European Financial Markets Lawyers Group

EU and euro area: latest developments

Antonio Sáinz de Vicuña
Chairman of the EFMLG

Quadrilateral Meeting
13 September 2012

Table of contents

The Outright Monetary Transactions program

European Financial Markets Lawyers Group

Adopted by ECB 6 September 2012

Legal basis: Art. 18.1 Statute ECB: the Eurosystem may "**operate in the financial markets by buying and selling outright … marketable instruments**".

Objective: "**safeguard the monetary policy transmission mechanism in all countries of the euro area**

"**preserve the singleness of ECB's monetary policy**"

"**ensure the proper transmission of ECB's policy stance to the real economy throughout the area**"

"**address severe distortions in government bond markets which originate from, in particular, unfounded fears on the part of investors of the reversibility of the euro.**"

"**if not addressed, these conditions would have severe consequences for the maintenance of price stability**"

Legal doubts by the media: OMT runs against the **prohibition of monetary financing** for Eurosystem central banks.

The Outright Monetary Transactions program (2)

European Financial Markets Lawyers Group

Art. 123 EU Treaty prohibits the Eurosystem the "direct purchases of public debt instruments "

An implementing Council Regulation prohibits the **circumvention** of such prohibition in cases of secondary market purchases.

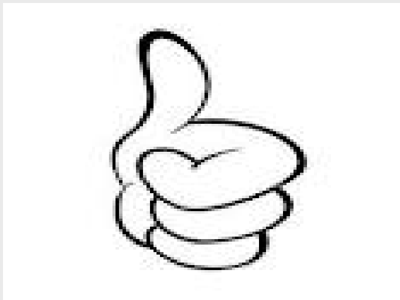
Triple objective of the prohibition:

1) **Fiscal discipline:** Member States need to finance themselves under market conditions.
2) **Central bank independence :** avoid the financial 'capture' of the central banks by the State; primacy of price stability over fiscal difficulties of Member States.
3) **Price stability**: financing a State creates inflationary risks.

The three objectives are met in the design of the OMT:

1) OMT will only be used only if and when a Member State submits to binding conditionality
2) ECB retains full independent capacity to activate or stop the OMT at any time – no commitment; only secondary market.
3) Injected liquidity by the operation of the OMT is to be re-absorbed to 'sterilise' its quantitative effect – no inflationary risks.

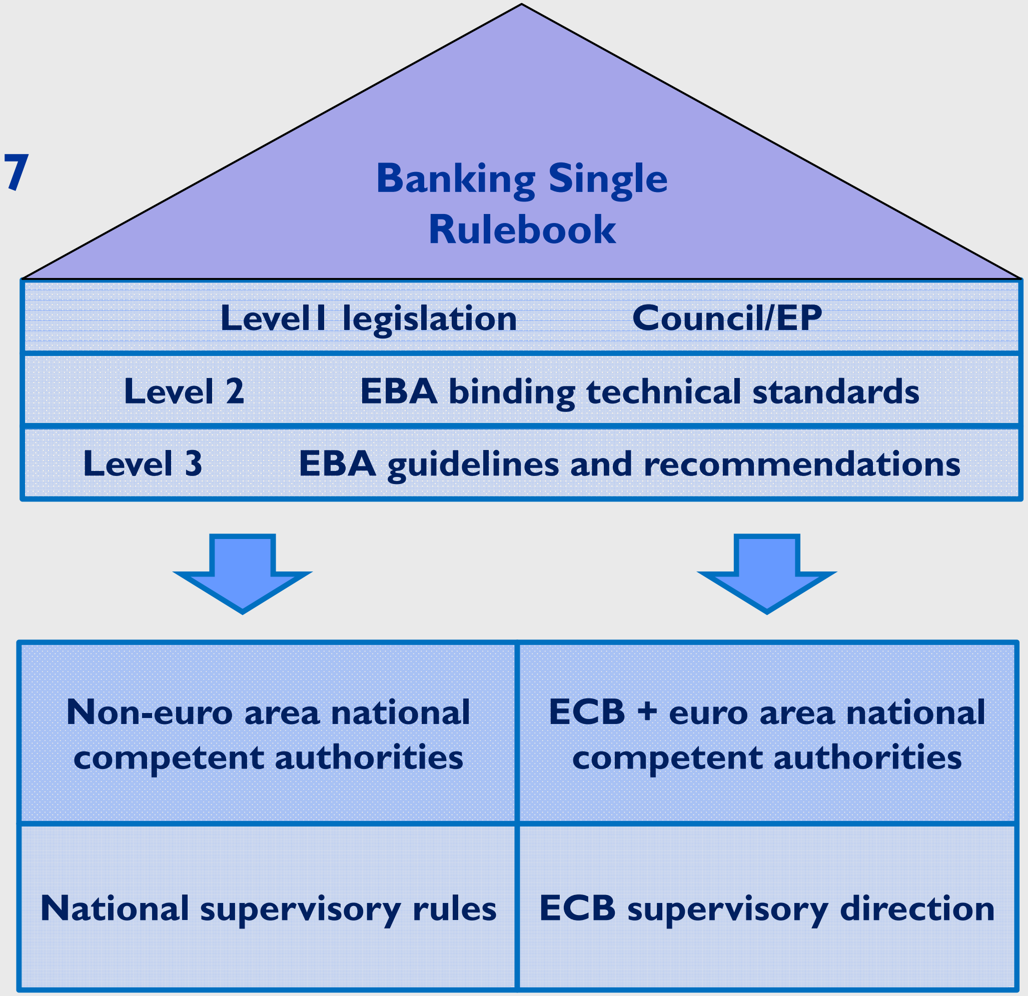
CONCLUSION: TOTALLY WITHIN THE LEGAL MANDATE OF THE EUROSYSTEM



The integration of banking supervision

European Financial Markets Lawyers Group

Banking regulation: EU-27



Supervision: Non-euro area

Supervision: Euro area

ECB supervisory function: governance

European Financial Markets Lawyers Group

- Governing Council

- Ultimate decision-making body
- Adoption of ECB legal acts on supervision
- Overseer of the Supervisory Board

Non-euro area member States (observers)

- Supervisory Board (SB)
- 4 ECB + 17 national competent authorities
- Chair and Vice- Chair elected from the GovC
- Observers: EBA, Commission

- Prepares decisions on supervisory matters;
- Planning and execution of ECB supervisory tasks
- Clearly defined supervisory tasks and related decisions re. individual credit institutions or a set of identifiable credit institutions

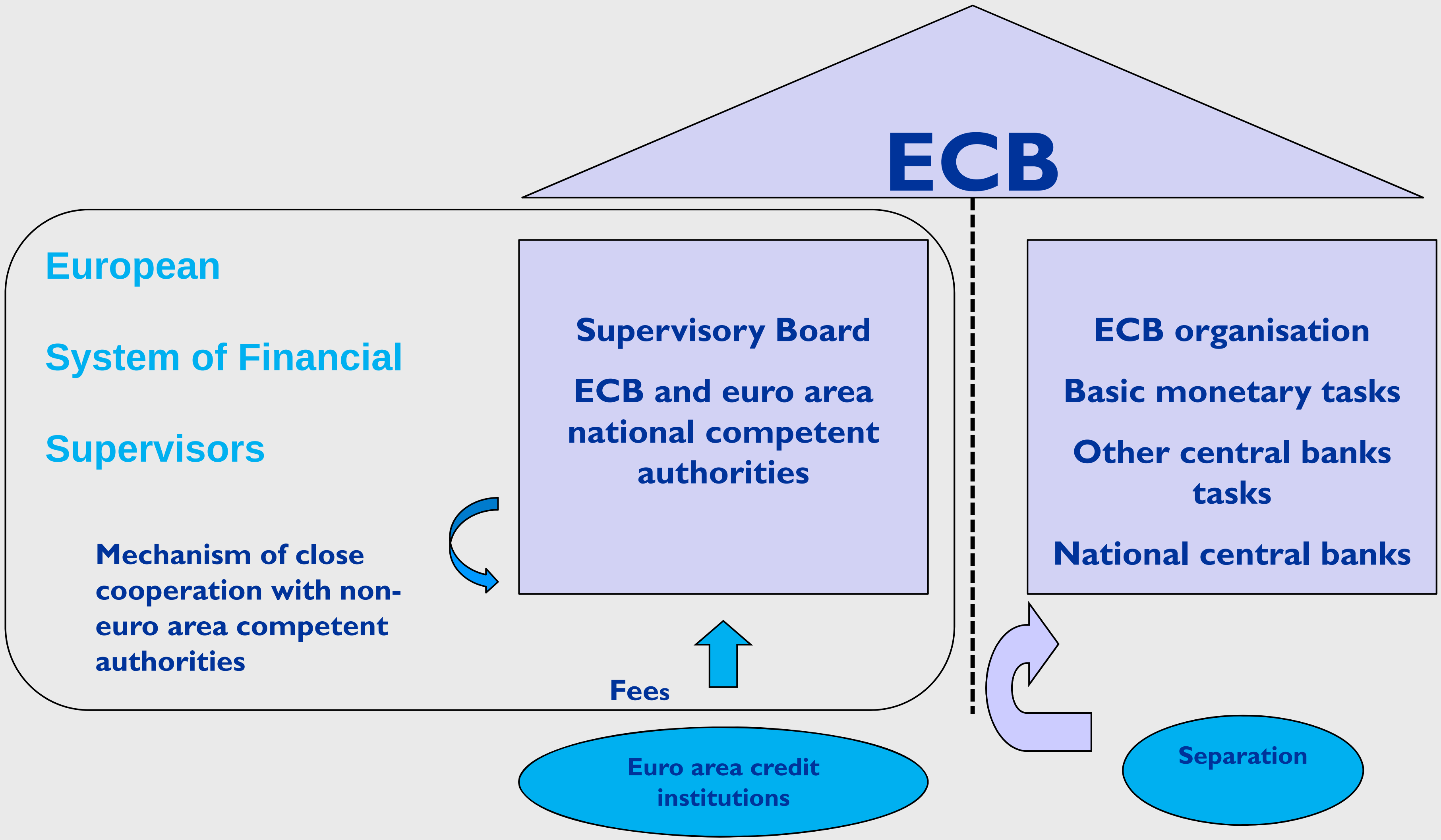
- Steering Committee
- composed from Supervisory Board members

Assists the SB and prepares its meetings

- Assistance by national competent authorities

ECB supervisory function: organisation

European Financial Markets Lawyers Group



ECB supervisory function: tasks

European Financial Markets Lawyers Group

Micro-prudential supervision	- Authorisation and withdrawal of credit institutions - Qualifying holdings - Compliance with prudential requirements - Governance arrangements - Stress-tests	*Competent authority* *Consolidated supervisor* *Participation in colleges* *Host authority for non euro area branches*
Macro-prudential supervision	Capital buffers and other macro-prudential instruments	*Designated authority*
Financial conglomerates	Supplementary supervision	*Coordinator*
Bank resolution	Early intervention measures	
Representation at the EBA	Coordinate and express an euro area common position	
ESM – Recapitalisation of credit institutions	Assistance of the Commission in implementing tasks entrusted by the ESM	

ECB supervisory function: powers

European Financial Markets Lawyers Group

Powers of national competent authorities (micro-prudential supervision) and designated authorities (macro-prudential supervision)

Requests for information

General investigations

On-site inspections

Authorisation/Withdrawal

Sanctions (ECB regime, CRD IV sanctions, action by national authorities)

ECB Supervisory function: timetable

European Financial Markets Lawyers Group

1.1.2013

- Entry into force of the 127.6 Regulation

1.3.2013

- Publication by the ECB of the list of supervised institutions

1.7.2013

- Credit institutions of European systemic importance

1.1.2014

- Full supervision of the euro area

- Supervision of banks having received or requested public assistance
- ECB decision

- At least ½ of the euro area banking sector

Exiting the euro

European Financial Markets Lawyers Group

1.- Exclusive competence of the Union: ⇨ Art. 3 TEU; ⇨ Adoption of the € entails a transfer of competence to Union level ⇨ the € is a common currency of several States issued under a joint & several mode by the Eurosystem (not by individual NCBs). ⇨ the *Lex Monetae* is EU law.

2.- No legal basis to exit: The Treaty only foresees the possibility to exit from the European Union (Art. 50 TEU) ⇨ No "opt-out" foreseen other than UK and Denmark ⇨ Use of the "Flexibility clause" (Art. 352 Treaty): not possible to contradict or amend the Treaty, only to supplement ⇨ Many Treaty provisions would be disregarded in case of an exit ⇨ Treaty of withdrawal needed.

3.- Prohibition to establish capital controls: Within the EU restrictions to capital movements are clearly prohibited. Exceptions foreseen do not cover unilateral exit.

Exiting the euro (and 2)

European Financial
Markets Lawyers Group

Consequences of an unilateral national withdrawal:

a) Flight of capital ⇨ a "bank deposit freeze ('*Corralito*') = illegal.

b) Re-denomination of contracts: a mess of possible conflicts (lex monetae –EU- vs. , lex contractus, lex forii, lex loci debitoris, lex loci creditoris, lex solvendi, *commercial sense*, *common sense*, equity, pro domo sua, etc.) E ⇨ contract continuity at risk ⇨ economic chaos. uro

c) Mismatch of balance sheets: assets/liabilities ⇨ litigation.

d) Acceleration of debts, public and private, credit event, fall of *ratings*, closing-down of access to external financing.

e) Introduction of a new currency: complexity, costs, creation of new references (i.e. substitution of Euribor), new monetary policy (high rates), immediate devaluations, new payments and clearing systems.

f) Legal liability of the State acting illegally; massive indemnities.

g) Possible suspension of voting rights in the institutions (Art. 7 TEU), also within the Governing Council of the ECB.

Any question?

Thanks for your attention!

[DISCLAIMER: THIS PRESENTATION DOES NOT NECESSARILY REPRESENT THE VIEWS OF THE ECB, BUT THE OPINION OF THE SPEAKER]