



EUROPEAN CENTRAL BANK

EUROSYSTEM

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***Complementarity and
friction points:
banking regulators and
banking supervisors in the
EU institutional structure****



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** The views expressed are those of the author and do not necessarily reflect the position of the ECB.*

Overview

1. **The reasons for the choice made by the EU legislator in separating the role of the regulator and of the supervisor**
2. **The relationship between the EU regulator and the EU supervisor today: respective roles, relationship and friction points**
3. **The proposed changes in the EBA/ECB relationship** (EBA regulation): new powers but is there a qualitative change?
4. **Brexit:** changes in the regulatory regime and the role of the ESAs

Why is in the EU the regulator separate from the supervisor?

- **Coexistence of:**
 - **Internal market** and single rulebook for 28 MS – EBA, and
 - **Banking union** with a single supervisor for the banks of 19 MS and national supervisors for other MS
- **Separation of rule-setting and supervision:**
 - **Regulator(s):** EU legislator, Commission and ESAs (in our case EBA): regulation is level 1, level 2 and level 3
 - **Supervisor:** “national competent authorities” **Issue of democratic accountability of legislator? But EBA? Commission?**
- **SSMR:** the ECB has all the powers that EU law assigns to national competent authorities for the tasks assigned to it → 29 (28+ ECB) supervisors (art 9 SSMR) and applies EU and national implementing law
- **Complications arise because:**
 - Some **discretion left to supervisors** in implementing certain rules
 - **EBA has also some supervisory functions**

Relationship ECB/ EBA

- **ECB subject to the same obligations as national competent authorities with regard to EBA decisions and legal acts**, notably Guidelines and Recommendations
- **Under certain circumstances, the EBA can bind the ECB** (in its capacity as a competent authority) and adopt individual decisions addressed to individual banks

Set-up indicates a **hierarchy between the ECB and the EBA**

the ECB is subordinated to the EBA (Art 3(3) and 4(3) SSMR)
Yet, ECB is an institution, EBA is an agency

This hierarchy is **impossible to explain in EU institutional law**

Tasks assigned to ECB via special type of secondary legislation (Art 127(6) TFEU)
ECB's independence enshrined in primary law (Art 130 TFEU)

Could this set-up **upset the principle of institutional balance?**

Original sin: assigning to an institution the role of a national authority, when it is a supranational one.
Judicial control issue.

Close institutional relationship, governance relationships

- Art 40(1)(d) EBAR:
 - One **representative of the ECB's Supervisory Board (SB) in the EBA Board of Supervisors (BoS)** in a non-voting capacity
- Rec (70) SSMR:
 - **ECB's SB may invite EBA** as observer to ensure coordination of EBA activities and ECB prudential policies
- Art 44 EBAR:
 - **Eurosystem NCAs represented in the EBA BoS** (19 out of 28 members take part in the SSM)
 - **ECB coordinates Eurosystem positions** in EBA BoS
 - EBA Regulation requires '**double-majority**' voting (majority both among SSM MS and non-SSM MS) (tension between single market – regulation – and euro area further integration)

Tensions: two main points of friction

- **1. Regulatory powers:**

- Borderline between the **regulatory powers of the EBA** and the **regulatory powers of the ECB (art 4.3, 2nd para)**
- Distinction between legislative power (level 1, 2 and 3) and exercise of supervisory discretion (regulations on options and discretions)

- **2. Supervisory powers:**

- Issue of **different use of discretion by the supervisory authorities** for SI and LSI, even in the same country, in case of
 - **Options and discretions**
 - **Comply or explain**

→ **Solution:** responsibility of the **ECB to ensure that if there is a difference it has a good reason** (ART 6.1 SSMR and *Landesbank*)

The proposed changes in the relationship ECB-EBA

- A **new independent Executive Board** with four independent full-time members replaces **the current Management Board** in which all CAs are represented
- **Responsibilities assigned to the new body:**
 - Breach of Union law matters
 - Independent reviews
 - Strategic supervisory planning
 - Stress testing
- **Advantages:**
 - a European body ensures a more coherent approach and less compromises
- **Disadvantages:**
 - Governance issue and “buy-in”
 - Planning and implementation are separated in two bodies
 - Risk of conflict with supervisors’ tasks under SSMR
 - Audit-like activity, overlaps? accountability?

Institutional balance, is there a risk in the change?

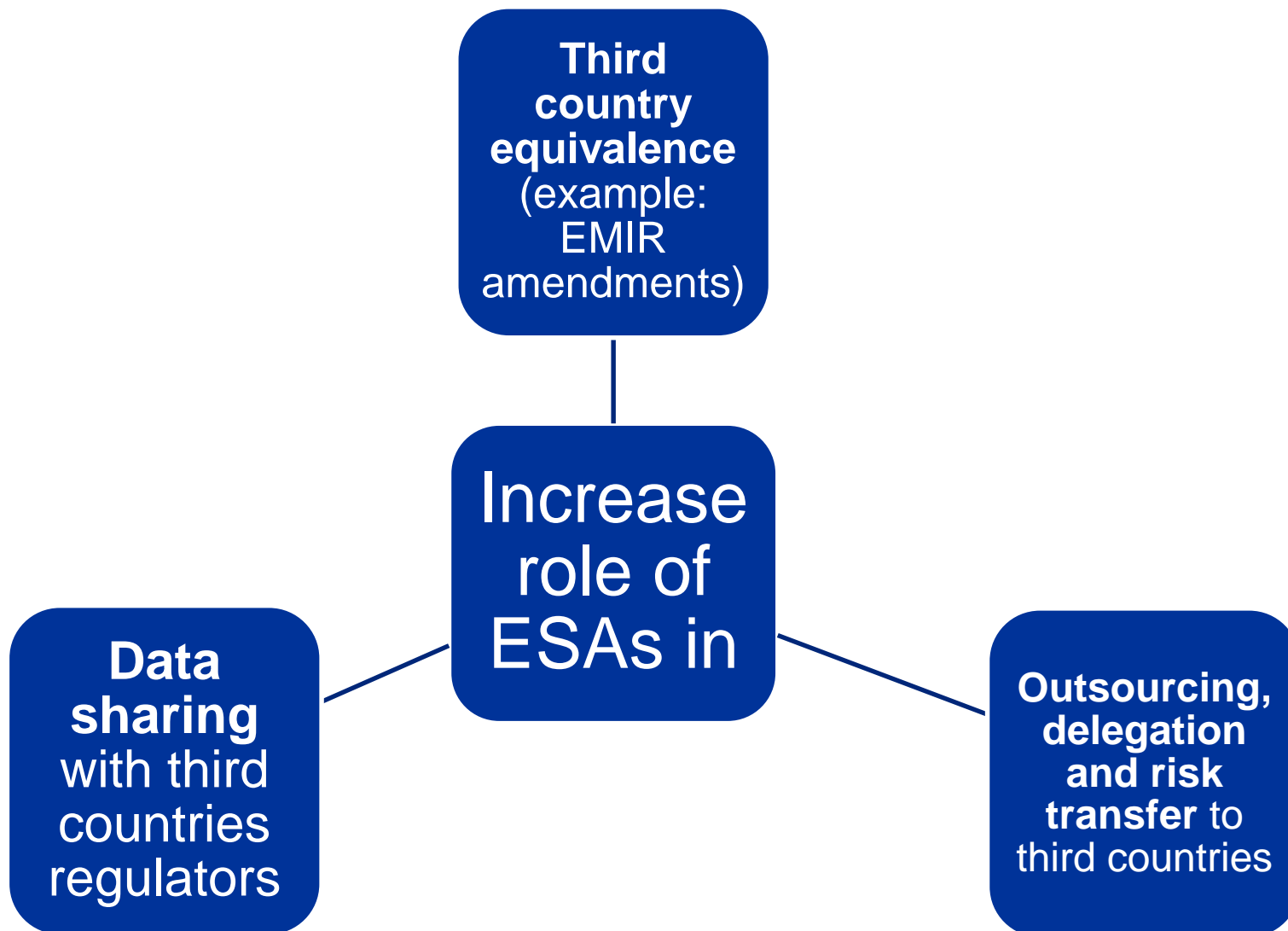
- **PRIMARY LAW**

- Art 13(2) TEU – conferral and mutual cooperation
- **Quality of powers of EBA have not changed:** new powers are “soft law”, cannot bind the ECB
- However, **increased risk of overlaps** from EBA expanded powers with ECB powers
- Issue of **independent reviews as audit-type activities:** Independence? Overlap with other authorities? Accountability?

- **SECONDARY LAW**

- To which extent **can EBA exercise supervisory tasks itself?**
- Issue of supervisory planning
- Issue of stress testing

Brexit : three main issues



**Thank you
for your attention!
Any questions?**

