

The Post-Crisis Expansion of European Central Bank Powers: Understanding the Legitimate Boundaries of the ECB's Supervisory Independence and Accountability

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Abstract : The recent transfer of banking supervision to the ECB has expanded its influence as of a non-majoritarian and technocratic policy-shaper in EU supervisory policies. To fulfil the main policy objectives of the Single Supervisory Mechanism, the ECB has been tasked with building a single supervisory approach to supervised banks across the euro area and is now exclusively responsible for direct supervision of the largest 'significant' euro area banks and the oversight of the remaining 'less significant' banks. This enhanced supranational position of the ECB significantly alters the EU institutional order and creates powerful incentives to actively pursue integrationist agenda by the ECB. However, this drastic shift has a little impact upon adapting the ECB's new supervisory mandate to the requirements of democratic legitimacy. Whereas the ECB's strong pre-crisis independence and limited accountability could be reconciled with democratic principles through a clearly articulated price stability mandate, independence and limited accountability in the context of a more complex supervisory mandate is problematic. Hence, in order to ensure the democratic legitimacy of the ECB/SSM's supervisory policies, the ECB's supervisory mandate requires both a lower scope of independence and higher accountability requirements. To address this situation, organizational separation ("Chinese Wall") between the ECB monetary and supervisory arms was introduced. This separation includes different reporting lines and the relocation of the ECB's monetary function to a new building complex while leaving its supervisory function at the Euro-tower ("Two Towers"). This paper argues that these measures are not sufficient to establish proper checks and balances on the ECB's powers to pursue euro zone's wide supervisory policies. As a remedy, this contribution suggests that the ECB's Treaties-embedded independence, as set out by art. 130 TFEU, designed to carry out its monetary function shall not be fully applicable to its supervisory function. Indeed functional and conditional reading of this provision to ECB supervisory function could enhance the legitimacy of future ECB's supervisory action.

Keywords : accountability and transparency, democratic governance, financial management, rule of law

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