

The single supervisory mechanism

Antonio Sáinz de Vicuña
General Counsel, ECB

EFMLG
Paris, 19 April 2013

** The views expressed are solely those of the author
and do not necessarily reflect the position of the ECB*

Outline

1. **Single supervisory mechanism (“SSM”):
background and status**
2. **New role for the ECB**
3. **Close cooperation**
4. **Governance**
5. **Legal framework**
6. **SSM and EBA**



SSM Background: “A genuine EMU” (4 Presidents’ Report, 5.12.2012)

Stage I (2013)

- **Banking Union**
 - Establishment of the **SSM** via ECB
 - Adoption of **BRRD, DGS** and **CRDIV/CRR**
 - Agreement on Framework for Direct Bank Recapitalisation via **ESM**
- **Fiscal Union**
 - Application of **SGP (Six-pack, Two-pack)**
 - Application of Fiscal Stability Treaty
- **Economic Union**
 - Application of **Macroeconomic Surveillance Framework (3 Regulations adopted 2011)**
 - Agreement on Framework for ex ante coordination of economic policy reforms.

Stage 2 (2013-2014)

- **European Resolution Authority and Fund**
- **Framework for “Competitiveness Contracts”**

Stage 3 (post 2014)

- **Central shock-absorption function**



SSM Background: The business case

FIVE REASONS JUSTIFYING THE SSM...

1. Fungibility of money in a monetary area

**2. Horizontal control of liquidity flows:
detecting imbalances, Basel III ratios**

3. Integration of euro money markets

4. No “*Home bias*” in bank supervision

5. Enabling ESM direct recapitalisation



SSM Background: the legal basis



- **Article 127(6) TFEU**
 - **Council Regulation conferring specific tasks on the ECB relating to the prudential supervision of credit institutions:**
 - **European Commission proposes**
 - **Parliament and ECB provide an Opinion**
 - **National parliaments are consulted (Protocols 1 and 2 TFEU)**
 - **Council decides by unanimity**
- **Article 114 TFEU**
 - **Regulation of the European Parliament and of the Council amending Regulation (EC) No 1093/2010 establishing a European Banking Supervisory Authority (“EBA”):**
 - **Co-decision Council and Parliament, QMV**
- **The political link among the two legal basis: use of *Triologue* for both acts**
- **Specific national parliament’s role**

SSM Background: status of the legislative procedure

- **COREPER discussion yesterday**
- **European Parliament debates (May & June)**
- **European Parliament vote (possibly, July)**
- **Opinions or Approval by national parliaments (expected at latest, within June)**
- **Tentative adoption date: July**
- **Summer 2014: expected start of the ECB supervision**



New role for the ECB: central banking and supervision (I)

- The debate at the **Committee of Governors in 1990**. Different traditions, the compromise: **Article 127(5) TFEU = Central banks role in financial stability**
- The debate at the **Maastricht's IGC: Art. 127(6) TFEU as enabling clause for central bank supervision.**

Supervisory models	National Central Banks		National Competent Authorities (NCAs)	
	Integrated Supervision	NCBs contributing to supervisory tasks	Autonomous NCAs	NCAs operating autonomously within the NCBs
Member States	BE, CY, EL, ES, IE, IT, NL, PT, SK, SI (10)	AT, DE, FR (3)	AT, DE, FR, LU, MT (5)	EE, FI (2)

New role for the ECB: central banking and supervision (II)

Synergies with monetary policy:



- **Success of monetary policy rests on:**
 - **Integrated and more homogeneous financial markets that function efficiently and smoothly, able to absorb shocks;**
 - **Better knowledge of status of counterparty banks and of the financial sector and its inter-action with the real economy**
 - **Avoidance of excessive imbalances that distort an homogeneous transmission mechanism within the monetary area; the SSM allows for macro-prudential tools;**
- **Better understanding of the interplay between monetary, supervisory and regulatory policies**

New role for the ECB: central banking and supervision (III)

Necessary safeguards to avoid conflict of interests:

- **Price stability** is and remains the primary objective of the ECB: in case of conflict, price stability prevails;
- **Governance**: the centre of gravity for the SSM will rest on the Supervisory Board (“**SB**”), a new organ of the ECB
- **Central bank independence** is preserved also for the new SSM tasks; however, some risks of political interference remain:
 - The European Parliament and the Vice-Chair of the SB
 - The status of the Mediation Panel
- **Reputational risks**: omissions more than actions

New role for the ECB: the tasks (I)

- **ECB exclusive competence for a list of prudential supervisory tasks for credit institutions of participating MS**
- **NCA's remain competent for tasks that have not been transferred to the ECB**
- **The SSM applies to all euro area MS. Non-euro area MS can opt-in (“close cooperation”)**



New role for the ECB: the tasks (II)

Micro-prudential supervision	<ul style="list-style-type: none"> - Authorisation and withdrawal of credit institutions - Qualifying holdings - Compliance with prudential requirements - Governance arrangements - Stress-tests 	<i>Competent authority</i> <i>Consolidated supervisor</i> <i>Participation in colleges</i> <i>Host authority for non euro area branches</i>
Macro-prudential supervision	Capital buffers and other macro-prudential instruments	<i>Designated authority</i>
Financial conglomerates	Supplementary supervision	<i>Coordinator</i>
Bank resolution	Early intervention measures	<i>Competent authority</i>
Representation at EBA	Coordinate euro area common positions	<i>Voice of euro area, no voting power</i>
ESM – Recapitalisation of credit institutions	Assist the Commission in implementing tasks entrusted by the ESM	

New role for the ECB: task allocation (III)

– **Direct supervision by ECB:**

- **'significant'** credit institutions, as defined (next Slide);
- **'less significant'** credit institutions in certain cases (next Slide).

– Direct supervision means:

- ECB adopts supervisory decisions addressed to the supervised entities;
- NCAs assist the ECB.

– **Indirect supervision by ECB through the NCAs:**

- **'less significant'** credit institutions (next Slide).

– Indirect supervision means:

- NCAs perform the SSM tasks directly on supervised institutions
- ECB may issue regulations, guidelines or general instructions to NCAs;
- ECB oversees the functioning of the system;
- ECB may collect information directly from the entities;
- ECB may decide to exercise directly supervisory powers.

New role for the ECB: task allocation (IV) - direct supervision

Criteria	The concept of 'Significant'
Size (determined on group level for all credit institutions in the group)	Value of assets of the group > 30 billion EUR
Importance to the economy of a participating MS or the EU	<ul style="list-style-type: none"> - Total assets of the group > 20% GDP of the MS of establishment; - Three most significant credit institution in each MS; - ECB agrees with NCA that the credit institution is of significant relevance with regard to the domestic economy; - Direct financial assistance has been requested or received from the ESFS or the ESM
Significance of cross-border activities	Banking subsidiaries in more than one participating MS and cross-border assets or liabilities represent significant part of the total assets or liabilities

New role for the ECB: instrumental powers

In general: within the SSM tasks, the ECB has the statutory powers of NCAs; it may issue Instructions to NCAs to use their national statutory powers; duty of loyal cooperation.

Requests for information

General investigations

On-site inspections (regime similar to Competition Law inspections)

Sanctions:

- **Only on directly supervised institutions; NCAs retain sanctioning power for non-directly supervised institutions;**
- **Only on breaches to directly applicable EU or ECB law; NCAs retain sanctioning power for breaches to national law;**
- **Only pecuniary sanctions; NCAs retain sanctioning powers other than pecuniary.**

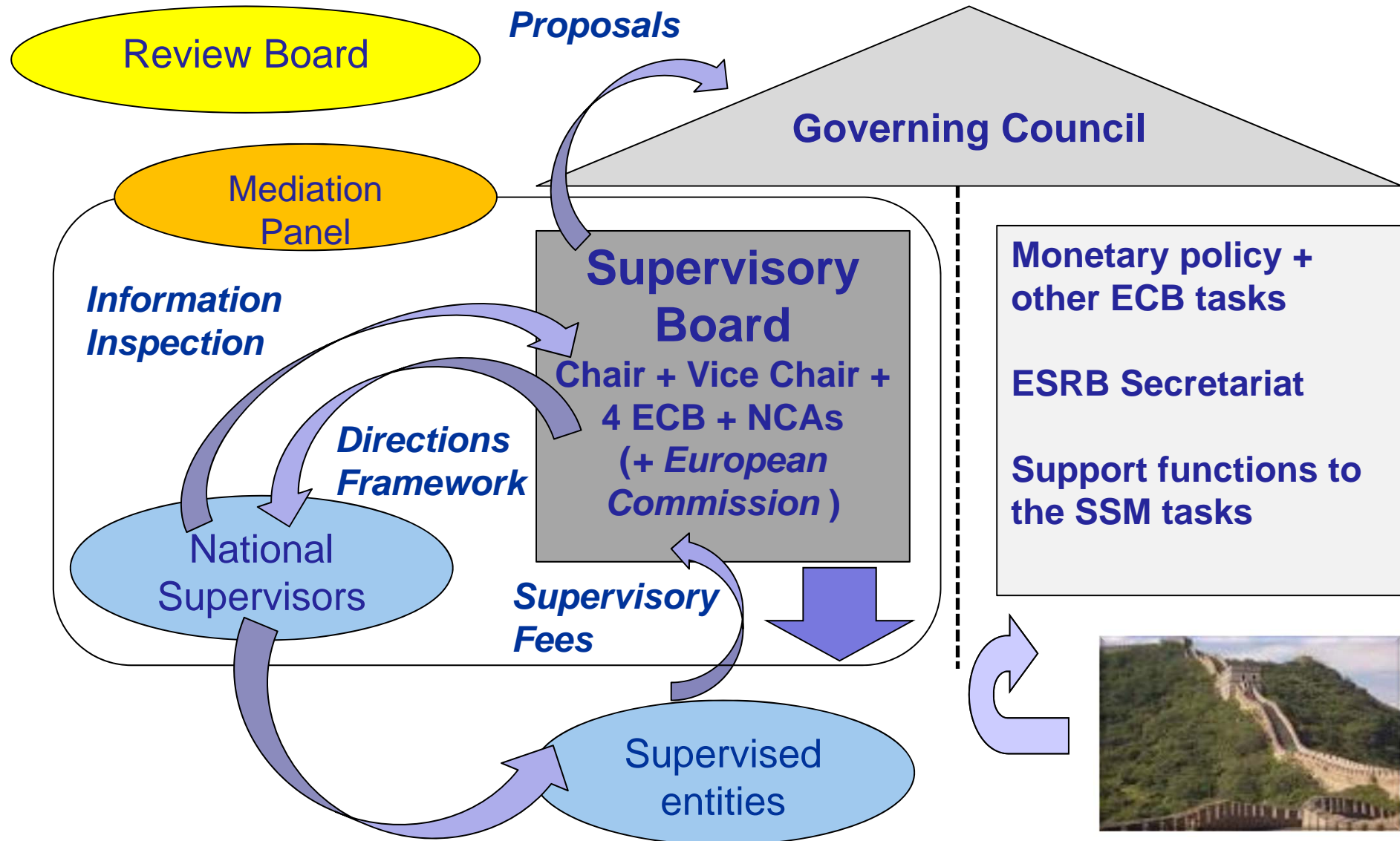
Supervisory fees

Close cooperation with non-euro area MS

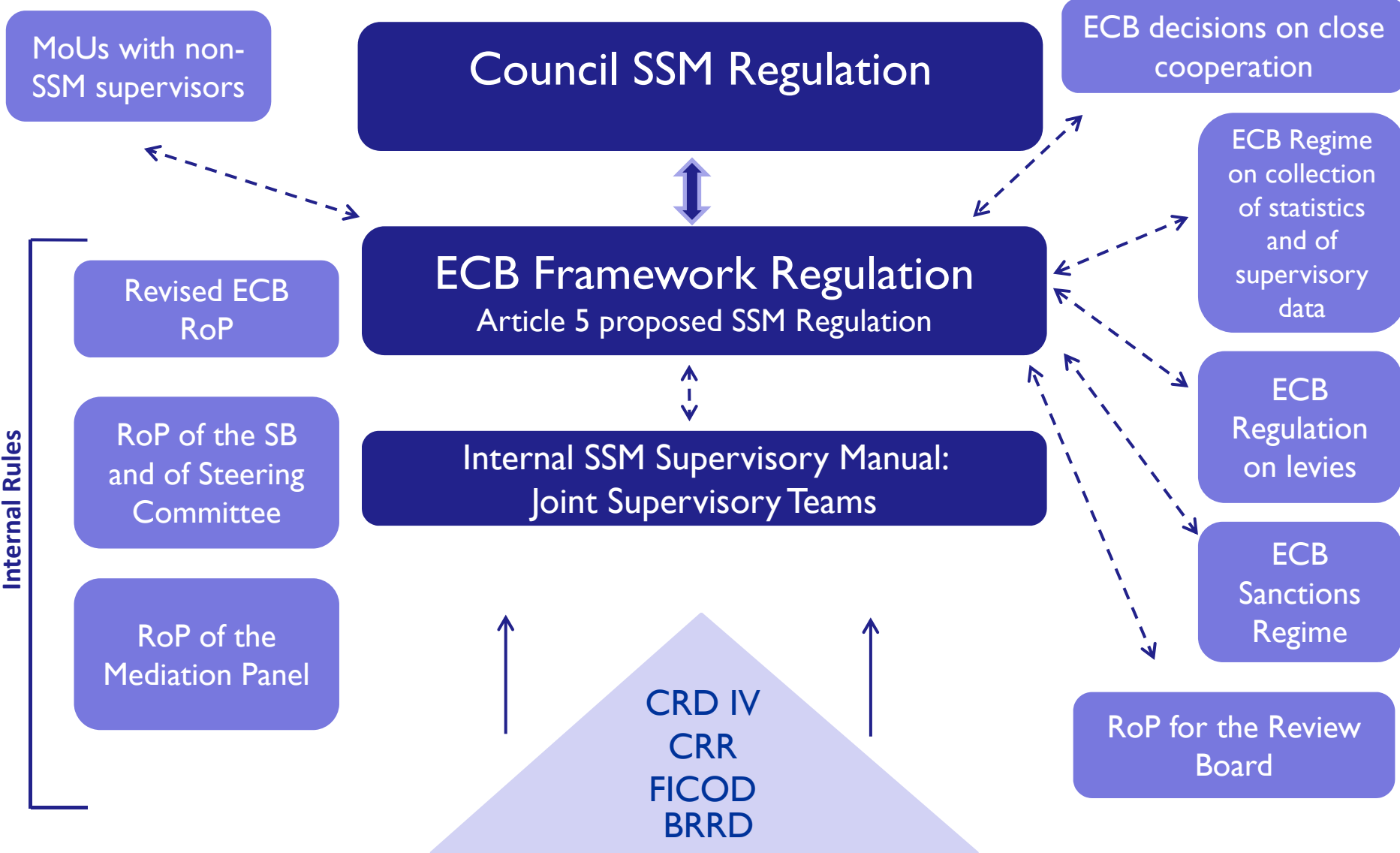
- **Relation ECB and NCAs of non-euro area MS within the SSM** → Article 5 generally applies:
 - ECB may **instruct** non-euro-area NCAs to issue specific decisions to ‘significant’ credit institutions and give **general instructions** in respect of ‘less significant’ credit institutions.
 - Whilst no **home/host relations** exist in case of ‘significant’ groups located only within participating Member States, in relation to non-participating MS home/host situations occur and ECB is the home/host supervisor in case of ‘significant’ credit institutions.
- **Macro-prudential supervision** → Article 5 does *not* apply
- **Sanctions** → The ECB has the power to instruct the NCAs of participating MS to impose sanctions.



Governance of the single supervision



SSM Legal Framework



The ECB and the EBA: complementarity (I)



EUROPEAN CENTRAL BANK
EUROSYSTEM



The ECB will apply the Single Rulebook within the SSM; it takes it as a given, no rival normative role.

Within the scope of non-regulated areas, or when the Single Rulebook leaves scope for options, the SSM will aim at consistent interpretation and implementation of the Single Rulebook within the SSM perimeter.

The need for the SSM to operate through Joint Supervisory Teams will smoothly lead to closer supervisory culture and consistent practices (Supervisory Manual)

The EBA retains all its existing powers and tasks:

- **developing the single rulebook for banking = EU 27 normative action**
- **contributing to its consistent implementation**
- **enhancing convergence of supervisory practices across the whole Union.**

Areas of close interaction EBA-ECB:

- **European Supervisory Handbook (best practices)**
- **Stress testing**
- **Crisis management procedures**

The ECB and the EBA: complementarity (II)

EU-27

Single Rulebook

Level 1	Directly applicable banking legislation CRR/BRRD
Level 2	EBA binding technical standards
Level 3	EBA guidelines, recommendations, handbooks



**Non-participating
Member States**

Non-SSM NCAs	ECB + SSM NCAs
National supervisory rules	SSM Supervisory Manual

**Participating
MS**

THE END

**Thank you very much for your
attention!**

