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Research Article

Trying not to be caught in the act:

Explaining European Central Bank's bounded
role in shaping the European Banking Union

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Abstract

The envisaged 'completion' of European Economic and Monetary Union (EMU) through the Banking Union is one of the most significant projects of European integration since the Maastricht Treaty. This article departs by emphasizing that the European Central Bank (ECB) is actively engaging in the design of this objective. ECB's engagement in different parts of the process as well as its role in the current state of core pillars of the Banking Union is varying. The ECB received a prominent role on micro prudential supervision in context of the Single Supervisory Mechanism (SSM), gained some structural power on macro prudential supervision and has some influence on the Single Resolution Mechanism (SRM). In order to explain this variance, the qualitative research approach is based on the analysis of comprehensive data such as legal opinions of the ECB, speeches of central bank officials, press articles, legal documents, institutional documents and expert interviews. The analysis shows that although the ECB acted politically in the making of the Banking Union, its role is paradoxically bound between the credence to sustain its independent mandate and avoiding overstretching its relatively narrow remit. My findings suggest that ECB's bounded supranational activism helps explaining both ECB's role and the current state of the design of a European Banking Union.

Keywords

European Central Bank, Banking Union, Supranational Activism

The financial turmoil in the aftermath of the financial crisis of 2008 emphasized the necessity to reform the institutional architecture of the Economic and Monetary Union (EMU). Especially the hardships of several Euro area periphery countries in the years after 2009 revealed the weakness of the reluctant European System of Financial Supervision (ESFS) to address the sovereign debt-bank 'doom-loop'. Against this backdrop, the concept of an unavoidable 'completion' of the EMU, to be realized through the 'Banking Union', is one of the most considerable implementation shaping the European integration process, since the advent of the Maastricht Treaty. European policy makers gave answers to questions of the so-called financial crisis, by perceiving a necessity to tackle specific construction failures of accommodating financial integration within the Euro Area. They identified as main dilemma that pooled monetary policy in the EMU spurs further economic and financial integration, but by doing so lead to cross-border spill-over effects affecting especially euro-periphery Member States. In 2012, the European Commission therefore started pursuing a number of initiatives to institutionalise the Banking Union. These initiatives are present(ed) as being necessary to sustain the Monetary Union through integrating the single market, and by breaking the vicious circle between sovereign and bank debt (European Commission 2012).

In this context, the European Central Bank (ECB) evolved to be among the key actors in European politics and plays an active and political role in shaping the design of the institutional architecture of the EMU. In line with the concept developed by Howarth and Roos (2017) in this special issue, ECB's activism shows an expansively defined understanding of its officially prescribed powers and goals and an effort, to expand these powers and goals. In stark contrast to its limited mandate to maintain price stability (Art. 127 TFEU), the ECB makes exceptional decisions and is involved in policy areas that push the boundaries of what is considered as the prerequisites of ECB's independent mandate

(Buiter 2014). Against this backdrop, Veron (2015) argues that such engagement has been only acceptable to the ECB and Euro area governments in context of a commitment for a substantial and significant step towards more institutional integration which the Banking Union ought to constitute.

On the first sight, quite paradoxically for a technocratic independent institution, the ECB plays an active political role in pushing the boundaries of its relatively narrow mandate in the process of designing the Banking Union. The central bank actively engages in the negotiations by issuing legal opinions and public statements, as well as by the drafting of reports and participation in negotiations. As will be presented in the following, the current outcome of the negotiation process shows a varying weight of the role of the ECB in different pillars of the Banking Union. It has a prominent role on micro prudential supervision, some structural power on macro prudential supervision and some influence on bank resolution. This article departs by focussing on the empirical puzzle of the technocratic central bank's involvement in the negotiation process, and by doing to shed light on ECB's differentiated significance in core pillars of the Banking Union, namely the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). In tracing the process of the establishment of the Banking Union, the qualitative research approach is based on the use of comprehensive data such as legal opinions of the ECB, speeches of central bank officials, press articles, legal documents, institutional documents and expert interviews, thereby focusing on the time between 2012 and 2014, while also considering the period after the publication of the de Larosière report.

In more analytical terms, the general observation that the ECB is actively pushing boundaries poses certain theoretical questions. With a more narrow focus on bank supervision, De Rynck (2016) identifies the ECB as an effective entrepreneur in political bargaining and finds that the ECB impacts significantly its own empowerment. But this evidence of supranational activism and the empowerment of traditional supranational actors challenge certain propositions of the debate of New Intergovernmentalism, as put forward by Bickerton, Hodson and Puetter (2015: 713). This article shows that extending De Rynck's argument of ECB's activism beyond his focus on bank supervision towards an analysis of ECB's different role in core pillars of the Banking Union allows for acknowledging that respective propositions of Bickerton, Hodson and Puetter's remain partly correct. The ECB could reinforce itself in the process of establishing the Banking Union, and thereby influencing EU politics, but pushing its boundaries gives way to serious legitimacy issues. The ECB has to keep an eye on these challenges, if it wants to avoid questioning of legitimacy, allowing for querying its independent mandate and eventually the sustainability of the EMU (Högenauer and Howarth 2016). Generally, the ECB is confronted with a somehow paradoxical task: as the ECB is attempting to achieve sustainability of the EMU and in order to better ensure the achievement of its goals, it actively engages in designing the Banking Union. But to secure its independent mandate and the sustainability of the EMU in the first place, ECB's role in actively supporting the shaping of the Banking Union is bounded by the necessity of not being caught in the act of over-stretching its narrow remit.

THE CURRENT STATE OF THE BANKING UNION

The current state of the European Banking Union is mainly designed for the euro-area, but potentially all EU member states can opt in. It comprises, as of the end of 2016, two core pillars: one of these pillars is the Single Supervisory Mechanism (SSM), which institutionalized ECB's single oversight over the Eurozone's banking system. The SSM was established by the SSM regulation of October 2013 (Council Regulation (EU) No 1024/2013), the regulation on the operational framework of the national competent authorities, and the SSM framework regulation (Regulation (EU) No

468/2014 of the ECB). According to the SSM framework (Art. 6.4, Council Regulation (EU) No 1024/2013) the ECB has direct oversight over the Eurozone's most significant banks. A credit institution is considered to be 'significant', if the total value of its assets exceeds EUR 30 billion or the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20 percent, unless the total value of its assets is below EUR 5 billion. Thus, the ECB has direct oversight over approximately 130 of the around 6,000 Eurozone's credit institutions. The ECB holds also final responsibility for the remaining banks, although direct supervision is conducted by national competent authorities (NCA). However, prerequisite for the delegation of supervisory responsibilities to the ECB was the implementation of organisational principles that should warrant separation between monetary policy and supervision. This separation shall mitigate potential conflicts between different policy objectives and allow for synergies due to ECB's relatively credible experience (European Commission 2012).

According to its legal mandate as the European banking supervisor, the ECB can take important supervisory decisions, which are legally binding for banks under the SSM. It makes decisions on the setting of micro- and macro prudential capital requirements, on the granting or withdrawing of banking licences, and on imposing enforcement measures and sanctions on significant banks. The decision making within the SSM is conducted by a Supervisory Board, which remains an internal body of the ECB. It prepares draft decisions to be adopted by the ECB's Governing Council, using a non-objection procedure. That is to say that, if the Governing Council does not object within a defined period of time, the decision is deemed adopted. The ECB received a very prominent role in supervision of the European banking sector especially with regard to micro prudential tasks.

The second pillar of the European Banking Union supplementing the SSM is the Single Resolution Mechanism (SRM). It is the pillar of the European Banking Union that is responsible for the recovery and resolution of credit institutions. The SRM is designed to allow for orderly resolution of failed banks in the Eurozone. According to the SRM Regulation (Regulation (EU) No 806/2014), the SRM has comprehensive resolution powers and has to cooperate closely with national supervisory and resolution authorities. The SRM complements the Bank Recovery and Resolution Directive (BRRD, Directive 2014/59/EU) which established a framework for the recovery and resolution of credit institutions. The BRRD aims to protect taxpayers from having to provide funds to cover credit institutions liabilities in case of bankruptcy. This element of the SRM basically allows a bail-in of shareholders and creditors and a tool to write-down debt owed by a bank to creditors or to convert it into equity. The BRRD establishes a "liability cascade", according to which creditors of the institution bear losses after the shareholders, whereas covered deposits shall be protected by respective deposit guarantee schemes, on which no European agreement could be achieved.

At the centre of the SRM's institutional framework is the establishment of the Single Resolution Board (SRB), an EU agency based in Brussels with own legal personality. The SRB applies the Single Rulebook on bank resolution provided by the BRRD to banks of participating Member States. It decides on the resolution of all banks which are supervised directly by the ECB as well as banks with subsidiaries in other member states taking part in the Single Supervisory Mechanism (SSM). When the ECB's notifies the Board that a bank is failing, and the SRB decides to resolve an institution, the European Commission and European Council have 24 hours to object to the resolution scheme (non-objection procedure). Accordingly, the SRM shows significant intergovernmental aspects, especially with regard to the access to pooled funds. However, the ECB, even having little influence within the resolution process, is the main triggering authority for bank resolution in the Eurozone. The SRM is complemented by a Single Resolution Fund (SRF), which shall provide the financial resources required for resolution. Since the beginning in 2016 the national resolution funds have largely been replaced by the SRF in participating member states of the Banking Union. The SRF relies on the BRRD and shall ensure tax payer and retail consumer protection when it comes to funding the

resolution of an institution. The idea is for shareholders and creditors to primarily bear the burden of bankruptcy (bail-in), instead of tax payers. The targeted fund volume is one percent of the covered deposits of all institutions granted a banking license in member states of the Banking Union (approximately EUR 55 billion). This volume shall be reached by the end of 2023. The SRF itself is constituted by an intergovernmental treaty between the EMU member states, specifying the channelling and the mutualizing of SRF funding.

EXPLAINING THE ROUTE TO THE EUROPEAN BANKING UNION

Reasonable points of departure approaching the establishment of the European Banking Union are interpretations of design failures of the EMU's institutional architecture (Jones 2015), which only rendered the implementation of the Banking Union necessary. For many observers, the financial turmoil in the aftermath of the financial crisis of 2008 emphasized persisting doom-loops between sovereign debt and financial stability of national banking systems in periphery states (De Grauwe 2013). Additional cross-border spill-over effects further threaten financial stability of the entire Eurozone. Building up on Schoenmaker's (2013) 'financial trilemma' based on the interplay of financial stability, cross-border banking and national financial policies, Howarth and Quaglia (2014: 127) identify a fourth element to be considered – that is the single currency. The authors argue that the single currency reinforced financial integration in the Eurozone and an increase in cross-border banking. The absence of a credible European architecture of supervision, European fiscal capacity and the lack of a normal central bank to act as Lender of Last Resort revealed a miss-match between the European scope of banking and national responsibility for financial stability (Donnelly 2011).

In addition to limits at the European level, national resolution powers are constrained by EU/EMU fiscal rules, which especially undermine Eurozone periphery Member States' abilities to rescue or resolve failing banks, so that the EMU architecture leaves several Eurozone Member States with fewer tools at disposal to safeguard financial stability. Howarth and Quaglia (2014: 128) conclude that several Eurozone Member States, although with reluctance in some prominent cases, are encouraged to explore a move towards more centralized and supranational solutions to achieve financial stability. Since institutional changes in supervisory and resolution architecture can imply international distributional consequences especially in monetary unions (Copelovitch and Singer 2008), reforms of the European financial architecture commonly imply bargaining along a debtor/creditor states cleavage.

Several scholars recognize these international political constraints of the financial integration process of the EMU and emphasize the role of national preferences and power (see Donnelly 2014). These approaches build up on concepts of liberal intergovernmentalism and typically derive national preferences from the structure of the banking system and Member States' financial position in the monetary union (Howarth and Quaglia 2016). Research by Howarth and Quaglia (2013a) suggests diverging interests and preferences of key European actors and policy makers that are involved in the politics of the reform process of the financial architecture of the EMU (see also Lombardi and Moschella 2016; McPhilemy 2016), so that the procedure towards sound European solutions is politically constrained. Based on a perspective of liberal intergovernmentalism, Schimmelfennig (2015) argues that reforms of EMU's economic and financial architecture reflect predominantly the interest of powerful Member States and mirror especially German preferences. For the transform of the financial architecture of the EMU, Schimmelfennig's (2015: 189) evidence of national preferences and power in the Euro crisis let the author to propose that new or reformed institutions of financial assistance are more intergovernmental than institutions of supervision.

With the analytical focus on the Banking Union, research by Howarth and Quaglia (2016) suggests that its core pillars can be attributed to intergovernmental bargaining - both in design and in implementation. However, also for the Member States, the financial turmoil reveals the necessity to delegate more financial and supervisory powers to the European level. Reflecting more general on issues of delegation, the debate on New Intergovernmentalism discusses Member States' difficulties of justification and legitimacy. Bickerton, Hodson and Puetter (2015) argue that in cases where delegation of new powers occurs, European governments and traditional supranational actors support the creation and empowerment of *de novo* bodies (2015: 713). This claim is only partly true with regard to the Banking Union. Although intergovernmental approaches can explain international bargaining processes and intergovernmental outcomes, they often fail to account for the role of supranational actors and their empowerment in salient policy fields. This shortcoming is especially clear regarding the creation and activism of so powerful supranational institutions as the ECB and the European Commission (Bauer and Becker 2014).

In order to focus on the more active role of supranational actors, authors like Sandholz and Stone Sweet (2010) build up on neo-functional approaches and describe cases in which supranational structural dynamics open up space for manoeuvres of supranational actors that can exploit these situations by acting as policy entrepreneur and pushing forward their own benefit. The so-called financial crisis could be such a case. It encouraged several European governments to acknowledge dysfunctionalities of EMU's financial architecture which they deemed necessary to be tackled at the European level, so that the financial turmoil allowed for possibilities for supranational institutions' activism. However, as Howarth and Roos (2017) show in this special issue, the concept of entrepreneurship commonly describes quite narrow activities, such as organising, managing and assuming the risks of an enterprise. In order to analytically account for more encompassing activities of supranational institutions, such as using its political room to manoeuvre in supervising and steering policy implementation (see also Bauer/Becker 2014), Howarth and Roos (2017) propose a concept of supranational activism that includes particular energetic efforts to fulfil an expansively defined understanding of its officially prescribed powers and goals, and/or efforts to expand these powers and goals.

When examining assumed financial dysfunctionalities of EMU, Epstein and Rhodes (2016) show that the establishing process of the Banking Union can be attributed to activism of the Commission and the ECB. Focussing explicitly on the ECB's role in the establishment of the Banking Union, De Rynck (2016) argues that ECB's advocacy of and involvement in political bargaining pushed key countries' governments to accept a centralized supervision authority at the auspices of the ECB. While De Rynck (2016) convincingly demonstrates that ECB's advocacy can explain its empowerment in banking supervision, the author does not elaborate on ECB's role in the establishment of single resolution. Whereas Epstein and Rhodes recognise ECB's involvement in reforming European banking supervision and in reforming bank resolution, the precise preferences of the ECB in regard of the before mentioned different pillars of the Banking Union are out of their focus. In their contributions remains still unanswered, how to explain ECB's diverse scope of action related to its different tasks of supervision and resolution?

A suitable starting point to approach this question is provided by Quaglia's pre-crisis findings (2008, 2009: 636), indicating that the central bank behaves as a normal bureaucracy, which is trying to expand competences, while staying at the same time in line with its remit and objectives. In the process of constructing the European Banking Union during the aftermath of the so-called financial crisis, important supervisory and regulatory functions - often deeply political - are assigned to the ECB. Reflecting on this reform process, Niemann and Ioannou argue that 'the Central Bank's advocacy to adjust and deepen the EMU framework need to be understood [...] as resolving functional dissonances between different policy domains under EMU that jeopardized the ECB's

independence and its ability to shield the euro and deliver price stability' (Niemann and Ioannou 2015: 212). These findings point towards the importance of Treaty obstacles for central bank's scope of action, since it has to achieve its legally defined objective without losing the legitimacy of its independent mandate.

The delegation of competences to and the legitimacy of independent institutions like the ECB are traditionally substantiated by a clear and narrow definition of their mandate and monitored by results of their policy output (Majone 1998). According to the Treaty on the Functioning of the European Union (TFEU), the ECB has 'to maintain price stability'. But only 'without prejudice to the objective of price stability, the European System of Central Banks shall support the general economic policies in the Union' (Art 127 TFEU). European policy makers delegated a rather narrow remit to the independent supranational institution. It is precisely the focus on the single legal objective that legitimates the outstanding independence of the ECB (Elgie 2002). Further, to maintain price stability is commonly perceived as being a rather technical task. As Moravcsik (2002) argues, the suggestion of a technocratic policy approach is important for an independent output-oriented supranational institution's legitimation. Arguably, to sustain its independence, the ECB should avoid participation exceeding its mandate, particularly intruding policy areas that are perceived politically contentious. As Högenauer and Howarth (2016) show, the stretching of the boundaries of ECB's mandate and political activism of the central bank can pose serious challenges to legitimacy and eventually threaten the persistence of the independent mandate of the supranational institution and eventually the sustainability of the EMU.

However, the ECB supposed a necessity to reform the pre-crisis EMU architecture on the European level and to expand its own competences to solve functional dissonances of the EMU (see Glöckler et al. 2016). In particular, the ECB commits itself to 'do whatever it takes' to preserve the euro (Draghi 2012a), whereas in turn the Euro is being perceived as being the prerequisite of the single market (Draghi 2017), that is key for the European project. Yet, the expansion of ECB's competences in context of banking supervision and bank resolution risks tensions with ECB's mandate of price stability. Although combining supervisory with resolution competences can improve regulators' credibility to enforce its policy measures because it allows for threats to reorganize non-compliant institutions. But contradictions can arise because the reorganization of non-compliant institutions is a costly process - both financially and politically - so that forbearance might appear easier. But tolerating non-compliance does not only create financial instability, it also leads to liquidity creation - particularly when lender of last resort facilities (like emergency liquidity assistance) are required. This can contradict the mandate of the ECB because liquidity creation to support failing institutions threatens to undermine price stability.

In the following section, the article shows that the central bank engages politically by acting as a 'normal' supranational actor by pushing for European level reforms of EMU's banking supervision and bank resolution architecture. But when pushing its boundaries, the ECB has to avoid clearly overstretching its narrow remit by apparent involvement in those policy areas of the Banking Union, that imply in addition to its monetary policy further fiscal and (re)distributive consequences or might even contradict its mandate of price stability. Banking supervision and resolution are both politically sensitive areas, but bank resolution has potentially more direct political impact than banking supervision. Bank resolution can imply decisions on direct fiscal transfers and touches the issue of property rights - and thus eventually one of the cornerstones of capitalism. While actively pushing for centralized European solutions regarding banking supervision under its own auspices, the central bank has to avoid intimate involvement in bank resolution. Therefore, in order to sustain its independent mandate, the ECB has to try not to be caught in the act of overstretching its narrow remit. As the subsequent section demonstrates, these obstacles can explain ECB's bounded role in actively engaging in the process of shaping the European Banking Union.

THE ACTIVISM OF THE ECB IN THE EVOLUTION OF TWO PILLARS OF THE EUROPEAN BANKING UNION

Already the aftermath of the first wave of the financial crisis posed serious economic and financial challenges for the EU, among other economic recession, high unemployment and huge government spending to stabilize the banking system. In October 2008, the President of the European Commission, José Manuel Barroso, implemented a high level working group to give advice on the future of European financial regulation and supervision. Named after its chairman, the de Larosière report was published on 25 February 2009 and recommended stronger coordinated macro and micro prudential supervision for all financial actors in the EU. The report strongly recommended the transfer of macro prudential tasks to the ECB by creating the European Systemic Risk Board (ESRB) under its auspices. 'Its task will be to form judgements and make recommendations on macro-prudential policy, issue risk warnings, compare observations on macro-economic and prudential developments and give direction on these issues' (de Larosière 2009: 44). But with regard to micro prudential regulation, the report clearly recommended an institutional structure outside of the ECB. The de Larosière report even states that bank resolution remains a national prerogative (2009: 78), because this area appears to be rather sensitive to Member States. The report however calls for the creation of a European System of Financial Supervision (ESFS), whereas newly institutions have been created for banking supervision, and for insurance and securities. Although the establishment of the ESRB could be regarded as a step towards single oversight of financial stability in the Eurozone, the creation of ESFS did not accommodate for issues of cooperation of national supervisors.

Already in the process of creation of the supervisory architecture of the de Larosière framework, the ECB pushed to gain more competences. During the monetary dialogue in the European Parliament on 21 January 2009, the then President of the ECB, Jean Claude Trichet concluded his introductory remarks by saying that 'as underlined in particular by a number of Members of Parliament, Article 105(6) of the Treaty explicitly mentions the possibility for the Member States to decide to confer upon the ECB specific tasks in the domain of financial supervision. Reflections have started on the specific role that could be played by the ECB and its Governing Council should this provision of the Treaty be activated.' (Trichet 2009). Similarly, in a speech to the European Parliament on February 12, Lorenzo Bini-Smaghi, member of the executive board of the ECB, called for the transfer of competences to the central bank for both macro- and also micro-supervision of single cross-border institutions (Bini-Smaghi 2009). Bini-Smaghi argued that changes could be done quickly, 'There is no need to follow the normal procedures for changing the treaty' (Euractiv 2009a). For micro prudential regulation, he argued that the task should be carried out by 'a body close to the ECB or by the European System of Central Banks' (Euractiv 2009a). This ECB position is also reported in the de Larosière report noting that '[...] a number of people, including representatives of the ECB, have suggested that the ECB could play a major role in a new European supervisory system in two respects: a role in macro-prudential supervision and a role in micro-prudential supervision' (De Larosière 2009: 42).

In 2009 the financial industry as well as key member states, such as Germany and the UK, opposed the idea of a centralized authority approach because Member States regarded this policy area as sensitive (Euractiv 2009a). The ECB could not achieve its objective of centralisation during the negotiations. Schelke (2014) attributes this to the scepticism of the European Council and that of the Internal Market Commissioner Charlie Mc Creevy, articulating potential fiscal and distributive implications by granting the ECB authority over micro prudential supervision. At the same time, the Bank's Board has been fragmented, weakening the position of the ECB's call for more competences (Euractiv 2009a). Thus, the de Larosière report rejected ECB's request by arguing that 'the ECB is primarily responsible for monetary stability. Adding micro-supervisory duties could impinge on its fundamental mandate' (de Larosière 2009: 43). Further, the de Larosière report argued that 'in case

of a crisis, the supervisor will be heavily involved with the providers of financial support (typically Ministries of Finance) given the likelihood that tax payers' money may be called upon. This could result in political pressure and interference, thereby jeopardising the ECB's independence' (de Larosière 2009).

Nevertheless, in the aftermath of these events, many observers called for direct supranational supervision to safeguard financial stability, although given the political arena and consequences such transfers have been regarded as 'somewhat unrealistic' (Beetsma and Eijffinger 2009: 3). Several member states articulated their preferences for more centralisation and harmonisation of financial regulation. Also, the European Commission and Parliament articulated their preferences for the enhancement of the ESAs' powers, other member states voiced concerns about possible fiscal burden and loss of sovereignty (Buckley and Howarth 2010; Spendzharova 2012). During this time, ECB officials continuously argued in favour of strengthening the supervisory role of the central bank. On 2 March 2009, Peter Praet, then Head of the ECB's banking supervision committee, argued in the European Parliament, 'We welcome the de Larosière report. It's a mix between vision and pragmatism. But pragmatism has its own drawbacks. The weakest point of the report is the crisis resolution mechanism' (Euractiv 2009b). In the following, even the relatively conservative executive Board Member Jürgen Stark articulated his intention not to object single supervision in the Eurozone (Stark 2009, 2011). Critically addressing remaining national supervisory practices, Bini Smaghi argued for more centralisation of single supervision, by pointing out that '[t]he experience over the last years has shown that national authorities tend to use at their own discretion the room for manoeuvre that is available in the transposition of European legislation' (Bini Smaghi 2009b).

ECB's opinion on centralized authority over micro prudential supervision was again apparent when the financial turmoil in the subsequent years revealed the weaknesses of the institutional architecture of the Eurozone. Starting in 2009 with the revelation of the Greek governments high debt obligations, the turmoil quickly spread to other periphery countries. Along Greece, Ireland, Portugal, and Cyprus called for EU assistance, which was later accompanied by the IMF and the European Commission, forming together with the ECB the 'Troika' (Featherstone 2013; Gros 2015). The crisis reached new heights in late 2011 and 2012 experiencing negative inflation rates in the Eurozone for the first time, and unemployment at record heights and market pressure on Greece. Talks of 'Grexit' determined daily media and the weak capital situation of several European banks enforced the bank-sovereign vicious circle. As a consequence, fears of contagion led to the preparation of direct bank recapitalisation by the European Stability Mechanism (ESM) (Howarth and Quaglia 2013b). For several observers, the crisis could only be embarked by bold ECB action, especially enacted through the Securities Market Program in 2010 and 2011, the Long Term Refinancing Operations and the reactions following the popular announcement of the Outright Monetary Transactions Program by Mario Draghi, President of the ECB, in 2012 (Draghi 2012b). These developments highlighted that the vicious circle of sovereign debt and banks was not sufficiently addressed by the current framework (see Gren et al. 2015).

The establishment of a Single Supervisory Mechanism

As De Rynck (2016) demonstrates, the ECB was among the first EU actors to demand more centralisation of supervision and resolution. Accompanying the LTRO and within a timeframe of six weeks, three relatively new members of its executive board publicly requested changes towards more centralisation and supra-nationalisation. In February 2012, Peter Praet, then member of ECB's Executive Board, advocated stepping up the level of integration beyond the supervisory authorities such as EBA. The central banker proposed a more centralized architecture and pushed for an ESM

mandate allowing for recapitalizing of banks (Praet 2012). One week later, Benoit Coeuré demanded European policy-makers 'to be more ambitious – now' (Coeuré 2012). Later in March, Jörg Asmussen, the German replacement of Jürgen Stark who had resigned over the ECB's bond-buying program, required 'a special fund for bank resolution', that should be institutionalized 'at the euro area level accompanied by the establishment of a joint supervisory and resolution regime' (Barker and Spiegel 2012). According to De Rynck (2016), the proposal for a specific Eurozone approach for financial services, endorsed by the ECB, broke a taboo on the integrity of the single market and the inclusion of London's City in EU regulatory architecture and allowed circumventing non-EU member states opposition on the proposal. In the following month, Mario Draghi publicly demanded a centralized European level banking supervision and resolution mechanism (Draghi 2012a).

On 26 June 2012, the four Presidents report 'Towards a Genuine Economic and Monetary Union' was published. The report is drafted under the responsibility of the President of the European Council Herman van Rompuy and outlines 'the possibilities foreseen under Article 127(6) TFEU regarding the conferral upon the European Central Bank of powers of supervision over banks in the euro area' (2012: 4). This statement was particularly significant, since a Treaty change would have precluded the reform process. The terms of a Single Supervisory Mechanism were set out in a Euro area summit at the end of June 2012 (EA 2012), at a Eurogroup meeting in early July (Eurogroup 2012) and were further endorsed by the Council (Council 2012). One of the most contested issues was the scope of the SSM. Epstein and Rhodes (2016: 416) argue, that the agreed architecture implies not only the reduction of governments influence over national banking systems but also the accepting of important elements of fiscal mutualisation, so that the transfer of authority towards the ECB should be regarded 'as a huge incursion on national sovereignty'. Another contested issue was the role of the ECB within the decision making of the SSM. Especially German negotiators worried about a potential conflict of interest between the ECB's double role as supervisor and as guardian of monetary policy (Euractiv 2012). Such a conflict could arise if the ECB were to decide to keep interest rates low to support struggling banks.

German Finance Minister Wolfgang Schäuble objected to the ECB's Governing Council having the final say over monitoring banks. A stance that appeared to push the talks backwards. Further, German government wanted to protect its Landesbanken (regional banks) and Sparkassen (saving banks), limiting the scope of the SSM (Schäfer 2015: 5; Epstein and Rhodes 2016: 424). During the negotiations, signs indicated that Germany softened its line, but French negotiators pushed for more supranational centralisation of banking supervision. The French Finance Minister, Pierre Moscovici, asserted that 'we [could] envisage degrees of supervision depending on banks' size, but on one condition – that in the end the European Central Bank holds the ultimate responsibility' (Euractiv 2012). Since ECB officials articulated clear support for more supranational centralized financial supervision (see Draghi 2012a; Constâncio 2012), a coalition could be built among the President of the European Council, who considered centralisation as the pragmatic approach (Die Welt 2012), the ECB and the French government.

The agreement of the coalition on a common policy approach opened the way for formal Trilogue negotiations that started in December 2012 and the proposal - actively sustained by ECB engagement at key junctures - could be already included in the European Commissions' 'Roadmap towards a Banking Union' (European Commission 2012) of September 2012. On European Council summit in October 2012, the envisaged framework was embraced by EU governments. In particular, they set out to push the establishment of the SSM under the auspices of the ECB. Governments further decided that support from the EUR 500 billion European Stability Mechanism (ESM) – Europe's permanent bailout fund – for individual banks would be conditional on their supervision by the ECB. However, European policy makers implemented legal barriers that make it almost impossible to access financial support.

The establishment of a Single Resolution Mechanism

Negotiations on further steps towards an integrated and centralized European resolution framework became important during the year 2013, with the ECB actively engaging in the discussions. Although not adopted, already by the end of 2012, the four Presidents report stated that ‘in a context where supervision is effectively moved to a single supervisory mechanism, it is however essential that the responsibility of dealing with bank resolution is also moved to the European level’ (van Rompuy 2012: 7). Precisely such a mechanism was envisaged for the time when the Commission’s proposal for a Recovery and Resolution Directive (BRRD) has been adopted. Accordingly, the SRM was closely linked to the recapitalisation of European banks through the ESM. The proposal made in the four presidents’ report aimed at the establishment of a single resolution authority, although not specifying where such a centralized European authority should be based.

The centralisation of decision-making in the SRM proved to be one of the key issues in the negotiations (Howarth and Quaglia 2014: 126). Especially the German government stated in the early month of 2013 that it will oppose the establishment of an institution exercising single authority to shut down banks. In particular, access to common funds of participants, and the European Commission having the trigger on the decision, was opposed by German negotiators (Epstein and Rhodes 2016: 426; Schäfer 2015: 8). In echoing the German position several Member States were reluctant to transfer significant authority to Brussels. In 2013, finance ministers pushed for a proposal on bank resolution in the euro zone. According to finance ministers’ proposal, decisions would be taken by the board of the resolution agency, but the decision would have to be approved by the finance ministers. In case ministers oppose the board’s decision, they have to involve the European Commission and start a procedure so complex that it raises doubt of being functional (Euractiv 2014).

To push forward its demands, in April 2013 all six ECB Executive Board members publicly backed the creation of a single authority with the power for prompt and coordinated resolution action. They especially showed concern for cross-border banks, and to cover in principle all banks within the SSM. Especially, the ECB pushed for a solution in which such an authority should not be restrained by national policy makers’ objectives (ECB 2013, Art 2.2). Vítor Constâncio explained that ‘the single resolution mechanism requires a strong authority at its centre. Mere coordination between national authorities is not sufficient for cross-border resolution in crises. This single resolution authority should have independent decision-making powers that would enable prompt and decisive action’ (Constâncio 2013). In a similar manner, Yves Mersch argued that

its institutional and geographical scope, however, should replicate that of the SSM. The SRM’s ultimate responsibility would rest with a Single Resolution Authority, charged with governing the resolution of banks and coordinating the application of resolution tools. As regards the jurisdictional scope, the SRM should in principle have the power and the authority to resolve all banks within the SSM (Mersch 2013).

Similarly, in May 2013, Benoît Cœuré called for the establishment of the SRM based on a ‘strong and independent Single Resolution Authority’ (Cœuré 2013). Thus, the ECB was actively pushing forward to a centralized European solution to overcome functional weaknesses that revealed over the course of the years since the financial crisis. At the Ecofin Council of 27 June 2013, the finance ministers of the member states agreed on a general approach on the draft directive establishing a framework for the recovery and resolution of failing banks (BRRD) and paved the way for trilogue negotiations. On July 10, the European Commission proposed a framework for a Single Resolution Mechanism for the Banking Union (European Commission 2013). According to the proposal, the commission receives powers, opposed to Berlin preferences but in line with ECB’s demands for more European

centralisation (Euractiv 2013). Thereby, it was designed allowing for a substantial step in breaking the sovereign debt-bank vicious circle. In the words of Michel Barnier, the commissioner in charge of financial regulation:

The Single Resolution Mechanism will integrate critical aspects of decision-making and financing so that, notwithstanding greater supervisory scrutiny by the ECB, a possible bank failure can be managed in the most efficient and least disruptive way (Barnier 2013).

However, due to German opposition, the proposal does not allow the European authorities calling for an explicit fiscal backstop role for the Eurozone's rescue fund, the ESM (Euractiv 2013). Thus, the proposal runs also short of ECB demands, which called for a 'European backstop' for the resolution agency (Asmussen 2013). In 2013, the ECB was actively pushing for a strong and centralized European SRM with the competence to resolve in principle all banks under supervision by the SSM and a pooling of resources to form a European fiscal backstop for the bank resolution. According to the ECB's legal opinion the Regulation to establish the SRM, 'It is crucial that the respective roles and responsibilities of resolution authorities and supervisory authorities are kept distinct before any crisis is envisaged' (ECB 2013). In May 2013, Benoît Cœuré added that,

Although the organisational aspects of the SRA still need to be decided, in order to achieve its objectives, the SRA should be strong, independent and preferably a standalone authority and should collaborate closely with the SSM and the European Commission' (Cœuré 2013).

Even more distinct, Yves Mersch argued that 'in order to prevent any potential conflict of objectives, this mechanism should under no circumstances be placed with the ECB' (Mersch 2013). However, although the ECB does avoid taking part in the decision making procedure of the SRM, it advocated observer roles in all meetings of the SRB, for itself as well as for all national central banks (ECB 2013). The final agreement on the SRM proposal was reached between the Council and the European Parliament on 20 March 2014 following informal trilogue negotiations, and adopted by the EP on 15 April 2014, closely before the EP elections in May 2014. Even having little influence on the resolution process, the ECB is the main triggering authority for bank resolution in the Eurozone. It receives an important supranational function, while avoiding being part of a decision-making process clearly implying fiscal and distributional consequences (although it participates as observer).

TRYING NOT TO BE CAUGHT IN THE ACT: EUROPEAN CENTRAL BANK'S BOUNDED ROLE SHAPING THE EUROPEAN BANKING UNION

The political turmoil in the aftermath of the financial crisis opened space for manoeuvres of supranational actors. Evidence shows that the consideration of the analytical concept of supranational institutions' activism helps explaining preferences of supranational actors and outcomes of EU institutional developments and can help to explain why the project seems to be incomplete. Building on the concept developed by Howarth and Roos in this special issue (2017), the analysis allows for understanding ECB's activism in the process of the establishment of the Banking Union. ECB's activism entails activities supporting and steering policy developments that better ensure the achievement of its goals. The ECB supposed a necessity to reform the pre-crisis EMU architecture on the European level and to expand its own competences to solve functional dissonances. It has an active role in the shaping of the European Banking Union by issuing legal opinions and public statements, as well as by participating in negotiations and drafting of reports. The ECB supposed the Banking Union as an important step towards financial integration and financial

stability in the EU, but in its activism the central bank had to struggle with a somehow paradoxical challenge: on the one hand, the ECB pushed for more competences in banking supervision to achieve financial stability in the Eurozone, while for being credible as a regulator the ECB received competences to act as the main triggering authority for bank resolution. On the other hand, ECB's activism confronts the European institution with a twofold challenge.

First, the ECB has to mind serious potential contradictions arising from its role in the current design of the Banking Union. ECB's involvement in supervision and in resolution can contradict with ECB's mandate to maintain price stability, while ECB's engagement as the triggering authority in the SRM and the pooled and potentially contradictory decisions in monetary policy and banking supervision can altogether endanger its independent mandate more generally. Open questions remain further with regard of authority in the definition and enforcement of prudential policy in ECB's relations with national competent authorities and endanger the EU institution's credibility (see also Gren 2017 in this issue). Several decision-making procedures, especially in context of accessing common funds for bank resolution remain very laborious and the institutionalised thresholds make their usage fairly impossible. It remains therefore rather unclear if the current state of the Banking Union can break the vicious circle of bank and sovereign debt, or add severe challenges to the multiplying tasks of the independent central bank. Since the current system is not in a stable state of equilibrium, its institutions will have to prove its capabilities.

Second, the ECB has to deal with its legitimacy, as an independent supranational institution and avoid to be caught in the act of over-stretching its narrow remit. Research suggests that ECB policies – e.g. the prominent announcement to 'do whatever it takes' (Draghi 2012a) to save the Euro - achieved securing the status quo of the EMU in the short run (De Grauwe and Ji 2015; Torres 2013). But together with the central bank's involvement in public discussion of and even the design and implementation of fiscal policy and structural reforms, the increasing use of unconventional monetary policies push the boundaries of what is considered as the prerequisite of ECB's independent mandate (e.g. Buiters 2014). It seems that the ECB has formed alliance on the usage of some of its unconventional policy instruments (notably the OMT program) with the European Court of Justice (ECJ 2015). However, the – although reluctant – opposition of the German Federal Constitutional Court (BVerfG 2014) and the declining public support of the ECB threatens the independence of the central bank and the sustainability of the EMU (Jones 2009; Kaltenthaler et al. 2010; Roth et al. 2014). This evidence suggests that stretching the boundaries of its relatively narrow mandate pose significant threats to public trust in the ECB and its political independence in the longer run (Kaltenthaler et al. 2010; Roth et al. 2014).

My findings support the evidence of De Rynck (2016), as they demonstrate that the ECB plays an active role in political bargaining with significant impact on important steps of reforming the European Banking Union. With regard to supervision, these evidence suggests that ECB's involvement in political bargaining pushed key countries governments to accept a centralized supervision authority at the auspices of the ECB. These results of ECB's advocacy for increasing its competences challenge claims put forward in the debate of New Intergovernmentalism. In contrast to propositions of Bickerton, Hodson and Puetter (2015) the ECB as a supranational actor pushed to extend the boundaries of its mandate. However, a second look at the process of the establishment of the Banking Union and its different pillars permits a rather nuanced judgement of the role of the ECB. Although De Rynck's (2016) finding that the central bank is among the key institutions in shaping the Banking Union is valid, its role in the different pillars of the Banking Union is not of the same political significance. The Banking Union framework comprises a newly established independent EU Agency – the Single Resolution Board (SRB) - for bank resolution and the ECB has become the main triggering authority for bank resolution. But the Council holds in principle powers to object decisions for bank resolution and the access to pooled funds (by acting with simple majority) and especially the SRF

under the auspices of the SRB indicates substantial intergovernmental facets. This evidence of intergovernmental influence and the creation of a new authority with potential fiscal powers is more in line with the claims developed by Bickerton, Hodson and Puetter (2015) on supranational support on the creation and empowerment of *de novo* bodies and corresponds with Schimmelfennig's more general proposition that institutions of financial assistance are more intergovernmental than institutions of supervision (2015: 189).

CONCLUSION

European Commission officials attributed the agreement on the Banking Union as a revolution of the European banking sector that took place in less than two years (from 29 June 2012 to March 2014) (Barnier 2014, cited in Euractiv 2014b). Still, observers describe it in terms of a rather 'messy compromise' (Howarth and Quaglia 2014: 138). The ECB supposed a necessity to reform the pre-crisis EMU architecture on the European level and to expand its own competences to solve functional dissonances. Nonetheless the ECB has to mind challenges that arise from potential contradictions of its regulatory tasks with its mandate of price stability, while it has to avoid too close involvement in political decision-making to sustain its political independence. This bounded supranational activism helps explaining both ECB's engagement in shaping the design of the Banking Union, while simultaneously explaining ECB's varying political significance in the different pillars of the project's current shape. However, if the ECB's contentious actions induce calls for more public deliberation and accountability of European economic governance, while highlighting remaining design flaws in the current setting, ECB's struggle when trying not to be caught in the act of overstressing its narrow remit might paradoxically ensure the sustainability of the European Union in the longer run.

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