

Reflections on Euro Area banking supervision:
context, transparency, review and culture
*A contribution to the conversation on the SSM
after three years*

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Disclosure and disclaimer

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- No disclosure of confidential information (ABoR, BCA)
 - Scope of the presentation: wide-ranging paper – so, by necessity, a selection in ten minutes
 - **All views my own**

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Cascade regulation; Single Rulebook strengthening

- “ FSB, BCBS > EU directives, regulation; ITS, RTS; Guidelines, Recommendations and Opinions > national legislation > NCA circulars
 - “ Proper legal basis for supervisory requests
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“ Ultimately: an overhaul of CRD IV to adopt its contents in a regulation

“ First steps:

- Options and discretions limited to the bare minimum, subject to supervisory, not legislative discretion
- Europe-wide specifics on FAP assessments to replace current wide disparity
- Bank holding company regulation
- Including ‘ECB power extensions’ of national law competences (2016, 2017) into EU law proper
- Aligning the definitions of ‘credit institution’ (EBA Report 2014)

Transparency



“ Memoranda of Understanding: go ESMA and Estonia

“ ABoR and judicial protection

- ABoR an element in the decision-making process
- Therefore, transparency of Opinions a sensitive issue
- General Court in *L-Bank*: ABoR Opinion relevant in reasoning ECB's 2nd decision
- Transparency already observed; possible regular reporting of statistics; ultimately (with Governing Council approval) abstracts of Opinions on ECB website?

“ Feedback mechanisms: is breach reporting mechanism sufficient for ECB to know of conduct of supervised entities and NCAs?

Recent judgment in Case T-122/15 (*L-Bank*)

- L-Bank's arguments that it should have remained under sole German supervision resoundingly rejected
- Any bank claiming "particular circumstances" that justify its qualification as less significant in spite of meeting the criteria for 'significance' in the SSM context, needs to show that national supervision is *better able* to attain the objectives of the SSM Regulation (and not solely: just as well able);
- SSM Reg. objectives repeatedly referred to as the "consistent application of high prudential standards";
- The **NCA**s perform *decentralised* tasks which form part of the exclusive ECB competences in the field of prudential supervision over all banks in the Euro Area; the allocation of competences to NCA's within the SSM concerns *a delegation from Union to State level*; *prudential supervision over LSIs by NCA's is not the exercise of a national power* – an unexpected reading that strongly underpins the ECB's SSM powers;
- ABoR's Opinion is given weight by the General Court as it considers an ECB Decision adopted in conformity with an ABoR Opinion "an extension of" the ABoR Opinion; ABoR's reasoning may be taken into account when assessing whether the subsequent ECB Decision is sufficiently motivated (adequately reasoned).

Lender of Last Resort (LOLR) assistance Emergency Liquidity Assistance (ELA)

- “ Another instance of erroneous interpretation of Article 14.4 ESCB Statute
- “ A remarkable act of auto-limitation (by the ECB)
- “ The ECB is competent to provide LOLR assistance itself
- “ “incorrect reading of the legal provisions” should be remedied, with direct ECB responsibility for ELA acknowledged, initially at least for the significant banks under its direct supervision

Concluding remarks

- “ Congratulations are due to the ECB for fostering a supervisory culture
- “ Awareness of the cultural element of the European project is important
- “ Emmanuel Macron’s ‘*les intraduisibles*’
- “ imperative of γνῶθι σεαυτόν
- “ Beyond Europe: unity of humankind, sentient beings
(Article 13 TFEU)

