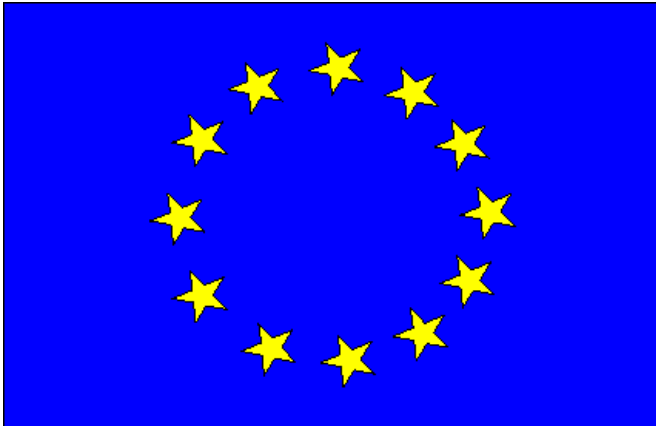


Some SSM experiences and challenges

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Professor René Smits



Disclosure



- Alternate Member, Administrative Board of Review, ECB
- Professor of EMU law, University of Amsterdam
- Independent Consultant: EMU law, banking regulation
- Assessor, Belgian Competition Authority
- *Ser feliz – estar com amigos portugueses em Lisboa*



Overview of the presentation

1. First experiences with ABoR
2. Harmonisation and convergence in SSM
3. Areas in need of convergence/ECB attention
4. SSM in wider context of our European project

ABoR experience: first nine months

- No disclosure of confidential information
- ABoR part of governance structure of prudential supervision
- ECB mandate: ‘The most important objective of the SSM is to improve the quality and consistency of banking supervision within the euro area.’

(Danièle Nouy, Chair, Supervisory Board, in the first annual report on the SSM - ECB Annual Report on supervisory activities, 2014, March 2015)

- First nine months: establishing procedures (e.g., hearings, costs), hearing first review cases
- One review case already before General Court (*Landeskreditbank Baden-Württemberg v ECB*; Case T-122/15)

ABoR costs

- Costs: [guide](#) published
- Costs for natural persons: € 500, for legal persons: € 5,000.
Abrogation or amendment of supervisory decision resulting from administrative review: no costs, reimbursement of applicant's own reasonable costs

Harmonisation and convergence

- Harmonisation / convergence of supervisory culture and practices key ingredient, also of ABoR's work, where traditions and experience from diverse backgrounds assist in finding appropriate opinions on cases submitted for review.
- Harmonisation and convergence resound across the activities of the SSM, strongly influenced by ECB now being the competent supervisor for 123 banking groups and being responsible for overall SSM functioning.

Article 6(1) SSM Regulation (1024/2013):

“The ECB shall be responsible for the effective and consistent functioning of the SSM.”

See, also, Article 6(5) [regulatory power, direct exercise of supervision, oversight, information powers] and Articles 4, 6(4) and 16, which attribute direct ECB powers to banks.

Quotes from ECB Report on supervisory activities, 2014 (1)

‘In order for the SSM to work effectively, we will also actively encourage further harmonisation of the banking regulatory environment. As long as the regulation remains fragmented, the mere convergence of supervisory practices cannot ensure a level playing field. In this respect, the SSM will actively contribute to the work of the European Banking Authority (EBA) in establishing, at the EU level, the single rulebook and the single supervisory handbook’

Quotes from ECB Report on supervisory activities, 2014 (2)

‘The ECB is **looking closely at national discretions to reduce the fragmentation within the SSM** countries and the resulting possible decrease in the quality of capital. It is monitoring the quality of capital (i.e. its capacity to truly absorb losses) as well as the distribution of capital within and across banking groups. Weaknesses in the capital base are to be addressed through the SREP capital planning process to promote banks’ resilience. The ECB **aims to improve convergence in the implementation of legislation in the euro area.**’

ECB new premises at dawn, June 2015 – photo: René Smits



Quotes from ECB Report on supervisory activities, 2014 (3)

Work on national options and discretions

Another important aspect highlighted by the results of the comprehensive assessment was **the impact of national options and discretions in the CRD IV package, which were found to have important implications for the quality of individual banks' CET1 capital and the consistency of its definition across Member States.**

These options and discretions grant certain choices regarding the application of regulatory rules either to the Member States or to the relevant competent authorities. This implies that, until November 2014, these choices were made at the national level. Given that the comprehensive assessment was carried out under the then prevailing legal framework, the discretions applied by NCAs were reflected in the calculations of the capital ratios, which were eventually compared with the defined thresholds to detect shortfalls. Previous national decisions (e.g. when setting the phase-in percentages for deductions from CET1 capital) thus had, and still have, implications for the composition and quality of capital. They lead to **significant divergences**, particularly in the degree to which individual banks benefit from transitional adjustments to their CET1 calculation.

A dedicated work stream has now been set up to carefully review the implications of options and national discretions applied by NCAs and report back to the Supervisory Board.

Support for doing away with discretions in Single Rule Book

All banks participating in the Banking Union need to enjoy a level playing field. This will **require further measures, in addition to and beyond the single rule book, to address the still significant margin for discretion at national level which still has important implications, notably for the quality and composition of banks' capital.** A large part of the discrepancies could be addressed within the context of the Single Supervisory Mechanism. But for other issues, legislative changes are necessary, in particular for those related to differing legal and institutional frameworks.

From: *Completing Europe's Economic and Monetary Union
Five Presidents' Report*, 22 June 2015, pp. 11-12.

Quotes from ECB Report on supervisory activities, 2014 (4)

The ECB seeks to **harmonise the application of the common procedures** [granting or withdrawing banking licenses and assessing the acquisition of qualifying holdings (known collectively in the SSM context as “common procedures”)] **and the conduct of the fit and proper assessments.**

Banque de France, June 2015 – photo: René Smits



Quotes from ECB Report on supervisory activities, 2014 (5)

‘(...) a priority for 2015 is to foster greater harmonisation of supervisory approaches across the SSM. This involves taking stock of existing national supervisory practices and identifying best practices among them; developing standards and testing and further refining harmonised supervisory methodologies.’ [from Danièle Nouy’s foreword]



Supervisory Board



ABoR



Composition of the Administrative Board of Review **Members**

- Mr Jean-Paul Redouin
(Chair)
- Ms Concetta Brescia Morra
(Vice-Chair)
- Mr F. Javier Arístegui Yáñez
- Mr André Camilleri
- Mr Edgar Meister

Alternates

- Mr Kaarlo Jännäri
- Mr René Smits

Explaining the ABoR: <https://www.bankingsupervision.europa.eu/about/ssmexplained/html/abor.en.html>

Areas (in need) of convergence/ECB attention (1)

- Intention to establish ‘independent, intrusive and forward-looking supervision that ensures a level playing field for banks’ [Danièle Nouy in ECB’s first first annual report on SSM]
- The following is presented as an independent, academic, outside view and in may no way be imputed to the ECB, or the SSM, or to be considered resulting from my ABoR experience
- **Intersection issues: SSM <> national competences**
- **Bank holding supervision**
- **Consequences of regulation of banking sector**

Areas (in need) of convergence (2)

‘Intersection issues’

Example No. 1: Integrity and ethical banking: banking culture

- ECB needs to assess the suitability of shareholders and of managers and directors [Articles 4(1) (c) [*all banks*] and (e) [*significant banks*] SSM Regulation], it has an established interest in the integrity and ethical behaviour of those influencing bank practice and culture. Even though NCAs may consider this aspect a national prerogative [“Netherlands Central Bank (DNB) on its [website](#): “DNB bears ultimate responsibility for integrity supervision of large significant banks and supervision of all smaller financial institutions.], there is a need for the ECB to form its own opinions and imbue the banking sector with its supervisory perspective on proper conduct.

Areas (in need) of convergence/ECB attention(3) 'Intersection issues'

Example No. 2: Anti Money Laundering / Counter Terrorist Financing

- Clearly not an ECB competence [*see below relevant recitals of preamble of SSM Regulation*], the closeness of compliance with these rules with the integrity makes this is matter of common concern for the ECB and the local (conduct) authority. A joint approach is called for.

Supervisory tasks not conferred on the ECB should remain with the national authorities. Those tasks should include (...) to carry out the function of competent authorities over credit institutions in relation to markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and consumer protection. [recital 28, SSM Regulation]

The ECB should cooperate, as appropriate, fully with the national authorities which are competent to ensure a high level of consumer protection and the fight against money laundering. [recital 29, SSM Regulation]

Areas (in need) of convergence/ECB attention (4)

Bank holding supervision

- ❑ Banking groups subject to ECB supervision
- ❑ Supervisory powers addressed to banks and (mixed) financial holding companies [Article 16(1), Article 4, recitals 26 & 36 SSM Regulation]
- ❑ Need to align supervisory with corporate practice and reality (as opposed to formal company law)
 - a) In agreement with legislative intent CRR/CRD-IV
 - b) In line with business reality / corporate practice
 - c) Closer to some Member States', US and selected African law & practice

Areas (in need) of convergence/ECB attention (5)

Consequences of regulation of banking sector

- ❑ Issue of avoidance of regulation – business fleeing to non-regulated sector (Capital Market Union, hedge funds)
- ❑ Effects of CMU on monetary policy transmission mechanism an element of this

❑ – but issue goes deeper and touches on effects of regulation/compliance and **culture** of banks/financial sector as **sustainable and servant to society's needs**



Source pictures: <https://www.upsides.com/>



SSM in the context of the European project (1)

- Unfulfilled single market: working for corporations but often not for citizens
 - Difficulties in on-line retail shopping, impossibility of live streaming in other Member States, qualifications of a bank as 'foreign': many instances in which the market is balkanised
 - European Court should strike down such restrictions as against the internal market in an appropriate case
- Specially, the banking market is balkanised: banks have retreated behind national borders
- Consequences: no economies of scale, hindrances in economic activities, EU undermined in the mind of citizens and SMEs.

SSM in the context of the European project (2)

- ❑ Five Presidents' Report, 22 June 2015
 - Single Deposit Insurance: missing link of banking
 - “(..) public risk-sharing should be enhanced through a mechanism of fiscal stabilisation for the euro area as a whole: euro area stabilisers requires more in-depth work.”
 - “(..) the world's second largest economy cannot be managed through rule-based cooperation alone”
 - At last: unified [*single?*] external representation (IMF), legally required since 1999
 - No reference to EU's own capacity to adopt economic measures (Art. 122(1) TFEU)
- ❑ Greece, United Kingdom: existential issues
- ❑ Misconceptions of what the Union is
- ❑ ... or the euro stands for (notably in British press)
- ❑ The importance of the cultural element:
 - Shared second language
 - Shared media space for Europe-wide debate
 - Emphasising our connections, shared history and inevitably shared future as Europeans.

