IN-DEPTH ANALYSIS

Requested by the ECON committee

European Parliament

On the transparency and accountability of the SSM

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Directorate-General for Internal Policies
PE 760.234 - September 2024

EN

On the transparency and accountability of the SSM

Abstract

This paper argues that the mandate of the SSM is too imprecise to function as a quantifiable yardstick based on which the performance of the ECB can be objectively evaluated. The accountability mechanisms should therefore focus on policy processes, underlying analyses and motivations instead of results.

Based on the transparency index of Liedorp (2013), the SSM appears much more transparent than national supervisors at the time of the SSM's creation.

However, the legislative framework lacks one feature that is usually associated with the concept of accountability, as the EP has no possibility to impose formal sanctions if the SSM underperforms.

This document was provided by the Economic Governance and EMU Scrutiny Unit at the request of the ECON Committee.

This document was requested by the European Parliament's Committee on Economic and Monetary Affairs.

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Original: EN

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Manuscript completed in September 2024
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LIST OF ABBREVIATIONS

EBU	European Banking Union
ECON	Committee on Economic and Monetary Affairs
ECB	European Central Bank
EMU	European and Economic Monetary Union
EP	European Parliament
IAA	Interinstitutional Agreement
MEP	Member of the European Parliament
MoU	Memorandum of Understanding
NCA	National Competent Authority
SSM	Single Supervisory Mechanism
SSMR	Single Supervisory Mechanism Regulation
TFEU	Treaty on the Functioning of the European Union

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1. INTRODUCTION

KEY FINDINGS

The concept of accountability has three main features: 1. Decisions about the mandate of the supervisory agency; 2. Disclosure of actual policy (transparency); and 3. Actions in case the principal is not satisfied with how well the agent has performed (rectification).

This paper argues that the mandate of the SSM, 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 yardstick based on which the performance of the ECB can be objectively evaluated. Nowadays, the ECB publishes more specific policy targets in the form of supervisory priorities. Still, the effects of regulatory actions may be hard to identify and circumscribe, even with the benefit of hindsight. All this implies that the 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 an indispensable component of accountability. To assess the SSM's transparency, the index as proposed by Liedorp et al. (2013) is used. According to Högenauer (2023), the score of the SSM is 12 out of 15 (in my own assessment: 11 out of 15), which is high in absolute terms and impressive in view of the limited transparency of national supervisors at the time of the SSM's creation.

An important step in the accountability process is that the accountor may ask questions demanding something from the accountee – information, justification of conduct, or change of decisions. The SSM legislative framework falls short for the rectification stage. There are no formal sanctions the EP can impose in case it concludes that the SSM failed. For example, since the ordinary legislative procedure is not applicable, the possibility of amending the SSMR cannot be considered an instrument at the disposal of the EP.

2. SINGLE SUPERVSISORY MECHANISM AT TEN

2.1. On the need for a banking union

The idea that a currency union should be accompanied by banking union was not part of the Economic and Monetary Union (EMU)'s original design. As national banking systems differed substantially, it made sense to delegate financial supervision to national authorities (Eichengreen, 2024). However, one of the lessons learned during the Global Financial Crisis and the European sovereign debt crisis is that "national regulators had failed to adequately internalise the cross-border repercussions of their policies: French and German regulators failed to prevent domestic financial institutions from lending hand over fist to Southern European banks and from accumulating large concentrations of Southern European government bonds. In addition, national regulators failed to address the risks for the euro area as a whole created by the fragility of large, systemically important banks. Relatedly, those national authorities lacked adequate mechanisms for resolving, or winding up, insolvent financial institutions." (Eichengreen, 20024, p. 28).

The Single Supervisory Mechanism (SSM) is situated in the ECB. However, the ECB did not fully replace national competent authorities (NCAs). The ECB supervises significant credit institutions, while NCAs oversee the less significant credit institutions. However, the SSM Regulation makes clear that the ECB is exclusively responsible for the effective and consistent functioning of the SSM (Karagianni and Scholten, 2018). Decision-making in the SSM is based on the so-called "non-objection" procedure, under which the Supervisory Board proposes draft decisions to the ECB Governing Council, which are deemed adopted unless the Governing Council objects to it within ten working days (see ter Kuile et al., 2015 for further details). Although controversial, since it raised the possibility that it could undermine monetary policy aimed at price stability, the ECB was the only EU entity with the necessary administrative capacity and technical expertise for the tasks at hand in view of the timeframe for the European Banking Union (EBU). The European Council summit of June 2012 approved the elevation of banking supervision to the European level and EBU started in November 2014. Art. 127(6) of the Treaty on the Functioning of the European Union (TFEU) made it possible to make the ECB responsible for banking supervision.[1] The key piece of secondary legislation establishing banking supervision is the Single Supervisory Mechanism Regulation (SSMR), which was adopted in 2013. The independence of ECB Banking Supervision is enshrined in law. Article 130 TFEU and Article 19 SSMR require the ECB to act independently.

[1] The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings."

2.2 On the need for supervisory independence[2]

Independence prevents supervisors from succumbing to 'capture', either by the industries they oversee or by political actors promoting self-interested agendas (Adrian and Narain, 2019). The independence of supervisors is one of the pillars of the Basel Committee's core principles for effective banking supervision (Basel Committee on Banking Supervision, 2012). Likewise, the Financial Stability Board (2010: 4) states that reinforcing operational independence of supervisory agencies "is critical to ensuring supervisory effectiveness."

Alesina and Tabellini (2007; 2008) show that policy areas that are relatively technical and areas where vested interests play a major role should, all else being equal, be delegated to independent agencies. This certainly holds for banking supervision. Governments have an incentive to adopt a less stringent regulatory and supervisory approach to boost their electoral support at the cost of financial instability. Referring to financial crises during the 1990s, Quintyn and Taylor (2003: 260) argue that "political interference in the supervisory process leading to regulatory forbearance" has been a major factor "contributing to the weakening of banks in the run-up to the crisis, postponing recognition of the severity of the crisis, and delaying first official and subsequently effective intervention." Isolating regulators and supervisors from the electoral cycle allows them to set more credible and time-consistent policies. This argument is analogous to the time-inconsistency argument for monetary policy independence (Čihák, 2010; Fraccaroli et al., 2020). Regulatory and supervisory policies may not be credible if the supervisory agency is politically dependent and hence subject to the shifts in policy preferences driven by the electoral cycle (Quintyn and Taylor, 2003).

So, greater independence from outside political pressures implies that the supervisor is less constrained in preventing financial distress, which should allow the supervisor to act earlier and more decisively before a crisis erupts (Čihák, 2010). In addition, a more independent supervisor could mitigate bank lending to firms with a weak economic basis but a strong political mandate or connection. Likewise, Hutchison and McDill (1999) argue that a supervisor that is closely aligned with the government may be more inclined to provide financial support to problem institutions, thereby creating an additional channel for the moral hazard problem. Finally, independence isolates, at least to a certain extent, the supervisor from the pressures of the private sector that lobbies the government. Ignatowski et al. (2015) show that banks use lobbying expenditures and political connections to have a preferential treatment in case of distress. If the supervisor is independent from the government, the benefits of lobbying the government to obtain a more lenient regulatory or supervisory treatment are substantially reduced, if not non-existent (Fraccaroli et al., 2020).

Importantly, financial sector supervisors should not only be independent from politicians, but also from the financial sector. Heinemann and Schuller (2004) provide evidence that industry influence leads to more lax supervision. As Čihák (2010: 49) argues: "Financial institutions' owners and managers may have good reasons to capture the [supervisory agency]. If a financial institution gets close to insolvency, the incentive structure of its owners and managers (in particular the combination of deposit taking and limited liability) encourages a 'gamble for resurrection': continue to absorb deposits from the public and invest them in increasingly risky projects. If the projects turn up successful, they can create substantial profits to owners, and allow saving the bank; if not, they usually create only limited costs to the owners or managers, but they substantially increase the costs of the ultimate failure ….. This creates incentives for financial institutions' owners and managers to capture the [supervisory agency]. These

[2] This section heavily draws on de Haan (2022).

incentives are likely to be stronger if the public sector plays an important role as an owner of financial institutions."

Fraccaroli et al. (2020) construct an index of regulatory and supervisory independence and test whether reforms which increase independence lead to a lower level of non-performing loans using a panel of more than 3,000 banks in 43 countries from 1999 to 2019. They find that regulatory and supervisory independence is associated with a significant improvement in financial stability: following a reform that increases independence, banks hold fewer non-performing loans. Furthermore, reforms are associated with an improvement in bank efficiency and have no effect on bank profitability.

Consistent with the arguments in favour of supervisory independence as discussed above, the SSM is very independent. In fact, the SSM has in its charter independence provisions that are essentially copy-pasted from the EU Treaty articles on monetary policy (Angeloni, 2019). It is stipulated that both the ECB and the national supervisors of participating countries "shall act independently", that the members of the ECB Supervisory Board "shall also act independently and objectively in the interest of the Union as a whole", and that they "shall neither seek nor take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body". The SSMR also underlines that "the institutions, bodies, offices and agencies of the Union and the governments of the Member States and any other bodies shall respect that independence".

According to then-Supervisory Board member af Jochnick (2022), "independence and accountability are two sides of the same coin – one cannot exist without the other. While it is sometimes suggested that accountability is a necessary "counterweight" to independence, I believe that framing this question as a zero-sum game essentially amounts to a false dichotomy. Rather than seeing independence and accountability as mutually exclusive, they should be seen as mutually reinforcing." And: "one cannot be held to account for decisions unless these were taken in an independent manner in the first place".

3. ACCOUNTABILITY AND TRANSPARENCY

3.1. On the link between accountability and transparency

The *Oxford English Dictionary* defines accountable as "obliged to give a reckoning or explanation for one's actions; responsible." In a principal-agent setup, the essence of accountability is that once a principal has delegated a particular task to an agent and has given the agent instruments to perform this task, the agent (the accountee) must be held accountable by the principal (the accountor) for achieving the objective.[3] Asymmetric information is a crucial problem here, as the principals only know imperfectly whether their agents are serving their interests faithfully and efficiently, or are instead neglecting them, or even pursuing selfish interests.

In my view, the concept of accountability has three main features: 1. Decisions about the mandate of the supervisory agency. 2. Disclosure of actual policy (transparency). 3. Actions in case the principal is not satisfied with how well the agent has performed (rectification).

In a democratic society, it is up to elected politicians to decide on the *mandate* for the supervisory authorities. The more clearly defined institutional mandates are through measurable objectives, the easier it will be for the supervisor to explain whether it has delivered on its goals. As af Jochnick (2022)

[3] As pointed out by Maricut-Abdik (2020), EU banking supervision deviates to some extent from this logic as the SSM was established by a Council Regulation adopted through a special legislative procedure in which the EP was only consulted (Art 127(6) TFEU). From this perspective, national governments in the Council are the principal of the ECB in banking supervision.

argues: "a lack of clarity in institutional mandates may lead to excessive discretion attributed to the independent function, which might be particularly scrutinised by other stakeholders (such as regulators) in times of crisis. This is why I also believe that such provisos are essential for the sustainability of the independent function over time." As pointed out by Amtenbrink and Lastra (2008), accountability is facilitated when there is one objective, rather than multiple objectives, and when that objective is narrowly defined rather than formulated in broad terms (see also Kirakul et al., 202).[4] If there are multiple objectives, a clear and unambiguous ranking is needed. As Högenauer (2023: 124) points out, in case of multiple objectives that are not prioritized, "the risk of a 'runaway agent' increases: If it is unclear which goals take precedence, the agent is de facto largely free to define its own mandate and pick indicators through which to assess its own performance."

Transparency can be defined as "the extent to which the supervisor discloses information that is related to the supervisory process" (Liedorp et al. 2013: 313). Transparency is a crucial component of ensuring accountability (Amtenbrink and Lastra, 2008; Högenauer, 2023). As Blinder et al. (2024), referring to transparency of central banks, put it: "central banks must offer meaningful words, that is, there must be transparent communication. Without that, accountability—that is, answering to some "higher" authority (the principal) about how well the central bank has achieved its given mandate—is a will-o'-the-wisp."

There are, however, two major differences between accountability for monetary policy and accountability for supervisory policy. First, the objective of supervisory policy is less easy to define than the objective of monetary policy (i.e., price stability). And that makes it more difficult to determine whether the objective has been achieved. For example, whereas the EU Treaty clearly mandates the ECB to maintain price stability, and the ECB Governing Council has adopted a numerical objective in that regard (aiming for 2% inflation over the medium term), SSMR conferring supervisory tasks on the ECB says that it does so "with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system".[5] This formulation thus leaves ample room for interpretation. This not only hampers accountability, but may also undermine independence (Angeloni, 2019), as independence and accountability are essentially two sides of the same coin. Second, as pointed out by af Jochnick (2022), banking supervision requires taking decisions on individual entities and on measures directly affecting individual citizens, which may have an impact on individual rights and liberties.

In my view, these considerations make an argument for focusing the accountability mechanisms in the case of supervisory policy 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.

The accountor may ask questions demanding something from the accountee – information, justification of conduct, or change of decisions. This is a crucial part of the accountability process. Accountability interactions have at least three steps, in which: (I) the accountor contests the decisions of the accountee; (II) the accountee silences, rejects or engages with said contestation and (III) the

[4] The mandates of many banking authorities have multiplied far beyond their core safety and soundness (S&S) remit. Kirakul et al. (2021) report that banking authorities in 27 surveyed jurisdictions report up to 13 additional objectives beyond S&S. They conclude that some of these additional objectives are key priority areas of national governments, clouding the demarcation between prudential and political spheres.

[5] See Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

accountor follows up on the issue or not, thus continuing or ending contestation on the matter (Maricut-Akbik, 2020).

Rectification: if, in the end, the principal is not satisfied by the performance of the agent, the principal can intervene by, for example, giving the agent a different objective or sanctioning the agent. The principal may decide to amend the charter of the agency, thereby removing or adding responsibilities, or even change the independent status of the agency altogether. This is arguably the strongest and most direct mechanism of democratic accountability. According to Bovens (2007), "accountability without sanctions is incomplete as the presence of a possibility to sanction makes the difference between noncommittal provision of information and being held to account." However, it is important in this respect to avoid political interference in the normal activities of the agent.

3.2. The benefits of transparency

Apart from being an indispensable part of accountability, some other arguments have been put forward why transparency of banking supervisors may be beneficial (de Haan, 2022). First, transparency enhances the legitimacy of the supervisor. Especially in times of financial turmoil, the legitimacy of the authorities responsible for banking supervision is crucial. Second, transparency will increase the predictability of the supervisor, which, in turn, may stimulate banks to adhere to existing regulation. Indeed, Arnone et al. (2007) report a positive correlation between the transparency of the supervisor (measured as the extent to which countries implement the IMF Transparency Code on Banking Supervision) and the effectiveness of banking supervision. Third, transparency forces supervisors to take careful decisions and to be consistent, reducing arbitrary decision-making. Finally, supervisory transparency may enhance market discipline. As Kohn (2011) put it: "Although better market discipline may not be sufficient for financial stability, it is essential, and better transparency is a necessary condition for better market discipline. The authorities have a critical role to play in promoting adequate transparency. Those same market failures that call for an important role in the regulation of financial institutions – moral hazard, systemic externalities, collective action problems – also imply that institutions and investors do not have the incentives to release as much or as useful information as is needed to judge fully and accurately the risks to the institutions or to the broader financial system. Many of the characteristics of "useful" information are things the authorities can help banks and other market
participant coordinate on, for example enforcing consistency across institutions, jurisdictions, and time." Kohn thus endorses the 'transparency-stability' view which holds that transparency facilitates the efficient allocation of resources by improving market discipline via reducing informational asymmetries. Increased transparency permits greater market discipline whereby strong banks are rewarded for their risk management and performance and weak banks are penalized with higher costs of raising capital and deposits, thereby enabling early detection of weak banks before they drag the entire banking system into crisis.

Still, as pointed out by Tadesse (2006), the 'transparency-fragility' view implies that more transparency, notably on interventions related to specific institutions, may engender banking-system instability. Disclosure of financial problems at the bank level may lead to the bank's failure through a bank run. A good example is the run on the U.K. bank Northern Rock in September 2007 after disclosure that it had to resort to the Bank of England. Furthermore, information about problems of a specific bank may be seen as indicator of widespread problems in the banking system, thereby possibly leading to runs on several banks. Lack of transparency may also be needed for "constructive ambiguity," which is one means of limiting moral hazard due to supervisory authority acting as the lender of last resort. By introducing an element of uncertainty into the provision of support, pressure can be maintained on

banks to act prudently, since banks will not know whether they will be rescued or not (Freixas et al., 1999). These considerations suggest that there may limits to transparency. Finally, there may be legal constraints for supervisors to release the information that they collect about individual banks.

There is very limited empirical research on the benefits and drawbacks of supervisory transparency. Following up on previous work in this regard by Oosterloo et al. (2007), Čihák et al. (2012) examine whether the publication of financial stability reports and its quality rating influence the occurrence of banking crises. They find that the publication of financial stability reports as such does not have an effect on financial stability, but the reports' quality ratings are positively related to financial stability. Horváth and Vaško (2016) construct a financial stability assessment transparency (FST) index and examine whether it helps explain (1) the share of non-performing loans; (2) financial stress; and (3) banking crisis. They find that there is a non-linear effect of transparency on the degree of financial stability; in other words, too much transparency may be harmful.

3.3 How to measure transparency?

Liedorp et al. (2013) have proposed an *index of supervisory transparency* which refers to the implementation of banking supervision and therefore does not cover the decision-making process for banking regulation. It follows the structure of the Eijffinger and Geraats (2006) index for central bank transparency, thus capturing five aspects of transparency: political, economic, procedural, policy and operational transparency. *Political transparency* refers to openness about policy objectives. This comprises a statement of the formal objectives of banking supervision, including an explicit prioritization in case of potentially conflicting goals. Political transparency is enhanced by institutional arrangements, like independence of the supervisor, because they ensure that there is no undue influence or political pressure to deviate from stated objectives. As pointed out by Quintyn et al. (2007), various arrangements can enhance the independence of the supervisor. For instance, supervisors should have the final word on granting and withdrawing banking licenses. Furthermore, supervisory agencies that enjoy a high degree of budgetary independence are better equipped to withstand political interference. Finally, one of the most important requirements is that supervisors enjoy legal protection in the performance of their duties. The absence of proper legal protection may have a paralyzing effect on supervision as the fear of suits brought by regulated entities against supervisors in their personal capacity could affect their willingness to take appropriate supervisory measures. *Economic transparency* focuses on the data and information used as input for supervisory policy making. *Procedural transparency* is about disclosure about the way supervisory decisions are taken. It captures the strategy, the considerations on the basis of which decisions are taken, and an explanation how the decisions are taken. *Policy transparency* refers to the prompt disclosure of policy decisions. Finally, *operational transparency* is about the implementation of policy actions, involving an evaluation of whether targets have been reached, a discussion of mistakes made, and an assessment about the adequacy of its policies in light of its objectives. Appendix 1 provides full details about the construction of the index.

Liedorp et al. (2013) construct their index for 24 banking supervisors, mostly from industrialized countries (but not for the SSM). It turns out that no supervisor reaches the maximum score of 15 points. The average total score is 8.4 points, whereas the minimum is 5.5 points and the maximum 12 points. In their sample, the average of political transparency is the highest (2.3), while the average score for procedural transparency is the lowest (1.0).

4. ACCOUNTABILITY AND TRANSPARENCY OF THE SSM

According to Buch (2024), “The achievements of the SSM during its first ten years are a strong foundation for our future work. We closely cooperate within the system, we apply the same standards across all supervised banks, and risks have been reduced. This would not have been possible without the trust that has been forged between supervisors across Europe.” Buch adds: “But we are not supervising in a vacuum – we need to continuously and transparently connect with all stakeholders. Accountability to European institutions is essential – to explain the risks we are seeing and how we are addressing them.”

Article 1 of the SSMR stipulates that “this Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage.” However, these objectives are not precisely defined. Amtenbrink and Markakis (2019: 12) therefore conclude that “[t]o the extent that the safety and soundness of credit institutions and the stability of the financial system may be qualified as the core objectives of the ECB as a European supervisor, they hardly amount to a quantifiable yardstick based on which the performance of the ECB can be objectively evaluated.” It follows that, at a minimum, the SSM should be explicit about the correspondence between its policies and the achievement of these objectives to the institutions to which it is accountable (Nicolaides, 2019). But even this may be problematic as the effects of regulatory actions may be hard to identify and circumscribe, even with the benefit of hindsight (Ioannou et al., 2020).

The ECB is accountable for the exercise of its supervisory tasks to the European Parliament (EP) and the Council, representing, respectively, the citizens of the EU and Member States.[6] The SSMR contains explicit accountability provisions for the banking supervisor (Ioannou et al., 2020). The accountability framework was further clarified by an Interinstitutional Agreement (IIA) with the European Parliament and a Memorandum of Understanding (MoU) with the Council of the EU.[7] Both documents make clear what information should be covered by the annual report as well as the procedural aspects of hearings, exchange of views, and responding to questions. The IIA also includes obligations with regard to access to information.

Bovens (2007) distinguishes three stages in the processes of accountability. In the first stage, information is gathered by means of reports and investigations. In the second stage, justifications for choices that were made are discussed. The final stage is about rectification, i.e., the potential effects if it is found that the mandate has been breached. In my view, the SSM legislative framework establishes the possibility for the information and discussion stages of accountability, but hardly for the rectification stage. In the context of the SSM, there are no formal sanctions. For example, there is no formal mechanism by which a European institution in specific circumstances can approve, suspend, annul or defer decisions (a so-called override mechanism). Furthermore, the statutory independence of the ECB has been included in primary Community law and can only be changed by an amendment

6 Art. 20 SSMR and Recital 55 SSMR; cf.Art.10(2) TEU. The involvement of the executive branch has been traditionally more common in the accountability of financial supervision (Ioannou et al., 2020). In this paper, we focus exclusively on the EP.

7 Interinstitutional Agreement between the EP and the ECB on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the SSM, [2013] OJ L 320/1; European Central Bank, ‘Memorandum of understanding between the Council of the European Union and the European Central Bank on the cooperation on procedures related to the SSM’, https://www.ecb.europa.eu/ecb/legal/pdf/mou_between_eucouncil_ecb.pdf.

to the EC Treaty itself (Amtenbrink and Rosa, 2008).[8] The dismissal of the Supervisory Board Chair can only happen on a proposal by the ECB and must be approved by the European Parliament and the Council. Finally, as pointed out by Amtenbrink and Markakis (2019), since the ordinary legislative procedure is not applicable, the possibility of amending the SSMR cannot be considered an instrument at the disposal of the EP.[9] However, ter Kuile et al. (2015: 174) argue that the absence of formal sanctions, "does not mean that there is no moment of "taking the blame or putting matters right". There can be other ways to ensure that the agent takes into account the principal's views, for example due to the indirect pressure that is felt when the agent has to explain what it has been doing or via informal coercion by the principal; this would have a preventative or "prophylactic" effect.""

In practice, there are *three main channels of accountability* for the ECB as supervisor (Fromage and Ibrido, 2018). *First*, hearings and exchanges of views, with the Chair of the Supervisory Board in the European Parliament and in the Eurogroup. There are three types of parliamentary discussions (Amtenbrink and Markakis, 2019): ordinary public hearings; ad hoc exchanges of views; and confidential meetings. The chair of the Supervisory Board participates in an ordinary public hearing twice a year on request of the EP's competent committee, i.e., the Committee on Economic and Monetary Affairs (ECON Committee). In addition, the chair of the Supervisory Board can be invited to ad hoc exchanges of views on supervisory issues. Furthermore, upon request, the chair of the Supervisory Board can schedule confidential oral discussions behind closed doors with the chair and vice-chairs of the ECON Committee in cases "[w]here [it would be] necessary for the exercise of Parliament's powers under the TFEU and Union law".[10]

In 2023, the Chair of the Supervisory Board appeared before the EP's ECON Committee on four occasions (three regular public hearings and one ad hoc exchange of views on the failure of Silicon Valley Bank and its implications for financial stability in Europe).

Amtenbrink and Markakis (2019) analyse the exchanges between the chair of the Supervisory Board and the ECON Committee. They conclude that: "Overall, the impression one gets from a first qualitative analysis of these hearings is that the MEPs do not (explicitly) ask questions on the achievement of the SSM's objectives, but rather focus on the overall performance of the banking sector or the financial health of individual banks. Accordingly, the chair of the Supervisory Board is asked to give an assessment of the situation in the banking sector in the SSM countries or to give an account for the board's action or inaction with respect to individual banks. The chair is further asked to comment on issues that fall squarely within her mandate (for example, non-performing loans), or issues that can have an impact on objectives falling within the board's mandate (for example, a lack of investor and consumer protection can have an impact on financial stability)." (p. 22).

Maricut-Akbik (2020) investigates both written and oral exchanges between the EP and the ECB. The author concludes that "the extent to which MEPs contest the supervisory decisions of the ECB remains limited. Too many of their questions simply ask for policy views or are not addressed to the relevant authority…. Second, the SSM confidentiality rules prevent MEPs from receiving full answers to questions that contest the situation at individual supervised banks. …. However, it would be inaccurate to conclude that the ECB refuses to engage with contestation of its supervisory conduct in general. In fact, the ECB is open to engage with contestation in response to requests for information about the internal organization of the SSM and the decision-making process in banking supervision. Moreover,

[8] This also holds for the accountability of the ECB as monetary authority (Gormley and de Haan, 1996; Amtenbrink, 1999).

[9] However, the EP's approval is required for the removal of the chair or vice-chair of the Supervisory Board from office, but this can only be done if they no longer fulfil the conditions required for the performance of their duties or have been guilty of serious misconduct (Amtenbrink and Markakis, 2019).

[10] SSM Regulation art.20(8).

in the few cases where MEPs demanded a change of conduct, the ECB demonstrated willingness to address their requests and subsequently made the required adjustments." (p. 1211).

Second, written questions of Members of the European Parliament and the Eurogroup to the Chair of the Supervisory Board. The ECB must reply in writing to questions put to it by the EP within five weeks of their transmission to the ECB. These questions and replies are accessible on the ECB's website. In 2023, the Chair of the Supervisory Board responded to two written questions from Members of the EP on banking supervision-related matters and to one written question from a member of a national parliament.

Third, the submission of an annual report on supervisory activities to the European Parliament, the EU Council, the Eurogroup, the European Commission, and the national parliaments of participating Member States.[11] The report is usually published in March of the subsequent year. In the latest report covering the year 2023, most of the information provided refers to the banking system as a whole. Financial institutions are only identified in chapter 2 about authorisations, enforcement and sanctioning procedures. For instance, the report mentions the names of the institutions for which the SSM concluded asset quality reviews, but further details are not provided. In explaining its decisions, the SSM also in this chapter generally does not identify the names of the institutions. For instance, the report mentions that "[o]f the 13 sanctioning proceedings handled in 2023, five were related to suspected breaches of directly applicable EU law (ECB decisions and regulations included) committed by five significant institutions. Three of these proceedings were finalised in 2023 with three ECB decisions imposing penalties amounting to €17,925,000 on three supervised entities for breaches of capital requirements and the misreporting of own funds requirements for market risk and credit risk respectively. Two proceedings were still ongoing at the end of 2023." In its Annual Report on Sanctioning Activities, the SSM generally also does not provide information about the institutions concerned. However, in its press releases the ECB mentions the names of the financial institutions concerned.

The SSMR and IAA provide several guidelines about the information to be provided by the SSM. To implement Article 4 of Section I of the IAA ("The ECB shall provide Parliament's competent committee at least with a comprehensive and meaningful record of the proceedings of the Supervisory Board that enables an understanding of the discussions, including an annotated list of decisions"), MEPs may also consult a comprehensive and meaningful record of the proceedings of the Supervisory Board in a secure reading room (Fromage, 2019). Furthermore, the ECB must duly inform the ECON Committee of the procedures (including timing) it has set up for the adoption of regulations, decisions, guidelines and recommendations that are subject to public consultation in accordance with the SSMR. The ECB must, in particular, provide information on the principles and indicators it is generally using in developing acts and policy recommendations. Moreover, the ECB must transmit the draft acts before the beginning of the public consultation procedure (Amtenbrink and Markakis, 2019).

An important question is whether the information provided by the SSM is sufficient for the EP to come to an informed judgement. Is there a need for more or other information? According to the ECB website, "ECB supervisory decisions need to be accompanied by clear reasoning, setting out the material facts, legal reasons and supervisory considerations underlying the decision."[12] However, some authors come to different conclusions. For instance, Nicolaides (2019: 148) argues that "the EP–ECB

[11] National parliaments may address to the ECB their reasoned observations on that report, may request the ECB to reply in writing to any of their observations or questions in respect of the ECB's supervisory tasks, and may invite the Chair of the Supervisory Board to participate in an exchange of views in relation to the supervision of banks in that Member State together with an NCA representative. See also Fromage (2019).

[12] https://www.bankingsupervision.europa.eu/organisation/decision-making/html/index.en.html

Agreement and the Council–ECB MoU do not require the SSM/ECB to explain how and why it converts its broad tasks into operational instruments and how they relate to its ultimate goal of preservation of financial stability. The Annual Reports state what the SSM does. They do not explain why it has chosen the particular regulatory procedures and instruments. Indeed, it is not obvious how the broad supervisory objectives of preserving financial stability and ensuring the soundness of financial institutions translate into the chosen instruments and procedures and justify the SSM's actual decisions. It is not easy for stakeholders to check whether those broad objectives have been achieved in practice and therefore whether the ECB has done what is supposed to do." Still, the author also points out that the ECB has set more specific policy targets, has provided extensive explanation of how it enforces its regulatory powers, and has adjusted its instruments according to the experience it has gained. A good illustration of more specific targets is the SSM's supervisory priorities for 2024-2026. Supervised institutions will primarily be asked to strengthen their resilience to immediate macro-financial and geopolitical shocks (Priority 1), as well as accelerate the effective remediation of shortcomings in governance and the management of climate and environmental risks (Priority 2) and make further progress in their digital transformation and building robust operational resilience frameworks (Priority 3). Figure 1 lists seven key vulnerabilities that will be addressed under these priorities.

Figure 1: SSM priorities 2024-2026

Source: ECB

Amtenbrink and Markakis (2019) conclude that "the information requirements under the SSM Regulation and the Interinstitutional Agreement, coupled with the (internal organisation of the) regular hearings and ad hoc exchanges, in principle provide a robust basis for the EP to understand and evaluate policy decisions ..." (pp. 22-23).

Högenauer (2023) assess the transparency of the SSM using the index proposed by Liedorp et al. (2015). The author concludes that the score of the ECB is 12 out of 15, which is high in absolute terms and impressive in view of the limited transparency of national supervisors at the time of its creation. The Annex shows the scoring of the ECB on this index.

The score for the clarity of the objectives of the SSM is 0.5 as there are several objectives without a clear prioritization (see Figure 1). However, the SSM receives full points for the accessibility of laws and regulations and the operational independence. That brings the overall score for political transparency at 2.5. Högenauer (2023) argues that the score for the SSM on economic transparency is 3 as it has made a detailed explanation of its supervisory review and evaluation process available online, publishes detailed data on individual banks and, since 2021, it no longer only publishes the aggregate results of

the stress tests, but also the results for individual banks. However, note that in general the SSM does not publish information on individual banks, so that a score of 2.5 may better capture the SSM's economic transparency. Högenauer (2023) gives the SSM a score of 2 for procedural transparency, arguing that it publishes its strategy for the medium and short term, but does not publish minutes of the Supervisory Board meetings. However, note that the SSM has not made its intervention ladder public, so that a score of 1 on procedural transparency may be more adequate. The score for the SSM's policy transparency given by Högenauer (2023) is 2.5 as non-sanctioning decisions are only reported in the Annual Report in an aggregate form. However, at the SSM provides information on non-sanctioning decisions so that a score of 3 may better reflect the SSM's policy transparency. Finally, Högenauer (2023) gives the SSM a score of 2 points for operational transparency. The reason why the maximum score is not reached is that internal audit reports are not published.

In conclusion, although Högenauer's (2023) score on the SSM's transparency may be too high (my score would be 11 instead of 12), it is clear that the SSM is very transparent compared to the national supervisors at the time the SSM was created (see Table 1). Note, however, that the scores for national supervisors included in Table 1 refer to the situation around 2010. In view of the increased importance of supervisory transparency it is likely that the current scores of these supervisors would be higher. In fact, the SSM may have inspired national supervisors to increase their transparency. Unfortunately, there is no more recent information available on the transparency scores of national supervisors.

Table 1: The transparency of the SSM and national European supervisors

Supervisor:	Transparency index score:
SSM (Högenauer, 2023)	12
SSM (my score)	11
Belgium	6.25
France	7.75
Germany	7
Ireland	8.75
Italy	8.75
Luxembourg	6.25
The Netherlands	7.75
Slovenia	6.75
Spain	9.5

Source: Liedorp et al. (2013), Högenauer (2023).

5. CONCLUSION

ter Kuile et al. (2015: 169) argue that: "Although the objectives [of the SSM] are not that precise… and the Council and Parliament do not have sanctions at their disposal, [the accountability] processes will put pressure on the ECB to properly explain "what it has been doing" and why it considers this the right way to fulfil its supervisory tasks. It leads towards a dialogue, which assures accountability."

I disagree. In my view, accountability has three main features: 1. Decisions about the mandate of the supervisory agency; 2. Disclosure of actual policy (transparency); and 3. Actions in case the principal is not satisfied with how well the agent has performed (rectification).

The mandate of the SSM, 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 yardstick based on which the performance of the ECB can be objectively evaluated. Nowadays, the ECB publishes more specific policy targets in the form of supervisory priorities. Still, the effects of regulatory actions may be hard to identify and circumscribe, even with the benefit of hindsight. All this implies that the 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 an indispensable component of accountability. To assess the SSM's transparency, the index as proposed by Liedorp et al. (2013) is used. According to Högenauer (2023), the score of the ECB is 12 out of 15 (in my own assessment: 11 out of 15), which is high in absolute terms and impressive in view of the limited transparency of national supervisors at the time of the SSM's creation.

An important step in the accountability process is that the accountor may ask questions demanding something from the accountee – information, justification of conduct, or change of decisions. Studies that have examined the Banking Dialogue suggest that MEPs do not (explicitly) ask questions on the achievement of the SSM's objectives, but 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). Furthermore, quite a few questions are not addressed to the relevant authority.

Finally, on the basis of the information provided and the discussion, the accountor (in our case, the EP) can decide whether subsequent steps may be needed. In my view, the SSM legislative framework falls short for the rectification stage. There are no formal sanctions the EP can impose in case it concludes that the SSM failed. For example, since the ordinary legislative procedure is not applicable, the possibility of amending the SSMR cannot be considered an instrument at the disposal of the EP. Still, that does not imply that the EP is entirely toothless. If the EP challenges SSM policies on serious grounds, that may have an effect (ter Kuile et al., 2015). However, according to Maricut-Akbik (2020), MEPs hardly contest the supervisory decisions of the ECB.

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ANNEX

The supervisory transparency index and the score of the SSM

This annex contains detailed information on the banking supervision transparency index. The index is the sum of the scores for the answers to the fifteen questions below (min=0, max=15). Note that all questions pertain to published information that is freely available. The score for the SSM according to Högenauer (2023) is shown in bold. Where my assessment is different, this is indicated in italics.

Political transparency

(1) Is there a formal statement of the objective(s) of banking supervision, with an explicit prioritization in case of multiple objectives?

No formal objective(s) = 0.

Multiple objectives without prioritization = ½.

One primary objective, or multiple objectives with explicit priority = 1.

(2) Are all relevant supervisory laws and regulations, including those made by the supervisory authority, easily accessible to the public?

No = 0.

Only the relevant laws/only the regulations made by the supervisory authority = ½.

Yes = 1.

(3) Are there explicit institutional arrangements or contracts between the supervisory authorities and the government, which strengthen the operational independence of the supervisory authority?

No = 0.

One positive answer = ¼.

Two positive answers =½.

Three positive answers = ¾.

Four positive answers = 1.[13]

Economic transparency

(4) To what extent does the supervisory authority make information from the regular off-site financial reports of banks available to the public?

None = 0.

Only key indicators (solvability, profitability) at an aggregate level = ¼.

Extensive information (e.g. about market risks, operational risks, credit risks, leverage ratio) at an

[13] According to art. 19 SSRM, "members of the Supervisory Board and the steering committee shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body."' In addition, other institutions are required to respect this independence. The Chair of the Supervisory Board can only be removed if he/she no longer fulfils the conditions required for the performance of his duties or has been guilty of serious misconduct. The ECB does not require a priori approval of its budget and can only be held liable for damages under specific conditions, such as unlawful behaviour.

aggregate level = ½. Key indicators for (major) individual institutions = ¾. **Extensive reporting about (major) individual institutions = 1.**

(5) Is the method the supervisory authority uses to come to a risk scoring of a bank publicly available; e.g. which factors or risks does the supervisory authority look at when assessing a bank and how do these inputs lead to a scoring?

No = 0. Yes, but no explanation = ½. **Yes, with explanation = 1.**

(6) To what extent does the supervisory authority inform the public about the outcomes of its risk assessments?

Not at all = 0. Only at an anonymous basis and/or at an aggregate level without explanation = ¼. *Only at an anonymous basis and/or at an aggregate level with explanation = ½.* In individual cases (publishing name of bank) without explanation of case = ¾. **In individual cases (publishing name of bank) with explanation of case = 1.**

Procedural transparency

(7) Has the supervisory authority a clear 'supervisory strategy', for instance a publicly available document that explains how the supervisory authority wants to reach its goals in the coming period, its priorities and/or main supervisory themes?

No = 0. Yes, but dispersed = ½. **Yes within one document =1.**

(8) Is there a publicly available explicit strategy for supervisory interventions; e.g. is there an 'intervention ladder' that links the outcome of the risk assessment to specific intervention actions?

No = 0. Yes, but no explanation = ½. **Yes, with explanation = 1**.

(9) Does the supervisor give a comprehensive account of policy deliberations within a reasonable amount of time?

No = 0. Yes = 1

Policy transparency

(10) To what extent does the supervisory authority inform the public about formal interventions, e.g. issuing directions, issuing fines and replacing directors of financial institutions?

Not at all = 0. Only at an anonymous basis and/or at an aggregate level without explanation = ¼. Only at an anonymous basis and/or at an aggregate level with explanation = ½. In individual cases (publishing name of bank) without explanation of case = ¾. **In individual cases (publishing name of bank) with explanation of case = 1.**

(11) Are decisions about formal interventions promptly announced?

No = 0. **Yes = 1**

(12) To what extent does the supervisory authority inform the public about formal non-sanctioning supervisory decisions, e.g. granting of licenses, giving permission to mergers and acquisitions, doing fit and proper checks?

Not at all = 0. Only at an anonymous basis and/or at an aggregate level without explanation = ¼. **Only at an anonymous basis and/or at an aggregate level with explanation = ½.** In individual cases (publishing name of bank) without explanation of case = ¾. *In individual cases (publishing name of bank) with explanation of case = 1.*

Operational transparency

(13) Does the supervisory authority regularly report to parliament about reaching its targets, and if so, how often?

No = 0. Yes, but less than once a year = ½. **Yes and at least once a year = 1.**

(14) Does the supervisory authority regularly publish an internal evaluation (self-assessment) of its functioning, and if so, how often?

No = 0. Yes, but less than once a year = ½. Yes and at least once a year = 1.

(15) Is there a regular publicly available external evaluation of the functioning of the supervisory authority, and if so, how often?

No = 0. Yes, but less than once a year = ½. **Yes and at least once a year = 1.**

This paper argues that the mandate of the SSM is too imprecise to function as a quantifiable yardstick based on which the performance of the ECB can be objectively evaluated. The accountability mechanisms should therefore focus on policy processes, underlying analyses and motivations instead of results.
Based on the transparency index of Liedorp (2013), the SSM appears much more transparent than national supervisors at the time of the SSM's creation.
However, the legislative framework lacks one feature that is usually associated with the concept of accountability, as the EP has no possibility to impose formal sanctions if the SSM underperforms.
This document was provided by the Economic Governance and EMU Scrutiny Unit at the request of the ECON Committee.

PE 760.234
IP/A/ECON-BU/FWC/2020-003/LOT3
Print ISBN 978-92-848-2235-5 | doi: 10.2861/2957982 | QA-01-24-005-EN-C
PDF ISBN 978-92-848-2234-8 | doi: 10.2861/0737942 | QA-01-24-005-EN-N