Perspectives of European Banking Regulations

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1. Introduction

The presentation will not try to have a view into a glass bowl although the ongoing regulation processes in Europe show a few indications of an insecure development.
What do I intend to say?
Due to the impact of the financial market crisis that started 2007 in the United States with the blast of the mortgage bubble, a lot of developments in the regulatory landscape in Europe have changed but it seems that the change process is still not finished.

Therefore I will try to paint a picture of the regulatory framework that depends on the changes that have taken place and are as such a basis for trying to give some provisional outlooks.

I want to underline that I only will focus on the European Supervisory structure. I will not elaborate on the national systems in the Members States of the European Union respectively in the European Currency Union.

I also will not have the time to include in my presentation the basic regime and the activities on G20 level.

2. The architecture of the financial market regulation in Europe prior to the crisis

European supervision was based on the system of home state control.
As a consequence the banking licence issued by the home state operated as a 'European passport'. The host member state was not permitted to require national authorisation for a branch of a credit institution that had already been granted a licence in another member state.

Therefore the opportunities for supervision in the host member state were limited. The national supervisor in the host country was only entitled to supervise the branch's liquidity. The competent supervisory authority in the home state was responsible for prudential supervision.

Furthermore financial market regulation in the European member states and on the European level was earmarked by liberalisation and internationali-sation of nation financial markets.

In detail this system depended on the quality of national supervisory systems, basing on the assumption of mutual confidence between the supervisors. National supervisory authorities relied on each other as they based themselves on each other's supervision and needed to be able to rely on the other party's quality and reliability. Especially that aspect formed a weak link in the chain of European supervision.

Due to that it existed a cooperation between the national supervisory authority as a more or less well working network, that involved:

- CESR (Committee of European Securities Regulators),
- CEBS (Committee of European Banking Supervisors) and
- CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors).

These networks played a decisive role in the European harmonisation process and constituted an important building block in the process of integrating the financial markets. The networks were structured along similar lines. The primary objective was to facilitate the exchange of information between the national supervisors. The essential tasks were divided into three columns: expertise, coordination and peer review.

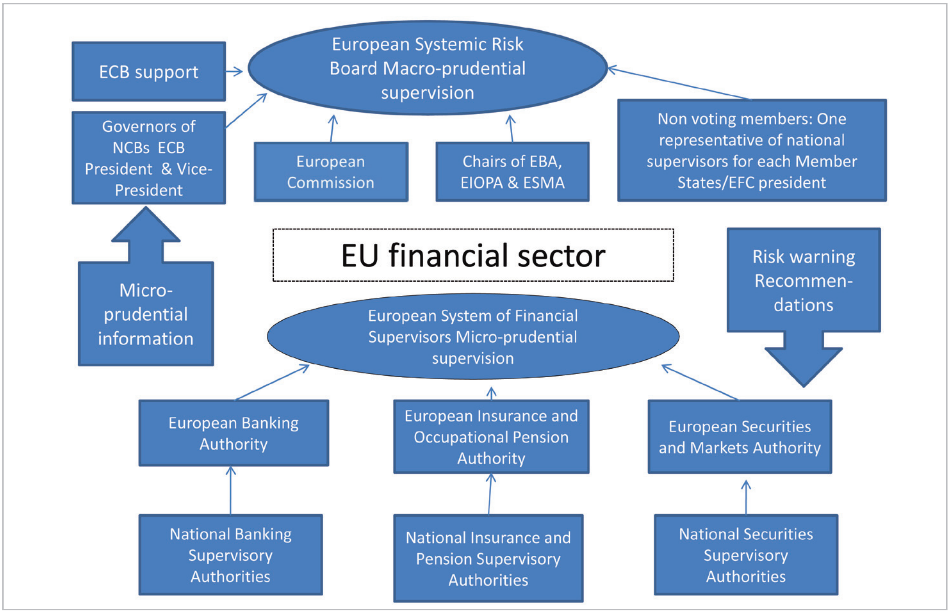
To summarise: Rather than seeking to establish a comprehensive alternative for European supervision, the purpose of the Committees was to reach closer alignment of national supervisory authorities and practices.

3. The new architecture of the financial market regulation in Europe

The financial supervisory landscape changed on January 1, 2011, when the European networks of national supervisory authorities became independent European Supervisory Authorities.

Although the national supervisory authorities remain primarily responsible for the supervision of financial institutions in line with the home country model, there was a shift in the case of certain supervisory tasks from a national to the European level.

Figure 1: The new European Supervisory Architecture



The new financial market architecture depends on the so-called De Larosière report. With its communication of May 27, 2009 the European Commission announced proposals for major changes to the European financial supervision. The proposals were drawn by the approach that there is a need for supervisors at the European level, given the continuingly high number of inconsistencies in national implementing practices. This approach ultimately resulted in three Regulations that established three new European authorities.

The new supervisory framework, the European System of Financial Supervision (ESFS), comprises:

- The European Systemic Risk Board (ESRB), that is responsible for identifying and assessing potential threats to financial stability stemming from macro-economic developments and from developments within the financial system as a whole.
    - It fulfills a macro-prudential supervision task.

- The European System of Financial Supervisors (ESFS). The system comprises a network of national financial supervisors working with new European Supervisory Authorities (ESAs) to safeguard financial soundness at the level of individual financial institutions and to protect consumers of financial services.
    - It is oriented to fulfill micro-prudential supervision.

The structures of the three new European financial supervisors (EBA, EIOPA and ESMA) are essentially the same.

The European legislator has not established a centralised, integrated European authority, but has left the supervision by the national supervisory authorities at a national level for the various sectors. The ESAs shall more or less moderate and harmonise this supervision on the European level.

The powers of the European supervisory authorities can generally be described as follows:

The most important task of the European Systemic Risk Board is to oversee macro-prudential supervision within the European Union. Hereby the European Central Bank plays a key role.

The Board has no binding powers. It is only able to issue warnings and recommendations. Its role will depend especially on application practice.

The new European Supervisory Authorities have important tasks and powers in order to help achieve greater convergence between national application practices and to allow rapid intervention in the event of conflicts between national supervisory authorities and in emergencies.

They are authorised to:

- To advise and propose technical standards that have to be endorsed by the European Commission.
- To issue guidelines for interpretation and conduct peer reviews.
- To facilitate and coordinate actions of national supervisory authorities in the event of emergencies
- To take binding decisions in the event of disagreements between national supervisory authorities.
- To support and guide functioning of colleges of supervisors.
- To build a common supervisory culture within the European Union.
- To give advice and deliver opinions to the European Commission and the European Parliament.
- To give recommendations to national authorities in the event of failure to comply with European obligations and, if these designations are not followed, to issue specific instructions to the relevant financial institutions.

(Articles 8, 10, 15, 16, 17, 18, 19, 21, 29, 32, 34 EBA regulation)

Concerning the structure and the powers of the new European financial market authorities one could comment that the formal networks simply have been repackaged in another organisational framework.

The influence of the national supervisory bodies is still significant.

For each European financial supervisor, the most important body is the board of supervisors.

This board comprises the heads or chairs of the national supervisors and is chaired by the European Supervisory Authority. Representatives of the European Commission, the European Systemic Risk Board, the European Central Bank and the other two European Supervisory Authorities attend the meetings as observers, but do not have voting rights.

As well as the Board of Supervisors, there is also a Management Board that comprises the chair of the European Supervisory Authority, representatives of the national supervisory authorities and the Commission, an Executive Director and a Board of Appeal. Additionally a Joint Committee, within which the European Supervisory Authorities have to work together to resolve cross-sectoral issues and promote consistency within the various financial sectors, has been established.

To make it brief, the question arises whether these structures will in reality deliver sufficient independence to the new authorities. The new structure is the result of important steps that have been taken. Nevertheless it will take a long term process to reach the expected effects of the new financial market architecture in Europe.

4. Actual issues of the political discussion on further needs to adapt the regulation and the structure of the financial markets in Europe

Recently a discussion started to develop a banking Union for and in Europe. That was accompanied by a discussion to build up a single European banking supervisory structure and a common European deposit insurance system. To be brief, a discussion concerning a banking Union does not mean to organize a big merger of banks in Europe. The objective is to come to a further “Europeanising”. This presentation does not offer the space and the time to discuss these new aspects in depth.

5. A brief summary

I want to finish with one aspect:
Globally the internalisation of financial markets will continue and that will influence the process of Europeanisation. At the end I am convinced, the National Supervisory Authorities will increasingly become the right hand of the European Supervisors. And: In the scope the financial market crisis led to several structural changes, the discussion how the financial market architecture has to be adapted adequately will continue.

References

The Europe Institute Utrecht, By Prof. A. Ottow (2011): Working Paper 02/11: The European Supervision of Financial markets.