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Legal Perspectives on Macroprudential Regulation

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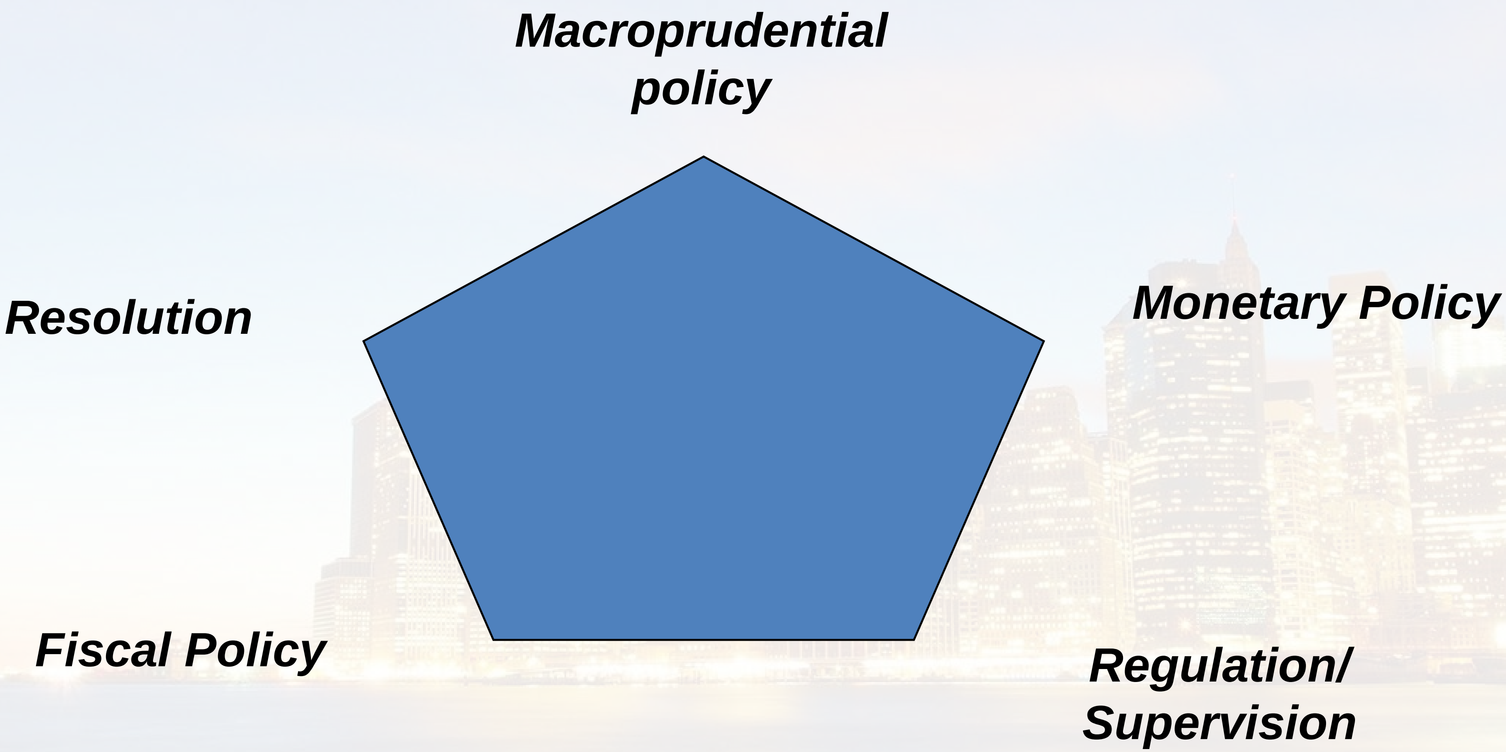
Main points

- Macro prudential policy – the contours
- Legal dimension
- Institutional design
- ‘Strong-form’ of Independence v Accountability
- ECB’s limitations as a macro-prudential supervisor

Fixing international financial regulation:

A cure for crises requires a comprehensive and consistent framework



Macroprudential policy

- ✓ Introduce macro-prudential policy
  - ✓ Create counter-cyclical buffer in banks
  - ✓ Direct derivatives transactions to central counterparties or clearing houses
  - ✓ Leverage limits/SIFIs
  - ✓ Bank resolution frameworks
  - ? Develop other macro-prudential tools
    - ? Limits on loan to value ratios and loan to income ratios – UK Financial Policy Committee
- ✓ Introduce systemic risk boards
  - ✓ In US
  - ✓ In UK
  - ✓ In EU
- ? Tasks: systemic risk boards identify and mitigate systemic risks in a timely fashion, including those risks that emanate from policymakers themselves?

Legal dimension of supervisory authority

- **Competences**
- **Powers**
- **Responsibilities**
- **Tasks**

As an illustration, Article **4 SSMR (exclusive competence)**

- **ECB**

  "exclusively competent to carry out, for prudential supervisory purposes, [a number of specific] tasks in relation to all credit institutions established in the participating Member States".

  - **Supervisory competence** depends on the identification by the Council of its tasks (ie., assignments).
  - licensing, monitoring and enforcing prudential regulations, Art. 4(1)(k): ex-ante supervision
  - No actual resolution and crisis management powers

Discharge of legal powers in macro/micro supervision –

- Six main regulatory policy principles
  - Tasks carried out *effectively* by supervisor, without reputational risks
  - *Independence* of supervisor to take *proportional* and necessary measures to regulate/restructure property rights. Principle 2 *Core Principles for Effective Banking Supervision* (September 2012)
  - Strict *separation* between monetary policy & supervisory tasks
  - Harmonisation and consistency to promote level playing field
  - *Accountability* of supervisor - *liability*, as per Core Principle 2(9)): should remain limited to reporting obligations and preserve the supervisor’s independence

Independence v accountabiliy in macroprudential supervision: Implications of CB Independence for Macroprudential Policy

- Usual model for monetary authorities: independence from political pressures, clear mandate for price stability
- Strengthen credibility of central banks → increases success of monetary policy
- Independence however also means less democratic legitimacy and control
- SSM Art. 16(1): "When carrying out the tasks conferred upon it by this Regulation, the ECB shall act independently."

➢ Application of independence model for *microprudential* (or even *macroprudential) regulation*?

Macroprudential Supervision and the ECB

- Twofold involvement of ECB in macroprudential tasks
  - Role as Secretariat of the ESRB
  - Macroprudential tools under Art 5 SSMR
- Risk of accumulation of responsibilities/liabilities
- ESRB has no legal powers - only warning and recommendations. *Effectiveness as a Macroprudential Supervisor?*

Monetary policy and supervisory decision-making separation?

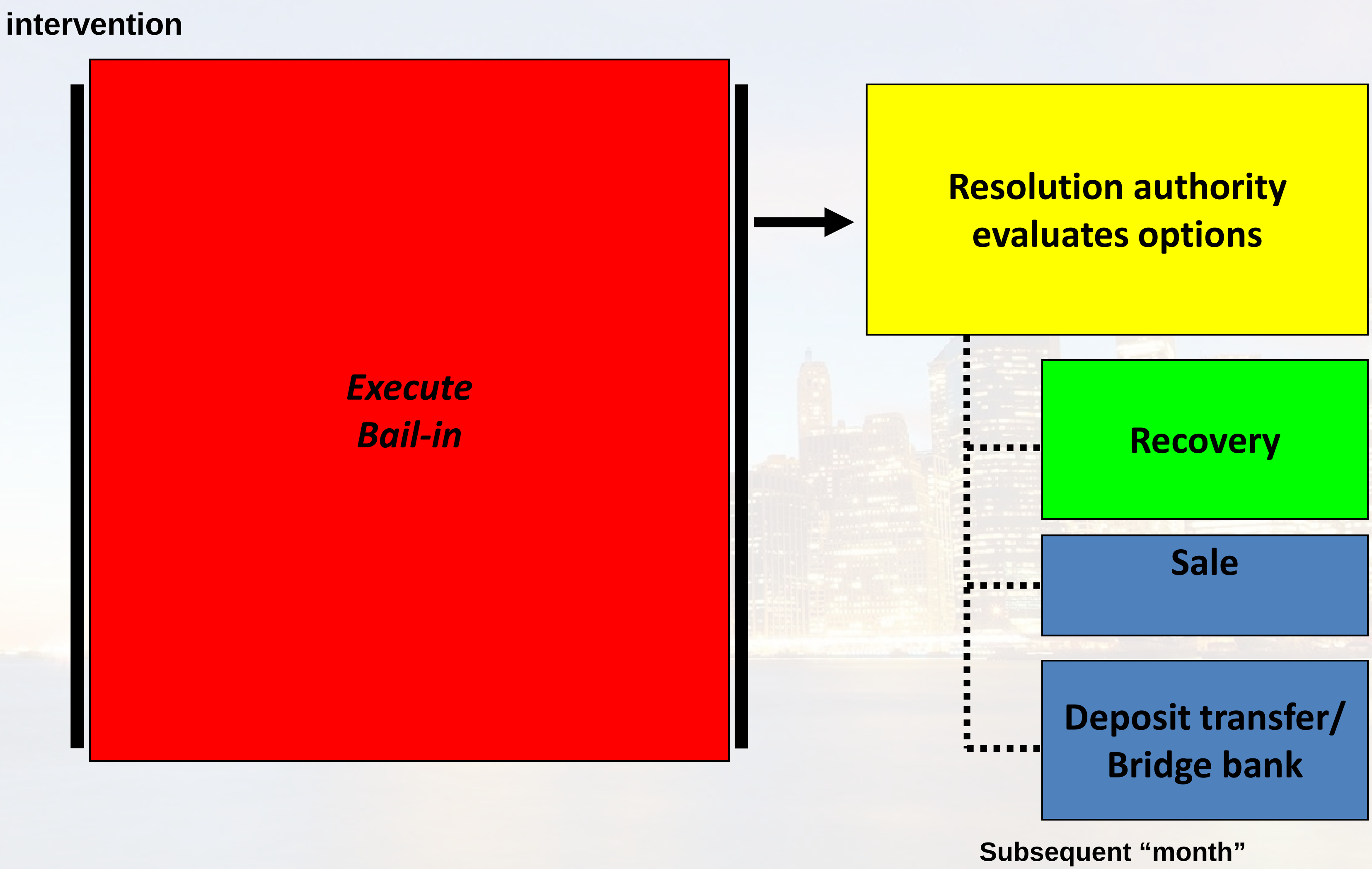
- Monetary policy and supervisory mandates are concentrated on ECB (accumulation of functions/liabilities)

- Creation of Single Supervisory Board intended to ensure separation. Separate staffs and assessments

- But cannot modify decision-making processes of ECB under which Governing Council must be ultimate decision-maker (Art 12.1 ESCB Statute)

- Supervisory Board & Administrative Board of Review can carry out preparatory tasks and make recommendations but Governing Council must be ultimate decision-maker.

SSM and SRM coordination via Resolution/bail-in



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