

Thinking of a Democratic and Accountable Central Bank - Observations by a Trade Unionist

By Johannes Priesemann, President of IPSO – International and European Public Services Organisation¹, in the context of the Workshop: “The ECB – Europe’s unelected government”

Organised by GUE/NGL, Brussels, 14 January 2016

Introduction

This workshop comes at a time of political, social, cultural, ecological and also technological unrest, change, uncertainty, upheaval – you name it. I would like to share with you my thoughts and aspects of my work as a trade unionist at the European Central Bank. I will briefly introduce our organisation, IPSO, the International and European Public Services Organisation. Then, I will show you what IPSO’s aims and claims are as the union representing ECB staff, which problems we face and how we would like to see them solved. This will shed some light on the aspect “thinking about a democratic central bank”. The main point to retain is that the ECB is at the same time employer and legislator of its own labour law. This is problematic.

Since the present and the following section of this workshop deal with “alternatives”, I will also report about IPSO’s work to seek reflection and meaning, to position ECB staff’s work in today’s challenges. IPSO invites members and interested ECB staff to a seminar series called “IPSONomics”. We invite to this series – at infrequent intervals – scientists and publicists who offer alternative thoughts and ideas on subjects that matter in the context of our work at the ECB. I consider this part as a contribution to both, institutional as well as policy alternatives. I share some thoughts and ideas presented by the speakers we had so far been able to listen to.

On the issue of “thinking about an accountable central bank”, I would refer in this context especially to the work of Antoine Vauchez who spoke on the questions as to whether and how independence is compatible with democracy. This aspect is for me inextricably linked to the question of the accountability of an independent central bank.

So, there are four elements I would like to share: first: IPSO – what is it? Second, what are IPSO’s aims and claims? Third, which kind of institutional and policy alternatives have we heard about so far in IPSONomics? Fourth, how can independence go along with accountability?

1. What is IPSO, the International and European Public Services Organisation?

IPSO is a trade union. It has been founded in 1997 with the initial support of two German unions, the ÖTV and the DAG who later on merged into Ver.di. These unions had been mandated by the European Federation of Public Services Unions (<http://www.epsu.org/>) to facilitate the organisation of staff at the then “European Monetary Institute” (EMI), the body preparing the establishment of the European Central Bank (ECB) and the European System of Central Banks.

¹ Views expressed are those of the author.

Today, IPSO is no longer supported by or in any form dependent on Ver.di or any German union. Yet, IPSO keeps a very good relationship with the German trade union movement and local union representatives. IPSO is not related to any party or movement other than the trade union movement. As such, IPSO is member of [Union Syndicale Fédérale](#) (USF) which groups unions active for European public service staff and by this affiliation also a part of the [European Federation of Public Services Unions](#) (EPSU). IPSO has c. 600 members. Almost all of them are persons working at the ECB. IPSO represents more than 40% of the ECB staff holding a permanent ECB contract and is actively representing the interests of all persons working for the ECB, irrespective of their contractual status.

IPSO has concluded two memoranda of understanding with the ECB which govern its recognition by the ECB and the information sharing with and consultation rights of IPSO at the ECB. The ECB has granted IPSO representatives among its staff with paid “time dispensation” amounting to 1.2 full-time equivalents (FTE) in total. IPSO has also 50% FTE assistant (currently based on temporary agency works contract) paid by the ECB and one General Secretary who is not an ECB staff member but an experienced trade union professional. IPSO has a Board of nine elected members who run the day-to-day business and represent IPSO together with the General Secretary. The Board of IPSO has accepted the support of the ECB in light of the special situation that the ECB is at the same time employer and legislator of its own labour law, provider of social security and disciplinary law. At the same time we are aware of the special and unique situation at the ECB. The ECB is a powerful executive organ of the Union and at the same time legislator. That is why we chose the blue ribbon as our emblem. This ribbon calls for more democracy in the ECB and Europe. This leads me on to my next point.

2. What are IPSO’s aims and claims?

In a nutshell, IPSO’s aims and claims can be summarised by a slogan IPSO and European and German union federations placed on a huge banner on the occasion of the inauguration of the ECB’s new Main Building in March 2015: “MORE DEMOCRACY AND BALANCE OF POWER FOR EUROPE + ECB”.

How comes that and why is this claim a legitimate one and regrettably still open – aim? I will focus here only on the democracy within the ECB and only from the perspective of a trade union representative, i.e. in the dimension of social and labour relations. I will touch upon the following four exemplary points where I see a need for public awareness and change for action: 2.1 the anomaly of ECB law-making in labour and social security law, 2.2 the too weak internal participation and balance of power, 2.3. conflicts in the ECB’s governance and 2.4 the underdeveloped judicial control.

2.1 The ECB acting simultaneously as employer and legislator

IPSO and its fellow unions displayed the banner in March 2015 primarily to bring to the public awareness a constitutional anomaly in the area of law-making by the ECB. By Article 36 (1) of the ECB and ESCB Statute the European Council has entrusted the ECB’s Governing Council with the power to “lay down the conditions of employment of the staff of the ECB.” The Governing Council and the Executive Board have interpreted this provision to mean that they have full autonomy in the

setting of the law governing the individual labour law, collective labour law, all rules and procedures of internal legal review of administrative decisions, disciplinary law and social security for all ECB staff. De facto the ECB is in this area a 29th EU state with its own legislation applying to c. 3,000 citizens and their families and applying to all “persons seeking an ECB “passport: and citizenship”, namely the applicants for ECB positions.

I consider Article 36 (1) of the Statute and its interpretation to be incompatible with the EU’s basic legal foundations. If we had a constitution in Europe, which we unfortunately do not have, this piece of legislation would be unconstitutional. I consider it materially flawed. The consequences of this legal flaw are potentially very severe. Why do I come to this conclusion? Article 2 of the TEU reads “The Union is founded on the values of [...], democracy, equality, the rule of law [...].” The question is whether entrusting the ECB’s Governing Council with law-making for its staff is in line with the values of democracy, equality and the rule of law. My answer is: no. This is not in line for a number of reasons.

The subject matters that have been dealt with by the Governing Council and the Executive Board are undeniably material “laws” in their content and not contracts or individual decisions. They apply generally to all active and retired ECB staff as well as to applicants to ECB positions and are not individually “negotiable”. At the same time it is clear that the ECB is a part of Europe’s executive powers. This all the more so since the ECB has taken up the function of banking supervision. This function is classic administration with the objective to regulate and police a core sector of our industry even with acts of public force such as dismissal of bank executives. The principle of separation of powers among legislative, executive and jurisprudence is one of the cornerstones of European democracy. Art. 36 (1) of the ESCB and ECB Statute is at odds with this principle.

For a “law” to qualify as “legal” and constitutional the law has to be not only materially but also formally lawful. All ECB law-setting is, however, flawed by the fact that it has been issued in breach of the value of democracy and the rule of law. The Governing Council and the Executive Board are leading an executive function and as such may not exercise legislative powers. The underlying legal principles of our European democracy stand against this. To compare this with a national context: would it be thinkable that a national central bank (NCB) drafts and adopts its own civil service code, different to the rest of the civil services rules of the country? Can an NCB Adopt the rules on collective bargaining and the scope of powers of staff representation and their access or not to the courts? This is unthinkable. I can also not think that a law-making process and the adoption of laws take place behind closed doors as is the case for the ECB law.

So, what can and what should be done? What certainly can be done is that the European Parliament and the European public are made aware of this weakness in democratic governance and legitimation. My colleagues and I have called for involvement of the parliament times and again at the ECB internally and in vain. Members of the European Parliament have shown in these matters. This interest has been shown by Members of various political parties. We welcome this.

I think that there should not be any obstacle for a systematic review of the ECB’s legislation, including all “legislative materials” by the European Parliament’s scientific service. These materials have to be in the public domain.

I think that based on the results of this review the European Parliament, the ECB and its staff representatives could conclude an agreement on parliamentary involvement on the ECB law making. On a voluntary basis cooperation in the law-making could start. This could alleviate the absence of an assignment to a constitutionally empowered legislator. The legislation in this field is a matter of public interest. We wish to see more transparency and debate in this field. We need support from the Parliament and the public.

As the result of the current combination of executive and legislative power, we consider parts of the ECB's legislation not adequate and some not acceptable. We do not find it acceptable that the ECB issues term-contracts as a rule. The ECB's argument that many of the term contracts are so-called "convertible contracts" of indefinite term does not convince staff representatives, especially since they are not involved in the conversion process. A further example can be found in the ECB's Staff Rules for [the hiring and appointment of candidates](#). The rules govern the entry to the ranks of the ECB and, by vacancies, also promotions, i.e. career progress. The rules are very flexible and provide ample discretion for management. Almost every rule knows an exception. Decision-makers are entrusted in a number of instances with discretion without any further guidance how to use the discretion. The consequence is that staff members currently appear to consider it more useful for their career to know the right people than to do a good work. This may generate risks for the quality of the work.

Yet, I am sure that the staff of the ECB which is highly motivated and dedicated to their task and especially to the work for Europe will join IPSO and the unions in their call for more democracy for Europe and the ECB. We should not lose sight of the aim to have a constitution for Europe, accepted and endorsed by a vote of our "constituante": the people of Europe.

2.2 Feeble participation and absence of collective bargaining

The [Charter of Fundamental Rights of the European Union](#) guarantees in its Articles 27 and 28 the workers' rights to information and consultation and the workers' and employers' right of collective bargaining.

The right to information and consultation is governed by the Conditions of Employment which are adopted by the Governing Council and by the Staff Rules which are adopted by the Executive Board, based on the Conditions of Employment. In addition, the ECB and IPSO have concluded the above-mentioned Memorandum of Understanding. Over the years an intensive practice of written consultations and meetings has been established, mostly on the frequent changes and adaptations of these Conditions and Rules. I recognise that there has been quite some progress in the quality and scope of these consultations in the ECB.

Still, staff representatives are not satisfied with this process. This refers to both aspects: quality and scope. In terms of quality, we miss transparency and accessibility. The consultations are, in essence, confined to rounds of exchanges of written statements. Dialogue takes place at lower levels but the staff representatives do not have the possibility to present their opinion at the meetings of the decision making bodies. Nor are they or staff provided with the arguments and discussions or the materials presented to these bodies. The decisions are taken behind closed doors. Minutes remain undisclosed to staff and the public. Nota bene: this refers to EU law making: the subject matters can be disciplinary law, the recognition or not of non-marital partnerships, the right to strike etc. I see no reason why the formalities of the process could not be tangibly enhanced: access of staff representatives to the meetings where decisions are taken, full transparency of the documentation.

Concerning the scope, there are on-going discussions and also disputes. These disputes can cover issues such as the questions as to whether the ECB is obliged to consult the staff representatives prior to the hiring of temporary agency staff or setting rules for these. The staff representatives' requests for staff participation in the hiring and promotion processes as is practice in the EU Commission and in many EU countries have been turned down. There is no representative for diversity or for the interests of staff with special needs. There is no information or consultation on the planning of staffing needs nor is there one concerning major reorganisations to name a few of IPSO's and staff representatives' requests.

At the level of the European System of Central Banks (ESCB) and the Single Supervisory Mechanism (SSM) the situation is even weaker. De facto the Eurosystem and the SSM act like one group of connected undertakings, like one body. There are more and more tendencies and, admittedly, also needs to coordinate and systematically govern aspects touching on labour relations and conditions of ESCB and SSM staff within the System and the Mechanism. In spite of this situation, there is no formal consultation or collective bargaining. Instead, there is the so-called "ESCB Social Dialogue". This is a regular series of information meetings organised by the ECB for union representatives of the ESCB and the SSM.

This form of social dialogue does not live up to the standards required by Art. 27 of the [Charter of Fundamental Rights of the European Union](#) on employee information and consultation. This forum must will develop into a format providing meaningful and effective social dialogue with formal consultations.

The right to "collective bargaining" is so far absent in the ECB's practice. The ECB has informed the European Parliament that "at the ECB, there is **no system of collective bargaining. Instead, the ECB has opted for an extensive social dialogue** [emphasis added], including a two-round consultation of staff representatives prior to any changes in the Conditions of Employment and/or Staff Rules." This statement is irritating in that it reads as if the ECB felt to be in the position to opt out of the application of fundamental rights.

There is a dialogue and exchange of correspondence on-going. Yet, de facto the impact of this dialogue remains limited. The legally guaranteed participation rights of ECB's staff representatives remain feeble. The Staff Committee cannot even challenge a non-consultation in court. Perhaps this should be tried again. IPSO and its members will still have to gain and fight for their right for collective bargaining. Thinking of a democratic ECB we see room for enhancement also in this area.

2.3 A conflict in the ECB's governance

The ECB is jointly owned by the national central banks of the EU Member States. It is governed by the Governing Council in which the governors of the central banks of the Member States whose currency is the euro hold a safe majority. The Governing Council decides on the ECB's staffing and resourcing. In this function the national central banks governors have to address a conflict of interest: balancing the resourcing needs between "their" central banks and those of the ECB as their "joint venture" which is the hub in the system. IPSO had found clear signs that the former interests may have systematically prevailed. Thus, IPSO denounced long ago a systematic understaffing and high workload. The result of this conflict is that staff pays the price. To address the needs, ECB management had taken recourse to the use of temporary agency staff to cover on-going resource needs. Also other forms of resourcing such as using trainees as regular workforce, consultancy and secondments were resorted to. IPSO considers this mix of staff not sound.

To address matters at the highest instance, IPSO wrote an open letter to the Governors of the Central Banks of the Eurosystem denouncing this situation. The letter can be found at IPSO's website (<http://ipso.de/press-and-information/2015.03.27-ipso-released-an-open-letter-to-the-ncbs-on-the-staffing-situation-at-the-ecb>). In its letter, IPSO flagged the conflict potential and claimed decisive countermeasures. So far, IPSO is not satisfied with the answer. We miss a reply to the question as to how the potential conflict is to be addressed. At least some staff increase, especially in the SSM has been decided for the years 2016/2017. The dialogue at this level needs still to be formally established.

As stated, the ECB uses temporary agency staff for permanent tasks. We speak of more than 300 persons, many if not most of them on permanent tasks. IPSO has started to work with the human resources department on these cases after IPSO denounced the intolerable abuse of this form of work. The ECB changed its policy in these matters – without consultation of staff representatives and in an inconsistent way. The work continues and slowly progresses. IPSO demands that long-serving temporary agency colleagues have to join in a fair way and without unsurmountable hurdles the ECB's workforce right away as one would expect under the principles of the relevant EU law.

The issue is to date not resolved: many long-serving agency staff members fear for their job. The ECB does fully respect the applicable German law in IPSO's view. On issue of governance and long-term staff planning IPSO calls for information and consultation at the level of the Governing Council.

2.4 Underdeveloped judicial control

Only briefly I would like to flag that a democratic central bank should be supported by a potentially strong judicial control. This, however, we still miss in Europe. The European Court of Justice and its Tribunal for the Civil Service function are designed as a court charged for appeals in cassation. The legal instruments and procedures are limited, the processes take unduly long time, are highly formalised and costly. There is no appeal against norms in abstracto and the court cannot be relied upon to replace the actions of the administration. IPSO supports its members wherever needed and possible in standing for their rights. A thorough reform of processes and instruments with a view to establish a wider and more effective judicial control by the ECJ would in my view be desirable and feasible.

Summing up on this section in short, Europe has entrusted the governing body of its central bank an unusual combination of powers combining executive and legislative tasks and responsibilities in one body. I wish to see the separation of powers to be re-established by a constitution that addresses the legislative powers for the EU civil service comprehensively. A "carving out" of the central bank from the generally applicable rules of civil service is an anomaly. The effects of this anomaly can be mitigated by pro-active involvement of the parliament, ideally on the basis of a voluntary agreement between the ECB, the Parliament and the staff representatives at the ECB. The concentration of powers has, as I have tried to show, not always proven to lead to good results in the law-making. The inner democracy of the ECB should be strengthened. Addressing the potential conflict of interests in the ECB's governance as well as the further development of the ECJ remain thorny but nevertheless

important tasks to be tackled in European policy-making. The ECB has recognised IPSO and also supports IPSO and for this credit is due! We are respected and have the freedom of expression. If I were a staff representative at the European Patent Office I would possibly not stand here. Social dialogue is not missing – it can and must be more intense and have a far stronger legal base and judicial control.

3. IPSOconomics: reflection about alternatives

Led by the principle and idea that a union represents also the interests of its members in the content of their work and shall contribute to “good work”, IPSO offers its members and interested ECB colleagues a series of lunchtime seminars. These seminars aim at sharing alternative thoughts and provide inspiration in our work at the ECB on topical issues. The understanding is here that reflection, debate, scepticism and openness are not only intellectually inspiring but are necessary to master the challenges of our work.

I share some of the content conveyed in these seminars. Already this brief recount may show the breadth of political alternatives and the wealth of inspiring ideas that are in the public domain.

At the time of the inauguration of the ECB’s new Main Building, Jendris Alwast presented his paper on *the Legitimation of Europe*. Alwast drew our attention the foundation of Europe: the ideals of the French revolution: liberté, égalité et fraternité. He saw the virtue of Europe in the dialogue, the quest for answers in dialogue. The law develops in the dialogue, the dialectic process of aligning conflicting interests. Europe legitimises its existence by the on-going struggle to find just solutions in a process of peaceful dialogue. Europe is the place that, inspired by the ideal of fraternity – and one may add inspired by the best of Christian, philosophic and humanistic tradition and thought - values sharing and the support of the weak, values solidarity.

Philipp Degens presented his paper on [Alternative Monetary Concepts](#). In a systematic way this literature overview presents the wide spectrum of ideas how “money” and the financial system can be organised. His presentation identified approaches to complement the current system by complementary currencies which mostly run at the local or regional level and aim to mitigate dysfunctions that are inherent in the central bank monetary order. He also explained various proposals for a fundamental reform of the fractional reserve system which either foresee the steering of the quantity of money centrally by a strengthened central bank or decentralised by the market participants.

One proposal to change the system was presented in another lecture by [Michael Kumhof](#). He explained his and Jaromir Benes paper on *the Chicago plan revisited*. This approach would fall into the category of a fundamental reform of the system. Privately owned market participants would lose the privilege to create “commercial bank money” that in day-to-day use is seen as equivalent to central bank money. There would be a clear demarcation line between money and credit: money would only be central bank money – be it on the account or be it in cash. Entrusting this central bank money to a bank would be a credit that goes along with risk of loss to be carried by the “depositor” as a “creditor”. If I am not mistaken, our panellist Norbert Häring challenged the working of commercial bank money with his initiative “Bargeld Widerstand” (cash resistance) goes in a similar direction.

[Daniel O’Neill](#) presented the ideas of *sustainable economics as also explained in his book “enough is enough”*. This approach is preoccupied with the ecological limits of growth and stresses the flaw in our economic thinking that is focused on GDP growth rather than on “happiness” or well-being of the citizens. Pointedly O’Neill remarked that, for instance, the US were far more successful in de-coupling GDP growth from happiness than from resource consumption, showing a flat graph

that depicts the measured level of “happiness” against the upward sloping curve of GDG growth and the closely correlated curve of the consumption of natural resources.

[Heiner Flassbeck](#), [Paul Jorion](#) and [Henri Sterdyniak](#) presented alternatives of economic policy which do not change the fundamentals but were certainly appreciated to show that fiscal austerity and export orientation were not the only ways to steer the economy.

The so far best attended event has been [Tomas Piketty](#)’s presentation of his work on *capital in the 21st century*. Piketty showed the world-wide and also the country specific features of distribution of wealth. The policy consequence of re-distribution of wealth by taxation remains on the agenda as a serious but thorny proposal. In a follow-up to Piketty’s contribution Christoph Deutschmann shared his view as a sociologist with his paper on “*Capitalism as a rentier society – consequences of Piketty’s analysis*” (*mimeo*). Deutschmann argued that the massive concentration wealth has the potential to destroy the promise of capitalism to provide chances of upward mobility in society.

Inspiring in this context from a very long-term perspective has been the speech of [Tomáš Sedláček](#), the Czech economist and writer, on “*the economics of good and evil*”. A simplifying synthesis of this review of 5000 years of human societies’ approaches to ensure social stability and peace could be very much in line with Alwast’s message: share and care, protect the widows, orphans and refugees – but reasonably.

We in IPSO intend to continue this seminar series in order to share ideas and discuss alternatives. The events are well attended and appreciated by members of staff and the ECB. We are all very appreciative for the possibilities the ECB grants for reflection on and in our work.

4. Independence, accountability and democracy

Also within the context of IPSOconomics [Antoine Vauchez](#) inspired a very lively debate on the question “*is independence compatible with democracy?*” We became aware of his book “*Démocratiser l’Europe*” and were glad that he accepted our invitation. I quote here from the review of his book by Armin von Bogdandy in the FAZ on 18 March 2015 (my translation). Under the heading: “*Make the ECB and the European Court of Justice democratic*”, von Bogdandy reviews and praises the thoughts of Vauchez. Von Bogdandy writes: “The main thought: the efforts that have been undertaken so far to “democratise” [scil.: the EU] have been largely unsuccessful because they were based on an erroneous understanding of the EU. Many see the Union as a two-chamber system as the one working in Germany and the United States. Accordingly the legislative competence and activities of the European Parliament are in the centre of the democratic attention and not the European Court of Justice, the central bank, the Commission and the agencies. The fundamental error, according to Vauchez, has the following root: these independent European Institutions are understood like their equivalent institutions in Member States. Doing this one overlooks that independent public authorities act as mere counterbalances to the democratically accountable institutions which are entrusted to carry out the main business of shaping and driving the political agenda. At the level of the Union, argues Vauchez, the situation is inverse: shaping and driving the politics is carried out by these independent institutions.”

I think that this brief summary is clearly related to this workshop’s title and agenda. In our debate with Vauchez we reflected his proposals for a “democratisation” of the “independent institutions”: he proposes to take them as such, as “political institutions” and to treat them as such. This will mean indeed an “inversion”: the acts and policy lines, the ramifications of the institutions’ work have to be

brought to the agenda and discussed. Even the expertise expected and accorded to the institutions should be challenged as to its methodological and empirical correctness.

Another aspect of the democratisation is certainly the “inner democracy” within the institutions. That is the field where IPSO has its aims and claims as stated above.

Not so much debated at the time was the link to the accountability in the troika of terms of independence, democracy and accountability. If I got this right, then the idea of Vauchez would be that the accountability for the independent institutions would have to consist in a litmus test for their methodological, empirical and in the end “political” soundness. This litmus test has to be continuously carried out by public. All this calls for transparency and will require uncomfortable questions and unconventional answers. So far the ECB, and that has to be acknowledged as well, has managed the crisis with its non-standard measures. The quest for further and better and lasting answers remains.

Conclusion

I am grateful to have had the opportunity to share with you my ideas. The independence of my trade union position is a great privilege and I appreciate the way the ECB respects this independence and even supports it.

I am sure that an open debate on approaches and alternatives can only be helpful. In a democracy change and alternatives need majorities and majorities need to be formed by argument. My arguments are: We need a constitution in Europe. In the absence thereof, the ECB can gain by parliamentary input in its law-making in the “non-central banking field” of labour law. It can gain by a stronger internal balance of power and staff participation. I see many alternatives and named a few. The idea of “accountability by discussion on the policy and on methods and stance” is a good one. This is a task and matter of public interest.

Finally, I would like to thank the organisers of and for this event. I also thank you for your attention.