

Open door for forces of finance at the ECB

Five hundred lobbyists for the financial sector at large
in the European Central Bank – by invitation

financial sector representati
other industry represent
consumer represe



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Introduction

It matters how the European Central Bank (ECB) makes its decisions, and it matters who it considers its experts and advisors. Especially if those advisors bear all the traits of lobbyists for the financial sector, and not least when the ECB is becoming a more and more powerful institution. In response to the financial crisis it has seen its mandate and working area increased. Supervision of the biggest banks has been handed over to the ECB, it is taking on a bigger role in setting up rules and procedures for financial markets, it has become co-administrator of debt ridden countries, and a series of asset purchasing programmes have seen it spend trillions to boost the European economy. Yet an incredible two thirds of the banks and financial entities under ECB supervision hold 346 seats in its own advisory groups, and this is just the tip of the iceberg when it comes to conflicts of interest between the role of the ECB and those whom it chooses to advise it.

The growth in the ECB's role notwithstanding, its ethics rules have remained static and do not match the current status of the institution. This is particularly the case for the way the institution associates with the private financial sector. This report puts the spotlight on the role of the bank's advisory groups – a much overlooked but important part of decisionmaking at the ECB. It shows an intense and troubling traffic in and out of the doors of the building in Frankfurt, of representatives from the biggest financial corporations in Europe, on their way to and from meetings with the ECB leadership. As it stands, they are in a position to play a key role in shaping responses of the ECB to developments in the economy. They serve as advisors on matters that relate to their businesses, and when doing so they often appear to be mere lobbyists for vested interests – invited through the front door to influence decisionmaking.

Interaction is both frequent and broad in scope. At the time of writing, the ECB is running 22 advisory groups with 517 representatives from 144 different entities: either corporations, companies or associations, mainly trade associations. They deal with both the ECB's bond purchases, banking regulation, technical regulations, frameworks underpinning securities trading, and much more. The questions are who they are, and how the ECB handles its interaction with outside groups.

When challenged by Corporate Europe Observatory the ECB responded that participation in such groups helps the ECB gather information, helps it effectively “discharge its mandate”, and finally it helps the ECB “explain its policy decisions to citizens”. The ECB, a letter from the Chief Compliance Officer asserts, hosts “a number of

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fora involving the private sector”, that can involve mixed audiences with participation from the public sector and/or independent specialists; these enable the ECB to “maintain the necessary dialogue with representative associations and civil society.”¹

Who can argue against the ECB interacting with the outside world in a broad sense? Would anyone be against engagement with the public per se? Hardly. But the message from the ECB is misleading if we agree that “civil society” implies a variety of interests, some economic, some non-economic, some with links to companies and corporations, some that represent other interests. When looking at the advisory groups of the ECB, it quickly becomes clear that the composition of these groups are not representative of the public, and digging a bit deeper, reveals no attempt is made to ensure representation of interests outside the private financial sector, nor is the ECB interested in gathering inspiration from independent academics. All groups but one are completely dominated by financial corporations, and

the number of seats taken by the private financial sector is an astonishing 98 per cent (508 out of 517).

This begs the question whether there is a risk of ‘regulatory capture’ or undue influence exerted by lobbyists from financial corporations via the privileged position that a seat in an advisory group offers them. Corporate Europe Observatory believes there is. The way some financial scandals and serious reform proposals are handled by the ECB resembles the handiwork of what one Commissioner in 2013 said is “probably the most powerful lobby in the world”, the financial lobby.²

So far, the ECB seems to have ignored the issue completely, and appears to be agnostic about the inherent dangers in an advisory regime dominated by the private sector that controls the financial markets, the very sector ECB is supposed to help regulate. Now is the time to push from the outside.

Luckily, we don’t need to look far to find a way to start: a similar phenomenon – corporate dominance of expert groups – was detected long ago in the case of the Commission. While the problem of corporate dominance still remains there, the Commission has at least been forced to make several reforms. Thanks to the work done by the European Parliament and the European Ombudsman, a yardstick by which the legitimacy of a system of advisory groups can be measured and reformed, now exists.

By contrast, the ECB has undertaken no reforms whatsoever. The ECB seems to live in its own bubble, setting its own low standards on key ethical issues. We argue that situation is not sustainable and needs to be addressed.

1. The ECB advisory groups: mandates and composition

The ECB groups with private sector participation serve several purposes. They provide platforms to explain the positions of the ECB to big players in the market, as stated by the ECB, but their significance goes far beyond that. That becomes clear when reading the mandates for the groups and the minutes from the meetings. They are about gathering information and exchanging views to ensure decisionmakers in the institution are well informed ahead of political decisions. They can be “either topic-based or open-ended”, the Chief Compliance and Governance Officer of the ECB wrote to Corporate Europe Observatory.³ In other words, they can deal with anything related to the mandate and the activities of the ECB, and nowadays that is no small matter.

The original mandate of the ECB is to conduct monetary policy to “maintain price stability” by setting the key interest rates and control money supply. From 1999 to the advent of the financial crisis, this was the simple, important task allocated to the central bankers in the decisionmaking structure of the ECB. But from 2008, the ECB started undertaking initiatives that went beyond its earlier remit. These include:

- * A broad programme of infusion of capital into the economy via diverse forms of asset purchases, including corporate bonds under the Corporate Sector Purchasing Programme (CSPP) and government bonds purchased on the market, typically from banks, under programmes such as the Securities Markets Programme (SMP).
- * Participation in the Troika (along with the Commission and the International Monetary Fund) which saw the ECB co-responsible for severe austerity programmes in indebted Eurozone member states, as well as very forceful direct, political intervention in countries such as Ireland, Italy, and Greece.
- * Supervision of the biggest banks in the EU under the Banking Union.
- * An increased involvement in financial regulation, both by pushing for reforms such as the Capital Markets Union, by addressing regulatory issues on the political agenda (such as the Financial Transaction Tax (FTT), and by developing its own initiatives – often with the

help of representatives of financial corporations in the advisory groups.

While monetary policy remains the chief concern, the ECB of today sees financial markets in general as its remit, and that is reflected in its advisory structure, big in numbers as well as in scope.

How many groups, and who is in them?

The use of advisory groups with private industry participation has been a hallmark of the ECB from early days. Of the existing groups, some have been up and running since 1999 when the ECB took charge of monetary policy, with the newest ones formed in 2016. The number of groups at any given time depends on whether there are ongoing projects with private industry participation. One such project is the T2S project, now in its final phase, which has included a high number of industry participants in a big structure. It is a European system of handling securities (ie tradable financial assets) transactions – both clearing (about making sure both sides of the trade are in sync about the terms), and settlement (about the execution of the deal, or honouring of the agreement so to speak).

Existing ECB advisory groups, composition, leadership and mandates

Name of advisory group and acronym	No. of industry members	Non-industry members outside the ECB (NCB=national central bank)	Chair (where available)	Mandate in short
Advisory Group on Market Infrastructures for Payments (AMI-Pay)	22	12 NCB	ECB (Director General)	"The group assists the Eurosystem in fostering payment innovation and integration across Europe, and offers advice on the provision and modification of Eurosystem payment-related services."
Advisory Group on Market Infrastructures for Securities and Collateral (AMI-Seco)	23	12 NCB	ECB (Director General)	"Issues related to the clearing and settlement of securities and to collateral management."
Banking Industry Dialogue (BID)	32	None	ECB (Governing Council)	"Targeted feedback from senior banking industry experts on... topics relevant for to financial stability and macroprudential policy-making."
Bond Market Contact Group (BMCG)	21	None	ECB (Director General)	"Structural and regulatory trends and the functioning of the euro area bond market in general."
Corporate Actions Sub Group (CASG)	22	None	Private sector (BNY Mellon)	"Support formulating and monitoring the implementation of harmonised rules for corporate actions processing."
Contact Group on Euro Securities Infrastructures (COGESI)	44	10 NCB	ECB	"Feedback on the Eurosystem collateral framework and on initiatives related to euro securities clearing and settlement integration."
Change Review Group (CRG)	19	17 NCB	ECB (Expert)	Central Securities Depositories liaison group.
Central Securities Depositories Steering Group (CSG)	23	None	Private sector (Iberclear)	"Give its advice and make resolutions on any issue related to T2S(the European platform for securities settlement in central bank money)"
Directly Connected Parties Group (DCPG)	31	7 NCB	Private sector (Citi)	"Track and monitor the resolution of general concerns relevant to authorized T2S users and central securities depositories"
Distributed Ledger Technologies Task Force (DLT-TF)	14	None	Private sector (Deutsche Bank)	"Forming an opinion on the potential impact of financial innovation on post trade and the wider EU financial market integration"
ECB Operations Managers Group (ECB-OMG)	29	3 NCB	ECB (Head of division)	"Banks' operational and post-trade developments related to regulatory reform and technological innovation" and responses to "crisis situations that may arise in financial markets."
Euro Retail Payments Board (ERPB)	7	2 consumer representatives, 1 from a public administration, 5 NCB	ECB (Member of executive board)	"Foster the development of an integrated, innovative and competitive market for retail payments."
European Financial Markets Lawyers Group (EFMLG)	21	None	ECB (Head of Division)	"Provide legal support to the historical task of achieving an integrated financial market."
Foreign Exchange Contact Group (FXCG)	23	None	ECB (Deputy Director General)	"Industry developments and structural trends of particular importance for the foreign exchange market."
Institutional Investors Dialogue (IID)	17	None	ECB (Governing Council)	"Industry developments and structural trends of particular importance for the euro area financial markets."
Macroprudential Policies and Financial Stability Contact Group (MFCG)	26	None	ECB	"Issues related to euro area financial stability and macroprudential policy."
Money Market Contact Group (MMCG)	20	None	ECB (Deputy Director General)	"Issues related to the euro area money market."
Project Managers Group (PMG)	20	27 NCB	ECB (Head of division)	"Ensure that T2S and subsequent releases go live."
T2S Advisory Group (T2S AG)	51	21 NCB	ECB (Director General)	Advice and support on T2S issues.
T2S Harmonisation Steering Group (T2S HSG)	14	1 NCB	Banque de France	"Foster the T2S post-trade harmonisation agenda, identify where T2S markets are lagging behind in the implementation of agreed standards."
Task Force on Future RTGS Services (TF-FRS)	18	15 NCB	ECB	Discuss impact of T2S and specify user requirements.
Task Force on Target Instant Payments Settlement (TF-TIPS)	24	11 NCB	ECB	"Define and specify user requirements for the potential instant payment settlement service, define the testing strategy."

517 seats are available and no less than 508 are taken by representatives of the private financial sector.

As opposed to the European Commission, there is no simple way of getting an overview of the ECB's existing advisory groups. The ECB does not participate in the Commission's register of expert groups, nor does it have its own public register. In the absence of such proactive transparency, Corporate Europe Observatory has used the ECB rules on access to documents to obtain the information necessary.

At the time of writing, the European Central Bank runs 22 different advisory groups with private industry participation. Following a freedom-of-information request the ECB produced a list of 17 groups, but after an exchange on information retrieved from other sources and from thorough searches on the ECB website, Corporate Europe Observatory has established that the number is 22.⁴

In the 22 groups, 517 seats are available (excluding observers and ECB representatives), and of those no less than 508 are taken by representatives of the private financial sector.⁵ Of the remaining 9 seats, 7 represent other economic interests (Total, BusinessEurope, the Retail Roundtable, Airbus, UEAPME, Siemens, and a Greek law firm), and only 2 come from consumer groups (BEUC and AGE Platform). Also, 10 of the groups are exclusively for the private financial sector, with a few representatives of the ECB – the remaining 12 groups include representatives from national central banks as well. Contrary to what the ECB stated in the letter mentioned above, there is not a single independent academic in any of these 22 groups.⁶

Who are the 500?

Who are in these groups, more specifically? The statistics give a very clear picture of the vision of the ECB when it comes to proactively seeking advice.

The 508 finance industry representatives sitting on these 22 groups, represent a large number of companies and trade associations – a total of 144 – and are made up of a variety of actors on financial markets: banks, investment funds, clearing houses, central securities depositories, financial

consultancies, and stock exchanges. This reflects the scope of the topics dealt with by the groups, and it results from attempts by the ECB to ensure what it deems to be “broad representation”. This refers not to a broad array of interests from stakeholders from various sectors, but to something narrow: it is to be understood as broad representation ‘from industry’, not of ‘society at large’.

Even within the finance industry sector itself, some are more equal than others. What becomes obvious when browsing through the list of members is that a few financial companies are represented in a very high number of advisory groups. As can be seen from the table, the top 10 – corporations with 7 or more seats – is dominated by the megabanks of Europe – with Deutsche Bank (18 seats), BNP Paribas (17 seats), Société Générale (16 seats), and Unicredit (15 seats) represented in most groups. Overall, these few corporations take no less than 208 of the 508 seats occupied by the private financial sector, so roughly half of all seats.

What do the 22 groups advise on?

The ECB's advisory groups can be divided into four categories according to their characteristics described in their mandates, or in the absence of a mandate, the short description on the ECB website:

1. Market Contact Groups

The Market Contact Groups include individuals from financial corporations with special knowledge about particular sections of the financial markets. This includes a bond markets group (BMCG), a foreign exchange group (FXCG), a money market group that works on topics like shadow banking, liquidity of banks and short-term financial papers (MMCG), an operation managers group that addresses regulatory issues, the effects of financial innovation and acts as a forum for responding to crisis situations (ECB OMG), a Euro Securities group on ECB loans (COGESI), and finally a group on macroprudential policies and financial stability, ie

Top 10

16 financial companies make it to the top 10 list of those with most seats in ECB advisory groups

Rank	Name of company	No. of seats
1	Euroclear	23
2	Deutsche Bank	18
3	BNP Paribas	17
4	Société Générale	16
5	UniCredit	15
6	Citi	13
6	Commerzbank	13
7	Clearstream	12
8	Crédit Agricole	11
8	Intesa Sanpaolo	11
8	Nordea	11
9	Santander	10
9	Monte Titoli	10
9	BNY Mellon	10
10	HSBC	9
10	ING	9

Rank allocated by number of seats. The numbers reflect the total allocated to corporations, any seat given to a subsidiary is reflected in these numbers.

the regulatory measures taken by the EU to avert financial crisis (MFCG), six groups in total.

In the words of the ECB, these groups are there to facilitate dialogue “on topics of common interest”, discuss developments on markets, and monitor and exchange views on market functioning. In other words, a very open-ended concept.

2. The big players groups

There are two groups which are forums for dialogue between the ECB and the biggest financial companies on both market developments and policymaking: one with representatives from some of the biggest banks (BID) and another one with some of the biggest investment funds (IID). In both cases, the groups’ mandates allow for both market developments and policymaking to be dealt with. Concerns over ECB policy can be addressed as well: again, a very open-ended scope for an advisory group.⁷

In this category belongs a third group, the European Financial Markets Lawyers Group, which gives advice on

legal issues. While it is chaired by an ECB official and administered by the ECB secretariat, all its members are associated with the private financial industry, predominantly the biggest banks in Europe. This means that the legal advice being proffered to the ECB from this group is coming from the big banks.⁸

3. T2S project

The biggest area is securities, with no less than 12 groups associated with T2S, a big project the ECB took on in 2008. Finally launched in July 2015, T2S is setting up an infrastructure for securities trading in the EU. The following groups stem from this workstream: the T2S Board, the Harmonisation Steering Group (HSG), the T2S Action Group, the Corporate Actions Sub-Group (CASG), a group on payments systems (AMI-Pay), one on securities and collateral (AMI-Seco), one on “distributed ledger technologies”, one on RTGS Services (TF FRS), a central securities deposit group (CSD), project managers group (PMG), direct connected parties group (DCPG), the change review group (CRG), and finally one on instant payments (TF TIPS). The strong industry involvement in the project has given opportunities for financial corporations to influence the setup and running of securities trading.

4. The European Retail Payments Board

Finally, the European Retail Payments Board is in a category of its own. This group has a mandate to follow and give advice on the ECB’s approach to retail payments, such as rules on credit cards, including under what circumstances providers can demand fees. Its composition and role differs considerably from the other groups in that it is not dominated by the financial industry. Curiously, the “positions, guidance and statements” of the group are adopted by consensus. Should the AGE Platform or BEUC, the two consumer groups represented in the group want to convey a special position that differs from eg the European Banking Federation, it would seem to be greatly hindered by this consensus process.

When the ECB is looking for knowledge relevant to the area in question, they look to those who are closest to markets – financial corporations. The ECB does not necessarily set out to recruit expertise per se.

Despite these four categories, it is worth noting that some groups have very broad remits and overall, practically all issues regarding financial markets are covered, according to the mandates of the groups. Considering the massive corporate bias within the membership of these groups, this gives significant opportunity to industry for influence.

Why advisory groups are dominated by financial corporations

Why are these groups inhabited almost exclusively by representatives of companies? How are members selected?

From the lists, it seems clear that the ECB is making no attempt to secure participation from groups outside the private financial community. When the ECB is looking for knowledge relevant to the area in question, be they bond markets, foreign exchange or otherwise, they look to those who are closest to markets – financial corporations, be they banks, investment funds or another type of financial company. They prefer actors in the markets rather than input from a variety of interests, including from consumer groups, trade unions, or academia.

If you expect to see a bank looking for different takes on a topic, and if you assume such an approach would provide a higher quality of output from an advisory group, then the ECB's advisory structure is mystifying. But the explanation is quite straightforward: according to the mandates (when available), or the texts on the ECB website that describe the purpose and criteria for the composition of the groups, the ECB does not necessarily set out to recruit expertise per se. Out of the 22 groups, 18 are composed of people invited explicitly to represent their institution (a company, corporation, or trade association).⁹ And of the 22 groups only 9 groups are explicitly intended to boast actual expertise,¹⁰ 2 further groups are to attract people with 'seniority',¹¹ a vaguer term that may or may not mean the same thing. Only two groups – the CASG and the COGESI – are set up

to find expertise, with no necessary link to an institution/company.

In other words, the ECB is interested in a direct dialogue with financial corporations on its current and future initiatives, notwithstanding the risk of biased input. Specific expertise is generally only a secondary objective. While many advisors may, then, bring deep knowledge of financial markets to the table, this is inevitably tainted by the economic interests they represent. In other words, the makeup of the ECB's advisory groups opens the door to the risk that the regulatory process being captured by lobbyists, who have been provided an excellent platform with which to directly access Europe's increasingly important Central Bank decisionmakers.

2. Regulatory capture via advisory groups

From the Financial Transaction Tax (FTT), to scandals such as Libor/Euribor, and Forex (see below), it is easy to identify key political battles where the ECB advisory groups played roles that resemble a classic defence of vested interests. Advisory groups made up of experts from many institutions outside the private financial sector, and from independent academics, would in all likelihood have led to a different policy direction in these cases; not to mention lent a degree of legitimacy which is currently absent.

The fight against the FTT

In response to the financial crisis a key demands of civil society, later supported by 11 member state governments,¹² was the financial transaction tax. This would be a tiny tax on every transaction from foreign exchange to sales or purchases of securities, in order to discourage and reduce high frequency trading and lead to billions of extra euros for public budgets.

Such a proposal is a challenge to most of the financial sector as it would trim profits, and not surprisingly, it has been fought vigorously by all major lobby associations and big financial corporations since it first emerged on the European political agenda at top level more than five years ago. Since 2012, the 11 governments in the Eurozone who have signed up to the idea in principle, have discussed internally how broad based such a tax should be – which financial instruments should be taxed, and which not. In parallel, the financial lobby has pushed incessantly to either have the whole project scrapped, or reduced to something very limited.

The European Central Bank quickly started looking into the issue, including by getting involved in a very deep debate with the private financial sector. At least four of its advisory groups put the tax on the agenda.¹³ Already in 2012, the ECB

took a position on the financial transaction tax. While the leadership says it is not necessarily opposed to a tax, they are keen on excluding the brunt of the transactions made on financial markets to avoid adverse effects on growth, an argument rejected by opponents who also argue that exclusions would make the tax less efficient if not useless.¹⁴

This matter has been a collective concern of the ECB leadership and the most outspoken members of several advisory groups, including many contact groups, have made public political statements that appear no different from what the financial lobby would convey through letters to parliamentarians and governments. For example, the Foreign Exchange Contact Group called for exclusion of huge chunks of transactions on financial markets.¹⁵

Since 2013, the FTT has been discussed at length, and serious disagreements have emerged between the original 11 EU governments prepared to introduce the tax. This stalemate was in part due to the strong resistance mounted by the financial lobby in 2012 and 2013, with the ECB advisory groups as a platform to forward their agenda.

The Libor scandal

The Libor scandal saw over a dozen financial corporations be fined by either the European Commission, the UK, or US financial services authorities.

The first sign of something brewing was in 2008, when the *Wall Street Journal* reported signs that the benchmark rates

It is not difficult to identify some key political battles where the ECB advisory groups have emerged as platforms for lobbying.

Five years of talks with the banks in the contact group on the Libor/Euribor scandal delivered nothing but delay.

for interbank lending were being manipulated,¹⁶ but it was not until 2012 when the first bank, Barclays, was penalised.

For decades the rates of different kinds of lending between banks in the US and the UK have been reported on by Libor, an office run by the British Bankers' Association until it was taken over by the ICE Benchmark Association in early 2014. The interest rates, called 'reference rates', were highly significant to banks, among other reasons because the Libor rate dictated the price of several financial products they sell. Movements in the rates affected profits.

The system was perfect for manipulation. The rates were estimated on the basis of reports of trades that came in from big banks, not on calculations on actual trades. To boost profits, traders from banks reported to Libor in a manner that would make the rates fit the optimum, and in this way, banks effectively worked together to manipulate rates. There were winners, and there were losers. While the winners were easy to identify, the losers seemed to have been millions of consumers, some of whom had to pay more for loans, while others lost on investments, according to many accounts.¹⁷

What followed were years of investigations and a row of fines imposed, not only in the case of Libor, but associated and similar systems, including the Eurozone, Euribor. One case led to fines of €1.49 billion in December 2013,¹⁸ and another ended in December 2016 with a combined fine of €485 million for JPMorgan Chase, Crédit Agricole, and HSBC.

A quest for solutions began. But despite the fact that the problem had originated with the private sector, the ECB considered it important from the beginning in late 2012, that the private sector develop the solution. A contact group – the Money Market Contact Group – was chosen to be the key vehicle to identify the alternative. The ECB set out to not only develop the alternative, but to implement it as well. All eggs in one basket.

Involved in the debates in the group were some of the main market actors also in the docks over market manipulation.

The composition of the group was controversial now and then, particularly when it emerged that three (two from Barclays and one from Deutsche Bank) of ten traders (6 from Barclays and 4 from Deutsche Bank) convicted in 2015 – had been members of the ECB contact group when the financial crisis was most severe.¹⁹ And in the years of reform discussion (2012-2017), even banks that had had to pay billions in settlements or fines, were be strongly represented in the group, making up 7 of 22 members in 2012 and 2013, and 4 of 20 in 2017.²⁰

The ECB used the forum to discuss alternatives from 2012, specifically to push the private sector to deal with the problem itself. Despite years of wrongdoing by a number of big banks, the ECB continued to support industry self-regulation rather than deciding it needed to take an active role. The solution, everybody seemed to believe, was pretty straightforward: instead of relying on reporting from banks, rates should be calculated on the basis of actual transactions. But from early on, the ECB bet on the financial sector to handle it themselves. The ECB President participated personally in a Money Market Contact Group (MMCG) meeting to urge the members to provide input and emphasised “the MMCG’s important role as a source of market intelligence and market feedback”.²¹

The issue would be the top priority for the group for almost five years, yet in May 2017, the private sector vehicle set up to deal with the problem, the European Money Markets Institute, announced it would not be “feasible to evolve the current Euribor methodology to a fully transaction-based [one]”,²² the very idea the ECB had lent its support for throughout the whole process. It may be that such an approach is indeed complex. However, it is difficult not to see the many years of discussion as one that led nowhere, with the finance industry succeeding in delaying any reform process in the absence of voices with other perspectives in the advisory group. Eventually, and for the first time, the ECB started contemplating setting up its own index²³ – after five years of talks with the banks in the MMCG had delivered nothing but delay.

From the time when the first signs of the Forex scandal were out in 2013 to date, the banks involved, have had strong representation in the advisory group of the ECB.

The foreign exchange scandal

In June 2013, financial news outlet Bloomberg reported allegations by five dealers in foreign exchange, claimed the market was rigged. Some of the world's biggest banks were manipulating currency exchange rates in order to make a solid profit from clients.²⁴ In August that same year, Bloomberg reported some suspicious spikes in exchange rates at specific hours of the day, indicating foul play.²⁵

That was the beginning of the foreign exchange or Forex scandal. When performing trades for clients, traders from big banks had colluded in a secret online chatroom to coordinate purchases that made a currency appreciate, affecting the exchange rate known as the 'London Fix'. Ultimately clients would lose, banks would win. In one estimate – savers lost about €8 billion per year.²⁶

The Forex scandal included a systematic method to reap a dubious profit, that of 'last look'. Last look simply means banks have reserved the right to reject trades for clients last minute – or rather "last millisecond" in many cases. Banks would have software that would analyse the implications for the bank itself of a particular trade, and then reject it if the outcome would be negative. At Barclays, an order was issued not to discuss rejected sales, but to "just blame it on the weekend IT release and say it's being fixed."²⁷ A strikingly clear conflict of interest between being a dealer and an investor.

The Forex scandal ended with many megabanks paying billions in fines, both in the US and in Europe; Citigroup, UBS, HSBC, JP Morgan, Bank of America, Royal Bank of Scotland, Barclays, Goldman Sachs, BNP Paribas, and Deutsche Bank all had to pay out. And last look was a key issue, with cases against Barclays and later Deutsche Bank dealing specifically with the last look approach.²⁸

The ECB picked its Foreign Exchange Contact Group to handle the European side of the scandal and develop an action plan, yet the ECB had no sensitivities regarding membership.²⁹ From the time when the first signs of the scandal were known in 2013 to date, the banks involved in the

scandal and who have either been fined or have accepted a settlement, have had strong representation in the group. In fact, of the 18 to 22 members of the group at any one time, 7 or 8 were always from banks involved in the scandal, according to list of members given to CEO by the ECB.³⁰

The contact group would be on the case very quickly, but if the ECB expected any help to set things straight in a jiffy, its representatives must have been disappointed. Despite rumours of a scandal brewing, the minutes from the meetings in 2012 and first half of 2013 show no indication of a thorough debate on suspected manipulation. A meeting in June 2013, the day after the Bloomberg article that broke the scandal, there was a debate on "the [Forex] spot market landscape", opened with input from a Barclays representative, which touched on the matter, apparently in a superficial manner: "Members also briefly discussed [Forex] reference rates and fixings. Most members reported that a key feature of [Forex] fixing is that they are transaction-based and that their methodology is transparent and recognised by market participants. Members said that most banks propose the execution of transactions at fixing rates as a pure service to customers with limited immediate benefits."³¹ This seems like a defensive discussion full of PR spin, rather than a detailed discussion of the emerging problem.

But was the group at least of use when the scandal had broken, and was it a good vehicle to search for an end to manipulation? The scandal led straight to international efforts to discipline the foreign exchange markets by developing a code, which was first discussed at a meeting of the group in October 2013, with members stressing that "manipulation" was often a question of interpretation. The issue would be top of the agenda for the years to come. A new code would be developed in an international framework through the Global Foreign Exchange Committees, comprising delegates from the central banks of the US, Australia, Canada, Singapore, Hong Kong, Japan, the UK, and the Euro Area, ie the ECB, and work under the auspices of the Bank of International Settlements, and the FX Contact Group would be a key partner for the central bank in its work with the new code. In the following years, the ECB used the group to comment drafts at every step of the way, and

The presence in the advisory groups of the very institutions, the ECB is supervising, is rather massive: of the 144 entities represented in the groups, 66 are monitored by the bank in order to secure a stable financial system and avoid a repetition of the financial crisis.

discuss details of the negotiations. 'Last look', in particular, was an important topic at the meetings from November 2016. Here, banning last look was not an issue, according to the minutes. That, it seems, would have required a different composition of the group. Considering the amount of voices that came flat out against 'last look' in the public domain, it may even sound odd that no one inside the group took such a position. The explanation could be that the group was composed of the exact market operators that had an interest in avoiding a ban.

In May 2017 the 75-page code, intended to help "restore the public's faith in the foreign exchange market", was released amid much fanfare.³² The big banks had good reason to celebrate, for example in the way the code deals with the 'last look' practice: against the advice if not demand of many financial institutions and investors outside the small circle of megabanks,³³ the practice is not banned under the new code,³⁴ but merely encourages market participants to be "transparent regarding its use and provide appropriate disclosures to clients".³⁵ The ECB too, would pledge allegiance to the code, with the interesting promise, that going forward, only institutions that have signed up to the code will be allowed to join the contact group.³⁶ Given the flexibility of the code, that may not be difficult.

Banking supervision

The problem with advisory groups does not just arise with the way the ECB handles infamous scandals and high profile political battles. Advisory groups touch on the core business of the ECB as well, be it monetary policy or supervision of banks, which can give rise to tensions between the advice the ECB needs, and the input they get from financial corporations. On both monetary policy and banking supervision, the ECB is supposed to defend its independence, and seems to do so with fervour when it comes to pressure from governments. But there are no specific safeguards when it comes to the risk of undue influence from its advisory groups in those two areas.

The massive presence in the advisory groups of the very banks and finance houses the ECB is supervising is concerning. This is the institution is responsible for securing a stable financial system and avoiding a repetition of the financial crisis, where over €1 trillion was spent to prop up ailing banks.

The main requirements the ECB can put in place for banks in trouble are either to have the bank change its management, or create a bigger financial buffer to avert a collapse, ie impose higher 'capital requirements'. In the end if all fails, the ECB has a significant say over the final fate of the bank, if it is to go into resolution. These are powerful measures. So it is particularly concerning that, of the 144 entities represented in the ECB's advisory groups, 66 of those are being monitored by the bank, and of the 16 corporations that have the most seats (top 10 in the table), only one is not supervised by the ECB (Monte Titoli). The financial entities under supervision hold 346 seats in the advisory groups, an incredible two thirds of the total.

One of the arguments used in the run-up to the adoption of the Banking Union, a Europe-wide set of rules which handed supervision of the biggest banks in the EU to the ECB – was to sidestep too-cosy relationships between national regulators and the biggest banks on the national scene. This was seen as one of the causes of the financial crisis. But the cosy relationships continue at the EU level. The advisory groups indicate a very close interaction between supervised corporations and the ECB, and absolutely no arms-length principle is applied in that regard. They are present in high numbers and are able to interact with the ECB on any issue related to financial markets.

It can be argued that none of the advisory groups are linked to the supervisory arm of the bank, however the main political decisions concerning supervision are taken in the executive bodies. There is certainly no firewall between the two. That is why discussions about supervision, such as one in the Money Market Contact Group in 2015,³⁷ which evaluated the experience with the EU system for overseeing banks (Single Supervisory Mechanism) after one year, appears inappropriate in a group in which only participants from

The ECB programmes make it very interesting for the biggest banks to be close to power in the bank, where a decision could mean a stake of billions of euros.

supervised banks were involved.³⁸ Surely independent authorities and observers who do not have a direct interest in supervision should be asked to give their view? Also, another group with only supervised entities in its membership, the Banking Industry Dialogue, seemed to become a mere lobbying platform, when the members used a meeting in July 2017 to lament the low profitability of banks and warn against increasing capital requirements and limiting any additional requirements³⁹ – something the ECB is actually in a position to act on.

Asset purchases

Another part of the bank's core business which financial corporations have a key interest in, are the quantitative easing programmes and the massive bond purchasing programmes that have become standard components of the ECB's monetary policy. They make it very interesting for the biggest banks to be close to power in the ECB, where a decision could mean a stake of billions of euros. Such programmes, their development and effectiveness, are discussed in general terms at meetings in the advisory groups, and at times the deliberations in advisory groups come very close to topics where big money is at stake for members of those groups. For example Volkswagen and Ford joined a working group in 2010 to help develop a template for reporting on car loans, in order to increase transparency and improve risk assessment.⁴⁰ In the following years, Volkswagen enjoyed the support of the ECB for its financial arm, including through ECB purchases of 'auto ABS', securities backed by auto loans. So, first the ECB allows VW to help standardise its financial products, then it buys the same products on markets. These purchases were so extensive that it became a liability for the ECB when the Dieselgate scandal broke – with the discovery of fraudulent software in Volkswagen vehicles to hide the scale of vehicle emissions. The ECB reacted by suspending purchases of VW auto ABS.⁴¹

Another example is Goldman Sachs being given the privilege to kick off a debate in the Bond Market Contact Group

on the ECB's new corporate bond purchasing programme, shortly before the programme took off. It is hardly a wonder that Goldman Sachs' assessment of the idea of the ECB purchasing bonds was very positive: through the investment bank's shares in companies such as Airbus, Bayer, Roche, and Nestlé, all winners from the corporate bond purchasing programme, the financial giant presumably gained indirectly from the programme.

In sum, the advisory system of the ECB creates multifold risks of regulatory capture. While the ECB tends to portray the advisory groups as a mere technical affair with no political ramifications, and as simply a way of helping the ECB to discharge its mandate, there are simply too many in-built dangers that open the door to regulatory capture. One way of dealing with this, is – of course – to ensure the ECB has rules in place that prevent regulatory capture from occurring in the first place, but here the ECB has a severe shortcoming.

3. Ethics rules

The discussion on the role the financial sector plays in designing ECB action through the network of advisory groups is about the ECB's relationship with the private financial sector. It is not a new topic in the EU: the European Commission's advisory structures have been called into question many times, with the Parliament pushing the Commission on the topic on many occasions over the past decade. Yet no similar pressure has ever been applied to the ECB.

Today, with the major influence the ECB is able to exert on financial markets and on the biggest banks, the rules that govern their composition, mandates, and approaches should be measured by the same yardstick as the 'expert groups' of the Commission. That yardstick has slowly evolved since 2005, and at key moments, the relationship with the financial sector within the Commission's advisory groups was similarly called into question.

The Commission's expert groups: the long way to reform

Members of the European Parliament started pushing for transparency on the composition and work of the Commission's advisory groups in 1999, but it was not until 2008 – after the budget committee had imposed a freeze of the EU budget for advisory groups⁴² – that a register of expert groups saw the light of day. While important, the introduction of the register was only the beginning of an ongoing struggle over the composition of the groups, one that took a decisive turn with the 2008 financial crisis.

In its aftermath, debate raged about whether regulators had let bankers have too much of a say, and whether lobbying had played a role in forging the rules that had proven so ineffective. Then Single Market Commissioner Charlie McCreevy admitted there had been "too much 'regulatory capture' by the sell side of the financial services market", and argued, "it was many of those same lobbyists who in

the past managed to convince legislators to insert clauses and provisions that contributed so much to the lax standards and mass excesses that have created the systemic risks. The taxpayer is now forced to pick up the bill."⁴³

The overly close interaction between regulators, decision-makers, and financial lobbyists came under scrutiny. In the case of the Commission, the composition of its advisory groups (or "expert groups") was first highlighted in a report from the ALTER-EU coalition from 2009 which revealed that expert groups that had advised the Commission on the very EU rules that had proved so inefficient when the crisis broke, had been dominated by financial corporations. Controversy grew over the fact that the Commission had established expert groups on financial regulation which were dominated by financial corporations, and political pressure mounted for reform.

With the change of Commission, and Michel Barnier in the Single Market Commissioner's seat, he promised in a November 2009 letter to the ALTER-EU coalition to enact reforms to ensure that "the concerns of end-users and other non-industry stakeholders are taken into account when the Commission designs initiatives that aim to restore confidence".⁴⁴

The outcome, however, was mixed. What followed was a tug-of-war that would last years. By 2014 very little had happened, despite repeated calls for reform from the European Parliament,⁴⁵ and the budget committee of the European Parliament again halted its approval of the EU budget until the Commission had delivered on expert

In the aftermath of the financial crisis in 2008, debate raged about whether regulators had let bankers have too much of a say.

groups, demanding more transparency, better procedures when selecting members of the advisory groups to work for balanced expert groups, and to enhance its surveillance of potential conflicts of interest.

At this point, the issue was not merely about financial expert groups, but about the Commission's expert groups in general, and an additional demand was for new crosscutting rules to cover all groups. In response to the lack of movement, the European Ombudsman Emily O'Reilly opened her own investigation in 2014, asking for input from trade unions, consumer groups, environmental NGOs, and others. Her findings were equally damning for the Commission, but two of her key preliminary recommendations – of greater balance within groups and crosscutting 'horizontal rules' – were outright rejected by the Commission as providing no "real added value".⁴⁶ The European Parliament waded in once more, opening another investigation, but before either the Ombudsman could issue her final judgement or the Parliament could issue their report, new "horizontal rules on the creation and operation of Commission expert groups" were adopted by the Commission, and are in force today.⁴⁷ While the Commission has taken some new steps in transparency, research from CEO shows the wider issue of corporate dominance is far from resolved.⁴⁸

The Ombudsman's litmus test

The Ombudsman's first list of recommendations considers the key parameters by which official advisory groups can be judged.⁴⁹ They reflect, in broad terms, positions similar to that of the Budget Committee of the European Parliament, and make up the state of play in the long-standing debate on the Commission's approach to advisory groups,⁵⁰ and as such they form a good basis for a look at the European Central Bank.

The recommendations in the Ombudsman's letter can be summarized as follows:

- * On the nature of rules regarding expert groups, she recommends binding legally binding rules, including rules that would guarantee balanced expert groups.
- * On transparency, it is suggested the Commission makes sure that published minutes are detailed, including by allowing identification of a person that takes a specific position.
- * On the EU lobby transparency register, the Ombudsman is satisfied that the Commission has accepted her suggestion to refrain from inviting non-registered entities to participate in an expert group, and suggests a hyperlink to the data sheets of a given entity in the Transparency Register be included in the register for expert groups.
- * On forming expert groups, she highlights the recommendation to publish open calls for applications ahead of putting together an expert group, instead of selecting and appointing particular members behind the scenes. This should "help increase the number of civil society organisations eligible for appointment to expert groups", she wrote.
- * On members of expert groups elected "in their personal capacity", she recommends that members of expert groups write a Declaration of Interest in order to secure there is nothing in their personal history which would give rise to conflicts of interest when they perform their job as experts, for instance strong links to an industry that will be affected by the matter dealt with by a given expert group.
- * Finally, the Ombudsman emphasizes the need to have rules in place that guarantees a balance between different interests in society. "If the Commission's policy development process is to meet the test of legitimacy", the report reads, "it is important that the Commission ensures that its use of external sources is, overall, well-balanced," she wrote in her final report.⁵¹

The letter to the Commission, as well as the report of the Ombudsman can be seen as the current climax of the battle over the Commission's expert groups. The Commission has taken a number of new steps in its latest decision – such as introducing mandatory declarations of interest for members of expert groups and a mandatory registration in the Transparency Register – but remains lacking on some

The ECBs website does not include a simple way to identify all the advisory groups. This is in contrast with the Commission which has run a register of its expert groups for a decade.

main issues, including balance. A February 2017 report by CEO of ten randomly selected Commission expert groups showed that while some improvements had been made on transparency and ensuring lobbyists giving advice are in the transparency register, big problems remained with the issues of corporate dominance and conflicts of interest. Half of the groups examined remain dominated by corporate interests. Across all ten groups, 70 per cent of seats were taken by corporate interests compared to less than 15 per cent for NGOs and just over 2 per cent for trade unions. The worst groups had more than 80 per cent corporate representation.⁵²

Still, when we compare the Ombudsman's yardstick on advisory groups against the state of affairs in the ECB, we can see that the central bank also comes up short, even worse than the Commission. On questions about the way advisory groups are put together, the balance they reflect, and more generally the ECB's rules on advisory groups, between the Ombudsman's recommendations and the reality there is a big chasm to cross for the central bank.

Transparency with flaws

In its communication with Corporate Europe Observatory, the ECB stresses that efforts have been made lately to improve the public's access to information about the work of the advisory groups. That may be the case. Once a group is published on the ECB website, its membership list as well as minutes of meetings are normally available online. As for the level of detail, though, the viewpoints raised in the groups are hardly ever assigned to specific members.

Also, the ECB's website does not include a simple way to identify all the advisory groups. To identify a group and find information on its purpose, composition, and work, it is necessary to possess basic information beforehand, for instance the name of the group. This is in contrast with the Commission, which has run a register of its expert groups for a decade.

When asked for a complete list of existing groups, the ECB apparently obliged and sent a list with "a comprehensive overview table of the relevant groups". After a meticulous search and a further exchange with the ECB, Corporate Europe Observatory established that three groups were missing from the list (The European Financial Markets Lawyers Group, the CSD Steering Group, and the Directly Connected Parties' Group). Subsequently, a further two groups were identified: the Change Review Group and the Project Managers Group. This does not represent full and open transparency from the ECB.

No broad commitment to transparency

The Commission has been asked repeatedly over the years to refrain from involving advisors representing companies or associations that have not registered in the Transparency Register, the register that is supposed to give the public basic information about lobbyists accessing the EU institutions. The Commission has been very reluctant on this point, but in a recent decision registration with the Transparency Register is now mandatory for all members of expert groups (other than those acting in a personal capacity). This ensures the public access to basic information about the company or association in question, the rough size of its lobbying budget, and its main area of interest.

The ECB, on the other hand, is not formally involved in the register – it is a register for the European Commission and the European Parliament only. In principle, according to the texts on the register website, the register is to cover "all activities designed to influence – directly or indirectly – policymaking, policy implementation and decision-making in the EU institutions, no matter where they are carried out or which channel or method of communication is used," but the institutional agreement that lays the foundation of the register does not involve the ECB.⁵³

Still, even the ECB seems to accept the register represents an obligation. The ECB has participated in the Ombudsman's consultation on public officials' interaction with lobbyists,

Of the 144 entities with seats in an ECB advisory group, 64 are not in the Transparency Register.

and one of the comments of the bank was that it should be made clearer that EU public officials must verify that a given “interest representative” has duly registered in the Transparency Register before a meeting goes ahead.⁵⁴ Yet no such rules have been formally adopted by the ECB itself, and no such procedures are followed. One has only to see the list of experts involved in its groups – of the 144 entities with seats in an ECB advisory group, 63 are not registered at the time of writing

No rules governing advisory groups

While the ECB is making an effort on transparency – albeit with some serious flaws – when it comes to ethics rules guiding its approach to advisory groups, the central bank flunks completely. A crucial flaw of the ECB’s design is the absence of rules. Whereas the Commission has produced a series of (imperfect) decisions on its expert groups that concern issues such as transparency, conflicts of interest, balance, and more, there is nothing in the ethics framework of the ECB⁵⁵ that directly addresses these issues in the context of advisory groups. The ethical codes address the question of independence and reputation of the ECB, they include a definition of conflict of interest, and they go into some detail about confidentiality. This all relates to the conduct of staff and members of executive bodies at the ECB, and they apply to staff or members of decisionmaking bodies that work with advisory groups to a limited extent. It would obviously be in breach of the rules if the ECB would divulge its upcoming decisions on monetary policy in an advisory group shortly before the important meetings in the Governing Council of the Bank. But no specific rules are offered on eg transparency, or composition, there are no specific guidelines about how to deal with lobbyists from the private sector in general, nor about advisory groups.

In 2015 the ECB’s interaction with private sector representatives came to the fore when a member of the Executive Board, Benoît Coeuré from France, told a closed meeting of people from the financial sector about the next moves of the ECB in the area of monetary policy. The information

was apparently used by some of those in the room to act before their competitors heard the news. This scandal soon led to the adoption of a code about how to address public meetings, and it repeats the need to keep confidential information within the ECB and not to divulge it to external people, which presumably includes advisory group members.

But the new code has nothing new and relevant to say about expert groups.⁵⁶ Crucially, the ECB has given itself a free hand to establish advisory groups with members recruited only from the financial sector. The question of balance that has played the key role in the debate between the European Parliament and the Commission on its expert groups is not even considered. As explained above, the ECB is rarely even looking for the best expertise: it wants market players to provide the necessary input. It does not consider that it has a duty to listen to other, independent, voices.

Rarely open calls for applications

The composition of ECB advisory groups is in part secured by the way groups are put together. While the need to hold open calls for applications before putting together an expert group has been routinely demanded by the European Parliament of the Commission, and is seen by the EU Ombudsman as a good tool for attracting varied expertise, and a means to avoid unbalanced expert groups, the ECB fails on this point.

Corporate Europe Observatory asked the ECB to provide information on selection procedures. In its response, the ECB did not give a structured explanation, but merely referred to specific places on its website.⁵⁷ Links provided by the ECB do give access to the mandates of most groups, but the procedures are not spelled out in detail.

What is clear, though, is that recruitment is not done in an open, inclusive manner. The texts – the mandates – show no indication of open, public calls to apply for a seat in any single group. To the extent that procedures are disclosed,

There is no indication that the ECB is interested in securing a sizeable representation of other stakeholders than the private financial sector.

they relate to replacement of individual members, in which case the standard approach is for non-specified representatives of the ECB or the ECB chairman of a group to pick and choose, either freely or among candidates proposed by other advisory groups or by specific associations. The exception to this rule is the T2S Harmonisation Steering Group where members of the T2S Board (including private companies) are invited to propose candidates, according to the mandate of the T2S HSG. This is not up-to-date information, though, as the T2S Board has ceased to exist.

Balance – the big question

In her recommendations the Ombudsman insisted on the introduction of binding rules to achieve “balance” in the Commission’s expert groups. In the event that the Commission encounters difficulties in securing participation from non-commercial interest groups, the Commission is encouraged to explore “options which will facilitate and encourage participation”.

Here, the Commission hardly meets the Ombudsman halfway in its decision from May 2016: in the preamble to its formal decision on expert groups, the Commission expresses a “commitment to strive for a balanced composition of the expert groups”. The Commission has acknowledged the need to consider balance, but omits clear commitment. But however small this advance may be, it shows a different approach than that of the central bank. No such commitment has ever been made by the ECB.

In terms of securing a sizeable representation of non-economic interests, from groups that do not profit from financial markets, there is no indication that the ECB pays any attention to the matter. In many cases, the ECB cites rather empty criteria, such as “broad involvement”, that leaves it with a very free hand. This goes in particular for the groups on banking (the Banking Industry Dialogue, BID) and on the investment fund community (Investment Industry Dialogue, IID). The BID, for instance, is to represent “a diverse geographical composition”, which indeed it does. But

the BID is not even a reflection of the banking industry as such – it is by and large a forum for megabanks – let alone including non-commercial views. Same goes for the IID, which does include different participants from meeting to meeting, but the ones who were at all meetings in 2016 and 2017 were all major players in the investment management business.

Some groups are put together in such a way as to not discriminate against market players from particular geographical areas or sectors, and in some cases criteria are applied to ensure that institutions of different sizes are represented too. But any concern for representation of organisations or individuals without a direct economic stake in financial markets, is absent. The ECB is keen on including only market players, as reflected in the composition of the groups.

Conclusion

For almost a decade the corporate domination of the Commission's expert groups has been in the spotlight. Scores of concerns have been raised by parliamentarians, fearing a lower quality of legislation, erosion of legitimacy, and regulatory capture that could end up in political scandal. As a result, the Commission has been forced to take a series of steps towards remedying corporate capture of expert groups, and while problems remain, some progress has been made.

Seen in that light, the corresponding advisory regime in the European Central Bank is outrageous. Here, it is standard procedure to exclusively consult with the private financial industry. Occasionally, geographical concerns are taken care of, and when considered relevant, both buyers and sellers of financial instruments are present in the advisory groups. In contrast, the ECB shows no concern for other interest groups in society, and seems utterly uninterested in getting independent academic expertise involved; the advisory groups are purely an interface with industry.

It may be the case that some of the talks inside the groups are of a purely technical, uncontroversial nature, but by the ECB's own admission, that is not the full picture. And the examples unearthed in this report about the role of some advisory groups show the danger of regulatory capture is very real.

It is high time to act. Over the years, the power of the ECB has risen sharply. Besides its traditional role in monetary policy, it now runs huge programmes of asset purchases, it designs financial regulation, it negotiates accords and codes for financial markets at the international level, and it has become a major factor in Eurozone member states economic and fiscal policies.

In this context, the glaring contrast between the standards set by the Ombudsman on advisory groups, and the status quo at the ECB is a pressing issue.

The questions are who is up for the challenge for reform, and who is in a position to implement it. It is certainly not straightforward as the ECB is in principle accountable to no

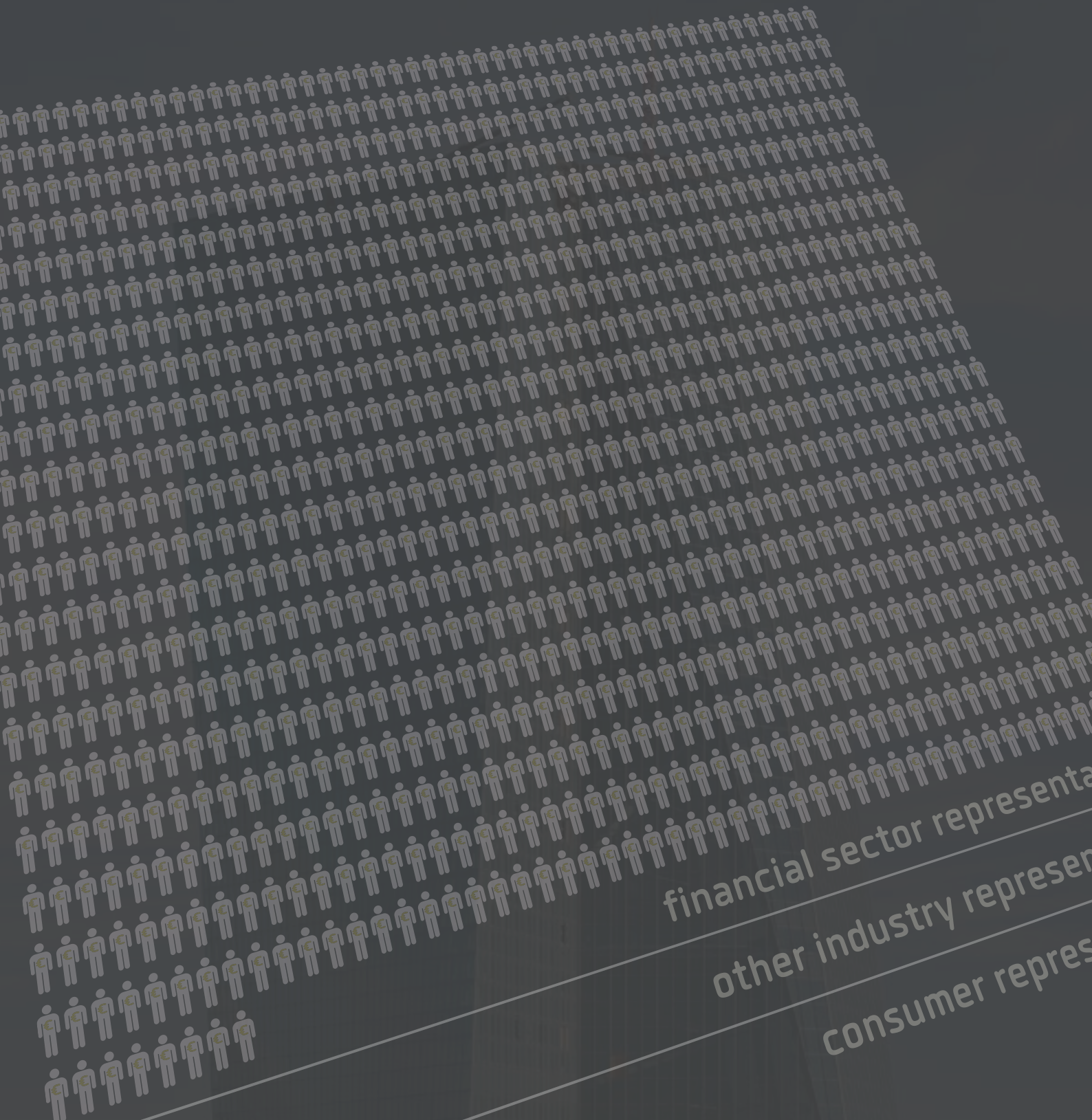
one, and guards its independence zealously. The European Parliament and the Council have few formal means to influence the ECB, and those that do exist are only indirect. This contrasts with the Commission, where the European Parliament at least gets to sign off on most of its legislative proposals. In the case of the expert groups, Parliament's power to reject the election of a new Commission and to approve or reject the annual budget has given it a leverage it doesn't have with the ECB. The lack of institutional oversight of the ECB within the EU's decision-making infrastructure may help to explain why the expanding mandate of the ECB has not been matched by a parallel development of its ethics rules.

But the independence enjoyed by the ECB makes it all the more important to deal with the danger of regulatory capture posed by the advisory groups.

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