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Abstract

In no other policy field has European integration advanced more rapidly over the past decade nor has the challenge of reconciling uniform rules with national diversity arisen more sharply than in financial regulation generally and banking supervision in particular. The creation of the Single Supervisory Mechanism (SSM) for European Banking Union is widely recognized as one of the most significant integration steps since the Maastricht Treaty and the introduction of the euro. This paper begins by outlining two alternative approaches to integrating diversity within the EU: differentiated integration (DI), the adoption of policies and rules that apply only to some Member States, but not to others; and experimentalist governance (XG), a process of provisional goal setting and revision, based on recursive learning from comparative review of implementation in different local contexts. The paper then goes on to analyze the SSM from three distinct perspectives: first, as a centralized hierarchy, seeking to impose and enforce uniform rules, standards, and procedures across the Banking Union; second, as a polyarchic network, seeking to orchestrate intensive cooperation between the ECB and the NCAs; and finally, as an experimentalist organization, seeking to accommodate and learn from diversity by adapting common rules and procedures to the specificities of individual banks, and revising them regularly through peer review of implementation experience at multiple levels. Drawing on a wide range of documentation and in-depth interviews with EU and national officials, the paper reconstructs the evolution of the SSM's organizational practices and decision-making processes, along with its institutional structures, from its inception in 2014 to the present. From this study of the SSM "in action", the paper argues that while each of these three views highlights important characteristics which need to be incorporated into any comprehensive picture, the most encompassing perspective is that of the SSM as an experimentalist organization, which integrates and recasts key elements of the other two views into a more complete and dynamic analysis of its evolving architecture and practical operations. The paper concludes by drawing out some broader implications from the case of the SSM for the relationship between uniformity, differentiation, and experimentalism in EU regulation more generally.

Keywords: financial regulation, banking supervision, European Union, European Central Bank, experimentalist governance, differentiated integration, hierarchy, polyarchy

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1. Integrating Diversity within the European Union: Alternative Approaches

How can advances in European integration be reconciled with diversity among Member States? Rightly or wrongly, EU regulation has acquired an increasingly contested reputation, at least within the Union itself, where the “Brussels rule factory” has become a term of abuse even among committed supporters of the European project (e.g. van Middelaar 2019). This contested reputation is partly due to the perceived technocratic character of EU rule making, and its remoteness from national parliaments and ordinary citizens. It is likewise partly due to the politically contested character of EU rules themselves, which may involve value conflicts and distributive consequences for Member States, firms, and taxpayers. But it is also due in no small measure to concerns about misfits between uniform, one-size-fits-all rules and heterogeneity of socio-economic conditions, institutional structures, and policy preferences in an increasingly diverse Union of 27 Member States, from which one (the UK) has recently departed (Matthijs et al. 2019).

One widely canvassed solution to this dilemma is differentiated integration (DI). Its underlying assumption is that deeper integration of markets and societies within the EU requires uniform, centrally determined rules, which some Member States may be unable or unwilling to accept, at least initially. Where other Member States wish nonetheless to push ahead, the result is DI: policies and rules that apply only to some Member States (internal DI), as well as in some cases to certain non-Member States (external DI). Most such internal DI, as recent research has shown, is temporary, resulting from transitional exemptions from EU rules in accession agreements or secondary legislation, which are eventually scheduled to expire (“multi-speed” integration). But other forms of internal DI are more durable, especially where they reflect “constitutional” reservations among some Member States to the integration of so-called “core state powers”, in fields such as foreign and defense, interior and justice, and monetary policies. Among the best known and most visible forms of such durable “multi-tier” integration are the Euro Area and the Schengen borderless zone (Schimmelfennig & Winzen 2020).

DI, defined in these ways, offers both advantages and disadvantages for European integration. On the positive side, DI may allow a closer match between EU policies and rules on the one hand and member state preferences and conditions on the other. In so doing, it allows greater self-determination for national *demoi* within the Union, and may help to blunt euroscepticism and secessionist movements, such as Brexit. DI may also help to avoid sub-optimal, lowest common denominator solutions at EU level by permitting national opt-outs or closer cooperation among avant-garde Member States (Bellamy & Kröger 2017; de Vries 2018; Schimmelfennig & Winzen 2020: ch. 1). On the negative side, however, DI may also divide Member States and EU citizens into separate and unequal groups. It may likewise fail to address externalities resulting from national policies and functional spillovers between interdependent policy fields (Schimmelfennig & Winzen 2020: 2; Lord 2015). Finally, where it becomes durably entrenched, DI may fragment the European market and create opportunities for regulatory arbitrage by transnational firms.

Yet DI is not the only available approach to accommodating diversity within the EU. A growing body of recent research has shown that in many core policy domains, EU governance is characterized not by top-down imposition of rigid, uniform regulation, but rather by an

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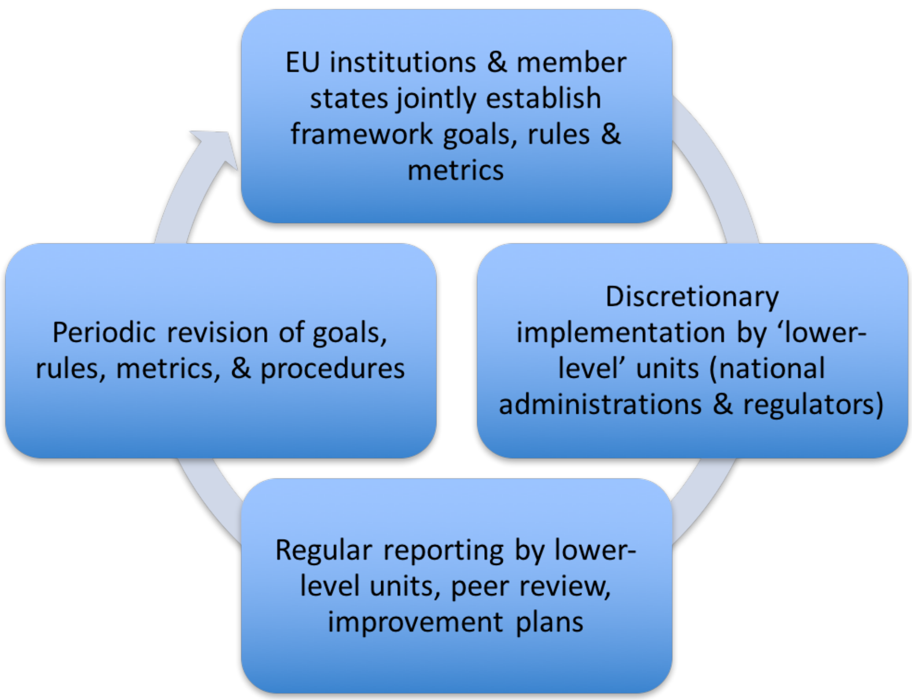
experimentalist architecture of provisional goal setting and revision, based on recursive learning from comparative review of implementation in different local contexts (Sabel & Zeitlin 2008, 2010; Zeitlin 2015, 2016). In this iterative, multi-level architecture, framework goals, rules, and metrics for assessing their achievement are established jointly by the EU institutions and the Member States, typically following consultation with relevant stakeholders. "Lower-level" units (such as national administrations and regulatory authorities) are then given substantial discretion to pursue these goals in ways adapted to their local contexts. But in return for this autonomy, they must report regularly on their performance and participate in a peer review in which their results are compared to those of others following different means towards the same ends. Where Member States are not making good progress, they are expected to take corrective measures, based on a plausible plan for improvement informed by the experience of their peers. The goals, rules, metrics, and decision-making procedures are then periodically revised in response to the problems and possibilities revealed by the review process, and the cycle repeats. For a diagrammatic representation, see Figure 1 below.

Figure 1: EU XG as an iterative, multi-level architecture



Source: Zeitlin (2015: 2)

In many (though not all) cases, experimentalist governance (XG) architectures are underpinned by "penalty defaults": destabilization mechanisms that induce reluctant parties to cooperate in framework rule making and respect its outcomes, while stimulating them to propose plausible and superior alternatives, typically by threatening to reduce control over their own fate. In the EU context, such penalty defaults frequently involve court judgments or (threats of) Commission

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decisions, which oblige Member States and/or private actors to explore how to pursue their own preferred goals in ways compatible with the fundamental principles of European law, but without imposing specific hierarchical solutions (Sabel & Zeitlin 2008: 305–8, 2010: 13–16, 2012: 413–14; Zeitlin 2016: 3–4; Gerstenberg 2019; Svietiev 2020).

Such XG architectures arguably have a number of fundamental advantages, relative both to conventional uniform regulation and to differentiated integration. First, they accommodate diversity by adapting common goals and rules to varied local contexts, rather than seeking to impose one-size-fits-all solutions or dividing Member States into separate groups of "Ins" and "Outs". Second, they provide a mechanism for coordinated learning from local experimentation through disciplined comparison of different approaches to advancing the same general ends, which can be used to generate new policy solutions and regulatory frameworks that may then be applied in contextually specific ways across the Union as a whole. Third, the same processes of mutual monitoring, peer review, and joint evaluation that support learning from diverse experience also provide dynamic, non-hierarchical mechanisms for holding both central and lower-level actors accountable for their actions in pursuit of agreed goals. Finally, because both the goals themselves and the means for achieving them are explicitly conceived as provisional and subject to revision in light of experience, problems identified in one phase of implementation can be corrected in the next iteration. For each of these reasons, XG architectures have emerged as a widespread response to turbulent, polyarchic environments, where pervasive uncertainty about the nature of current and emerging problems means that policy actors cannot define ex ante their precise goals or how best to achieve them, while a multi-polar distribution of power means that no single actor can impose their preferred solution without taking into account the views of others. Under such conditions, they may also represent an alternative and potentially preferable approach to DI for coping with national diversity within the EU.

XG architectures of this type are neither universal nor ubiquitous in the EU, but are widely diffused across a variety of policy domains. Well-documented examples include: regulation of competition, energy, telecommunications, and finance; food, drug, chemicals, and maritime safety; environmental protection; employment promotion and social inclusion; justice and home affairs; data privacy, anti-discrimination, and fundamental rights. These architectures also play a growing part in EU external governance, where the revisable framework rules they generate are frequently extended to third-country actors. A typical pattern in recent years has been progressive formalization of EU regulatory networks, without full supranational centralization, as in the case of the Agency for Cooperation of Energy Regulators (ACER). In some sectors, under conditions of high interdependence coupled with high uncertainty, concern for the integrity of integrated markets has led to the creation of a single set of harmonized but provisional rules, revisable through ongoing monitoring and review of implementation experience, as in regulatory fields like chemicals, energy, and arguably finance. These developments in turn raise the possibility of the emergence in such cases of a simplified XG architecture, combining synchronic uniformity with diachronic revisability. In such a simplified architecture, framework rules and procedures may be progressively specified and discretion for lower-level actors at any given moment narrowed, but the rules and procedures themselves remain contestable in light of local application, while revisions over time based on recursive review of implementation experience

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provide a crucial source of improvement and adaptability for the governance system as a whole (Zeitlin 2016; Rangoni 2020).

2. Reconciling Uniformity and Diversity in EU Financial Regulation

In no other policy field has European integration advanced more rapidly over the past decade nor has the challenge of reconciling uniform rules with national diversity arisen more sharply than in financial regulation generally and banking supervision in particular. The global crisis of 2007-2009 was widely agreed to have exposed fundamental flaws in the EU's networked, multi-level governance architecture for financial regulation, based on collaboration between EU institutions and member state administrations on the one hand and committees of national supervisors on the other. Foremost among these was the imbalance between the "single passport" for financial institutions and the relative weakness of European arrangements for supervisory cooperation, information sharing, and crisis management. But the crisis also underscored the risks of regulatory arbitrage arising from the incomplete harmonization of financial rules and supervisory practices across EU Member States. A further weakness exposed by the crisis, in common with other jurisdictions around the world, was the limited capacity of European and national supervisory bodies to effectively monitor and assess the risk-management strategies of large, systemically important firms in rapidly changing financial markets (Black 2012; Ferran 2012: 122-5, 128-9; Moloney 2014a: 880-2, 956-60; Zeitlin 2016: 1077-8).

Based on this diagnosis, the EU undertook a far-reaching set of reforms to its financial regulatory governance. Foremost among these was the transformation of the so-called Lamfalussy Level 3 committees of sectoral national supervisors (for banking, securities markets, and insurance and occupational pensions respectively) into European Supervisory Authorities (ESAs) with enhanced powers as part of a new European System of Financial Supervision alongside National Competent Authorities (NCAs). These ESAs were designed to support the creation of a "single rulebook" for each field of financial regulation, as well as to promote stronger convergence of national supervisory practices and improve coordination across NCAs. The ESAs were empowered to propose binding technical standards for the elaboration and implementation of EU financial regulation, which the Commission must endorse or present compelling reasons not to do so. They were likewise empowered to develop a body of non-binding guidelines, opinions, and recommendations on the implementation of EU financial regulation, with which NCAs are required to "make every effort" to comply, or explain why they do not, subject to peer review of national practice. Under a tightly specified set of conditions, ESAs may also issue instructions to NCAs and market participants to tackle emergency situations and breaches of EU law, as well as to resolve disputes between NCAs through binding mediation (Ferran 2012: 132-55; Moloney 2014a: chs. X-XI).

These new powers of the ESAs to formulate uniform binding rules, override NCAs, and issue direct instructions to market actors have been widely seen as a "great leap forward" towards centralized hierarchical authority in EU financial governance (e.g. Grossman and Leblond 2012). At the same time, however, knowledgeable observers of the ESAs have emphasized the continuing polyarchic role of the NCAs themselves in their governance and decision-making

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procedures, along with the reinforcement within them of experimentalist practices of peer review and recursive revision of rules and guidelines (Ferran 2016; Moloney 2018; cf. also Zeitlin 2016: 1079-80).

More novel and far-reaching still is the Single Supervisory Mechanism (SSM), created in 2012-2014 as an authoritative supranational supervisor for eurozone banks attached to the European Central Bank (ECB). The SSM was explicitly designed to break up the "cozy relationships" between banks and national supervisors, which were deemed to have contributed through lax oversight to the global financial crisis, as well as to cut the "doom loop" between banks and sovereigns, which had become a key source of contagion during the euro crisis. It was likewise a response to the failure of the initial stress tests conducted by the European Banking Authority (EBA) to flag the parlous state of banks in several Member States, which had to be bailed out shortly thereafter, due in part to the Authority's limited powers to extract information directly from individual financial institutions (Moloney 2014b: 1622–5; Veron 2015: 14–16; Ferran 2016: 43–4).

The SSM, accompanied by the creation of a Single Resolution Mechanism (SRM) for eurozone banks as part of the broader Banking Union project, is itself a form of differentiated integration, nested within the Single Market and EU-wide financial regulation, but faced with significant challenges of diversity across participating Member States. Participation in the Banking Union is obligatory for countries within the Euro Area, but other EU Member States may also apply to join the SSM (and the SRM) under a system of "close cooperation" with the ECB (whose details will be discussed further below). So far, only Croatia and Bulgaria have joined the SSM on this basis, as part of their preparations to adopt the euro (on the SSM and Banking Union as a case of DI, see Schimmelfenning 2016; Mack 2020).

The SSM was explicitly designed as a more centralized and hierarchical institution than the ESAs. Foremost among its powers, which will be discussed in greater detail in subsequent sections, is the final authority to grant and withdraw banking licenses for credit institutions in participating Member States. The SSM directly supervises the largest and most systemically important banks in the eurozone (currently 115), accounting for 81% of total banking assets, through Joint Supervisory Teams (JSTs) for each Significant Institution (SI) led by an ECB coordinator. The ECB can also take over supervision of the remaining 2500 or so less significant institutions (LSIs) from NCAs where it deems this necessary to "ensure consistent application of high supervisory standards", and can demand any information it requires from these institutions via their supervisors. To carry out these tasks, ECB Banking Supervision has built up a substantial central organization directly employing some 1200 staff, recruited mainly from national supervisors, central banks, and the private sector (ECB Banking Supervision 2018a: ch. 5; 2021a: 78; https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html).

This supranationalization of banking supervision has been described by prominent EU policy makers like Mario Draghi and Sharon Bowles (then chair of the EP Economic and Monetary Affairs Committee) as "the most significant integration step since the Maastricht Treaty" and "a greater pooling of sovereignty than signing up to the Euro" (Draghi quoted in Glöckler et al. 2017: 1136; Bowles quoted in McPhilemy 2014: 13). It has likewise been assessed by academic commentators such as Epstein and Rhodes and Texeira as a decisive step away from the EU's "main established

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form of governance, with strong multi-level and heterarchic properties, towards government with a strong degree of centralization and hierarchy", replacing "the soft governance of the previous period with legally binding and centralized enforcement of European law" (Epstein & Rhodes 2018: 207; Texeira 2017: 559; cf. also Chiti & Recine 2018: 104). "By shifting supervisory and resolution powers to the ECB", Kudrna similarly writes (2016: 260), "the EU has crossed the Rubicon that separates the ever-closer intergovernmental cooperation from the supranational regime." Many political and academic commentators have welcomed the increased hierarchical centralization of eurozone banking supervision, some seeing it as a promising model for other fields of financial regulation such as anti-money laundering (Kirschenbaum & Veron 2018). But others have expressed concern instead that it might create a "subsidiarity deficit", in which "too much central decision-making" might inhibit the SSM's capacity to mobilize accumulated local knowledge within the NCAs about national markets, legal frameworks, business practices, and the specificities of individual banks (Cabane & Lodge 2018; Tröger 2014).

As with the ESAs themselves, however, close observers of the SSM's legal framework and organizational design have drawn attention to its complex, polyarchic governance structure, in which NCAs participate directly in the key decision-making bodies, while also highlighting the heavy reliance of its supervisory model on "intensive cooperation" between the ECB and the NCAs. Thus, for example, as Coman-Kund and Amtenbrink (2018: 4-5) remark, "Although the ECB is at the core of the new system, it cannot simply be concluded from this fact that banking supervision in the EU has been centralized altogether and that the NCAs are hierarchically subordinated to the ECB in all matters. Instead, the SSM introduces a complex division of tasks and close interaction between the ECB and the NCA", whose supervisory model "favours an integrated system of peers based on smooth cooperation and the combining of different strengths and resources with a view to ensuring effective banking supervision".[1]

At a more granular level, Grundmann (2019: 110) sees "the diversity in the composition of supervisory teams, with members coming from the ECB and from the Member State which would otherwise be competent for supervising the bank…[as] a novel and promising way of combining advantages of uniformity and diversity", whose mixed character may be expected to facilitate effective use of local knowledge while limiting the risk of supervisory capture. In previous work of my own, I have likewise argued that the SSM's distinctive "combination of uniform rules and processes, contextually adapted to banks' individual risk profiles by mixed teams of European and national supervisors, and regularly revised on the basis of central benchmarking and comparative review, supports the conclusion that, at least for now, experimentalist practices are flourishing beneath the SSM's hierarchical veneer" (Zeitlin 2016: 1082).

[1] For related reflections on the distinctive mix of centralization and decentralization in the SSM's governance structure and the importance of cooperation between NCAs and the ECB in its supervisory model, see Lo Schiavo (2015); Ferrarini (2015); Pizzola (2018); Grundmann & Micklitz (2019).

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3. Studying the SSM in Action

The vast bulk of the literature on the SSM to date focuses on two principal themes: its legal framework and governance structure (mostly produced by legal scholars)[2] on the one hand, and the political process leading to its creation (mostly produced by political scientists and political economists)[3] on the other. Although the SSM was established in 2014, there has been surprisingly little research on how this novel institution actually works, most of which deals with its initial years of operation (e.g. Schoenmaker & Veron 2016; Cabane & Lodge 2017; Grundmann et al. 2017; Chiti & Recine 2018; Violle 2019).[4]

To close this yawning gap and bring fresh empirical evidence to bear on the contrasting views of the nature of the SSM discussed above, this paper analyses the evolution and functioning of its organizational practices and decision-making processes, along with its institutional structures, from its inception to the present. In addition to a wide range of official documents and secondary literature, this study of the SSM "in action" is based on 25 in-depth interviews with a total of 40 officials (some of whom were interviewed more than once) involved in EU banking regulation and supervision, from the ECB (16), six NCAs (21), the EBA (2), and the European Commission (1).[5] The interviews were conducted between March 2019 and March 2021. During this period ECB Banking Supervision underwent a far-reaching reorganization, which I have therefore been able to follow and analyze in real time. Most of the interviews were recorded and transcribed (with the exception of ECB 4-7 and NCA 5); in many cases, the interviewees were also given an opportunity to review and correct the transcripts, as well as to comment on earlier drafts of this paper.[6] A full list of interviews, with information about the institutions and functions (but not the names) of the interviewees, along with their date and location, can be found in the Appendix. One NCA, a small newer Member State, also requested anonymity as a matter of official policy, whose name is therefore omitted. The interviews are referred to in the text by codes (ECB 1-12, NCA 1-11, EBA 1, COM 1), for which the key is provided in the Appendix.

The remainder of this paper uses the evidence generated from these interviews and the available documentation to analyze the SSM from three distinct perspectives: first, as a centralized hierarchy, seeking to impose and enforce uniform rules, standards, and procedures across the Banking Union; second, as a polyarchic network, seeking to orchestrate intensive cooperation

[2] In addition to the works already cited, see especially Lo Schiavo (2019a); Chiti & Santoro (2019); Bassani (2019); D'Ambrosio (2020); Busch & Ferrarini (2020).

[3] In addition to the works already cited, see especially Howarth & Quaglia (2016); Epstein & Rhodes (2016); Keller (2018); Nielsen & Smeets (2018); Quaglia (2019); Culpepper & Tesche (2020); Howarth & Schild (2020).

[4] Two important exceptions, on which I draw in the analysis below, are the unpublished PhD theses by Jakub Gren (2019) and Cecilia del Barrio Arleo (2020); cf. also Gren (2017, 2020). There is also a substantial empirical literature on the political, administrative, and judicial accountability of the SSM, which is reviewed in Zeitlin and Brito Bastos (2020).

[5] Interviews NCA 5, 9, and 10, and EBA 1 were conducted by or with Dr. Marta Božina Beroš of the University of Pula, Croatia.

[6] None of the statements by the interviewees quoted in this paper represent the official views of the organizations concerned (NCAs, ECB, EBA, European Commission), which cannot be held legally liable for them.

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between the ECB and the NCAs; and finally, as an experimentalist organization, seeking to accommodate and learn from diversity by adapting common rules and procedures to the specificities of individual banks, and revising them regularly through peer review of implementation experience at multiple levels. The aim of the analysis is not only to adjudicate empirically between these apparently opposed views of the SSM, but also to show how they can be reconciled with one another in a more comprehensive analytical perspective, and to draw out the implications for EU financial regulation and European integration more generally.

4. The SSM as a Centralized Hierarchy

As already indicated, there is no shortage of evidence that could be adduced to support the view of the SSM as a centralized hierarchy. Foremost among this is the SSM's final authority for granting and withdrawing banking licenses: the power of life and death over eurozone credit institutions. The SSM likewise has full authority over the designation of banks as SIs, subject to direct supervision by the ECB, along with far-reaching powers over other crucial matters such as the appointment and removal of bank directors ("fit and proper" decisions), passporting, acquisition of qualifying holdings, own funds determinations, and adoption or modification of internal models. To streamline the process, routine decisions on many of these issues have been formally delegated by the SSM Supervisory Board (SB) to the heads of ECB work units. As part of the annual Supervisory Review and Evaluation Process (SREP) decision, the SSM can require SIs to hold additional capital to cover specific risks, as well as to revise their governance arrangements, planning processes, controls, and other internal systems (ECB Banking Supervision 2018a: chs. 3-4; Petit 2019: 117-22; D'Ambrosio 2020: 39-60, 193-8).

Beyond the power to assume direct oversight of LSIs referred to earlier, the ECB can issue guidelines and instructions, both general and specific, to NCAs on their supervision. The ECB is further authorized to exercise powers granted to national supervisors under both EU and national law over SIs, and to instruct NCAs on their use towards LSIs. Unlike other fields of EU multi-level regulation, the European Courts have determined (in the landmark *L-Bank* case) that powers over banking supervision within the SSM have been delegated exclusively to the ECB rather than distributed between the ECB and the NCAs, which are responsible for "decentralized implementation" under the former's control, including as regards supervision of LSIs (ECB Banking Supervision 2018a: ch.5; Smits, 2017, 2019; Petit 2019: 123-8; D'Ambrosio 2020: 203-30; Schiammo 2021).[7]

Compared to other EU regulatory agencies, including the ESAs, the SSM is much more involved in the direct exercise of executive and enforcement tasks in the Member States. From the outset, the SSM has been explicitly committed to developing "intrusive and hands on supervision", aimed at implementing the single rulebook "diligently and assertively" by ask[ing] the hard questions and challeng[ing] the responses where necessary" (ECB Banking Supervision 2015: 5; ECB Banking

[7] Note, however, that this interpretation of the distribution of supervisory powers between the ECB and the NCAs is contested by the German Constitutional Court.

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Supervision 2018a: 4). At the heart of this process are the JSTs, which carry out the annual SREP exercise for each SI according to a standardized methodology assessing their business models, governance and risk management, capital, liquidity and funding risks, whose results feed into the subsequent year's Supervisory Examination Programme (SEP). The JSTs comprise a mix of directly employed ECB staff and local supervisors from the NCAs in which the bank operates, coordinated by an ECB official, who should not normally be a national of the country where it is headquartered. The JST Coordinator is formally responsible for proposing the SREP decision to the SSM SB, based on standardized risk scores, benchmarked against those of other similar banks by the ECB's horizontal services, which can be adjusted upwards or downwards according to "constrained supervisory judgment" within a limited bandwith (ECB Banking Supervision 2018a: 11-14, 77-89; ECB Banking Supervision 2018b). A key purpose of this decision-making procedure is to reduce national bias and regulatory capture. As one ECB official responsible for supervising JSTs for several large banks observed, "In some countries…these people, the bank supervisor, the Minister of Finance, the big bank CEOs…they all went to the same school. They all know each other. If the bank [CEO] doesn't like it, he just calls the Minister of Finance. 'Take care of this, I don't want this'…and it gets settled. That's stopped, it's done, you cannot do that anymore" (ECB 3; cf. also ECB 1).

The JSTs are supported in their tasks not only by the ECB's horizontal services, but also by an extensive program of on-site inspection missions, which conduct detailed investigations on the bank's premises lasting several months of specific issues ranging from residential real estate or shipping loans to governance and operational risks, focusing on problem areas identified in past SREPs based on a targeted engagement level keyed to the size and complexity of each institution (ECB Banking Supervision 2018c; ECB 1; NCA 1; NCA 3; NCA 11.4). To reduce information asymmetries still further, the SSM has carried out with the aid of external consultants a multi-year on-site investigation of banks' internal models, analyzing individually and comparatively not only their technical content but also their management processes for validation, monitoring, review, and revision. This massive investigation has resulted in turn not only in new guidelines for the use of internal models, but also in remediation requirements for non-compliance with applicable regulation and follow-up letters from the JSTs on open issues. Over a three-year period, this Target Review of Internal Models (TRIM) identified over 5800 deficiencies in the models used by the 65 large banks studied, resulting in an increase of 12 percent in their aggregated Risk Weighted Assets (RWA) and a commensurate decline in their Common Equity Tier 1 (CET1) ratios, with knock-on effects on their capital requirements (ECB Banking Supervision 2021b).

From the outset, too, the SSM has sought to promote increased harmonization and convergence of supervisory approaches across participating units. Among its first products was an internal "Supervisory Manual" describing "common processes, procedures and methodologies" for the ECB and the NCAs, aimed at "ensuring that the same supervisory standards are applied across the banking union…complementary to the EBA's work in fostering harmonization within the EU." In its initial form, the Manual covered a variety of topics in considerable detail, including on- and off-site reviews, risk assessments, and model validations, as well as the SREP. But over time, the methodologies for various SSM activities have largely been hived off to separate operational guides, which can also be very detailed and prescriptive, running some 1500 pages in the case of

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on-site inspection, with separate sections for each major risk category (ECB Banking Supervision 2015: 33-34; ECB Banking Supervision 2018a; ECB 8; ECB 12.1; ECB 12.2; ECB 11.1; ECB 11.2; ECB 1; NCA 1; NCA 11.3; Gren 2018: 299-301). The ECB has likewise sought to develop "joint supervisory standards" to steer and harmonize NCA supervision of LSIs, including a modified version of the SREP methodology, which is being progressively rolled out across NCAs (ECB Banking Supervision 2018a: 67-8; ECB Banking Supervision 2020b). In addition to the public versions of the Supervisory Manual and the SREP and on-site inspection methodologies, the SSM also publishes detailed guidance documents and recommendations setting out its supervisory expectations for banks on a variety of issues, including non-performing loans, internal models, and internal capital and liquidity assessment processes, and dividend distributions during the Covid-19 pandemic.[8].

The SSM has consistently sought to enhance the uniformity of the Single Rulebook for EU banking regulation and harmonize its implementation at national level. Among its first major projects was a comprehensive review of the numerous options and discretions (O&Ds) provided to competent authorities under EU legislation, aimed at reducing variations across the eurozone which were believed to distort competition and fragment the banking market. Based on this review, the ECB issued a detailed regulation and guide setting out which of the more than 120 O&Ds granted originally to the NCAs it would continue to apply under what conditions to SIs under its direct supervision. The ECB then went on to publish a similar set of instruments requesting the NCAs to adapt these harmonized rules for the use of O&Ds in the supervision of LSIs. Other O&Ds, however, were granted not to NCAs but instead to Member States themselves, as notably with the waiver regime for intra-group large exposures, which promotes national "ring fencing" of capital and liquidity, thereby inhibiting the integration of eurozone banking markets (ECB Banking Supervision 2015: 7, 2016a: 62-67, 2016b; Guideline (EU) 2017/697 of the ECB; ECB 11.1; ECB 11.2; COM 1; NCA 7; NCA 1; NCA 2; NCA 9.2; NCA 11.2; Kudrna & Puntscher Riekmann 2018). Here the SSM's leadership has pressed the European legislators to accelerate the phase-out of this discretion, while also seeking to develop practical workarounds that could induce national governments to relax their application (Enria, 2019b; Enria & Fernandez-Bollo 2020; Enria 2020b).

Beyond these options and discretions enshrined in EU regulation, many supervisory rules and powers remain unharmonized across the Banking Union due to variations in the underlying national legislation. A notable case in point are the "fit and proper" requirements for appointing and removing bank directors, which involve ex ante supervisory approval in some countries but only ex post assessment in others. Here, too, the SSM leadership has announced plans to publish a revised guide aimed at establishing a common "Europe-wide process" for such assessments, asking banks to give prior notice of proposed appointments and enabling the ECB to provide advance feedback about any potential issues before the appointment takes effect (Lo Schiavo 2019b; Enria 2020c; Fernandez-Bollo 2021).

More fundamentally still, the SSM leadership has advocated tirelessly for the completion of the second and third pillars of the Banking Union, as originally proposed in 2012. At stake here is not

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[8] https://www.bankingsupervision.europa.eu/press/publications/html/index.en.html.

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only a common European backstop for the Single Resolution Fund (adopted in December 2020), but also a European Deposit Insurance Scheme, seen as an essential step towards cross-border consolidation of banking groups, relaxation of national ring fencing, and integration of eurozone banking markets. At the same time, moreover, SSM leaders have highlighted overlaps and contradictions in the legal frameworks for crisis management, resolution, insolvency, and liquidation, pressing for revised legislation to harmonize the transposition of EU rules into national law and enhance centralized European coordination of bank liquidations (Nouy 2018b, 2018c; EC Banking Supervision 2019: 7, 2020a: 6-7, 2021a: 7-8; Enria 2020a; Hakkarainen 2020; Enria 2021).

5. The SSM as a Polyarchic Network

But alongside these centralized hierarchical elements, the SSM also displays significant heterarchical features that support an alternative view of eurozone banking supervision as a polyarchic network. Foremost among these is the structure of decision making within the SSM itself. All major decisions of the SSM, both on general policy and on individual banks, must be approved by the Supervisory Board, where NCA representatives account for the overwhelming majority of votes (21 out of 27 since the onset of close cooperation with Croatia and Bulgaria; 19 of 25 previously). Formally, SB decisions must also pass via a non-objection procedure through the ECB Governing Council (GC), on which national central banks also have a structural majority, with a mediation panel to address possible concerns raised by NCA. But so far, the GC has not intervened in SSM decisions and the mediation panel has never been activated, about which "the SSM is quite proud", as one NCA interviewee observed (Petit 2019: 112-15; Danish Ministry of Industry, Business and Financial Affairs 2019: 9; NCA 9.3).

Although NCA representatives are legally obliged to perform their duties "in the interest of the Union as a whole", they also keep a watchful eye on national interests and defend member state perspectives in the SB's deliberations. All NCAs interviewed had established SSM coordination units of varying sizes to prepare the work of their SB representative and review draft decisions proposed through the written approval procedure, which from the outset has accounted for the majority of the SSM's decisions (ECB Banking Supervision 2015: 11-12, 2021a: 88). Several of the larger NCAs have also created special units for monitoring banks outside their own market in order to enhance their capacity to contribute to SB decision making and the functioning of the SSM more generally. As one interviewee remarked, "In the end, all the supervisory decisions that are proposed to the SB need to be approved [whether on domestic] or foreign banks. And this means that when we are asked to assess proposals over foreign banks, we need to know a little bit more about those banks and about the context in which they operate. That's why we like to see the SSM not only as a transfer of responsibilities…but also [as the] assumption of new responsibilities…over the foreign banks and the SSM banking system as a whole" (NCA 9.3; cf. also NCA 11.1).

At the outset, NCAs scrutinized all draft decisions for approval by written procedure extremely closely, in order to safeguard national preferences and avoid undesirable precedents being set without a proper discussion in the SB, for example on sanctioning decisions against individual

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banks. While the intensity of such scrutiny has diminished as the SSM's policies and procedures have consolidated, NCA coordination units still carefully review and comment on these draft written decisions; where three or more NCAs object, the decision must be placed on the agenda of the SB. In practice, when NCAs submit comments through these written procedures, the comments are reviewed by the ECB units that prepared the relevant proposals and as far as possible incorporated in the final approved version. Because of the high workload involved in reviewing these draft decisions, many on routine issues concerning individual banks (such as fit and proper assessments), the NCAs have generally welcomed their delegation to ECB work units, which has also been seen as a means for freeing up time within SB meetings for discussion of substantive policy issues. But negative decisions cannot be taken under the delegation framework, and hence must be submitted for approval to the SB. All controversial decisions, irrespective of the procedure under which they are taken, thus come before the SB, where they may be challenged and debated by NCA representatives (ECB 6; ECB 11.1; NCA 4.2; NCA 7; NCA 9.1; NCA 11.1; European Commission 2017a: 6, 2017b: 20-21; Petit 2019: 115-23).

These governance arrangements in turn mean that all major SSM policies and decisions must be agreed between the ECB and a majority of NCAs. As Danièle Nouy, the founding Chair of the Supervisory Board, bluntly explained during the 2015 negotiations over the harmonization of options and discretions: "for such decisions, I need a majority in the Supervisory Board…which comprises six of our own people and 19 representatives of the 19 national supervisory authorities" (Nouy 2015a). To channel input from the NCAs and build support for common policies and procedures, the SSM has established a dense web of expert networks, working groups, and drafting teams bringing together ECB staff and national supervisors. Each horizontal division of ECB Banking Supervision has its own joint expert network with the NCAs to discuss and develop plans, policies, and procedures. Most of these networks, which meet at least quarterly and often much more frequently, are chaired by the ECB Division Head, though the pivotal Supervisory Methodologies Development (SMD) network, which oversees the procedures for the SREP assessment, is chaired by an NCA representative (ECB 1; ECB 2.1; ECB 8; ECB 10.1; ECB 11.1; ECB 12.1; NCA 4.1; NCA 5.1; NCA 7; NCA 9.2; NCA 11.3; NCA 11.4; Gren 2018: 295-7).

All major SSM initiatives and documents, including preparation and revision of manuals and operational guides, are developed through joint working groups, task forces, and drafting teams convened by these divisional networks, many of which are also led by NCA representatives (Gren 2018: 298-9). The purpose of these collaborative arrangements is to develop political buy-in for common positions as well as to tap into the detailed knowledge and expertise of the NCAs on complex technical issues such as review of banks' trading books, risk-by-risk scoring in the SREP, or implementation of bank recovery plans. As a top official of the ECB's Supervisory Policy (SPO) Division observed, "in general, we have a no surprise policy so that the Supervisory Board isn't blindsided." For this purpose, it is helpful that the NCAs can "raise issues at an early stage. It's always better when we get to know their problems before it goes to the SB, because sometimes we might agree with their solution. It's not always that this needs to be a controversy" (ECB 11.1). NCAs, for their part, consider participation in these networks and joint drafting teams crucial to ensure that their perspectives are taken into account before any proposals go to the SB. As an interviewee from one large NCA remarked, "in terms of influencing decisions, what is also important is all the work done prior to the final phase of the decision making. There is some

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arbitrage, some decisions taken at the Board level, but obviously a lot of the final decision comes from the preparatory work. So it's key for us to be involved in this preparatory phase" (NCA 11.1). Importantly, however, as another interviewee from a smaller member state pointed out, NCAs' capacity to influence SSM policies through participation in these networks and drafting teams depends on the human resources they are able to invest, as well as on the relative importance of their national banking sector (NCA 5.1).

In the case of LSIs, where the supervisory role of the ECB is less direct, the impetus towards the cultivation of cooperative rather than hierarchical relations with the NCAs is even stronger. In the early years of the SSM, as a top official of the responsible DG explained, "certain stakeholders expected that the ECB could maybe intervene much, much more in some LSIs, the largest ones essentially", and "there was a whole methodology developed for these high-priority LSIs, with…larger involvements." But over time, the ECB's oversight approach has evolved away from such efforts to implement a sort of "direct-indirect" supervision of individual LSIs, shifting instead towards "a more system perspective" focused on the co-development of Joint Supervisory Standards with NCAs through the Senior Management Network (SMN). Foremost among these is the common LSI SREP methodology mentioned earlier, which allows greater flexibility than that for SIs in terms of frequency and procedures to accommodate variations in banks' size, organization, and national specificities. The LSI SREP methodology is formally non-binding, but has been progressively adopted by most NCAs, with the rest committed to follow soon, despite some delays due to the Covid-19 pandemic. While the ECB is empowered by the SSM Regulation to issue general instructions to NCAs on LSI supervision, they now find it more effective to rely more on informal guidance and persuasion than on binding instruments, not only because it creates less "stress in the system", but also because the latter are slower and more difficult to change in response to implementation problems and new developments (ECB 10.1; ECB 10.2; NCA 8). To date, moreover, the ECB has never exercised its power to take over direct supervision of an LSI from an NCA against the latter's objections, which the Chair of the SSM SB termed "an exceptional response – a measure of last resort which should be considered only when all other appropriate supervisory measures have been unsuccessful" (Reply by Danièle Nouy to a written question by MEP Nuno Melo, 2.5.2016, quoted in Petit 2019: 125, n. 113; Gren 2020: 251).[9]

But even for SIs supervised directly by the ECB, there are sharp practical constraints on the latter's hierarchical powers over NCA staff. Most notably, the ECB does not directly employ or control NCA supervisors participating in SI oversight through on-site missions and JSTs. The numerical disparity is greatest in the case of on-site missions, where only 70 of the supervisors involved are directly employed by the ECB, and the head of mission is typically employed by the host NCA. Hence as a top official of the ECB's centralized on-site function remarked, to carry out these missions "I rely on 1000 inspectors, but I have no hierarchical power on 95 percent of these people" (ECB 1). The balance is less skewed in the case of the JSTs, where ECB staff comprised 37 percent of the 1318 FTEs responsible for off-site supervision of individual SIs in 2019 (ECB Banking

[9] The ECB has, however, taken over direct supervision of two Latvian banks (Luminor and PNB Banka) at the request of the Latvian NCA. See https://www.fi.ee/en/news/european-central-bank-names-luminor-bank-significant-bank; Nouy 2018a.

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Supervision 2020a: 91). Here, too, however, the JST coordinator has limited direct authority over participating local supervisors, who do not necessarily work full-time for the team, and whose performance evaluations and career prospects remain in the hands of their NCA employers. While an SSM protocol has been agreed whereby the JST coordinator can submit an annual performance evaluation for team members employed by the NCAs, it remains up to the latter what use they make of these assessments (Decision (EU) 2019/976 of the ECB; Gren 2018: 273). Thus as an ECB official responsible for vertical supervision of four large multinational banks put it: “We really want to work with these people as if we are one team….But the problem is because it's hierarchy, the [NCA] people work for [the NCA], and not for ECB.” For such an arrangement to function effectively, it is “important to create good relationships, to create buy in, because you have to cooperate with people, but you don’t have any hierarchical power. So you depend on their willingness to cooperate [and] you better make it work” (ECB 3; cf. NC6; NCA 4.1).

Each JST therefore has a local coordinator, who is responsible for reconciling tensions in work assignments and priorities for local supervisors between NCA managers and the ECB team coordinator. Although the ECB coordinator is formally empowered to propose the SREP decision, any dissenting opinions from national supervisors are also reported, and controversial cases must be resolved by the SSM Supervisory Board. Hence larger teams have a “core JST”, comprising a sub-coordinator from the NCA where the bank is headquartered and local coordinators from other countries with major subsidiaries along with the ECB coordinator, who interact frequently “to discuss the most important topics” and hammer out the proposed SREP decision (ECB 3; NCA 6; NCA 4.1; NCA 4.2; NCA 9.2; NCA 11.4). During the SSM’s early years, the degree of friction within JSTs often depended on the nationality and personality of the ECB coordinator, as well as on NCAs’ own willingness to embrace the new supervisory arrangements. But interviewees from both sides agree that these relationships have become much smoother and more cooperative. Crucial in this respect has been the mandatory rotation of coordinators and local team members every three to five years, which interviewees argue has fostered the circulation of ideas and experiences across JSTs, sanding off rough edges in relationships between ECB and NCA officials, while encouraging the diffusion of a common approach to joint decision making. The ECB itself has deliberately sought to stimulate this transnational socialization process through systematic secondments and exchanges of staff at multiple levels between the NCAs and ECB divisions, as well as between NCAs themselves, along with a variety of training and experience-sharing forums for participants in JSTs and on-site missions (ECB 3; NCA 6; NCA 3; NCA 4.1; NCA 4.2; NCA 9.2; NCA 11.4).

Beyond the SSM, NCAs retain an independent voice on EU banking regulation through the EBA, with double majority voting arrangements to safeguard the interests of non-Banking Union Member States. The ECB participates in meetings of the EBA Board of Supervisors (BoS), but does not have voting rights there, unlike the NCAs (Ferran 2016).[10] While the ECB seeks to coordinate

[10] The NCAs, overseen by the EBA and the ESRB, also retain primary responsibility for key supervisory functions such as consumer protection, macro-prudential regulation, anti-money laundering and combating the financing of terrorism, even if the ECB has become increasingly involved in the latter from a micro-prudential perspective (ECB Banking Supervision 2021a: 76-7).

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with the NCAs before each BoS meeting, in order to develop a common position on matters of particular interest to the SSM, it cannot compel the NCAs to follow their lead. As one top official observed:

> Normally, there's quite some readiness to find a common position, but if it really concerns things that are very politicized in their national jurisdiction, I think we will not be successful. If the broader public is looking at the financial markets authority in a given country and say that if you make this decision, we will have a huge damage, then it's probably difficult for us to convince that country to go in the other direction (ECB 11.1).

An NCA official concurred that national authorities' willingness to follow the ECB's lead depends on the nature of the topic: "when it's more about how 'do we run this process?'", such as the conduct of the biannual EBA stress tests, "where 90 percent of the work is done by the SSM and their centralized quality assurance", "the ECB has a stronger position, and when it's more towards real policy making the balance is more towards the NCAs" (NCA 2).

More generally, SSM NCAs value the EBA as "a different channel to communicate your stance, with full independence", especially on issues concerning smaller banks, and regularly take different positions from one another as well as the ECB within the BoS (NCA 9.2; NCA 5.1; NCA 5.2; NCA 2; EBA 1.1; COM 1). Non-Banking Union countries are particularly active within the EBA in building coalitions and blocking minorities to defend their specific interests, over issues such as the regulatory treatment of euro-denominated debt held by banks outside the eurozone. But Banking Union ins and outs also form more or less formal "clubs" to pursue shared interests within the EBA, such as the Banking Supervisors of Central and Eastern Europe or the Forum of Host Supervisors, founded at Poland's initiative, in which Belgium and Luxembourg also participate (NCA 10; Siwek 2019: 60-62).

Discussions within the EBA BoS are more explicitly "political" and policy-oriented, as well as wider-ranging, than those within the SSM SB. This difference reflects in turn the elusive distinction between regulation and supervision, whereby the EBA is formally responsible for drafting binding regulatory standards and "soft law" guidelines on interpretation of EU legislation, while the ECB/SSM, like NCAs outside the Banking Union, is responsible for their implementation in supervising individual credit institutions. From this perspective, the SSM is itself expected to follow EBA supervisory guidelines, including on core activities such as the conduct of the SREP, though the ECB unlike the NCAs is not subject to peer review by the EBA.[11] To influence EU regulation and ensure a productive division of labor between the two bodies, the ECB therefore cooperates closely with the EBA on key policy issues, such as the recommendations on suspension of bank dividend payouts during the Covid-19 pandemic. The ECB likewise participates actively in EBA committees and working groups, which it might chair on issues where it has particular expertise, such as authorization requirements in bank recovery plans or fit and

[11] ECB Banking Supervision has, however, agreed to report to the EBA on how they have integrated the new Union-wide strategic priorities introduced by the 2019 revised EBA Founding Regulation into their work program, and is generally committed to comply with applicable EBA guidelines (EBA 1.2; ECB Banking Supervision 2021a: 75).

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proper assessments. The ECB, like the EBA, also participates in the working groups of the Basel Committee on Banking Supervision, whose standards underlie EU capital adequacy regulations and EBA guidelines on many issues, including the SREP (ECB 11.1; ECB 11.2; EBA 1.1; EBA 1.2; NCA 2; NCA 7; NCA 9.2; NCA 11.2; NCA 11.4; ECB Banking Supervision 2018a: 36-7, 39, 2021a: 74).

The EU-level distinction between regulation and supervision can also constrain the ECB's ability to issue detailed prescriptive guidance to eurozone banks in areas where it does not have explicit powers under the SSM regulations. A high-profile case in point is the ECB's 2017 guidance on non-performing loans, which was sharply criticized by the European Parliament and the Council, as well as by banks themselves, for effectively increasing provisioning obligations beyond the existing requirements and thereby overstepping the line between rule making and supervision. While the ECB had to rework its guidance in less prescriptive language, the Council and the Parliament in turn revised the Capital Requirements Directive (CRD) at unusual speed to "require all banks to make a deduction from own funds where [non-performing exposures] are not sufficiently covered by provisions or other adjustments in an automatic manner", the so-called "Pillar 1 NPL backstop". Under the new regulations, while the SSM can still issue "general guidance as to how it will deal with certain situations" under the CRD's Pillar 2, which covers prudential supervision, it must then "tailor the measures to each individual bank" in order to justify demands for additional capital provisioning (del Barrio Arleo 2020: 311-23; ECB Banking Supervision 2020a: 19-22; COM 1; ECB 11.1; NCA 7; NCA 9.2).

The Council and Parliament thus retain the final word over revisions to the legislative framework of the EU's Single Financial Rulebook (level 1 rules), including the elimination of the remaining O&Ds vested with the Member States and other revisions to the crisis management, resolution, and liquidation regulations requested by the SSM leadership. While the ECB has exclusive competence over the designation of credit institutions as SIs, the EU Legislators can exclude public development and promotional banks from the scope of the Capital Requirements Regulation (CRR) and thus from oversight by the SSM, as they ultimately did with the Landeskreditbank Baden-Württemburg, the bone of contention in the pivotal *L-Bank* case discussed earlier (Directive (EU) 2019 (878), Art. 1.1.5; Smits, 2019; COM 1; NCA 7). The Commission and the EBA are likewise responsible for adopting and revising binding technical standards (level 2 rules) and soft law guidelines (level 3 standards), which ECB Banking Supervision, like the NCAs, is expected to implement, subject to the "comply or explain" procedure in the latter case.

6. The SSM as an Experimentalist Organization

The polyarchic governance structure and institutional design of the SSM thus strongly encourages the pursuit of a cooperative rather than a hierarchical approach by the ECB to joint supervision

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of eurozone banks with the NCAs.[12] But how far can the SSM also be considered an experimentalist organization? As previous sections have shown, the SSM clearly diverges from the classic XG architecture outlined earlier in a number of significant respects. Rather than setting open-ended framework goals and giving lower-level actors substantial autonomy to pursue them in ways adapted to their local circumstances, the SSM has developed increasingly detailed and prescriptive rules and methods, which banking supervisors are expected to apply as consistently as possible across credit institutions and jurisdictions. Such supervisory convergence is considered crucial to advance the SSM's mission and strategic aims of "contributing to the safety and soundness of credit institutions and the stability of the financial system" while "promoting European financial integration", by reducing opportunities for regulatory arbitrage, removing national barriers to cross-border operations, and ensuring a level playing field and equal treatment of all eurozone banks (ECB Banking Supervision 2018a: 4-6).

Within these limits, however, a closer look at the SSM "in action" reveals the centrality to its organization of experimentalist practices of learning from diversity, peer review, and continuous revision of rules, methods, and procedures based on comparative evaluation of their implementation in different local contexts. The widespread adoption of such experimentalist practices, as this section will demonstrate, flows directly from the SSM's deliberate efforts to adapt its rules, methods, and procedures to eurozone banks' diverse business models and risk profiles on the one hand, and to continuously update and revise them in response to rapidly changing markets and technologies on the other.

Thus, despite the SSM's emphasis on regulatory harmonization and supervisory convergence, it does not seek to homogenize banks' business models nor impose a single "one-size-fits-all" approach to their supervision across the eurozone. "Our goal", in its first Chair's words, "should be a truly European banking market – a market that is closely integrated but still comprises different kinds of banks. Such a market would have room for all types of banks: small and large, specialized and universal, listed as well as mutual and cooperative….So striving for a truly European banking sector does not take away from diversity." Hence the SSM, as she explained at an early stage, seeks to "ensure consistency across institutions and supervision tailored to [their] specificities…by balancing uniform supervisory anchor points with constrained supervisory judgment", thereby accommodating banking diversity, which remains "very desirable from a financial stability perspective", and whose "systemic benefits" are explicitly recognized in the recitals to the SSM Regulation (Nouy 2018b, 2015b; Council Regulation (EU) No 1024/2013, recital 17).

To achieve these objectives, the SSM supervisory model was explicitly designed to combine the "deep specific knowledge of national supervisors with the broad-ranging experience of the ECB"

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[12] In this vein, a systematic effort to apply principal-agent analysis to the SSM concludes that its organizational and operational design largely supports a "management" rather than an "enforcement" hypothesis, in which compliance by the NCAs as "agents" with the preferences and objectives of the ECB as "principal" depends more on the former's "capacity of cooperation" than on the latter's "capacity of control" (Gren 2018). These management and enforcement hypotheses, in turn, are drawn from the classic study by Chayes and Chayes (1998) of national compliance with international regulatory agreements.

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through the JSTs and joint expert networks, while leveraging "increased opportunities for benchmarking and peer comparison…to improve the tools of supervisory risk assessment, with due regard to the diversity of banks' business models" across the euro area (ECB Banking supervision 2015: 5). More recently, Andrea Enria, Nouy's successor as SB Chair, has argued that whereas in the early years of the SSM, "a more rigid frame was needed to ensure consistency…the closer we get to a common supervisory approach and culture, the more flexible the frame can be, and the more room can be given to judgement…coupled with ex post quality and consistency checks". The core idea is thus to treat similar institutions similarly and different institutions differently across the Banking Union, irrespective of national origin, using "a common methodology to provide a level playing field" for assessing each bank, while "tailor[ing]…supervisory expectations to its specific situation" (Enria 2019a).

The design of the SSM supervisory model was itself the outcome of an intensive process of joint deliberation and comparison of national practices by mixed teams of ECB and national officials (Gren 2018: 294-5). As one of the chief architects of the SSM's horizontal services put it: "We had a vision, the methodology must be a methodology that is as simple as possible, and still being able to cover a hundred banks….From then on…you have the chance to select from 19 countries, because…supervision was not a new field…[so] you pick and select the best practices from each….I would describe it as a big box of puzzle pieces and you put them together in a different way, but you had existing puzzle pieces, rather than drawing on a green sheet" (ECB 8). Other participants in the drafting of the SSM Manual described how the key design decisions emerged from this process of cross-national comparison and mutual reflection:

> So we were sitting together eight years ago, and thinking about how can you process a JST decision, how would that go? What is a JST, how does it function? What is the governance of a JST? How do you escalate conflicting decisions? How do you bring in NCA opinions?...This phase was quite interesting because we were a team of people that were coming from different backgrounds from different NCAs…and they all had in mind their own language and their own approach. I think we struggled quite a bit to get over how differently things are done in different countries, so basically we said, we need to step away from what we do in our countries and we need to…identify the underlying concepts, see where it's a problem of language, where it's a problem of substance, external drivers, etc….So that was most of the work, understanding where we actually have differences, like on-site, whether on-site is a separate function, does it need to be independent or not, whether it is led by the ECB or not (ECB 11.1).

Beyond the JSTs, which were an entirely novel construction, among the most important design decisions taken in this phase was the generalization of extended on-site investigations into specific priority risks, conducted on behalf of the JSTs by mainly local supervisors, but coordinated by the ECB. The SSM's on-site inspection (OSI) function was based on the practices of a few national authorities, notably the French, the Italian, and the German, "with some minor variations in order to try to take the best out of each of those models", as one of its architects observed. But OSI was largely new to many NCAs, like the Dutch or the Irish, and differed significantly from that of others, like the Spanish, who as another ECB official remarked, "did

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offsite supervision onsite", processing reporting that they were getting from the banks on the latter's premises (ECB 1; ECB 3; NCA 9.2; NCA 9.3; NCA 11.4; NCA 1; NCA 3; NCA 6).

The SSM's comparative, numerical approach to supervision, focused on calculating specific ratios, benchmarking banks against peer groups, and identifying outliers, likewise drew heavily on the practices of certain NCAs "who worked to a very large extent quantitatively beforehand", like the Spanish, French, and Italians, while representing a bigger change for others like the Germans and the Dutch, whose supervisory culture was more qualitative and principles-based. As one top ECB official recruited from the DNB observed, "We had invited a few of the big supervisors to present the way they do supervision. And then the Spanish came. They had analysis and numbers, it was incredible to us. We had nothing like this." But they were "mainly focused on credit risk….They didn't look at governance….In the Netherlands, after the disaster with ABN Amro, there was a lot of focus on governance." In the end, however, as one NCA official noted, the German and Dutch authorities' qualitative emphasis on strengthening banks' governance and risk management procedures "has also now been implemented into the SSM's common rules and…manuals", resulting in a sort of hybrid synthesis of the two approaches. Nevertheless, the Dutch authority's focus on organizational behavior and culture, based on "convincing the CEO to do the right thing…rather than making sure that they comply to the regulations", has remained until now a bridge too far for the SSM (NCA 6; ECB 1; NCA 1; NCA 3; NCA 4.1; NCA 4.2; ECB 6; COM 1; BaFin 2015: 22, 89-90; Sijbrand 2018; del Barrio Arleo 2020: ch. 3).

The development of the JSTs themselves has similarly involved an intensive process of cross-fertilization and mutual learning between supervisors from different national systems, who look "with different eyes and different perspectives" at each other's entrenched practices, such as Dutch mortgage lending or German reliance on external auditors. Dutch supervisors, for example, particularly appreciate the depth of insight into banks' operations obtained through on-site investigations, which "everybody at the Dutch Central Bank today would never ever let go anymore of", whereas Spanish supervisors were especially interested in the SSM's focus on corporate governance, which they had "never looked at", and which gave them "access to the CEO and the Chairman of the bank, while in Spain, only the Governor could talk to people like this" (ECB 3; NCA 1; NCA 3; cf. also the interviews with Dutch officials cited in Das 2014: 39-40).

Home NCAs of large banks with subsidiaries in other Member States welcome the deeper insight into each other's national markets and supervisory approaches provided by the JSTs. "It's very helpful", as one national official commented, "to have the input from…colleagues who know very well the specificities of the national market of this specific transaction, a real added value to the supervision of the group. On top of their experience of their national market, their background of supervising, their experience on how to maybe have a slightly different approach to supervision. So together we can promote the best approaches to deal with the risk of the bank." Before the SSM, "you had and you still have the Colleges of Supervisors" for non-eurozone banks, "but it's only once or twice a year, where you can exchange information, exchange experiences. But now with the SSM and the JSTs you have these chances on a daily basis." Other NCA and ECB

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officials concur that the frequency and intensity of interactions within the JSTs operates at "a totally different level" from those in the Colleges of Supervisors (NCA 11.4; NCA 7; ECB 3).[13]

To foster this multi-perspectival approach to bank supervision, the SSM systematically combines multiple forms of comparison within and between institutions both nationally and cross-nationally. Thus, in preparing the SREP decision for each bank, JSTs draw not only on the reports of on-site investigations into key issues, but also on the work of specialized risk teams, often led by NCA experts, whose purpose is to "connect the dots" on each major type of risk across the banking group as a whole. These experts from the different JSTs in turn participate in knowledge-sharing groups on specific topics such as liquidity or credit risk coordinated by the vertical DGs to which they belong, while interacting with the horizontal line services of the ECB on methodological issues. Each SSM Member State also has a Country Coordination Group, "where all the JSTs…in that member state discuss, exchange views on common topics, which are relevant for these SIs." In the French case, as one national official explained, topics discussed in these fora include specificities of the national banking market, such as regulated savings and mortgage guarantee schemes, which have "helped other supervisors and the ECB colleagues to understand what is the real risk related to these instruments" (ECB 3; NCA 11.4).

This distinctive combination of vertical and horizontal analysis, including benchmarking conducted by the ECB, in turn plays a crucial role in resolving disagreements about the SREP decisions between JST coordinators and NCAs. As another national official observed, this horizontal comparison of vertical SREP scores really helps,

> because now you can realize…if you were tougher or maybe too mild than [on] the other banks, and maybe adjust your decision….The comparative analysis is a process that can help us…to realize if we were wrong or if the JST coordinator was wrong. If it was difficult to reach agreement in the JST, you can always compare this decision…with others. So you have these different layers where you can discuss, which is really helpful (NCA 9.2; cf. ECB 3; ECB 12.2).

Such horizontal comparisons, experience sharing, and peer review are even more important in on-site inspections, where the proportion of ECB staff, as we have seen, is much lower than in the off-site work of the JSTs. Thus, in addition to centralized quality assurance reviews of each report, the ECB has deliberately sought to promote "mixed teams" and "cross-border missions", comprising supervisors from multiple NCAs, which currently account for some 30 percent of the 160 or so on-site investigations conducted each year. Alongside regular experience-sharing workshops on specific topics, the ECB on-site function also organizes coordinated "campaigns", where the same type of investigation is conducted in different banks more or less simultaneously, on topics such as residential real estate, commercial real estate, leveraged finance, market risk, or IT risk, "in order to enable heads of missions to be able to share experiences more or less in real time with other colleagues…in order to make sure that the outcome will be as homogeneous

[13] On the Colleges of Supervisors, which were pioneered by the Committee of European Banking Supervisors (CEBS), the EBA's predecessor, before being diffused globally by the G-20 and the Basel Committee during the financial crisis, see Posner (2015: 207-9).

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as possible regardless of the fact that we are dealing with different countries and banks" (ECB 1; NCA 1).

Behind all this coordinated experience-sharing is an explicit recognition that the only way to ensure consistent outcomes across the SSM is for peers to compare supervisory techniques and clarify through discussion the reasons for differences in their application to individual cases. As the architect of the ECB's on-site inspection function explained,

> We all know that if you give the same document, the same methodology to two people who are coming from a very different background, say a Portuguese inspector and a Finnish inspector…most likely the outcome will not be perfectly comparable. So what we are trying is precisely encouraging missions where we would have mixed teams composed of both Portuguese and Finnish inspectors. Offering to these people the possibility in the course of the mission to discuss and compare their views on the same supervisory issues…and techniques is the best way to homogenize step by step (ECB 1).

Before joining the ECB, this official had worked for ten years as an on-site inspector in a large NCA. There he was "always a little bit surprised that nobody offered me the possibility to discuss with peers. I was in my silo…dealing with a mission in [Bank X]. Six months later I was on another mission in [Bank Y]. Each time I was drafting a report, but I was never asked to exchange views with colleagues who might have been facing the same type of issue in a lot of banks." "[H]ere in the SSM", he concluded, "we are the largest supervisor in the world, so we are in the perfect position to benchmark, compare, and therefore homogenize" (ECB 1).[14]

From the outset, the SSM set out to engage in "forward-looking" supervision, aimed at identifying and addressing prudential risks and potential threats to financial stability in a timely manner, rather than "looking backwards towards audited accounts", as had been the dominant practice in some Member States (ECB Banking Supervision 2015: 5, 56, 2018a: 4, 6; interview with two DNB officials, 27.5.14, quoted in Das 2014: Appendix 4). Hence the SSM Supervisory Manual was deliberately conceived as a "living document", "subject to continuous review and improvements on the basis of internal evaluations, internationally accepted benchmarks and international regulatory developments" and regularly "updated to reflect new market developments and supervisory practices" (ECB Banking Supervision 2015; DNB interviews in Das 2014: Appendix 4; Gren 2018: 299-301). The Manual was comprehensively revised in the spring of 2015, following field tests covering more than half the significant banks in the eurozone, aimed at detecting and correcting problems in the SREP methodology, promoting "learning by testing" by the JSTs, identifying further best practices and "focus areas for the continuous methodology improvement process" (ECB Banking Supervision 2015: 55-7). As an architect of the ECB's horizontal services observed, "it's a dynamic approach, you need to be flexible, you need to see what's happening

[14] For a similar finding from a study of US food safety about how peer review of inspection practice can reveal large differences in ratings of the same establishment by different inspectors from the same agency, whose discussion and clarification can in turn lead to greater convergence of assessments than among inspectors who did not participate in this process, see Ho (2017).

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in the world….[I]f you are a horizontal guy, you cannot believe…this is the methodology now, and now it stops…[Y]ou need to be aware that you develop all the time, it never stops" (ECB 8).

The SREP methodology is now updated on an annual cycle, based on inputs from joint NCA-ECB drafting teams convened by the SMD network, "which allows us to make sure that all the evolution and changes in the regulation can be included in the process." As one NCA member of this network explained, "the updating is a process that is conducted throughout the year. It's not one meeting in December to have the update, it's the work that is conducted by the drafting teams", dealing with topics such as business model or liquidity risk assessments. "Each drafting team that is launched has to end up with a deliverable that in the end will be included in the SSM Manual, so that's really ongoing work that is conducted in a one-year period, and the final concretization is validated by the SB for the revised manual" (NCA 11.3; NCA 9.3; NCA 9.2; ECB 12.1; ECB 3). Frontline supervisors can and do challenge specific procedures for the SREP assessment prescribed by the Manual, on the grounds that they do not fit the bank in question, leading to a discussion within the core JST, which may decide not to apply it. In many though not all cases, the issue will then be raised in the SMD network, resulting in a possible revision of the Manual, for example to take account of national differences in bank board structures. The French NCA holds a regular weekly meeting of managers and representatives of the various teams involved in the SSM, at which frontline supervisors can raise practical problems experienced with the methodologies and procedures, which are then taken up within the network drafting teams preparing revisions to the Manual, in which experts from the JSTs may themselves be invited to participate (NCA 6; ECB 3; NCA 11.3).

This recursive approach to revision and updating of methodologies based on frontline experience with their application in different local contexts is equally pronounced in on-site supervision. As the architect of the ECB's on-site inspection function explained, a common methodology "is of course indispensable for a multicultural organization like the SSM. It is essential to have a common document because otherwise…one thousand inspectors at the SSM have no reason to carry out missions in the same way." But he "was very keen to make sure that the methodology keeps being updated because the worst thing is that you…waste a lot of resources in drafting a methodology and afterwards nobody takes care of it and therefore very quickly, maybe one to two years, it is totally obsolete." Hence the COI network convenes five to ten joint drafting teams of ECB and NCA officials per year to update the methodologies on specific risks, so that each component of the 1500-page on-site inspection guide will be updated at least every two-three years. To help identify points for revision, each JST coordinator and head of mission fill out a feedback form at the end of each mission, in which they are encouraged to "precisely mention cases where the methodology has not been useful, should be updated or extended." The comparative experience-sharing workshops for heads of missions likewise often "come to the conclusion that they have to maybe revise the way they are implementing their supervisory techniques. Sometimes [they] lead to the proposal to update the methodology because there is something that's not clear, that is understood differently by different people, so this is also something that we are using to decide to set up a new drafting team" (ECB 1; NCA 1).

Beyond these intensive forms of peer review and recursive revision developed within the SSM's frontline units and horizontal services, the ECB has created an innovative Supervisory Quality

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Assurance (SQA) function as a "second line of defense" for system-wide quality assurance. This SQA function conducts regular "advisory reviews" addressing thematic issues across JSTs and ECB business areas, such as the implementation of the SREP and on-site inspections. It also conducts "assurance reviews" to check the execution of tasks by the JSTs and NCAs against the manuals and regulations, including the "common procedures" delegated to the national authorities such as preparation of fit and proper assessments, in which the latter are encouraged to participate (ECB Banking Supervision 2018a: 47-8; ECB 2.1; ECB 2.2; ECB 2.3).

SQA reviews combine horizontal data analysis, benchmarking, surveys, and interviews (with JSTs, OSI missions, ECB business areas, and NCAs), based on samples stratified according to criteria relevant to the specific investigation. The emphasis in these reviews is on identifying blind spots in the work of the frontline units, pushing them to justify why specific areas may have been neglected or given lower priority in SREPs and OSIs of individual banks. As one top SQA official put it: "We are looking into the technical details of the supervision of individual banks to see how a specific conclusion, a specific decision has been reached, and on what basis, to understand also from the meta perspective whether this is comparable to other activities, from the supervision of other banks, to guarantee in the end a level playing field in terms of supervision, that we are treating the banks equally." The aim of these reviews is thus to contribute both to improvements in the supervision of individual banks and to systematic improvements in the SSM's horizontal services (ECB 2.1; ECB 2.2; ECB 2.3).[15]

SQA reviews focus not only on identifying problems, but also on helping to develop solutions, in contrast to a classic internal audit. The reports on JSTs are anonymized, and the identity of the interviewees remains confidential, even to their immediate supervisors, in order to ensure the full cooperation of the frontline supervisors and the candor of the information provided. SQA reviews conclude with "proposals for improvement" (rather than recommendations or "corrective action requests" typical of internal audits), which are consensually agreed with the ECB business areas, based on "a convincing effort" rather than "an exercise of power". SQA has become increasingly involved in helping these units to implement its improvement proposals through customized training activities, such as for instructing JSTs on how to do a good challenge to a bank's recovery plan. SQA activities are thus explicitly forward-looking, aimed at contributing to continuous improvement in the SSM's operations and effectiveness (ECB 2.1; ECB 2.2; ECB 2.3). For LSIs, the Institutional Oversight Division of DG SPL (formerly DG MS III) undertakes similar if less formalized quality assurance reviews on thematic priorities such as NPLs or credit underwriting standards, which it uses to identify problems and good practices, follow up periodically on action plans developed in collaboration with individual NCAs, and raise supervisory standards across the SSM (ECB 10.1; 10.2).

These supervisory quality assurance activities can be understood as an experimentalist form of dynamic, forward-looking accountability, in which officials are expected to explain how they have

[15] Following the October 2020 reorganization of ECB Banking Supervision, whereby SQA was integrated into a new Strategic Supervisory Risk Directorate, it is envisaged that this function should contribute more directly to the formulation and implementation of the SSM's strategic priorities through a combination of ex-ante and ex-post reviews, though the precise modalities through which this will work remain in the design phase (ECB 9.1; ECB 9.2).

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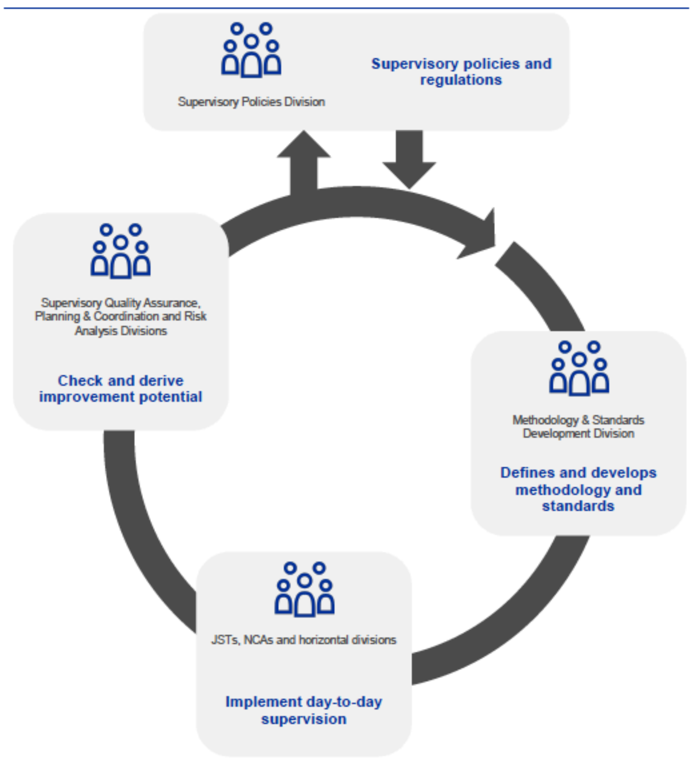
used their discretion within a given framework to advance the institution's goals, subject to review by peers knowledgeable enough to challenge such explanations. Where problems or performance failures are revealed by such reviews, officials are expected to explain what revisions in their internal policies and practices they are adopting to improve the situation, and to monitor the implementation and effectiveness of such measures – for which they can then be held accountable going forward.[16]

Within a few years of its formation, the SSM had thus established an intensely recursive process for developing and revising policies, regulations, methodologies, and standards based on continuous review of frontline implementation, which as depicted in its Supervisory Manual closely resembles the classic XG cycle.

Figure 2: The SSM Supervisory Cycle



Source: ECB Banking Supervision 2018a: 41

[16] In a recent Briefing Paper for the European Parliament, Filipe Brito Bastos and I have suggested that the reports of SQA thematic reviews, redacted to remove confidential information, could also serve as the basis for dynamic accountability towards external audiences, such as parliaments, political leaders, judges, and the general public, by providing detailed information about what the SSM is doing to ensure and improve the effectiveness, consistency, and fairness of eurozone banking supervision (Zeitlin & Brito Bastos 2020).

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This recursive cycle, as Andrea Enria (himself previously EBA Chair) has observed, does not stop with ECB supervisory policies, but reaches all the way up to EU banking regulation itself. While acknowledging that "the ECB has a supervisory task, not a rule-making one",

> there should be a feedback loop. Supervisors and regulators must talk to each other, and the experience of supervisors much inform the work of regulators. [S]ome rules may be less effective in practice than expected when they were designed. And some rules may interact in a way that makes them difficult to apply. For instance, the ECB has flagged the difficulty of applying early intervention measures due to the overlap of tools defined in the BRRD [Bank Recovery and Resolution Directive] and the Capital Requirements Directive. The experience of supervisors should be taken into account when shaping and reviewing the rules Enria 2019a).

In a similar vein, the EBA within the framework of its own peer reviews and supervisory convergence activities focuses more on identifying opportunities to improve existing guidelines and regulations through comparison of good practices and difficulties experienced in the implementation process than on "naming and shaming" of weak enforcement by NCAs (EBA 1.1; EBA 1.2).[17]

The recent reorganization of ECB Banking Supervision can itself be seen as a higher-level instance of such experimentalist recursive revision.[18] This exercise, which was conducted without the assistance of external consultants by a group of 60 supervisors and senior managers, was explicitly aimed at "addressing shortcomings highlighted by…management and staff" and "correcting imbalances that had built up over the years" by breaking down organizational silos, fostering closer cooperation and knowledge sharing between frontline and horizontal supervision, and clustering vertical oversight around specific banking business models (ECB Banking Supervision 2021a: 8, 78-82; ECB 7; ECB 8; ECB 11.1).

As one ECB official explained:

> So until now DG IV was in charge of the horizontal supervision, and then DG I and II were in charge of the direct line supervision, and the idea now is to see how horizontal supervision can work better with JSTs. If you look at the horizontal line supervision DG, which has inherited part of the mandate of what was formerly DG IV, the idea is they have built groups of experts around different risks, and these experts will not only help to develop the methodology, policy, tools, and so on, but they will be able to work more directly with the JSTs and support them in the performance of the assessments (ECB 7).

[17] For a good example of this approach, see EBA (2020).

[18] I am grateful to Daniel Głuch of ECB Banking Supervision for suggesting this line of interpretation.

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To reinforce this new structure, not only were pools of experts on different types of risks gathered into new divisions within horizontal supervision to work directly with their counterparts in the JSTs in developing tools and reviewing banks, but the top officials of the former DG I and DG IV effectively switched roles to head the new DGs for Universal & Diversified Institutions (UDI) and Horizontal Line Supervision (HOL) respectively. Such "position exchange", aimed at "making sure that everyone understands better the work that others do", can be understood not only as a mechanism for dismantling emerging silos, but also for what the American pragmatist sociologist George Herbert Mead called reciprocal "perspective taking", which strengthens the capacity of an organized group to operate as a collective "we" (ECB 7; ECB 8; SSM AR 2020: 80-1; ECB Banking Supervision 2020c; Mead 1934).

By clustering vertical oversight around specific business models, the reorganization was intended to facilitate tailoring of supervisory methodologies to banks' individual situations, while enhancing consistency of implementation across similar institutions. Thus, for example, all the German Landesbanken, which use the same accountants, IT companies, and internal models, now fall within the same supervisory division, as do the international subsidiaries of banks affected by Brexit, whereas they would previously have been scattered across different divisions (ECB 7; ECB 10.1). DG Specialized Institutions & LSIs (SIL) similarly organizes supervision of SIs around seven distinct business models, including car financiers, promotional banks, and very small retail lenders. As regards LSI supervision, the separate methodology functions previously housed in DG MS III have now been integrated with those for SIs in DG HOL. The idea here is that "instead of having work done for SIs", for example on the SREP process, "and then taking that work and adapting it to the LSIs, you could…do it in one go. We do something for SIs and we do in the first wave the LSIs as well." Hence the Senior Management Network of NCAs, which used to be run by DG MS III, is now shared between DG SIL and DG HOL, in order to ensure that NCAs are fully involved in the latter's methodological work on LSIs (ECB 10.1; ECB 12.1).

7. Conclusions

In the preceding sections, this paper has analyzed the SSM from three distinct perspectives: as a centralized hierarchy, seeking to impose and enforce uniform rules and procedures across the Banking Union; as a polyarchic network, seeking to orchestrate intensive cooperation between the ECB and the NCAs; and as an experimentalist organization, seeking to accommodate and learn from diversity by adapting common rules and procedures to the specificities of individual banks, and revising them regularly through peer review of implementation experience at multiple levels. Each of these views, as we have seen, highlights important characteristics of the SSM, which need to be incorporated into any comprehensive analysis. But each successive perspective, as the previous sections have sought to show, also illuminates critical features obscured by its predecessor, leading to a richer understanding of the SSM as a novel institution for European banking supervision. The most encompassing perspective, as the preceding sections have likewise sought to demonstrate, is that of the SSM as an experimentalist organization, which integrates and recasts key elements of the other two views into a more complete and dynamic analysis of its evolving architecture and practical operations.

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The SSM, as we have seen, was designed as a much more centralized institution than its predecessors, including the ESAs, while the ECB has been officially given far-reaching hierarchical authority over eurozone banks and NCAs by the Council and the Courts. But as a deeper investigation of the SSM's governance structure reveals, all major policies and decisions must effectively be agreed by the NCAs, while the supervision of individual banks depends in large measure on tasks carried out by national officials over whom the ECB has no direct hierarchical control. Even the most formally impressive powers granted to the ECB, such as the right to take over direct supervision of LSIs or to issue binding instructions to NCAs turn out on closer inspection to operate more as a form of experimentalist penalty default, a last-resort mechanism for inducing reluctant parties to collaborate in joint activities by threatening to impose consequences undesirable for both sides, than as an effective instrument of hierarchical control.

The SSM's polyarchic governance structure and institutional design mean that the ECB and the NCAs are ineluctably "condemned to cooperate" with one another, a shared fate embodied in the dense web of expert networks, working groups, and drafting teams created to co-develop policies, procedures, and methodologies, as well as in the JSTs and on-site inspection missions themselves. But as we have further seen, the ECB and the NCAs created these elaborate joint structures for feeding local supervisory knowledge into the development and application of common methodologies and procedures not merely because they felt obliged to do so politically, but also because they considered them functionally essential for tackling the diversity of business models and national conditions across the Banking Union, while adapting to rapid changes in financial markets, technologies, and lending practices. To support a forward-looking approach to supervision under conditions of high uncertainty, the SSM has accordingly established a remarkable array of experimentalist processes for recursive revision of policies, methodologies, and procedures through continuous peer review and benchmarking of implementation experience at multiple levels. Six years after its formation, moreover, the SSM has applied these same experimentalist principles of recursive review and revision to its own organizational structure, in order to deepen collaboration between the JSTs, the NCAs, and the ECB's horizontal services, while enhancing its capacities to tailor supervision to banks' individual business models.

A crucial feature of the SSM, which may at first glance appear to conflict with this experimentalist perspective, is its commitment to the development of uniform rules, methodologies, and procedures, which supervisors are expected to apply as consistently as possible across banks and jurisdictions. Such uniformity and consistency, its leaders firmly believe, are crucial to advance the SSM's overarching goals of financial stability and market integration by reducing opportunities for regulatory arbitrage, removing barriers to cross-border operations, and ensuring equal treatment for all credit institutions within the Banking Union. As we have also seen, however, the SSM does not seek to impose a "one-size-fits-all" approach on eurozone banks, but rather to calibrate its supervision ever more finely to the latter's diverse business models and risk profiles, treating similar institutions similarly and different institutions differently, irrespective of national origin. The design of the SSM's supervisory model, along with its core methodologies and procedures, was itself the result of an intensive process of comparison and "learning from difference" by mixed teams of ECB and NCA officials from a wide range of national and professional backgrounds. The outputs of these methodologies and procedures, including the SREP assessments, are subject to intensive peer review and

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comparative benchmarking at multiple levels, aimed at clarifying the reasons for disagreements about their application to individual cases, and identifying blind spots, misfits, and possibilities for improvement, which should be addressed in subsequent iterations. In this process, frontline supervisors can and do challenge their applicability in particular cases, and feed in proposals for changes to manuals and operational guides through joint ECB-NCA networks, working groups, and drafting teams. The SSM's rules, methodologies and procedures, together with its broader policies and organization, are thus regularly updated and revised on the basis of learning from comparative review of frontline experience with their implementation in different local contexts, as in the classic XG architecture.

The major difference between the SSM and the classic XG architecture is its distinctive combination of synchronic uniformity with diachronic revisability, whereby rules and procedures are progressively specified, narrowing discretion for lower-level actors at any given moment, but remain fully contestable in light of local application, and subject to recursive revision in light of comparative implementation review. In this respect, the SSM represents an advanced case of the broader trend within the EU discussed earlier towards the emergence, under conditions of high interdependence coupled with high uncertainty, of simplified XG architectures based on a single set of harmonized but provisional rules, revisable through ongoing monitoring and review of local implementation. The case of the SSM supports the view that under such conditions, harmonized rules and supervisory practices can be accepted as effective and legitimate by Member States, provided that they are applied in contextually sensitive ways and revised regularly on the basis of local implementation experience, through deliberative procedures in which frontline officials themselves participate. In this sense, the case of the SSM further suggests that far from being uniformity and experimentalism being antithetical to one another, diachronic experimentalism may actually be a necessary condition for synchronic uniformity of regulation within a diverse polity like the EU.

What finally of differentiated integration? The Banking Union is obviously a case of DI, whose creation would not have been possible by all accounts without the exclusion of non-euro Member States, especially the UK. Since Brexit, both Croatia and Bulgaria have signed up for close cooperation with the SSM, while Romania hopes to follow suit in the mid-2020s. Denmark and Sweden are both considering entering the Banking Union as non-Euro Member States, but neither has yet come to a decision, for reasons that appear to have more to do with concerns about domestic politics than about the governance and functioning of the SSM, which a Danish Task Force called "organizationally efficient" and "technically competent", with "a deep insight into the EU's largest credit institutions" (Danish Ministry of Industry, Business, and Finance 2019: 7; Government of Sweden 2019).[19] The three remaining non-euro Member States (Poland, Hungary, and Czechia) show no current interest in joining the SSM, because of political preferences for "banking nationalism" combined with broader "constitutional" concerns about

[19] The Swedish report did raise some concerns about the intrusiveness and costs of bank supervision conducted by the SSM, but also identified significant advantages of participation in terms of "greater awareness among external assessors of Swedish banks that they will be examined and compared more with corresponding banks in the banking union", as well as enhanced opportunities for geographical diversification of Swedish banking groups and increased influence on EU decision making (Government of Sweden 2019: 10-11, 21-2, 23-4, 28-9, 31).

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sovereignty and integration of core state powers (Méró & Piroska 2016; Siwek 2019). For some time to come, the EU is thus likely to remain divided into Banking Union "Ins" and "Outs", even if the latter may gradually dwindle to a hard-core rump of irreconcilables, with a more limited blocking power in the EBA.[20]

But if DI allowed the Banking Union to move forward, it does nothing to address the very substantial challenges of integrating diversity among its members, for which the SSM's experimentalist organization and practices are instead essential. The EBA, whose own peer review and supervisory convergence activities are conducted on experimentalist lines, likewise provides a vital framework for learning from difference among NCAs across the Banking Union divide in drafting, overseeing, and revising the EU's Single Financial Rulebook. The case of EU financial regulation thus suggests that experimentalist governance and differentiated integration may be complementary, but asymmetrically so, in that DI depends on XG to accommodate diversity within and across separate groups of Member States, but not vice versa.

[20] According to the Regulation (EU) No 1093/2010 of the EP and the Council of 24 November 2010, OJ L 331, 15.12.2010, art. 4, when the number of competent authorities from non-Banking Union Member States reaches four or fewer, only one vote from this group is required for decisions by simple majority of the Board of Supervisors.

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Acronyms

ACER	Agency for Cooperation of Energy Regulators
ACPR	L'Autorité de contrôle prudentiel et de résolution
BaFin	Bundesanstalt für Finanzdienstleistungsaufsich
BoS	Board of Supervisors
BRRD	Bank Recovery and Resolution Directive
CEBS	Committee of European Banking Supervisors
COI	Centralised On-Site Inspection
CRD	Credit Requirements Directive
CRR	Credit Requirements Regulation
DG	Directorate-General
DGS	Deposit Guarantee Scheme
DI	Differentiated Integration
DNB	De Nederlandsche Bank/Dutch National Bank
EBA	European Banking Authority
ECB	European Central Bank
ESA	European Supervisory Authority
ESRB	European Systemic Risk Board
EU	European Union
GC	Governing Council
HOL	Horizontal Line Supervision
JST	Joint Supervisory Team
L-Bank	Landeskreditbank Baden-Württemberg
LSI	Less Significant Institution
MS	Microprudential Supervision
NCA	National Competent Authority
NPL	Non-Performing Loan
O&Ds	Options and Discretions
OSI	On-Site Inspection
SB	Supervisory Board
SI	Significant Institution
SEP	Supervisory Examination Programme
SMD	Supervisory Methodologies Development
SMN	Senior Management Network
SPL	Specialized Institutions & LSIs
SPO	Supervisory Policy
SQA	Supervisory Quality Assurance
SSM	Single Supervisory Mechanism
SREP	Supervisory Review and Evaluation Process
SRM	Single Resolution Mechanism
TRIM	Targeted Research on Internal Models
UDI	Universal & Diversified Institutions
XG	Experimentalist Governance

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Appendix: Anonymized List of Interviews

Interview Code	Institution	Function	Date	Location
NCA 1	DNB	On-site Supervision & Banking Expertise Division	8.3.2019	Amsterdam
NCA 2	DNB	Banking Policy Department	20.3.2019	Amsterdam
NCA 3	DNB	On-site Supervision & Banking Expertise Division	7.5.2019	Amsterdam
NCA 4.1	DNB	European Affairs Banks Department, Supervisory Policy Division	2.10.2019	Amsterdam
NCA 4.2	DNB	SSM Coordination Unit	2.10.2019	Amsterdam
NCA 5.1	Bank of Slovenia	Banking Supervision Department	10.1.2020	Ljubliana
NCA 5.2	Bank of Slovenia	On-site Supervisor	10.1.2020	Ljubliana
NCA 5.3	Bank of Slovenia	On-site Supervisor	10.1.2020	Ljubliana
NCA 5.4	Bank of Slovenia	On-site Supervisor	10.1.2020	Ljubliana
NCA 6	BaFin	Directorate Supervision of SIs	4.3.2020	Bonn
NCA 7	BaFin	Directorate Coordination & Supervision of Foreign Banks, SSM Supervisory Board Coordination Division	4.3.2020	Bonn
NCA 8	BaFin	Directorate Supervision of Bausparkassen, Private Banks & Leasing	4.3.2020	Bonn
ECB 1	ECB Banking Supervision	Centralised On-Site Inspections Division, DG MS IV	29.1.2020	Frankfurt

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ECB 2.1	ECB Banking Supervision	Supervisory Quality Assurance Division, SSM Secretariat	29.1.2020	Frankfurt
ECB 2.2	ECB Banking Supervision	Supervisory Quality Assurance Division, SSM Secretariat	29.1.2020	Frankfurt
ECB 2.3	ECB Banking Supervision	Supervisory Quality Assurance Division, SSM Secretariat	29.1.2020	Frankfurt
ECB 3	ECB Banking Supervision	Significant Bank Supervision Division II, DG MS I	31.1.2020	Amsterdam
NCA 9.1	Banca d'Italia	SSM Coordination Division	18.6.2020	Online
NCA 9.2	Banca d'Italia	Banking Supervision Expert	18.6.2020	Online
NCA 9.3	Banca d'Italia	SSM Coordination Division	18.6.2020	Online
NCA 9.4	Banca d'Italia	SSM Coordination Division, LSIs	18.6.2020	Online
NCA 10	Small New Member State NCA	Prudential Regulation Department	9.7.2020	Online
ECB 4.1	ECB Banking Supervision	Decision-Making Division, SSM Secretariat	10.7.2020	Online
ECB 4.2	ECB Banking Supervision	Decision-Making Division, SSM Secretariat	10.07.2020	Online
ECB 5	ECB Banking Supervision	Decision-Making Division, SSM Secretariat	6.8.2020	Online
ECB 6	ECB Banking Supervision	DG SSM Governance & Operations	20.10.2020	Online
EBA 1.1	European Banking Authority	Policy Expert	21.10.2020	Online
EBA 1.2	European Banking Authority	Policy Expert	21.20.2020	Online
NCA 11.1	ACPR	SSM Coordination Unit	24.11.2020	Online

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NCA 11.2	ACPR	Policy Unit	24.11.2020	Online
NCA 11.3	ACPR	Quality and Methodology Unit	24.11.2020	Online
NCA 11.4	ACPR	Ist Banking Supervision Directorate	24.11.2020	Online
ECB 7	ECB Banking Supervision	DG SSM Governance & Operations	27.11.20	Online
COM 1	European Commission	Banking Regulation & Supervision Unit, DG FISMA	5.1.2021	Online
ECB 8	ECB Banking Supervision	DG Universal & Diversified Institutions	11.1.2021	Online
ECB 9.1	ECB Banking Supervision	Supervisory Risk -- Non-Financial Risks, Supervisory Strategy & Risk Division, DG SSM Governance & Operations	20.1.2021	Online
ECB 9.2	ECB Banking Supervision	Supervisory Risk -- Non-Financial Risks, Supervisory Strategy & Risk Division, DG SSM Governance & Operations	20.1.2021	Online
ECB 10.1	ECB Banking Supervision	DG Specialized Institutions & LSIs	28.1.2021	Online
ECB 10.2	ECB Banking Supervision	Institutional & Sectoral Oversight Division, DG Specialized Institutions & LSIs	28.1.2021	Online
ECB 11.1	ECB Banking Supervision	Supervisory Policy Division, DG Horizontal Line Supervision,	24.2.2021	Online

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ECB 11.2	ECB Banking Supervision	Supervisory Policy Division, DG Horizontal Line Supervision	24.1.2020	Online
ECB 12.1	ECB Banking Supervision	Supervisory Methodologies Division, DG Horizontal Line Supervision	16.3.2021	Online
ECB 12.2	ECB Banking Supervision	Supervisory Methodologies Development Division, DG Horizontal Line Supervision	16.3.2021	Online

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