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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

Resolution

Monetary Policy

Fiscal Policy

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

intervention

Execute Bail-in

Resolution authority evaluates options

Recovery

Sale

Deposit transfer/Bridge bank

Subsequent “month”
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