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THE ACCOUNTABILITY OF THE EUROPEAN CENTRAL BANK: SKETCHING A  
COMPARATIVE PERSPECTIVE

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WORK IN PROGRESS

This paper looks at the issue of the accountability of the European Central Bank (ECB) from the standpoint of its legitimacy.

The rise of non-majoritarian institutions – namely of “institutions which, by design, are not directly accountable to voters or to their elected representatives” (Majone, 1996a: 3) - poses a problem of democratic legitimacy. This problem has become especially prominent in the case of the ECB, given that its institutional design is such as to make it minimally accountable to the European electorate or its representatives.

As the standard of democracy is usually taken to be majority rule, the issue of the ECB’s lack of accountability has generally been framed as a question of establishing forms of majoritarian control on the ECB by making it accountable to institutions that in turn are accountable to the European electorate, such as the European Parliament or the Council of Ministers.

This, however, supposes that either there actually exists a “European polity”, or that the different polities that make up the European Union subscribe to the same standard of democracy. In this paper, I intend to propose that the different European polities in fact have different benchmarks of democracy<sup>1</sup>, which in turn makes it especially difficult to find a common institutional model that would make the ECB legitimate.

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<sup>1</sup> On the need to set a given standard of democracy in order to evaluate the democratic performance of an institution, see Majone, 1998b.

## The European Central Bank as a Non-majoritarian Institution

Non-majoritarian institutions are institutions that operate outside the government hierarchy and therefore cannot be considered to be the ‘agents’ of any political ‘principal’ (Majone, 1998a: 20). They are, that is, independent institutions, where ‘independence’ refers to their having a specific set of features, such as budgetary independence, personnel independence, independence in the choice of goals and of instruments to achieve them, and above all independence in terms of whether their decisions can or cannot - under normal circumstances - be overturned by other bodies, specifically the electorate at large or electorally accountable bodies.

Such institutions do not represent per se a new development, as in all democracies the role of institutions such as an independent judiciary - insulated from the electoral pressures of a democratic system - has traditionally been to protect minorities from the tyranny of the majority and the polity in general from the vagaries of momentary passions. Moreover, non-majoritarian institutions have been especially important in federal systems<sup>2</sup>.

However, in recent years the non-majoritarian modus operandi has spread beyond the judiciary to policymaking, and central banks have been at the forefront of this trend.

While in the two decades following WWII central banks “were regarded as an integral part of the Government’s central policy-making machine” (Goodhart, 1994: 60),

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<sup>2</sup> In general, the very structure of a federal system entails institutional arrangements preventing the will of local polities from being diluted in and overridden by the will of the larger polity of the federation. The United States Senate - in which each state is represented irrespective of its population - is one such arrangement; another one is the EU Council of Ministers (Majone, 1998b: 11).

starting in the 1980s policy and academic circles have largely moved to support the idea of central bank independence. As a result, “more countries increased the independence of their central banks during the 1990s than during any other decade since World War II” (Berman and McNamara, 1999: 3)<sup>3</sup>, leading one observer to write that “a wave of change toward greater independence<sup>4</sup> for central banks is sweeping across the globe” (Cross, 1994: 128).

The ascendance of central bank independence, and more in general of non-majoritarian institutions, has been explained in a number of ways<sup>5</sup>, such as the need for technical expertise that politicians or a generalist bureaucracy do not have, the wish to economize time on the part of the legislators, and their wish to shift the blame for the possible negative impacts of policies onto the independent agencies<sup>6</sup>. A line of explanations that is often cited in the literature refers to the issue of reputation.

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<sup>3</sup> In fact, 30 central banks increased their independence in the 1990s alone, as opposed to a total of only 17 in the three preceding decades (see Maxfield, 1997: 4).

<sup>4</sup> Central bank independence can be classified according to different criteria. So, for instance, Masciandaro and Spinelli distinguish between political and functional independence, where the former is “the possibility for a bank to pursue a strategy of monetary policy consistent with price stability” and the latter “relates to the tactics of monetary policy, i.e. to the possibility of freely choose the instruments and techniques of monetary control which ultimately lead to price stability” (Masciandaro and Spinelli, 1994: 436); Elgie and Thompson distinguish between political and economic independence, where the former is defined as “the central bank’s ability to make policy decisions without interference from the core executive” (Elgie and Thompson, 1998: 24) and the latter as “the central bank’s ability to use the full range of monetary policy instruments without restrictions from the core executive” (Elgie and Thompson, 1998: 25; see also Alesina and Summers, 1993: 153); De Haan distinguishes among independence in personnel matters - which “refers to the influence that government has in appointment procedures” (De Haan, 1997: 398) - financial independence - no obligation to finance government spending directly or indirectly - and policy independence, which refers to “the maneuvering room given to the central bank in the formulation and execution of monetary policy” (De Haan, 1997: 399). In turn, policy independence can be distinguished as goal independence, which refers to whether the central bank “is free to set the final goals of monetary policy” (De Haan, 1997: 399), and instrument independence, which refers to whether the central bank “is free to choose the means by which it seeks to achieve its goals” (De Haan, 1997: 399).

<sup>5</sup> For a review, see Majone, 1998b: 16 and 1996b: 40-41.

<sup>6</sup> This is the so-called ‘scapegoat’ theory, according to which “independence serves politicians’ interests in having policy scapegoats, and central banks simply play along for the rewards of longer periods in office and substantial budgetary autonomy”(Dydon, Featherstone and Michalopoulos, 1995: 479); Elgie and Thomas in part support this kind of interpretation for the increasing independence of the Bank of England and the Banque de France (Elgie and Thomas, 1998: 144); for the United States, Kane interprets the

Policymakers, that is, must grapple with a problem that stems from their own discretionary power: Their lack of credibility arising from the problem of ‘time inconsistency’<sup>7</sup>. A policymaker’s discretionary power entails that a policy implemented at a certain time can be changed at a later time if it does no longer appear optimal. Policymakers, and in particular elected politicians given the ‘pro tempore’ nature of their office, might therefore find it necessary to set up a ‘commitment technology’, namely to delegate power to independent authorities that can commit themselves to specified policies over time<sup>8</sup>.

The need for such a ‘commitment technology’ is especially strong – it is argued – in the area of monetary policy. In the context of increased cross-border capital mobility, “credibility and reputation in monetary policy-making have become the indispensable resources of central banks in influencing market expectations<sup>9</sup>” (Dyson, Featherstone and Michalopoulos, 1995: 473), and central bank independence is precisely the instrument that can provide the needed credibility. The bank’s independence from political power allows it to make credible commitments to certain targets, in the first instance in terms of the rate of growth of money supply and, through the monetary aggregates, in terms of the

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independence of the Federal Reserve precisely as a way to provide political incumbents with a convenient scapegoat (Kane, 1980: 206-7).

<sup>7</sup> This problem is in the literature especially laid to the ‘pro tempore’ nature of democracy, namely the fact that at each election “the policies of the current majority can be subverted, legitimately and without compensation, by a new majority with different and perhaps opposing interests” (Majone, 1998a: 9). However, it affects absolute rulers as well: J. Lawrence Broz, for instance, points this out with reference to the creation of the Bank of England. The Bank was created in 1694 to attract funds for the war efforts of England against France. The government’s loans had gone badly undersubscribed as “at the time the government was a poor risk due to previous debt repudiations and confiscations of wealth” (Broz, 1994: 244) and the Bank was created precisely with the purpose of creating an institution separate from the government that would be credible by virtue of this separation.

<sup>8</sup> An independent agency provides the credibility of policy commitment and at the same time the flexibility to adapt to unforeseen contingencies that would be lacking from an arrangement depending on fixed rules (Majone, 1996a: 9).

rate of inflation. Credible commitments in terms of inflation mean that private actors will set their expectations of inflation on the targets endorsed by the bank; they will adjust their claims in nominal terms (prices and nominal wages) to the inflation rate endorsed by the central bank, thus prompting a faster and less painful adjustment of the economy<sup>10</sup>. This argument seems to be supported by econometric evidence<sup>11</sup> showing that countries with independent central banks have lower inflation - and no slower income growth - than countries where central banks are dependent from their governments<sup>12</sup>.

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<sup>9</sup> A similar observation can be found in Epstein, 1992: 2. Also, Quinn and Inclán find a correlation between the degree of financial openness of a country and the degree of independence of its central bank (Quinn and Inclán, 1997: 800).

<sup>10</sup> For a review of the models showing how an independent central bank that is more conservative (i.e., more inflation-averse) than the preferences of the majority of voters might in fact increase the general welfare, see Majone, 1998a: 15- 18).

<sup>11</sup> For a review, see for instance De Haan, 1997.

<sup>12</sup> It is important to note that both the argument and the econometric evidence are the product of what is currently mainstream economics. They are based on the assumption of the validity of the quantity theory of money, namely that money supply does not have any impact on real income in the long-term:

Let M = Money Supply; P = General Level of Prices; V = Velocity; Q = Aggregate Real Income

Then:  $MV = PQ$

Now, if V and Q are constant when M changes - as held by the quantity theory of money - then changes in M only affect P. The fact that money (specifically, the growth rate of money aggregates), does not have any long-term effect on real aggregates is also expressed by the fact that the Philips curve (which represent the relationship between the inflation and the unemployment rate), while negative in the short-term (thus showing a short-term trade-off between inflation and unemployment) is vertical in the long-term. In the long term, that is, there is a 'natural' rate of unemployment for the economy (or NAIRU: Not Accelerating Inflation Rate of Unemployment), compatible with different levels of inflation, and the actual level depends not only on the present and past rate of monetary growth, but on the credibility of monetary policymaking.

However, the fact that the growth rate of money supply only impacts the inflation rate is not uncontroversial. Keynesian and Post-Keynesian approaches hold that money has real effects, both in the short and in the long run (for a review of these arguments, see the Winter 1995 issue of the Journal of Post-Keynesian Economics). Even accepting the idea of a natural rate of unemployment, the management of the money supply may be needed to accelerate the process of adjustment to the long-term equilibrium (Cardim De Carvalho, 1995: 171); moreover, tight monetary policies have an impact on the structure of interest rates, typically lowering the long-term interest rates and keeping relatively high short-term interest rates. Thus, countries where investment is financed on shorter-term borrowing may see their growth stunted (this poses a problem of policy coordination in the case of countries with different financial structures but a centralized monetary policy; within the European Monetary Union credit in France, Britain and Italy is financed with shorter term rather than in Germany, and therefore a common anti-inflationary policy might have positive impacts on investment in Germany, and negative impacts in those other countries. See Smyser, 1994: 53). Also, sub-optimal equilibria might arise from the lack of coordination between monetary and fiscal policy (De Haan, 1997: 410-411), and econometric evidence exists that in fact "nominal wage rigidity seems to have no significant relationship with central bank independence" (Posen, 1998: 347).

Thus, one might need to be careful and not make the jump from correlation to causation in assessing the impact of independent central banks on currency stability. After all, it might well be that both central bank

Now, even within the context of increasing central bank independence worldwide, the ECB<sup>13</sup> stands out for having been designed to be especially independent. The ECB is in fact at least as independent as the Bundesbank, which is usually considered a paragon of central bank independence<sup>14</sup>. Thus, as for the independence in carrying out its statutory mandate of monetary policy<sup>15</sup>, “neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body<sup>16</sup>”. Compared to the Bundesbank, the ECB appears also to have more personnel independence: Just like in the case of the Bundesbank - where the members of

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independence and currency stability depend on “structural factors determining the social opposition to inflation” (Posen’s position, as reported in Bruni, 1996: 12; see also Goodhart, 1995: 67 and De Haan, 1997: 409). Moreover, the econometric evidence linking central bank independence to lower inflation rates might be tainted by the reliability problems of the way a bank’s independence is measured (Mangano, 1998).

<sup>13</sup> The Treaty on European Union (TEU), signed in Maastricht on 7 February 1992, established the European System of Central Banks (ESCB) as the institution in charge of the monetary policy for the member states participating in the final stage of the European Monetary Union. The ESCB “is governed by the Governing Council and the Executive Board of the ECB. The Governing Council comprises all the members of the Executive Board and the governors of the NCBs [National Central banks] of the Member States which have adopted the euro. The Executive Board comprises the President, the Vice-President and four other members appointed by the Heads of State or Government of the Member States which have adopted the euro. The ESCB is governed by the Governing Council and the Executive Board of the ECB and, as a third decision-making body of the ECB, by the General Council. The General Council comprises the President, the Vice-President and the governors of all 15 NCBs” (ECB, 1999: 12).

As the ECB is the central institution of the ESCB, in what follows I will normally use the two interchangeably.

<sup>14</sup> In a survey of seven widely cited indexes of central bank independence (including, among others, the indexes devised by Bade and Parkin, by Alesina and Summers, by Grilli, Masciandaro and Tabellini, by Cukierman, and by Eijffinger and Schaling), the Bundesbank ranks consistently as the most independent (Masciandaro and Spinelli, 1994: 440). An application of the Bade and Parkin, Alesina, Grilli, Masciandaro and Tabellini, Cukierman, and Eijffinger and Schaling indexes to the ECB (De Haan, 1997: 413) shows that in terms of independence the ECB scores as high as (in the Bade and Parkin and in the Alesina indexes) or higher than the Bundesbank (in the Grilli, Masciandaro and Tabellini, Cukierman, and Eijffinger and Schaling indexes).

<sup>15</sup> The statutory mandate of the ESCB is stated in article 105(1), TEU: “The primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies of the Community as laid down in Article 2.” The mandate is expressed in clearer terms than in the case of the Bundesbank Law (which generically refers to ‘safeguarding the currency’ in article 12). Also more clearly than the Bundesbank Law, the TEU establishes the primacy of price stability over any other objective.

the Directorate are nominated by the federal government - the members of the ECB's Executive Board are nominated by the governments of the member states<sup>17</sup>; however, the fact that the terms in office of the members of the Executive Board cannot be renewed reduces their incentive to accede to possible pressures coming from the governments<sup>18</sup>. Further, as regards financial independence, ECB is more independent than the Bundesbank since the latter can extend credit to the federal government in the form of small overdrafts, while this possibility is explicitly ruled out in the case of the ECB<sup>19</sup>.

Moreover, the statute of the ESCB is defined in the Maastricht Treaty and in an attached Protocol. As both the Treaty and the Protocol can only be modified by unanimous consent of the member states, changes in the statute are extremely difficult. This means that the ECB lacks even the incentive to take heed of society's preferences that would stem from knowing that a workable procedure exists to reduce the Bank's current level of statutory independence<sup>20</sup>.

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<sup>16</sup> Article 107, TEU. This article is reminiscent of article 12 of the Bundesbank Law, which states that in pursuing its statutory mandate, the Bundesbank is "independent of instructions from the Federal Government."

<sup>17</sup> Article 109a(2b), TEU, states: "The President, the Vice-President and the other members of the Executive Board shall be appointed [...] by common accord of the Governments of the Member States at the level of Heads of State or of Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB. Their term of office shall be eight years and shall not be renewable."

<sup>18</sup> A further telling difference with the case of the Bundesbank is that - contrary to the procedure for the appointment of the Directorate - the Governing Council of the ECB is consulted on the appointments to the Executive Board.

<sup>19</sup> Article 104, TEU.

<sup>20</sup> It would very difficult for a hypothetical majority of voters in the EMU member states to affect a change in the status of the ECB, since any such change should receive the unanimous consent of the EU member states (including any that might have not joined the EMU yet). In comparison to the Bundesbank Law - which is an ordinary law that can be changed through the normal parliamentary procedure - the Treaty can be assimilated to a 'rigid constitution' (that is, a constitution under which certain laws generally known as constitutional or fundamental laws cannot be changed in the same manner as ordinary laws", A. V. Dicey, quoted in Brentford, 1998: 76). The measure of accountability that is present in the institutional design of the Bundesbank is therefore almost completely absent in the case of the ECB. It is interesting to note that the governors of the central banks who drew up the project for the Protocol that provides the statute of the ECB gave the protocol the same juridical value as the Treaty, precisely to ensure its rigidity (Louis, 1995: 53).



### The Accountability of the ECB: Cause for a Legitimation Crisis?

The fact that a non-majoritarian institution such as the ECB is independent of any electorally accountable institution does not mean that it is not accountable altogether. What one might call ‘diffuse accountability’ can be achieved through “a system of multiple control” (Majone, 1996b: 300) based on “clear and limited statutory objectives to provide unambiguous performance standards; reason-giving and transparency requirements to facilitate judicial review and public participation; due process provisions to ensure fairness among the inevitable winners and losers from regulatory decisions; and professionalism to withstand external interference and reduce the risk of an arbitrary use of agency discretion”, so that “no one controls [the] agency, yet the agency is ‘under control’” (Majone, *ibid.*).

Put in these terms, to a certain degree the ECB is indeed accountable. The ECB is subject to judicial review from the European Court of Justice<sup>21</sup>, its objective is clearly stated, and furthermore – as we saw above - it does not enjoy complete personnel independence. In terms of transparency<sup>22</sup>, the ECB is open to external monitoring on the

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<sup>21</sup> Article 35, ESCB Statute. However, “one should not expect an abundant amount of case law from the Court of Justice regarding the policies of the ECB. The latter will enjoy a large margin of autonomy in the determination of monetary policy and the judges will be able to exercise only minimal control on questions of opportunity” (Louis, 1995: 75; my translation).

<sup>22</sup> This term denotes “a requirement that acts of government be understandable to the persons concerned and, when appropriate, accessible to the public, reasoned and clearly drafted” and is therefore “closely related” to the protection of individual rights (Neuwahl, 1994: 40). In the case of the ECB, transparency, moreover, might also have an impact on the effectiveness of the institution, as “the credibility of the monetary policy framework is enhanced if the latter is clearly understood by market participants. This implies that it has to be relatively simple and explained by the ECB to the public” (Bini Smaghi, 1996:28). A similar connection between credibility and transparency was made by the British government when it announced – in the aftermath of the ‘Black Monday’ (September 16, 1992, when sterling was taken out of the ERM) – that the Bank of England would publish an Inflation Report “monitoring the government’s progress in pursuing the inflation target” (Elgie and Thompson, 1998: 77). It is worth noting that the

part of the Commission and Ecofin Council principally, but also of the European Parliament and European Council<sup>23</sup>. A further measure of transparency comes from the fact that the ECB will have to make public its monetary and inflation targets<sup>24</sup>.

Now, how does this measure of accountability affect the overall legitimacy of the ECB? If one considers the rule of law<sup>25</sup> as a “legitimizing factor” (Obradovic, 1996: 196), then it might be argued that this ‘diffuse accountability’, possibly buttressed by

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connection between transparency and credibility can be interpreted more in general as a aspect of the connection between legitimacy and effectiveness of a non-majoritarian institution. A number of authors have analyzed it with respect to the judiciary (see for instance Gibson and Caldeira, 1995). In the case of an independent central bank, independence without any form of even diffuse accountability might lead to a situation in which the central bank itself becomes the natural terrain of political conflict (thus Pierluigi Ciocca, Bank of Italy’s vice-Director General, as reported in Predieri, 1996: 112), thus in fact imperiling the institution’s independence. Moreover, if the central bank is perceived by the markets to be obdurately unresponsive to the preferences of public opinion, it risks to become less credible in its own commitment to the unpopular policy course, as the markets might anticipate that either it will eventually cave in to these preferences (through, for instance a process of general receptiveness to “changes in the public’s mood” as described in Flemming and Wood 1997: 493 with reference to the U.S. Supreme Court; on this, see later) or that electorally accountable institutions will publicly exert pressure to achieve a change in the policy course (an illustration of this might be the recent, and successful, pressure exerted by the left-leaning governments of the European Union on the ECB to reduce the interest rates in the face of deteriorating growth prospects. In particular, Eijffinger, Hoerberichts and Schaling (1998) show how an independent central bank that adopts a policy of transparency achieves a lower expected inflation rate than an independent and non-transparent central bank, but also that it will provide less stabilization in case of supply shocks. in a simila vein, with reference to the increased independence of the Bank of Italy, the economist Antonio Pedone (Il Sole 24 Ore) ascribes the good results of the increased central bank independence on Italy’s monetary policy to the fact that a measure of accountability has been maintained, thus preventing policy rigidities that would make the central bank less effective in dealing with “unforeseeable exogenous shocks” (my translation).

<sup>23</sup> Article 109b(1), TEU states that the president of the Ecofin Council and a member of the Commission “may participate, without having the right to vote, in meetings of the Governing Council of the ECB”, and article 109b(3) states: “ The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also the European Council. [...] The President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent Committees of the European Parliament”. Furthermore, Art. 15 of the Statute of the ECB states that the ECB has to publish a report on its activities at least quarterly as well as a weekly consolidated financial report. Through the Ecofin Council, all member states (also those in derogation to the third stage of monetary union) will be able to monitor the activities of the ECB. A further monitoring opportunity is offered to the ‘Euroland’ states (that is, the members participating in the final stage of the monetary union) by the presence of the national central bankers in the Governing Council of the ECB.

<sup>24</sup>This provision was made in 1997 by the European Monetary Institute (EMI) (Brentford, 1998: 100). The EMI was created at the 1992 Maastricht Intergovernmental Conference to “contribute to the realization of the conditions necessary for the transition to the third stage of Economic and Monetary Union” (Article 2, EMI Statute).

measures to enhance the ECB's current level of transparency<sup>26</sup>, will in fact be sufficient to give legitimacy to the ECB, especially if this institution will be perceived to be effective in pursuing its statutory goal of defending monetary stability and if a degree of responsiveness to the preferences of public opinion is introduced through the appointment mechanism<sup>27</sup>.

A legitimation strategy that relies mainly on transparency<sup>28</sup> and effectiveness, however, risks being inadequate to the task of making the ECB legitimate. An institution will be legitimate if it enjoys diffuse support in society, namely if – despite the occasional disagreements that are bound to happen with regard to specific policies – citizens will “concede its authority as a political decision maker” (Caldeira and Gibson, 1995: 357). Now, this diffuse support – while inextricably bound to the perceived effectiveness of the institution (Rothschild, 1977: 488) – cannot rest on utilitarian considerations alone, not only because it would risk to lose the allegiance of those who might lose from its

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<sup>25</sup> Namely the idea “that the powerful and their agents, whatever influence they may exercise over the formulation of the law, are themselves subject to it, and have to conform to recognized procedures if the wish to change it” (Obradovic, 1996: 196).

<sup>26</sup> The overall transparency of the ECB is diminished by the decision not to publish the minutes of the meetings of the ECB for sixteen years (to give a term of comparison, the minutes of the meetings of the Federal Reserve are made public after two weeks). This decision has officially been taken to shelter the national central bankers from the pressure of their governments (Financial Times, 11/12/1998. In fact, this motivation for secrecy does not seem to take into account that protection from pressure is to a certain extent provided by article 107 and article 108 TEU, which require that the central banks of the member states participating in the last phase of monetary union are independent of their national governments).

<sup>27</sup> An example of a non-majoritarian institution which is supposed to be at least partly responsive to public opinion through the appointment mechanism is the U.S. Supreme Court, whose members are appointed by the President of the United States. On this see Flemming and Wood, 1997; Mishler and Sheehan, 1993; George and Epstein, 1992. All these authors agree that Supreme Court decisions do show a measure of responsiveness to public opinion, possibly with a five-year lag (Mishler and Sheehan, 1993: 97), and possibly on certain issues and not others (Flemming and Wood, 1997: 470). The latter authors, however, suggest that the responsiveness of the Supreme Court is due less to institutional design (appointment mechanism) than to the judges' general receptiveness of “changes in the public's mood” (Flemming and Wood, 1997: 493).

<sup>28</sup> Beyond the case of the ECB, the overall legitimation strategy of the EU as conceived by the Commission seems to rely heavily on the assumption that “if the public has greater access to more relevant and more attractively presented information about the EU and its policies, disaffection, skepticism and hostility will decline” (Lodge, 1994: 359).

policies, but because – even if there are no or only negligible redistributive effects - support based on “*purely* material interests and calculations of advantages” would necessarily be unstable (Weber, 1978: 213; emphasis in the original). The legitimacy of an institution, then, rests on being considered “the most appropriate for society” (Barkin and Cronin, 1994: 107), where this appropriateness depends not only on material considerations, but also on “affectual and ideal” elements (Weber, 1978: 213). Now, at least in the West, one such ideal element is the perceived democratic nature of the institution (Weiler, 1992: 19). Thus the legitimacy of the institution will crucially rest on the notion of democracy the polity holds. Now, according to Arend Lijphart “majority rule is a ‘Kuhnian’ paradigm (Lijphart, 1991: 490), namely an unquestioned model of democracy. If indeed the prevailing standard of democracy in a polity is majority rule<sup>29</sup>, then a non-majoritarian institution will necessarily be perceived as illegitimate, no matter how ‘diffusely accountable’ and effective careful institutional design might have made it, precisely because it is non-majoritarian and therefore contravenes the standard of democracy held by public opinion.

If the people of the EU member states do hold a majoritarian conception of democracy, then the ECB faces a ‘legitimation crisis’ that stems precisely from its being unaccountable to the electorate, and that can be solved only by making it dependent on

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<sup>29</sup> In its ideal-type form, majority rule asserts that majorities have the right “to control all of government – legislative, executive, and, if they have a mind to, judicial – and thus to control everything politics can touch” (Elaine Sptiz, quoted in Lijphart, 1991: 485). It goes without saying that this is only an ideal type, and that all forms of majoritarian democracy have set limits to the will of the majority.

institutions that are politically accountable, such as the European Parliament<sup>30</sup> or the Council of Ministers<sup>31</sup>.

However, the European Union does not constitute a single polity, and the various polities that constitute it do not subscribe to the same democratic model. Beside the majoritarian model, there exists another model, consensual and tendentially non-majoritarian.

### Two Alternative Models

Robert Reich suggests that there are two models of democratic policymaking, based on different assumptions on human nature<sup>32</sup>. One assumes that:

“People are essentially self-interested rather than altruistic and behave much the same way whether they are choosing a new washing machine or voting on a new board of education. *These personal preferences are not significantly affected by politics, social norms, or previous policy decisions.* The public good, or ‘public interest,’ is thus best understood as the sum of these individual preferences. Society is improved whenever some people’s preferences can be satisfied without making other people worse off. [Government is strictly a] problem solver, intervening when it can satisfy pre-existing preferences more efficiently than the market can. Democratic processes, in this view, are primarily means for alerting policy makers to what people want for themselves.” (Reich, 1988: 1-2, 5; emphasis added).

The alternative view assumes the existence of a common good that can be arrived at through the public debate of different ‘public ideas’. In this view, policy-making has a

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<sup>30</sup> See for instance Manzella, Andrea (1998) “Il Parlamento dopo L’Euro” La Repubblica, June 20, 1998.

<sup>31</sup> However, it should be noted that both the European Parliament and the Council of Ministers have their own problems of legitimacy. The European Parliament suffers from the legitimacy problem common to all centralized institutions in a new federal system, namely the fact that in a new federal system the federal institutions might intrinsically lack legitimacy because they represent a federal polity that is not yet considered legitimate by the polities of the member states, so that decisions democratically made at the federal level might not be accepted if they override the decisions made at the national level (Dahl, 1989: 197-204). The Council of Ministers suffers from the same problem whenever it makes decisions by majority rather than unanimity.

more active - almost maieutic – role, namely to help society articulate its idea of common good and guide society towards attaining it:

“The core responsibility of those who deal in public policy [...] is not simply to discover as objectively as possible what people want for themselves and then determine and implement the best means of satisfying these wants. It is also to provide the public with alternative visions of what is desirable and possible, to stimulate deliberation about them, provoke a reexamination of premises and values, and thus to broaden the range of potential responses and deepen society’s understanding of itself. [Policy-making] can help the public discover latent contradictions and commonalities in what it wants to achieve. [...] The public manager’s job is not only, or simply, to make policy choices and implement them. It is also to participate in a system of democratic governance in which public values are continuously rearticulated and recreated (Reich, 1988: 3-4, 123-4)”.

The first model finds expression in the majority rule paradigm, while the second in consensual forms of democracy, where governments, that is, are responsive not to a simple majority of people but to “as many people as possible” (Lijphart, 1991: 483).

This latter conception, thus, emphasizes the participatory aspect of democracy, as a system in which “all who are affected by a decision should have the chance to participate in making that decision [rather than a system in which] the will of the majority will prevail” (Lewis, quoted in Lijphart, 1991: 491).

The consensus paradigm of democracy is founded on the idea that society can express a common concept of the good, and that the state has the task not only to implement this common vision of the good but to help shape it. Voting, in this view, cannot alone attain the good. The legitimacy of an institution, then, does not come necessarily from simply being the product of a voting process – from being, that is, accountable to the electorate. It might also come from being perceived as the embodiment of the idea of the good that society expresses through public debate. In this

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<sup>32</sup> These two models, it is worth reminding, are ideal types. In their actualization as systems of governance the difference between them “is one of degree and emphasis” (Reich, 1988: 6).

view, democratic legitimacy stems from the sovereignty of the people as ‘public opinion’ – “private people who relat[e] to each other [...] as a public” (Habermas, 1991: 28) - rather than simply as self-interested individuals who vote. In this case, an institution might be considered legitimate according to the consensual view of democracy precisely because it is non-majoritarian, namely independent of institutions that are simply the product of a voting process.

In Italy, for instance, the consensual paradigm is prevalent. Italian political culture<sup>33</sup> has traditionally articulated in its dominant traditions – Catholicism and Socialism - the idea of the common good not as a mere sum of individual preferences but as the expression of the values of society and on which, therefore, a consensus can be reached.

The concept of common good has thus shaped the republican constitution, which has as its goal the fostering of “the full development of the person” and the “spiritual and material dignity of every individual<sup>34</sup>” (Ortino, 1979: 14 and 159; my translation).

The idea that there exists a common concept of the good - which in the last few years found expression not only in the choices of consensual policy strategies<sup>35</sup>, but in the

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<sup>33</sup> And this – one would be tempted to say - not despite but precisely *because of* its deep ideological divisions. As Lijphart points out, it is divided societies – namely those which are “sharply divided along religious, ideological, linguistic, cultural, ethnic, or racial lines into virtually separate sub-societies with their own political parties, interest groups, and media of communication” (Lijphart, quoted in Majone, 1996b: 286-7) – that need consensual forms of democracy.

<sup>34</sup> The Italian Constitution also expressed the *Zeitgeist* of the years after WWII; in 1950, just a few years after the Italian Constitution was drafted, Marshall published his famous *Citizenship and Social Class* on social rights, defined as “the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society” (Marshall, 1950: 11).

<sup>35</sup> One can think of the so-called ‘concertazione’, a national social bargaining method that created and maintained consensus through triangulation among unions, government and employers. This strategy is considered one of the key factors that have allowed the reforms necessary for Italy to join the EMU in the first round (see interviews by former Prime Ministers Romano Prodi, *L’Expansion*, 1998: 72, and Carlo Azeglio Ciampi, *Corriere della Sera*, March 20, 1998). In 1992, the union leader Giorgio Benvenuto

very success of ‘technical’ governments in dealing with the unions precisely because they were “removed from the political party sphere<sup>36</sup>” (Braun, 1996: 210) – is also the basis of the Bank of Italy’s self-conceptualization<sup>37</sup> and is the root of the social support for the Banca d’Italia. The Bank of Italy has for a long time been one of the institutions most respected and trusted by the Italian public opinion. This achievement is not a simple case

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warned that the country could accept spending cuts only with a government with “great moral authority” (*La Stampa*, May 31, 1992).

<sup>36</sup> A similar connection between autonomy from “a narrow cluster of class interests or regional or religious communities” and the legitimacy of the democratic regime is to be found in Spain (McDonough, Barnes, Lopez Pina, 1986: 738).

<sup>37</sup> Antonio Fazio, the current Governor, opposes the concept that the “government must be neutral on what might be called the question of the good life” (Dworkin, 1985: 191) and embraces the idea of a common good that the State must advance:

“In the polity, the purpose of the State is to pursue the general interest, the common good whence the good of society descends. This good is based on the classical ‘philia’, on civil friendship, on the concept of full citizenship. The public good, the general interest cannot be a mere aggregation and composition of individual interests” (Fazio, 1998: 20; my translation).

Fazio rejects the vision of the individual reduced to mere “homo oeconomicus” - defined as “the self-contained individual who, although gifted with intelligence and creativity, only aims at furthering his own interest - (Fazio, 1999d: 9; my translation), as the person is more than the self-interested individual:

“The human being is open to all relations and concepts that his environment expresses, and projects himself towards the reality beyond and before himself. He is a social entity that find realization in a world of values that do not originate only within him” (Fazio, 1999: 9, my translation).

The purpose of the State is precisely to realize this “world of values” by fostering ‘full citizenship’, namely full participation in the life of society. People, then, have a right as well as a duty to participate in associated life, and the principal way of participating is through work: “One participates in society through one’s work” (Fazio, 1998: 7, my translation).

Work is in fact both a contribution to the joint quest for the common good and the way for achieving individual dignity, personal development and self-realization:

“Working means making a contribution to the creation of the wealth, not only in a material sense, of the society one belongs to and is an integral component of one’s dignity. The inability to contribute to this wealth offends the person as well as his/her family” (Fazio, 1999: 11-12; my translation).

And quoting from Pope John Paul II: “Work is the vocation of every person. The human being finds his expression and realization in his work” (Fazio, 1999: 12, my translation).

Thus, if society has the right to ask that its members contribute to it, it also has the duty to preserve its members’ dignity. This “centrality of the person” (Fazio, 1999: 9, my translation) vis-à-vis the State on the one hand and the free market on the other is the foundation of the Constitution, and is at the core of Fazio’s thought as well. He rejects the ‘laissez-faire’ as a conception that leads to the ‘dissolution’ of the common good (Fazio, 1999: 7) and embraces the Constitution as an expression of ‘personalismo’, namely of the moral centrality of the person (Fazio, 1999, especially pp. 8-7 and Fazio, 1998, especially p. 5-7).

This is at the basis of the principle of social solidarity, which entails that the State as the political expression of society has the duty to create the conditions that will allow people to be gainfully employed. This, however, must be achieved not through the direct provision of jobs by the State – what Fazio calls a sort of short-circuit of the right to work (Fazio, 1999: 13). - but by fostering the conditions for the creation of jobs by the private sector, namely by increasing competitiveness. Specifically on currency stability, Fazio declared: “The currency is common good that must be regulated in the interest of all” (*La Stampa*, December 12, 1993; my translation). On the former Governor Ciampi’s concept of the common good and the role of the Bank of Italy in achieving it, see Gai, 1995: 48.



of 'legitimacy by results', as the Banca d'Italia has enjoyed high social support even in the periods of high inflation and high unemployment. Rather, it is due to its being perceived as one of the few institutions over which parties have not extended their control, and that therefore has been able to focus its patrimony of technical skills on the pursuit of the common good<sup>38</sup>.

### Legitimation through Participation in the Public Discourse

A consensual paradigm of democracy relies on the idea that there is a common good which is not the mere summation of individual interests and is autonomous from them. If to this we add the idea that this common good can be discovered through public debate in the public sphere<sup>39</sup>, we can conclude that policy-making institutions might have a central role to play not only in implementing the concept of public good but in guiding society towards it by appropriately shaping the public discourse that defines the public good<sup>40</sup>.

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<sup>38</sup> As Goodman reminds us, the Bank of Italy has been one of the few institutions that has consistently stood apart from the strategy of accommodation to special groups (whether they be political, social or geographical) that gave Italy the sobriquet of 'available state' (Goodman, 1992: 142), and this earned the Bank a veritable 'veneration' in the country (Goodman, 1992: 143). There is no dearth of indication that the aura of respect for the Bank of Italy rests on it being considered dedicated to the pursuit of the common good, see for instance the comment by the European Commissioner Mario Monti about the Bank of Italy having "the function of being the critical conscience and a stimulus for national politics" (*La Stampa*, May 31, 1998; my translation) or the presentation of Carlo Azeglio Ciampi as "the conscience of the peninsula" (*Le Monde*, May 8, 1993; my translation).

<sup>39</sup> A notion that – as Habermas points out – is integral to the development of modern democracy (Habermas, 1991). The public sphere that developed as bourgeoisie rose to power in Western Europe, "is looked upon not only as autonomous, but as the setting for education in political virtue and civic responsibility" (McDonough, Barnes, Pina, 1986: 738). The typical expression of this sentiment is to be found in John Stuart Mill's *Representative Government*.

<sup>40</sup> One can thus in fact configure a *duty* of the non-majoritarian institution to directly address the public opinion. This position has for instance been made in Italy with reference to the President of the Republic (Dogliani, 1997: 228-9).

Thus, if one pillar of the legitimacy of non-majoritarian institutions is their being perceived as the expression of the common good, the other is their participation in the public discourse. Now, just the fact that non-majoritarian institutions are placed outside of the hierarchy of government tends to create a public discourse on certain issues<sup>41</sup>.

In the case, for instance, of independent central banks, governments can no longer simply order the central banks to carry out their preferences; as a result, governments need to engage in a public debate with the central banks in order to convince the central banks and the public that the policies they prefer are in fact the most appropriate.

Some evidence that increased independence leads central banks to achieve a higher public profile can be derived by the cases of Italy and France, as in both countries central banks have become much more confrontational towards other actors after they have obtained greater independence.

In the case of Italy, the progress of the Bank of Italy towards greater independence from the government started in 1981 - under Carlo Azeglio Ciampi's governorship - with the 'divorce' from the Treasury which freed the bank from the obligation of buying government debt. It then considerably advanced with the law number 82 of February 7, 1992, which gave the Bank of Italy sole responsibility to set the discount rate.

Now, under Ciampi's governorship a few examples of this higher profile of the central bank are the advocacy of greater competition in the service sector (Il Sole 24 Ore December 13, 1991), the conflict between the central bank and the Antitrust Authority on

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<sup>41</sup> In Majone's words: "An [independent] agency structure may favor public participation, while the opportunity for consultations by means of public hearings is often denied to government departments;

the ownership structure of the Generali insurance company (Il Sole 24 Ore, March 12, 1992), or the earnest invitation to the 'political class' to be more responsible (Il Sole 24 Ore June 14, 1992).

The current Governor, Antonio Fazio, had a quite contentious relationship with the Prodi government, especially with regard to the level of the interest rates<sup>42</sup>. The conflict surfaced already in the first weeks of the Prodi's government, in the 1996 Considerazioni Finali<sup>43</sup> of the Banca d'Italia, in which not only did the Governor urge the new government to proceed with structural cuts to current account public spending, but he warned that he would only cut the interest rates when the inflation rate went under the 4% mark. (Financial Times, June 1, 1996); moreover, a few months later he criticized the government's forecast of economic growth as too optimistic (Corriere della Sera, November 4, 1996). The 1997 Considerazioni Finali repeated the same message: The government's plan for financial reform was based on an excessively optimistic growth forecast and he would not cut interest rates - in 1997, public current account spending

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[furthermore] specialized agencies are able to focus public attention on controversial issues thus enriching public debate" (Majone, 1999: 9).

<sup>42</sup> To be sure, other issues have also surfaced from time to time. One could think of issues such as the parity of the Italian Lira when it was readmitted into the ERM in November 1996 (both the government and industrialists would have wanted the Bank of Italy to negotiate a lower exchange rate for the lira when it re-entered the ERM in November 1996 than the 990 LIT/DM that was in the end agreed upon - Corriere della Sera, December 4, 1996 and February 7, 1997), the cut of the pensions of Bank of Italy employees (in November 1997 the government applied the provisions of the recently approved pension reform to the pensions of the Banca d'Italia; this stirred discontent in the central bank and prompted the Governor to come in the defense of the pension entitlements of the Bank's employees; which in turn was dubbed as inconsistent by the government as well by many groups affected by the pension reform - Il Mondo, November 22, 1997: 96-99), or the still open issue of the supervisory role of the central bank over the banking system (a role that is under renewed attack within the context of the newly established ESCB, as the ECB is pushing towards moving banking regulation and supervision to the European level - see the recent public position in favor of this solution taken by Padoa Schioppa - Financial Times, February 25, 1999; Padoa Schioppa had already advocated depriving the Banca d'Italia of its supervisory role in 1997, when he was the chairman of CONSOB, the Italian stock exchange regulatory agency - Il Mondo, December 7, 1997: 18- , an approach that Fazio adamantly opposes, as the Banca d'Italia is one of the European central banks with the largest supervisory powers - Bruni, 1996: 7).

<sup>43</sup> The report on the state of the economy that the Governor of the Bank of Italy presents to the public every year on the 31st of May.

(wages of public employees, pensions, health care) were 48% of GDP, while public investment was only 3.4% of GDP, one of the lowest ratios in the EU (Targetti, 1998: 1041). Last year, the message sent by the 1998 Considerazioni Finali did not change: The government's growth forecast is too optimistic - the government had forecast a 2.5% growth rate, and the Banca d'Italia suggested that it would be at most 2%; the actual growth rate turned out to be 1.4 % in real terms (ISTAT, 1999) - current spending for pension entitlements and public health is too high, and so are taxes (Il Sole 24Ore, May 31, 1998, Corriere della Sera, June 1, 1998, Financial Times, June 15, 1998).

All this while, the Banca d'Italia was under pressure to cut the interest rates from the industrialists' association (Confindustria) - see, for instance, Corriere della Sera, May 24, 1996 - the government<sup>44</sup> and part of the media (in particular the daily La Repubblica and the weekly L'Espresso).

In France the 1993 reform of the Banque de France (fully operative since January 1994) greatly increased its economic independence, in fact modeling the new statute after the indications set by the Maastricht Treaty for the ECB (Elgie and Thompson, 1998: 133), as well as its political independence (although the government reserved for itself the power to appoint the members of the policy-making institution within the Banque, namely the Conseil de la Politique Monétaire).

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<sup>44</sup> The recorded instances of conflict are very numerous. Here are a but few examples: Decrying the very high unemployment rate, especially in the South, Fazio pushes for the elimination of the labor market rigidities that prevent employment conditions from adapting to the evolution of productivity and labor demand, to which Prodi answers by asking for a reduction in the interest rates (Corriere della Sera, January 25, 1998: 7); in June 1997, after the Finance Minister, Vincenzo Visco, had declared urged the Banca d'Italia to cut the interest rates (Il Mondo, December 7, 1997), Fazio answered that he would not 'drug the economy' by cutting interest rates when the government has not yet proceeded to the restructuring of public finance with a shift of resources from current account spending to productive investments His sentence "if you want to drug the economy, call someone else for the job" made headlines. He later commented that his menace to resign had been 'in jest' (Corriere della Sera, June 13, 1997) (La Stampa, June 13, 1997)

The government and the central bank started a relationship that got partly played out in public<sup>45</sup> and in which “each side let the other know what it wanted and what it was willing to do in order to bring it about” (Elgie and Thompson, 1998: 140). The new institutional arrangement in act does bring out contrasts between the two institutions out in the open. In marked contrast to the pre-reform era, when the Governor of the Banque de France – Oliver Wormser - was fired by Giscard D’Estaing simply for urging the “redoubling of effort in the fight against inflation” in an interview to the “Le Figaro” newspaper (Goodman, 1992: 116), examples of a more vocal role of the central bank in the public discourse after the increase in its independence from the government are the declaration of the Banque de France that expressed its alarm for the possible abandonment of the ‘politique de rigueur’ (Le Monde, April 13, 1995) - which caused the angry reaction of both Chirac and the Socialists (Le Monde April 19 1995 and May 29, 1995) - the conflict between the two institutions over the level of the interest rates (Le Monde September 30, 1995; October 19 1995, October 29, 1995 and November 3, 1995), or the Banque de France’s invitation to the government to reduce the government deficit (Le Monde January 25, 1997).

Now, with a view on the possible strategy choices of the ECB to establish its legitimacy, one might ask whether the more vocal role taken on by these central banks has increased their legitimacy. This paper does not aim to answer this question; however, it can offer a couple of observations.

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<sup>45</sup> As well as privately, as most high ranking officials both in the government and in the Banque de France belong to the same technocratic elite (Le Monde April 4, 1995), are very familiar with each other and move interchangeably from one position to the other (for instance, the current Governor of the Banque de France, Jean Claude Trichet, used to be at the Treasury)

In Italy, the reform process towards greater independence of the central bank was indeed initiated by the government with the 1981 'divorce' (Goodman, 1992: 143). However, the Bank of Italy's independence was defended - against often vicious attacks from the government (see for instance the description of the 'Bank of Italy Affair' in Goodman, 1992: 169) - and in fact enlarged thanks to the widespread support for the institution in the country (Goodman, 1992: 169, 180), and in turn this support might have been bolstered and firmed up by the Bank's practice of directly addressing the public opinion through both Bank publications (including, but not limited to, the famed *Considerazioni Finali*) and the media (Predieri, 1996: 65-6, 97-8). It is in fact worth noting that all the steps taken to increase the Bank's independence (not only those mentioned in the text, but also those, for instance, that increased the Bank's supervisory role over the banking sector) were preceded by public declarations of the Bank advocating them in the *Considerazioni Finali* (see for instance Gai, 1995<sup>46</sup>).

In France, on the contrary, a more vocal Banque de France seems to have generally been greeted negatively, as the expression of the hegemonic tendencies of a non-democratic institution (*Le Monde*, January 31, 1995) and of a technocratic mode of governance (*Le Monde*, February 1, 1999).

In Italy, then, there is some indication that the high profile of the central bank in the public discourse might increase the social support towards it, while in France the central bank's taking a more vocal stance seems to be negative in terms of its legitimacy.

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<sup>46</sup> It is also interesting that the increased centrality of the Bank of Italy in the country's public discourse on the economy proceeded *pari passu* the development of an extra-constitutional power of public address (the so-called "potere di esternazione") for another institutional figure that is considered the embodiment of the will of the nation, namely the President of the Republic (Dogliani, 1997).

Tentative explanations of the difference between French and Italian public attitude towards the role of the central bank might be that the Banque de France is perceived as not enough engaged in public debate (Le Monde, April 12, 1994 and August 5, 1995), a more majoritarian inclination of the French polity (as expressed by the greater power of the executive and the more limited independence of the judiciary than in Italy), or the fact that in France the government has traditionally been considered – regardless of the validity of this view in reality - relatively independent “from all societal pressures” (Goodman, 1992: 103), and therefore the repository of the public will. In this latter case, a shift of policy-making responsibility from the government to the central bank would clash with both the majoritarian and the non-majoritarian paradigms of democracy.

## Conclusions

The argument of this paper is that the legitimacy problem of the ECB cannot be tackled by either the majoritarian or the non-majoritarian paradigms of democracy alone as among the EU member states both conceptions are present. Therefore, institutional solutions based on either model alone (for instance either increasing the accountability of the ECB towards the European Parliament according to the majoritarian model or the ECB's 'diffuse accountability according to the non-majoritarian model') are not an answer to the legitimacy problem stemming from the ECB's insufficient accountability because they would clash with the model that was not implemented<sup>47</sup>.

Further, the issue of the ECB's legitimacy gains another dimension if we consider the question of how the ECB is going to relate to the public opinion of the EMU member states. In countries such as Italy, where a consensual model of democracy prevails and the central bank is already perceived as the expression of the public will, a higher profile of the central bank in the public discourse might enhance its legitimacy. The case of France, however, seems to indicate that in other European countries the higher visibility of the central bank might in fact rather weaken its legitimacy. A strategy of high visibility to increase its legitimacy is therefore not open to the ECB.

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<sup>47</sup> To be sure, the ECB might never be legitimate in terms of a consensus model of democracy based on the notion of a common good, because there is no European 'community' to which this notion would apply. Therefore, even the consensual polities – it might turn out – will fall on the side of the majoritarian model of accountability for the ECB, which would then be the only model of accountability for the ECB accepted by the polities of all the EMU member states.



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