

## **REINTERPRETING THE RULES ‘BY STEALTH’ IN TIMES OF CRISIS: A DISCURSIVE INSTITUTIONALIST ANALYSIS OF THE EUROPEAN CENTRAL BANK AND THE EUROPEAN COMMISSION<sup>1</sup>**

Vivien Schmidt, Boston University

### **Abstract**

This article examines the ways in which EU actors have engaged in incremental changes to the Eurozone rules ‘by stealth,’ that is, by reinterpreting the rules and recalibrating the numbers without admitting it in their public discourse. Using the methodological framework of discursive institutionalism to focus on agents’ ideas and discursive interactions in institutional context, the article links EU actors’ rules reinterpretation to their efforts to ensure greater legitimacy in terms of policy performance and governance processes as well as citizen politics. Using the normative theoretical framework of EU democratic systems theory, it analyses EU actors’ considerations of legitimacy not only in terms of their policies’ ‘output’ performance and citizens’ political ‘input’ but also their governance processes’ ‘throughput’ quality. The article illustrates by elaborating on the different pathways to legitimation of the European Central Bank and the European Commission.

### **Introduction**

At the onset of the Eurozone Crisis in 2010, EU actors responded after some delay with loan bailouts and bailout mechanisms in exchange for which they all agreed to reinforce the pre-existing rules and numerical targets of the Stability and Growth Pact through legislative pacts (the ‘Six-Pack’ and the ‘Two-Pack’) and intergovernmental treaties and agreements (e.g., the European Stability Mechanism and the ‘Fiscal Compact’). In the absence of any deeper political integration that could provide greater democratic representation and control over an ever expanding supranational governance, and in the face of major political divisions among EU actors over what to do and how, the EU ended up ‘governing by the rules and ruling by the numbers’ in the Eurozone (Schmidt 2015). But as the crisis evolved from 2010 through 2014, and as EU actors were tested by continued poor economic performance and growing political volatility, they slowly began to reinterpret the rules and recalibrate the numbers ‘by stealth,’ that is, without admitting it in their communicative discourse to the public. Instead, they mainly continued to insist that they were sticking to the rules even as they incrementally altered them.

Not acknowledging up front that the rules didn’t work meant that EU actors continued to operate under rules that were sub-optimal, and that constrained the range of possible solutions. Moreover, it left their actions open at any time to being contested as illegitimate. By the same token, however, not saying what they were doing gave EU actors the space

necessary to reinterpret the rules incrementally—arguably until such a time as they could gain agreement to legitimate changing the rules more formally.

The challenge for EU actors, in short, has been how to get beyond the original rules to more workable ones in a context in which formal rule-change has been difficult. This has not just been a question of how to get around the institutional constraints that make formally changing the rules very difficult (Scharpf 1999, 2012) or the political logics of divided member-state perceptions of the crisis and diverging national economic interests (Schimmelfennig 2015). It has also been a question of how to build legitimacy for change in a context of institutional-legal constraints and politico-economic divisions. And for this, we also need to consider EU actors' legitimating ideas and discourse about their actions within the EU institutional context.

Explaining the legitimation of institutional change in terms of a disjunction between discourse and action demands a combination of methodological theory to explain institutional change and normative theory to define legitimacy. In what follows, I argue that although the main neo-institutionalist analytic frameworks used in the explanation of the Eurozone crisis—rational choice and historical institutionalism—go a long way toward explaining the crisis response, discursive institutionalism provides a necessary complement. By focusing in on agents' cognitive and normative ideas about what to do and their discursive legitimation of what they did as they coordinated with one another and communicated to the public, discursive institutionalism helps explain the dynamics of change (and continuity) in the ongoing crisis over time. Moreover, because discursive institutionalism sets any such action in institutional context, it is able to use the other neo-institutionalist approaches as background information even as it helps to explain the (re)defining of interests and the (re)shaping of institutions (Schmidt 2008, 2012). Beyond this, by theorizing about legitimacy in terms of EU systems concepts of the responsiveness of the 'input' politics, the effectiveness of the 'output' policies, and the quality of the 'throughput' processes (Scharpf 1999; Schmidt 2013), the article additionally offers an analysis of the constructivist logics of EU actors' ideational and discursive legitimation of their reinterpretation of the rules 'by stealth.'

To illustrate the discursive institutionalist dynamics of change, this article focuses on the cases of the European Central Bank (ECB) and the Commission. The different pathways to legitimation of the ECB and the Commission can be explained not only by differences in their (rationalist and historical) institutional context, in which the ECB had much greater autonomy than the Commission, which was subject to an increasingly divided and politicized Council, but also in meaning and discursive context. The ECB benefited from a more open policy forum within which to develop new legitimating ideas through its coordinative discourse and to engage in a much more elaborate communicative discourse to the public than the Commission. While the ECB was able to hide its reinterpretation of the rules 'in plain view', through a discourse that claimed that everything it did was in keeping with its Charter, the Commission had to hide behind a discourse that claimed that it was rigidly following the rules, even as it interpreted them ever more flexibly.

The article begins with a discussion of the differences between rational choice, historical, and discursive institutionalist theories of institutional change, and how they apply to the Eurozone crisis, followed by a sketch of the normative framework for the analysis of legitimacy, focused on EU systems theory. It then explores the legitimating ideas and discursive interactions of the ECB, followed by the Commission.

### ***Theorizing Neo-Institutional Change (and Continuity) in the Crisis***

Explanations of the Eurozone crisis often tend to fit into one or another neo-institutionalist approach, including rational choice, historical, and discursive institutionalism. Rational choice institutionalist approaches tend to focus on the interest-based political and economic logics of EU member-state actors in the crisis. Historical institutionalist approaches concentrate on the path dependencies of or incremental changes to formal rules and institutional regularities during the crisis. Discursive institutionalist approaches tend instead to look into EU agents' crisis-based ideas and discursive interactions as they reshape their institutions and redefine their interests.

In the Eurozone crisis, rational choice institutionalist approaches tend to cast member-state political leaders in the Council as the key actors in the crisis. They generally concentrate on member-states' rationalist political calculations in interstate bargaining and the domestic political interests and/or economic motivations that inform member-state positions.

The more political accounts focus on interstate hard bargaining and brinkmanship, often within a 'liberal intergovernmentalist' framework in which domestic politics determines member-state bargaining positions with minimal winning coalitions (Moravcsik 1998; see also Jones et al. 2015). For example, the Eurozone crisis response of 2010 to 2012 has been described as a game of chicken in which the strong preference to avoid the break down of the euro area was combined with efforts to shift the costs to the weaker euro members most in trouble (Schimmelfennig 2015). Similarly, the lopsided outcome of the Greek crisis of 2015, during which the government achieved none of its stated goals, was attributed to the Greek government's nested games (Eurogroup and national constituency) and incomplete information (about Greece's bargaining room), confronted with the brinkmanship of the Eurogroup finance ministers, led by German Finance Minister Wolfgang Schäuble (Tsebelis 2016).

The more economic accounts additionally describe a structurally flawed euro that serves to benefit some member-states and handicap others. This has created perverse incentive structures that helped to divide preferences while enabling Germany (with its Northern European coalitional allies) to impose its strategic preferences, aided by the decision rules (most notably the unanimity rule) that gave veto players extra clout while resulting in sub-optimal outcomes, in particular for Southern Europe (e.g., Scharpf 2012; see also Schimmelfennig 2014). Where EU supranational actors are considered at all, moreover, they are often cast as secondary players following member-states' orders, motivated by self-

interest, the push for bureaucratic power, or the cultivation of neo-functionalism spillover (see, e.g., Niemann and Ioannou 2015, pp. 209-212).

Historical institutionalist approaches are often seen to provide a corrective to the rational choice perspective. They embed events in a broader context traced over time and emphasize the endogeneity of institutions, because they set the rules and the boundaries within which individuals may choose their course of action, and point to the unanticipated consequences of decisions (Pierson 1996; Schimmelfennig 2015, pp. 19-20). In the Eurozone crisis, historical institutionalism emphasizes the design of the pre-existing institutions, and uses the concept of path dependency to explain how the rules of the Stability and Growth Pact were mainly reinforced through subsequent agreements such as the Six Pack, the Two Pack and the Fiscal Compact (Gocaj and Meunier 2013; Verdun 2015). That said, path dependence can be too general a tool, with a tendency to underplay the incremental changes through which old rules are reinterpreted, new policies layered onto the old, or old rules converted into new ones (Streeck and Thelen 2005). In the Eurozone crisis, incrementalist historical institutionalism has been deployed to describe the layering of new elements onto existing rules or the creation of new institutions patterned on the old. Scholars have noted a ‘redirection’ of existing instruments, as in the case of the ECB’s new supervisory responsibilities for banking union (Salines et al. 2012), the invention of new rules ‘copied’ from older institutions, as in the case of the European Financial Stability Facility (EFSF), and the ‘replacement’ of institutions, as with the substitution of the European Stability Mechanism (ESM) for the EFSF (Verdun 2015, pp. 226-228).

Historical and rational choice institutionalist approaches have also sometimes been combined to great effect to explain how successive (rationalist choice institutionalist) intergovernmental bargains have deepened European integration through processes of (historical institutionalist) incremental change. For example, the phenomenon of ‘failing forward’ has been used to illustrate the neo-functionalism (historical institutionalist) dynamic in which liberal intergovernmental bargaining led time and again to incomplete agreements that produced piecemeal, failed reforms which soon required new intergovernmental bargains that generated further European integration without solving the overall problem of the Eurozone (Jones et al., 2015).

From a discursive institutionalist perspective, historical institutionalist approaches do very well in describing how the rules and institutions continue or change incrementally over time but not so well in explaining why. This is because they do little to elucidate how and why agents engage in layering, let alone inventing or reinterpreting the rules—other than to categorize them as change agents (as in Mahoney and Thelen 2009). In contrast, although rational choice approaches do deal with agents, theirs are rational actors with fixed preferences in stable institutions. From the discursive institutionalist point of view, although the resulting game-theoretic analyses may serve as useful depictions of strategic interests at any given point in time, they cannot deal with the complexity of real agents’ changing ideas about their interests in incrementally developing institutions, as member-state agents engage in a constant process of dialogue, deliberation, and contestation in their ‘coordinative’

discourses of policy construction and ‘communicative’ discourses of political legitimation (Schmidt 2008, 2012).

Without denying the usefulness of the parsimony of rational choice approaches that attribute interests to actors, in other words, discursive institutionalism seeks to elucidate agents’ own ideas about their interests across a much wider range than economic or political self-interest alone, while adding their value-based ideas. Thus, instead of attributing socio-economic interests to ‘rational’ agents, discursive institutionalists elucidate real agents’ competing ideas about interests and values that may be embedded in policy ideas and programs that emerge from deep philosophies. For example, scholars attuned to the importance of ideas point to the very different stories about the causes of the Eurozone crisis, with competing narratives about the problems resulting from government finances, household debt, lack of competitiveness, or a sudden stop in market financing (Jones 2015). Alternatively, they show how EU actors’ ideas about austerity are embedded in policy programs that reflect deep philosophies (e.g., Blyth 2013), as in Germany’s ‘stability culture’, with its view of debt as shameful and its belief in an *ordo-liberal* economic philosophy focused on monetary stability and rule by laws (e.g., Howarth and Rommerskirchen 2013). And they demonstrate that ideas may be so powerful as to go against (rationalist) material self-interests, as in the ‘perverse logic’ of Germany’s *ordo-liberal* ideas and the problems these have caused for the Eurozone and Germany’s own economic interests (Matthijs 2015).

Moreover, rather than seeing the European Council solely as an arena of hard-bargaining liberal intergovernmentalism, scholars focused on discursive interactions instead cast the Council as a forum of ‘deliberative intergovernmentalism’ in which the member-states seek to come to consensus-based agreements via processes of persuasion and deliberation (Puetter 2014, Ch. 2; Bickerton et al. 2015). We could add that only by considering the interactive processes of contestation along with deliberation can we explain how and why incremental changes in the rules were agreed in the Council, as Germany conceded, over and over again, to things it had initially resisted, including new institutional instruments of Euro governance such as Banking Union and new guidelines for Euro governance such as growth beginning in 2012 and flexibility beginning in 2014 (Schmidt 2015). It is also mainly through agents’ ideas and discursive interactions that we can explain how the ECB was able to persuade the more powerful members of the Council, and in particular Chancellor Merkel, to accept its many reinterpretations of its mandates, as well as to agree to Banking Union; or how the Commission was able to increase its discretionary powers while obscuring its increasingly flexible reinterpretations of the rules in the European Semester (Dehousse 2015; Bauer and Becker 2014). To such approaches we could additionally point to ones that build on the ‘multiple streams’ approach in policy analysis (Kingdon 1984), whether to emphasize the importance of policy entrepreneurs to change ideational paradigms during windows of opportunity, as in the ECB’s success in banking union (de Rynck 2016), or the importance of coherent coalitions of policy entrepreneurs, as in the Commission’s success in pushing for legally constraining norms for the European Semester from 2009 to 2013 (Saurugger and Terpan 2016).

In sum, the addition of discursive institutionalism to our neo-institutionalist tool-kit helps lend insight into how EU institutional actors have incrementally managed to overcome the stasis-reinforcing aspects of their institutional contexts. This is the case whether institutional context is understood in terms of the (rational institutionalist) logics of the EU's sub-optimal incentive structures and member-states' divided preferences (Scharpf 1999; Schimmelfennig 2015) or the (historical institutionalist) constraints of the path dependencies stemming from change-resistant decision rules and the sunk costs of adaptation (Pierson 1996), even where incremental changes are instituted over time (Verdun 2015) and successive bargaining games deepen integration (Jones et al. 2015). EU actors have overcome stasis by developing and implementing cognitive and normative ideas for rules-reinterpretation in coordination with other policy actors and in communication with the public. Institutional context here therefore needs to be defined not only as the (historical) institutions and (incentive) structures within which agents find themselves but also as the 'meaning' context for their ideas as well as the discursive 'forums' in which actors articulate their ideas (Toulmin 1958; Schmidt 2012). As a result, different EU actors may follow different pathways not only because of their different institutional settings but also because of their different constructions of meaning and the different communities of interlocutors with whom they engage.

### ***Theorizing Legitimacy***

Within this constructivist logic, it is important not only to consider agents' (re)construction of their interests over time but also how they manage to normatively legitimate their actions to one another as well as to the wider public. Most importantly, in particular in any crisis of politics and economics, real people don't just think strategically, they also think about what is legitimate and how they will legitimate their actions to others.

Although there are many different normative theoretical approaches to EU legitimacy (e.g., Beetham and Lord 1998; Bellamy and Weale 2015), this paper turns for definitions of legitimacy to the systems concepts often used in the EU studies literature. These include the 'output' effectiveness of EU policies, the EU's 'input' responsiveness to citizens' political concerns (Scharpf 1999, 2012; Mair 2013), and the 'throughput' quality of the EU's policymaking processes (Schmidt 2013). Throughput is judged by the efficacy of the decision-making processes, the accountability of those engaged in making the decisions (e.g. Harlow and Rawlings 2007), the transparency of the information (e.g. Héritier 2003), and the processes' inclusiveness and openness to consultation and deliberation with the interest groups of 'civil society' (e.g. Coen and Richardson 2009; Kröger 2008).

The first two such legitimizing mechanisms are often seen to involve a trade-off, in which more *output* performance through effective policy outcomes can make up for less *input* responsiveness, or vice-versa (Majone 1998; Scharpf 1999). There is no such trade-off for the third mechanism. Better quality throughput does not make up for either bad output or minimal input, whereas bad throughput—consisting of oppressive, incompetent, corrupt, or biased governance practices—can throw input and output into question by seeming to skew representative politics or taint policy solutions (Schmidt 2013).

Using these three mechanisms of legitimation to analyse EU actors' initial 'governing by rules and numbers' and their subsequent 'rules-reinterpretation by stealth' suggests particularly interesting ways of stylizing our understanding of the Eurozone crisis. Put succinctly, it could be said that initially EU actors assumed that reinforcing rules-based governance (throughput) would ensure good policy results (output) even in the absence of citizens' political involvement (input). But as EU actors themselves soon recognized, however good the quality of rules-enforcement (throughput), policy performance (output) did not improve as expected while political volatility (input) rose in response. EU actors subsequently therefore began slowly to reinterpret the rules (throughput) in order to ensure better results (output) and to respond to the increasingly negative politics (input). But doing so 'by stealth', the only possibility under the circumstances, still skirts problems of legitimacy, in particular with regard to lack of (throughput) accountability and transparency.

In what follows, we look closely at the different pathways to ideational innovation and normative legitimation taken by the ECB and Commission. There can be no doubt that formal institutional context matters greatly for the pathways taken by these supranational actors—meaning not only the rules governing their institutional autonomy and bureaucratic discretion but also their perceptions of their relative power and strategic interests vis-à-vis other EU actors. But equally important are the ways in which supranational EU actors (re)conceived of their roles and responsibilities while seeking to build legitimacy for their changing ideas about what to do and how to do it.

### ***The ECB: Legitimizing without Admitting Rules Reinterpretation***

As a non-majoritarian institution, the ECB has generally seen itself and been seen as legitimated by its output policy performance and, arguably, its throughput processes, with good output considered to act as a trade off for any deficiencies in political input. As *ordo*- and *neo*-liberal thought suggests, isolating the regulatory institutions carrying out the policies from majoritarian politics is as important for output performance as is instituting the right kinds of policies (e.g., Majone 1998). All central banks in advanced industrialized countries have over the years become increasingly insulated from input politics for this reason, and the ECB is the example of this *par excellence*. It has autonomy without any significant or at least sufficient democratic control from the classic 'democratic circuit' of parliamentary oversight (Héritier and Lehmkuhl 2011, pp. 138-9). But the ECB is therefore even more keenly aware of the need to succeed (and to be perceived as succeeding) in its (output) policy performance as well as to ensure the (throughput) quality of its governance processes. This also means managing the perceptions of a wide range of actors not only directly, through citizens' experience of monetary policy performance, but also indirectly, through the effectiveness of the ECB's communicative discourse and/or its coordination with the groups engaged with the ECB in building, implementing, or assessing the Euro's effectiveness (see Scharpf 1999, and discussion in Jones 2009). With such discourse, the ECB sought to legitimate its own increasingly radical reinterpretations of the rules by carefully arguing that its actions remained within its remit as set out in its Charter.

### **From ‘Credibility’ to ‘Stability’ and ‘Never’ Lender of Last Resort to ‘Almost’**

Initially, the ECB sought to manage perceptions with a communicative discourse focused on the quality of its throughput processes, by emphasizing the importance of maintaining its ‘credibility’ through strict adherence to its (throughput) rules of inflation-fighting while resisting any (input) political pressures from member-state leaders. This was the main mantra of ECB president Jean-Claude Trichet, whose discourse focused on ‘credibility’ as the financial crisis turned into a crisis of the real economy and then a sovereign debt crisis, and as his ‘non-standard’ bond-buying program remained extremely modest (in particular compared to the FED or the Bank of England), as he insisted that the ECB was not and could never be a lender of last resort (LOLR) (Trichet 2009).

When first appointed head of the ECB, Trichet’s successor Mario Draghi initially continued with the discourse of ‘credibility’ while denying that the ECB could be a LOLR (Draghi 2011). But very soon thereafter (by Spring 2012), as the ECB engaged in more robust bond-buying program, he switched his legitimizing discourse to a focus on ‘stability’ (see Figure 1). In a randomized sampling of speeches and press conferences from Draghi’s appointment in late 2011 through 2013 (see figure 1), although ‘credibility’ appears in the first months of his mandate (winter 2011/spring 2012), it largely drops out of his vocabulary subsequently (with the exception of a small increase in Spring 2013). In contrast, ‘stability’ remains the most prevalent term from 2011 and 2013, rivalled only by the word ‘competitiveness’—linked to the economic growth prospects of the Eurozone—while ‘inflation’ stayed was a low-level yet steady presence, as was ‘structural reform’ at an even lower level. ‘Save the euro’ appears only once, since Merkel’s use of the phrase in 2010 to legitimate the Greek bailout to German citizens had panicked the markets. ECB Executive Board member Jörg Asmussen (2012) used that event explicitly in a speech to illustrate the problems of communicating to the people, with the markets listening (Schmidt 2014).

Figure 1 about here

The shift from a discourse emphasizing credibility to one focused on stability was not uncontroversial. The stability discourse was intended to help legitimate bond buying while overcoming the resistance of those who retained a narrow reading of the ‘no-bailout clause’. Already with Trichet, the modest ‘non-standard’ bond-buying policies led to internal fights within the ECB, and even the resignation of the two German members of the ECB governing board, Axel Weber in April 2011, Jürgen Stark in September 2011, in protest (Matthijus 2015). This led to the appointment of the more moderate Jörg Asmussen to the governing board, which facilitated further discretionary policies by the ECB. But only once Draghi was appointed did the ECB move toward a more expansive view of its mandate. Even so, stability was not accepted as on a par with credibility until the euro itself was clearly in danger.

In using the word ‘stability’, the ECB sought to conjure up the ‘stability paradigm’ underlying EMU (Heipertz and Verdun 2010, p. 93), and thereby to reassure all and sundry

that the ECB remained committed to its basic philosophy, as outlined in the Charter. As ECB officials themselves explained, in a crisis the central bank ‘must stand ready to back up the market while increasing its communication to explain that its primary objective has not changed in crisis mode’ (Drudi et al., 2012, p. 890). Thus, at the same time they insisted that the Charter was correct to prohibit primary market purchases of public sector debt by central banks, to prevent the ECB and Euro-system central banks from becoming an LOLR, they concluded that therefore ‘it must be clear that an increased intermediation role for and outright purchases of the central bank are only justified on grounds of malfunctioning of the financial markets—and hence the exceptional measures are temporary in nature—to ensure price stability in the medium term’ (Drudi et al., (2012, p. 894).

The switch from credibility to a stability discourse also opened up space for the ECB to engage in informal interactions with EU leaders in the Council. Unlike Trichet, who seemed most concerned about maintaining his autonomy for purposes of ‘credibility’, Draghi sought to coordinate with Council leaders, including engaging in a concerted year-long ‘charm offensive’ to persuade Chancellor Merkel in particular that ‘unorthodox’ bond-buying programs and banking union were essential. All the while, the bank was working to fashion policy packages acceptable (to Germany) and workable (for EMU) against Bundesbank opposition (Spiegel 2014). Draghi succeeded in getting around Bundesbank opposition largely via Merkel and after bypassing the objections of the German representative on the ECB board.

Importantly, however, while the ECB quickly switched its discourse from credibility to stability beginning in 2011, it continued to deny publicly that it would or could act as a lender of last resort (LOLR) despite slowly and incrementally layering on increasingly ‘unorthodox’ bond-buying policy that brought it closer and closer to one (Buiter and Rahbari 2012). When Draghi was asked early in his term whether the bond buying was Europe’s version of ‘quantitative easing’, his response was: ‘Each jurisdiction has not only its own rules, but also its own vocabulary. [The bond-buying programs] are certainly unprecedented. But the reliance on the banking channel falls squarely in our mandate, which is geared towards price stability in the medium term ... We call them non-standard measures (*Financial Times* Dec. 19, 2011). Such measures did little to change the course of the crisis itself between 2010 and 2012, however, since the discourse of denial kept the markets worried and primed for panic and attack, while the actual policies created their own knock-on effects for member-states, the banks, and the ECB itself (Blyth 2013).

Only in July 2012, when Draghi pledged to do ‘whatever it takes to preserve the euro’, did the markets stop their massive attacks against Spanish and Italian sovereign debt, convinced that this constituted a pledge to act as an LOLR (although the ECB never stated this—and qualified the statement by adding that it would do whatever it takes ‘within our mandate’). The one significant difference from what central banks ordinarily do as LOLRs is that the ECB made its pledge conditional on the Italian and Spanish governments asking for it to purchase their debt and in exchange agreeing to a conditionality program focused on austerity and structural reform. Conditionality made the program more akin to an IMF-style lending

program, focused on dealing with insolvency, than an LOLR program, focused on illiquidity (Mody 2015). Even German leaders largely accepted this shift in policy (Newman 2015), with the exception of the more orthodox Bundesbank, which supported the court case in the German Constitutional Court that opposed the ECB's right to institute OMT.

The ECB's pledge in 2014 to engage in quantitative easing to stave off deflation, begun in early 2015, was yet another step toward becoming an LOLR without admitting it—and has also been questioned by German central bankers and economists. In fact, with Asmussen's replacement by a less moderate German representative to the Bundesbank, Sabine Lautenschläger, Draghi may have lost both support and room for manoeuvre in his making the ECB more of an LOLR via quantitative easing.

### **Legitimizing Rules Reinterpretation by Hiding it in Plain View**

So how do we explain the ECB's remarkable reversals, in particular given the continual denials in the discourse? The answers require considering the policy program and ideas on the one hand, the discursive interactions on the other. In terms of ideas, very generally speaking, we could explain the ECB's slow, incremental shifts in bond buying as involving a search for solutions. The ECB's pre-crisis 'paradigm' on what to do in the event of a crisis did not cover all the contingencies, and the ECB had to engage in a continual process of '*bricolage*' (see Carstensen 2011) in the context of emergency crisis management via increasingly 'unorthodox' policies that were unimagined and arguably unimaginable prior to the crisis. These were the *ad hoc* responses of the ECB agents puzzling their way through a crisis rather than the result of 'willful actors' seizing the moment (Braun 2013). Any reinterpretation of the rules was not easy because of very different ideas held initially by different members of the ECB board between more pragmatic central bankers willing to take an increasingly more expansive interpretation of the rules and more orthodox ones insisting on following the rules as heretofore strictly defined.

In terms of discursive interactions, moreover, inside the ECB, member-state representatives to the ECB governing board were engaged behind closed doors in internal coordination processes of persuasion and contestation. Initially, the more orthodox bankers mainly from Northern Europe formed a blocking coalition around Germany, but this changed as more and more Northern European countries rallied around the ECB President in a process of 'deliberative intergovernmental' decision-making (Puetter 2014; Bickerton et al. 2015). This left the Bundesbank (BB) increasingly on its own to espouse the most orthodox positions.

In terms of our normative theory of legitimacy, we could explain the stand-off between the BB and the rest as a clash between the ECB and its increasing numbers of allies concerned about (output) policy results versus the BB's sticking to the (throughput) principles of accountability and its view that technical agents ought not to take decisions that are the domain of input legitimate political actors. This clash in views came out most clearly in the hearings of the German Constitutional Court. The ECB's executive board member Jörg Asmussen justified the unorthodox monetary policy measures as a (output) response to unusual circumstances, insisting that: "We are in a situation of one size fits none, that is why

we have extended these non-standard instruments.” Bundesbank President Weidmann instead vehemently opposed ECB intervention on the grounds that its (throughput) remit was to control inflation, and that only the politicians had the (input) legitimacy to deal with the rest (*Financial Times* June 12, 2013).

Ideational entrepreneurship is an added factor in the explanation of the ECB’s changing ideas and discourse over time. The switch in presidents of the ECB was of great significance, and needs to be added to the deliberative coordination of internal consensus among ECB bankers and the ECB’s changing communicative discourse to the public. Trichet was the consummate civil servant whose career was focused on institution building in financial and monetary affairs, and whose ideas about what to do remained conservative. Draghi was much more innovative, having had a more diverse background, beginning as an academic economist with stints in international institutions and private as well as public finance, in which he was often called in to reform institutions and innovate policies (Basham and Roland 2014). Draghi was also a bridge-builder. In the progressive reinterpretation of the rules to ‘save the euro,’ not only did Draghi gain the trust and respect of fellow bankers, he also, as noted above, managed to develop sufficient rapport with Council leaders—and in particular Chancellor Merkel—so as to gain their trust and support as well. As such, Draghi could be seen as a highly successful ‘policy entrepreneur’ (Kingdon 1984) who was able not only to develop a new set of actionable ideas acceptable to the broader central banking epistemic community, he was also able to legitimate this to the satisfaction of political as well as technical actors in potential veto positions. The ECB itself, in fact, has been very successful as a policy entrepreneur overall. In banking union, for example, a dominant group in the ECB in 2012 took advantage of Council decision-makers’ high uncertainty to help preferences converge around the idea of giving up national supervisory powers (de Rynck 2015; see also Dehousse 2015).

While the ECB appears to have managed incrementally to reinterpret the (throughput) rules so as to move slowly toward better (output) economic performance, the question of its input legitimacy remains. Although the absence of even the shadow of input legitimacy can be seen to pose little problem when the ECB remains within its charter-based remit to guide monetary policy, as a trade-off with output legitimacy, it can be problematic where the ECB goes beyond that remit. This is arguably the case when it pushed the more input-legitimate actors like the Council and individual member-states to implement policies focused on austerity and structural reform, as a *quid pro quo* for its bond buying programs (Braun 2013, pp. 6-8). Worse yet was the ECB’s joining the ‘Troika’ in partnership with the IMF and the Commission to impose conditionality on program countries (Eichengreen 2013), not to mention ECB President Trichet sending secret letters to Prime Ministers threatening withdrawal of Central Bank support if they do not follow ECB demands.

In addition to these questions of its input legitimacy, however, remain those related to output. Although the ECB remains the ‘hero’ of the crisis because it took action, one could nonetheless question its output performance. Most prominent among these is the question: Did the ECB do enough soon enough? It took five years after the inception of the euro crisis

for its (throughput) reinterpretation of the rules to bring it the place where it began the kind of quantitative easing that the US has engaged in since 2008—and only because deflation threatened.

### ***The Commission: Neither Admitting nor Legitimizing Rules Reinterpretation***

During the crisis between 2010 and late 2014, the Commission incrementally also altered its interpretation of the rules without acknowledging it. But unlike the ECB, which has the autonomy to reinterpret its own rules, and chose constant communication to legitimate its reinterpretations by insisting that they remained true to the cardinal rules, the Commission had little independence of action, and therefore sought to hide its increasing flexibility with a harsh discourse focused on austerity and structural reforms.

As befits a bureaucracy as opposed to an autonomous agency, the EU Commission depends for its legitimacy primarily on its carrying out of the (throughput) duties assigned it by the input legitimate bodies to which it must render accounts—the Council and increasingly over time the EP. With the onset of the Eurozone crisis, however, the ‘master’ to whom the Commission saw itself accountable was narrowed to the Council as a result of the massive increase in intergovernmental decision-making in this area and the sidelining of the EP (Fabbrini 2013). The Commission itself appeared to have lost much of its traditional power of initiative to the increasingly active European Council (Bickerton et al. 2015). That said, Council legislation focused on reinforcing the Eurozone’s ‘governing by rules and numbers’—themselves mostly proposed by the Commission itself—further strengthened the Commission’s role as enforcer in the European Semester. The Commission’s own legislative proposals in fact vastly increasing its powers of oversight as well as built in the discretionary authority that enabled it to reinterpret the rules—if only ‘by stealth’ (Dehousse 2015). But with such new powers, the Commission’s legitimacy also became increasingly linked to the output performance of the policies it administered. As for input legitimacy, its (throughput) processes of oversight over national governments’ budgets raised questions about whether this undermined the member-states’ own political input legitimacy.

### **From Governing by Rules and Numbers to Greater Flexibility**

Initially, the Commission was most concerned with the quality of its administration of the rules (throughput), and conceived of its autonomy rather narrowly, with a constant eye to possible Council (read Germany and its coalitional allies) response. As the crisis continued, however, in the absence of remedies to the crisis such as a fiscal union or Eurobonds and in light of a narrative focused on the sinners who overspent, the Commission was stuck with searching for solutions ‘like the drunk who looks for his lost keys under the lamp post’ because ‘that is where the light is’ (Mabbett and Schelkle 2014). Recognizing this reality, in particular as economic output performance deteriorated, the Commission made increasing numbers of exceptions and flexible adjustments for non-program countries, in particular beginning in 2013. But it tried to avoid acknowledging this publicly not only because it lacked the independent authority of the ECB but also because it felt constant pressures from the member-states in the Council either to make exceptions or to deny them. As a result, it

maintained a harsh discourse focused on the necessity of austerity and structural reform so as to circumvent the political pressures and objections from pro-austerity Council members.

The Vice President of the Commission in charge of Economic and Monetary Affairs and the Euro, Olli Rehn, was the main public spokesperson for the Commission with regard to the European Semester between 2011 and 2014. His communicative discourse was all about fiscal consolidation and structural reform in order to bring down excessive deficits and address macroeconomic imbalances. Especially in the first few years, his speeches invariably referred to the need for consolidation along with structural reform. In terms of word use frequency between fall 2011 and fall 2013, Rehn's discourse was similar to that of ECB President Draghi, despite the differences in their responsibilities (see Figure 2). This was most apparent in the absence of considerations of inflation, lender of last resort, or even 'save the euro' in Rehn's public pronouncements. Moreover, although Rehn, like Draghi, repeatedly referred to the importance of stability, Rehn's discourse emphasized the 'stability culture' and/or the need for financial stability in the member-states, not price stability<sup>2</sup>. Additionally, Rehn's focus on competitiveness was even more pronounced in his discourse than Draghi, especially by late 2012 into 2013. Competitiveness served as a justification for the push for structural reforms, which also appeared steadily at an increasingly high level. Finally, interestingly enough, while Draghi largely dropped credibility as a reference point, Rehn continued to use it, but to different ends. It focused on the member-states' regaining credibility by consolidating their finances<sup>3</sup>, or Europe regaining 'credibility on our road towards a stability union of both responsibility and solidarity', not on the institution's own credibility<sup>4</sup>.

Figure 2 about here

Behind the discourse focused on stability, credibility, and competitiveness were practices that were becoming incrementally more flexible in the application of the rules and calculation of the numbers. This is because the increasingly precise definition of rules and numerical targets, although limiting the Commission's room for manoeuvre, actually gave the Commission greater margins for flexibility. The Six Pack regulations increased Commission discretion in evaluating a member-state's fiscal position and adjustment effort, since the Commission was to take into account the 'range of relevant factors' when judging non-compliance, including mitigating or aggravating ones, along with 'exceptional circumstances' (Mabbett and Schelkle 2014, pp. 12-13). Moreover, RQMV made it harder for the Council to reverse a Commission decision. All of this ensured the Commission a kind of built-in discretion without any built-in input accountability, in particular with regard to the Macroeconomic Imbalance Procedure (MIP), where the Commission was essentially free to decide when to launch (or not) an MIP (Scharpf 2012). This was in contrast to the Excessive Deficit Procedure (EDP), where merely hitting a certain number would trigger the procedure.

But for both procedures, the actual calculations mattered, giving way to a 'politics of numbers' that raises questions about the 'accounting' end of flexibility (Mabbett and Schelkle 2014, pp. 12-13) as well as the Commission's accountability. One such example was the

change to calculating the deficit in terms of a ‘primary’ surplus (deficit minus interest payments). This enabled the Commission to allow countries that posted a primary surplus to delay rapid deficit reduction in order to propel growth, which is why France and Italy were given two-year delays to meet their deficit targets, first in 2013 and again in 2015. In the case of Spain, moreover, the Commission ultimately also agreed to a delay deficit reduction by using a new calculation of the ‘structural deficit’ proposed by the Spanish government itself (on the grounds that Commission calculations underestimated the impact of unemployment). But the Commission refused to generalize this calculation out of ‘concern in some capitals’ (read Germany) about the implications of using better estimates—which might ease up the pressures on program countries (*Wall Street Journal* Sept. 24, 2013), thus raising questions about (throughput) fairness and consistency in the application of the rules.

The Commission’s (throughput) flexibility came in for increasing criticism beginning in 2012, in particular from Northern European member-states. Germany remained very much wedded to the ‘stability culture’ and *ordo-liberal* ideas (Howarth and Rommerskirchen 2013; Matthijs 2015), as did other Northern European countries like Finland and the Netherlands. Their increasing opposition to flexibility came to a head in 2014, with Germany and Finland making a frontal attack on the Commission in an eight page memo in which they claimed that the Commission used ‘a somewhat arbitrary approach’ in granting budget flexibility, and went so far as to suggest that ‘a separate pair of eyes’ was needed to ensure that the rules were properly applied (*Financial Times* 28 February, 2014). In contrast, Southern European member-states continued to complain that the Commission was too rigorous, and that without greater leeway in the application of the rules they were concerned that their economies’ output performance would deteriorate along with their input legitimacy, as the voters turned increasingly to populist parties on the political extremes. Moreover, by 2014, Italian Prime Minister Renzi, supported by French President Hollande, had been pushing the Council—and Merkel in particular—to agree to greater flexibility in view of the need for growth, which had already entered the Council discourse in 2012, pushed by the previous Italian Prime Minister, Mario Monti (Schmidt 2015). Finally, lack of (throughput) inclusiveness in the internal Commission evaluation process was also an issue, in particular at first, since the Commission had initially shut out other Directorates-General which could have provided more nuanced information to moderate judgments about the numbers as well as to address the effects of any cuts (Zeitlin and Vanhercke 2014).

But whatever the criticisms, the Commission consistently claimed to be applying the rules and running the numbers as its mandate demanded, despite the fact that it reinterpreted the rules increasingly flexibly over time. And by 2013, although the Commission tacitly acknowledged the failure of fiscal consolidation policies by agreeing to ease the policy on rapid deficit reduction, Commission spokespeople stuck to a discourse that claimed that it was prior success in austerity measures, not failure, which had allowed for a more flexible policy. Rehn claimed that things were getting slightly better only because the crisis response offered “a policy mix where building a stability culture and pursuing structural reforms supportive of growth and jobs go hand in hand” (Rehn 2013). In response to the Northern Europeans in particular, moreover, the Commission insisted that the increasing complexity of

the rules constituted a ‘methodological refinement’, and was ‘no change in policy, only a change in circumstances’ since ‘we now have more room for manoeuvre’ because cutting deficits was no longer such an urgent priority (*New York Times*, May 17, 2013).

### **Legitimizing Rules Reinterpretation by Hiding behind a Discourse of Denial**

Notably, while the Commission’s communicative discourse remained largely the same across time, and outside analysts saw the Commission as tone deaf to the economic and social impact of numbers-targeting rules, the actual internal coordinative bureaucratic discourse, as contained in the official reports, including the Annual Growth Surveys (AGSs) and the Country Specific Recommendations (CSRs) incrementally more inclusive of such concerns. This resulted not only from Commission responsiveness to Council admonitions as output performance deteriorated but also to an internal opening by DG ECFIN to other Directorates-General as well as to the member-states in the context of the sectoral advisory committees on employment and social policy.

The initial experiences did indeed confirm critics’ worst fears regarding a ‘one size fits all’ approach in the European Semester that subordinated social cohesion goals to fiscal consolidation, budgetary austerity, and welfare retrenchment. This was clear in the first AGS and CSRs in the 2011 exercise (Pochet 2010; see also Zeitlin and Vanhercke 2014, pp. 12-14). The AGS’ first priority was ‘to set budgetary policies on a sound footing through rigorous fiscal consolidation’; the second priority was to engage in ‘rapid reduction in unemployment through labour market reforms’ focused on wage devaluation; and only the third proposed ‘growth enhancing measures,’ while there was no mention of social concerns such as the increase in poverty (Annual Growth Survey (AGS) 2011—COM 2011, 11 final, Jan 12, 2010, p. 9).

Subsequent exercises of the European Semester were less narrowly targeted, however, at least on paper. Moreover, even in the assessment of the results of the 2011 European Semester and guidance on 2011-2012 written in June 2011, the Commission was already highlighting problems with the (output) results, regarding ‘reaching the targets in the areas of employment, research and development, energy efficiency, tertiary education and poverty’. But the focus on austerity remained, as the Commission insisted that it was ‘essential to stick to agreed deadlines for the correction of excessive deficits and to consolidate swiftly’. That said, the Commission did signal awareness of problems with the input legitimacy of the exercise, as it recommended involving national parliaments, subnational authorities, and other stakeholders ‘to build the legitimacy and effectiveness of the new EU economic governance’ (AGS 2011--COM(2011) 400 final, June 7). Moreover, subsequent AGS’s recommended a more socially balanced set of priorities, including ‘tackling unemployment and the social consequences of the crisis’, including issues of poverty reduction and social inclusion as well as issues of education, training, and active labor market policies, pensions, and health policy. This was the result of an increasingly more collaborative process over time from within the Commission (Zeitlin and Vanhercke 2014, pp. 21-28), but not from outside. The absence of non-governmental stakeholders such as NGOs or the social partners at EU or national levels continued to raise questions of (throughput) legitimacy with regard to

accessibility and inclusiveness. Most importantly, however, although the stated objectives and recommendations did become more social and employment-friendly on paper, and more all-inclusive in process, their actual impact in practice remains in question. The fact that the first priority in the Annual Growth Surveys from 2011 through 2014 was fiscal consolidation helps explain why member-states cut first, and then naturally found there was nothing left for growth-friendly policy based on the Commission's Agenda 2020, let alone for poverty alleviation and employment promotion (Alcidi et al., 2014).

Only with the inception of a new Commission in January 2015 have the practices and the discourse seemed to be coming into greater alignment. The Juncker Commission began presenting structural reform as a *quid quo pro* for greater flexibility through slower deficit reduction. It also pledged to do more to alleviate the social costs of the crisis, as well as to promote growth through an investment fund. And the Commission's Annual Growth Survey (AGS) of 2015 for the first time put fiscal consolidation—now renamed 'fiscal responsibility' (defined as 'growth-friendly fiscal consolidation')—in third place, following investment for growth in first place, and structural reform in second place—now with a much wider set of recommendations, instead of the narrow focus on labour market flexibility of the AGS of 2011 (AGS COM (2014) 902 final, Nov. 28). As Commission President Jean-Claude Juncker declared in his first State of the Union speech to the EP on September 9, 2015: "You cannot run a single currency on the basis of rules and statistics alone. It needs constant political assessment, as the basis of new economic, fiscal and social policy choices". The Commission's first step in getting beyond the contradictions between its discourse and its actions was to publish a set of rules on flexibility in January 2015—only to get push back from the ECB and the Council.

### **Conclusion**

Increasingly over the course of the Eurozone crisis between 2010 and 2015, both the ECB and the Commission sought to improve policy performance (output) by reinterpreting the rules by which they governed (throughput) more and more extensively. But they did this very differently.

The ECB had significant autonomy to reinterpret the rules set out in its Charter so long as it could build a sense of agreement about what to do in its coordinative discourse of policy construction. In addition, the ECB developed an elaborate communicative discourse to hide its reinterpretations of the rules 'in plain view,' by seeking to persuade its interlocutors and the general public that its policies remained within the mandate set out by its Charter, even as its reinterpreted that mandate more and more broadly. As such, the ECB moved from a discourse of 'credibility' to one of 'stability' and from a discourse that pledged that it would 'never' be a lender of last resort like normal central banks to almost becoming one, while passing this over in silence.

The Commission had much less margin for manoeuvre than the ECB since the rules it devised and administered were decided by the Council (with the EP in certain instances) and

pushed by the ECB. The Commission's lack of autonomy meant that although it also sought to build legitimacy with other EU actors for rules reinterpretation, the Commission had a rather thin communicative discourse through which it generally insisted that it was applying the rules with great vigour, via harsh austerity and structural reform, even as it actually applied the rules with increasing flexibility.

The question today is whether the ECB and the new Commission from 2015 on will go from reinterpreting the rules 'by stealth' to a clearer discourse of legitimation. If this happens, it is likely to be the result of a more input legitimate Commission President more willing to codify rules (re)interpretation, and an even more activist ECB successfully engaged in quantitative easing. But how far this can go remains in question, given the Eurozone's divided politics and institutional constraints.

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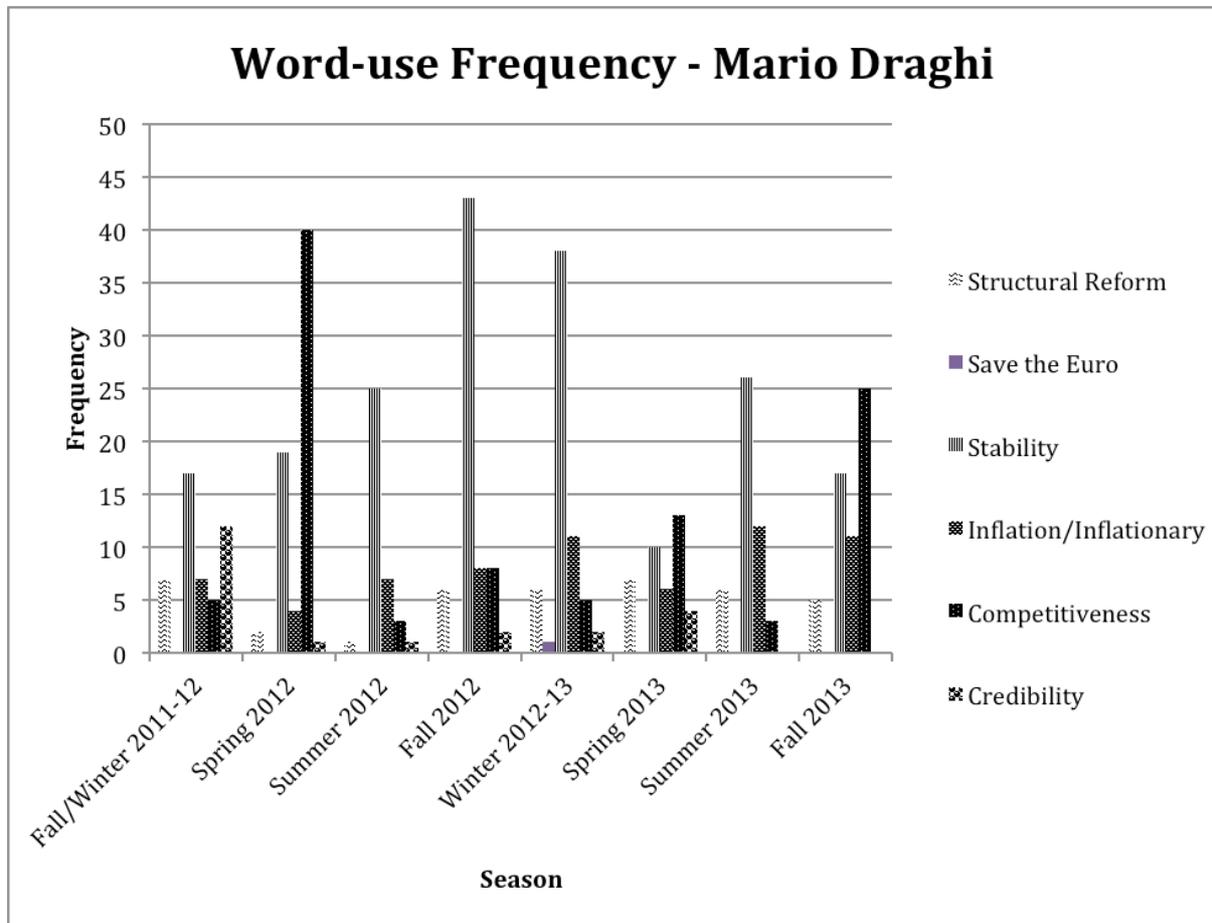


Figure 1: Word Use Frequency by ECB President Mario Draghi (Fall 2011 to Fall 2013)

*Source:* Speeches and Press Conferences, randomized choice, 3-4 per season.

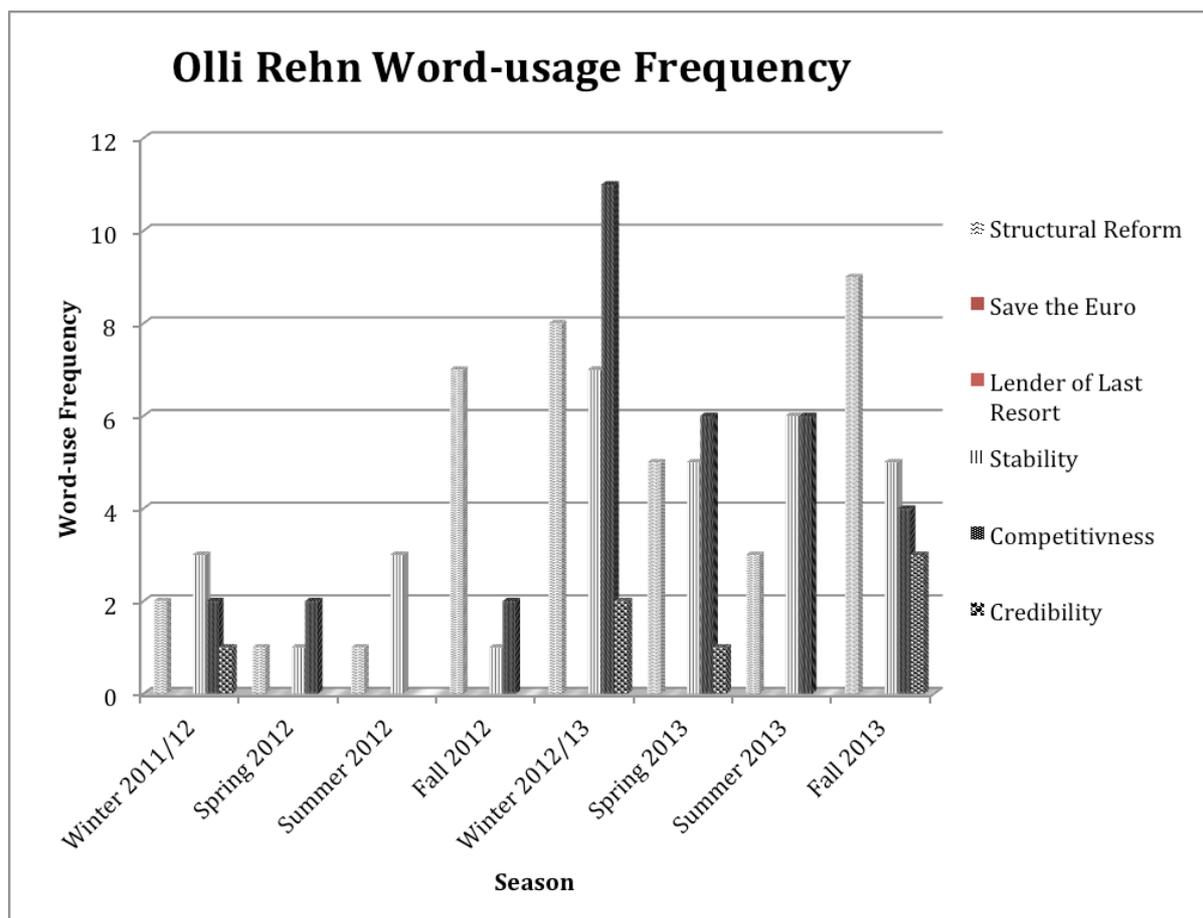


Figure 2: Word Use Frequency by Olli Rehn, EU Vice President in charge of Economic and Monetary Affairs and the Euro (Fall 2011 to Fall 2013).

*Source:* Speeches and Remarks, randomized choice, 3-4 per season.

\* Note that the blank spaces left for ‘Save the Euro’ and ‘Lender of Last Resort’ indicate that no mention was made of these terms.

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[http://ec.europa.eu/economy\\_finance/publications/eedp/dp015\\_en.htm](http://ec.europa.eu/economy_finance/publications/eedp/dp015_en.htm)

<sup>2</sup> See, e.g., Rehn’s speech at European American Press Club, Paris, 1 October, 2013; Debate in the European Parliament, Strasbourg, 13 June 2012; Speech at the European Economic and Social Committee public hearing/Brussels, 19 February 2013.

<sup>3</sup> See, e.g., Rehn’s speech on the adoption by the Italian Government of extraordinary fiscal and economic measures on 4 Dec., 2011; at the Conference on the European Semester/Warsaw 8 March 2013; and at the European American Press Club, Paris, 1 October, 2013; Press Conference in Strasbourg, 14 February 2012

<sup>4</sup> Speech at the EPC Policy Breakfast in Brussels 11 January 11, 2013