

THE ABOR EXPERIENCE

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UNIQUE FEATURES OF THE ABoR IN THE EU LEGAL FRAMEWORK: 3 POINTS

- **First**, the ABoR is an administrative body (it carries out an internal administrative review, according to the Art.24 of the SSM Regulation) and not a judicial or quasi-judicial body, **but**
- the operating rules are typical of those of a judicial body with the sole exception of the publication of the ABoR's opinions (the opinion is “confidential”, but the applicant receive it and it can use it, first exhibiting it before the Court in a possible judicial procedure).

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Second

- The opinions of the ABoR are not binding on the SB or on the Governing Council (the decision-making body of the ECB). **Nevertheless**
- the ABoR is part of the decision-making process of the ECB in the banking supervisory field according to the ECB website and the Court of Justice in its first decision (Landeskreditbank Baden-Württemberg versus ECB case of 2017) “in so far as the contested decision ruled in conformity with the proposal set out in the ABoR’s opinion, it is an extension of that opinion” ...furthermore **decision forms a part** and may, therefore, be taken into account for the purpose of determining whether that decision contained a sufficient statement of reasons”

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Third

- The members of the ABoR enjoy the traditional third-party position that characterizes judges: according to article 24 of the SSM Reg the members must act independently and in “the public interest” and rules are established to ensure that members are not staff of the ECB or of the NCA...members “may not be bound from the ECB instructions, **but**
- the members are appointed by the ECB (Governing Council)