



## *Background Paper*

### **Landmark banking supervision deal includes key provisions on democratic accountability**

*Important aspects of the compromise for creating an effective common banking monitoring mechanism*

#### Competence between national and European supervision

Major banks with a balance sheet of over 30 billion Euro are being supervised by the ECB as well as the three biggest banks in each of the cooperating countries. Small and medium sized banks will remain under national supervision while ECB is ensuring the consistency of supervision as a whole. The compromise is close to the Council's position. However, participating countries are also able to submit other banks to supervision by the ECB, if they see the risk of competitive detriment.

#### Attractive conditions to participate for Non-Euro countries

Countries, which have not yet adopted the Euro, but would still like to participate in the banking supervision of the ECB are granted attractive conditions. The EU treaty does not allow decision powers of Poland, Sweden etc. in the Governing Council of the ECB. However, it transfers the highest decision making competence to the Council. Therefore the compromise provides that:

- All decisions regarding banking supervision are prepared on a "Board of Supervisors" (BoS), whom the Governing Council of the ECB usually follows.
- If the Governing Council of the ECB rejects a BoS decision which concerns Non-Euro countries, they may call on a conciliation committee.
- If the Governing Council of the ECB defies their advice, Non-Euro countries are granted special but restricted rights to withdraw membership of the supervisory system.

The last point is hardly acceptable, as it presents a questionable novelty in the history



of European integration. It is to be acquiesced, because withdrawing countries would harm themselves in the capital market.

#### Strict distinction of ECB personnel between monetary policy and supervision

Based on a text of the parliament, the personnel of the ECB in monetary policy and in supervision are strictly separated. It will be left to the European parliament to monitor how the details of this rule will be defined.

#### Strengthening the EBA towards the ECB, stress tests and in the acquisition of information

In order to ensure a consistently high quality banking supervision, the European Parliament has achieved to strengthen the EBA. The ECB will be treated by the EBA as one supervisor among others. The EBA is responsible for creating a supervisory handbook which equally applies to the ECB. The ECB is also subject to binding mediation within the EBA. Regarding stress tests and acquisition of data, the EBA is considerably strengthened.

#### Rules of voting within the EBA

To prevent a structural majority of supervisors of the ECB in the EBA, voting in the EBA will in the future require the principle of double majority. This is a backstep regarding the adoption of common rules within the financial market of the EU. This was a concession made mainly to win support for ECB supervision of the United Kingdom, which was necessary to achieve a unanimity in the council. If however, the number of EU countries outside of the common supervision falls to four, a revision of the regulation is automatically triggered. The European Parliament was able to prevent the introduction of a general consensus principle for all decisions of the EBA as proposed by the council. The chairperson of the EBA will in the future be able to exercise the right to request votings without a prior consensus as granted in the regulation.

#### Proportionality principle

Upon Green initiative ECB and EBA will have to take into account differences in size



and business models of supervised institutions. The regulations explicitly recognize that a more diverse banking system improves stability of the financial sector. Particularly cooperatives and savings banks had bad experiences with EBA in the past.

#### ECB cannot introduce IFRS through the backdoor

The regulation clarifies that banks may not oblige through certain auditing requirements or other supervisory requirements, that will indirectly impose IFRS-rules upon them.

#### Co-appointment and dismissal of the Chair and Vice Chair by the European Parliament

For effective control of the ECB supervisory chapter the European Parliament has co-appointment rights of the Chair and Vice Chair of the Supervisor. Therefore, it will not be possible for the European Council to ignore the Parliaments position as was the case in the appointment of Yves Mersch. The Chair will be appointed in an open procedure. The Vice Chair will have to be a Member of the ECB Governing Council. Furthermore, both the European Parliament and the Council will have the right to launch suspension proceedings against the Chair.

#### Strengthening of national Parliaments

National Parliaments will have the right to invite the ECB supervisors to hearings. Furthermore, the European Parliament insisted that if national Parliaments want to, they can grant question rights to their members in their own rules of procedures.

#### Strengthening of Whistleblowers' rights

Based on a Green proposal the ECB is obliged to grant special protection for whistle blowers.

#### Access to documents

The regulation states that access to documents of the ECB supervisor is possible according to the comparable rules applicable to the European Commission and its



agencies. These rules are laid down in the treaties of the European Union.

### Interinstitutional agreement between ECB and European Parliament

The whole agreement depends on the successful conclusion of an interinstitutional agreement. The European Parliament insists on referring to third parties in regards to its investigation rights and being granted broad access to documents and information.

### Rules to tackle conflicts of interests

The legislative text anchors an obligatory “cooling off” period of two years for leading staff, who seek a new job in the business sector. Generally, ethical standards apply to the supervisory staff.

### Strengthening of the EBA stakeholder group

The EBA regulation takes into account negative experiences of the past and determines that members of the stakeholder group are remunerated appropriately, if they represent NGOs or scientific institutions.