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PRESS RELEASE

The single supervisory mechanism or ‘SSM’, part one of the Banking Union
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The introduction of a centralised system of banking supervision is a major development in the area of financial regulation in the European Union. The European Central Bank will supervise directly all larger banks in the euro area, whereas the national supervisors will continue to supervise the smaller banks and the non-bank financial institutions, under the overall direction of the ECB. The regime only applies in the 18 euro area Member States, but an opt-in has been provided for the non-euro area Member States. The new regime is the first step in the multilayered scheme referred to as the Banking Union. The Basel III framework has already been implemented in European law through the Capital Requirements Directive and Regulation (CRD IV and CRR). The centralised banking supervision designated as the Single Supervisory Mechanism (SSM) will be followed by the Bank Recovery and Resolution Framework (BRRD) and the Deposit Guarantee Scheme (DGS), both applicable in all EU Member States. The SSM, the Single Resolution Mechanism (SRM) and the accompanying Single Resolution Fund (SRF) will only be applicable in the euro area Member States. The latter measures are expected to be adopted before the May 2014 European elections.

The complexities of creating a single banking supervisory space are considerable. The definition of the scope raises significant questions: rather than centralising all supervision, only the largest and potentially systemic banks have been included, creating distinct outcomes depending on the banking structure of the Member States concerned. The national supervisors will remain active in fields other than banking supervision. Furthermore, to assist the ECB in its direct banking supervision, the national supervisors will largely be able to continue their previous activities. The ECB will be entitled to formulate general guidelines applicable to all banks, to bring a bank under its direct supervision if it deems necessary, or to enjoin certain actions to be taken by a national supervisor. These instruments will ensure a coherent supervisory scheme and contribute to the level playing field, at least as far as supervision is concerned.

The integrated supervisory regime is likely to affect the banking groups’ decision to set up foreign establishments as branches or as subsidiaries. Banks have complained repeatedly about the need to deal with as many supervisors as states in which they carry out operations. Also the cost structure of running the foreign business as a branch rather than as a subsidiary will be beneficial. The regulation rightly reiterates that Member States can not make establishment conditional upon the requirement to create a subsidiary. It will be interesting to analyse the decisions leading banking groups will take.

The governance of the SSM is based on the setting up of a Supervisory Board within the ECB, acting under the overall responsibility of the ECB’s Governing Council. The board is to be regarded as an internal body of the ECB, preparing the decisions of the Governing Council, which has the last word. The Board’s decisions shall be considered approved unless the Council opposes. The supervisory board admits a strong involvement of the 18 euro area national supervisors: each has one member on the board, the ECB being represented by the vice-chair, and four representatives. When national tensions crop up, this will put great pressure on the Governing Council.

The regime of the opt-in states is based on their voluntary choice for joining the SSM, along with the commitment to implement all policies and decisions adopted by the ECB (‘close cooperation regime’). In order to ensure that the overall SSM functions on the same basis, the rules to be applied by that national supervisor should be identical in all participating states. In case of disagreement, the non-euro area state is entitled to abandon the ‘close cooperation’ or to refuse to apply the ECB’s order. The latter will then decide whether or not to keep that Member State in the ‘close cooperation’ scheme. Although this regime can only be assessed properly in due time, it would seem that some states will choose to join the euro outright, rather than to adopt the ‘close cooperation’.

The SSM Regulation has been adopted along with important amendments to the Regulation on the European Banking Authority. The powers of the EBA have been extended especially in the field of supervision, whereas the position of the non-participating states was preserved by the provision that decisions must be adopted by a separate majority of the non-participating states. Over time it is likely that the two main leading banking institutions - the ECB and the Bank of England – will have to agree on most important measures to be decided on within the EBA.

The new regime will enter into force on November 4. The ECB will proceed to a thorough review of the financial position of the candidate banks. This test will encompass a comprehensive risk assessment, an asset quality review and a stress test.

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