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BANKING UNION

Looking back at 10 years of parliamentary scrutiny in the Banking Union

This briefing presents a summary of 3 studies prepared by academic expert panel for the Banking Union on the occasion of 10 years of parliamentary scrutiny over key authorities within the Banking Union, the Single Supervisory Mechanism (SSM) and the Single Resolution Board (SRB). It also presents proposals for enhancing the accountability framework governing these authorities. These studies were requested by the Committee on Economic and Monetary Affairs (ECON) of the European Parliament.

The 10-year anniversary of the Banking Union (BU) marks a decade of **parliamentary scrutiny over its key authorities, the Single Supervisory Mechanism (SSM) and the Single Resolution Board (SRB)**.

Over this past decade, both SSM and SRB Chairs have appeared regularly for **public hearings** and occasionally for **in-camera hearings** before the ECON Committee. Moreover, a range of publicly available reports by the authorities are available to the Parliament. The authors of these studies, part of the Banking Union Expert panel, were asked to **assess the level of detail available in these documents provided by the SSM and SRB**, mindful of the need for specific information on instance of particular concern on the one hand and the need for adequate confidentiality, on the other. The authors adopted various approaches in analysing the **existing transparency and accountability mechanisms**, whether these mechanisms are adequate for the 10th legislative term, or if, going forward, improvements to the established practices of information sharing would be beneficial and feasible within the current accountability framework.

In the first paper, Andrea Resti argues that the SSM can be considered a success given the circumstances, but stresses that **further improvements can be made in terms of accountability**. The author proposes some **possible avenues to improve the interaction between the European Parliament (EP) and the SSM**, such as **increasing the focus on informal interactions** between the EP and the Single Supervisory Board (SSB) Chair and looking for ways **to inform the public about the EP's assessment of the SSB Chair's attitude towards accountability**.



The second paper written by Rosa Lastra and Sara Dietz argues that the **Banking Dialogue** (in the form of a public hearing) **is an important tool for the EP to scrutinise the actions of the authorities in the BU.** However, the authors suggest that **scrutiny could and should be enhanced** in order to ensure that decisions and practices by supervisory authorities and authorities acting within banking resolution are truly challenged. Additionally, the authors emphasise that **accountability is also provided by administrative and judicial review** which allows courts to assess the legality of these decisions, ensuring they comply with EU law and do not overstep legal boundaries.

The third paper, authored by Jakob de Haan, analyses **the concept of accountability through three main features:** i) decisions about **the mandate** of the supervisory agency, ii) disclosure of actual policy (**transparency**), and iii) actions in case the principal is not satisfied with how well the agent has performed (**rectification**). Author argues that **the mandate of the SSM, as the supervisory agency**, namely contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State **is too imprecise** to function as a quantifiable benchmark. According to the author, the SSM scores high on transparency levels. However, the paper also shows **the SSM legislative framework falls short for the rectification stage.** There are **no formal sanctions that the EP can impose** in case of SSM's failure.

10 years of parliamentary scrutiny over the Single Supervisory Mechanism: Are current transparency and accountability mechanisms adequate for the next legislative term?

by *Andrea RESTI*

This paper by Andrea Resti evaluates the accountability and transparency mechanisms of the Single Supervisory Mechanism (SSM) over the last 10 years. Although **the SSM can be considered a success given the circumstances** (e.g. the pandemic, the military conflict in Eastern Europe and the wave of bank failures in the US and Switzerland), the author believes **further improvements can be made in terms of the accountability** of the European Central Bank (ECB) towards the EP.

In this paper **the friction between the independence and the accountability of banking supervisors is assessed**. On the one hand, the independence is necessary to reduce conflicts of interest and political meddling. However, Resti argues that supervisors also need to be held democratically accountable to legitimate the existence of the independent agencies in the citizens' eyes.

Several studies have indeed raised doubts on the ECB's ability to guarantee adequate levels of transparency and democratic legitimacy. These highlight the existence of "a gap in terms of the ability of the EP to assign consequences to the ECB's conduct", creating a **democratic deficit**. This arises when the accountability largely relies on the ECB's willingness to self-police and present a self-critical picture. As a result, Resti recognises the need for amendments to the EU Treaties to **enhance accountability**. Some studies still provided a more positive assessment, underlining:

- The high transparency levels guaranteed by the ECB, compared to other agencies;
- The SSM's rules on **independence and accountability** which meet the principles of the Basel Committee on banking supervision;
- That the ECB is held accountable by a network of EU institutions, ensuring its power is balanced while maintaining its independence.

This assessment is supported by **the special regime that was awarded to the ECB by the Treaties** under which members of the ECB's decision bodies are forbidden to seek or take instructions from the other Union institutions and from other Member States. The SSM Regulation (Regulation (EU) No 1024/2013) stipulates that the ECB should still be accountable for the exercise of its supervisory tasks towards the EP and outlines **a set of accountability tools**. The operation of these tools is regulated in greater detail by an Interinstitutional Agreement, where several interaction channels are provided.

In addition, the paper also examines **how such channels have been used in practice**. The **ECB's annual reports** on its supervisory activities mostly draw upon pre-existing publications yet involve the provision of some previously undisclosed details on the SSM's operation. The **public meetings** between the SSB Chair and the ECON Committee have, over time, shifted focus, moving from the SSM's setup and bank-specific issues to broader policy topics like NPLs, crypto-assets and climate risk. Questions asked by the MEPs now also focus more on regulatory developments, although some have criticised the limited time for follow-up questions. Moreover, **written questions by the MEPs to the SSB Chair** have indeed been seldom used in the most recent period and, according to the author, are instead used by some MEPs as a communication tool towards voters and lobbies. Additionally, the author argues that **the access to SSB minutes** for MEPs via the "secure reading room" has little influence in enforcing accountability. In fact, due to the confidential nature of these documents, MEPs are often constrained in the ability to use information in public hearings or justification requests to the ECB. **The access to draft regulations** that the ECB is about to issue to MEPs, who can submit comments in parallel with public consultations has led to lively confrontations in the past.

A key contribution of the paper is author's proposal of **possible avenues to improve the interaction between the EP and the SSM**. According to the author, the best short-term option to increase the ECB's accountability is to **rely on the EP's and ECB's willingness to strengthen the relationships** while recognising each other's powers. Additionally the paper suggests to **increasingly focus on informal interactions** between the EP and the SSB Chair as public/formal/high-level accountability forums have recently come under increasing criticism. These interactions should only include **a small group of ECB and EP experts** who can commit enough time and effort for in depth feedback over short periods of time. The author particularly highlight the need to **look for topics where the SSM has a real interest in entertaining a closer relationship with lawmakers**. Finally, **other ways should be found to inform the public about the EP's assessment of the SSB Chair's attitude towards accountability**. The author suggests to include an *ad hoc* section, as objective and reasoned as possible, in the EP's Banking Union report when the Chair is halfway through their term of office.

Full paper available on the EP homepage: [10 years of parliamentary scrutiny over the Single Supervisory Mechanism](#)

Accountability of the European Banking Union: Accountability in Banking Supervision and Banking Resolution under Review

by Rosa LASTRA and Sara DIETZ

With the 10-year anniversary of the Banking Union (BU), this paper by Rosa Lastra and Sara Dietz evaluates the accountability of the EBU through a legal and economic perspective. Authors argue that **accountability is an elusive concept with philosophical, political, economic and sociological connotations**. Since the introduction of independent central banks and independent agencies, the question arose on how to reconcile the needs of technocratic entities populated by unelected official with the demands of democratic legitimacy. The authors support **accountability, transparency and adequate communication**.

Lastra and Dietz emphasise that **the nature of monetary policy and the nature of (micro-prudential) supervision is different**. This implies that supervisory independence is not the same as monetary independence and that monetary accountability is not the same as supervisory accountability. Under Art. 25(2) of the SSM Regulation (SSMR), a fundamental principle in the working of the ECB, is actually **the principle of separation between monetary policy and banking supervision**. Furthermore, the authors also stress **the importance of the immunity and legal protection of supervisors**, the latter actually recognised in the Basel Core Principles of Banking Supervision.

The ECB therefore enjoys independence in the performance of all its functions, **the independence in monetary policy** as a cornerstone of the Economic and Monetary Union (EMU) and the **independence in its supervisory responsibilities**, necessary to protect it against political influence. **The SRB has also been given statutory, formal independence**. Since the justification for independence in supervision and resolution is different (and typically more limited) than independence in monetary policy, the accountability mechanisms in the EBU are conceptualised differently from those in the monetary policy realm. Control and scrutiny of the ECB is explicitly provided for to the EP and the Council in the SSMR and of the SRB in the Single Resolution Mechanism Regulation (SRMR). According to the authors, **the Banking Dialogue (in form of a public hearing) is an important tool for the EP to scrutinise the actions of the authorities in the Banking Union**. However, the authors suggest that **the thoroughness of scrutiny could and should be enhanced** in order to ensure that decisions and practices by supervisory authorities and authorities acting within banking resolution are truly challenged.

Accountability is also provided by administrative and judicial review within the SSM and SRM. Administrative review involves the internal administrative processes through which decisions made by the ECB or SRB, can be re-examined or challenged. The administrative review mechanism under the SSM is governed by Art. 24 of the SSMR, establishing an Administrative Board of Review (ABoR) to handle internal administrative reviews of ECB decisions. The ABoR can recommend the abrogation, amendment, or replacement of the contested decision. Under the SRM the administrative review mechanism is governed by Art. 85 of the SRMR, establishing an Appeal Panel (AP) to handle internal administrative reviews of decisions made by the SRB, which has similar legal framework to ABoR's. Lastra and Dietz argue that administrative review is important to ensure accountability at an early stage within the administrative process itself. In addition to the legal framework of the administrative review, the right to be heard is a fundamental aspect of both the initial decision-making process and the review process under the SSM. Judicial review, on the other hand, allows courts to assess the legality of the decisions made by the ECB and SRB, ensuring they comply with EU law and do not overstep legal boundaries.

Based on some relevant cases and trends in judicial review, the authors mention some implications for the Banking Union. Firstly, the General Court (GC) and the European Court of Justice (ECJ) affirm the ECB's role

in **the centralised supervision** of significant institutions, ensuring a cohesive supervisory framework and reducing the potential for divergent national practices. Secondly, the courts have ensured that supervisory standards are **uniformly applied**, enhancing the stability of the banking sector. Thirdly, the **judicial oversight** of the courts provide a check on the ECB's powers while simultaneously endorsing its central role in banking supervision. Finally, the rulings emphasise the importance of **harmonising supervisory practices** across the EU. The CJEU has therefore continuously strengthened the role of the ECB and the importance of direct supervision, thus affirming the uniformity of the application of supervisory standards throughout the Banking Union.

The authors conclude that notwithstanding the existing mechanisms of parliamentary accountability, administrative and judicial review, **accountability of the Banking Union institutions should be strengthened** in light of the principle of democratic legitimacy.

Full paper available on the EP homepage: [Accountability of the European Banking Union: Accountability in Banking Supervision and Banking Resolution under Review](#)

On the transparency and accountability of the Single Supervisory Mechanism

by Jakob DE HAAN

Jakob de Haan in his paper argues that **the concept of accountability has three main features**: i) decisions about **the mandate** of the supervisory agency, ii) disclosure of actual policy (**transparency**), and iii) actions in case the principal is not satisfied with how well the agent has performed (**rectification**). Based on these three features, the author evaluates the SSM's accountability.

De Haan stresses that the **mandate of the SSM as the supervisory agency**, namely contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, **is too imprecise** to function as a quantifiable benchmark based on which the performance of the ECB can be objectively evaluated.

Author explains that there are two major differences between **accountability for monetary policy and accountability for supervisory policy**. Firstly, **the objective** of supervisory policy is less easy to define than the objective of monetary policy. Secondly, this increases the **difficult in determining whether the objective has been achieved**. Therefore, according to the author, accountability mechanisms in the case of supervisory policy should **focus on policy processes and underlying analyses and motivations instead of on results**. Accordingly, the supervisory authority can be held to account for the analysis and motivation underlying policy decisions and the extent to which policy instruments have been deployed in order to mitigate identified risks.

Transparency is as such an indispensable component of accountability according to the author. There are **four main benefits of transparency** - first of all it enhances the legitimacy of the supervisor; secondly, it increases the predictability of the supervisory, which, in turn, may stimulate banks to adhere to existing regulation; thirdly, it forces supervisors to take careful decisions and to be consistent, reducing arbitrary decision-making; and lastly, it may enhance market discipline.

According to the authors' assessment, transparency - measured by the index proposed by Liedorp et al. (2013) - **indicates that the SSM scores 11 out of 15**. This score is high in absolute terms and particularly notable given the limited transparency of national supervisors at the time of SSM's establishment.

Finally, the **author focusses on the so-called rectification stage, an important step in the accountability process** where the accountant may ask questions demanding something from the accountee – information, justification of conduct, or change of decisions. Studies that have analysed the Banking Dialogue suggest that MEPs do not (explicitly) ask questions on the achievement of the SSM's objectives. Instead, they rather focus on the overall performance of the banking sector or the financial health of individual banks (which are hard to address in view of confidentiality requirements), while quite a few questions are not addressed to the relevant authority. Furthermore, de Haan argues that **the SSM legislative framework falls short for the rectification stage**. There are **no formal sanctions that the EP can impose** in case it concludes that the SSM has failed. For example, since the ordinary legislative procedure is not applicable, the possibility of amending the SSM Regulation cannot be considered an instrument at the disposal of the EP. Nevertheless, the author argues that this does not imply that the EP is completely without power, instead he suggests that if the EP challenges SSM policies on significant grounds, this could have an impact.

Full paper available on the EP homepage: [On the transparency and accountability of the SSM](#)

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