



ECB - The New Regulator - ILF Frankfurt  
The Single Supervisory  
Mechanism - a View from the  
Outside

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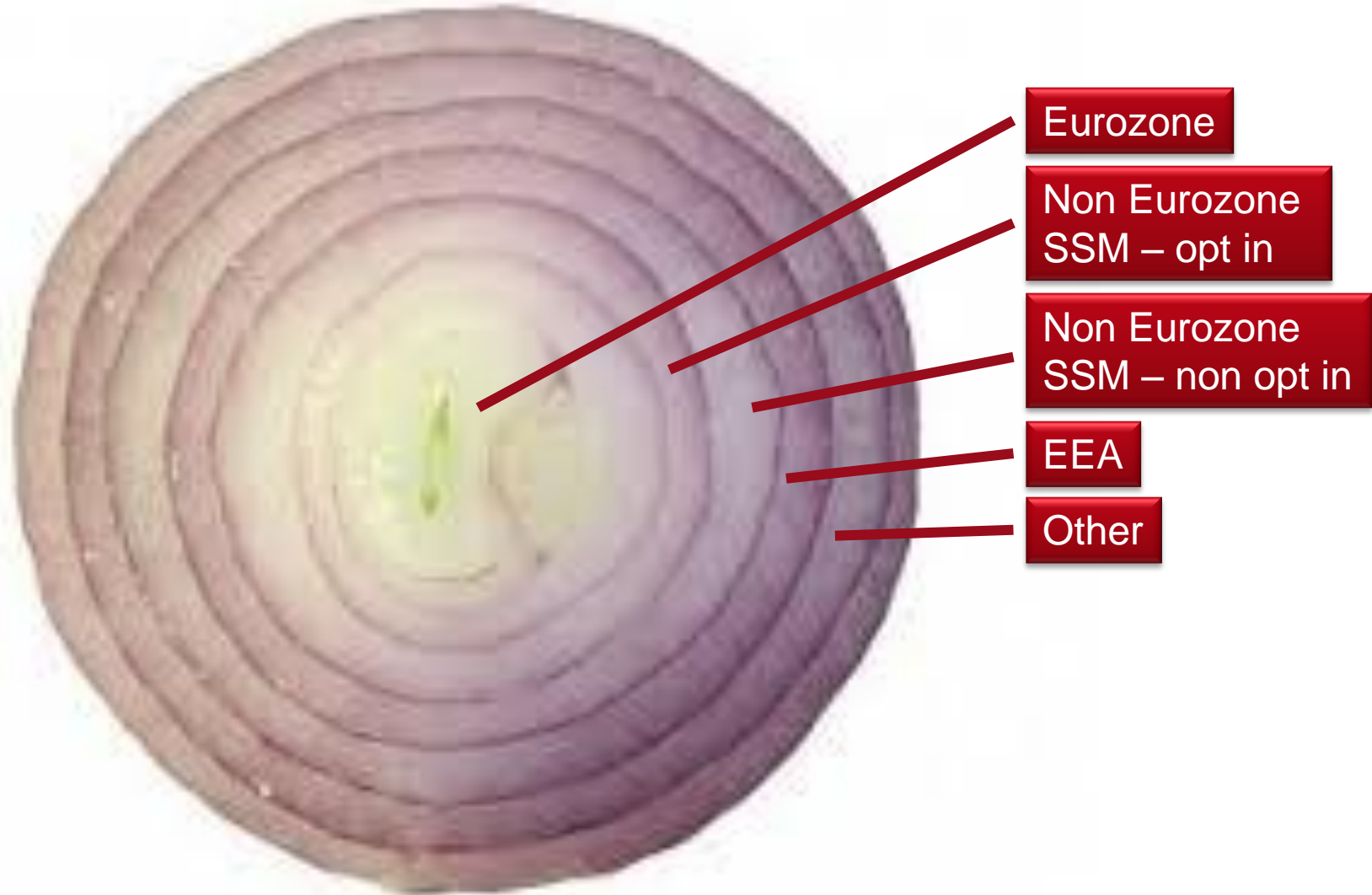
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- > Scope of supervision by ECB
  - > „Significant Financial Institutions“ (sFI) established in pMS, including
    - > subsidiaries in pMS
    - > branches in pMS and npMS
  - > Not credit institutions in non-participating Member State (npMS) or a third country
    - Exceptions
      - Branches in a npMS of sFI (home regulator)
      - Significant subsidiaries (host regulator)
      - Significant branches (host regulator)
- > Right of establishment of branches/cross-border services
  - > Intra-SSM: 11-12 SSM-FR
  - > SSM – In: 13 – 16 SSM-FR
  - > SSM – Out: 17 SSM-FR
- > Questions
  - > Access of non Euro-area credit institutions to ECB liquidity/term funding?
  - > ECB supervision of credit institutions conducting business pursuant to MiFID passporting rights (as opposed to their role as credit institutions)

## Non Eurozone – opt-in I

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- > Non euro member states can join SSM (7 SSM-R)
  - > „... exercise of supervisory tasks by a Union institution brings about clear benefits in terms of financial stability and sustainable market integration ...“ (rec. 42 SSM-R)
  - > “Necessary pre-condition for effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay” (rec. 42 SSM-R)
- > Definition of „participating Member State“ in 2(1) SSM-R:

(1) ‘participating Member State’ means a Member State whose currency is the euro or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7;

## Non Eurozone – opt-in II

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- > Opt-in procedure (7(2) SSM-R)
  - > Member state must undertake:
    - > to ensure, that its NCA will abide by any guidelines or requests issued by ECB
    - > to provide alle information for comprehensive assessment of credit institutions in that MS
    - > to enact legislation to ensure that NCA will be obliged to adopt any measure in relation to credit institutions requested by the ECB

## Non Eurozone – opt-in III

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- > Termination of „close cooperation“
  - > By ECB in event of major non-compliance (7(5) SSM-R)
  - > By non-euro Member State
    - > After 3 years without qualification (but reasons – 7(6) SSM-R)
    - > Expedited exit procedure at the request of MS in case of a major disagreement with a supervisory decision impacting the country – MS will not be bound by decision – 7(7) SSM-R)
    - > No re-entry within 3 years

## Non Eurozone – opt-in IV

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- > Incentives for non-euro Member States to join SSM
  - > Strong safeguards for non-euro Member States
    - > Representation and voting right in ECB supervisory board
    - > financial stability objective relative to Union and each MS (1 I SSM-R)
    - > Right of exit in case of major disagreement (7(7) SSM-R)
    - > Accountability of ECB vis-à-vis national parliaments (21 SSM-R)
  - > Answer will depend on structure of banking system
    - > Home jurisdiction
    - > Host jurisdiction



- > Memorandum of understanding ECB – competent authority of npMS (rec. 14 SSM-R)
  - > describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions referred to in the SSM-R
  - > clarify the consultation relating to decisions of the ECB having effect on subsidiaries or branches established in the npMS whose parent undertaking is established in a pMS
  - > cooperation in emergency situations, including early warning mechanisms
- > „Close cooperation“ ECB – competent authority of npMS in supervision of cross-border credit institutions active both inside and outside the euro area (rec. 42 SSM-R)
- > ECB participates fully in colleges of supervisors

# European Economic Area (EEA) I

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- > European Economic Area (1993)
  - > Norway, Iceland, Liechtenstein
  - > Full integration in Single Market, including financial services market
  - > Ongoing incorporation of financial services acquis into EEA agreement
- > Will SSM-R be incorporated into EEA-Agreement?
  - > Objective of SSM (1(1) SSM-R)
    - > „... contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State ...“
    - > „... unity and integrity of the internal market based on equal treatment of credit institutions ...“
    - > „... preventing regulatory arbitrage“
    - > „... Not discriminate against any Member State or group of Member States as a venue for the provision of banking or financial services in any currency.“
  - > Definition of “third country” in 2(27) SSM-FR: “...a country which is neither a Member State nor a European Economic Area Member State”

# European Economic Area (EEA) II

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- > Major problems with integration of ESAs into EEA agreement
  - > power of supervisory authorities to issue binding technical standards
  - > constitutional limits (Iceland, Norway)
  - > Observer status for Liechtenstein, Iceland and Norway
    - > EBA, ESMA and EIOPA
    - > “Level 2 committees
  - > but integration of pipeline acquis into EEA Agreement blocked
- > EU/EEA ECOFIN Conclusions 14 October 2014
  - > „...strong coordinated financial supervision key to maintaining and deepening Single Market for financial services
  - > Two-pillar structure of EEA-A
    - > EFTA Surveillance Authority will take decisions addressed to EEA competent authorities/market operators
    - > Based on drafts prepared by EU ESAs
  - > EU ESAs competent to perform non-binding actions (recommendations, mediation)
  - > EFTA Surveillance Authority and EEA States participate in Board of Supervisors of ESAs, without voting rights

- > EEA Agreement (3.1.1994)
  - > Objectives: realization of four basic freedoms
    - > free movement of goods
    - > free movement of persons
    - > free movement of services
    - > free movement of capital
  - > Competition
  - > „closer cooperation in other fields, such as research and development, the environment, education and social policy“

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- > National authorities remain responsible
    - > for supervision of credit institutions from third countries establishing a branch or providing cross-border services in the Union (Rec. 28 SSM-R)
  - > ECB will be responsible
    - > Supervision of significant subsidiaries of third country institutions in a pMS
    - > Host country supervisor of significant branches of third country institutions in a pMS
    - > Home country supervisor of subsidiaries and branches of significant SSM institutions in a third country

# International Cooperation

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- > “...globalization of banking services and increasing importance of international cooperation” (rec. 80 SSM-R)
- > ECB fully integrated in international standard setting/cooperation bodies
  - > Member of Financial Stability Board (FSB)
  - > Member/shareholder of Bank for International Settlements (BIS)
    - > Member of all committees and working groups hosted by BIS
      - BCBS
      - CPSS (now CPMI)
      - CGFS
      - Markets Committee
- > Change of relative weight of ECB/NCAs
  - > Gradual process – no adjustment in institutional arrangements

## Assessment – Designation criteria

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- > „Significant credit institutions“ are credit institutions satisfying any of the following requirements (6(4) SSM-R):
  - > Credit institution of „significant size“
    - > Assets in excess of EUR 30 bn.
    - > Assets representing more than 20% of a pMS GDP
  - > Credit institution is of „significant importance to the economy of the EU or pMS“
    - > Designation by NCS
    - > Designation by ECB based on size of cross-border activity
  - > Credit institution receives public funding via EFSF/ESM
  - > One of three most significant Credit institutions in a pMS

- > Complexity of Governance Arrangements
  - > Within ECB – legal constraints
  - > Within SSM – relationship to NCAs
  - > Within European Supervisory Structure
- > Inherent weakness of overly complex institutional arrangements
  - > US „alphabet soup“



- > ECB – Conflicts of interest
  - > twin mandate of central banks: stable money and sound banking
    - > Banking system is primary transmission channel for monetary policy
  - > Emphasis on price stability in the 1980's - move away from banking supervision
  - > Reversal since 2007/8
    - > Financial stability mandate
    - > Macroprudential supervision
  - > Are there true conflicts?
- > Arrangements to deal with conflicts of interest (25 SSM-R)
  - > Restriction to supervisory objectives (25(1) → 1(1) SSM):
    - > „...safety and soundness of credit institutions and the stability of the financial system...“
  - > Separation of supervisory/monetary policy functions

- > Independence of supervisory function
  - > Independence of ECB/NCA (19 SSM-R)
  - > Accountability
    - > EP/Council/Commission/Eurogroup (20 SSM-R)
    - > National parliaments (21 SSM-R)
- > Rationale for central bank independence – time inconsistency
- > Central bank independence and crisis management
- > Is there a comparable rationale for independence of supervisory functions?

# Assessment - Fragmentation

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- > Fragmentation of financial services markets
  - > Eurozone crisis
  - > Regulation
    - > Too big to fail-legislation
      - US rules for foreign bank holding companies
      - UK retail ring-fence
    - > Wholesale market regulation
      - Derivatives markets regulation
    - > Third Country Rules in EU directives/regulations
      - Equivalence test
  - > SSM?
    - > Banking Union as a way to reverse fragmentation within Eurozone
    - > Risk of fragmentation within single market/third countries
      - Regulatory treatment of branches/subsidiaries
  - > Does anybody has a view of the complete picture?

# Conclusions

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- > Spillover and external effects of Eurozone crisis
  - > Global growth
  - > Financial stability
  - > Switzerland: EUR/CHF floor
- > Completing monetary union
  - > SSM is important step to banking union
  - > Banking union is a necessary, but not sufficient step toward completing monetary union
  - > breaking the vicious circle between banking and sovereign crisis – but incentives feeding the circle remain
  - > Creditibility of ECB decisive factor

Thank you for your attention.

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