



EUROPEAN CENTRAL BANK

EUROSYSTEM

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***ECB independence in supervision:  
protection through separation and  
challenges arising from  
interinstitutional interfaces***

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# 1. Independence of the ECB

- Established at Treaty (constitutional) level (Art 130 and 282)
- Obligation to respect both for CBs and for any political (or other) body
- Enters into national law, amending it, to protect the governors
- Conferred for the performance of the tasks (functional)
- As of 2014 supervisory tasks are conferred, independence foreseen in art 19 SSMR, less strong protection

**Important question: can the very extensive independence provided for the ECB monetary policy extend to the exercise of the supervisory powers?**

## **Cons:**

- the objective of independence, exception to the democratic principle, is a very specific one, monetary policy – otherwise accountability must prevail
- independence specifically provided for, but with less protection, in secondary legislation

## **Pros:**

- the ECB is one institution and art 130 covers “the tasks” – prudential supervision has been given as a new task through a special procedure
- Art 127.6 could not change the institutional structure of the ECB to establish the SB; neither could it change the ECB’s level of independence

## 2. Principle of separation

Necessary to ensure independent policies (to protect monetary policy...)  
Perceived risk of conflict of interest, and risk of corrosion of independence  
because of the higher accountability of the supervisory function

**NB: in only 5 out of 19 euro area Member States the NCA is a completely independent authority (mostly CB have this responsibility).**



### Art. 25(1) SSM Regulation (EU regulation)

- ✓ «without prejudice to» and «separately» from monetary policy
- ✓ «without interfering with, nor being determined by,» monetary policy



#### DECISION MAKING

- GovC separate meetings and agendas
- Supervisory Board for the **planning** and **execution** of supervisory tasks
- Supervisory Board Steering Committee and temporary substructures



#### OPERATIONAL LEVEL

- Five (5) organisationally separated DGs
- Internal rules – **segregation of information flows** and **confidentiality regime**
- Different building
- Different website and logo

# 2. Principle of separation and information sharing

Separation further developed in the ECB decision

## Art. 5 Decision ECB/2014/39

- ✓ Information **may** be exchanged between policy functions
- ✓ Access to confidential information shall be determined by the **ECB policy function that owns the information**

## Art. 6 Decision ECB/2014/39

- ✓ Executive Board *ex ante* approval necessary for **COREP, FINREP, raw data, assessments and policy recommendations**
- ✓ Executive Board *ex ante* approval not necessary for anonymised or aggregated data, as well as not policy-sensitive information

## Art. 3(4) Decision ECB/2014/39

- ✓ Shared Services are not subject to Article 6, but remain subject to the general principles of Article 5

# 3. Interinstitutional interfaces: relationship with SRB

**The main interface ECB/SSM and SRB is the determination that a credit institution is failing or likely to fail. Supervision ends, resolution (might) start(s).**

- There are four conditions for the FOLTF determination, incl. (likely) over-indebtedness or (likely) illiquidity (Art. 18(4) SRMR)
- The failing-or-likely-to-fail (FOLTF) determination is one of the three conditions for triggering resolution (Art. 18(1) SRMR)
- In general, the ECB is responsible for the FOLTF assessment of significant institutions after consulting the SRB (Art. 18(1) subpara. 2 SRMR).
- **Alternatively, the SRB may make the FOLTF determination** (i) only after informing the ECB of its intention and (ii) only if the ECB – within 3 calendar days – does not make such an assessment (Art. 18(1) subpara. 2 SRMR).

**Potential threat to ECB/SSM independence?**

**The fact that in case the ECB remains inactive, SRB has the competence to conduct itself the FOLTF assessment could put the ECB under pressure to act.**

# 3. Interinstitutional interfaces: relationship with AML/CTM authorities

**ECB was not granted AML/CTM supervisory competences (which are at national level). BUT it needs to take into account AML/CTM information in its functions.**

- **In some cases, the law foresees that AML/CFT supervisor provides the information on AML/CFT breaches and ECB decides on taking adequate prudential action:**
  - SREP assessments
  - Licence withdrawal
  - Suspension of managers
- **In other cases (SREP specific cases), a common assessment should be reached by the prudential and AML/CFT supervisors and then communicated to EBA. Thereafter, the ECB decides on taking adequate prudential action.**

**The separation of the competences and yet the interface between the different authorities could have an impact on the independent assessment of the supervisor.** Even though the decision on the adequate prudential action is with the ECB and the determination made by the AML/CFT supervisor cannot bind the ECB to take specific prudential actions, the ECB is bound by that determination as it does not itself have the competences. Withdrawal of licence is a clear case.

# 3. Interinstitutional interfaces:

## Relationship with the regulator (EP)

- The issue here is, where is the boundary between the competences of the legislator and where does the discretionary power of the supervisor start.
- Regulator/legislator: sets the rules and the frame within which it confers some room for discretion to the supervisor. The supervisor's regulations are technical ones.
- The principles to be taken into account in considering this issue are (i) respective competences (ii) equal treatment (iii) transparency (iv) foreseeability (v) impact on the market, even of non-binding guidance.
- Two examples in which there have been discussions:
  - The options and discretions, adopted by regulation
  - The requirements for applying provisioning policies for the NPL
- The supervisor, in establishing and publishing general principles according to which its discretion will be exercised, increases transparency and allows for planning. Special care needs to be taken however to ensure that this does not look as binding regulation.
- If the regulator wants to restrict too much the room for discretion originally attributed, by increasing technical regulation with the effect of taking away the room for discretion, this could also be seen as an interference in the independent exercise of the competences.

# Conclusions

- Independence is a very important value for prudential supervisors even though a higher level of accountability is required
- The principle of separation alleviates some concerns, however appears very demanding (more than the national regimes, even when in institutional separation)
- The interinstitutional interfaces appear to be inevitable. They present challenges and require a clearer definition of the respective competences, which will intervene with time. In any event these interfaces do not seem to jeopardise the independent exercise of the supervisory competences.



Thank you for your attention!

