

**The ECB in “unchartered waters”?  
Reconciling monetary policy, financial  
stability, prudential mandates and  
fundamental rights**

David Ramos Muñoz

U. Carlos III de Madrid – U. of Bologna

# AGENDA

- **MONETARY POLICY AND FINANCIAL STABILITY**
  - **CONFLICTS**
  - **MANDATES**
  - **CONFLICT-SOLVING RULES & STANDARD OF REVIEW**
- **MONETARY POLICY, FINANCIAL STABILITY, AND FUNDAMENTAL RIGHTS (AND FREEDOMS)**
  - **GENERAL CONSIDERATIONS**
  - **SPECIFIC RIGHTS**

# MONETARY POLICY AND FINANCIAL STABILITY

## ■ ARE THEY REALLY IN CONFLICT?

- Price stability facilitates financial planning, and enhances financial stability
- Monetary models work better in the absence of financial frictions
- So, in the long-run, NO CONFLICT... BUT

## ■ SUBSTANTIVE CONFLICTS

- (1) Different type of goals: monetary policy (concrete) & financial stability (abstract); (2) Different degrees of certainty; (3) Different 'lags' (risk-taking channel: longer lag)
- Reserve requirements v. capital/liquidity requirements: 'threshold effects', 'cliff effects', steeper rate curve

## ■ OPERATIONAL CONFLICTS

- Could capital/liquidity requirements be adjusted to smooth over monetary distortions?
- Could monetary policy be adjusted to reduce financial stability?

# MONETARY POLICY AND FINANCIAL STABILITY

## ■ MONETARY MANDATE

- Art. 127 (1) TFEU → *'The primary objective'*

## ■ FINANCIAL STABILITY 'MANDATE'

- Art. 127 (6) TFEU → Possibility to transfer 'competences' on 'policies' on 'prud. supervision'
  - SSM Reg: Fin. Stability is a 'goal' of prud supervision (Recital (30) & article 1)
- Art. 127 (5) TFEU: ESCB 'contribute' to 'smooth conduct' of prud. supervision policies by 'competent authorities' and 'stability of financial system'
- Art. 18 Stat. ESCBs → Use of instruments to 'achieve objectives' & 'carry out tasks'
- LoLR???

# MONETARY POLICY AND FINANCIAL STABILITY

## ■ CONFLICT OF MANDATES: RULES

- Art. 25 SSM: independence, non-interference
- Art. 127 (1): *The* primary mandate; SSM: Single ECB Executive Board (organisation); SSM art. 26 (8) Governing Council (possibility override on mon. pol. grounds)

## ■ CONFLICT OF MANDATES: REVIEW

- C-62/14 *Gauweiler*: (1) 'Monetary' policy includes 'transmission channel'; (2) ECB has broad discretion; (3) Discretion is subject to proportionality
- Problems: (1) No clear definition of 'monetary' mandate: how far across the 'transmission channel?'; (2) No clear indication of countervailing policies/principles: central bank independence, or else?; (3) Credibility v certainty

## ■ CONFLICT OF MANDATES: PRACTICE?

- Use of 'monetary' powers for fin. stability purposes: flexible
- Use of fin. stability tools for mon. purposes: rule-bound

# MANDATES & FUNDAMENTAL RIGHTS & FREEDOMS

- **TRUMP vs. TRUMP or REASON v. REASON**
  - Rights: anti-utilitarian propositions
  - Conclusive reasons *v prima facie* reasons
- ***Ex ante* SPECIFICATION v. *ex post* BALANCING**
  - Specification: problem of scope of application of the right → too uncertain & inaccurate description
  - Balancing: Alexy, 'proportionality' (ECHR/ CJEU)
    - Theoretical problems: Utilitarianism in disguise
    - Practical problems: 'suitability', 'necessity' & 'proportionality' require complex technical judgments
- **CAN COURTS COPE?**

# MANDATES & FUNDAMENTAL RIGHTS & FREEDOMS

## ■ EU FREEDOMS

- Fin. mkts policies as trumping reasons: *C-222/95 Parodi*; *C-384/93 Alpine Investments*; *C-212/11 Jyske Bank Gibraltar*; *C-442/02 Caixabank*
- *T-496/11 UK v ECB* → Location policy. Decided on the basis of competences. The bullet was dodged... for the moment

## ■ PROPERTY RIGHTS

- 'The right is not absolute', regard must be had to its 'social function' → original sin of specification
- Battle lost before it began: *C-501/11 P Schindler* (fines); *C-283/11 Sky Österreich* (regulatory changes); *App 8793/79 James and others v UK*
- In banking it is no better: *App 34940/10 Grainger v UK*; *C-526/14 Kotnik & others*
- *What EXACTLY is a legitimate expectation in finance?*

# CONCLUSIONS

- Mandates and goals can cause frictions in dynamic settings
- Mandates have different pedigree
- Asymmetric standards of review (prudential tasks more rule-bound) → final equilibrium unclear
  
- Rights not trumps, but reasons → Balancing
- Proportionality is as good as the principle, and the Court's economic acumen → Not good omens
- Property and its specification/definition problems