

**The ‘single supervisory mechanism’:
a major building block towards a European
Banking Union (the full Europeanisation of the
‘bank safety net’)**

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TABLE 1

**The bank safety net:
the instruments used to safeguard the stability of the banking sector**

(elements in italics denote instruments mainly used after the recent (2007-2009) international financial crisis)

Policy Instruments	Competent Authority	Attributes of the institution
<i>A. Prevention of crises</i>		
Bank authorisation	Supervisory authority	Central bank or other administrative authority
Micro-prudential and <i>macro-prudential regulation</i> of banks	<ul style="list-style-type: none"> • Parliament • Supervisory authority 	<ul style="list-style-type: none"> • General regulator • Upon delegation
Micro-prudential supervision of banks	Supervisory authority	Central bank or other administrative authority
<i>Macro-prudential oversight of the financial system (including the banking sector)</i>	Specific authority with the active involvement of the central bank (in most cases)	

TABLE 1 (cont.)

(elements in italics denote instruments mainly used after the recent (2007-2009) international financial crisis)

Policy Instruments	Competent Authority	Attributes of the institution
<i>B. Crisis management</i>		
Reorganisation of banks	Supervisory authority	Central bank or other administrative authority
<i>Provision of state subsidies to systemically important banks (recapitalisation in the context of a 'taxpayers' solution')</i>	Ministry of Finance (funds being part of the public debt)	
<i>Other 'emergency' instruments: debt guarantees, asset purchase and guarantees, liquidity measures</i>	Ministry of Finance and central bank	
<i>Resolution of banks</i>	<ul style="list-style-type: none"> • Resolution authority • Resolution fund 	<ul style="list-style-type: none"> • Public authority • A fund financed either by the public sector (part of its debt) or by credit institutions
Winding-up of banks	Supervisory or judicial authority	On an <i>ad hoc</i> basis
Deposit guarantee	Deposit guarantee scheme	Entity of private or public law
Last-resort lending	Central bank	

TABLE 2
Towards a ‘European Banking Union’:
Elements of change and continuity
(italics denote new elements)

Financial policy instruments	Institutions/ rules
<p>Authorisation and micro-prudential supervision of credit institutions</p>	<ul style="list-style-type: none"> ● <i>'Single supervisory mechanism': European Central Bank (Article 127, paragraph 6 TFEU), and national supervisory authorities</i> ● <i>Single rulebook (adopted by the European Parliament and EcoFin Council (Regulations), the European Commission (technical standards), and the EBA (guidelines and recommendations))</i>

TABLE 2
Towards a ‘European Banking Union’:
Elements of change and continuity
(italics denote new elements)

Financial policy instruments	Institutions/ rules
Micro- and macro- prudential regulation of credit institutions	<i>Single rulebook</i>
Macro-prudential oversight of the financial system	European Systemic Risk Board
Reorganisation and winding-up of credit institutions	National authorities and mutual recognition between Member States
Resolution of credit institutions	<ul style="list-style-type: none"> • <i>Single resolution authority</i> • <i>Single rulebook</i> • <i>Single European resolution fund</i>

TABLE 2
Towards a ‘European Banking Union’:
Elements of change and continuity
(italics denote new elements)

Financial policy instruments	Institutions/ rules
Operation of deposit guarantee schemes	<ul style="list-style-type: none"> • <i>Single European deposit guarantee system</i> • <i>Single rulebook</i>
Last resort lending	No specific legal provisions – <i>de facto</i> : national central banks (Emergency Liquidity Assistance (ELA) in the eurozone)
Provision of subsidies to systemically important credit institutions (recapitalization in the context of a ‘taxpayers’ solution)	<i>Potentially the ESM (conditioned European Stability Mechanism)</i>

TABLE 3

The current regulatory initiatives

1. a (longer) proposal for a Regulation of the Council on “*conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions* (hereinafter ‘Council Regulation proposal’), and
2. a (shorter) proposal for a Regulation of the European Parliament and of the Council “*amending Regulation (EU) No. 1093/2010 establishing a European Supervisory Authority (European Banking Authority) regarding its interaction with Council Regulation No.../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions* (hereinafter ‘European Parliament and Council Regulation proposal’)

TABLE 4

The main elements of the proposed institutional framework

1. Deciding on the actor: conferment *on the European Central Bank* of specific tasks relating to the micro-prudential supervision of certain financial firms
2. Setting the perimeter: specific tasks conferred on the European Central Bank exclusively in relation to the micro-prudential supervision of *certain credit institutions*
3. Establishment of a ‘single supervisory mechanism’ in relation to the performance of the specific tasks conferred on the ECB
4. The ‘single supervisory mechanism’ as part of the European System of Financial Supervision (ESFS)
5. Creation of ‘Chinese walls’

TABLE 5

ECB's tasks following the adoption of the Council Regulation proposal

Category of ECB tasks	Legal basis	Implementation in euro area Member States	Implementation in Member States with a derogation
1. <i>Basic</i> tasks	Article 127, para. 2 TFEU	yes	no
2. <i>Other</i> tasks	Several TFEU articles	yes	as a rule, no
3. <i>Specific</i> tasks on macro-prudential supervision over the European financial system	Regulation 1096/2010 of the Council (based on Art. 127, para. 6 of the TFEU)	yes	yes
4. <i>Specific</i> tasks on micro-prudential supervision over credit institutions (<i>new</i>)	Council Regulation under preparation (based on Art. 127, para. 6 of the TFEU)	yes	Under the conditions of the 'close cooperation' procedure

TABLE 6

Setting the perimeter: specific tasks conferred on the European Central Bank exclusively in relation to the micro-prudential supervision of certain credit institutions

A. The perimeter in respect of different types of financial firms

Included	Excluded
<ul style="list-style-type: none">▪ credit institutions▪ ‘financial holding companies’, in the context of the conduct of consolidated supervision of banking groups,▪ ‘mixed financial holding companies’, in the context of the conduct of supplementary supervision on financial conglomerates including credit institutions	<ul style="list-style-type: none">▪ financial institutions (e.g., leasing, factoring and credit companies), including, since 2009, electronic money institutions and payment institutions▪ investment firms, UCITS management companies, and alternative investment fund managers (mainly hedge funds), as well as▪ insurance and reinsurance undertakings

TABLE 6 (cont.)

Setting the perimeter: specific tasks conferred on the European Central Bank exclusively in relation to the micro-prudential supervision of certain credit institutions

B. The perimeter in respect of Member States

Euro area Member States	Non- participating Member States
Yes	Specific rules on: <ul style="list-style-type: none">▪ branches in participating Member States of credit institutions incorporated in non-participating Member States▪ credit institutions incorporated in non-participating Member States which have opted for this regime, i.e. for specific (supervisory) tasks to be performed by the ECB over their credit institutions

TABLE 6 (cont.)

Setting the perimeter: specific tasks conferred on the European Central Bank exclusively in relation to the micro-prudential supervision of certain credit institutions

C. The perimeter in respect of specific credit institutions

1. In principle: those that meet any one of the following conditions:

- the total value of their assets exceeds €30 billion,
- the ratio of their total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of their assets is below €5 billion, or
- following a notification by their national competent authority that it considers such institutions of significant relevance with regard to the domestic economy,
the ECB takes a Decision confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of
these credit institutions

2. The ECB may also, on its own initiative, consider an institution to be of significant relevance where it has established banking subsidiaries in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its¹⁴ total assets or liabilities subject to the conditions laid down in the methodology

TABLE 6 (cont.)

Setting the perimeter: specific tasks conferred on the European Central Bank exclusively in relation to the micro-prudential supervision of certain credit institutions

C. The perimeter in respect of specific credit institutions

3. Those for which public financial assistance has been requested or received directly from the EFSF or the ESM
4. In any case, the three most significant credit institutions in each Member State, unless justified by particular circumstances
5. When necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national authorities or upon request by a national competent authority, decide to exercise directly itself all the relevant powers for one or more other credit institutions, including in the case where financial assistance has been requested or received indirectly from the EFSF or the ESM

TABLE 7

The specific tasks conferred on the ECB and their discharge within the framework of the 'single supervisory mechanism'

1. Specific tasks in relation to credit institutions incorporated in participating Member States
2. Specific tasks concerning branches in participating Member States of credit institutions incorporated in non-euro participating Member States
3. Specific tasks in relation to credit institutions incorporated in non-euro participating Member States
 - 3.1 *Establishment of a 'close cooperation' procedure*
 - 3.2 *Suspension or termination of a 'close cooperation' procedure*
4. Regulatory powers

TABLE 8**The specific tasks conferred upon the ECB with regard to credit institutions incorporated in participating Member States**

Specific tasks	Provisions of the existing European banking law (CDR)	Provisions of the upcoming European Banking law	Specific Provisions of the proposal of the Council Regulation on the establishment of the SSM
Granting of authorisation and withdrawal of authorisation of credit institutions	Articles 6-18	CRD IV, Articles 9-21	Article 13
For credit institutions established in a participating Member State, which are willing to establish a branch or provide cross-border services in a non-participating Member State, the performance of tasks which would fall upon the competent authority of the home Member State under existing EU banking law	Articles 23-28	CRD IV, Articles 33-46	

TABLE 8 (cont.)**The specific tasks conferred upon the ECB with regard to credit institutions incorporated in participating Member States**

Specific tasks	Provisions of the existing European banking law (CDR)	Provisions of the upcoming European Banking law	Specific Provisions of the proposal of the Council Regulation on the establishment of the SSM
Assessment of applications for the acquisition and disposal of 'qualifying holdings' in credit institutions, except in the event of a bank resolution	Articles 19-21	CRD IV, Articles 22-27	Article 13a
Own funds requirements, including securitisation	Articles 56-105	CRR, Articles 22-375, and 393-399	
Limits on large credit exposure	Articles 106-119	CRR, Articles 376-392	
Liquidity requirements		CRR, Articles 400-415	

TABLE 8 (cont.)

The specific tasks conferred upon the ECB with regard to credit institutions incorporated in participating Member States

Specific tasks	Provisions of the existing European banking law (CDR)	Provisions of the upcoming European Banking law	Specific Provisions of the proposal of the Council Regulation on the establishment of the SSM
Leverage ratio		CRR, Articles 416-417	
Public disclosure of information on these matters ('Pillar3')	Articles 144-149	CRR, Articles 418-440	
Ensuring compliance by credit institutions with the provisions of EU banking law provisions, as to the existence of robust corporate governance arrangements	Article 22	CRD IV, Articles 72-74, and 86-91	

TABLE 8 (cont.)

The specific tasks conferred upon the ECB with regard to credit institutions incorporated in participating Member States

Specific tasks	Provisions of the existing European banking law (CRD)	Provisions of the upcoming European Banking law	Specific Provisions of the proposal of the Council Regulation on the establishment of the SSM
Ensuring compliance by credit institutions with the provisions of EU banking law provisions, as to the existence of effective internal capital adequacy assessment processes, including Internal Ratings Based models	Articles 123	CRD IV, Articles 72-91	
Conduct of supervisory reviews of credit institutions, including, where appropriate, in coordination with EBA, stress tests and their possible publication			Article 4, para 1 (g)
<i>Ad hoc</i> imposition of additional requirements ('Pillar 2' of the current regulatory framework)	Article 124	CRD IV, Articles 92-105	

TABLE 8 (cont.)

The specific tasks conferred upon the ECB with regard to credit institutions incorporated in participating Member States

Specific tasks	Provisions of the existing European banking law (CRD)	Provisions of the upcoming European Banking law	Specific Provisions of the proposal of the Council Regulation on the establishment of the SSM
Specific tasks on the micro-prudential of banking groups on a consolidated basis	Articles 125-143	CRD IV, Articles 106-121	
Specific tasks in the area of supplementary supervision of financial conglomerates	Article 123	CRR, Articles 114-121	
Carrying out supervisory tasks in relation to recovery plans and early intervention		Proposal Regulation on the recovery and resolution of credit institutions, Articles 4-8, and 23-25	
Tasks with regard to macro-prudential regulation		CRD IV, Articles 122-132	Article 4a. para. 2

TABLE 9
Investigatory and specific supervisory powers of the ECB

1. Introductory remarks

2. Investigatory powers

2.1 Requests for information

2.2 General investigations

2.3 On-site inspections

2.4 Authorisation by a judicial authority

TABLE 9 (cont.)
Investigatory and specific supervisory powers of the ECB

3. Specific supervisory powers

3.1 Authorisation of credit institutions

3.1.1 Granting of an authorisation

3.1.2 Withdrawal of an authorisation

3.2 Assessment of acquisitions of qualifying holdings

3.3 Supervisory powers

3.4 Powers of host authorities and cooperation on consolidated supervision

3.5 Administrative sanctions

TABLE 10

Organisational principles

1. The Supervisory Board
2. The institutional independence of the ECB (including the members of its Supervisory Board) and the national competent authorities acting within the SSM with regard to the specific tasks conferred upon the ECB
3. The accountability of the ECB before the European Parliament, national Parliaments, and the Council
4. The professional secrecy of the members of the Supervisory Board and of the ECB staff carrying out the specific tasks to be conferred upon the ECB, as well as the exchange of information

TABLE 10 (cont.)
Organisational principles

5. The ECB's obligation to devote the necessary financial and human resources to the exercise of the specific tasks to be conferred upon it
6. Budget and annual accounts
7. ECB's power to roll the cost of micro-prudential supervision over to credit institutions subject to supervision ('supervisory fees')
8. Exchange and secondment of staff, under the responsibility of the ECB, with and among national competent authorities

TABLE 11

The composition of the Supervisory Board

- Chair
- Vice-Chair
- four (4) representatives of the ECB
- one representative of the national authority competent for the supervision of credit institutions in each participating Member State
- observers