



EUROPEAN CENTRAL BANK

EUROSYSTEM

The views expressed represent
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Zürich, 11 December 2014

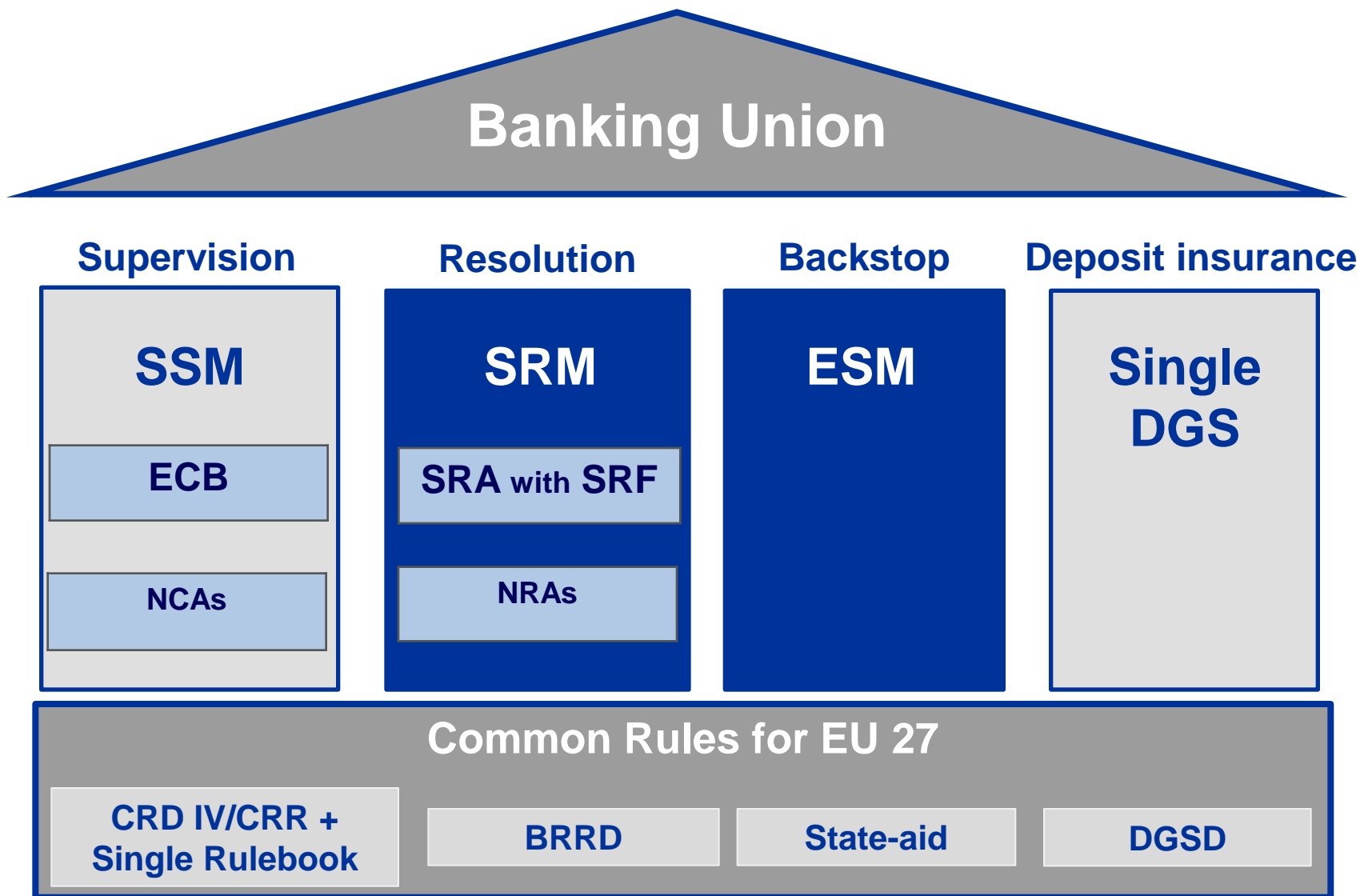
The ECB as banking supervisor: the establishment of the Single Supervisory Mechanism

Overview

1 New Banking Union

2 Single Supervisory Mechanism (SSM) and the role of the ECB

3 Main challenges



Core objectives of the EU-wide financial reform agenda



Source: COM Memo on the Banking Union

- Necessary for achieving a genuine EMU
- Vulnerabilities in the banking sector having a negative impact on the sovereign debt crisis
- Strengthening of the overall financial stability
- Preserving the single market (increasing focus on national markets undermining the single market for financial services)
- SSM is a precondition for the introduction of potential direct recapitalisation of banks by ESM



Relevant Law

Legal basis on the TFEU – Article 127(6)

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

Act creating the SSM – the SSM Regulation

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

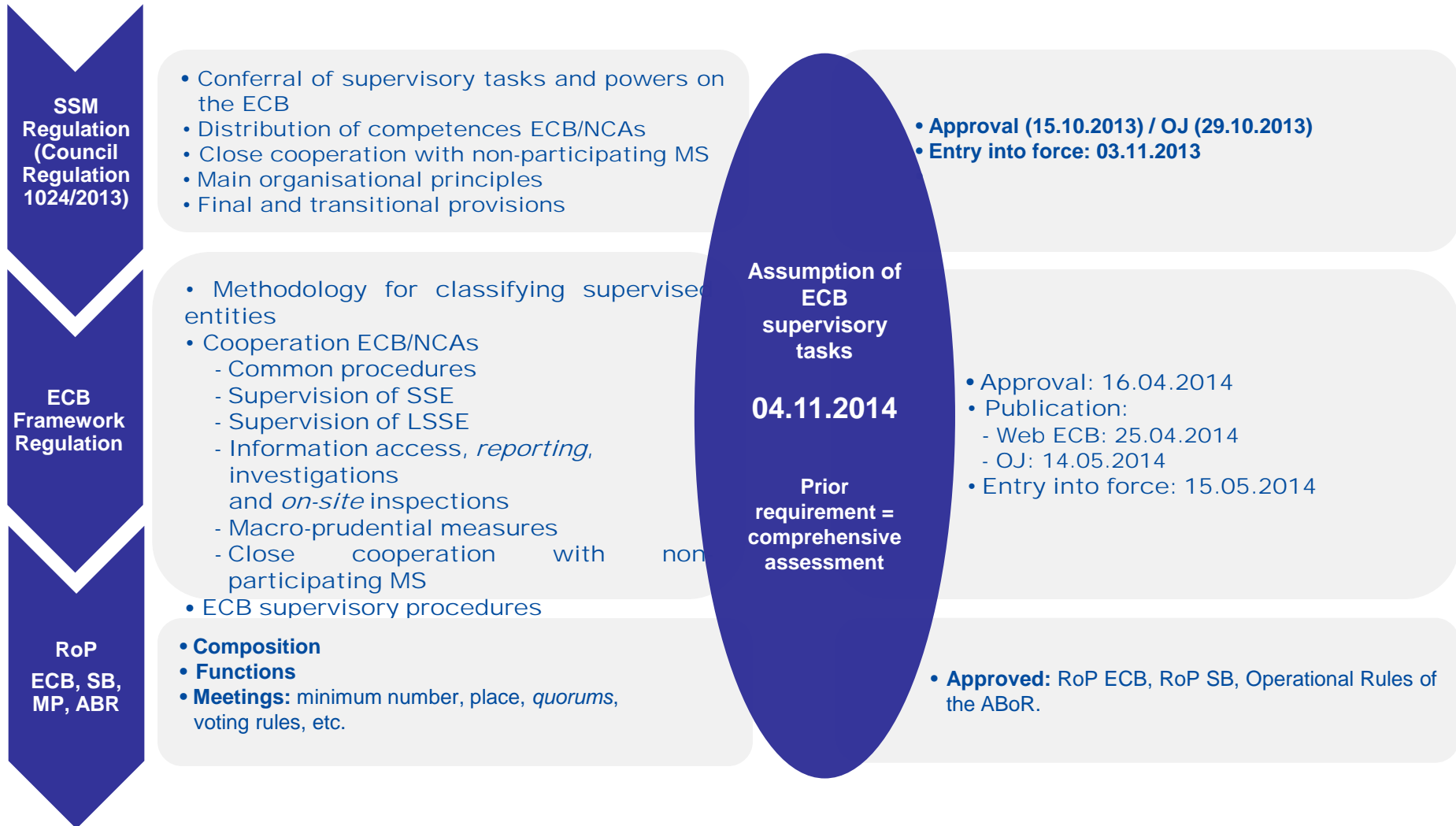
Cooperation within the system – the Framework Regulation

Regulation of the ECB establishing the framework for cooperation within the SSM between the ECB and the national competent authorities (NCAs) and with national designated authorities (NDAs)

Other relevant legal acts

Regulation on Mediation Panel, Regulation on fees, Decision on close cooperation, Decision on the ABoR, Rules of procedure...

History of Legal Steps towards the SSM



- 3 November 2013: Entry into force of the SSMR
- 2013-2014: Preparatory work
- **4 November 2014**: Effective start of the ECB supervision



- Central banking and supervision
- New tasks for the ECB
- Governance
- Legal instruments



- Importance of central banks in financial stability (Article 127(5) TFEU)
- However, different historical background and variety of national practices concerning financial supervision:

Supervisory models	National Central Banks		National Competent Authorities (NCAs)	
	Integrated Supervision	NCBs contributing to supervisory tasks	Autonomous NCAs	NCAs operating autonomously but under the auspices of the NCBs
Member States	BE, CY, EL, ES, IE, IT, NL, PT, SK, SI (10)	AT, DE (2)	AT, DE, LU, MT (4)	EE, FI, FR (3)

Synergies:



- success of monetary policy rests on integrated financial markets that function efficiently and smoothly
- benefits in particular related to increased information on financial sector and economy
- better consideration of the interplay between monetary, supervisory and regulatory policies
- better management of the creditworthiness of ECB monetary policy counterparties

Necessary safeguards:

- price stability is and will remain the primary Treaty objective of the ECB
- avoiding conflicts of interest
- governance
- managing reputational risks
- preserving central bank independence



- Exclusive competence for a list of prudential supervisory tasks for euro area credit institutions
- NCA remain competent for tasks that have not been transferred to the ECB
- Non-euro area MS can opt-in (Art. 7 on establishing close cooperation)



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 	<p><i>Competent authority</i></p> <p><i>Consolidated supervisor</i></p> <p><i>Participation in colleges</i></p> <p><i>Host authority for non euro area branches</i></p>
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	
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	

Micro- vs. Macroprudential Tasks



Micro-prudential tasks

Grant or withdraw bank licences

Authorise acquisitions of qualified holdings

Monitor compliance with all prudential requirements laid down in EU banking rules

Conduct investigations and on-site inspections

Set prudential requirements (own funds, large exposure limits, liquidity, leverage and disclosure, internal governance and controls, “fit and proper tests”)

Carry out supervisory reviews

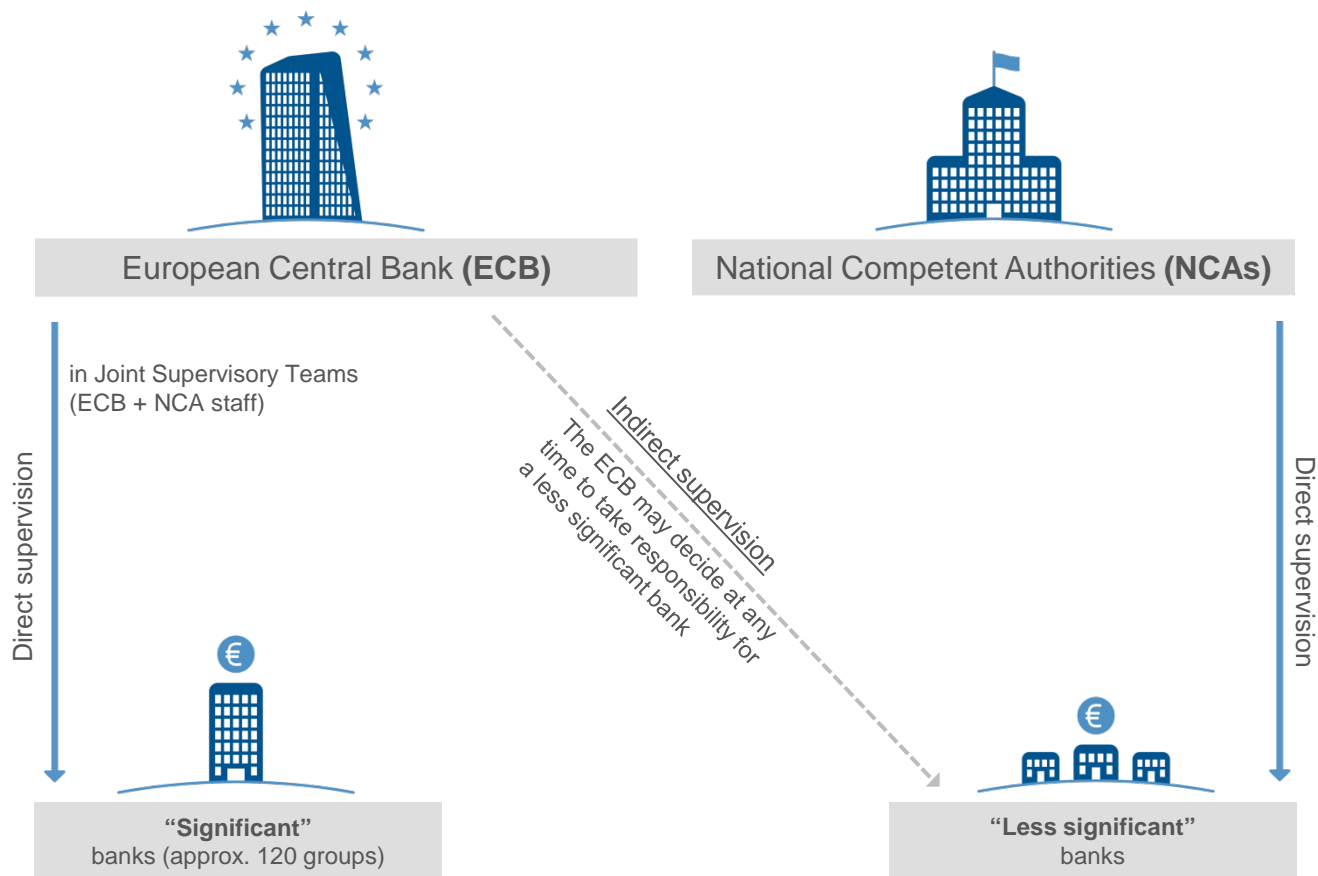
Impose corrective measures and sanctions



Macro-prudential tasks

Define higher requirements for capital buffers than applied by NCAs and set a buffer rate if NCA has not done so

Microprudential Supervision Distribution of tasks within the SSM



- Distribution of powers between ECB and NCAs according to the concept of *significance* (Article 6):
 - Direct supervision by ECB:
 - in cases of ‘significant’ credit institutions;
 - credit institutions receiving public assistance from direct assistance from the EFSF or ESM; and
 - ‘less significant’ credit institutions following a decision of the ECB to supervise them.
 - Indirect supervision by ECB in cases of ‘less significant’ credit institutions.
- Common procedures involving the ECB and NCAs regarding (i) authorisation, (ii) withdrawal of authorisation and (iii) assessment of qualifying holdings.

- Direct supervision means:
 - ECB adopts supervisory decisions addressed to the supervised entities;
 - NCAs assist the ECB.

- Indirect supervision means:
 - ECB may issue regulations, guidelines or general instructions to NCAs;
 - ECB oversees the functioning of the system;
 - ECB has powers to collect information directly from ‘less significant’ supervised entities;
 - ECB may decide to exercise directly supervisory powers ‘to ensure consistent application of high supervisory standards’.

Microprudential Supervision Classification criteria (significant CI)

	Size	Importance (for the economy of the EU or a participating Member State)	Cross-border activities	Direct public financial assistance from ESM	3 most significant CI in a part. MS	
Requirements	<ul style="list-style-type: none"> Total value of assets > EUR 30 billion 	<ul style="list-style-type: none"> Total value of assets > 20% GDP (unless < EUR 5 billion) 	<ul style="list-style-type: none"> Importance for specific economic sectors Interconnectedness Substitutability Complexity 	<ul style="list-style-type: none"> Parent undertaking established in a participating Member State Subsidiaries in more than one participating Member State. Total assets > EUR 5 billion. Cross-border assets or liabilities > 20% total assets or liabilities. 	<ul style="list-style-type: none"> Request for or receipt of assistance 	<ul style="list-style-type: none"> Not a significant supervised entity due to other criteria Higher amount of total assets.
Calculation parameters	<ul style="list-style-type: none"> Prudential perimeter Accounting data: subsidiary 		<ul style="list-style-type: none"> Assessment on a case by case basis 	<ul style="list-style-type: none"> Assets/liabilities with counterparties located in a participating MS other than the MS in which the parent undertaking of the relevant supervised group has its head office 	-	<ul style="list-style-type: none"> See size criterion

Significant vs. Less Significant Banks (I)

	Significant supervised entities (SSE)	Less significant supervised entities (LSE)
ECB	<p>Direct supervision (consolidated + solo supervision of any credit institution established in a participating MS)</p> <p>Exceptions: payment services, markets in financial instruments, anti money laundering, consumer protection, etc. = national remit</p>	<p>Indirect supervision</p> <ul style="list-style-type: none"> - Issuing regulations, guidelines or general instructions to the NCAs determining how to perform their supervisory tasks. - Deciding to exercise directly all supervisory powers for one or more credit institutions when necessary to ensure consistent application of high supervisory standards. - Exercising oversight over the functioning of the SSM. - Requesting information to NCAs and credit institutions. - On-site inspections.
NCAs	<p>Assistance role (subject to ECB instructions)</p> <ul style="list-style-type: none"> - Participating in the Joint Supervisory Teams (JSTs): off-site supervision (i.e. preparing and implementing ECB decisions, verification activities, day-to-day assessment of the situation of SSE). - Participating in the on-site inspections teams: on-site supervision. - Preparing draft decisions. - Enforcing ECB supervisory decisions. 	<p>Direct supervision (on-site inspections incl.)</p>

Supervisory powers

Require CIs to hold own funds in excess

Restrict or limit the business or operations of a CI

Restrict or prohibit profits distributions

Remove any member from the management body

Others (Article 16 SSM Regulation)

Investigatory powers

Requests for information

Ad hoc information

Supervisory reporting

Statistical reporting

General investigations, off-site and on-site inspections

ECB+NCA

On-site inspection teams

Sanctioning powers

Allocated between ECB and NCAs on the basis of the rules infringed and the classification of the CI

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

Requests for information

General investigations

On and off-site inspections

Authorisation/Withdrawal

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

Supervisory fees

Micro-prudential supervision: common procedures			Macro-prudential supervision		
	Authorisations		Qualifying holdings	National law tools	EU law tools
	Granting (licensing)	Withdrawal of licenses			
NCA	<ul style="list-style-type: none"> • Entry point: receipt and assessment (national law) • Rejection of application (national law) / positive draft decision (20 working days before deadline). • Notification: NCA draft decision and ECB final decision. 	<ul style="list-style-type: none"> • [Draft decision: coordination with NRA] • [Objection to ECB proposal] 	<ul style="list-style-type: none"> • Entry point: receipt and assessment (EU law and national law). • Draft decision: 15 working days before deadline. 	NCA/NDA exclusive competence	<ul style="list-style-type: none"> • Adopting measures (taking into account ECB objections). • Proposing the ECB the adoption of higher requirements or more stringent measures. • [Objection to ECB intended measures].
ECB	<ul style="list-style-type: none"> • Assessment: EU law • Decision: authorisation is deemed granted if the ECB does not object (based on EU law) within a maximum period of 10 working days (extendable for the same period in duly justified cases). 	<ul style="list-style-type: none"> • [Initiative: proposal] • Final decision: coordination with NRA. • Notification of final decision. 	<ul style="list-style-type: none"> • Assessment: EU law • Decision • Notification of final decision. 	Request NCAs/NDAs to use their national powers	<ul style="list-style-type: none"> • Adopting more stringent measures (even if NDAs has not adopted any one), taking into account NCA/NDA objections. • [Objection to NCA/NDA intended measures].

Procedures relating to Microprudential Tasks

Colleges of supervisors

- The **ECB** will **chair** the college for **significant groups** with branches/subsidiaries outside the SSM
- The ECB will **participate** in the colleges for **non-SSM groups** with branches/subsidiaries that are significant within the SSM

Passport issues

- **CRD IV procedures do not apply** anymore for the establishment of branches **within the SSM**
- For a **bank of the SSM** wishing to establish a **branch outside the SSM**, its home authority will be the ECB (for significant banks) or the NCA (for less significant banks)

Financial conglomerates

- **Coordinator is the ECB** if the financial conglomerate is headed by a significant credit institution
- Excluding the supervision of insurance undertakings

Macroprudential Tasks

Distinction NCA/NDA

- accommodates **different competences** assigned to **NCAs** and **NDAs** under EU and national law
- establishment of a **list** of NDAs and NCAs

Tools and procedures

- **capital buffers**, Article **458 CRR** and other measures under EU law
- NDAs/NCAs and the ECB will **exchange information** and **cooperate**

Application by the ECB

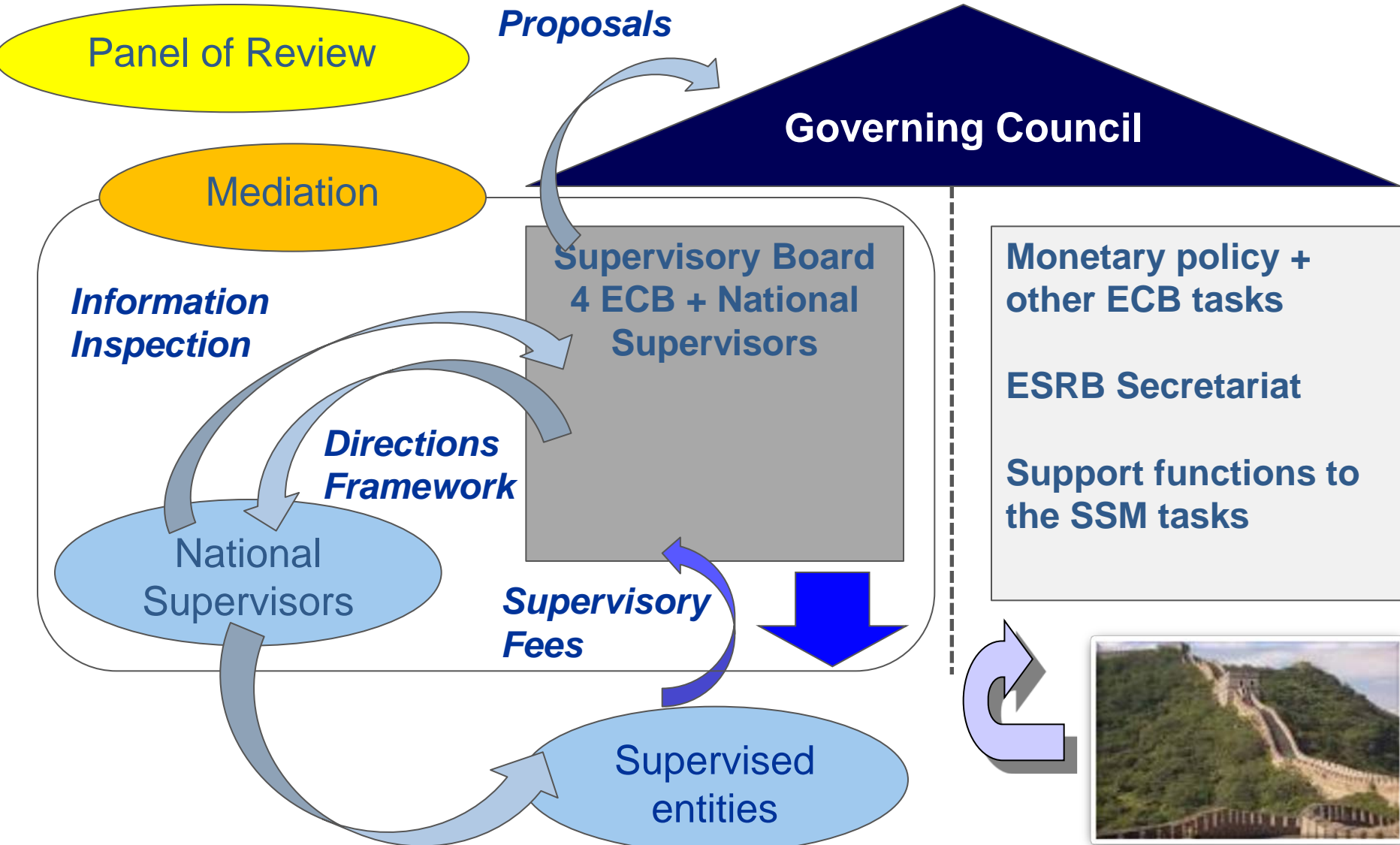
- **ECB** may set **stricter requirements**
- **ECB** may **set a buffer** where an NCA/NDA has not done so

Allocation of Tasks

Infringement / Sanction		Significant supervised entities (SSE)		Less significant supervised entities (LSE)	
		Entities	Natural persons	Entities	Natural persons
Directly applicable EU law	Pecuniary	ECB		NCA	
	Non-pecuniary	NCA (only at ECB request)			
National law: implementing EU Directives	Pecuniary				
	Non-pecuniary				
ECB regulations and decisions	Pecuniary	ECB		ECB = obligations vis á vis ECB	
	Non-pecuniary	--			
National law: non-ECB tasks	Pecuniary	NCA			
	Non-pecuniary				

Sanctioning Proceedings





Overview of involved bodies:

- **Governing Council**
- **Executive Board**
- **Supervisory Board**
- **Steering Committee**
- **Mediation Panel**
- **Administrative Board of Review**

**Supervisory
Board**

**Separated
Governing
Council
deliberations**

**Separation at
staff level**

Internal rules

**Mediation
panel**

Supervisory Board (IV)

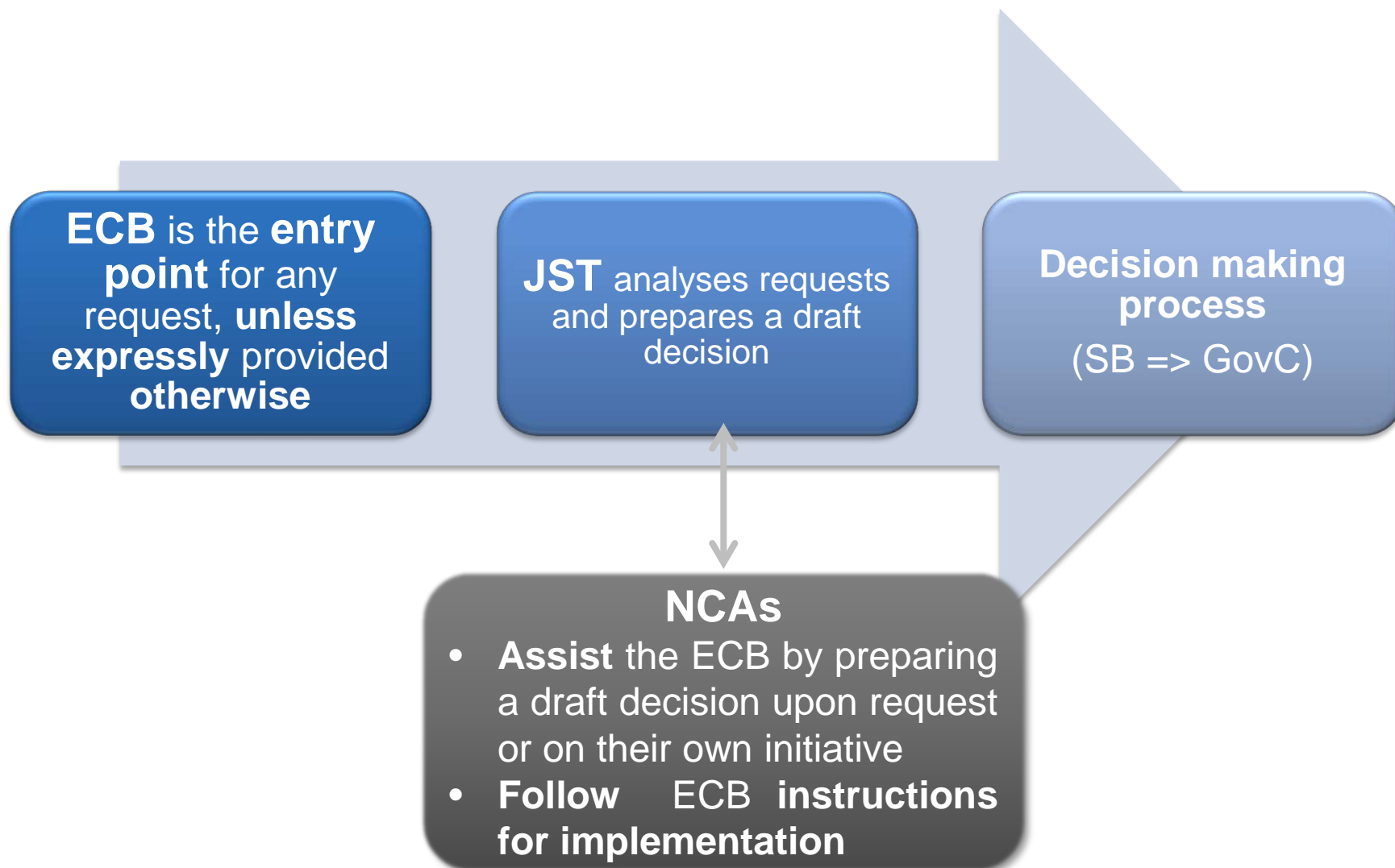
Supervisory Board (SB)

- **Chair**
- **Vice-Chair**
- **4 ECB rep's**
- **1 rep' per NCA**

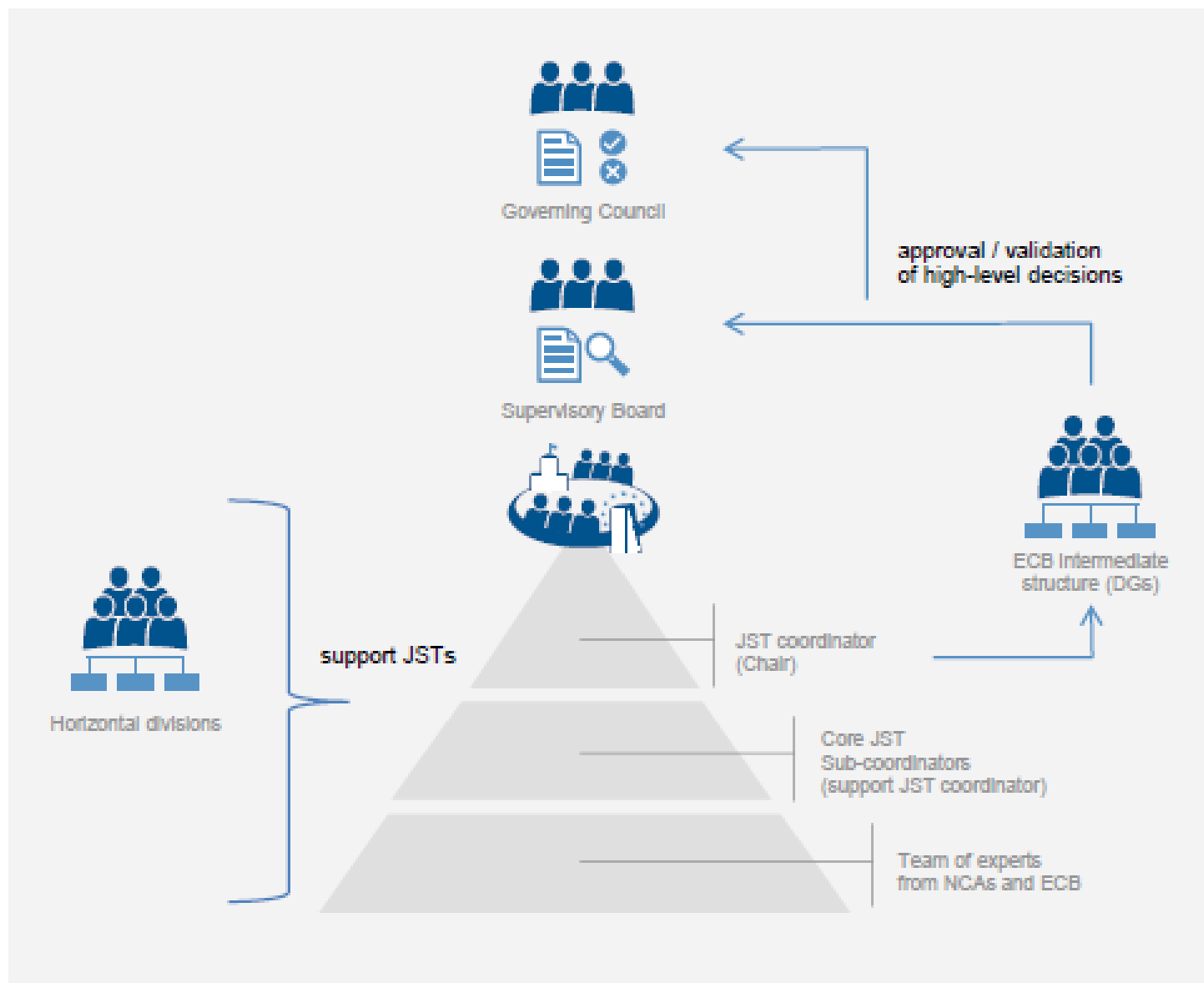


- ✓ Planning and execution of tasks
- ✓ Preparatory works and draft decisions
- ✓ Not a decision making body

General Approach to decision-making process:



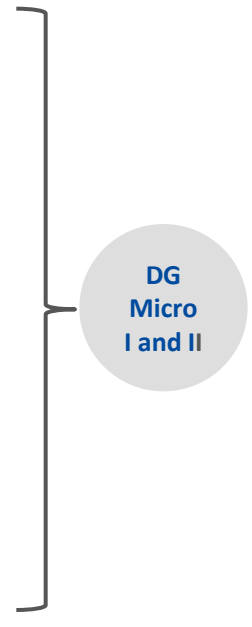
Functioning of Joint Supervisory Teams (JST)



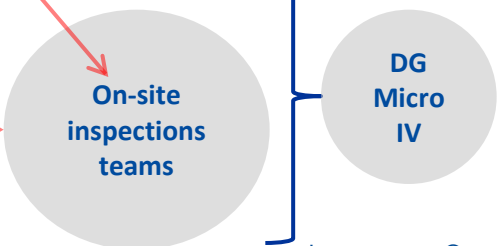
JOINT SUPERVISORY TEAMS (JSTs): Operational units within the SSM that will be in charge of the day-to-day supervision of significant supervised entities (SSE) or supervised groups

OFF-SITE

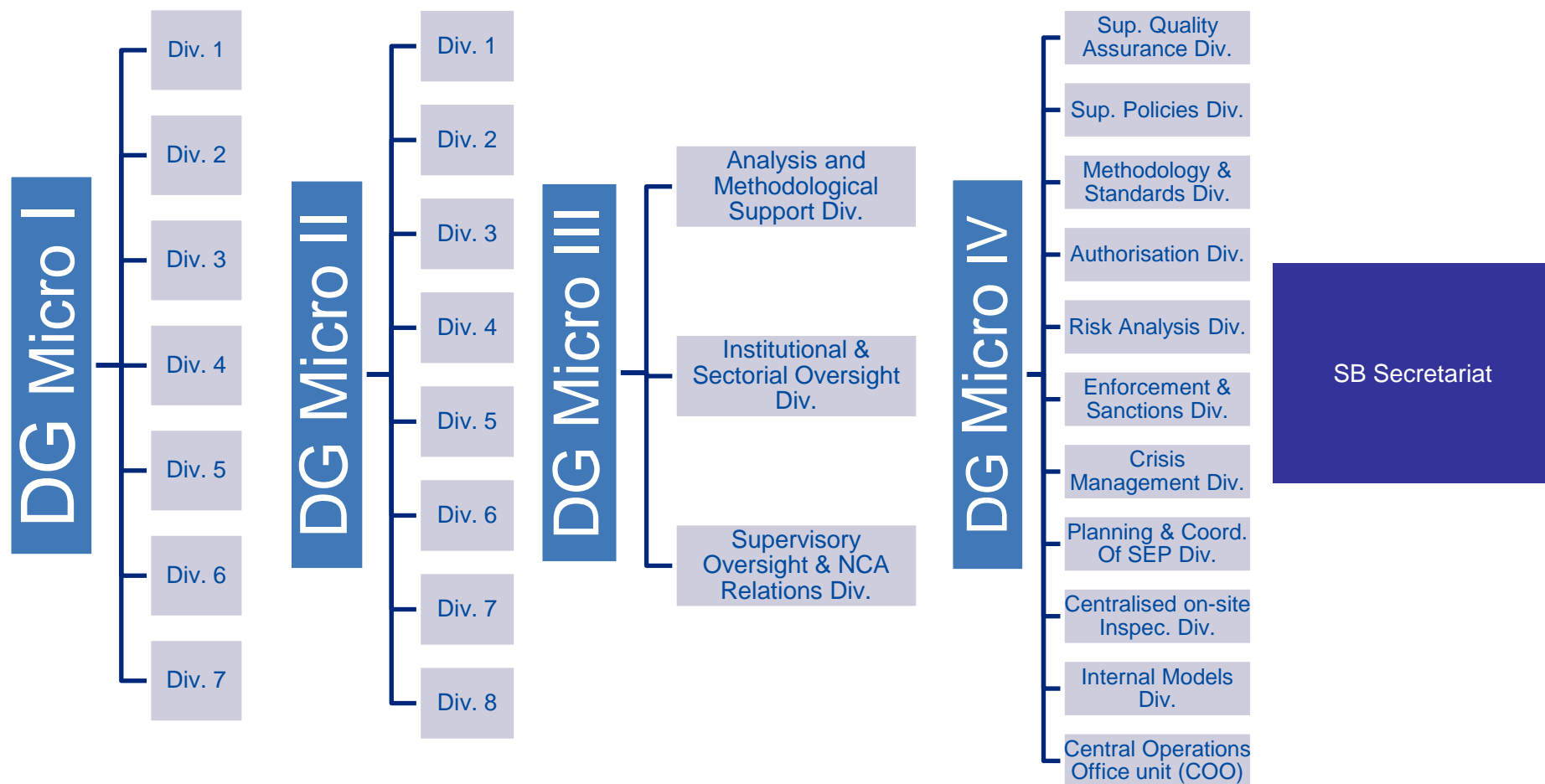
Number	Composition	Functions (numerus apertus)
1 JST / SSE	<ul style="list-style-type: none"> • ECB and NCA staff • ECB coordinator • NCAs sub-coordinators: <ul style="list-style-type: none"> - The JST coordinator will be assisted by a sub-coordinator from each NCA that has appointed more than one staff member to the JST. 	<ul style="list-style-type: none"> • Performing the Supervisory Review and Evaluation Process (SREP). • Participating in the preparation of the supervisory examination programme (SEP), including an on-site inspection plan. • Implementing the SEP and any ECB supervisory decisions • Liaising with NCAs. • Ensuring coordination with on-site inspections teams.



ON-SITE



Internal supervisory structures



Non-objection Procedure (I)

- SSM Regulation

- Article 26(8):

- The Supervisory Board shall carry out preparatory works regarding the supervisory tasks conferred on the ECB and propose to the Governing Council of the ECB complete draft decisions to be adopted by the latter, pursuant to a procedure to be established by the ECB. A draft decision shall be deemed adopted unless the Governing Council objects within a period to be defined in the procedure mentioned above but not exceeding a maximum period of ten working days.

- ECB Rules of Procedure

- Article 13g(1):

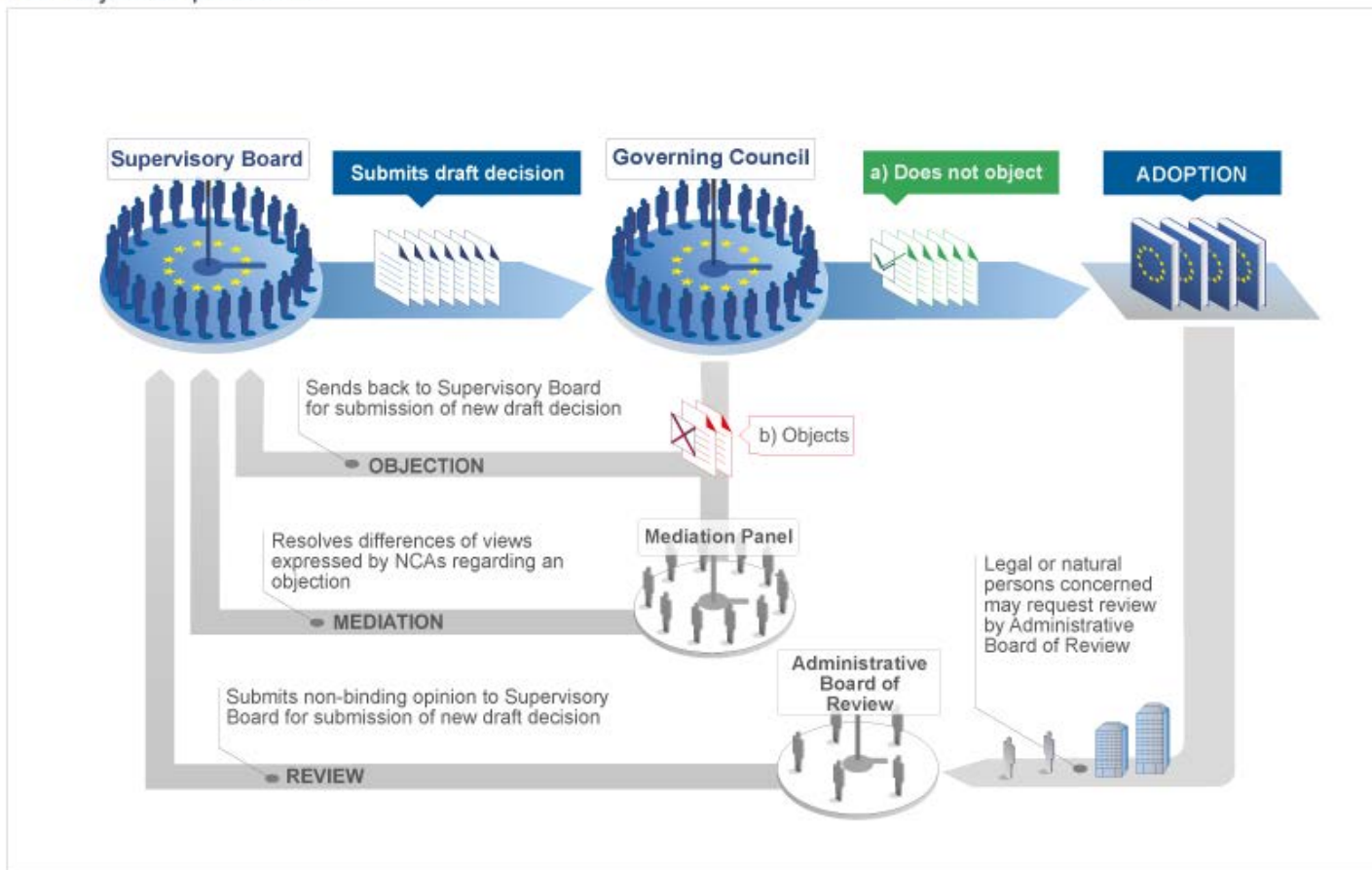
- The Supervisory Board shall propose to the Governing Council complete draft decisions for the purpose of carrying out the tasks referred to in Article 4 of the SSM Regulation together with explanatory notes outlining the background to and the main reasons underlying the draft decision.

- Article 13g(2):

- A draft decision shall be deemed adopted unless the Governing Council objects to it within ten working days.

Non-objection procedure (II)

Decision-making process of the Single Supervisory Mechanism:
Non-objection procedure



Mediation Panel

- **Legal Basis**

- Article 25(5) SSM Regulation: “The ECB shall adopt and make public a regulation setting up such Mediation Panel and its Rules of Procedure.”
- These Rules of Procedure have been adopted in principle in March 2014.

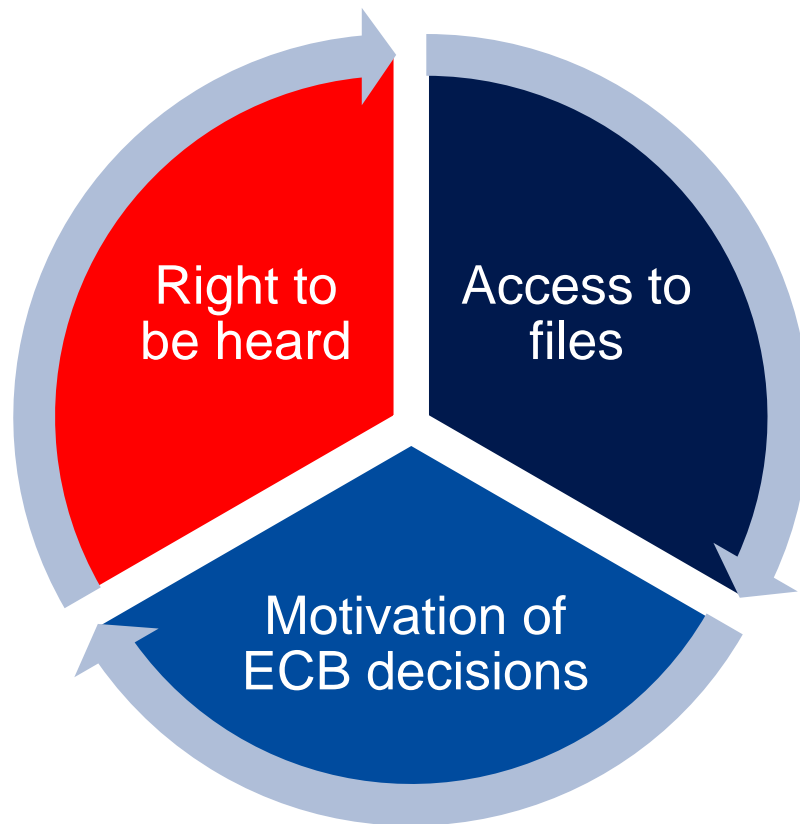
- **Composition**

- Composed of one member per participating Member State, chosen by each Member State among the members of the Governing Council and the Supervisory Board.
- In addition to the members, the Vice-Chair of the Supervisory Board shall act as Chair of the Mediation Panel.

- **Responsibilities**

- Part of the rules regarding the separation from monetary policy.
- Resolving differences of views expressed by the competent authorities of participating Member States concerned regarding an objection of the Governing Council.

Due Process Rules



Administrative Board of Review

- Legal Basis

- Article 24(10) SSM Regulation: “The ECB shall adopt a decision establishing the Administrative Board’s Operating Rules.”
- These Operating Rules have been adopted in April 2014.

- Composition

- Five Members
- Two Alternates
- Appointed by the ECB for five years, renewable once.

- Responsibilities

- Internal review body for addressees of supervisory decisions. The review is without prejudice to the right to bring proceedings before the Court.
- The review shall be limited to the examination of the grounds relied upon by the applicant as set out in the notice of review.
- The opinion of the Administrative Board of Review is not binding on the Supervisory Board or the Governing Council.

EU-27

**Banking Single
Rulebook**

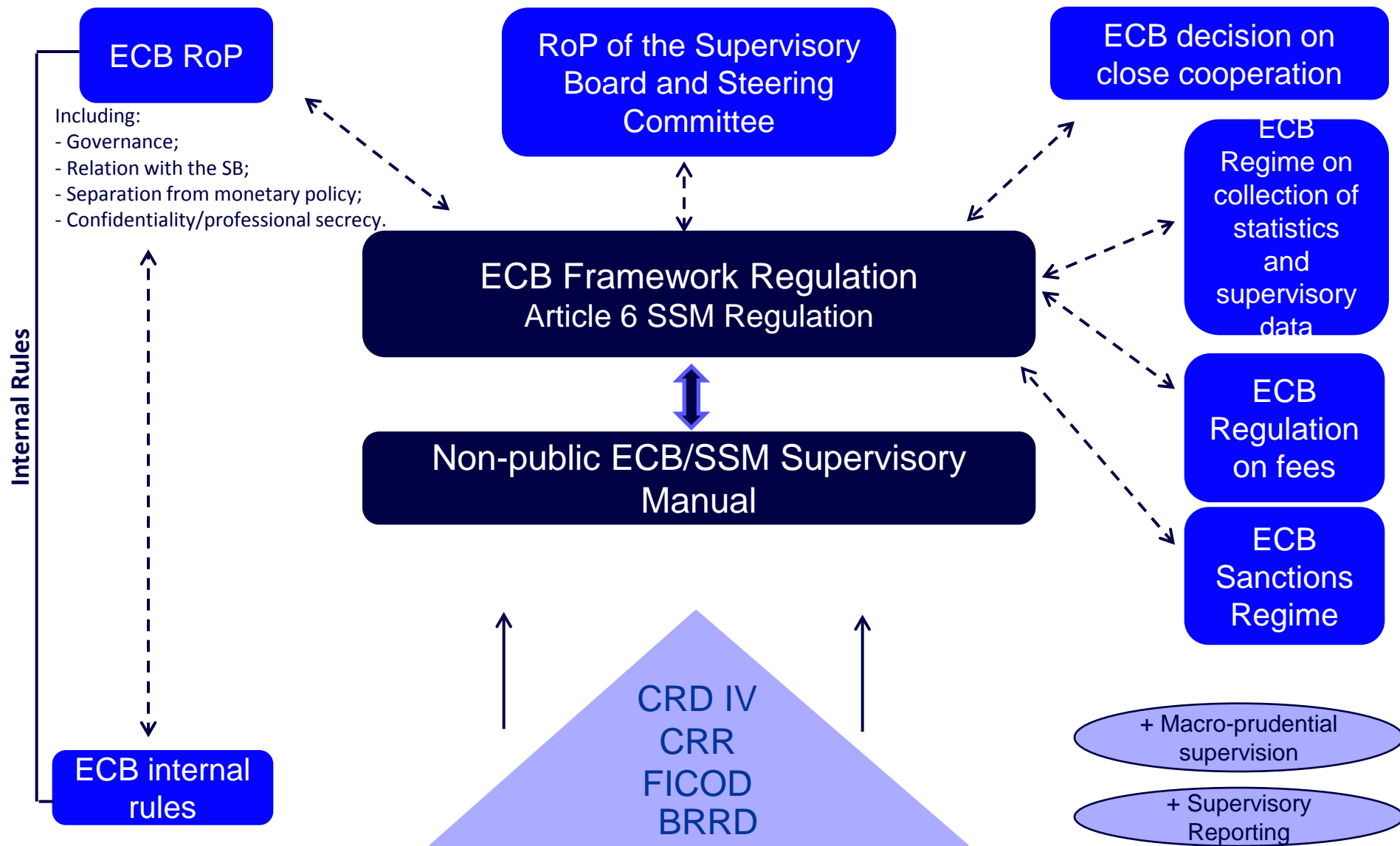
Level 1 legislation	Council/EP CRD IV/CRR
Level 2	EBA binding technical standards
Level 3	EBA guidelines and recommendations



Non-euro area national competent authorities	ECB + euro area national competent authorities (SSM)
National supervisory rules	SSM/ECB supervisory Rulebook

**Non-participating
Member States**

**Euro
area**



Single Rulebook

To be applied by ECB and NCAs

- CRD IV
- CRR
- FICOD
- BRRD

EBA technical standards

+ Article 16 of the EBA Regulation (Guidelines and recommendations)



Framework Regulation – Article 6 SSM Regulation

Significant institutions

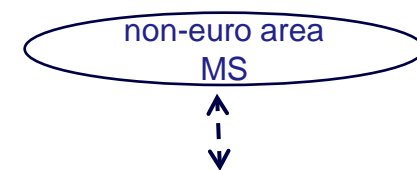
Less significant institutions

ECB decisions

NCA decisions

- Law applied by ECB
- Application of union law
 - When union law is composed of directives, application of national legislation transposing directives

- ECB law applied by NCAs
- Regulations
 - Guidelines
 - General Instructions to NCAs
 - Instructions to NCAs (groups or categories of institutions)



Close Cooperation, Article 7

NCA decisions

ECB

- Instructions to NCAs
- ECB requests to adopt measures
- Warnings
- Governing Council objections

- **European Parliament**

- » Tools: Reports, hearings and confidential oral discussions, responding to questions
- » Modalities are laid down in the Inter-Institutional Agreement between the European Parliament and the ECB of November 2013

- **Council**

- » Tools: Reports, hearings and exchanges of views, responding to questions
- » Modalities are laid down in the Memorandum of Understanding between the Council and the ECB of December 2013

- **National Parliaments**

- » Tools: Reports, observations, exchanges of views, responding to questions
- » Recital 56 SSM Regulation: The role is appropriate given the potential impact that supervisory measures have on public finances, the credit institutions and the markets in the participating Member States

Balance of Independence & Accountability

Independence

Art. 19.1 SSMR – independence of the SSM: *“When carrying out the tasks conferred on it by this Regulation, the ECB and the national competent authorities acting within the SSM shall act independently.”*

Art. 19. 1 SSMR - independence for the SB members: *“The members of the Supervisory Board and the steering committee shall act independently and objectively in the interest of the Union”*

Accountability

- **Art. 20 SSMR** establishing accountability to EU Parliament and Council and **21 SSMR** establishing accountability before national parliaments (reporting obligation, response to questions, exchange of views)

- **Inter-institutional Agreement 2013/694/EU** with European Parliament for the democratic accountability and oversight of the SSM providing for:

- access to ECB information
- reporting obligation to EP

- **MoU with the Council** establishing:

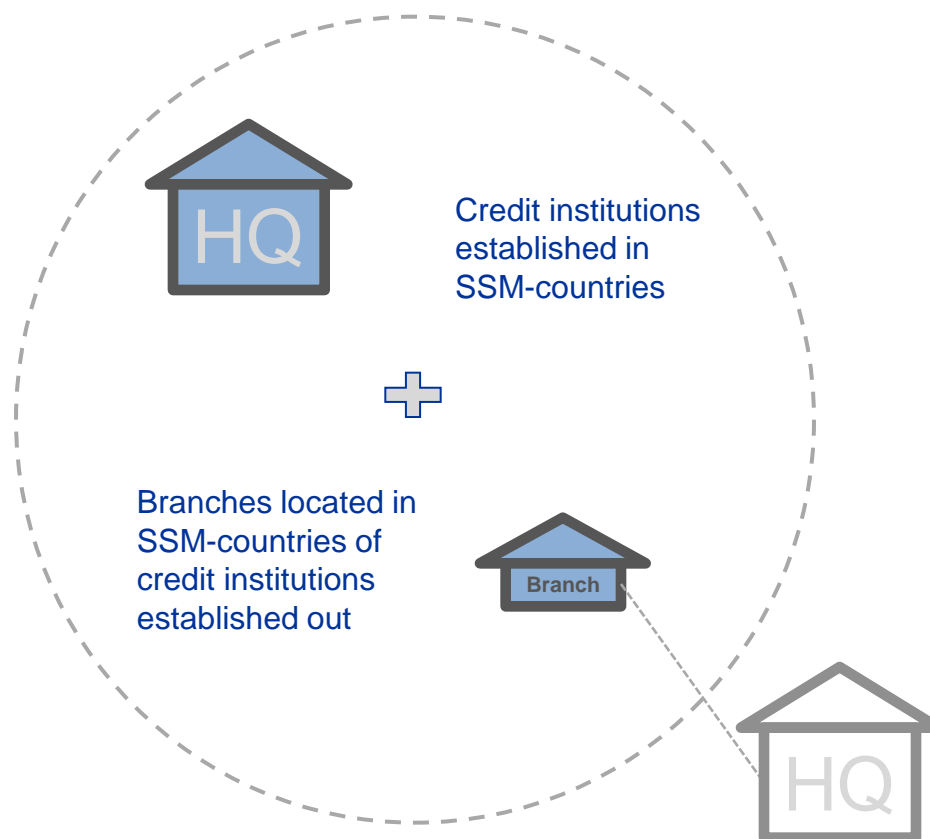
- accountability (reports, participation in hearings – exchange of views, response to questions)
- participation of the Council in selection and appointment procedures for SB members

Legal Basis

- Art. 30 SSM Regulation
 - (1) “The ECB shall levy an annual supervisory fee on credit institutions established in the participating Member States and branches established in a participating Member State by a credit institution established in a non-participating Member State...”
 - (2) “...the amount of the fee will be calculated in accordance with the arrangements established, and published in advance, by the ECB”
- ECB Regulation on Supervisory Fees
 - “...they shall cover, but not exceed, the expenditure incurred by the ECB in relation to its supervisory tasks...”
- Calculated according to objective criteria: Size and risk profile of each credit institution

Concept

- Purpose: independence and separation
- All supervised institutions within the SSM will pay an annual supervisory fee to the ECB, i.e.:





- ECB: direct and indirect supervision of credit institutions established in the euro area and in the participating MS



- EBA: development of regulatory policies as defined under relevant EU legal acts for all EU and design of stress tests
- role in pan-EU management of crises

- The EBA maintains its role and retains all its existing powers and tasks: it should continue developing and contributing to the consistent application of the single rulebook applicable to all Member States and enhancing convergence of supervisory practices across the whole Union
- Areas of close interaction:
 - European Supervisory Handbook (best practices)
 - Stress testing
 - Crisis management procedures



- Organisation and efficiency of cooperation with the NCAs (Art. 6)
- Central bank independence and democratic accountability for the supervisory function (Art. 19 and 20)
- Close cooperation with NCA outside the euro area (Art. 7)
- Use of national law

Thank you very much for your attention!



- ECB Banking Supervision Website:
<https://www.bankingsupervision.europa.eu/home/html/index.en.html>
- ECB Guide to Banking Supervision:
<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssmguidebankingsupervision201411.en.pdf>
- Contact: petra.senkovic@ecb.europa.eu or (+49 69 13 44 7019)