

Yves Mersch: Aligning accountability with sovereignty in the European Union - the ECB's experience

Speech by Mr Yves Mersch, Member of the Executive Board of the European Central Bank, at the ECB Legal Conference, Frankfurt am Main, 4 September 2017.

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Ladies and Gentlemen,

Let me also welcome you on behalf of the Executive Board to the ECB Legal Conference 2017.

Today and tomorrow we will discuss matters that are relevant not just to the ECB and the legal community, but also to the public. The legal order indeed has a direct impact on all our daily lives.

And it is of crucial importance to what we do at the ECB. With the ratification of the EU Treaties, the citizens of Europe made us independent and gave us a clear mandate. So it is entirely legitimate that we are held to account. We need to be able to show that we continue to act in accordance with our mandate; we do not need to enter into a contentious debate about changing it.

In fact, the demand for accountability has been increasing across advanced economies and across institutions. It's a trend that reflects questions stemming from the crisis as well as societal and technological change – people want more answers, more quickly. But we need to be mindful that direct, instant and constant communication does not necessarily translate into stronger accountability. In our constitutional democracies, parliaments and courts provide fundamental checks and balances, for good reasons.

The increased attention and stronger scrutiny we are facing at the ECB also reflects the growing importance and more direct impact of decisions taken at European level. Citizens in Europe witness the power exercised by EU institutions – and they want to be able to see that it is not wielded arbitrarily or from behind closed doors.

Today, I will discuss how these trends are affecting the ECB. And I will aim to draw some conclusions on how to align accountability with sovereignty in the EU's multilevel governance framework at a time when, according to the latest Eurobarometer survey¹, 68% of those polled say they feel they are citizens of the EU as well as citizens of their own country.

Independent, accountable and European

The survey shows that trust in the ECB has increased, albeit from a lower level than trust in other public institutions. Still, during the crisis, reduced trust in public institutions tempted some people to reopen the debate on central bank independence. They often argued that independence was incompatible with accountability on the basis of the trends I have described.

A critical assessment of why trust in public institutions fell is important, but questioning central bank independence is not the right approach – subjecting central banks to political influence is unlikely to make them more trusted. We know the economic argument – empirical evidence shows that political influence is more likely to lead to short-termism and make the central bank less effective in preserving price stability. But there is also a political argument – political influence does not necessarily mean stronger legitimacy, precisely because it is likely to arouse the suspicion that the central bank is politically motivated and may therefore deviate from its mandate for political reasons. So I would argue that independence does not weaken accountability, it strengthens it.

Accountability, in turn, ensures that independence does not lead to arbitrariness and that the

mandate is fulfilled. So, proper accountability arrangements strengthen the case for independence. And they reinforce each other as cornerstones of central banks' legitimacy and effectiveness.

At the ECB, our monetary policy mandate is for the euro area as a whole. And when the governors of the national central banks (NCBs) attend the Governing Council meetings, they are not representing their respective countries. They are there in a personal capacity and represent the interests of everyone in the euro area. So it is appropriate that we are held to account at European level, while the NCBs explain monetary policy decisions at national level.

Importantly, explaining decisions is not synonymous with exercising accountability. In principle, where a competence, such as monetary policy, has been fully transferred to European level, accountability should be practised at that level. This ensures that everyone in Europe has the same ability to hold us accountable through the same bodies, namely the European Parliament, complemented by judicial review by the Court of Justice of the European Union (CJEU). In other words, a single monetary policy requires single accountability, but in a multinational setting it can be explained through various channels.

Attempting to strengthen political ties to national political systems, "renationalising" accountability through the back door, if you will, would only risk undermining the singleness of monetary policy and threaten its independence. People and markets would end up suspecting that the ECB is responding to national interests instead of acting in the interests of the euro area as a whole.

Accountability during crises

Central banks played a key role in managing the crisis and implemented some controversial measures. Understandably, this triggered a demand for stronger scrutiny. The ECB was among the institutions that took such measures: preserving price stability was particularly challenging in an Economic and Monetary Union that was still incomplete. We were facing doubts about the integrity of the single currency, not to mention a unique institutional environment that lacked crisis management capacities.

We increased our accountability and transparency in line with the essential role we played in managing the crisis. And this was not only driven by external demands. It was in our own interest to provide the public and the markets with a comprehensive analysis of the economic situation and monetary policy decisions. For instance, we decided to publish the accounts of the Governing Council's monetary policy meetings. Of course, this higher level of transparency had to be counterbalanced by the need to maintain the frank and dynamic exchanges which make for efficient collegial decision-making. The accounts offer a fair and balanced reflection of policy deliberations by Governing Council members. They aim to provide clear and accurate information that elucidates the message, rather than overloads it with detail. However, there is a caveat: the growing importance of forward guidance has increased the risk of self-censorship in the official discussions.

Since the start of the crisis we have substantially increased our interaction with the European Parliament, our key counterpart in terms of accountability. In addition to the regular hearings, the ECB now participates in exchanges of views. The number of MEPs' written questions to the ECB has also considerably increased; the average number of replies to the Parliament per year has risen tenfold compared with the pre-crisis period. This is partly a reflection of the fact that we now have a broader role, albeit mostly in relation to financial assistance programmes and banking supervision.

Alongside this increased accountability, the CJEU has become more involved in judicial review of our actions in recent years. On the one hand, the Court has exercised its powers in relation to a wide range of central bank decisions and policies. Recent cases have seen it review not only monetary policy and supervisory decisions, but also technical advice provided within the

framework of the Troika and central banking policies, even where they do not involve the exercise of our decision-making powers. On the other hand, the Court's decisions have far-reaching implications, as recent rulings have confirmed that individuals can also challenge our conduct by seeking damages, in addition to asking the Court to annul our decisions for reasons of illegality. We need to ensure that all our actions, even when we are not exercising our core decision-making powers, also comply with the legal requirements that are intended to confer fundamental rights on individuals at EU rather than national level.

The European Ombudsman and the European Court of Auditors also play a role. The Ombudsman can act in matters involving the ECB regarding transparency and good governance, while the Court of Auditors examines our operational efficiency. The European Anti-Fraud Office has the power to conduct administrative investigations within the ECB for the purposes of fighting fraud, corruption and other illegal activity, as well as to investigate serious matters relating to the discharge of officials' professional duties.

Finally, we are also subject to the scrutiny of the European Data Protection Supervisor, which monitors and ensures that data protection legislation is appropriately applied to our data-processing operations.

Aligning accountability with sovereignty in the EU

The ECB's monetary policy provides an example of how sovereignty and accountability can – and, ideally, should – be aligned when transferring a competence to European level. It also shows that it is possible to keep pace with events and meet the demand for greater accountability from society, while respecting essential principles enshrined in primary law.

However, there are two challenges in this regard that I would like to discuss as they also have broader relevance for the EU, with its unique institutional framework.

First, the distinction between the euro area and the EU means that it is more difficult to fully tailor accountability to euro area tasks. In particular, the European Parliament does not sit in euro area composition when discussing euro area matters, even though it would be common sense for it to do so.

Second, accountability and sovereignty also need to be proportionate in areas that are not exclusively dealt with at EU level but of shared competence.

For instance, more specific arrangements within our accountability framework have been established for banking supervision. Although the SSM Regulation and interinstitutional arrangements focus mainly on relations with the European Parliament and the EU Council, the SSM Regulation also provides for specific reporting requirements to national parliaments. This reflects the significant potential impact of microprudential supervision on banks, their customers and public finances at national level and justifies *ad hoc* reporting at different levels. At the same time, the national competent authorities remain accountable at national level for their tasks in the context of the Single Supervisory Mechanism. These arrangements are, however, incomplete as the Single Resolution Mechanism backstop is not operational, and neither is the European deposit insurance scheme.

For other bodies, such as the European Stability Mechanism, the situation is somewhat more complex and blurred. It was created on the basis of intergovernmental arrangements and for tasks where the EU only has a coordination role, and where the European Parliament is not yet a counterparty in terms of accountability. So a balance needs to be found. On the one hand, accountability should be assigned to national parliaments for decisions that are fully in the hands of national authorities. On the other hand, it would seem appropriate for the European Parliament to be accountable for decisions that affect the interests of the EU as a whole.

Addressing the risk of an “accountability deficit”

Let me conclude.

Accountability and sovereignty need to be aligned to address risks of a perceived “accountability deficit”.

The development of the ECB’s accountability practices has ensured continued effective scrutiny, even as our role expanded as a result of the crisis. In turn, this has allowed the temptation of renationalisation to be resisted, in keeping with our European mandate.

Public opinion surveys suggest that Euroscepticism is now receding. But we should not be complacent, as trust in the ECB is only gradually returning.

Moreover, while European policies have assumed a stronger role over time, in many areas they still overlap with national policies. In those areas, confusion over the assignment of responsibilities and accountability arrangements threatens efficiency and legitimacy. We should reflect on how it can be addressed.

And there is a need for us to complete not only the banking union, but also the institutional set-up. This includes the ongoing debate on a euro area finance ministry and a euro area composition of the European Parliament.

This is important for two reasons. First, it would be a true reflection of a functioning democracy where sovereignty has been either fully transferred to EU level (e.g. monetary policy) or is shared between national and EU levels (e.g. prudential policies).

And second, liability and control need to be aligned – he who pays the piper calls the tune. When taxpayers’ money is involved at European level, a European control function is called for.

If, going beyond the Westphalian paradigm, EU citizens can receive rights and obligations not only through the national sovereignty channel but also directly through the EU channel, we need to adjust the institutions. This was already recognised at the Maastricht Treaty conference on political union in 1990. On a final note, let me just add that the return to intergovernmentalism for fear of Treaty changes will destroy the EU, as Europe, over the centuries, has repeatedly seen the breakdown of such alliances of dominant states.

Thank you very much for your attention. I look forward to the many fruitful discussions and exchanges we will no doubt have at this conference.

¹ Standard Eurobarometer 87.