary policy, the ECB is free to decide and implement its preferred policy instruments within the confines of the Treaty (especially Articles 119 and 123 TFEU), whereas in banking supervision it has to apply secondary law.⁷ In fact, banking supervision leaves limited room for discretion in comparison to monetary policy. The SSM legal framework is elaborate, based on international regulatory standards (Basel III) translated into EU legislation through the Capital Requirements Directive (CRD IV) and the Capital Requirements Regulation (CRR). This means that ECB Banking Supervision is responsible for enforcing tangible legal rules which are subject to change by the co-legislators, i.e. the EP and the Council. In other words, there is much more room for checking whether the ECB complies with the rules framework in the SSM than in monetary policy.

In terms of substance, the most contentious accountability issue in banking supervision concerns the transparency of supervisory decisions and bank-level information. Here there is a huge gap between American and European practices regarding the disclosure of financial supervisory data, with the latter traditionally more inclined towards confidentiality.⁸ The reasons for secrecy concern legalities, trust between the supervisor and the supervisee, and financial stability at large. Legally, EU bank supervisors are not allowed to disclose information

5. Kaare Strøm, *Delegation and Accountability in Parliamentary Democracies* (2000) 37 *European Journal of Political Research* 261, 270.

6. Diane Fromage and Renato Ibrido, *The "Banking Dialogue" as a Model to Improve Parliamentary Involvement in the Monetary Dialogue?* (2018) 40 *Journal of European Integration* 295, 296.

7. Gijsbert Ter Kuile, Laura Wissink and Willem Bovenschen, *Tailor-Made Accountability within the Single Supervisory Mechanism* (2015) 52 *Common Market Law Review* 155, 167–68.

8. Christopher Gandrud and Mark Hallerberg, *Explaining Variation and Change in Supervisory Confidentiality in the European Union* (2018) 41 *West European Politics* 1025, 1029.

that would endanger the competitive position of a credit institution on the market.⁹ In relation to trust, banks are more likely to share sensitive information with the supervisor if they are confident that this will be treated confidentially. From the perspective of financial stability, liquidity problems at a bank can trigger bank runs and panic in the population.¹⁰ Conversely, the arguments for transparency are more general: transparency is a precondition for accountability which increases the legitimacy of the supervisors by allowing accountability forums to judge whether the supervisor is acting in the public interest. Moreover, transparency reduces the scope for arbitrary decisions and creates stable expectations that incentivise banks to adhere to regulations.¹¹

In the Interinstitutional Agreement with the ECB, the EP consented to balance accountability obligations with secrecy requirements (Article 5). Accordingly, MEPs can read a non-confidential version of Records of the Proceedings of the Supervisory Board, which are summaries of discussions after each meeting. In addition, there are confidential ‘in-camera meetings’ that take place before hearings of the Chair of the Supervisory Board at the ECON Committee. These are meetings between the coordinators of all political groups, the ECON Chair and Vice-Chairs, and the Chair of the Supervisory Board to organise the agenda of public hearings.¹² These encounters are reported to be much more confrontational than public hearings, with a ‘tough’ language that is often absent in public interactions between the two institutions.¹³ **But the downside of confidential accountability is the suspicion that there is something to hide;** after all, how can the public be sure that the ECB is being held accountable behind closed doors? The same problem is found in the accountability interactions between ECB Banking Supervision and the Council: formally, the provisions of the Interinstitutional Agreement are mirrored in a Memorandum of Understanding signed in 2013 between the ECB and the Council—specifically concerning the Eurogroup. However, exchanges of views and questions from national finance ministers remain confidential, in line with Eurogroup practices.¹⁴ It is thus impossible to evaluate their accountability relationship other than to say that the Chair of the Supervisory Board participates in Eurogroup meetings at least twice per year, when they appear to discuss the same topics as in hearings at the ECON Committee.¹⁵

Two final issues further complicate the scope for political accountability of ECB Banking Supervision. On the one hand, the SSM is part of a Banking Union that is still work-in-progress. Several legislative dossiers for amending or completing the Banking Union are currently under

9. Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

10. Ignazio Angeloni, [Transparency and Banking Supervision](#) (Remarks by Ignazio Angeloni, Member of the Supervisory Board of the European Central Bank at the ICMA Capital Market Lecture Series, Frankfurt am Main, 27 January, 2015), accessed 19 October 2018.

11. Franka Liedorp and others, [Transparency of Banking Supervisors](#) (2013) 61 *IMF Economic Review* 310, 311.

12. ECON Committee Chair Roberto Gualtieri sometimes refers to ‘meetings at the coordinators’ level’ in his announcements at the beginning of public hearings ([Regular Hearing with Danièle Nouy](#), Chair of the Supervisory Board of the ECB, on 9 November 2017), accessed 23 October 2018.

13. Information about ECON in-camera meetings was shared during the closed workshop [Contesting the Incontestable: The ‘Post-Crisis’ Accountability of the European Central Bank](#) held on 8 October 2018 at the Hertie School of Governance in Berlin, Germany. According to Chatham House Rules, the identity or affiliation of the speakers cannot be revealed, unless the participants explicitly consented to be cited anonymously (see n 19 and 29).

14. Uwe Puetter, [The Eurogroup: How a Secretive Circle of Finance Ministers Shape European Economic Governance](#) (Manchester University Press 2006).

15. See statements following Eurogroup meetings, Council of the European Union, [Eurogroup - Consilium](#), accessed 23 October 2018.

review, which means that the framework of rules in which the ECB operates remains in flux.¹⁶ On the other hand, the Banking Union is a complex arrangement spread over several institutions: the European Banking Authority (in charge of banking regulation), the ECB (responsible for banking supervision), and the Single Resolution Board/the Commission (in charge of banking resolution). In addition, the ECB is part of a layered supervisory system in which it acts in coordination with domestic supervisors, known as National Competent Authorities (NCAs). This means that the ECB functions in a changing environment where the division of competences is difficult to disentangle. Holding the ECB accountable as a bank supervisor is thus far from straightforward.

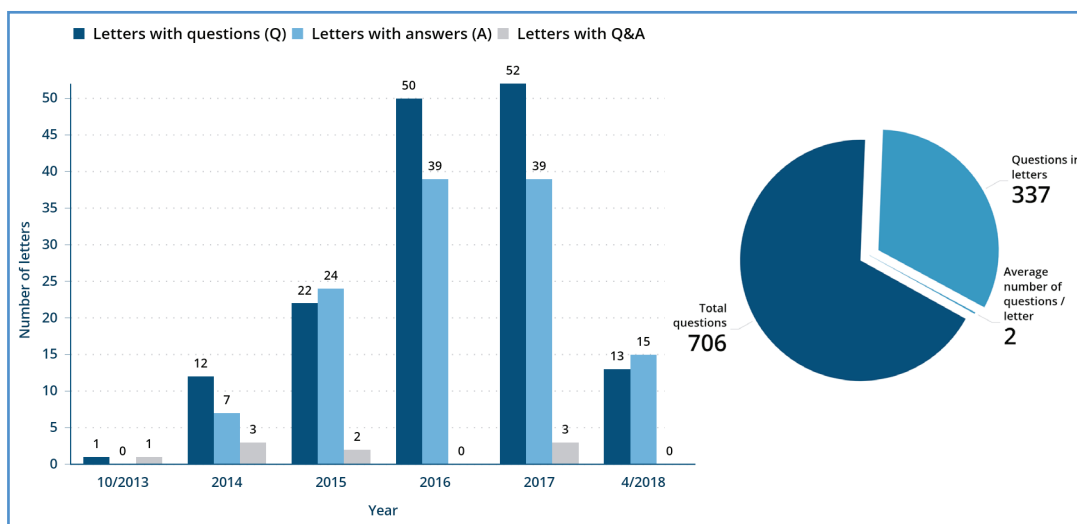
2. HOW OFTEN DO MEPS AND ECB BANKING SUPERVISION INTERACT?

The SSM Regulation was adopted in October 2013, giving the ECB one year to prepare for taking over banking supervision in the euro area. The dialogue with the ECON Committee started right away, while the first Chair of the Supervisory Board Danièle Nouy took office in January 2014. **During the period October 2013–April 2018, the EP asked ECB Banking Supervision a total of 706 single-topic questions** in both written letters and public hearings. Box 1 offers an overview of the letters exchanged between the two institutions in the 56 months analysed. **Overall, ECB Banking Supervision used 123 documents to answer 150 letters sent by MEPS.** There are two reasons why the number of letters sent by MEPS does not correspond to the number of letters published by the ECB. First, letters sent at the end of the calendar year are answered early in the new year, so there is never an equivalence between the numbers of documents exchanged per year. Second, the ECB has a practice of using one document to answer multiple letters sent by same MEP(s). This is not to say that each single-topic question goes unanswered, but that one document can contain multiple answers. Besides, seven ECB letters simply followed up on questions raised during hearings at the ECON Committee. In addition, three documents included both questions and answers addressed by Members of the ECON Committee to ECB President Mario Draghi before the appointment of the first Chair of the Supervisory Board. **In total, MEPS raised 337 single-topic questions in written letters.**

¹⁶ Council of the European Union, [Amendments to the Banking Union Rules - Consilium](#) (May 2018), accessed 22 October 2018.

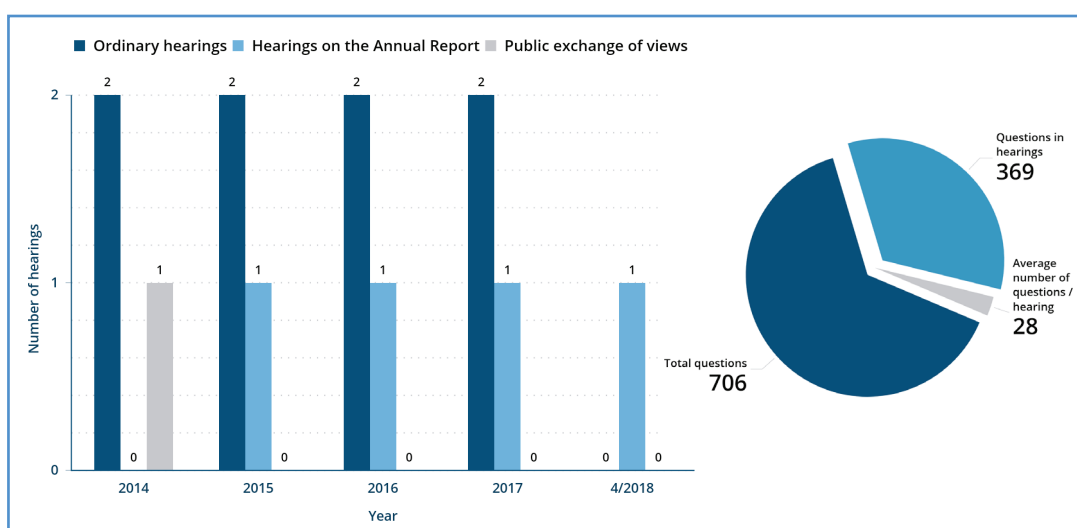
BOX 1 ■ Letters with written questions and answers exchanged between the EP and ECB Banking Supervision (October 2013–April 2018)

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THE EP ASKS MANY
QUESTIONS TO ECB
BANKING SUPERVISION
BOTH IN WRITING
AND IN HEARINGS



Furthermore, there have been 13 public hearings of ECB Banking Supervision at the ECON Committee during the period January 2014–April 2018, after the first Chair of the Supervisory Board was appointed. Box 2 provides an overview of the type of hearings taking place in the period under focus. Ordinary hearings as well as hearings on the SSM annual report make the bulk of the data. In terms of format, hearings usually last between 90 and 120 minutes and follow a specific structure, starting with 1) welcome announcements by the ECON Chair, followed by 2) an introductory statement by the Chair of the Supervisory Board, and then moving to 3) questions and answers (Q&A) from MEPs. In line with the EP’s Internal Rules of Procedure, speaking time is allocated in order of the size of political groups and in proportion to their total number of members (Rule 162 for the 8th parliamentary term). **On average, MEPs ask 28 questions during a Q&A session of a public hearing, bringing the total to 369 questions in the period under consideration.**

BOX 2 ■ Public hearings of ECB Banking Supervision at the EP’s ECON Committee (January 2014–April 2018)





THE PROFILE OF MEPS WHO RAISE QUESTIONS IS VERY DIVERSE

Having established the number of questions raised by the EP to ECB Banking Supervision, the next relevant aspect concerns the profile of MEPs who ask questions (Box 3). In terms of letters, the majority is sent by individual or groups of MEPs from the ECON Committee, although there were 4 questionnaires sent by the ECON Chair on behalf of the entire committee and one letter sent by the EP's President. In respect to political groups (Figure 1), most letters are sent by MEPs from GUE-NGL (24.1%), the Greens/EFA (16.8%), and the EPP (15.5%). In terms of nationality (Figure 3), most letters are authored by Members from Portugal (22.7%), Germany (20.9%), Italy (17.7%) and Spain (16.4%). **The national affiliation of MEPs matters more for some members than others: for instance, MEPs from Portugal, Spain, Ireland, and Greece tend to ask questions regarding their own Member State.** The others ask more general questions that go beyond their national context, although of course they also inquire about specific situations at their national/regional levels.

When it comes to public hearings, the breakdown of MEPs asking questions by political group and nationality looks different. On the one hand, the EP's Rules of Procedure automatically incline the balance towards larger groups (see Figure 2). Accordingly, MEPs from the two largest political groups in the 8th parliamentary term – the EPP and the S&D – took the floor most often (each 28.8% of the time). They were followed by MEPs from the ECR and the Greens/EFA (each 7.7% of the time). The limited speaking time of small groups during public hearings is likely to contribute to a higher number of written questions from their members (Figure 1). However, **the ideological position of MEPs definitely plays a role, as the two most active political groups in written letters – GUE-NGL and the Greens/EFA – are on the left of the political spectrum.** On the other hand, in respect to nationality (Figure 4), German MEPs are leading in public hearings (speaking 23.1% of the time), followed by MEPs from France (12.8%), and Italy and Spain (12.2% each). What is counted here is the number of instances an MEP takes the floor rather than the number of questions they ask at a time.

List of political groups in the 8th parliamentary term 2014–2019 (in order of size):

- Group of the European People's Party (EPP)
- Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S&D)
- European Conservatives and Reformists Group (ECR)
- Group of the Alliance of Liberals and Democrats for Europe (ALDE)
- The Greens-European Free Alliance (Greens-EFA)
- Confederal Group of the European United Left-Nordic Green Left (GUE-NGL)
- Europe of Freedom and Direct Democracy Group (EFDD)
- Europe of Nations and Freedom (ENF)

BOX 3 ■ Who asks questions to ECB Banking Supervision? (October 2013–April 2018)

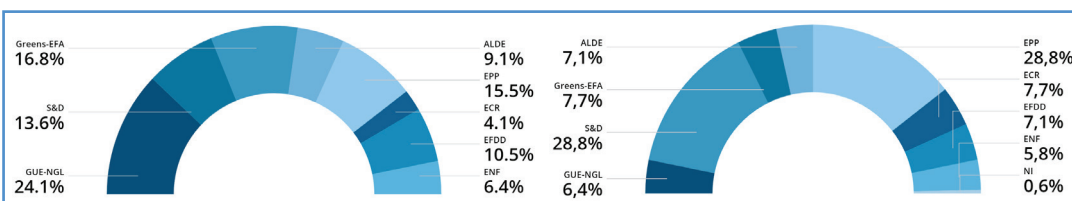


FIGURE 1 ■ Political affiliation of MEPs sending letters with questions to ECB Banking Supervision.

Most letters are single-authored, but 24 letters have multiple authors from the same political group. MEPs from S&D and ALDE tend to send letters in large groups: e.g. 30 MEPs from S&D sent 10 letters, while 20 MEPs from the ALDE sent 5 letters.

FIGURE 2 ■ Political affiliation of MEPs taking the floor during public hearings of the Chair of the Supervisory Board.

What is counted is the number of instances when an MEP took the floor, not the number of questions asked at a time.

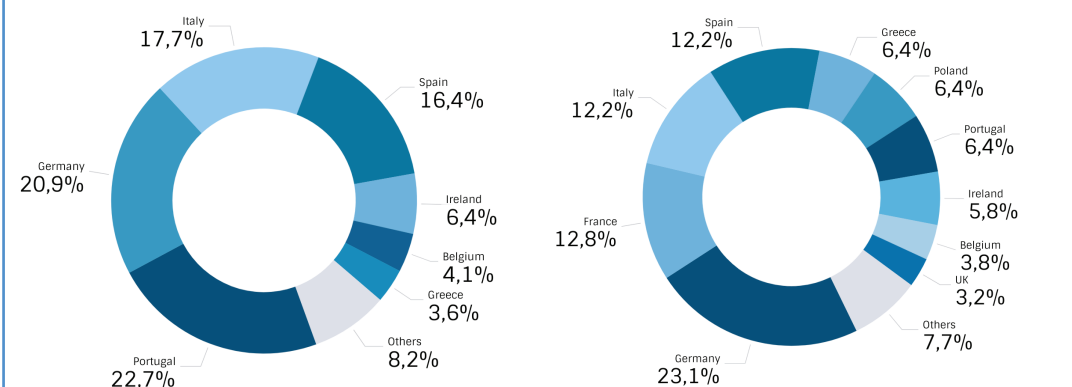


FIGURE 3 ■ Nationality of MEPs sending letters with questions to ECB Banking Supervision.

24 letters have multiple authors from MEPs of different nationalities. What is shown here is the overall number of MEPs identified.

FIGURE 4 ■ Nationality of MEPs taking the floor during public hearings of the Chair of the Supervisory Board.

What is counted is the number of instances when an MEP took the floor, not the number of questions asked at a time.

3. WHAT TYPES OF QUESTIONS DO MEPS ASK?

The SSM Regulation does not provide a definition of ECB accountability in banking supervision. The Interinstitutional Agreement between the ECB and the EP lists several accountability obligations but similarly does not specify what it means to be an accountable bank supervisor. By implication, one can infer that if the ECB complies with regular reporting requirements to the EP, then it is accountable. **But there is a difference between formally answering questions and substantively addressing the concerns they raise.** To categorise the types of questions asked by MEPs, this paper follows a theoretical framework developed by the author elsewhere¹⁷ and identifies four types of possible requests that can be made—namely for 1) information (policy and procedural transparency), 2) justification of decisions or conduct, 3) change of decisions or conduct, and 4) sanctions

17. Adina Maricut-Akbik, *Accountability as Contestation – An Interactionist Approach to the Study of Public Accountability*, Paper prepared for the 2018 Annual Conference of the European Group for Public Administration (EGPA), Lausanne, 5–7 September 2018.

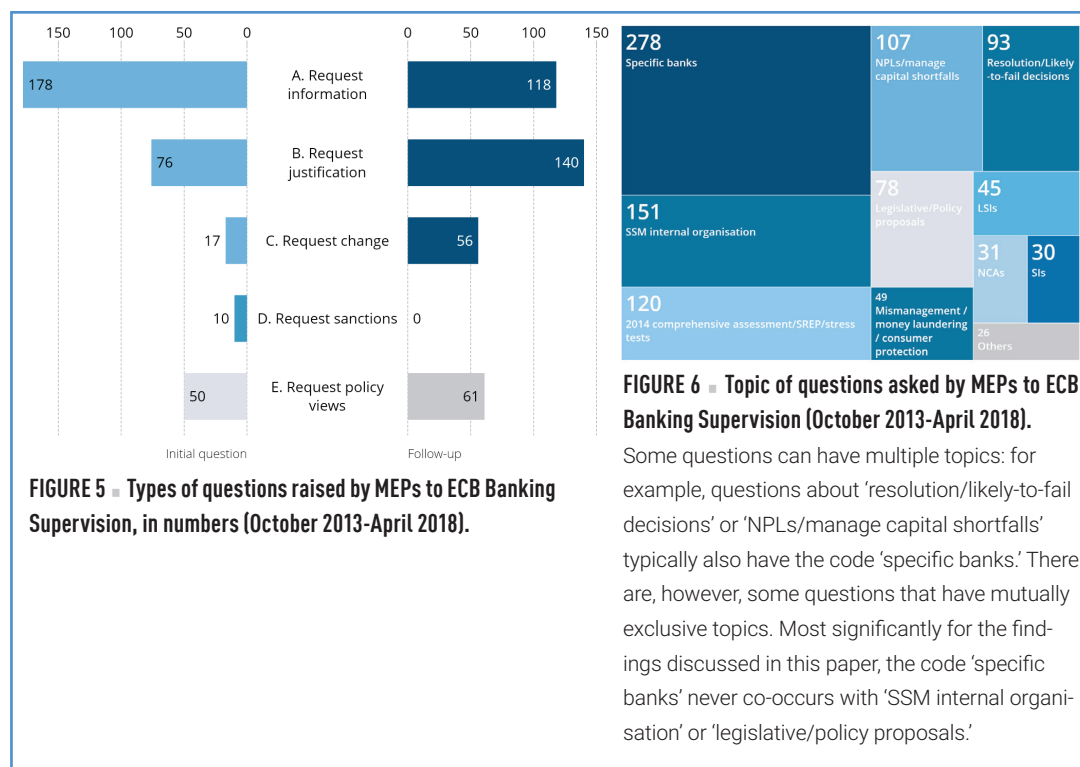
of responsible actors. Simultaneously, the paper distinguishes ‘initial questions’ (asked for the first time) from ‘follow-up questions’ that are raised because MEPs were dissatisfied with the original answer or wanted more details about the issue under discussion. Box 4 (Figure 5) offers an overview of the different categories of questions identified in both public hearings and letters.

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MEPS SPEND A LOT OF TIME ASKING FOR ECB OPINIONS ON LEGISLATIVE PROPOSALS

There is a fifth category of questions that diverges from the typology of accountability interactions. This refers to ‘requests for policy views’ – present in 111 out of the 706 total questions. Such requests typically include demands for the ECB’s expert opinion on ongoing legislative files or on issues relevant to Member States domestically. While it makes sense for MEPs to consult the ECB on their legislative activity, this can be done separately and not filed under accountability. In fact, the ECB is formally consulted on proposed legislation that falls under the EU’s Economic and Monetary Union (EMU) more generally.¹⁸ Requests for policy views cannot be considered a form of accountability because they do not concern the past activity of the ECB in terms of decisions or conduct. Conversely, they typically refer to the future legal framework of the Banking Union. Requests for policy views are more common during hearings (22% of all questions asked) than in letters (8.9% of all questions sent), with the additional observation that rapporteurs on legislative files are most likely to use hearings with the Chair of the Supervisory Board to ask for her expertise on issues that interest them. **From this perspective, it appears that a fifth of the time of all hearings is wasted on questions that have nothing to do with accountability.**

According to one ECB official, these questions are not in fact wasted because the ECB can ‘provide important advice on financial legislation and it is in the interest of both EP and the ECB to exchange frequently also on such policy issues, even if this is not strictly speaking a discharge of accountability.’¹⁹

BOX 4 ■ What types of questions do MEPs ask ECB Banking Supervision?



18. European Central Bank, *All ECB Opinions* (n.d.), accessed 29 August 2018.

19. Comments by an ECB official on a presentation of an earlier draft of this paper at a closed workshop on 8 October 2018 at the Hertie School of Governance, panel 1 *Accountability without contestation? The ECB and the EP in Banking Supervision* (see also n 13).



THE SITUATION AT
 SPECIFIC BANKS OFTEN
 ATTRACTS THE
 ATTENTION OF MEPS

Furthermore, the most prevalent types of questions in both letters and hearings are requests for information (49.7% overall) and justification of conduct (36.3% overall). This is not surprising, given the institutional independence of the ECB and the lack of political mechanisms to demand changes of decisions or impose sanctions (see section II). Given that the SSM was only established in 2013-2014, many questions addressed the internal organisation of ECB Banking Supervision and the 2014 comprehensive assessment. More interesting, however, is that the most popular subject of questions by far refers to the situation at specific banks under the direct or indirect supervision of the ECB (Box 4, Figure 6).

Banks that attract the most attention are usually those that performed poorly in stress tests and had a high level of non-performing loans (NPLs), such as the Italian banks Monte dei Paschi di Siena, Banco Popolare de Vicenza, and Veneto Banca. Other examples include banks that were formally declared failing or likely to fail (e.g. the Spanish Banco Popular) or alternatively were considered to receive preferential treatment in stress tests (e.g. the German Deutsche Bank). MEPs also ask many questions about the resolution of less significant institutions (e.g. the Portuguese bank Banif) or the recapitalisation of state-owned significant banks with the approval of the Commission (e.g. the Portuguese bank Caixa Geral de Depósitos). Unsurprisingly, these are also the banks that are most often mentioned in press reports regarding the performance of the SSM.

However, given the professional secrecy requirements laid down in the Interinstitutional Agreement between the EP and the ECB and in the Capital Requirements Directive IV, the ECB 'cannot comment on the interactions with individual supervised institutions or on the supervisory measures taken with regard to them.'²⁰ **There is thus a tension between the issue that MEPs care most about** – the next one is 'SSM internal organisation' (see Box 4, Figure 6) – **and the likelihood that they will receive the information they publicly seek.** Contesting supervisory decisions is bound to be limited from the outset.

Moreover, follow-up questions are more likely to occur in hearings (65.3% of all questions) than in letters (41% of all questions raised). This is to be expected because some hearings have a central topic that dominates the Q&A session. Hearings with 'heated' debates took place, for example, in November 2016 on the methodology of stress tests and the alleged preferential treatment of Deutsche Bank thereof, in June 2017 on the recent ECB decision to declare Banco Popular failing or likely to fail (FOLTF), and in November 2017 when MEPs contested the draft Addendum to the ECB Guidance on NPLs as overstepping the institution's mandate (see below).

The Deutsche Bank case received a lot of attention in written letters as well. In short, the problem was that in the 2016 stress test, the ECB accepted in the assessment of Deutsche Bank the sale of its stake in the Chinese bank Hua Xia, despite the fact that the transaction was going to be completed at the end of the year and the stress test took place in the summer. There were nine letters asking the ECB for the reasoning behind its agreement to 'bend the rules' for the Deutsche Bank. The questions share common ground, as MEPs reference or copy text directly from a *Financial Times* article reporting the ECB's preferential treatment in this case.²¹ The Chair of the Supervisory Board defended the decision, explaining that the conclusion of the

20. Danièle Nouy, *Letter from Danièle Nouy, Chair of the Supervisory Board, to Mr José Manuel Fernandes, MEP, with Respect to a Credit Institution under ECB Supervision*, accessed 29 August 2018.

21. Laura Noonan, Caroline Binham and James Shotter, *Deutsche Bank Received Special Treatment in EU Stress Tests*, *Financial Times* (10 October 2016), accessed 7 June 2018.

transaction was regarded as a mere formality (it was concluded by the end of the year). In addition, Deutsche Bank formally requested the exception; by comparison, other banks – which some MEPs claimed to have been in a similar position – did not request such an exception. The text of the ECB response to the nine letters is almost identical, with large portions of the reply copy-pasted from the first answer offered. Judging from the follow-up contestation in the November 2016 hearing, many MEPs did not accept the ECB’s answers as valid. **The point here is that MEPs are eager to contest ECB supervisory decisions but there are only a few cases in which they have the background information and knowledge to do so.**

“
 MEPS ARE MOST
 EFFECTIVE WHEN THEY
 COORDINATE THEIR
 REQUESTS TO THE ECB

The case of the 2017 draft Addendum to the ECB Guidance to banks on NPLs (‘the Addendum’) also deserves further attention – not least because it was the subject of a letter sent by the EP President to the ECB. This is also the main clear-cut example of MEPs demanding concrete changes to the ECB’s conduct. The Addendum aimed to address one of the most persistent but also controversial problems in banking supervision, namely how banks should deal with high levels of NPLs on their balance sheets. The document was designed to supplement the earlier ECB Guidance on the matter by specifying minimum levels of prudential provisions for new NPLs starting 1 January 2018.²² Several Members of the ECON Committee, after asking the opinion of its Legal Service, contested some of these supervisory expectations as *ultra vires* because they effectively introduced additional obligations for banks beyond the current regulatory framework.²³ At the same time, MEPs considered that the ECB did not give legislators and the public sufficient time to provide feedback on the Addendum, as its date of entry into force was less than three months from the publication of the draft version. Ms Nouy acknowledged during the hearing that the phrasing of several provisions could be improved, as the meaning seems to have been misunderstood from what the ECB had intended. One example is the so-called ‘comply or explain mechanism,’ criticised for inverting the burden of proof from the supervisor to the supervised bank – meaning that banks would become responsible for showing that their provisioning level was adequate instead of the supervisor demonstrating that it was inadequate. This was changed in the revised version of the Addendum, whose date of entry into force was also postponed to 1 April 2018.²⁴ The case is an example of **the effective performance of the EP as an accountability forum when there is a clear, coordinated agenda about what to ask from ECB Banking Supervision.** The pressure put by MEPs asking questions on the same issue, even if sometimes they were repeated, is something to bear in mind for improving future hearings of the ECON Committee.

4. WHAT KIND OF ANSWERS DOES ECB BANKING SUPERVISION PROVIDE?

Moving to the way in which the ECB replies to MEPs (Box 5), we can immediately observe that **the ECB tends to address questions head-on, substantively answering over 70% of all requests** (Figure 7). These include the large number of questions asking for policy views, which the ECB typically provides (on 111 occasions). More interesting are the 413 answers

22. European Central Bank, [Press Release: ECB Reinforces Its NPL Guidance for Banks](#) (ECB Banking Supervision, 4 October 2017), accessed 29 August 2018.

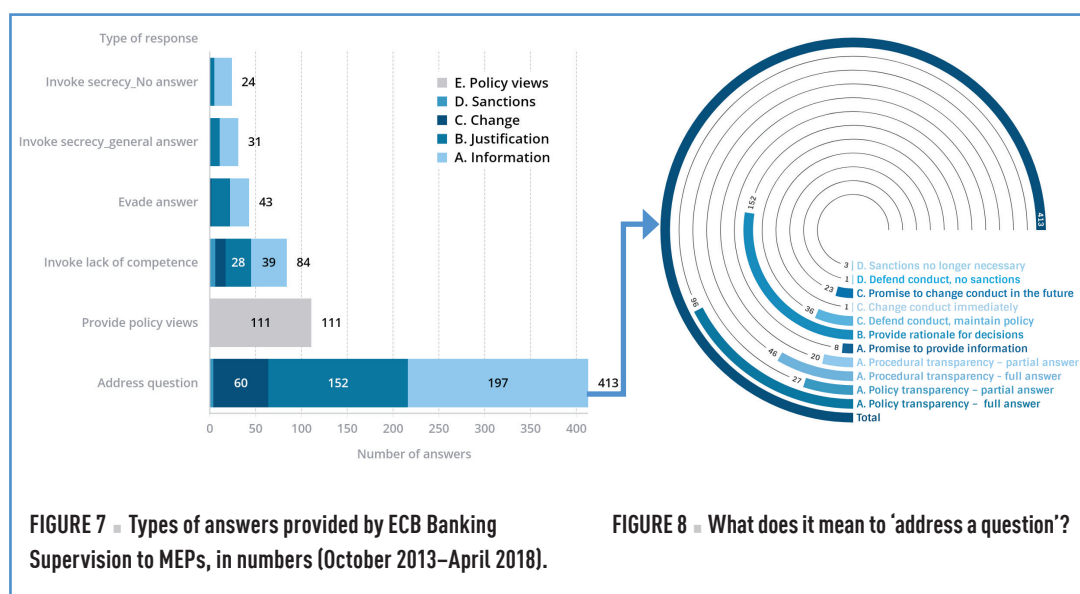
23. See the opening remarks of Roberto Gualtieri, ECON Chair, at the hearing on 9 November 2017 (n 12).

24. European Central Bank, [Comparison of Pre- and Post-Consultation Versions of the Addendum 7](#), accessed 29 August 2018.

“
 THE ECB IS MOST OPEN TO ANSWER QUESTIONS ABOUT THE ORGANISATION OF THE SSM AND GENERAL DECISION-MAKING PROCEDURES

classified as ‘addressing questions’ in both letters and hearings. A question is considered addressed when the ECB directly engages with the request made by MEPs. Out of the 413 replies identified as such (Figure 8), the ECB provided justification for its decisions/conduct in 152 answers, offered full information about decisions in 96 answers (policy transparency) and gave full information about decision-making processes 46 times (procedural transparency). Questions requesting information were partially answered on 47 occasions. Furthermore, the ECB defended its decisions without changing them in 36 answers, and promised to change its conduct in 23 others. In terms of sanctions, these were no longer necessary in three instances (because the responsible parties had already resigned), while on one occasion the ECB rejected the need for sanctions.

BOX 5 ■ How does ECB Banking Supervision respond to questions from MEPs?



What are the questions that go unanswered? (Figure 7). On the one hand, there are those for which the ECB invokes ‘lack of competence’ because they are outside its mandate in banking supervision or because they concern issues within the purview of NCAs (84 in total). Such questions include 1) the methodology of stress tests, especially the choice of adverse scenarios, for which the European Banking Authority (EBA) and the European Systemic Risk Board (ESRB) are responsible; 2) the resolution process of specific banks, where the Single Resolution Board (SRB) and/or the European Commission have competence; 3) issues of consumer protection – especially concerning unfair practices of banks – where national bodies have jurisdiction; and 4) cases of financial misconduct and money laundering in different member states, where national authorities are also the competent institutions.

These instances are the result of the intricate multi-level framework of the Banking Union, where the division of tasks is spread across many institutions at different levels of governance. Separating bank regulation (EBA) from bank supervision (ECB) from bank resolution (the SRB, the Commission) created overlapping areas of activity that are difficult to disentangle from an accountability perspective. At the same time, the fact that the SSM mandate is limited to prudential supervision and hence does not include matters such as consumer protection or money laundering additionally complicated matters because it restricts the range of issues for which the ECB can be held accountable. **It is difficult to establish whether MEPs ask ques-**

tions outside the ECB's supervisory competence unknowingly or on purpose – because they are important to their constituencies. As a general pattern, it seems that many MEPs base their questions on current financial news in the national or international media, which suggests an interest in politically salient issues that is disconnected from considerations of the relevant competent authority.

“
 SOME QUESTIONS GO
 BEYOND THE ECB'S
 COMPETENCE IN
 BANKING SUPERVISION,
 BUT THEY MIGHT STILL
 BE RELEVANT

Nonetheless, not all cases are straightforward when it comes to the ECB's lack of competence. For instance, in the first report on the functioning of the SSM, the Commission discretely criticised the ECB for pointing the finger at the EBA regarding the flaws of stress test methodologies, keeping in mind its own responsibility for the quality of the process.²⁵ Another relevant example concerns the Portuguese bank Banif, a less significant institution under the supervision of Banco de Portugal, which was put into resolution in December 2015. The controversy concerned the ECB's approval to limit Banif's access to Eurosystem liquidity prior to the announced decision that the bank was failing or likely to fail (FOLTF), as well as the involvement therein of ECB Vice-President Vítor Constâncio, who was the former Governor of Banco de Portugal. In the following year, Portuguese MEP Nuno Melo (EPP) sent 12 letters to the ECB demanding information and justification of conduct about the ECB's role prior to and during the FOLTF decision-making process.²⁶ On the supervisory part, the SSM Chair repeatedly invoked lack of competence and directed the MEP towards Banco de Portugal as the 'right addressee' for the questions.²⁷ **The point here is that the Banking Union established a convoluted system: it is not always clear who bears responsibility for specific actions or how to differentiate 'real' lack of competence from passing the buck from one institution to another.**

On the other hand, questions that do not get appropriate answers are those in which the ECB refuses to respond to issues raised by MEPs. Here there is a difference between oral and written questions, as the lack of answers in letters is supported by confidentiality requirements of the SSM legal framework, while no reply in hearings is an example of evading answers by not addressing the substantive point of the question raised. However, for the latter it is difficult to identify ill-intent; most often the Chair of the Supervisory Board simply spends more time covering one question and does not have time for the others.

The lack of [full] answers on confidentiality grounds deserves closer attention, as they are present in 13.3% of ECB letters. All these answers concern questions that require information or justification of decisions regarding a specific supervised bank. In the early years, the ECB would address such requests by invoking its confidentiality regime and offering no answer. Over time, the SSM Chair started to provide general considerations about the bank in question and what the ECB does to address similar circumstances for any supervised bank. This allowed an answer to be provided without revealing what is considered sensitive supervisory decisions on specific banks. When confronted by an MEP with contestation of the entire secrecy regime, the Chair of the Supervisory Board answered as follows:

²⁵ European Commission, *Commission Staff Working Document Accompanying the Document 'Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism Established Pursuant to Regulation (EU) No 1024/2013 (COM(2017) 591 Final)* 52.

²⁶ European Parliament, *Nuno Melo Parliamentary Activities – Questions to the ECB* (European Parliament – Public Register of Documents, 2016) accessed 23 October 2018.

²⁷ *Letter from Danièle Nouy, Chair of the Supervisory Board, to Mr Melo, MEP, regarding a Less Significant Credit Institution* (ECB Banking Supervision, 3 March 2016), accessed 23 October 2018.



SUPERVISORY
 CONFIDENTIALITY
 PREVENTS MEPs
 FROM RECEIVING
 FULL ANSWERS TO
 QUESTIONS ABOUT
 SPECIFIC BANKS

These [confidentiality] requirements, as adopted by the European EP and/or the Council of the European Union, form the cornerstone of the legal supervisory framework under which European banking supervision operates. They are aimed at instilling confidence in credit institutions that the banking supervisor will treat their sensitive information appropriately. This is essential for an open supervisory dialogue and thus an important basis for effective banking supervision.²⁸

Invoking confidentiality requirements means that questions of MEPs are dealt with expeditiously and unsatisfactorily from the perspective of an accountability forum. While some MEPs ask multiple rounds of questions about the same bank, they give up at some point and move on to different issues—aware that there is nothing they can legally do to force the ECB to provide public information or justification.

On this matter, an ECB official explained that ‘what is observable by the public is the non-confidential part. But there are a number of possibilities to exchange [information] on a confidential basis,’ such as the routine in-camera meetings before hearings of the Chair of the Supervisory Board or the [as-yet-unused] formal confidential oral discussions and inquiry committees. Moreover, from the perspective of the ECB, such questions remain important even if they cannot reply with bank-specific information: ‘On the one hand, it helps us understand the thinking of MEPs and on the other hand it may allow us to clarify our general policies which are of relevance to the specific case.’²⁹

Ultimately, the problem of the ECB’s secrecy regime can be solved in one of two ways: either the two institutions agree on a change in the legal framework that would allow the EP to receive answers to politically salient questions, or MEPs have to alter the type of questions they send to ECB Banking Supervision. Information about specific banks is at the heart of banking supervision because it concerns the way in which SSM rules are enforced;³⁰ for this reason, it can be expected that the EP will continue to ask such questions in the future even if they will rarely receive full answers in response.

CONCLUSION & POLICY RECOMMENDATIONS

The first years of the functioning of the SSM institutionalised the accountability relationship between the EP and ECB Banking Supervision. As noted in ECB Annual Reports on the SSM, the two institutions interact on a regular basis through hearings and letters. MEPs ask the Supervisory Board numerous oral and written questions, to which the ECB replies in a timely manner. MEPs from Portugal, Germany, Italy, Spain, and France ask the bulk of questions, while [smaller] political groups on the left tend to be more active.

But frequent interactions are insufficient to determine the nature of the accountability relationship at play. Too often, MEPs ask questions about issues that are outside the ECB’s supervisory competence or that simply do not contest anything about the ECB’s decisions or conduct in the SSM. While public hearings became more focused over time in terms of

²⁸ Danièle Nouy, [Letter from Danièle Nouy, Chair of the Supervisory Board, to Mr Hayes, MEP, Regarding Professional Secrecy Requirements](#), accessed 26 October 2017.

²⁹ See n 19.

³⁰ Christopher Gandrud and Mark Hallerberg, [Does Banking Union Worsen the EU’s Democratic Deficit? The Need for Greater Supervisory Data Transparency](#) (2015) 53 *Journal of Common Market Studies* 769, 770.

topic, they are still undermined by a format which allows too many uncoordinated speakers to take the floor and ask not entirely relevant questions. To be an effective political accountability forum, the ECON Committee needs not only more instances of contestation but also more confrontational accountability interactions in public with the Chair of the Supervisory Board—similar to testimonies of the Governor of the Bank of England before the Treasury Committee of the House of Commons³¹ or to the hearings of Federal Reserve officials before the United States Congress.³² As with other specialised executive bodies of the EU, there is an obvious imbalance between the expertise of the EP and that of the institution they are supposed to hold accountable. The EP’s Economic Governance Support Unit (EGOV) has helped with the problem of asymmetric information by preparing background notes before every public hearing of the Chair of the Supervisory Board. In-house expertise should be further expanded in order to provide MEPs with a pool of concrete questions about ongoing developments in the SSM (Box 6 below).

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 THE LACK OF BENCHMARKS TO ASSESS THE PERFORMANCE OF THE ECB AS A BANK SUPERVISOR REMAINS A PROBLEM

As for ECB Banking Supervision, the first years of the functioning of the SSM showed an openness to engage with questions that concern organisation and general decision-making procedures. But the ECB is a creature of rules, which means that any unanswered question is explained away by the system of rules in place. In accountability studies, this problem is well-known; Roy L. Heidelberg explained how the reliance on rules can allow an institution to ‘dismiss criticism of a policy or action by appealing to an obedience to procedural rules or, at worst, to justify doing the wrong thing in the right way.’³³ **This is not to say that the ECB secrecy regime in banking supervision is completely unjustified or should simply be abolished, but the lack of answers on confidentiality grounds remains questionable.** Unanswered questions signal that there is something to hide from the public because of wrongdoing rather than due to ‘financial stability’, ‘professional trust’, or ‘fair market competition’.

The underlying accountability shortcoming is the inability to assess the performance of ECB Banking Supervision in the absence of information about the specific decisions taken. This problem could be solved by shifting the focus from the content of individual supervisory decisions to the overall performance of the ECB as a bank supervisor. Other authors³⁴ have already noted the lack of a clear yardstick against which to measure whether the ECB is achieving its SSM mandate to ensure financial stability and ‘the safety and soundness of credit institutions.’ What seems more feasible is the publication of benchmarks and statistical information to judge their effectiveness. In other words, if the ECB is doing a good job in banking supervision, how would MEPs—and the public at large—know it? One way of doing this could be to develop benchmarks corresponding to the three goals of the ECB in banking supervision (see Box 6). Such indicators need not be quantifiable or fixed in time; on the contrary, ongoing developments in banking supervision should lead to a periodic revision of the benchmarks. The existence of clear indicators would allow MEPs to address the performance of the ECB as a whole rather than prioritise the situation at specific banks as reported in the media.

31. House of Commons Treasury Committee, *Accountability of the Bank of England. Twenty-First Report of Session 2010–12* (2011) HC 874, accessed 6 April 2018.

32. Federal Reserve, *The Fed - Testimony of Federal Reserve Officials* (n.d.), accessed 28 September 2018.

33. Roy L. Heidelberg, *Political Accountability and Spaces of Contestation* (2017) 49 *Administration & Society* 1379, 1386.

34. Fabian Amtenbrink and Menelaos Markakis, *Towards a Meaningful Prudential Supervision Dialogue in the Euro Area? A Study of the Interaction between the European Parliament and the European Central Bank in the Single Supervisory Mechanism* [2017] ADEMU Working Paper Series 5–6, accessed 4 June 2018; see also Benjamin Braun, *Two Sides of the Same Coin? Independence and Accountability at the ECB* (Transparency International EU 2017) 7, accessed 11 January 2018.

In the future, ECB Banking Supervision will be considered accountable to the EP because of the way in which the next Chairs of the Supervisory Board will substantively answer questions from MEPs. While the ECB is not expected to indiscriminately comply with requests from the EP, it should stand ready to explain and defend its conduct in the SSM. After all, accountability and democratic legitimacy go hand in hand: an accountable bank supervisor is a legitimate bank supervisor. The latter is desirable for both EU institutions and the general public.

BOX 6 ■ Policy recommendations

TO THE EUROPEAN PARLIAMENT	TO THE EUROPEAN CENTRAL BANK
<ul style="list-style-type: none"> • Change the format of public hearings to streamline the Q&A session: <ul style="list-style-type: none"> · Centralise questions, ensure there is no overlap, address specific topics in order, one question at a time; · Coordinate a division of labour within political groups (different MEPs take the lead in different accountability hearings); · Task the EGOV Unit with providing a monthly round-up of possible questions to ECB Banking Supervision; · Separate accountability hearings from dialogues on legislative files. • Focus written and oral questions on the mandate of the ECB in the SSM; • Organise accountability hearings on the performance of the ECB as a bank supervisor on different dimensions; • Communications: <ul style="list-style-type: none"> · Publish transcripts of public hearings of the Chair of the Supervisory Board, similar to the Monetary Dialogues. 	<ul style="list-style-type: none"> • Annual Report: provide more detailed information about the subject of questions raised by MEPs and how the ECB answers them; • Develop public benchmarks for assessing the extent to which the ECB reaches its objectives in the SSM: <ul style="list-style-type: none"> · Benchmarks should correspond to the three SSM goals (ensure the safety and soundness of the European banking system; increase financial integration and stability in Europe, ensure consistent supervision); · Benchmarks should be tangible, but not necessarily quantifiable or fixed in time; · Link the regular release of statistical information to the benchmarks. • Communications: <ul style="list-style-type: none"> · Publicise explainer videos/sheets of the type ‘whom should I ask?’ to clarify the division of competences in the Banking Union between the ECB, EBA, the ESRB, the Commission, and NCAs.
TO BOTH	
<ul style="list-style-type: none"> • In the medium- to long-term, reappraise the secrecy regime in banking supervision in order to identify specific circumstances under which supervisory decisions can be disclosed 	

ON THE SAME TOPIC

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