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The ECB as a banking supervisor: transparent compared to what?

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ABSTRACT

After over a decade of crisis, the ECB's functions have expanded considerably, which in turn altered its relationship with other institutions. In particular, when the ECB assumed the role of Banking Supervisor under the Single Supervisory Mechanisms, it was generally accepted that this role would require more accountability than its traditional role in monetary policy. Yet, accountability requires transparency. However, there is a dearth of studies on the transparency of European banking supervision, and the few that exist are usually single case studies. This leaves us without a point of comparison that would help us understand what constitutes a 'transparent banking supervisor'. Therefore, the aim of this article is to situate the transparency of the ECB within the wider literature on the transparency of banking supervisors. This allows us to pinpoint more precisely its strengths and shortcomings and the potential for reforms.

KEYWORDS

European Union; banking union; banking supervision; SSM; transparency; accountability

Introduction

Banking supervision – like monetary policy – is a technocratic policy area that benefits from expertise- and fact-based decisions untainted by political considerations of electoral desirability. The literature therefore agrees that banking supervisors should benefit from a high level of independence, but it also sees accountability as the other side of the coin (Quintyn, Ramirez, and Taylor 2008). Thus, Athanassiou describes accountability 'as a sine qua non condition of good governance and as a guarantor of supervisory independence' (Athanassiou 2011, 4). According to Hüpkes, Quintyn, and Taylor (2005) and Arnone, Darbar, and Gambini (2007), accountability plays an important role: it allows for public oversight, generates legitimacy for the expert-institution, whose input legitimacy is otherwise low and improves agency performance, as the supervisor has to explain its decisions, demonstrate their consistency, and reflect on its performance in terms of reaching certain targets. One could add to this that, in the process, it forces the agent to reflect on possible mistakes, the strengths and weaknesses of its procedures and possible future improvements. For Athanassiou (2011), independence, defined as 'the degree of operational flexibility necessary for the exercise of supervision' (p. 5), is possible

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because of accountability as a cornerstone of the principal-agent relationship between elected governments and unelected supervisors.

However, the effectiveness of all forms of accountability depends crucially on the level of transparency of the banking supervisor. For example, Athanassiou argues that accountability of banking supervisors can come in five main forms: parliamentary accountability (e.g. in the form of annual reports and hearings), ministerial accountability (e.g. appointments, the participation of ministerial representatives in boards and regular reports), market-based accountability (e.g. publications on the website, public consultations), financial accountability (e.g. submission of financial accounts to auditors), and judicial accountability (e.g. through judicial review) (Athanassiou (2011). However, for a banking supervisor to be highly accountable, it is not enough to simply tick the boxes, i.e. to have procedures in place that lead it to submit 'a report' to government and parliament, to put some information on a website, to have some auditors approve its accounts and a court that can review its decisions. Instead, whether those actors can hold the banking supervisor to account depends on the quality of the reports and on the website and on whether the auditors and courts have access to all the necessary documents and information. One example of ineffective accountability due to insufficient transparency stems from the ECB during the early years of banking union. The European Court of Auditors was formally in charge of auditing the ECB, but complained that it was refused access to a wide range of documents and that it had great difficulties obtaining the necessary evidence on the good functioning of the SSM (European Court of Auditors 2016).

Transparency is thus a core principle of good governance, as it is the precondition for any functioning accountability regime (Lastra and Shams 2001; Amtenbrink and Markakis 2017). In the case of central banks, transparency increased at least since the 1990s (e.g. the International Monetary Fund 1999), because explanations of the reasons that underly changes in short-term rates were deemed to make decisions more predictable, to reduce the element of surprise for financial markets and thus to create stability. However, in the case of banking supervision, some aspects of transparency remain a somewhat thorny issue, as the level of commercial sensitivity is higher. Any hint at the potential instability of a bank may undermine market and consumer confidence and thus – counterproductively – hasten bank failure. In addition, publicity may invite interference by other actors and thus impede impartial and independent decision-making (Hüpkes, Quintyn, and Taylor 2005). Hüpkes, Quintyn, and Taylor (2005) nevertheless argue that decisions to take corrective action and the reasons underpinning them should be made public – though with a delay – as this encourages consistent decision-making in line with pre-announced policies and similar cases and based on a careful consideration of the law and the facts. In addition, given the number of interested parties (legislators, financial institutions, consumers, the general public), transparent rule-making processes based on open consultation processes are also deemed important. Furthermore, Sundararajan, Das, and Yossifov (2003) show that an unclear policy framework can contribute to the destabilization of markets. The European Banking Authority has thus recognized the need for transparency and provided guidelines (EBA 2010).

Interestingly, while the literature recognizes the importance of transparency, there is much less research on the transparency of banking supervisors than on the transparency of monetary policy-makers (Liedorp et al. 2013). The argument that commercial sensitivity legitimizes a certain level of secrecy may have obscured the case for transparency.

However, commercially sensitive information is just one of many types of information that one can provide, and it should not distract from the need to provide clarity on the objectives, policies, and general principles underlying the actions of the supervisor. Nevertheless a few studies have begun to evaluate the transparency (and accountability) of banking supervisors from a comparative perspective (cf. Arnone, Darbar, and Gambini 2007; Liedorp et al. 2013; Masciandaro et al. 3008; Seelig and Novoa 2009). There are thus ways of measuring transparency that can be used both to identify the strong and weak points of a particular supervisor, and to evaluate its overall performance in the context of other banking supervisors. However, one important case is missing from this nascent literature: the ECB, which was delegated supervisory authority too recently to be included in these studies. The ECB is an interesting case firstly because it is so recent and thus could model itself on existing supervisors, and especially on the national banking supervisors of the Eurozone. Secondly, European banking supervision was born in an era of financial instability, and given the different shocks to the European economy since the Great Financial Crisis (e.g. the Covid-19 crisis and – at the time of writing – severe tensions with Russia accompanied by sanctions) it is likely to remain a challenging issue in the foreseeable future. Therefore, the aim of this article is to examine the extent to which the ECB can be considered a transparent supervisor, by placing the ECB's transparency in the context of the existing comparative literature. In the process the article contributes to the core questions of the introduction of this special issue (Högenauer, Howarth, and Quaglia 2023) about the performance of banking union in the first decade since its establishment, the strengths and weaknesses of its institutional design and the lessons to be drawn.

The article will address this question through the analysis of the ECB's and SSM's websites and additional written questions to the SSM based on a study by Liedorp et al. (2013), which will allow us to situate the ECB among the existing 24 cases of the study. This study was chosen as it is firstly sufficiently transparent in the methodology and coding to be replicable on additional cases. Secondly, it uses a broad range of indicators of transparency (see section 2) and thus provides a very comprehensive evaluation of different aspects of transparency – political, economic, procedural, policy and operational transparency.

In the following, the article will first review the state of the art on the transparency (and accountability) of banking supervisors. This section will define transparency and discuss existing comparative studies. The following section discusses the case studies on the ECB, which tend to be critical, but fail to contextualize their findings. Finally, the third section discusses why the Liedorp et al. study from 2013 was chosen as a model and presents and discusses the findings on the ECB and the strengths and weaknesses of its existing transparency framework. The final section concludes with recommendations for future changes.

The transparency of banking supervisors: state of the art

Defining the transparency of banking supervisors

If transparency is a core ingredient of accountability, its importance has increased in recent decades. As Kirakul, Yong, and Zamil (2021a) argue, the objectives of banking supervisors have become more diverse since the Great Financial Crisis. They found that 27 supervisors reported up to 13 additional objectives in a survey, including consumer protection, maintenance of an appropriate level of competition in the sector, fostering the growth of the sector and promotion of a specific financial centre, climate change policies etc. At the same time, the conferral of objectives driven by government priorities blurs the line between prudential supervision and politics (Kirakul, Yong, and Zamil 2021b).

As the potential for conflict between different objectives grows, the risk of a 'runaway agent' increases: If it is unclear which goals take precedence, the agent is de facto largely free to define its own mandate and pick indicators through which to assess its own performance. Thus, in order to preserve operational independence, but ensure that elected policy-makers stay in control of the mandate and can evaluate supervisory performance effectively, a sound accountability framework is needed. Transparency in crucial, in particular as regards the prioritization of different goals and the question of how they can be operationalized and measured. Kirakul, Yong, and Zamil (2021b) recommend that the legislator should define clearly which objectives take precedence to achieve a transparent mandate. Banking authorities should report on their interpretation of the objectives, their strategies for fulfilling them and measure the outcome to give transparency to their operation. In fact, even the core S&S mandate is subject to different interpretations across countries, including the protection of depositor interests, the safeguarding of banking system stability and the strengthening of the banking system (Basel Committee on Banking Supervision 2015; Kirakul, Yong, and Zamil 2021a).

In light of the high costs of supervisory mistakes for the state, financial sector, the public (in the case of bank failures) and for individual institutions (in the case of wrong decisions), accountability is important. Yet, most of the accountability mechanisms typically listed by authors (Athanassiou 2011; Kirakul, Yong, and Zamil 2021b) either consist in transparency measures (e.g. reporting to the public, freedom to access non-confidential information, public consultation before new supervisory rules, transparent redress procedures, regular reports to the legislator, executive and authorities on the operationalization of objectives and performance) or require transparency to function (hearings, audit, investigations through public inquiries). In the case of accountability towards the legislator/executive, this typically involves an annual report that includes some or all of the following items (Kirakul, Yong, and Zamil 2021b):

- Clear S&S objectives and their concrete interpretation (Basel Committee on Banking Supervision 2012)
- A strategic plan with concrete milestones to achieve said objectives
- Metrics to measure the attainment of the milestones
- Concrete targets that the supervisor aimed to achieve in the past year, whether it has achieved them, and targets for the future
    - Activity-based measures such as: The number of examinations and type of enforcement actions undertaken (less commonly information on which banks were affected)
    - Performance-based measures such as: the percentage of banks that meet capital ratios and other quantitative prudential standards, percentage of banks with a specific risk-rating, changes in the risk-ratings of banks, rehabilitation rates of problem banks, statistics on bank failure and loss, information on compliance with sound governance requirements.
- A breakdown of the use of its financial resources.

- If applicable reporting on non-S&S objectives.
- In addition, some supervisors report on their compliance with international standards such as the Basel core principles or the peer reviews of the Financial Stability Board and how they aim to address recommendations.
- Finally, some supervisors report on their engagement with industry feedback, but this is a tricky issue, as there is a risk that giving great weight to industry feedback may water down supervisory efforts (as the financial institutions often prefer less stringent requirements).

Based on the preceding discussion, this article will define transparency as 'the extent to which the supervisor discloses information that is related to the supervisory process' (Liedorp et al. 2013, 313) to policy-makers, financial institutions and the general public. It comprises a clear statement of objectives and how they are operationalized (i.e. how their attainment is measured). In the case of multiple objectives, there should be a clear order of priority. Finally, the information should cover the state of the financial system and how its health is defined and measured, actions taken by the supervisor, the reasons for these actions and how they correspond to clear and consistently-applied rules, and the outcome of those actions and how they relate to the objectives.

Comparative studies of the transparency of banking supervisors

Unfortunately, Kirakul, Yong, and Zamil (2021a) do not transform their analysis of transparency and accountability frameworks into a fully-fledged comparative analysis. However, other studies have tried to quantify transparency and/or accountability. Arnone, Darbar, and Gambini (2007) created an index of how well banking supervisors adhere to the IMF Code of Good Practices on Transparency in Monetary and Financial Policies. It covers four main areas including the objectives and role of supervisors, formulation and reporting on policies, provision of information to the public and accountability by agencies, but the data on which it is based is not publicly available and therefore it would be difficult to try and expand it to additional cases.

Similarly, the detailed country scores for the index of the accountability of financial sector supervisors of Masciandaro, Quintyn, and Tayler (2008), which complicates replicability and the addition of new cases. In addition, the index measures items such as the presence of an ombudsman or a consumer consultation board which are more related to accountability than transparency.

Finally, Seelig and Novoa (2009) measure (among other things) the transparency of financial sector supervisors, but again the lack of information on the exact questions or country scores makes an expansion impossible. The most recent study, Gandrud and Hallerberg (2015), ties supervisory transparency to the EU's democratic deficit. It is questionable whether the study lives up to this ambition, as the substance of the study is rather thin. It chooses a single type of indicator – banking data – and its availability to the general public. This is problematic for two reasons: firstly, 'transparency' is about much more than just 'banking data'. It should at the very least cover the wider objectives of the institutions, the clarity of the operationalization of these objectives, its decision-making processes, and the reasoning behind the actual decisions in addition to the economic data. It is far from clear whether the economic data is the most important indicator for an assessment of the democratic deficit of the EU, as the absence of precise objectives or clear justifications for decisions would arguably distort good governance much more severely. Secondly, the general public is not the only relevant group for transparency and one could even ask the bold question of whether it is the most relevant target group when transparency is purely defined as the availability and level of detail of banking data. Thus, one might wonder what percentage of the general public would be able to understand such data, and what percentage actually wants to read it. Instead, in practice, the main target groups of technical information like banking data are more likely to be other banks and financial actors that can use this data to inform their own strategies.

Thus, the most suitable study is by Liedorp et al. (2013), which measured transparency in the case of 24 banking supervisors. The survey questions, coding and country scores have all been made available, which allows for both replication and a meaningful comparison of new cases to existing data. Inspired by Eijffinger and Geraats (2006) index for the transparency of monetary policy, they measure political, economic, procedural, policy and operational transparency. Their study reveals substantial diversity across banking supervisors, which score between 5.5 and 12 out of a maximum of 15 points, the average being 8.4. In addition, their detailed reporting allows for an analysis of how countries perform on each type of transparency. Generally, political transparency is highest, whereas procedural transparency is lowest. As this study will be used as a point of reference for the ECB, the definition of the five types of transparency will be discussed in the section 'The ECB in Comparative Perspective'.

A transparent banking supervisor? The ECB in the literature

None of the above-mentioned comparative studies on the transparency of banking supervisors covers the ECB, as the gradual establishment of banking union took place in the past decade, after the studies were conducted. In addition, it is difficult to derive clear expectations from these studies. For example, Liedorp et al. (2013) tried to understand variation in the transparency of banking supervisors through correlation analysis and paired visual comparisons focusing on single factors, but ultimately virtually none of their wide-range of explanatory factors proved particularly relevant. The authors came to the conclusion that transparency is largely driven by country-specific factors. The only factor that appears to have a noticeable impact is that 'central bank independence is negatively related to most aspects of supervisory transparency' (Liedorp et al. 2013, 327). In addition, policy transparency is lower in cases when banking supervisors also handle monetary policy. The predictive power of these studies is thus limited, and one can at most assume that – as a central bank with a high level of independence – the ECB might not perform particularly well on transparency. In addition, it should be noted that those national banking supervisors from the Eurozone that were covered by the index performed less well in the study, with Belgium (6.25) and Luxembourg (6.25) being ranked among the four least transparent supervisors, and only Spain (9.5) significantly above average. This could further point towards a low transparency of the ECB.

There are now also several case studies on ECB transparency and accountability, but there is a disconnect with regard to the wider context of banking supervision. On the upside, these case studies provide detailed qualitative assessments into the functioning of different aspects of transparency. The main question is whether these predominantly critical existing case studies over- or underestimate the problem in the absence of an external point of reference.

Deirdre Curtin, for example, analyses the role of the ECB as a central bank and banking supervisor and concludes that its current approach to 'accountable independence' falls short of what is democratically required, and that more attention needs to be paid to both transparency and (democratic) accountability. Part of the problem are the formal rules, which are unduly lax with regard to transparency:

> 'The discretion it [the ECB] enjoys over what to release, when and how is reinforced in the Treaty and in its own internal rules. The ECB enjoys by dint of precise Treaty formulation formal "public accessfree" status that can only be lifted by changing the Treaty. The ECB's internal rules on the classification of documents further reinforce zones of secrecy and its autonomy in deciding what to release, to whom and when.' (Curtin 2017, 28–29).

According to Curtin (2017), the ECB interprets transparency as being about communication, which puts it in control of what kind of information it allows others to access (or withholds from them). As a result, the actor controls what those who are meant to hold it accountable can see, which is problematic. However, she concedes that the ECB itself recognized the need to be more transparent in its supervisory work, for example by clearly announcing the goals for the coming year or through the creation of a website that bring together information for the public (Curtin 2017; https://www.bankingsupervision.europa.eu/home/html/index.en.html). Nevertheless, many documents of the ECB are at least partially restricted, and the ECB's rules on public access to documentation could be spelt out more clearly.

As a banking supervisor, the ECB should be accountable to the European Parliament (EP) and the Council under the SSM Regulation. From a transparency perspective, the ECON Committee of the EP receives the SSM annual reports and can invite the Chair of the Supervisory Board to appear before it. Many studies of the ECB's accountability as a banking supervisor have focused primarily on this ECB-EP dialogue (Fromage 2019; Fromage and Ibrido 2018; Amtenbrink and Markakis 2017; Maricut-Akbik 2020). MEPs can also submit written questions to the SSM (Fromage 2019). However, this accountability relationship is marred by confidentiality: The annual report is kept confidential until after the European Parliament debate, and is only then published on the website of the SSM. Meetings beyond the annual report often take place at the level of the ECON committee and are confidential. MEPs can only see the minutes of the Board in a closed reading room. No minutes or recordings may be taken and confidentiality has to be strictly observed (Curtin 2017). Although a number of meetings take place per year, Fromage (2019) and Maricut-Akbik (2020) see the restricted access to information as a problem for fully effective parliamentary scrutiny. In addition, Maricut-Akbik argues that the confidentiality clauses have the effect of silencing debate and preventing the European Parliament from fulfilling its role of providing public scrutiny.

The Council also receives the annual reports and the Euro group may address written questions to the ECB. Finally, national parliaments receive the SSM annual reports and may invite the Chair or a member of the Board for discussions. This is not a formal accountability mechanism, but the idea is to provide national parliaments with information and foster dialogue. The decision to include national parliaments is justified in light of the fact that decisions about banks – and especially major banks – are likely to have considerable domestic repercussions and that national banking supervisors are still involved the monitoring of smaller banks. However, only about two exchanges with national parliaments per year have taken place, and very few questions have been asked (Fromage and Ibrido 2018; Fromage 2019).

Finally, the Amtenbrink and Markakis (2017) note that the ECB is subject to procedural transparency in certain decisions-making procedures. According to the Interinstitutional Agreement between the ECB and the EP, 'the ECB must duly inform the ECON Committee of the procedures (including timing) it has set up for the adoption of regulations, decisions, guidelines and recommendations that are subject to public consultation in accordance with the SSM Regulation' (Amtenbrink and Markakis 2017). The ECB must further lay out the indicators and principles that underpin its acts and policy recommendations.

However, they criticize the lack of quantifiable objectives that can be used as a clear yardstick against which to evaluate the performance of the supervisor. Thus, they point out that the 'safety and soundness of credit institutions' and the 'stability of the financial system' of the SSM Regulation are rather vague, and that the ECB's own definition of financial stability as avoiding a build-up of financial risk, which is in turn defined as the provision of financial products and services being affected to the point where economic growth and welfare may suffer is not much more concrete (Amtenbrink and Markakis 2017).

On the other hand, Curtin might overestimate the intransparency of the ECB when she criticizes the fact that any minutes related to decisions of the SSM, the Supervisory Board, the Steering Committee or any other related body must be confidential unless the Governing Council authorises the ECB President to make the outcome of their deliberations public. In fact, Liedorp et al. (2013) found that only one out of 24 supervisors publishes the minutes related to its decisions in a timely manner. This thus appears to be in line with 'standard practice'. What is more problematic is that the Court of Auditors could not access them either (Curtin 2017), despite the fact that it has to review the operational efficiency of the ECB (Amtenbrink and Markakis 2017).

Last but not least, some authors have proposed reforms: Goldmann (2018) encourages the ECB to release individual bank data to facilitate a public review of its performance, especially in controversial cases such as Monte dei Paschi. In addition, he recommends that the bank should publish its own legal assessments where the legality of its decisions is disputed. Nikolaides (2019) notes that there is still a lack of performance benchmarks against which the ECB can be evaluated, and that there is a need for expert reviews, as it is not possible to review performance without access to confidential information given the complexity of the policy environment. He therefore argues that there should be an audit by external experts subject to confidentiality who can assess these policies. However, it should be noted that – despite the recommendations – Nikolaides is one of the few authors who see the accountability of the ECB as a banking supervisor positively, arguing that it set more precise policy targets over time, provided explanations of its supervisory strategy, adjusted instruments based on learning and thus proved that it acted responsibly. Overall, the literature appears to take a critical stance on ECB transparency and accountability, though.

The ECB in comparative perspective

Methodology

This article will use the Liedorp et al.'s (2013) study as a point of reference, as it is provides a comprehensive index of the transparency of banking supervisors and was reported in such a way that replication or expansion to new cases are possible. The questions and coding decisions are known and country scores are available for the original 24 countries in the study. The index measures five types of transparency: political, economic, procedural, policy and operational.

For Liedorp et al. (2013), *political transparency* refers to clarity about the precise objectives, including both the statement of those objectives and a clear prioritization. This protects the independence of the supervisor, as it makes it more difficult for other actors to pressurize it to deviate from its main objectives. At the same time, clarity as to the main objective makes it easier for other actors to detect poor performance and to hold the supervisor accountable. *Economic transparency* refers to information about off-site financial reports, the logic behind the scoring of risks and the outcomes of risk assessments. It thus provides other actors with a means to understand the state of the financial system. *Procedural transparency* is about explanations of the supervisory strategy and how interventions will be used as well as summaries of policy deliberations. It allows other actors to understand and predict what kind of situation triggers what kind of action, and it forces the supervisor to act in a consistent way. Fourthly, *policy transparency* is present when the supervisor informs the public about concrete interventions, the promptness of such information and information on non-sanctioning decisions. This is meant to demonstrate the consistency, timeliness and proportionality of concrete decisions. Finally, *operational transparency* refers to performance evaluations, the analysis of mistakes and the review of policies as to their adequacy. It allows other actors to pinpoint necessary changes and to understand the evolution of the institution and its policies.

For the purpose of this study, the publicly available information on the website of the SSM and the ECB was analysed and a written questionnaire has been sent to the ECB to obtain answers on the remaining open questions. The transparency index contains 15 elements that are each worth one point. Half points or quarter points are possible for some of the more complex questions. Banking supervisors can thus score up to a maximum of 15 points, three in each of the five categories.

One limitation needs to be acknowledged. Given the availability of existing studies, there is unfortunately a time difference of about 10 years in the collection of data. As the Great Financial Crisis tended to trigger reforms towards more accountability and transparency of banking supervisors (Liedorp et al. 2013), the original transparency scores may be slightly too low in some cases. However, this is nevertheless a good starting point in terms of providing a wider context to the transparency of the ECB as a banking supervisor, especially as it allows us to compare the score of the ECB today with the scores of the national supervisors shortly before the creation of the SSM. In other words, we can compare the transparency of the ECB today with the transparency of Eurozone banking supervisors prior to the creation of the banking union, which allows us to understand whether the ECB is really a source of intransparency.

The transparency of the ECB according to the Liedorp et al. index (2013)

The index is the sum of the scores for the answers to 15 questions (min = 0, max = 15). It measures what information is *publicly available*. In other words, if the banking supervisor has the information but does not make it public, it does not count towards the transparency score. In the case of the ECB, an example would be internal audits which exist, but are not made public (and thus receive a score of 0). The reasoning behind this is that information only contributes to transparency if it is shared. This section will analyse the five types of transparency and the questions associated with them in turn, before comparing the overall score to the findings of Liedorp et al. (2013). The original questionnaire of Liedorp et al. (2013) can be found here http://www.jstor.org/stable/43302167.

Political transparency (2.5 points). Political transparency focuses on the clarity of the objectives, the accessibility of relevant laws and regulations and the operational independence of the supervisor. The ECB only obtains half a point for the clarity of its objectives. On the one hand, it lists its objectives for the medium terms on its website: 'The three priorities identified for 2022–2024 aim to ensure that banks (1) emerge from the pandemic healthy, (2) seize the opportunity to address structural weaknesses via effective digitalisation strategies and enhanced governance, and (3) tackle emerging risks, including climate-related and environmental risks, IT and cyber risks' (www.bankingsupervision.europa.eu/banking/priorities/html/ssm.supervisory_priorities2022~0f890c6b70.en.html). These overarching goals are then broken down into concrete objectives and workplans. On the other hand, the ECB states that 'the three priorities for the 2022–2024 period are all equally important' (ibid.). The absence of prioritization is seen as reducing the transparency of the goals of banking supervision, as it is not clear which objective takes precedence should a situation arise where who objectives clash.

However, it receives full points for the accessibility of laws and regulations (e.g. www.bankingsupervision.europa.eu/legalframework/html/index.en.html; www.bankingsupervision.europa.eu/legalframework/supervisorypolicy/html/index.en.html) and performs well on the third question, which looks at the transparency of who is in charge: Council Regulation (EU) explicitly enshrines the independence of the ECB in chapter IV. According to art. 19 'The members of the Supervisory Board and the steering committee shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body'. In addition, the second paragraph of art. 19 requires the other institutions to respect this independence. The rules for the dismissal of the Chair of the Supervisory Board are set out in art. 26(4) of (Council Regulation (EU) , which states that 'if the Chair of the Supervisory Board no longer fulfils the conditions required for the performance of his duties or has been guilty of serious misconduct, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Chair from office'. The ECB does not require a priori approval of its budget (cf. art. 29 of Regulation (EU) No 1024/Council Regulation (EU). Finally, it can only be held liable for damages under specific conditions, such as unlawful behaviour (Almhofer 2021).

Economic transparency (3 points). This category focuses on whether and to what extent the results of its supervisory activities are made public and whether the method of scoring itself is explained. The ECB performs well on all three questions: It has made a detailed explanation of its supervisory review and evaluation process available online, which details the different types of risks that are taken into account, how they are assessed, what factors are taken into account and what supervisory responses should be taken (www.bankingsupervision.europa.eu/banking/srep/2022/html/ssm.srep202202_supervisorymethodology2022.en.html). In addition, it publishes detailed data on individual banks and, since 2021, it no longer publishes the aggregate results of the stress tests, but the results for individual banks (www.bankingsupervision.europa.eu/press/publications/annual-report/html/ssm.ar2021~52a7d32451.en.html#toc5; https://www.eba.europa.eu/risk-analysis-and-data/eu-wide-stress-testing).

Procedural transparency (2 points). Procedural transparency focuses on the existing on clear supervisory and intervention strategies and on whether information on policy interventions is made public. In terms of procedural transparency, the ECB performs well on strategy, in that it has two documents that set out its future plans, but with a different focus: A strategy for 2022–2024 sets out the goals for the medium term (www.bankingsupervision.europa.eu/banking/priorities/html/ssm.supervisory_priorities2022~0f890c6b70.en.html), whereas the Annual Report outlines the strategy for the coming year. In addition, the explanations on the supervisory review and evaluation process (www.bankingsupervision.europa.eu/banking/srep/2022/html/ssm.srep202202_supervisorymethodology2022.en.html) also provide an explanation of the basis for decisions on capital or liquidity measures or other supervisory interventions. However, the ECB does not publish the minutes of the meetings of the supervisory board or detailed summaries of the deliberations behind the decisions.

Policy transparency (2.5 points). Policy transparency focuses on whether the supervisory authority informs the public about formal sanctioning and non-sanctioning interventions. The ECB performs relatively well in this category, in that it announces sanctions promptly on its website (www.bankingsupervision.europa.eu/banking/sanctions/html/index.en.html), where it also provides basic explanations for each case. However, non-sanctioning decisions are only published in an aggregate form in the Annual Report.

Operational transparency (2 points). The three questions that assess operational transparency focus on accountability towards parliament as well as internal and external evaluations that assess the performance of the supervisor and that can act as a catalyst for reforms. The ECB scores two points in this category, but loses one point because the outcome of internal audits is not published. Its relationship with the European Parliament is defined in an Interinstitutional Agreement (Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (2013/694/EU) /694/EU) that foresees several meetings per year that can cover all aspects of the SSM as covered by (Council Regulation (EU) ()). Art. 1 and 2 require the ECB to submit an Annual Report which the Chair of the Supervisory Board will present at a public hearing. In addition, the competent committee can make additional requests for the Chair of the Supervisory Board to participate in ordinary public hearings on the execution of the supervisory tasks, and can invite him or her to ad hoc exchanges of views. The Chair of the competent committee can further request confidential meetings when this is necessary for the exercise of the European Parliament's powers. Art. 3 allows the European Parliament to address written questions to the ECB. Under Title 3 of the Institutional Agreement, the ECB also commits to sincere cooperation with Committees of Inquiry.

In terms of evaluations, the ECB's Directorate Internal Audit is responsible for reviewing ECB Banking Supervision and the findings are shared with the ECB's Audit Committee, ECB Governing Bodies as well as the ESCB Internal Auditors Committee. The findings and recommendations of these internal reviews are, however, not public. In addition, External auditors evaluate ECB financial accounts on a regular (annual basis) and their report is made public (cf. www.ecb.europa.eu/pub/annual/annual-accounts/html/ecb.annualaccounts2021~5130ce3be2.en.html#toc92). The ECB is also subject to the European Court of Auditors which may conduct audits on different aspects of ECB Banking Supervision. The relationship with the ECA is defined in a Memorandum of Understanding (MOU/ Memorandum of Understanding between the ECA and the ECB regarding audits on the ECB's supervisory tasks, MOU/2019/10091 /10,091). Furthermore, pursuant to Article 32 of SSM Regulation, the Commission is required to review the functioning ECB Banking Supervision on a regular basis.

Discussion

Despite the relatively critical literature, the ECB scores in fact high on the transparency index of Liedorp et al. (2013) (cf. Table 1). Even if one takes into account the fact that a decade has passed since the data on the original cases was collected and that those supervisors may have undertaken reforms in the aftermath of the financial crisis, a total score of 12 out of 15 is high not just in comparative, but also in absolute terms. The original data had an average of 8.4 and the highest scoring supervisor was Norway with 12 points.

More importantly, the findings challenge the narrative that banking union resulted in the creation of a somewhat intransparent European banking supervisor. Instead, it was the national banking supervision that was particularly opaque in the Eurozone and that banking union provided it with a more transparent European banking supervisor (cf. Table 2). Among Eurozone countries, only Spain (9.5), Italy and Ireland (both 8.75) performed above average, while France, the Netherlands (both 7.75), Germany (7), Slovenia (6.75), Belgium and Luxembourg (both 6.25) had fairly intransparent banking supervisors. For example, on procedural transparency – where the ECB only scored two points because it does not publish the minutes on policy deliberations – four out of nine Eurozone countries obtained zero points, four obtained one point and only Italy managed

Table 1. Transparency scores.

	Political	Economic	Procedural	Policy	Operational	Total
ECB°	2,5	3	2	2.5	2	12
Average Liedorp et al. (2013) across 24 cases	2.3	1.7	1	1.5	1.9	8.4

°Data collected in 2022

Table 2. The transparency of the Eurozone banking supervisors.

	Political	Economic	Procedural	Policy	Operational	Total
Belgium	2	0.5	1	1.25	.1.5	6.25
France	2.25	2	0	3	0.5	7.75
Germany	2.5	2	0	1	1.5	7
Ireland	1.75	0.75	1	2.25	3	8.75
Italy	2.5	2	1.5	1.25	1.5	8.75
Luxembourg	2.5	2	0	1.25	0.5	6.25
Netherlands	2	1.75	1	1	2	7.75
Slovenia	2.25	2	1	0.5	1	6.75
Spain	3	1.5	0	2.5	2.5	9.5

°Based on Liedorp et al. (2013). Please refer to the source for a complete overview of the scores

to score 1.5 points. Indeed, the average score for all 24 countries was one point at the time. Thus, when authors criticize the fact that the ECB does not publish its minutes on policy deliberations, that is something that – according to Liedorp et al. (2013), – almost no banking supervisor does (with the Bank of England being a rare exception).

One explanation for this misperception might be a subconscious bias of scholars working on European integration. As we know that there is a democratic deficit debate on the European level, we have the tendency to look for potential flaws and promptly find them. In the absence of a clear point of reference, we then assume that they are major weaknesses that further undermine European democracy. At the same time, we assume that national democracies are far more robust, therefore do not specifically look for shortcomings, thus do not find shortcomings, which confirms our overall impression. In reality, it is probably the constant pressure of the democratic deficit debate that contributed to the relative transparency of European banking supervision and the absence of comparable pressures that explains the complacency of national supervisors. Overall, the findings of this study underline the importance of placing case studies in a wider context.

Secondly, this finding matters because European and national banking supervision are interconnected in banking supervision and the ECB tries to encourage convergence on common standards and approaches. While a large-scale survey was beyond the scope of this article, it is very likely that these positive European developments were mirrored to at least some extent on the national level. This question – the evolution of European banking supervision more generally and the impact of banking union on national supervisors – would indeed be an important topic for future research.

Thirdly the findings reflect Nikolaides (2019) argument that the ECB is sincere in its efforts to improve transparency. Thus, several of the criticisms in the literature have been resolved in this first decade of the SSM: Risk assessments are now published on the level of individual banks, the objectives have become more precise, and the ECB publishes detailed guides on how to measure risk.

That said, there is always room for improvement. The ECB lost points on issues that could easily be remedied. For instance, a clear prioritization of objectives can be implemented at no additional costs – except for a minor loss of flexibility for the banking supervisor, for whom 'vague' means 'leeway'. Similarly, the results of the internal evaluations – or at least a summary thereof – should be made public. This would allow the public to see that the ECB is reflecting on its practices, and it would help to explain why certain changes to the working practices of the ECB are made.

The question of minutes is a thornier issue, and it raises the question whether more transparency is always better. Very few banking supervisors publish their minutes, and some are reluctant to publish information on individual financial institutions, because they argue that too much information about the problems of individual actors could create a premature panic. An institution that could have been stabilized might thus end up failing. While this information should in principle be published at some point, a delay is justifiable, and this should be sufficiently long to allow financial actors to resolve temporary problems. At the same time, as this paper (and the literature) show, transparency has many facets, and the need to keep sensitive information confidential should not obscure the need to maintain a high level of transparency as regards the objectives, approach, policies and decisions of the supervisor.

Conclusion

In response to the guiding questions of this special issue, this study has shown that the ECB has performed well as a banking supervisor in terms of transparency. Its overall score of 12/15 is high in absolute terms and impressive in the context of limited national supervisory transparency at the time of its creation. This result is the product of a process of debate and reform, which saw changes to the reporting of supervisory data and the provision of information to the general public via the website, for example. The ECB has above average scores in all five categories of transparency today. In addition, as the ECB and national banking supervisors have to cooperate closely and as the ECB consistently tries to push for common standards, it is likely that these positive European developments will also have left a mark on the national level. Instead of adding the problem of democratic deficit, the creation of banking union has thus brought more transparency to a previously suboptimal policy area.

From a methodological perspective, the article demonstrates the importance of situating case studies in the appropriate context. Especially in the context of EU studies, we often treat the EU as a sui generis organization and assess it in the absence of an external point of reference. This creates the risk of comparing institutions to unrealistic ideal-types that do not – and in some cases cannot – exist. Real institutions often face inevitable trade-offs between incompatible principles. In the case of banking supervisors, one example would be the need to ensure the stability of the financial system (which is their raison d'être and which requires at time a measure of confidentiality) and the principle of transparency, which requires disclosure. When assessing case study results, it improves our understanding if we have an index or existing literature on other cases as a point of reference.

Finally, while the ECB has reached a high level of transparency, there is still room for improvement. In particular, there is a need for a clear prioritization of goals. At the moment, the ECB works with several goals that it defines as equally important. This strategy has advantages in terms of flexibility, as it allows the banking supervisor to shift its attention from one to the other goal as it sees fit. However, this flexibility in goals weakens accountability as it gives the supervisor more wriggling room in its reports and is a source of uncertainty for stakeholders, who may face situations where they have to choose one objective over the other. In addition, the ECB could strengthen its transparency by making the results of its internal evaluations public alongside the external evaluations. Both forms of evaluation should influence discussion on possible adjustments to the working practices of the institution. Lastly, as Curtin (2017) argues, there is a need for a clearer framework for the access to documents and a clearer definition of what requires confidentiality. This would also facilitate the access to information of other institutions like the European Parliament and the Court of Auditors who are supposed to hold the ECB accountable.

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