EPFSF Briefing

"Towards a European Banking Union"

Financial integration in the EU has deepened significantly following the introduction of the single currency, but supervision, crisis management and the resolution of banks remained organised along national lines. The major regulatory overhaul of supervisory structures in 2010 have led to European Supervisory Authorities that have, however, been endowed with mainly coordinating functions. Day-to-day supervision has still remained at national level.

On 12 September 2012 the European Commission presented its proposal for a Single Supervisory Mechanism (SSM), as a first step of a Banking Union: comprising a regulation setting out the transfer of powers and duties for the prudential supervision of banks to the European Central Bank (ECB), and a regulation amending the existing European Banking Authority (EBA) regulation to fit with the proposed new mandate of the ECB.

The Commission published, alongside the two proposals for regulations, a Communication entitled "A Roadmap towards a Banking Union". Therein, it suggests two other potential elements to complete the Banking Union: A common system for deposit guarantees and an integrated crisis management framework. Once agreement on the existing DGS and Bank Recovery and Resolution proposals is achieved, the Commission envisages to propose notably a single resolution mechanism to resolve banks and to coordinate the application of resolution tools to banks under the banking union.

The proposals are addressed to all 27 Member States, but primarily concern Eurozone countries. Under the proposal, the ECB would be responsible for prudential supervision of all Eurozone banks (6,000+). National supervisors would remain responsible for conduct (markets, consumer protection, AML etc.) and insurance supervision.
Eurozone subsidiaries of non-Eurozone banks would be included, contrary to branches (i.e. UK banks with branches in Eurozone) which would remain under home Member State supervision. Likewise, branches of, or activities carried out by, banks from third countries, would remain under national supervision.

Phasing-in approach

Implementation of the SSM will follow a phasing-in approach:

- 1st Jan 2013: ECB assumes new powers under proposals; initial focus on supervision of banks that have 'requested or received public financial assistance'
- 1st July 2013: Supervision of Eurozone banks of 'systemic importance[1]' takes effect
- 1st Jan 2014: All Eurozone banks subject to supervision

[1]Systemically important banks are proposed to be defined by the ECB by 1 March 2013.

Powers conferred to the ECB

The ECB is proposed to assume full prudential supervisory powers, including:

- authorisation and withdrawal of authorisations (in conjunction with national authorities)
- ensuring compliance with capital and liquidity requirements
- determining additional pillar two requirements (firm specific capital requirements)
- imposition of capital buffers
- approval of assessment of acquisitions and disposals
- approval of own funds sufficiency
- execution of stress tests
- approving recovery plans and intra-group financial support arrangements
- early intervention powers

The ECB would be empowered to make information requests from supervised firms and to have full investigatory powers, including carrying out on-site inspections without prior announcement. It would be able to authorise national officials to carry out inspections on their behalf.

Further, the ECB would be empowered to carry out supervision on a consolidated basis where the parent entity is in the Eurozone and to take part in supervisory colleges where the parent entity is in non-participating Member States. The ECB would be able to impose sanctions up to twice the amount of profits gained or up to 10% of total annual turnover of the preceding year. Where applied to a subsidiary, these penalties shall be calculated on the basis of consolidated account of the parent entity.

Cooperation with national authorities

The proposals envisage non-prudential supervisory tasks (e.g. conduct of business regulation, market and trading supervision, anti-money laundering) remaining with national supervisors and recognise the need for close cooperation between the ECB and national supervisors. The proposals also recognise that the ECB lacks resources to carry out supervision at present and so will need to make use of the expertise which exists within national supervisors. How this would work in practice is unclear, but there is provision within the legislative proposal for staff exchanges and secondments from national supervisors.
Between participating Member States, the ECB would be responsible for administering procedures relating to branching or freedom to provide banking services.

Cooperation with non-Eurozone countries and international organisations

There is a provision for the ECB to undertake supervision of credit institutions in a Member State whose currency is not the euro, via ‘close cooperation’ established with the national supervisor.

The ECB would also be licensed to develop contacts and ‘enter into administrative arrangements’ with third country authorities and international organisations and so may have a distinct personality on the international stage. However, while the ECB may have a seat on key bodies such as the Basel Committee on Banking Supervision, it is unlikely to replace national regulators entirely.

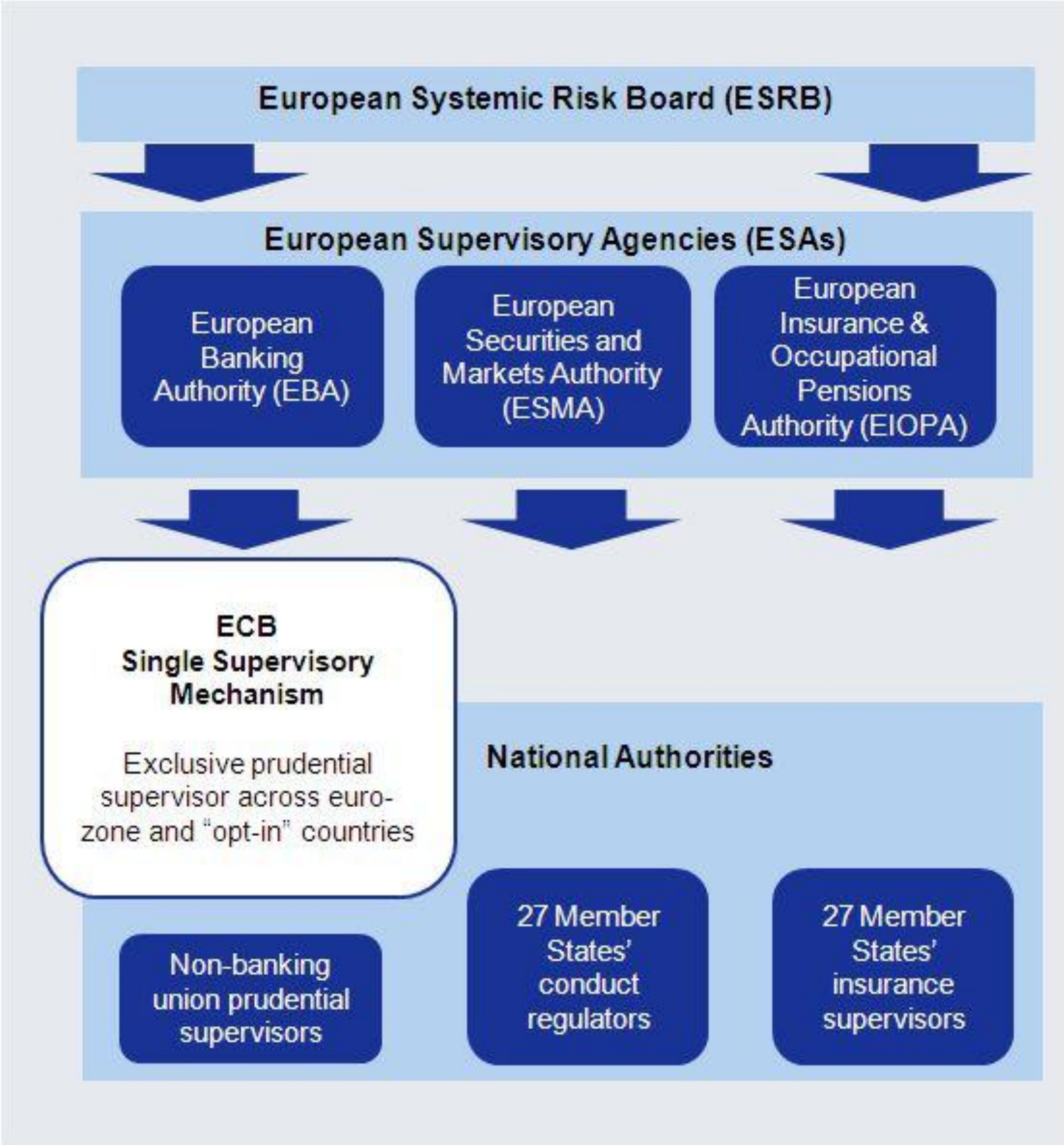
Governance / Separation of monetary policy and prudential tasks

The ECB is to establish a ‘supervisory board’ compromising representatives of national supervisors and four representatives of the ECB, to plan and execute its supervisory mandate. This should be independent from the monetary policy function of the ECB. The Chair of the EBA and EU Commission are provided observer status on the ‘supervisory board’, as are Member States who have ‘close cooperation’ status. There is no observer status for non-participating Member States. The ECB should levy fees on credit institutions to cover costs of the new regime. These fees will be proportionate to the size, importance and risk profile of the credit institution. The proposal assumes that supervisory fees due at national level can in return be reduced (i.e. firms should not be paying twice for the same supervision).

Modification of the existing EBA regulation

Alongside the SSM proposal which Member States must approve unanimously, the EU Commission proposed a revised regulation governing EBA powers and governance. The role of EBA is maintained. It should remain responsible for the development of the single rulebook and enhancing convergence of supervisory practices across all 27 Member States. EBA should fulfill this role not only with respect to national supervisors but also the ECB. The ECB should coordinate and express a common position of the Eurozone supervisors in the EBA decision-making boards. The impact of the SSM is to be specifically examined in the 2014 review of the functioning of the EBA and other EU supervisory agencies. To protect the interests of non-Eurozone supervisors, the EBA’s governance structure and voting arrangements for binding decisions would be amended. For decisions involving acting to address a breach of EU law and to settle disagreements between national authorities, an independent panel to be set up would resolve differences.

Annex: Illustration of proposed ECB, EBA and national supervisor interaction



Proposed interaction:

- SSM and national supervisors must follow EBA prudential rulebook
- Non-Eurozone Member States can participate in the SSM and banking union by "opt-in"
- Day to day conduct regulation will continue under national authorities

Briefing notes are prepared by the Financial Industry Committee to the European Parliamentary Financial Services Forum. For further information on the subjects raised in the briefs please contact the Chairman, Members or Secretariat of the Financial Industry Committee.

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