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# **ECB SUPERVISORY OVERSIGHT OF SYSTEMICALLY IMPORTANT BANKS IN THE EUROZONE: A CRITICAL LEGAL ANALYSIS**

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## ***Introduction***

The establishment of the Single Supervisory Mechanism (SSM) in 2014 marked a constitutional transformation in the European Union's financial governance, grounded formally in Article 127(6) of the Treaty on the Functioning of the European Union (TFEU), which authorises the Council to confer "specific tasks" upon the European Central Bank (ECB) concerning prudential supervision. Although the wording of Article 127(6) TFEU appears narrow, the political urgency following the global financial crisis of 2008 and the euro area sovereign debt crisis led to an expansive interpretation that enabled the adoption of Council Regulation (EU) No 1024/2013 (the SSM Regulation). This Regulation entrusted the ECB with direct supervisory powers over systemically important credit institutions, fundamentally altering the balance between national sovereignty and supranational oversight. The crisis revealed the inadequacy of fragmented national supervision within an integrated financial market, and the SSM was designed to address these deficiencies by centralising supervisory authority. Yet, the legal and institutional implications of this shift remain contested, raising questions about the constitutional limits of Article 127(6) TFEU, the compatibility of supervisory functions with the ECB's monetary mandate under Article 130 TFEU, and the democratic legitimacy of a technocratic institution exercising intrusive supervisory powers.

### ***1. The Legal and Constitutional Basis of ECB Supervision***

The legal foundation of the ECB's supervisory mandate rests on Article 127(6) TFEU, which permits the Council to confer specific supervisory tasks upon the ECB through a special legislative procedure requiring unanimity. The SSM Regulation operationalised this provision by granting the ECB extensive powers, including the authorisation of credit institutions, the assessment of qualifying holdings under Directive 2013/36/EU (CRD IV), and the supervision of compliance with prudential requirements established under Regulation (EU) No 575/2013 (CRR). The breadth of these powers raises the question of whether the conferral remains within the limits of "specific tasks" or whether it constitutes a de facto transfer of supervisory

competence that would normally require treaty amendment. The Court of Justice of the European Union (CJEU) has not yet been called upon to interpret the precise scope of Article 127(6) TFEU, though its jurisprudence in cases such as *Gauweiler* (C-62/14) demonstrates a willingness to adopt a functional and integration-friendly approach when assessing ECB competences.

The ECB's dual role as both monetary authority and supervisory authority introduces further constitutional complexity. Article 130 TFEU guarantees the ECB's independence in the exercise of its monetary mandate, but prudential supervision requires a different institutional posture, involving continuous engagement with supervised entities, cooperation with national authorities, and transparency obligations under Article 20 of the SSM Regulation. The ECB has attempted to separate its monetary and supervisory functions institutionally through the creation of the Supervisory Board, yet the ultimate decision-making power remains with the Governing Council, raising concerns about potential conflicts of interest. The question arises whether an institution designed for macroeconomic stability can effectively perform micro-prudential supervision without compromising either function.

## ***2. The Division of Competences Between the ECB and National Authorities***

The SSM operates through a hybrid supervisory structure that distinguishes between significant institutions (SIs), supervised directly by the ECB, and less significant institutions (LSIs), supervised by national competent authorities (NCAs) under the ECB's oversight. The criteria for significance, set out in Article 6(4) of the SSM Regulation, include total assets exceeding €30 billion, economic importance for the Member State or the Union, and cross-border activities. Although these criteria appear objective, their application often requires discretionary judgment, particularly in borderline cases. The ECB also retains the power to assume direct supervision of any institution to ensure consistent application of supervisory standards, a power that derives from Article 6(5)(b) of the SSM Regulation and has been used sparingly but strategically.

The relationship between the ECB and NCAs is governed by a complex framework of cooperation obligations under Articles 6 and 12 of the SSM Regulation, supplemented by ECB regulations such as Regulation (EU) No 468/2014 (the SSM Framework Regulation). National central banks (NCBs), although not always NCAs, play a crucial role in providing macroeconomic assessments, participating in Joint Supervisory Teams (JSTs), and facilitating

information exchange. However, the hybrid nature of the SSM has generated structural tensions. NCAs retain significant operational responsibilities, including on-site inspections and enforcement of national sanctions, while the ECB exercises strategic oversight. This division reflects political compromise but also raises questions about accountability and the allocation of responsibility in crisis situations. The Landeskreditbank case (T-122/15) illustrates the legal uncertainty surrounding the division of competences, as the General Court upheld the ECB's broad discretion in determining significance, reinforcing the centralised nature of the SSM.

### ***3. Information Gathering and Supervisory Methodologies***

The ECB's information-gathering framework is grounded in a dense network of EU legislative instruments that impose extensive reporting obligations on credit institutions. Regulation (EU) No 575/2013 (CRR) establishes uniform prudential reporting requirements, while Directive 2013/36/EU (CRD IV) mandates supervisory disclosures and internal governance reporting. These instruments are supplemented by Implementing Technical Standards adopted by the European Banking Authority (EBA) under Articles 99 and 430 CRR, which define the FINREP and COREP templates used by banks to transmit granular financial and prudential data. The ECB receives this information through national competent authorities (NCAs), as required by Article 6(2) of the SSM Regulation, which obliges NCAs to act as operational conduits for supervisory data. This system ensures that the ECB has access to harmonised, comparable, and timely information, although the initial years of the SSM revealed significant inconsistencies in data quality across Member States, reflecting the legacy of divergent national reporting frameworks.

In addition to mandatory reporting, the ECB relies heavily on on-site inspections conducted under Article 12 of the SSM Regulation and Articles 143–146 of the SSM Framework Regulation (Regulation (EU) No 468/2014). These inspections allow the ECB to verify the accuracy of reported data, assess internal models used for capital calculations under Articles 143–191 CRR, and evaluate governance structures in accordance with Articles 74 and 88 CRD IV. The ECB's authority to conduct on-site inspections is broad, extending to any premises of supervised entities, and is supported by the power to request documents, interview staff, and access IT systems. However, the execution of inspections often depends on NCAs, which may lead them or participate in mixed teams. This reliance reflects the hybrid nature of the SSM but also raises questions about the consistency of supervisory practices, particularly when national supervisory cultures differ significantly.

Joint Supervisory Teams (JSTs), established under Article 3 of the SSM Framework Regulation, constitute the backbone of day-to-day supervision. Each JST is composed of ECB staff and NCA experts, reflecting the principle of integrated supervision. JSTs conduct ongoing risk assessments, engage with bank management, and prepare the Supervisory Review and Evaluation Process (SREP) decisions under Article 97 CRD IV. The SREP methodology, harmonised through EBA Guidelines (EBA/GL/2014/13), requires supervisors to assess business models, internal governance, capital adequacy, and liquidity risk. Although the methodology aims to ensure consistency, it grants supervisors considerable discretion, particularly in determining Pillar 2 capital requirements under Article 104 CRD IV. This discretion has prompted debate about legal certainty and the potential for divergent supervisory outcomes, especially in complex cross-border groups.

The ECB also draws on market intelligence, macroeconomic analyses, and information from other EU bodies, including the European Systemic Risk Board (ESRB), which issues warnings and recommendations under Regulation (EU) No 1092/2010. The ECB's access to such information is facilitated by Article 15 of the SSM Regulation, which mandates cooperation with the ESRB and other EU institutions. Furthermore, the ECB may request information directly from supervised entities under Article 10 of the SSM Regulation, a power that has been used to obtain granular data on non-performing loans (NPLs), internal models, and liquidity positions. The legal basis for such requests is robust, but their intrusiveness has raised concerns among banks about proportionality and administrative burden, particularly when requests overlap with EBA data collections.

Historical challenges in information gathering were particularly evident during the Comprehensive Assessment of 2014, conducted under Article 33(4) of the SSM Regulation prior to the ECB assuming supervisory responsibilities. The Assessment revealed significant discrepancies in asset classification, provisioning practices, and internal model validation across Member States. These discrepancies underscored the need for harmonised supervisory standards and justified the ECB's subsequent efforts to impose uniform definitions of non-performing exposures (NPEs), drawing on EBA Guidelines and Article 178 CRR. The ECB's 2017 Addendum to the NPL Guidance, although not legally binding, exerted considerable supervisory pressure on banks to increase provisioning, raising questions about the boundary between supervisory expectations and de facto regulation.

#### ***4. Enforcement Powers, Corrective Measures, and Practical Examples***

The ECB's enforcement powers derive primarily from Articles 16 and 18 of the SSM Regulation, which authorise it to impose administrative penalties and adopt supervisory measures to ensure compliance with prudential requirements. These powers are complemented by Article 104 CRD IV, which allows supervisors to impose a wide range of corrective actions, including restrictions on business operations, limitations on variable remuneration, and requirements to strengthen governance arrangements. The ECB's sanctioning framework is further detailed in Regulation (EU) No 2532/98, which governs the imposition of penalties by the ECB and has been adapted to the supervisory context through ECB Decision ECB/2014/31.

Despite the breadth of its powers, the ECB remains dependent on NCAs for the enforcement of national administrative and criminal sanctions, as required by Article 18(5) of the SSM Regulation. This dependence reflects the limits of EU competence in criminal matters and the continued relevance of national administrative law. The resulting fragmentation has occasionally hindered effective enforcement, particularly in cases involving breaches of national consumer protection or anti-money laundering rules, which fall outside the ECB's mandate under Article 1 of the SSM Regulation.

The Banco Popular case of 2017 illustrates the practical challenges of supervisory intervention. The ECB identified a rapid deterioration in the bank's liquidity position, triggering the declaration of "failing or likely to fail" under Article 18 of Regulation (EU) No 806/2014 (the SRM Regulation). The subsequent resolution by the Single Resolution Board (SRB) highlighted the importance of real-time supervisory data and the need for seamless coordination between the ECB and SRB. However, the case also raised questions about transparency, as the ECB's assessment relied on confidential liquidity data that could not be disclosed to shareholders or the public, prompting litigation before the General Court.

Similarly, the ECB's supervision of Italian banks between 2015 and 2017 revealed tensions between supranational supervisory expectations and national political considerations. The ECB's insistence on accelerated NPL reduction, based on Article 97 CRD IV and EBA Guidelines, clashed with the Italian government's preference for gradual adjustment. The precautionary recapitalisation of Banca Monte dei Paschi di Siena under Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive (BRRD) further demonstrated the complexity of coordinating supervisory, resolution, and state aid frameworks. These examples underscore

the challenges of applying uniform supervisory standards in a diverse banking union.

### ***5. Accountability, Transparency, and the Democratic Deficit***

The ECB's supervisory accountability framework is grounded in Articles 20 and 21 of the SSM Regulation, which require the ECB to report annually to the European Parliament, the Council, the Commission, and the Eurogroup. The ECB must also respond to written questions from Members of the European Parliament and participate in public hearings. These mechanisms aim to ensure democratic oversight while respecting the ECB's independence under Article 130 TFEU. However, the effectiveness of these mechanisms is limited by the technical complexity of supervision and the confidentiality obligations imposed by Article 27 of the SSM Regulation, which restrict the disclosure of sensitive information.

Judicial review by the Court of Justice of the European Union provides an additional layer of accountability. Supervisory decisions may be challenged before the Administrative Board of Review (ABoR) under Article 24 of the SSM Regulation and subsequently before the General Court under Article 263 TFEU. The Landeskreditbank judgment confirmed that the ECB enjoys broad discretion in supervisory matters, and the Court's review is limited to manifest errors of assessment. This deferential standard raises concerns about the adequacy of judicial oversight, particularly given the intrusive nature of supervisory decisions.

The tension between transparency and confidentiality remains a central challenge. While transparency is essential for democratic legitimacy, excessive disclosure may undermine financial stability. The ECB has attempted to balance these competing interests by publishing supervisory methodologies, aggregate statistics, and thematic reviews, but it remains cautious about disclosing institution-specific information. This cautious approach is legally justified by Article 53 CRD IV, which imposes strict confidentiality obligations on supervisors, yet it fuels perceptions of opacity and technocratic insulation.

### ***Conclusions***

The ECB's supervisory mandate under the Single Supervisory Mechanism represents one of the most ambitious institutional experiments in the history of European integration. It is a project born not of constitutional design but of crisis-driven necessity, constructed on the narrow legal foundation of Article 127(6) TFEU yet tasked with reshaping the supervisory

landscape of an entire monetary union. This tension between limited textual authority and expansive functional responsibility remains at the heart of the SSM's constitutional identity. It invites a fundamental question: can a supervisory architecture built on a provision never intended for such breadth sustain the weight of long-term institutional expectations?

The hybrid nature of the SSM — centralised decision-making by the ECB combined with decentralised execution by national competent authorities — has undoubtedly improved supervisory consistency. Yet it has also preserved, and in some cases amplified, the structural asymmetries that characterised pre-crisis supervision. National supervisory cultures, divergent legal traditions, and political sensitivities continue to shape the implementation of ECB decisions. The SSM Framework Regulation attempts to harmonise these interactions, but the reality remains that the ECB's authority is only as strong as the willingness of national authorities to internalise supranational priorities. This raises a deeper normative question: is the SSM a genuinely integrated supervisory system, or a sophisticated coordination mechanism that masks persistent national fragmentation?

The ECB's extensive information-gathering powers, grounded in the CRR, CRD IV, and the SSM Regulation, have enabled unprecedented access to granular supervisory data. Yet the sheer volume of information raises concerns about supervisory overload, the risk of over-reliance on quantitative indicators, and the potential for supervisory blind spots in areas where qualitative judgment is essential. The Comprehensive Assessment of 2014 revealed the magnitude of pre-existing inconsistencies, but it also exposed the limits of harmonisation in a system where national accounting practices, legal definitions, and institutional incentives remain heterogeneous. This prompts a further question: can supervisory convergence be achieved through legal instruments alone, or does it require a deeper cultural transformation within national supervisory bodies?

Enforcement remains one of the most challenging aspects of the ECB's supervisory role. While the ECB possesses broad administrative powers under the SSM Regulation and CRD IV, it remains dependent on national authorities for the imposition of criminal and certain administrative sanctions. This duality creates a fragmented enforcement landscape that risks undermining the credibility of supranational supervision. The Banco Popular and Italian banking cases illustrate both the strengths and the vulnerabilities of the current system: decisive action is possible, but it is often constrained by political, legal, and institutional frictions. The unresolved question is whether a supervisory authority can be truly effective when its enforcement powers are structurally incomplete.

Accountability and transparency remain equally complex. The ECB's independence, essential for monetary policy, sits uneasily with the intrusive and discretionary nature of prudential supervision. Judicial review by the CJEU is limited by the Court's traditional deference to expert economic assessments, while parliamentary oversight is constrained by confidentiality obligations under CRD IV and the SSM Regulation. This raises a constitutional dilemma: how can democratic legitimacy be ensured when the very nature of supervision requires opacity? The SSM's accountability framework is functional, but it is not yet conceptually coherent. It reflects a system still searching for equilibrium between technocratic authority and democratic control.

Ultimately, the SSM represents both a remarkable achievement and an unfinished project. It has strengthened financial stability, reduced national bias, and enhanced supervisory professionalism. Yet it remains a structure built on legal compromise, institutional hybridity, and political contingency. Its long-term viability may depend on developments that lie beyond the SSM itself: deeper fiscal integration, completion of the Banking Union, harmonisation of insolvency regimes, and perhaps even treaty reform.

The central question that emerges is not whether the SSM works — it demonstrably does — but whether it can continue to function effectively without a more solid constitutional foundation. As the euro area faces new challenges, from digital finance to climate-related risks and geopolitical instability, the adequacy of the current supervisory framework will be tested in ways that its architects could not have anticipated. The future of the SSM may therefore hinge on a broader reflection: is the European Union prepared to move from crisis-driven integration to deliberate constitutional design, or will the SSM remain a sophisticated but ultimately provisional solution to the structural vulnerabilities of the monetary union?

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