



EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB-PUBLIC

European Central Bank Legal Conference

*“Shaping a new legal order for Europe:  
a tale of crises and opportunities”*

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4 and 5 September 2017

ECB main building

Frankfurt am Main

programme

Monday, 4 September 2017

- 09:00 Registration
- 09:30 **Welcome address**  
Chiara Zilioli, European Central Bank
- 09:40 **Keynote speech – Aligning accountability with sovereignty in the European Union: the ECB’s experience**  
Yves Mersch, European Central Bank
- 10:00 **Panel 1**  
**Transparency and accountability of central banks and banking supervisors**  
Chair: Sabine Lautenschläger, European Central Bank
- Democratic principles demand that, as agents of government, central banks and banking supervisors must be transparent in their policies and accountable in the pursuit of their mandates. Although these principles underpin the legitimacy of central bank independence, the financial crisis has raised questions about potential conflicts between the goals of democratic legitimacy and the effectiveness of central bank policy. A related theme concerns the broad construction that the Court of Justice of the European Union has given to the types of central bank policies announced to the public that may be subject to judicial scrutiny or give rise to liability (see, for example, case C-62/14 *Gauweiler* and case C-T496/11 *United Kingdom v ECB*). The panel will discuss the implications of these themes for central banks and banking supervisors and the strategies they might pursue to balance conflicting goals.
- Strengthening transparency and accountability of economic governance – the IMF experience**  
Presenter: Sean Hagan, International Monetary Fund
- Liability and accountability for policies announced to the public and for press releases**  
Presenter: Alexander Türk, King’s College London
- Accountability and audit requirements in relation to the SSM**  
Presenter: Frédéric Allemand, Centre Virtuel de la Connaissance sur l’Europe
- Discussant:**  
Deirdre Curtin, European University Institute
- Discussion (questions from the audience)**
- 11:30 Coffee break

12:00

**Panel 2****Judicial review in a central bank context – focus on fundamental rights**

Chair: Chiara Zilioli, European Central Bank

This panel explores how EU courts have responded to legal and policy-related measures that have been adopted in response to the eurozone-crisis. There is a trend of increasing judicial involvement in review of such measures which raises questions regarding the institutional balance between the courts and EU institutions and the extent to which economic decision-making is justiciable. The panel also explores the reasons why there can be differing levels of judicial protection afforded to differing kinds of central bank policies and decisions, contrasting the treatment of cases arising in a monetary policy context to those in a supervisory context. A key development of interest is the extent to which recent rulings (e.g. cases C-8/15 P to C-10/15 *Ledra Advertising* and case C-105/15P *Mallis*) on the non-contractual liability of EU institutions for economic decision-making place new emphasis on fundamental rights considerations.

**Judicial review and institutional balance in European law**

Presenter: Juliane Kokott, Court of Justice of the European Union

**Varying levels of scrutiny in judicial review of central bank measures**

Presenter: Matthias Lehmann, University of Bonn

**Relevance of fundamental rights for central bank policy and decision-making**

Presenter: Pauliine Koskelo, European Court of Human Rights

**Discussant:**

Marco Ventoruzzo, Bocconi University

**Discussion (questions from the audience)**

13.30

Lunch

14.30

**Panel 3****Brexit – Looking inwards**

Chair: Benoît Cœuré, European Central Bank

The key legal issue this panel will explore is the interpretation of the procedural requirements involved in invoking Article 50 TEU. The panel will examine what it means for the UK to withdraw “in accordance with its own constitutional requirements” by exercising its rights under Article 50, a constitutional rule of the EU. The procedural challenges of negotiating and implementing the withdrawal agreement and the scope for specifying transitional arrangements will also be explored, including the implications that arise by reason of WTO law and practice.

**Interplay between Union law and UK constitutional law in the negotiation and conclusion of the withdrawal agreement under Article 50 TEU**

Presenter: Sionaidh Douglas-Scott, Queen Mary University of London

**Problems of negotiating and implementing the withdrawal agreement under Article 50 TEU in practice: the scope of transitional arrangements**

Presenter: Hubert Legal, European Council

**Implications of WTO law: what legal difficulties may arise in the negotiation and implementation of the withdrawal agreement or in the context of a new EU-UK bilateral free trade agreement?**

Presenter: Christoph Herrmann, University of Passau

**Discussant:**

Federico Fabbrini, Dublin City University

**Discussion (questions from the audience)**

16:00

Coffee break

16:30

**Panel 4**

**Brexit – Looking outwards**

Chair: Peter Praet, European Central Bank

This panel considers some of the legal challenges involved in developing a future relationship with a withdrawing Member State, with a focus on implications for the financial sector. One issue concerns the extent to which existing treaties and trade agreements could provide a point of reference for the future bilateral arrangements between the EU and UK, in particular, with respect to trade in financial services. Some EU financial law regimes recognise non-EU third country regulatory regimes which are deemed 'equivalent' to those of the EU. However, there may be legal or practical limitations on equivalence which limit the extent to which it could mitigate the potential loss of passporting rights. There are various dispute resolution mechanisms included in free trade agreements and in WTO law, which raise questions about how any future EU-UK bilateral arrangements might be policed.

**To what extent can existing treaties and trade agreements serve as role models for future EU-UK bilateral arrangements?**

Presenter: Luis Romero Requena, European Commission

**Recognition of third country equivalence in EU financial law – an obstacle or a way forward for future EU-UK bilateral arrangements?**

Presenter: Eilís Ferran, University of Cambridge

**What would be the scope and elements of an appropriate dispute resolution mechanism under a new EU-UK bilateral free trade agreement?**

Presenter: Paul Nihoul, General Court

**Discussant:**

Maria Chiara Malaguti, Università Cattolica Sacro Cuore

**Discussion (questions from the audience)**

18.00

End of day 1

19.00

Dinner and reception - InterContinental Hotel (Room „Silhouette“), Wilhelm-Leuschner Straße 43, Frankfurt am Main

**Key Note Speech - Brexit: Those whom the Gods wish to destroy they first make mad**

Joseph H.H. Weiler, New York University

Tuesday, 5 September 2017

8:30 Registration

9:00 **Welcome by the President**  
Mario Draghi, European Central Bank

9:15 **Panel 5**  
**Restructuring, resolution and insolvency: shift of tasks from judicial to administrative authorities**  
Chair: Roberto Ugena Torrejón, European Central Bank

This panel will examine the institutional framework that has been established for the management of banking crises at EU level, alongside developments in Member States which have set up administrative procedures to address the consequences of the crises, e.g. arbitration of investor compensation claims or frameworks to facilitate the restructuring of non-performing loans. The implications of these changes for the development of administrative law in the EU will be discussed, taking into account the margin of discretion allocated to these administrative authorities, the scope of judicial review of their actions and the implications of these developments on fundamental rights. These themes provide the background for considering the challenges involved in harmonising the hierarchy of creditor claims in bank and corporate insolvency, and of the application of the bail-in tool in cases of cross-border bank resolution.

**The rise of a new framework of administrative arrangements for the protection of individual rights**

Presenter: Sabino Cassese, Scuola Normale Superiore di Pisa

**Bank resolution and insolvency priorities**

Presenter: David Ramos Muñoz, Universidad Carlos III de Madrid

**Legal challenges of bail-in**

Presenter: Seraina Grünewald, University of Zurich

**Discussant:**

Pentti Hakkarainen, European Central Bank

**Discussion (questions from the audience)**

10:45 Coffee break

11:15

**Panel 6****Overcoming silo thinking: a cross sectoral approach to financial market policies and rules**

Chair: Christian Kroppenstedt, European Central Bank

Following the financial crisis, the legislative projects for regulating the financial system have resulted in a large number of actors on both the national and EU levels. This panel explores the advantages and disadvantages of the present system and considers whether overcoming silo thinking could result in better regulation. It considers the importance of price stability considerations in the fulfilment of the mandate of the ECB and how this might be contrasted with the fulfilment of financial stability considerations in the mandate of the Bank of England. This debate illustrates the broader issues of separation and the conflicting and complementary competences of EU institutions in the monetary and fiscal domain that are of interest from a legal perspective.

**Scope for financial stability considerations in the fulfilment of the mandate of the Bank of England – complementarity of functions**

Presenter: Sir Paul Tucker, Harvard Kennedy School

**Importance of price stability considerations in the fulfilment of the mandate of the European Central Bank – separation of functions**

Presenter: Otmar Issing, Goethe University Frankfurt

**Relationship between supervision/resolution and monetary policy/supervision – issues of separation, conflicting competences and complementarity**

Presenter: Kern Alexander, University of Zurich

**Discussant:**

Joanne Kellerman, Single Resolution Board

**Discussion (questions from the audience)**

12:45

**Concluding remarks**

13:00

Lunch

14:00

End of conference

## General information

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| Conference dates    | 4 and 5 September 2017   |
| Conference venue    | European Central Bank, Main Building, Meeting room C2.01/02, Sonnemannstrasse 20, 60314 Frankfurt am Main  |
| Conference language | English  |
| Transfers           | Participants are requested to arrange their own transfers, unless indicated otherwise  |
| Contacts            | <p>Sarah J. Hlásková Murphy<br/>Directorate General Legal Services<br/>Tel.: +49 (0) 69 1344 5824<br/>E-mail: sarah_jane.hlaskova_murphy@ecb.europa.eu</p> <p>Legal Groups Team<br/>Directorate General Legal Services<br/>Tel: +49 (0) 69 1344 4805/8442<br/>E-mail: leggroupst@ecb.europa.eu</p> |

Website [www.ecb.europa.eu](http://www.ecb.europa.eu)

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**Please note that this programme may be subject to change without notice.**

**The views expressed in this conference are those of the presenters and do not reflect those of the European Central Bank.**