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The views expressed in this paper are those of the authors and should not be reported as representing the views of the European Central Bank.

The accountability of the ECB as banking supervisor

Demosthenes Ioannou, Cyril Max Neumann, Carina Stubenrauch

Abstract

While much research has analysed the creation of banking union and the ECB's assumption of bank supervisory responsibilities, less attention has been paid to the modalities of the ECB's accountability in this context. This paper provides an overview and explanation of the modalities for discharging accountability by the ECB for banking supervision which it fully assumed in November 2014. On this basis, it discusses the accountability framework and provides an overview from the perspective of the broad benchmark provided by the Basel Committee on Banking Supervision (BCBS) in its 2012 Core Principles for Effective Banking Supervision, also by considering the practices of other (central bank) supervisors as they are analysed in the IMF's Financial Sector Assessment Programmes (FSAP).

Key words: European Central Bank, EMU, banking supervision, accountability, banking union, BCBS core principles

JEL codes: E52, E58, F15, F36, G28, N24, N4

1. Introduction¹

The decision by EU legislators in 2012 to give the ECB the role of pan-European banking supervisor in the form of the Single Supervisory Mechanism (SSM) created the first of the three main pillars of the European Union's (EU) banking union. This step in European integration was taken amidst the financial crisis and the full realisation that both the single market and Economic and Monetary Union (EMU) require an enhanced microprudential framework that ensures financial stability, financial integration and more broadly the efficient operation of EMU including the smooth transmission of monetary policy. Banking Union (BU), with its second pillar for bank resolution and a third pillar for bank deposit guarantee, has been described by one observer "as the most structurally significant policy initiative of the whole decade of crisis" (Veron 2018).

The modalities of the functioning of ECB banking supervision, including those for discharging political accountability,² were based on the Treaty on the Functioning of the European Union (TFEU), which foresaw this possibility under Article 127(6)³. The key piece of secondary legislation establishing banking supervision on that basis came to be known as the Single Supervisory Mechanism Regulation (SSMR), adopted in 2013, and contains explicit accountability provisions for the banking supervisor. The accountability framework was further clarified by an Interinstitutional Agreement with the European Parliament (IIA) and a Memorandum of Understanding (MoU) with the Council of the EU.

All in all, the analysis of this paper supports four findings as regards the ECB's political accountability framework for banking supervision.

First, the framework for banking supervision was shaped to a significant extent by the provisions relating to the ECB's accountability as a monetary authority, as these were formulated already in the Maastricht Treaty of 1992, that is, more than twenty years before the arrival of European banking supervision in 2013. The basic parameters of the accountability framework were shaped to a large extent by the institutional and constitutional set-up as enshrined in the EU Treaties, most notably of the ECB as a single EU institution with clear governance structures and allocation of competences to its decision-making bodies, and far-reaching independence.

Second, the accountability framework for the monetary policy competence was practiced and developed for almost fifteen years before the ECB assumed banking supervision as a competence, i.e. between 1 June 1998 when the ECB was formally established and 3 November 2013 when the SSMR entered into force.

Third, the degree of independence of ECB banking supervision, and therefore also the accountability modalities for banking supervision, have been broadly similar to those of monetary policy but with some practical differences reflecting the different policy nature of banking supervision.

Fourth, a first qualitative analysis of the accountability framework as measured against the principles of the Bank for International Settlements' (BIS) Basel Committee on Banking Supervision (BCBS) and using the International Monetary Fund's (IMF) Financial Sector Assessment Programmes (FSAPs) to compare practices among major (central bank) supervisors, suggests that the ECB banking supervision accountability framework largely meets the criteria of Principle 2 on independence, accountability, resourcing and legal protection.

¹ We are grateful to Sophie Bening, Peter Praet, Rebecca Segall and participants at a panel of the EUSA 2019 conference (9-11 May) for helpful discussions and comments. All errors remain our own.

² Throughout this paper, and unless explicitly stated otherwise, we discuss political accountability, that is, accountability discharged by a technocratic institution towards political institutions representing the (EU) citizens.

³ "The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings."

The paper is accordingly structured as follows.

Section 2 describes, by using the notion of path dependence, how on the one hand the elevation of banking supervision from the national to the European level of competence, and the ECB's singleness as an institution with established practices for discharging accountability for monetary policy, provides an appropriate institutionalist explanation behind the accountability modalities of the ECB as bank supervisor.

Section 3 discusses the ECB's accountability for banking supervision in response to six common questions about accountability, namely: who is accountable, for what, by what standards, to whom, in what manner and effects of a breach of standards. The section is far from exhaustive and discusses the ECB's accountability framework for banking supervision from a theoretical and empirical perspective focusing on the legal and political requirements for democratic accountability.

Section 4 follows up on Section 3 by conducting a preliminary assessment of the accountability modalities of ECB banking supervision against the benchmark of the 2012 Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision.

2. The emergence of European supervisory accountability

Path dependence

Historical institutionalism helps us understand why European banking supervision was allocated to the ECB in the first instance and thus how the accountability framework for this competence came about. Both events were shaped by the EU's strong orientation towards rules and institutions⁴ and the importance of the boundaries set by the EU Treaties. In addition, historical institutionalism sees new institutions as often 'copied' from or 'layered' onto existing (EU) institutions (Verdun, 2015), a method that is particularly effective when the need to act quickly limits other possible options. An emphasis is also placed on critical historical junctures in which several possible options arise, at least in theory. Often, however, the choices of the past affect the options available to solve current problems while actors' choices have a deep impact on outcomes (Verdun, 2015). More broadly, institutions provide a framework for future development, guiding and limiting future choices while reflecting the environment in which they operate (Steinmo, 2008; Kuipers, 2009; Eliasson, 2014).

Arguably, the global financial crisis and its evolution in the euro area into a sovereign debt crisis was a critical juncture for the development of EMU. The crisis put enormous pressure on policy makers and proved instrumental in overcoming the entrenched opposition of several euro area Member States to creating European Banking Supervision (Howarth and Quaglia, 2014; Glöckler et al, 2016). More broadly, the single financial market in Europe had fragmented along national lines, laying bare the fault lines in the Economic and Monetary Union's (EMU) institutional framework. One of these fault lines was a segmented framework for banking supervision lacking euro area wide crisis prevention and mitigation mechanisms. Among other things, conferring supervisory powers to the European level was seen as imperative for a monetary union facing diverse supervisory practices and a bank-sovereign nexus hampering i.a. the transmission of monetary policy (Goya et al., 2013, Dell'Ariccia et al. (2018)). In the end, according to Ludlow (2012), these developments had a profound effect on decisions at the highest level and specifically at the European Council summit of June 2012 which finally approved the elevation of banking supervision to the European level.

The crisis thus prompted the political decision to create EU Banking Supervision. But its creation was also subject to a number of framework conditions and restrictions of a constitutional, legal and practical nature. One of the earliest such framework conditions was the Maastricht Treaty of 1992 which introduced the creation of EMU. The Treaty also foresaw, beyond the establishment of the ECB, the possibility for assigning European banking supervision to the ECB albeit in a broad and tentative manner.

⁴ Seen from an international relations perspective, Pollack (2009) thus calls the EU "the world's most tightly institutionalised international organisation".

It therefore appears that the construction of the banking union and the bank supervisory pillar in particular were pre-determined by the path-dependency initiated by the Maastricht Treaty itself. The practical modalities of where precisely banking supervision would be housed, how it would function and concomitantly, how accountability would be discharged also followed constitutional and institutional path dependence.

Regarding the choice of entity to which to entrust European banking supervision, there were strong legal, institutional and practical reasons for deciding on the ECB. First, as mentioned above, the prospect of the ECB supervising banks was explicitly foreseen in an article of the Treaty of Maastricht of 1992. Indeed, as Padoa-Schioppa (2004, p. 111) points out, a single currency and a single central bank “naturally leads one to ask whether supervision should remain national or become itself European. This was the question explicitly addressed in 1988 to 1992 when EMU was designed and inscribed in the Treaty of Maastricht”.

In constitutional-legal terms, the end result of this debate on whether and how to create banking supervision was Article 127(6) TFEU⁵, which foresaw the assumption of supervisory powers by the ECB through a special legislative procedure designed to circumvent potential difficulties arising from the original separation of central banking and banking supervision. This simplified procedure, described by Padoa-Schioppa as a “last resort clause” (1999, p. 297) in case the interaction between the Eurosystem and the national supervisory authorities proved insufficient, thus avoided the need for the lengthy process of Treaty change. Consequently, it would have been extremely difficult – if not impossible – to justify giving these powers to any EU institution other than the ECB (Lackhoff, 2017). Indeed, banking supervision could only be undertaken by an EU institution due to what has become known as the Meroni doctrine⁶. In other words, a competence with such far-reaching implications as banking supervision could not be undertaken by, for example, an agency created through secondary legislation. Crucially, the “last resort clause” allowed mandating the ECB with prudential supervision without necessitating a Treaty change; an important consideration in view of the time pressures created by the crisis.

Second, the ECB also provided the relevant expertise, infrastructure, as well as organisational independence for setting up the SSM within a short timeframe (Angeloni and Ioannou 2013). Furthermore, it had already acquired experience and reputation as a competent crisis manager, which would benefit a single European supervisor (Mersch 2013). Central banks’ involvement in banking supervision (rather than a non-central bank institution) was common in most euro area member states as well as other jurisdictions around the world (see Section 4). Moreover, as Wyplosz (2019, p. 4) remarks, “supervision failures – both in the EU and in the US, and previously in Japan – were directly linked to the weakness of national supervisory agencies. Frequently, the agencies were poorly staffed, both in terms of quality and quantity. They were often too close to governments, which are always sensitive to pressure by banks. The decision to establish the SSM within the ECB acknowledges the importance of this latter consideration.”

Third, once it had been decided to entrust the *competence* of banking supervision to the ECB, the institution would now also have to discharge the *accountability* for banking supervision. Given the vast number of around 3,000 supervised entities in the euro area, a division of labour was established between the ECB and national competent authorities (NCAs)⁷. Accordingly, the ECB carries out the supervision of significant banks (SIs) while the NCAs supervise less significant banks (LSIs), all within a single system ultimately reporting to the ECB’s decision-making bodies⁸. Thus the overall responsibility for the effective and consistent functioning of the SSM lies with the ECB, with full discretion with regard to

⁵ See Annex A.1

⁶ See also [Gren 2018](#). The Meroni doctrine was established by the European Court of Justice (ECJ) in 1956 when it decided that EU institutions may not delegate to agencies powers with a wide discretion.

⁷ Article 6 SSMR.

⁸ Article 25(2) on the Protocol (Number 4 TFEU) on the Statute of the ESCB and the ECB reflects the possibility of Art. 127(6) TFEU allowing for the possibility of delegating “specific tasks” to the ECB on banking supervision. It should be noted that these provisions went beyond those already practiced by the ECB until and also after the time of assuming bank supervision and related to financial stability (Article 127(5) and Statute Article 3.3), and being consulted on any acts or legislation “in its field of competence” by national authorities (Article 127(4) TFEU and Statute Art. 25.1).

prudential decisions over all banks. This division of labour and other provisions were adopted by means of an SSM Framework Regulation (ECB 2014b).

Fourth, concerning the political accountability provisions, the TFEU provisions applying to the ECB as a monetary authority (Article 284) provided the basis for the modalities of banking supervision accountability in Article 20 of the SSM Regulation. In this way, the reading of the Treaty and the parameters of the independence and accountability frameworks were incorporated in the SSM Regulation, which in turn formed the basis for the Interinstitutional Agreement (IIA) between the European Parliament and the ECB (2013), and the Memorandum of Understanding (MoU) between the Council of the EU and the ECB (2013), which clarified the practical modalities for discharging supervisory accountability.

Fifth, while the SSM Regulation and the ensuing documents of the IIA and MoU had to respect the constitutional parameters and other legal *acquis* of the Union⁹, they took into account in addition the practical implementation of the ECB's discharging of accountability as monetary authority in the 15 years since the establishment of the ECB. We explore this factor in more detail in the following subsection.

Discharging accountability from 1998 to 2013

By the time the ECB assumed its supervisory responsibilities, it already had a relatively long record and experience with discharging accountability as the central bank and monetary policy maker for the euro area, namely, since 1 June 1998 when the ECB was formally established as an institution.

The provisions of the Treaty had been developed in practical terms to a considerable extent, presenting a wide-ranging accountability and reporting framework. These included (i) the hearings of the ECB President, Vice President and other Executive Board members at the European Parliament plenary and in the Economic and Monetary Affairs Committee (ECON); (ii) the submission of the ECB's Annual Report; (iii) responses to MEPs written questions; (iv) the publication of the ECB's Monthly Bulletin (renamed to the Economic Bulletin in 2015 and published 8 instead of 12 times per year in line with the schedule of monetary policy meetings of the Governing Council); (v) exchanges of views also in national parliaments; and (vi) the publication of accounts of monetary policy meetings and numerous other publications, articles and speeches, as evidenced on the ECB's web site (www.ecb.europa.eu) (see also **Table 4** below).

The practical experiences by the ECB and the European Parliament with regard to the modalities for discharging accountability for monetary policy was followed up upon and strengthened with the establishment of ECB banking supervision under the leadership of the first Supervisory Board Chair, Danièle Nouy. The political agreement between the European Parliament and the Council of Ministers on the SSM Regulation was reached in March 2013 (and thus also Article 20 on the accountability provisions¹⁰). This paved the way for the discussion and agreement between the European Parliament and the ECB for the Interinstitutional Agreement (IIA) on the practical modalities for discharging accountability for banking supervision by the date on which the preparatory phase started in November 2013. Four reports were then prepared on a quarterly basis to keep legislators informed of the developments and readiness to assume full supervisory powers in November 2014.

As summarised in **Table 4** and explained further in the next section, the modalities for discharging accountability on the supervisory side were specified and developed during these discussions, especially on the IIA with the European Parliament, in a number of ways reflecting the practical modalities as these had been initially developed for monetary policy. This also meant that practical differences needed to be included to reflect the different policy nature of banking supervision (cf. the ECB banking supervisor's website (www.bankingsupervision.europa.eu)). For example, a large part of bank supervisory information is secret as it is market sensitive and can damage directly commercial interests, let alone lead to financial instability under inadvertent circumstances. The provision, therefore, of "records of proceedings"

⁹ Notably the regulatory parameters set out in such key legislation as the Capital Requirements Directive (CRD "IV") and Capital Requirements Regulation (CRR).

¹⁰ See Council Regulation (EU) No 1024/2013 of 15 October 2013

discussing such supervisory information need to be kept confidential (as opposed to, for example, the “monetary policy accounts” published by the ECB).

To recap, once the decision had been taken to entrust the ECB with a supervisory mandate, the ECB’s constitutional set up had to be taken into account when it came to accountability provisions. We argued above that two key factors determined the broad template of the ECB’s accountability framework for banking supervision in 2013. First, the accountability (and independence) provisions pertaining to the ECB in the (Maastricht) Treaty. And second, the evolution of the ECB’s accountability framework prior to obtaining supervisory functions. These arguments are best understood from a path dependence perspective.

Against this background, the next Section (3) discusses the ECB’s accountability for banking supervision as it emerged by responding to six common questions about accountability, namely, (i) who is accountable, (ii) for what, (iii) by what standards, (iv) to whom, (v) in what manner and (vi) the effects of a breach of standards. The section is far from exhaustive and discusses the ECB’s accountability framework for banking supervision from a theoretical and empirical perspective, focusing on the legal and political requirements for democratic accountability.

3. The accountability framework for ECB banking supervision

Delegation of banking supervision to an independent institution is necessary to overcome time inconsistencies and to provide for adequate technical expertise. In the past two decades, delegation of many supervisory and regulatory powers from government to independent authorities has taken place. With regard to financial supervisors, the ultimate principal is society (the citizens), who have an interest in the effective supervision of the financial institutions they do business with. There are technical reasons for delegation, as the agent has detailed information, expertise and time that the principal lacks (Strom, 2000). Moreover according to Quintyn and Taylor (2002), delegation occurs to overcome time inconsistencies, as there is (i) the need to insulate regulators from short-term political interests that can undermine the quality of supervision and their credibility and (ii) the electoral incentive of politicians to postpone problem resolutions through bail-outs and forbearance in order not to lose votes (a variant of the time inconsistency literature about monetary policy).

The SSM was placed within an EU institution whose operational independence provided a sound institutional framework for the SSM to carry out its tasks effectively (Recital 75 SSMR)¹¹. At the same time, the ECB’s new competences required it to be held appropriately accountable for its actions. In the parlance of principle/agent theory, the citizens (principal) would run the risk that the agent (ECB) does not act in the former’s interest. This “vertical” relationship between principal and agent might lead to the conclusion that there is a trade-off between independence and accountability (Taylor, 2012), so that the decision to grant financial supervisors independence would make it difficult to enforce effective accountability provisions. However, the bulk of the literature has tended to consider independence and accountability as two sides of the same coin and two mutually strengthening principles, with Hetzel (2012) describing them as “Siamese twins”. The ECB has also seen the two concepts as such (ECB 2002). As explained by one ECB policy maker “[F]or the ECB independence and accountability are two sides of the same coin. The ECB was given a democratic mandate. Independence ensures that the ECB can act in line with its mandate. Accountability, on the other hand, ensures that the ECB does act in line with its mandate” (Coeuré 2017).

Hüpkes, Quintyn and Taylor (2005) stress that independence and accountability are also important to maintain and enhance the agency’s legitimacy in the eyes of the public by allowing it to continuously explain its decisions. Striking the right balance between independence and accountability, however, crucially depends on an appropriate design of the accountability framework, which should be aligned

¹¹ These include contributing to the safety and soundness of the banking system and the stability of the financial system (cf. SSM mission statement), increasing financial integration and stability and ensuring consistent supervision.

with the tasks performed. In this respect, practical differences may emerge between the frameworks for monetary policy on the one hand and banking supervision on the other.

Six elements of accountability

Accountability in the context of the ECB's role as a prudential supervisor refers, for the purposes of this paper, to the legal and political obligations of the ECB as banking supervisor to explain and justify its decisions to citizens and their elected representatives. Together with the related transparency and communication policies, as well as a robust integrity framework, these are essential elements of the ECB's democratic legitimacy. According to Marshaw (2006), democratic accountability contains at least six relevant elements: (i) who is liable; (ii) what are they liable for; (iii) by what standards; (iv) to whom; (v) through what processes is accountability assured; and (vi) what are the potential effects when standards have been breached? The next sub-sections apply Marshaw's accountability questions to the SSM, exploring both the internal and external elements of accountability.

Who is accountable?

The conferral of supervisory powers to the ECB has been based on a politically legitimate decision by the Council of EU Ministers and European Parliament based on a Commission proposal (Article 127(6) TFEU). Political accountability was thus exercised already by granting the ECB supervisory powers. Both the Supervisory Board and the Governing Council act as entities, and their members are collectively responsible for supervisory decisions taken. Decision-making in the SSM is based on the so-called "non-objection" procedure, under which the Supervisory Board proposes complete draft decisions to the ECB Governing Council, given that the latter, together with the Executive Board, are formally the two decision-making bodies of the ECB. A draft decision is then deemed adopted unless the Governing Council objects to it within ten working days. This careful distribution of tasks between the Supervisory Board and the Governing Council aims at preserving the independence of both monetary policy and banking supervision, while avoiding conflict of interests between the two policy fields. This is in line with the second BCBS core principle (2) for effective banking supervision requiring the supervisory body to be structured so as to avoid any real or perceived conflicts of interest.

With regard to the institutional set-up, Article 26 of the SSM Regulation stipulates that the Supervisory Board (SB) is an internal ECB body comprising a Chair, a Vice Chair, four representatives of the ECB, and one representative of the National Competent Authority (NCA) from each participating member state. In order to ensure the most complete separation between the discharging of accountability for monetary policy and SSM banking supervision, the President of the ECB is not involved in discharging the accountability requirements of the SSM. This is the task of the Chair of the SSM Supervisory Board.¹²

¹² To prevent conflicts of interest between monetary policy and supervisory responsibilities, a number of other provisions exist and the ECB ensures a separation of objectives, decision-making processes and tasks. This includes strict separation of the Governing Council's meetings.

Table 1

Euro area national arrangements for banking supervision upon the SSM's arrival¹³

| Euro area Member States in which the NCA is a central bank | Euro area Member States in which the NCA is not a central bank ¹⁴ |
|---|--|
| Belgium, Ireland, Greece, Spain, France, Italy, Cyprus, Lithuania, Netherlands, Portugal, Slovenia, Slovakia (11) | Germany, Estonia, France, Latvia, Luxembourg, Malta, Austria, Finland (8) |

Source: Authors based on Bini-Smaghi (2007)

Accountability for what?

As explained further below, ensuring the accountability of banking supervision may be an inherently more difficult task than ensuring the accountability of central banking tasks such as monetary policy.¹⁵ The key challenge is how can one hold supervisors accountable, given the absence of a clearly quantified objective, the multiplicity of possible instruments at the disposal of supervisors (e.g. direct market interventions, liquidity or credit expansion measures, margin adjustments, etc.) and the difficulty to forecast the effects of such instruments, whose functioning has been studied far less than the transmission mechanism of monetary policy. In the specific case of the SSM, the challenge is compounded by the complex institutional set-up of the banking union and the peculiar allocation of tasks between the national and the European levels within it.

An independent institution can be held accountable more effectively the more clearly defined and delineated its mandate and tasks are. In the case of the ECB (and other central banks), the objective of monetary policy is relatively clearly defined with regard to the inflation rate, especially because it is assigned primary status. But how exactly does one measure, for example, the ECB's contribution "to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State" as Article 1 of the SSMR stipulates? In contrast to monetary policy, it is probably not possible to come up with a single quantitative objective against which the ECB and other bank supervisors can be held accountable.¹⁶ The legislator has thus established that the ECB will be held accountable for the implementation of the SSMR, and the ECB's adherence to appropriate procedures is used (for example in European Parliament hearings and reports¹⁷ as a performance criterion for accountability (Article 20 of the SSMR)).

Accountability by what standards?

We address this question at length in Section 4.

Accountability to whom?

¹³ See also Padoa-Schioppa (2004, p. 112) and Bini-Smaghi (2007).

¹⁴ Some national central banks that are not designated as the National Competent Authority (NCA) have bank supervisory competences under national law. They continue to carry out these tasks within the Single Supervisory Mechanism as set out in the SSM Regulation and the SSM Framework Regulation.

¹⁵ It should be noted that while in this section we speak broadly of financial supervisors, the ECB's competences under the SSMR make it a bank supervisor without competences such as those enjoyed by financial supervisors in other jurisdictions which are responsible for example for other market segments such as insurance, or other specific policy areas such as consumer protection or anti-money laundering.

¹⁶ As Anil Kashyap (2019), member of the Bank of England's Financial Policy Committee observed with regard to macroprudential policy, "it is hard to know how to define success. Suppose we had moved the risk of a crisis from a one in 20 year event to one in 50. How would we know that had happened? How would we know that met parliament's definition of success? And how could we begin to convince the public of that?"

¹⁷ The ECB Annual Reports on supervisory activities since 2014 are available at: www.bankingsupervision.europa.eu/press/publications/annual-report/html/index.en.html. A list of hearings and exchanges of views between the European Parliament's Economic and Monetary Affairs (ECON) Committee and the Chair of the Single Supervisory Board from 2014 can be found at: www.europarl.europa.eu/committees/en/econ/banking-union.html

The ECB is first and foremost accountable to the European citizens for the exercise of both its monetary policy and supervisory powers, in line with the Treaty and secondary legislation. This follows from the principle that accountability needs to be discharged at the European level for the exclusive competences assigned to that level of governance.

In contrast to the ECB's monetary policy function, which is accountable to the European Parliament according to Article 284 of the Treaty, and which does not refer explicitly to the word "accountability",¹⁸ the general accountability provision for the ECB's supervisory function is explicit in Article 21 of the SSM Regulation. This states that: "The ECB shall be accountable to the European Parliament and to the Council for the implementation of this Regulation". Several reasons may lie behind this more explicit, and one could say somewhat broader, instruction by the legislators.

One is the more direct implication for public finances in case of bank failures given that governments may need to spend fiscal resources in the case of a bank failure in order to ensure the continuing operation of a bank's essential functions (for e.g. depositors or other parts of the financial system and economy). By contrast, the reaction of the government to an independent central bank's monetary policy (made independent by law makers themselves) is more relevant in the debate about fiscal and monetary policy reaction functions. The implications of independent monetary policy for public finances are thus of a different and considerably more indirect nature to those of banking supervision.¹⁹

Additionally, the consensus in Europe and elsewhere suggests that the political economy of banking is rather different to that of monetary policy. While most major central banks in the world are primarily accountable to parliament for their monetary policy decisions, the involvement of the executive branch has been traditionally more common in the accountability of financial supervision (cf. also Annex A.2).²⁰

As for the question of the governance level at which accountability is discharged (i.e. national or European), EU legislators did recognise in the SSMR that the national level needs to be informed of developments at the European level of supervision, as national public authorities retain a direct role in the supervision of Less Significant Institutions (LSI), which in terms of numbers of financial institutions form the vast majority of the banking population of the euro area.²¹ Article 21 SSMR also foresees the need for appropriate channels of reporting to national parliaments (annual report on the activities of the SSM and reasoned observations on the report by parliaments) and the possibility for the SB Chair and an SB member from the relevant NCA to appear in national parliament committees (according to national practices) and also of national parliamentarians to address questions to the ECB.

An element of what the literature refers to as "regulatory accountability" is provided for under article 4.3 of the SSMR. The article stipulates that, before adopting regulations to organise or specify the arrangements for the carrying out of its supervisory tasks as foreseen under article 4.2, the ECB should conduct open public consultations and analyse the potential related costs and benefits (ex-ante

¹⁸ Article 284(3) of the TFEU states that "The European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis. The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament."

¹⁹ The implications of bank failures for public finances and financial stability depends on a large number of factors that may put under the general heading of bail-in vs. bail-out regimes (see e.g. the discussion in Avgouleas and Goodhart, 2015).

²⁰ We note the difference between banking supervision specifically, and financial supervision more generally which may entail supervision of financial entities beyond the strict remit of banks and for issues (e.g. anti-money laundering) for which the ECB is not competent. We employ the terms accordingly in what follows.

²¹ In December 2019, the number of significant institutions supervised by the ECB was 117. The full list of entities directly supervised by the ECB is available from: <https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.listofsupervisedentities202001.en.pdf> (Accessed 29/01/2020).

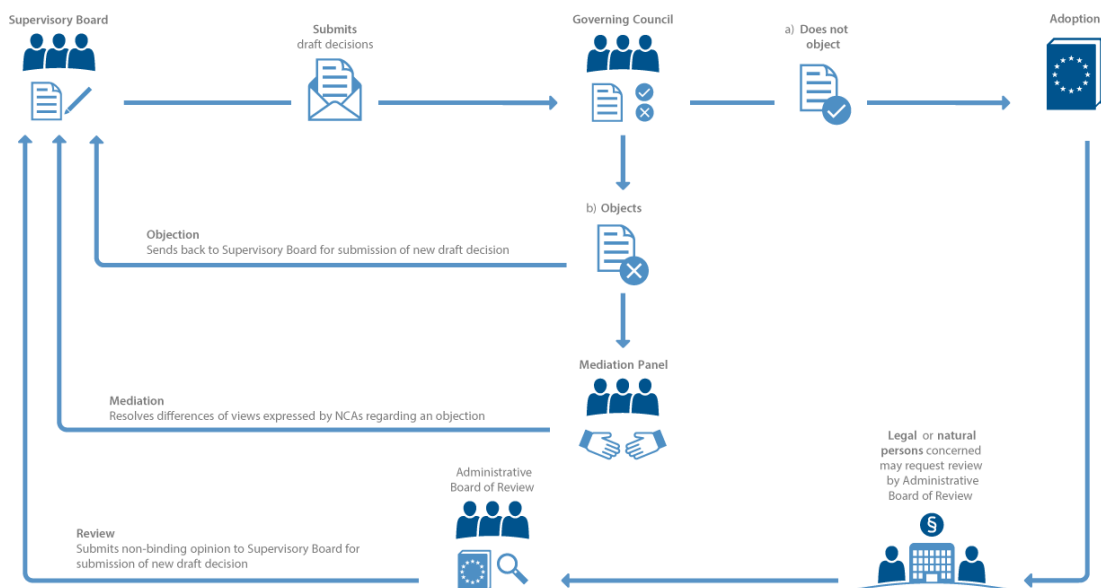
accountability).²² This allows the public and all relevant stakeholders, including the regulated entities, to make their opinions heard.

Finally, it is important to note that the NCAs maintain in a number of cases a responsibility and/or accountability towards their national government and national parliament, depending on the national arrangements for NCAs in the euro area member states. In some cases, for example, national governments remain formally and within the national hierarchy the principals of NCAs and their representatives in the SB. This potentially raises questions over the degree of NCAs' independence in discharging their duties in the SB. Furthermore, NCAs retain tasks which fall outside the scope of the SSM Regulation (Article 4 of the SSMR) such as consumer protection, Anti-Money Laundering (AML) and the supervision of financial entities that are not banks. For these, the NCAs continue to be accountable to national parliaments in line with the legal and constitutional provisions of the respective Member States.

²² The SSM undertook such consultations before adopting the SSM Framework Regulation, the ECB Regulation on Supervisory Fees and the Regulation on Reporting of Supervisory Financial Information. Furthermore, the entities supervised by the ECB have, as addressees of ECB supervisory decisions, in principle the right to be heard prior to the taking of the decision.

Table 2

ECB banking supervision decision making procedures²³



Source: ECB banking supervision website

Accountability in what manner?

The SSMR lays down extensive reporting requirements for the ECB in the exercise of its supervisory functions. These requirements are mainly limited to providing information and debating that information, which assures accountability through a dialogue and whereby the principals have sanctions only in extremis at their disposal. Article 20 requires the ECB to submit an Annual Report on the execution of its supervisory tasks to the European Parliament, to the Council, to the Commission and to the Eurogroup. Noteworthy is not only the detail to be contained in the ECB Annual Report on supervisory activities²⁴ but also the provision to the ECON Committee of the European Parliament of regular, timely and meaningful confidential Records of Proceedings of the Supervisory Board. While the general reporting obligations are broadly similar to those of other major financial supervisory authorities, (see **Table 3**) the provision for Records of Proceedings indicates the far reaching nature of the accountability provisions in the case of ECB banking supervision.

²³ See also Padoa-Schioppa (2004, p. 112) and Bini-Smaghi (2007).

²⁴ <https://www.bankingsupervision.europa.eu/press/publications/annual-report/html/index.en.html>

Table 3

Reporting obligation of four banking supervisors

| | ECB | Federal Reserve | Financial Services Agency (Japan) | Bank of England |
|--|-----------|--|-----------------------------------|-------------------------|
| Issues report on banking/financial supervision | Yes | Yes | yes | yes |
| Frequency | Annually | annually | annually | annually |
| Part of report on monetary policy or separated | Separated | Part of annual report on monetary policy | separated ²⁵ | separated ²⁶ |

Source: Supervisors' websites, IMF FSAP.

In the case of the ECB, the Chair of the ECB Supervisory Board is required to present the separate Annual Report on banking supervision in public to the European Parliament, and to the Council in the presence of representatives from any Member State outside the euro area participating in the banking union. In addition, the Chair of the Supervisory Board may also be heard at the request of the Eurogroup, may be requested by the European Parliament to participate in a hearing by its competent committees (in practice, this has so far been the ECON Committee, as for the President of the ECB and monetary policy), and may also be invited by the national parliament of a participating member state to participate in an exchange of views (again, differentiating between accountability and reporting). The ECB has to reply orally or in writing to questions put to it by the European Parliament (the same obligation is foreseen for questions put forward by the Eurogroup).

In addition to the accountability and reporting duties detailed above, it is important to remember that the SSMR under art. 26 also provides for an orderly dismissal procedure for the Chair of the Supervisory Board, aimed at ensuring that the latter fulfils his/her duties at best. The regulation refers to cases under which the Chair “no longer fulfils the conditions required for the performance of his/her duties or has been guilty of serious misconduct”, meaning that a dismissal cannot be undertaken in a discretionary manner on the grounds of past policy-performance, but only in line with the clearly stipulated circumstances. The provision closely parallels what the Statute of the ESCB stipulates for the dismissal of Executive Board members. However, while with regard to the Executive Board such a final decision would rest with the European Court of Justice, the dismissal of the Supervisory Board Chair can only happen on a proposal by the ECB and must be approved by the European Parliament and the Council.

Finally, article 19(7) of the SSMR provides for “budgetary accountability” stipulating that, when the European Court of Auditors examines the operational efficiency of the management of the ECB in accordance with the Statute of the ESCB, it should also take into account the supervisory tasks of the ECB. Budgetary accountability is a consequence of the budgetary independence of the SSM, whose expenditures should “be separately identifiable within the budget of the ECB” (article 29 of the SSMR) and are financed through annual fees levied on supervised credit institutions.

Accountability channels for banking supervision and monetary policy

How does this compare with the accountability framework for monetary policy? If our thesis in Section 2 is correct that the accountability framework for banking supervision was influenced by the path

²⁵ The Financial Services Agency is responsible for banking supervision. It is a separate institution from the Bank of Japan and publishes a “Financial Monitoring Report” annually.

²⁶ “Prudential Regulation Authority Annual Report and Accounts”, published annually.

dependence of the ECB as an institution, and its existing accountability modalities at the time of arrival of the SSM, then we would expect the two frameworks not to differ significantly.

In theory, as accountability should be based on an evaluation of performance, significant differences arise depending on the policy area chosen (Hüpkes et al. 2005). While a broad academic and policy consensus has come to identify the primary task of monetary policy with the preservation of price stability (often numerically expressed in the clearest way as an inflation target and with tools developed and deployed towards exactly that target), much less clarity exists in the case of financial supervision, which is often entrusted with the pursuit of multiple objectives (e.g. financial stability, protection of ill-informed retail consumers, fighting financial crime²⁷), and for which appropriate quantitative performance targets are hard to identify. Furthermore, the effects of regulatory actions may be hard to identify and circumscribe, even with the benefit of hindsight. Hence, the adherence to appropriate procedures is generally used as a performance criterion for accountability.

While transparency is usually considered an important prerequisite for the good discharge of accountability and increases the effectiveness of monetary policy, the market sensitivity of most information handled by financial supervisors makes transparency and disclosure more difficult in the field of financial supervision. Differently from monetary policy authorities, financial supervisors often operate in a multiple-principals environment and affect a multitude of diverse interests. This seems to usually result in, or at least warrant, a more complex accountability framework in order to ensure that the potentially broad range of interests affected by supervisory decisions is properly represented. Finally, the enforcement and sanctioning powers usually granted to financial supervisors (e.g. special audits and inspections, sanctioning powers, etc.) give supervisors a degree of discretion that is absent in a monetary policy focused primarily on price stability.²⁸

²⁷ Consumer protection and the investigation of financial crimes fall outside the ECB's mandate in the area of banking supervision.

²⁸ Sullivan and Horáková (2014) challenge this view by referring to unconventional monetary policy measures and the relatively novel use of central banks' balance sheets during the crisis.

Table 4

Main accountability channels of ECB monetary policy functions and ECB banking supervision

| Accountability channel | ECB monetary policy | ECB banking supervision |
|---|---|---|
| Annual Report | The ECB submits an annual report of its tasks, the activities of the ESCB and the Eurosystem's monetary policy to the European Parliament, the Council and the Commission. The report is presented each year in the European Parliament by the Vice President of the ECB in a dedicated session of the ECON committee and by the President on the occasion of a plenary debate. | The ECB submits annual reports on how it has carried out its supervisory tasks to the European Parliament, the EU Council, the Eurogroup, the European Commission and the national parliaments of participating Member States. |
| Hearings and exchange of views | The ECB's President participates in quarterly hearings before the ECON committee. Other Executive Board members also participate in ECON committee hearings to explain the ECB's reasoning and decisions on specific topics. | The Chair of the Supervisory Board attends two regular hearings per year before the ECON committee. The Chair may additionally be invited to ad hoc exchanges of views on supervisory issues before the ECON committee. |
| Written questions | Members of the European Parliament can address written questions to the ECB. | Members of the European Parliament and the Eurogroup can address written questions to the Chair of the Supervisory Board. |
| Press conferences | The ECB holds press conferences after each Governing Council monetary policy meeting, i.e. every six weeks. | There are no press conferences following SB meetings. |
| [Economic Publications Bulletin] | The Economic Bulletin (formerly the Monthly Bulletin) presents the economic and monetary information which formed the basis for the Governing Council's policy decisions. It is published eight times a year, two weeks after each monetary policy meeting. | There is a wide variety of publications and information on the web site of ECB Banking Supervision but no regular publication beyond the Annual Report. |
| Weekly financial statements | The consolidated financial statement of the Eurosystem, which is published weekly, provides information on monetary policy operations, foreign exchange operations and investment activities. | Given the difference in tasks, there is no equivalent for a banking supervisor. |
| Accounts of Governing Council/Supervisory Board meetings | The accounts of the Governing Council's discussions are published four weeks after each monetary policy meeting. | The ECB provides the European Parliament's ECON committee with a comprehensive and meaningful record of the proceedings of the Supervisory Board. In the case of an objection by the Governing Council against a draft decision by the SB, the President of the ECB shall inform the ECON Chair of the reasons for such an objection. |
| Articles, interviews and speeches | The members of the Executive Board regularly communicate with the public by way of articles, interviews and speeches. These are published on the ECB website. | The Chair and Vice-Chair as well as the other ECB members of the SB and the NCA representatives communicate with the public by way of articles, interviews and speeches. For the Chair, Vice-Chair and SB members, these are published on the ECB Banking Supervision website. |
| Public access requests | Any EU citizen has a right of access to ECB documents, subject to the conditions and limits defined in Decision 2004/258/EC. | Any EU citizen has a right of access to ECB documents, subject to the conditions and limits defined in Decision 2004/258/EC.* |

Sources: The first and second columns are based on Fraccaroli et al (2018) and authors. Third column by authors.

See also:

- ECB Banking Supervision and accountability on the [SSM website](#).

- Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (2013/694/EU), OJ L 320, 30.11.2013.

*https://www.bankingsupervision.europa.eu/organisation/access_to_documents/html/index.en.html

In the case of a single institution having both the competences of monetary policy and financial/banking supervision, additional considerations are made with regard to the interaction between the two competences, the degree to which they should be separated, and so on. This then can have implications in the arrangements for discharging accountability for the two competences, for example, as regards the channels and methods used for this purpose.

The differences in undertaking banking supervision policy and monetary policy, as well as their implications for stakeholders, tends then to have implications also for designing an analogous accountability framework. As mentioned above, an additional dimension that affected the modalities of supervisory accountability in the European case was related to the decision to raise the competence of banking supervision from the national to the supranational level and to assign it to the Union's central bank.

Beyond the similarities and some differences with regard to the channels of accountability explained in **Table 4**, one may note the somewhat different approaches of reporting towards national parliaments, at least in formal terms. The SB Chair may be invited to attend exchanges of views at national level and responds to letters (Article 21 of SSMR). In practice, the situation is similar to monetary policy where the President of the ECB has attended, without there being a formal requirement in the Treaty, exchanges of views with parliamentarians in national parliaments to discuss economic developments in the euro area.

Effects of breaching accountability standards

Defining the potential implications of a breach of defined "standards" is an additional tool to incentivise technocrats to act in the public interest. Financial supervisors should have to comply with a (legal) standard of care in order to avoid the possible sanctions arising from accountability. Dijkstra (2010) singles out four such sanctions: 1) suspension or dismissal of supervisors if they fail to achieve financial stability; 2) overruling by another authority, for example the Minister of Finance, resulting in a serious reputational damage for supervisors; 3) parliamentary survey, potentially resulting in a reputational damage; 4) liability, namely the obligation to pay a compensation after being held liable for supervisory failure. If none of these sanctions is credible enough, then formal requirements to supervisors to explain and defend their decisions may not be sufficient to ensure effective accountability.

As in monetary policy, no such sanctioning mechanism in the event of suboptimal performance is foreseen for the ECB in terms of supervision (ECB, 2002). While sanctions may theoretically appear suitable for enforcing central banks' accountability in monetary policy and banking supervision, in practice the two policy areas present features that would make sanctions very difficult to operationalise. In particular, apart from extreme cases, their impact on economic outcomes is usually very complex to determine unequivocally. This is even more so for banking supervision and regulation, whose transmission mechanisms have been studied far less than the transmission mechanism of monetary policy. Moreover, the consequences of suboptimal performance might become evident only with a considerable time-lag, so that sanctions might come too late to have any effect on preventing a crisis. Given these uncertainties, had legislators adopted performance sanctions for the ECB, these could have been used to undermine the independence of the ECB's monetary policy and financial supervision.

Administrative and judicial accountability

We have discussed above the six dimensions by focusing on political accountability. However, the concept of accountability is broader and for the sake of completeness, we address here also briefly two additional dimensions, that is, administrative and judicial accountability. In the concept of Quintyn, Ramirez and Taylor (2007), an essential part of supervisory accountability is the possibility of judicial review. The EU legal framework provides several procedures which supervised entities can use to appeal supervisory decisions. Firstly, in order to avoid unnecessary litigation, the ECB has established an Administrative Board of Review (ABR, Article 24 SSMR). This independent body is tasked with reviewing, at the request of the concerned bank, whether decisions conform to the ECB's supervisory tasks and procedures as set out in the SSMR. In general, a request for review does not suspend the decision. The bank can however apply for a suspension, which the Governing Council, upon a proposal

by the ABR, can grant. After the ABR has issued an opinion on the request for review, the Supervisory Board must submit a new draft decision to the Governing Council. This new decision either abrogates the initial decision, replaces it with a decision of identical content or replaces it with an amended decision. A review of the new decision before the ABR is not possible.

Secondly, insofar as supervisory decisions of the ECB are acts addressed to a bank or acts which are of direct and individual concern to a bank, the latter can challenge them before the European Court of Justice (ECJ). The ECJ may invalidate supervisory decisions not only on grounds of a violation of substantive legal provisions, but also upon infringement of procedural requirements. It is not a precondition to have used the possibility of review at the ABR in order to take the case to the ECJ. Moreover, as single supervisor for the SSM area, the ECB is required to apply also national laws for the exercise of its supervisory tasks under the SSMR, as per Article 4(3) SSMR. Legal recourse for the ECB's actions as single supervisor is to the ECJ, even when its legal act is directly based on national law.

Finally, the European Banking Authority (EBA) has the competence to impose binding decisions on competent authorities in case of breach or non-application of relevant EBA decisions by the competent authority. The ECB, although granted far-reaching independence under the EU Treaties, is as competent authority also subject to this constraint as a supervisor (Ferran and Babis, 2013).

Transparency and internal procedures

Some authors consider supervisory data transparency – giving the principal the possibility to evaluate the agent's supervisory work – an important prerequisite for accountability that increases the effectiveness of supervision (Gandrud and Hallerberg, 2015). At the same time, the market sensitivity of much information handled by financial supervisors makes transparency and disclosure more difficult in the field of banking supervision (inter alia due to the commercial rights of companies).²⁹ Moreover, disclosure of confidential information may lead to financial instability. The current accountability framework for ECB banking supervision finds one balance in this regard through the confidential provision of SB records of proceedings to the EP's ECON Committee, and the publication of aggregate supervisory data as well as that of the results, in an appropriate manner, of the annual SREP exercise (see e.g. for 2018), or stress tests (see e.g. in 2019), or on ad hoc issues such as in the context of guidance to banks on Non-Performing Loans (NPLs). Accountability and transparency provisions meet within such channels as the ECB's obligation to publish the Annual Report on supervisory activities, as well as the response to questions from Members of the European Parliament (MEPs) and the publication on the ECB banking supervision website of the answers and so on (see discussion under Section 3).

The Basel Committee on Banking Supervision (2015) also highlights the importance of internal accountability, which refers to internal processes and procedures that guide the supervisory process, including checks and balances and a clear division of roles and responsibilities to ensure well founded actions and decisions.

In this regard, Ter Kuile et al. (2015) argue that by creating the ECB Supervisory Board, the SSMR has created an internal body leading to new accountability relationships within the ECB, whereby representatives of the NCAs account to governors of NCBs and vice versa. At the same time, the Supervisory Board is clearly separated from the governing bodies of the ECB (Executive Board, Governing Council), while the Governing Council of the ECB holds separate meetings to those of monetary policy in case supervisory issues need to be discussed. Moreover, decision making for the Supervisory Board is based on the non-objection procedure in the Governing Council. Disagreement between these two bodies would lead to a dialogue whereby the Governing Council would need to explain its concerns, not only internally, but also to the European Parliament.³⁰

²⁹ The degree of information provision can and has been a matter of debate for policy makers and academics. For a general discussion see Hüpkes et al, (2005).

³⁰ See paragraph 4 of the IIA: "In the case of an objection of the Governing Council against a draft decision of the Supervisory Board in accordance with Article 26(8) of Regulation (EU) No 1024/2013, the President of the ECB shall inform the Chair of Parliament's competent committee of the reasons for such an objection, in line with the confidentiality requirements referred to in this Agreement."

Internally, a Mediation Panel provides the possibility for resolving any differences of views expressed by a NCA regarding an objection to the Supervisory Board by the Governing Council (see also Table 2). The mediation panel is meant to ensure i.a. appropriate decision making in case a non-EA EU member state would participate in banking union and the SSM, whereby its National Central Bank (NCB) would not be represented in the Governing Council but its NCA would be part of the Supervisory Board.

These accountability relationships, in line with the BCBS standards, guide the supervisory processes and provide checks and balances to ensure the effectiveness of supervisory decisions.

4. Supervisory accountability and the BCBS principles

Principle 2 of the BCBS Core Principles for Effective Banking Supervision addresses independence, accountability, resourcing and legal protection for supervisors. Against this background and the discussion in the previous sections, this section draws on the IMF's most recent Financial Sector Assessment Programme (FSAP) for Japan (2017), the UK (2016), the US (2015) and the euro area (2018), and attempts a brief comparison of these major (central bank) banking supervisors. Our comparison is preliminary and of a qualitative nature and needs to take into consideration that the banking supervisors considered (may) have differently defined competences to those assigned to ECB banking supervision. We nevertheless undertake the comparison as an indication of the ECB's approach in relation to the benchmark and the similarities to other central banks/banking supervisors to draw some tentative conclusions about where the ECB stands in this regard.

The Core Principles for Effective Banking Supervision recommend that supervisory responsibilities be clearly assigned to supervisory authorities and that laws and regulations provide a framework for supervisors to establish and enforce prudential requirements. This is broadly the case for the supervisors in the US, UK, Japan and euro area. ECB Banking Supervision has the powers to determine prudential capital and liquidity requirements for each credit institution and to grant or withdraw banking licences. However, in contrast to the supervisory authorities in other countries, the ECB is confronted with inconsistent national laws in setting these requirements, leading to gaps and asymmetries in its supervisory powers. Efforts have been made to reduce these irregularities, by inter alia working towards the harmonisation of the national options and discretions available to competent authorities.³¹

In the use of their powers, supervisors need to be independent. This is a key element of the second Core Principle for Effective Banking Supervision, which sets high standards for the independence of supervisors and requires independence to be enshrined in law. ECB Banking Supervision benefits from a high level of protection under Article 130 of the Treaty and Article 19 of the SSM Regulation.³² The ECB and National Competent Authorities (NCAs) are explicitly required to act independently and not to seek or take instructions from third parties. Such a degree of legal independence appears to be stricter than in other jurisdictions. In the US, for example, Federal Banking Agencies (FBAs) operate pursuant to express statutory grants of authority, which provide for very different rules on independence across agencies and do not establish a general legal definition of independence. The Comptroller of the Currency (OCC) for instance is located within the U.S. Department of the Treasury. According to 12 U.S.C. Section 1, the OCC is required to perform his or her duties under the general direction of the Secretary of the Treasury. However, the Secretary is prohibited from intervening in agency enforcement actions, unless otherwise specifically provided by law. In Japan, legal independence appears to be somewhat weaker. In accordance with its Act of Establishment, the Financial Services Agency (JFSA) has been established as an extra-ministerial bureau of the Cabinet Office. Moreover, the Banking Act specifies that the powers to carry out supervision lie with the Head of the Cabinet Office, the PM. In practice however, most supervisory powers (except for bank licencing) have been delegated to the Commissioner of the JFSA.

³¹ See for example [ECB Regulation 2016/445 on the exercise of options and discretions](#); [ECB Guide on options and discretions available in Union law, March 2016](#) and [Addendum to the ECB Guide on options and discretions](#), August 2016.

³² Which is virtually identical to that in Article 7 of the ECB Statute.

Another important element of independence is that supervisors are afforded sufficient protection in the exercise of their mandates. Essentially this means that selection processes should be transparent, that term length, succession, and renewability are clearly defined and that heads of supervision are removed only for grounds specified in law. ECB Banking Supervision fully meets these principles, as its leadership is appointed through a transparent process for a fixed term and can only be removed for reasons specified in law. This contrasts with the US, where reasons for removal of agency heads are not always specified in laws. Although most agency heads can only be removed from office for cause³³, the OCC's Comptroller of the Currency "shall hold his office for a term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate"³⁴. In Japan, the protection of the head of supervision appears to be somewhat weaker. Against common practice the JFSA Commissioner is appointed by the PM for an indefinite term, but from experience tends to hold office for two to three years. The PM has the authority over personnel management of all officials whose position is higher than Director, including the JFSA Commissioner. As a government official the Commissioner can only be removed on grounds specified in the National Personal Service Act,³⁵ which however includes performance and qualification reasons. Arguably these are subject to qualitative judgement and may be influenced by different views on prudential issues.

The flipside of independent supervisory authorities is that they need to be accountable to the public. In line with the Core Principles for Effective Banking Supervision, two important elements of accountability are that supervisors publish their objectives and that they are held accountable for those objectives through a transparent framework. The objectives of ECB Banking Supervision are clearly stated in Article 1 of the SSM Regulation and the ECB regularly publishes its supervisory priorities. As an EU institution, ECB banking supervision is accountable primarily to the European Parliament and the EU Council, in line with Article 20 and the SSM Regulation. Key tools of accountability are the annual report on supervisory activities, the record of proceedings of Supervisory Board meetings and regular hearings of the Chair in the European Parliament. National parliaments also receive the annual report and can address written observations to the ECB. The ECB is therefore accountable through a transparent framework for the discharge of its duties, which is broadly similar in other jurisdictions. The objectives of supervisory authorities in the US, UK, and Japan are set by law and made transparent through the publication of strategic objectives. All supervisory authorities provide annual reports and are accountable to Parliament. In the US, the Federal Banking Agencies are subject to testimony and reporting requirements to Congress. In Japan, the Commissioner of the JFSA regularly appears in the Diet. In the UK, the PRA and FSA testify before the Treasury Select Committee.

In some respects, however, executive and parliamentary oversight over these supervisory authorities goes beyond formal accountability requirements. In the US, the Congressional Review Act allows Congress to disagree with and alter supervisory policies that Federal Banking Authorities have made independently. Congress may request the Government Accountability Office (GAO) to investigate issues it deems important.³⁶ In the UK, the PRA and FSA report to HMT, which has powers to undertake investigations into regulatory failure or any relevant event, although from experience this instrument is mostly used for ex-post accountability in cases of potential regulatory failure. In Japan, ex-ante interference in supervisory action is theoretically possible, as the PM endorses key supervisory decisions regarding the approval and revocation of bank licenses. Moreover, the day-to-day supervision of regional banks³⁷ has been delegated to the Local Finance Bureaus, which are part of the Ministry of Finance. Such oversight arrangements may lead to undue third-party influence on supervisory policy and affect the operational independence of supervisory authorities. In this respect, ECB banking supervision appears to be more insulated from the influence of the legislature and executive and more in line with the Core Basel Principle 2 for effective banking supervision, which recommends (under "Essential criteria") that there

³³ For cause removal does not have a precise meaning, but is understood to exist under legal precedent and includes factors such as malfeasance or neglect of duty.

³⁴ 12 U.S.C. §2.

³⁵ Which include incapacity and serious misconduct

³⁶ Statutes of FBA's set the terms and conditions under which GAO can access confidential information of private banks.

³⁷ Though regional banks are individually small, as a group they are systemically important representing approximately 40 percent of banking system assets

should be “no government or industry interference that compromises the operational independence of the supervisor”.

Operational independence also depends on sound governance, such as independent and effective decision-making processes and autonomy over the budgetary and staffing. With regard to decision making, the members of the ECB’s Supervisory Board should act independently and objectively in the interest of the Union³⁸. One may conjecture that there is a risk that decisions are influenced by national interests, as national representatives who may have natural domestic allegiances dominate the Supervisory Board. To a certain degree this risk is mitigated by the collective responsibility of the Supervisory Board while each supervisory decision is subject to several approvals including the non-objection procedure by the Governing Council. Such elements arguably provide some protection from national regulatory capture. A possible related downside aspect of this can be that decision making is made complex and time-consuming. Routine decisions may require approval at higher level which could potentially be made (and seem to be made in other supervisory authorities) at lower (management) level. Efforts are sought to increase efficiency by delegating the decision-making of routine decisions to management.

The second feature of operational independence is autonomy over the budget and staffing. Budgetary independence is applicable by Treaty to the ECB as a whole and applies to all its competences. Supervisory fees on (all) supervised credit institutions are levied annually and in a proportional manner using a transparent calculation process (with fixed and variable part, taking into account significance and so on).³⁹ As ultimate budgetary authority is vested in the Governing Council of the ECB also for banking supervision, these resources are available for banking supervision but are not directly in the Supervisory Board’s control. Moreover, the Supervisory Board does not have full control over the amount and suitability of staff from National Competent Authorities, which are involved in the work of Joint Supervisory Teams to varying degrees. At the same time, such constraints should not be overstated, as the ECB has an overarching interest in protecting its integrity and reputation by providing sufficient resources to its policy areas to ensure that they are able to meet their objectives. This was shown in the ECB’s Annual Accounts by the significant increase in resources allocated since the establishment of the SSM. In comparison, although its budget has remained stable and sufficient to carry out its tasks, Japan’s supervisory authority appears to have less control over its budget. Rather than being financed via fees charged on supervised banks, expenses of the JFSA are funded by the central government budget, which the diet of Japan approves every fiscal year. In contrast, the US’ Comptroller of the Currency and the UK’s Prudential Regulation Authority are self-funding through fees from regulated institutions.

A very preliminary overview in summary form of how the four supervisors fare against the main criteria of the BCBS Core Principle 2 on independence and accountability is provided in **Table 5** below.

³⁸ Article 19 of the SSMR

³⁹ See also BIS (2016, pp. 7-8) on guidance for the application of the 2012 core principles.

Table 6

BCBS Principle 2 comparison of four supervising entities based on IMF FSAPs – simplified table

| BCBS criteria | ECB Banking Supervision (SSM) | Federal Banking Authority | Bank of England | Japanese Financial Services Agency |
|---|--|---|---|--|
| Operational independence, accountability and governance prescribed by legislation | Independence and accountability enshrined in international treaties | Statutory grants of authority and accountability | Legal and statutory arrangements for independence and accountability | Legally, the JFSA is an external agency of the Cabinet Office, with day-to-day supervision of regional banks delegated to the MoF |
| Appointment and removal of the heads of the supervisory authority is transparent | Open selection procedure for Chair, based on publicly available criteria; appointment of Vice-Chair from among ECB EB members; both appointments require approval of European Parliament and Council | Laws establishing FBAs set out appointment process of the heads of agencies; top leadership subject to Senate approval; reasons for the removal of agency heads not specified in law | Chair and CEO positions held by BoE Governor and Deputy Governor for prudential regulation, respectively; law-based dismissal, but no requirement to disclose reasons for dismissal | The JFSA Commissioner, as a government official, is appointed by Prime Minister; a summary of reasons for dismissal must be published |
| Supervisor publishes objectives and is accountable through a transparent framework | The objectives of ESB Banking Supervision are clearly stated in Article 1 of the SSMR. Accountable to European Parliament. Annual report, records of proceedings. Operational efficiency subject to examination by European Court of Auditors (ECA). | The objectives of FBAs are stated in US legislation. Accountable to US Congress. Agencies subject to Government Accountability Office (GAO) audits and investigations. | PRA and FCA objectives are set out in legislation. Accountable to UK Parliament via the Treasury. PRA and FCA subject to full audit by the National Audit Office. | JFSA objectives are stated in Article 2 of the Act for Establishment of the JFSA. Accountable to Cabinet and the Diet on ex post basis. Publication of strategic direction and priorities in annual reports. |
| Effective internal governance and communication processes | Fast-track procedures and delegation framework aim to cut down on complex and time-consuming decision-making processes. Code of Conduct sets framework of high ethical standards for members and participants at Supervisory Board meetings. | Each FBA has a unique internal governance and accountability structure for supervision and regulation involving authority and review at various regional or central levels. Absence of a robust conflict-of-interest framework. | PRA Board makes all decisions on SIs. Most other decisions are delegated to the CEP of the PRA, advised by the Supervision, Risk and Policy Committee. Conflict-of-interest policy for members of the PRA and FCA Boards. | Formal delegation frameworks govern internal decision-making processes. Acts lay out ethical principles for government officials |
| Professionalism and integrity of the staff | ECB Ethics Framework governs all staff, broad concept of conflicts of interests for banking supervision staff. | Federal laws and regulations, as well as individual conflict-of-interest rules and codes of conduct govern each of the FBAs. Standards are reinforced by a number of criminal statutes. | PRA staff is covered by the BoE's Code of Conduct, including potential conflicts of interest. | BoJ has established rules on service for its officers and employees, as well as a framework covering potential conflicts of interest. |

| | | | | |
|--|---|--|---|--|
| Adequate resources | Resources are financed via a supervisory fee borne by the entities subject to the ECB's supervision. NCAs also contribute a significant share of supervisory resources. | FBA's are self-funded and thus not subject to the congressional budget process or congressional appropriations. | PRA and FCA have powers to require the payment of fees, with the cost of banking supervision being met by an annual fee. | The JFSA is funded by the central government budget, which the Diet approves every fiscal year. |
| Effective HR planning framework | Beyond its own staff, ECB also relies on NCA staff for the supervision of SIs, though found to be unreliable at times across various NCAs. Comprehensive SSM-wide staff training network. | Internal evaluation processes ensure each FBA has the staffing resources and skills to meet its supervisory needs. Staff training provided. | Annual skill review, including training needs analysis. | Corporate planning processes review staffing and skill requirements annually. |
| Consideration of risk profiles and systemic relevance of banks in supervisory practices | Supervisory Examinations Programmes ensure that supervision of SIs is risk-based and proportionate. Reviewed twice a year. | Risk-based supervisory approach with more intense, frequent and comprehensive scrutiny for those entities presenting the greatest risk | Level of supervision principally reflects a firm's perceived level of systemic importance, its proximity to failure and its resolvability. | Risk profiling of regulated banks and banking groups drives monitoring and inspection activities for individual institutions |
| Adequate legal protection of supervisors | ECB staff and members of its organs are legally immune from legal proceedings in respect of acts performed by them in their official capacity (except in cases of unlawful conduct) | Supervisory authority and its staff are adequately protected against the cost of defending their actions (except in cases of malicious intent or gross negligence) | FSMA provides that both the PRA, FCA and its staff are not liable in damages for anything done or omitted in the discharge of their functions | JFSA staff are afforded appropriate protection from being liable for actions taken in good faith |

Sources: Authors' elaboration on IMF FSAP Euro Area July 2018; FSAP US April 2015; FSAP UK June 2016; FSAP Japan September 2017.

5. Conclusion

The accountability framework for ECB banking supervision was shaped to a significant extent by legal and institutional path dependence starting more than a quarter of a century before the ECB assumed this task with the constitutional and institutional provisions enshrined in the Maastricht Treaty of 1992. These provisions included in particular the ECB's singleness as an EU institution, with clear governance structures and allocation of competences to its decision making bodies, and far reaching independence.

The accountability framework for the monetary policy competence was practiced and developed for almost fifteen years before the ECB assumed banking supervision as a competence, that is, from June 1998 when the ECB was formally established until November 2013 when the SSMR entered into force.

The practices developed during those fifteen years were also instrumental in identifying the key channels necessary to hold the ECB accountable also for banking supervision. The degree of independence of ECB banking supervision, and thus also the accountability modalities for banking supervision, were consequently broadly similar to those of monetary policy, but with some practical differences reflecting the different policy nature of banking supervision.

As our discussion above has alluded to, the emergence of the appropriate accountability framework for banking supervision has to do with a number of considerations related to the differences in existing and intended policies and institutional frameworks which may also prove to be strongly path dependent. For this reason, we have found it informative not only to discuss the accountability of ECB banking supervision itself but also to have a preliminary assessment vis-à-vis the BCBS benchmark and practices by other supervisors. Against this background, a first qualitative analysis of the accountability framework

as measured against the principles of the BCBS, and using the IMF's Financial Sector Assessment Programmes (FSAPs) to compare practices among major (central bank) supervisors, suggests that the ECB's banking supervision accountability framework largely meets the criteria of Principle 2 on independence, accountability, resourcing and legal protection.

As for further research, the field of supervisory accountability has in our view the potential for further exploration and a number of issues could benefit from more methodical analysis. A question that will likely continue to attract debate is whether banking supervision should be performed by central banks or separate authorities and whether banking supervision as one policy competence of a technocratic institution, and a central bank in particular, should be "more" or "less" independent than other competences of that institution. The path dependent nature and crisis mode under which banking supervision was elevated to the European level perhaps offered a rare opportunity for banking supervision to acquire an equally independent status to that enjoyed by monetary policy. This presumably should be welcomed, especially if one is willing to accept that supervisory independence before the crisis was found to be inadequate.

By contrast, there is also the view in the case of the ECB that this development may have challenged the ECB's independence: "while the accountability obligations for monetary policy tasks are laid down in primary legislation, the ECB's accountability obligations for banking supervision tasks are subject to a specific regime set out in the SSM Regulation and further detailed in an interinstitutional agreement between the European Parliament and the ECB and a memorandum of understanding between the Council of the EU and the ECB. To the extent that accountability and independence are seen as counterparts, the different accountability frameworks might have implications for the implementation of the principle of independence." (Mersch 2017a)

This debate both about the degree of independence and the modalities of accountability was also prominent during the discussions for giving the ECB also supervisory competences, with some legislators, observers and policy makers seeing the need to have a different approach to supervision. In the end, as this paper argues, the framework that was adopted for accountability was in principle similar to that of monetary policy but also differed in a few important practical ways recognising the special nature of bank supervisory policy.

Arguably, the increased independence of European banking supervision within the ECB, and the robust accountability framework that has accompanied it, has supported well so far the ability of the ECB as bank supervisor to perform its tasks and contribute to the soundness of the banking system in the euro area. In its most recent resolution on Banking Union, the European Parliament stated that "entrusting the ECB with the supervision of systemically important financial institutions has proven to be successful" (European Parliament, 2019, p. 3). The resolution also reiterated the European Parliament's belief that "decisions by the supervisory and resolution authorities must be coherent, properly explained, transparent and made public" (Ibid., p. 4).

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Annex

A.1 Selected Treaty provisions

Treaty on European Union and the Treaty on the Functioning of the European Union (“Lisbon Treaty”), 13 December 2007⁴⁰

Article 127(6)

The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

COUNCIL REGULATION (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions⁴¹

Article 20

Accountability and reporting

1. The ECB shall be accountable to the European Parliament and to the Council for the implementation of this Regulation, in accordance with this Chapter.
2. The ECB shall submit on an annual basis to the European Parliament, to the Council, to the Commission and to the euro Group a report on the execution of the tasks conferred on it by this Regulation, including information on the envisaged evolution of the structure and amount of the supervisory fees mentioned in Article 30.
3. The Chair of the Supervisory Board of the ECB shall present that report in public to the European Parliament, and to the euro Group in the presence of representatives from any participating Member State whose currency is not the euro.
4. The Chair of the Supervisory Board of the ECB may, at the request of the euro Group, be heard on the execution of its supervisory tasks by the euro Group in the presence of representatives from any participating Member States whose currency is not the euro.
5. At the request of the European Parliament, the Chair of the Supervisory Board of the ECB shall participate in a hearing on the execution of its supervisory tasks by the competent committees of the European Parliament.
6. The ECB shall reply orally or in writing to questions put to it by the European Parliament, or by the euro Group in accordance with its own procedures and in the presence of representatives from any participating Member States whose currency is not the euro.
7. When the European Court of Auditors examines the operational efficiency of the management of the ECB under Article 27.2 of the Statute of the ESCB and of the ECB, it shall also take into account the supervisory tasks conferred on the ECB by this Regulation.

⁴⁰ Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

⁴¹ Available from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:287:0063:0089:EN:PDF>

8. Upon request the Chair of the Supervisory Board of the ECB shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament concerning its supervisory tasks where such discussions are required for the exercise of the European Parliament's powers under the TFEU. An agreement shall be concluded between the European Parliament and the ECB on the detailed arrangements for organising such discussions, with a view to ensuring full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law.

9. The ECB shall cooperate sincerely with any investigations by the European Parliament, subject to the TFEU. The ECB and the European Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB by this Regulation. Those arrangements shall cover, inter alia, access to information, cooperation in investigations and information on the selection procedure of the Chair of the Supervisory Board.

A.2 Overview of national arrangements ⁴²

| | | Number of Member States | Countries | Notes |
|-----|--|-------------------------|--|--|
| 1 | Member States in which the central bank is responsible for supervision | 10 | SI, ES, PT, SK, NL, IT, LT, EL, CZ, CY | In EE, IE and FI, responsible for supervision is an independent body forming part of legal personality of the central bank |
| 1.2 | Member States in which there is a single financial supervisory agency for the financial sector | 14 | AT, BE, UK, SE, LU, MT, LV, HU, IE, DE, CZ, DK, SK, EE | |
| 2. | Authorities whom the supervisory bodies are responsible or accountable to | | | |
| | (a) the Prime Minister | 0 | | |
| | (b) the Finance Minister or other cabinet level official | 11 | UK, PL, LU, NL, IT, HU, IE, DK, DE, BE, CY | |
| | (c) a legislative body, such as Parliament or Congress | 18 | UK, PL, I, B, CY, P, SE, SK, MT, LV, LT, EL, HU, IRL, FIN, CZ, EE, A | |
| | (d) other | 6 | FR, CY, HU, IE, PL, SE | |
| 2.1 | Procedures for the appointment of the head of the supervisory agency (and other directors) | | | |
| | (a) the decision of the head of government (e.g. Prime Minister) | 8 | ES, MT, EL, HU, FR, DE, AT, CY | In some countries the procedure involves more than one political body |
| | (b) the decision of the Finance Minister or other cabinet level authority | 5 | UK, NL, IE, DK, ES | |
| | (c) a majority of a legislative body (Parliament or Congress) | 3 | LV, LT, SE | |
| | (d) the decision of the Head of State | 8 | AT, BE, CY, CZ, FI, IT, LU, SK | |
| | (e) other | 6 | EE, FR, IE, PT, PL, SE | |
| 2.2 | Member States in which the head of the supervisory agency (and other directors) has a fixed term | 24 | All except DE | |
| 2.3 | Responsibility for the removal of the head of supervisory agency | | | |
| | (a) the decision of the head of government (e.g. Prime Minister) | 4 | DE, HU, MT, ES | |
| | (b) the decision of the Finance Minister or other cabinet level authority | 4 | AT, DK, NL, UK | |
| | (c) a majority of a legislative body (Parliament or Congress) | 3 | LV, LT, SI | |
| | (d) the decision of the Head of State | 5 | CZ, FI, IT, LU, SK | |
| | e) other | 9 | BE, CY, EE, FR, EL, IE, PT, PL, SE | |

Source: World Bank and ECB

Notes: AT = Austria; BE = Belgium; CY = Cyprus; CZ = Czech Republic; DE = Germany; DK = Denmark; ES = Spain; EE = Estonia; EL = Greece; FR = France; FI = Finland; HU = Hungary; IT = Italy; IE = Ireland; LU = Luxembourg; LT = Lithuania; LV = Latvia; MT = Malta; NL = Netherlands; PT = Portugal; PL = Poland; SE = Sweden; SI = Slovenia; SK = Slovakia; UK = United Kingdom.

⁴² From Bini Smaghi (2006, Annex)

A.3 Principle 2 of the BCBS Core Principles for Effective Banking Supervision: Independence, accountability, resourcing and legal protection for supervisors⁴³

The supervisor possesses operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources, and is accountable for the discharge of its duties and use of its resources. The legal framework for banking supervision includes legal protection for the supervisor.

Essential criteria

1. The operational independence, accountability and governance of the supervisor are prescribed in legislation and publicly disclosed. There is no government or industry interference that compromises the operational independence of the supervisor. The supervisor has full discretion to take any supervisory actions or decisions on banks and banking groups under its supervision.
2. The process for the appointment and removal of the head(s) of the supervisory authority and members of its governing body is transparent. The head(s) of the supervisory authority is (are) appointed for a minimum term and is removed from office during his/her term only for reasons specified in law or if (s)he is not physically or mentally capable of carrying out the role or has been found guilty of misconduct. The reason(s) for removal is publicly disclosed.
3. The supervisor publishes its objectives and is accountable through a transparent framework for the discharge of its duties in relation to those objectives.
4. The supervisor has effective internal governance and communication processes that enable supervisory decisions to be taken at a level appropriate to the significance of the issue and timely decisions to be taken in the case of an emergency. The governing body is structured to avoid any real or perceived conflicts of interest.
5. The supervisor and its staff have credibility based on their professionalism and integrity. There are rules on how to avoid conflicts of interest and on the appropriate use of information obtained through work, with sanctions in place if these are not followed.
6. The supervisor has adequate resources for the conduct of effective supervision and oversight. It is financed in a manner that does not undermine its autonomy or operational independence. This includes:
 - (a) a budget that provides for staff in sufficient numbers and with skills commensurate with the risk profile and systemic importance of the banks and banking groups supervised;
 - (b) salary scales that allow it to attract and retain qualified staff;
 - (c) the ability to commission external experts with the necessary professional skills and independence, and subject to necessary confidentiality restrictions to conduct supervisory tasks;
 - (d) a budget and programme for the regular training of staff;
 - (e) a technology budget sufficient to equip its staff with the tools needed to supervise the banking industry and assess individual banks and banking groups; and

⁴³ BCBS, 2012, pp. 22-24

(f) a travel budget that allows appropriate on-site work, effective cross-border cooperation and participation in domestic and international meetings of significant relevance (e.g. supervisory colleges).

7. As part of their annual resource planning exercise, supervisors regularly take stock of existing skills and projected requirements over the short- and medium-term, taking into account relevant emerging supervisory practices. Supervisors review and implement measures to bridge any gaps in numbers and/or skill-sets identified.

8. In determining supervisory programmes and allocating resources, supervisors take into account the risk profile and systemic importance of individual banks and banking groups, and the different mitigation approaches available.

9. Laws provide protection to the supervisor and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. The supervisor and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith.

A.4 BCBS Principle 2 according to the IMF’s FSAP in the euro area, USA, Japan and UK

| Operational independence, accountability and governance prescribed by legislation | |
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| ECB Banking Supervision (SSM) | The independence of ECB Banking Supervision is enshrined in law. Article 130 TFEU and Article 19 SSMR require the ECB to act independently, which also applies to NCAs. Article 20 SSMR and an IIA with the European Parliament and MoU with the Council set out accountability requirements. |
| Federal Reserve | Federal banking agencies ⁴⁴ (FBAs) operate pursuant to an express statutory grant of authority, with clearly defined objectives. Agencies are statutorily required to submit periodic reports and officials to testify before Congress. |
| Bank of England | Independence and accountability arrangements of the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) are set out in statute FSMA 2000 and the articles of association of each body. Under the 2012 Financial Services Act, HMT has powers to undertake investigations into serious regulatory failure or any “relevant events”. |
| Financial Services Agency (Japan) | The Act for Establishment of the Financial Services Agency created the JFSA as an external agency of the Cabinet Office. Although the PM as Head of the Cabinet Office has powers for the execution of supervision as stipulated in the Banking Act, most powers are delegated to the Commissioner of the JFSA (except for bank licencing). The day-to-day supervision of regional and Shinkin banks has been delegated by the JFSA to the Local Finance Bureaus which are part of the MoF. |
| Appointment and removal of the heads of the supervisory authority is transparent | |
| ECB Banking Supervision (SSM) | The process of appointment of the Chair and Vice-Chair and ECB Representatives of the Supervisory Board (SB) is described in Art. 26 of the SSMR, the ECB Rules of Procedure and ECB Decision on the appointment of representatives of the ECB to the SB. They are appointed for a fixed term, based on an open selection procedure, of which the criteria are made public. The Vice-Chair is chosen from among the EB members. The Chair and Vice-Chair are proposed by the ECB and approved by the EP and Council. Their removal from office is only possible for reasons specified in law. |
| Federal Reserve | Laws establishing FBAs set out appointment process of the heads of agencies. Top leadership is subject to Senate confirmation. Reasons for the removal of agency heads are not specified in law. While most regulators may be removed when a higher “for cause ⁴⁵ ” threshold is met, the OCC’s Comptroller of the Currency, “shall hold his office for a term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate”. ¹² U.S.C. §2. |
| Bank of England | The Financial Services and Markets Act require the BoE’s Governor to be Chair of the PRA and the deputy governor for prudential regulation to be CEO of the PRA. Both are appointed by the Queen under the BoE act 1998, on recommendation by the PM and Chancellor. Under the FSMA, officials of the PRA and FCA are removed by the Treasury on grounds set by law (incapacity, serious misconduct, significant conflicts of interest). There are no legal provisions requiring that the reason(s) for removal of the head(s) of the supervisory authorities be disclosed |
| Financial Services Agency (Japan) | The JFSA Commissioner is appointed by the PM for an indefinite term, but in practice tends to hold office for 2-3 years. The Commissioner is a government official and can only be dismissed for reasons outlined in the National Public Service Act, which include also performance and qualifications grounds. A summary of the reasons for demotion or dismissal must be published. |

⁴⁴ The FBAs are defined as the Office of the Comptroller of the Currency (OCC), the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC).

⁴⁵ This is understood to include factors such as malfeasance or neglect of duty.

| Supervisor publishes objectives and is accountable through a transparent framework | |
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| ECB Banking Supervision (SSM) | <p>The objectives of ESB Banking Supervision are clearly stated in Article 1 of the SSMR. The framework for accountability is transparent. The ECB is accountable to the European Parliament, Council and to some degree to National Parliaments. Main tools of accountability are records of proceedings, the annual report on supervisory activities, regular hearings by the chair in the EP or Eurogroup and written questions posed by members of parliament, both EP and NPs.</p> <p>Operational efficiency may be examined by the European Court of Auditors (ECA).</p> |
| Federal Reserve | <p>The objectives of FBAs are stated in US legislation. In accordance with the Government Performance Act, FBAs prepare strategic plans and performance reports, in consultation with Congress and outside stakeholders, which are made public and set out strategic objectives. Agencies are statutorily required to submit periodic reports to Congress. Agency officials testify before Congress upon request; some are also statutorily required to do so periodically. Agencies are subject to Government Accountability Office (GAO) audits and investigations. ⁴⁶Agency rulemaking can be overturned under the Congressional Review Act.</p> |
| Bank of England | <p>The PRA and FCA objectives are set out in legislation. FSMA requires the PRA and FCA to deliver annual reports to the Treasury, which it must in turn lay before Parliament and which is open to public consultation. The PRA and FCA are subject to full audit by the National Audit Office. HMT has the power to order an independent inquiry into regulatory failure, or on the grounds it believes it would be in the public interest.</p> <p>Under the FSMA the House of Commons Treasury Select Committee considers the performance of the PRA and FCA, requiring officials to appear before it.</p> |
| Financial Services Agency (Japan) | <p>The JFSA objectives are stated in Article 2 of the Act for Establishment of the JFSA. Moreover, the JFSA defines and communicates its objectives in regular reports on “Strategic Directions and Priorities”. The JFSA reports to the Cabinet and the Diet. Discharge of the JFSA’s accountability is carried out on an ex post basis, which prevents active ongoing intervention by the Diet in current cases. The Commissioner and staff can be required to appear before the Diet. In its annual report, the FMSA also evaluates its performance against the goals it has set in its strategic direction and priorities.</p> |
| Effective internal governance and communication processes | |
| ECB Banking Supervision (SSM) | <p>The decision-making processes depend on whether supervisory actions are “operational acts” (which are decided on by supervisors) or are legally binding on supervised credit institutions (which require submission to the Supervisory Board under a non-objection procedure). Decision-making processes in ECB banking supervision are complex and time-consuming. Many decisions that require GovC approval are routine decisions that, in many other supervisory authorities, would be made at the operational level. The ECB Governing Council therefore introduced a delegation framework to nominated ECB managers for decisions involving limited discretion. Additionally, fast-track procedures can be used to shorten the time limit for approvals or taking decisions at teleconferences, especially in crisis times.</p> <p>A Code of Conduct, adopted in 2014 and supported by a high-level Ethics Committee, provides a general framework of high ethical standards for members and participants at Supervisory Board meetings. In particular, this covers areas of potential conflicts of interest, private financial transactions and cooling-off periods.</p> |
| Federal Reserve | <p>Each of the FBAs has a unique internal governance and accountability structure for supervision and regulation involving authority and review at various regional or central levels. Within each agency there are processes for delegation of various supervision and regulation functions. Governance of the Federal Reserve district banks allow for two-thirds of the boards of these banks to be appointed by the regulated commercial banks. These boards appoint the officers of the Reserve Banks (including those in charge of supervision). In the absence of a robust conflict-of-interest framework, this may raise concerns of perceived or actual conflicts of interest.</p> |
| Bank of England | <p>The PRA’s supervisory internal governance is operated through the PRA Regulatory Decision Making Framework Guide. While certain decisions (e.g. those pertaining to systemically significant banks) are the preserve of the PRA Board, most decisions are delegated to the CEP of the PRA, who in turn is advised by the Supervision, Risk and Policy Committee. A dedicated Secretariat supports and manages PRA’s internal governance and its associated committees.</p> <p>At the FCA there is a process for escalation of supervisory decisions in place with the criteria around decisions for escalation set out and available to all Supervisors. Members of the PRA and FCA Boards are required to subscribe to a conflict-of-interest policy.</p> |
| Financial Services Agency (Japan) | <p>Both the JFSA and BoJ have formal delegation frameworks in place to govern internal decision-making processes. The ethical principles that government officials need to follow pertaining to their duties are set out in the National Public Service Ethics Act and the Bank of Japan Act.</p> |

⁴⁶ Congress may request that GAO investigate a topic based on a desire to raise awareness of a regulator’s decision or activity that Congress supports or opposes.

| Professionalism and integrity of staff | |
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| ECB Banking Supervision (SSM) | All ECB staff are required to comply with the ECB's Ethics Framework. This covers in particular the rules on avoiding conflicts of interest, as well as the rules governing gifts and hospitality, private financial transactions, professional secrecy, and cooling-off periods. The Compliance and Governance Office advises ECB staff and monitors compliance. Moreover, ECB banking supervision adopted a broad concept of conflicts of interests, with ethics rules set in place to avoid these during the recruitment phase, during ECB employment as well as from subsequent employment activities. Strict rules prohibit the use of insider information for private financial transactions as well as the unauthorized disclosure of any information received by staff in the performance of their duties. |
| Federal Reserve | Federal laws and regulations, as well as individual conflict-of-interest rules and codes of conduct of each of the FBAs, help to ensure high professional standards and integrity of agency heads and staff. Senior examination staff of the FBAs are generally subject to a one-year post-employment "cooling off" period with respect to entities they supervised. Examiners also are prohibited from accepting loans or gratuities from banks that they examine. These standards are reinforced by a number of criminal statutes, including those against corruption, bribery, theft and fraud by agency employees. The FBAs have administrative policies to ensure that appropriate codes of conduct (e.g. investment prohibitions, borrowing prohibitions and recusal requirements for conflicts of interest) are being followed. |
| Bank of England | All staff in the PRA are covered by the BoE's Code of Conduct. The Code includes sections on records management and Information security as well as a broader range of policies around the management of potential sources of conflict of interest and impartiality. |
| Financial Services Agency (Japan) | JFSA staff is made up of government officials, and thus required to ensure fairness and public trust in exercising duties in accordance with National Public Service Ethics Act. Additionally, a high level of expertise in the supervision of financial institutions is required. Staff tend to rotate every two to three years, enabling them to gain a broader perspective on supervisory tasks as well as ensuring continuity in the quality of supervisory work. The BoJ also has established rules on service for its officers and employees, e.g. the obligation to devote themselves to their duties and to separate themselves from private enterprises, as well as a framework covering potential conflicts of interest. |
| Adequate resources | |
| ECB Banking Supervision (SSM) | The SSMR provides that the ECB must be able to devote adequate resources to carry out its supervisory tasks effectively. It further requires that these resources be financed via a supervisory fee borne by the entities subject to the ECB's supervision. The budgetary authority of the ECB (including the SSM) is vested in its Governing Council. Thus resources for ECB banking supervision are allocated within broader organizational priorities of the ECB. As envisaged under the SSM arrangements, NCAs also contribute a significant share of supervisory resources. The ECB's salary and benefit structure (applying to all ECB staff) has so far proven sufficiently attractive to hire and retain supervisory staff. Additionally, ECB banking supervision has the ability to commission external consultants, subject to the same professional secrecy requirements as ECB staff. A dedicated training curriculum for the SSM has been developed that complements general training available at the ECB and training available locally at NCAs. |
| Federal Reserve | Each of the FBAs is self-funding and thus not subject to the congressional budget process or congressional appropriations. Since the financial crisis the FBAs have increased their staffing resources, particularly in the supervision of large banking organizations, policy implementation and stress testing. The Federal Reserve, in particular, has significantly increased staffing in its supervision and regulatory policy areas. Each FBA sets its own salary scales for its employees, and staff training has been intensified to match the influx of recruits. |
| Bank of England | The PRA and FCA have powers to require the payment of fees, with the cost of banking supervision being met by an annual fee. The PRA budget is divided into ongoing support costs and investment in new technology, much of it targeted at adoption and implementation of European and national legislation. The PRA's salary scales are reviewed every two years in order to continue to attract, retain and motivate staff with the key skills required. A training needs analysis is conducted on an annual basis, and the supervisory function is represented on the 'FCA Academy' Advisory Group that directs investment in learning. |
| Financial Services Agency (Japan) | The JFSA is funded by the central government budget, which the diet of Japan approves every fiscal year. JFSA expenses that might be directly allocated to supervised firms are also covered by this budget, rather than by fees charged to institutions in question. While the salary levels of JFSA staff are those of a government official, an exemption is made for specialists, which can be hired at better salary conditions. They however remain subject to the government's conflict of interest and confidentiality provisions. It has an extensive internal training program in which staff participates 2-4 times a year. The BoJ prepares its own budget for expenses every fiscal year, financed mainly by interest on own assets such as Japanese government securities, bills, loans and foreign currency assets. It is thus financed in a manner that does not undermine the BoJ's autonomy or operational independence. |

| Effective HR planning framework | |
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| ECB Banking Supervision (SSM) | The ECB has a well-structured supervisory planning process (the SEP), which ensures that staff is allocated on supervisory needs and priorities. However, the ECB also relies on NCA staff for the supervision of SIs (JSTs and onsite work). The ECB does not have full control over the levels of NCA staff dedicated to the supervision of SIs, nor over their suitability and performance. Commitment of NCA headcount has been found to be unreliable at times across various NCAs. SSM-wide training network offers comprehensive training for staff. |
| Federal Reserve | Each of the FBAs undertakes an internal evaluation process to ensure that it has the staffing resources and skills to meet its supervisory needs. Training for their staff, including a structured skills enhancement program to qualify as an examiner-in-chief. |
| Bank of England | The identification of skills required and activity to rectify is conducted on an annual basis. This includes a training needs analysis facilitated by the central team with input from across the supervision business areas; and a learning and development analysis conducted by individual supervisors and team managers through performance management. |
| Financial Services Agency (Japan) | The JFSA regularly reviews its staffing and skills requirements, identifies gaps and training requirements through its corporate planning processes |
| Consideration of risk profiles and systemic relevance of banks in supervisory practices | |
| ECB Banking Supervision (SSM) | The level of supervisory engagement for SIs is determined via the Supervisory Examinations Programmes, which aim to ensure that supervision is risk-based and proportionate. Each SEP builds on the SSM Supervisory Priorities and is reviewed twice a year. |
| Federal Reserve | The FBAs use a risk-based supervisory approach. As part of this approach, supervisory programs are applied that are appropriate to the geographic scope and degree of specialization, sophistication, risk, size and complexity of the activities and organization of banks. In general, those entities presenting the greatest risk receive the most intense, frequent and comprehensive scrutiny. Supervisory programs allocate resources to each risk area, taking into account the intended frequency and intensity of risk assessments. |
| Bank of England | The frequency and intensity of the PRA's supervisory activity varies across firms. The level of supervision principally reflects the PRA's judgment of a firm's potential impact on the stability of the financial system, and therefore its systemic importance; its proximity to failure and its resolvability. Those firms that are unlikely, individually, to create disruption to the wider financial system are subject to a baseline level of supervisory activity to ensure that they meet key prudential standards, whereas for higher-impact firms, the PRA makes use of a fuller selection of its supervisory tools. |
| Financial Services Agency (Japan) | The JFSA has introduced risk profiling of regulated banks and banking groups, which drive monitoring and inspection activities for individual institutions and ultimately the allocation of staff to those activities across regulated institutions. |
| Adequate legal protection of supervisors | |
| ECB Banking Supervision (SSM) | According to Articles 11 and 22 of Protocol No 7, ECB staff and members of its organs are "immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office." The ECB is required to make good any damage caused by it or by its staff in the performance of their duties, provided that their conduct infringes laws conferring rights on third parties, is sufficiently serious and there is a causal link between this unlawful conduct and the damage caused. |
| Federal Reserve | Supervisory authority and its staff are adequately protected against the cost of defending their actions. However, when there is malicious intent or gross negligence on the part of the public officer, the Government has the right to obtain reimbursement from that public officer |
| Bank of England | FSMA provides that both the PRA, FCA and any person who is, or is acting as, a member, officer, or member of staff of either body is not liable in damages for anything done or omitted in the discharge, or purported discharge, of the PRA's or FCA's functions (para. 25 of Schedule 1ZA and para. 33 of Schedule 1ZB). The regulators cover the legal costs of defending their staff in legal actions against them in relation to their work as PRA or FCA employees |
| Financial Services Agency (Japan) | An appropriate protection from being liable for actions taken in good faith is assured for the JFSA staff, as stipulated in the National Public Service Act and rules made by the National Personnel Authority. Supervisory authority and its staff would be adequately protected against the cost of defending their actions. However, when there is malicious intent or gross negligence on the part of the public officer, the Government has the right to obtain reimbursement from that public officer |

Sources: IMF FSAP Euro Area July 2018; FSAP US April 2015; FSAP UK June 2016; FSAP Japan September 2017.