

## The European Central Bank and the European Macroeconomic Constitution

The book is about money, central banking and constitutions. It explains how the European Central Bank was established to ensure stability and prosperity for the euro area. The ECB was guided and controlled by a coherent European Macroeconomic Constitution. However, this model has failed during recurring crises, and the ECB has started to act as the euro area fire brigade. Consequently, it is pushing the boundaries of monetary policy, and with that challenging the accountability mechanisms and fundamentally also the democratic legitimacy of the EMU. The book sheds light on this complex economic-constitutional setting with a view on the future. The imbalance between various new operations and a single price stability objective is difficult to remedy. New objectives of financial stability, economic adjustment and environmental sustainability can cause fundamental ruptures between the ECB's formal role and its actions, and they also dangerously overburden monetary policy moving forward with substantial risks.

**Klaus Tuori** is a research fellow at the University of Luxembourg. He is one of the leading scholars of the EU economic-constitutional model, whose multidisciplinary approach and understanding stems from his work as a central bank economist at the European Central Bank and financial markets. He is the co-author of *The Eurozone Crisis: A Constitutional Analysis* (Cambridge, 2014).

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Klaus Tuori

Frontmatter

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# The European Central Bank and the European Macroeconomic Constitution

From Ensuring Stability to Fighting Crises

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Klaus Tuori

*University of Luxembourg*



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## Series Editors' Preface

The European Central Bank (ECB) has played a major role in the development of European law and policy since its inception; it is characterised by its independence, the eight-year, non-renewable term of membership of its Executive Board and by the primary objective of the European System of Central Banks (ESCB), of which it is the core central actor, the maintenance of price stability (Article 127(1) TFEU). The importance of price stability is further emphasised in the tasks of the European Union set out in Article 3(3) TEU. Unsurprisingly, issues of accountability and independence have been discussed since before the structure of the ESCB and the ECB was agreed. Independence and accountability can be unruly bedfellows; in the name of the latter, politicians desire to keep a finger on the pulse of monetary policy; in the cause of the former, central bankers seek to ensure that they do not become pawns in the prospects of re-election of sitting politicians. Particularly in times of crisis, the co-ordination of economic and monetary policy can become something of a battleground. In this book, Klaus Tuori casts a sceptical eye on the system which the European Treaties have established in a stimulating and challenging discussion.

Tuori first sets out to construct the key constitutional principles of the euro area macroeconomic framework, the European Macroeconomic Constitution, based on its foundations. He then uses these principles as normative premises for assessing the ECB's actions before, during and after a series of crises. He then looks at the overall impact of these events and measures on the European Macroeconomic Constitution to assess how it has changed, and what that implies for the future. Tuori argues that the relevant Treaty provisions and EU legal principles form a relatively coherent and internally consistent economic-constitutional whole

that can be divided into two layers: one microeconomic, consisting of the four economic freedoms and competition law; the other macroeconomic which contains the single monetary policy, the euro currency and the framework for other macroeconomic policy-making in the Member States.

The book is, like Ancient Gaul, divided into three parts. Part I deals with the key constitutional principles of the European Macroeconomic Constitution that set the normative premises for the assessment of common monetary policy and the ECB, ending with a description of those constitutional principles and of the ECB as it was established accordingly. Part II examines the impact of the financial, economic, sovereign debt and pandemic crises on the ECB and the constitutionality of its measures in the light of the European Macroeconomic Constitution. Finally, Part III embraces a broader perspective on the overall implications for the European Macroeconomic Constitution, ECB accountability, and even the rule of law.

Tuori argues that the change in the importance of objectives from price stability to financial stability demonstrates that the ECB has mutated from a central bank of stability to a central bank of crisis. He argues that the financial stability of the euro area has become the main objective and rationale for most new elements introduced in the broad field of EU macroeconomic governance over the last decade. Hence, it could be a prime candidate to become a new constitutional objective for the European Macroeconomic Constitution that could restore its ability to provide future stability and prosperity. However, he observes that the problem with adopting financial stability as a legal objective is that it is based on an elusive economic concept that lies at the intersections between macroeconomics, public finances, financial markets, and financial institutions; it is a crisis concept which is difficult to transform into a constitutional one. Tuori sees structural economic adjustment and environmental sustainability appearing to penetrate the European economic constitution. He concludes by sketching three paths for the future, each with different legitimacy implications. It will be intriguing to see how events unfold, as we live in interesting times.

It is with great pleasure indeed that we welcome this challenging and closely-argued addition to *Cambridge Studies in European Law and Policy*.

Jo Shaw  
Laurence Gormley  
Mark Dawson

## Preface and Acknowledgements

This book is built on a need to understand how a supranational money, the euro, and the European Central Bank (ECB) as its guardian could and should function. I thought I had an idea, when I was among the people preparing and starting the new currency more than two decades ago. However, the events of the last decade have changed this perception. Both the economic and the constitutional aspects of the ECB have become increasingly confusing, and it seems that fewer people than ever have a structured idea where we are heading. Given the importance of money for our liberal and hopefully humane societies, this is not a comfortable situation even for the ECB.

Two personal confessions might help the reader. First, I have some trust issues with public sector actors, including central banks. Central banks can make positive contributions, as they attract clever people that have the best of intentions. However, the positive contributions are more likely to happen if they remember that they are technocrats that only facilitate others to create actual prosperity. History warns against central banks that become omnipotent and start solving broader problems by their main instrument, issuance of currency, that has small initial costs but potentially devastating longer-term consequences. And worse, the more the public trusts the central bank, the smaller is the initial cost, and larger the potential for devastation. Second, I have an ambivalent view on the EU. Many things are to like: the freedoms, people, peace and even the very idea of Europe as our common destiny. However, the EU as a problem-solving mechanism has some caveats alongside its many positive features. The EU politicians and civil servants sometimes form their own reality that is insulated by slogans, statements and claims of success from the realities of other people. These two notes underlie my

research: for my small part, I wish to help the ECB to keep its focus on the longer term; and I aim to look beyond slogans and claims of success, at actual facts for a firmer foundation for the future.

I have been fortunate to be supported by many enthusiastic and intelligent people that have commented on the work at different stages: Fernando Losada, Diane Fromage, Kaarlo Tuori, Agustín Menéndez, Giandomenico Majone, Adrienne Heritier, Otmar Issing, Fritz W. Scharpf, Marise Cremona, Claire Kilpatrick, Kaius Tuori, Christian Joerges, Tuomas Ojanen, Fabian Amtenbrink, Hans-W. Micklitz, Phedon Nicolaides, Juha Raitio, Thomas Beukers, Paul Dermine, Vesa Vihriälä, Sixten Korkman, Peter Nyberg, Álvaro de Elera, Tuomas Saarenheimo, John Erik Fossum, Päivi Leino-Sandberg and Jukka Snell. My important research environments include the University of Helsinki as my intellectual origin, the University of Luxembourg as my new intellectual home, and the locations of my excellent research visits, the EUI (Firenze) and the Sciences Po (Paris).

In addition to the academic community, I want to thank my ex-colleagues and friends from the financial markets, at the ECB and Suomen Pankki for the many interesting discussions.

Last but not least, I want to thank my family.



## Abbreviations

ABSs	asset-backed securities
BIS	Bank for International Settlements
BoE	Bank of England
BoJ	Bank of Japan
CEBS	Committee of European Banking Supervisors
CDS	credit default swap
CJEU	Court of Justice of the European Union
CoG	Committee of Governors
D-Mark	Deutsche Mark, German currency before EMU
EBA	European Banking Authority
ECB	European Central Bank
ECJ	European Court of Justice (also the CJEU)
ECOFIN	Economic and Financial Affairs Council
ECSC	European Coal and Steel Community
ECU	European Currency Unit
EEC	European Economic Community, can also refer to the Treaty of Rome
EFSS	European Financial Stability Facility
EIOPA	European Insurance and Occupational Pensions Authority
EMI	European Monetary Institute
EMS	European Monetary System
EMU	Economic and Monetary Union (refers principally to the Third Stage of the EMU)
ERM	exchange rate mechanism
ESAs	European supervisory authorities
ESCB	European System of Central Banks
ESFS	European System of Financial Supervision

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ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
FCC	(German) Federal Constitutional Court, Bundesverfassungsgericht
Fed	US Federal Reserve System
FOMC	Federal Open Market Committee
FSA	Financial Supervision Authority
GDP	gross domestic product (the size of the economy)
IMF	International Monetary Fund
LTROs	longer-term refinancing operations
M1	measure of money supply, a narrow monetary aggregate with most liquid form of money
M3	measure of money supply, a broad monetary aggregate with less liquid forms
MPC	Monetary Policy Committee
MRO	main refinancing operations, ECB's main policy interest rate
NAIRU	non-accelerating inflation rate of unemployment
NCB	National Central Bank
NY Fed	Federal Reserve Bank of New York
OMOs	Open market operations
OMT	Outright Monetary Transactions Programme
PEPP	Pandemic Emergency Purchase Programme
PSPP	Public Sector Purchase Programme, ECB's QE programme
QE	Quantitative Easing, in practice central bank measure of buying vast amounts of assets
RBC	Real Business Cycles approach
SGP	Stability and Growth Pact
SMP	Securities Market Programme
SNB	Swiss National Bank
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TARGET	ECB (Eurosystem) payments system, Trans-European Automated Real-time Gross Settlement Express Transfer System
TARGET2	The revised payments system from 2007
TEU	Consolidated version of the Treaty on the European Union

## LIST OF ABBREVIATIONS      xix

TFEU	Consolidated version of the Treaty on the Functioning of the European Union
Tier1	ECB (Eurosystem) list of eligible collateral
WWI	The First World War
WWII	The Second World War
ZIRP	Zero interest rate policy

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