

Legal Protection against acts of the ECB

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Jeder Mensch hat etwas, das ihn antreibt.

Wir machen den Weg frei.





Splitted Legal Protection within the SSM

ECB: Administrative Board of Review

ECB: Legal Protection before the General Court (EuG) / Court of Justice (EuGH)

In particular: Action against direct supervision by the ECB

In particular: Action against supervisory decisions / acts

Splitted Legal Protection within the SSM (I)



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The Single Supervisory Mechanism does not result in a single legal protection.

In contrast: The Single Supervisory Mechanism results in a principle of separability and causes questions of legal differentiation.

Actions against NCA, in Germany BaFin: National Administrative Court.

Actions against ECB: European Court (Art. 24 para. 11 SSM-Regulation, Art. 256 TFEU).

Splitted Legal Protection within the SSM (II)



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Question of legal differentiation with regard to efforts within the SSM:

Direct supervision / decision / acts by the ECB -> European Court.

Direct supervision / decision / acts by the NCA -> National Court.

Indirect supervision by the ECB but direct acts and consequences for indirect supervised institutions -> European Court.

Indirect supervision by the ECB and indirect consequences for indirect supervised institution -> Question of imputability / remaining discretion of NCA.

Common procedures -> Question of imputability of final / interim decision.

Administrative Board of Review (I)



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Administrative Board of Review (ABoR) carries out internal administrative reviews of the ECB's supervisory decisions.

Administrative reviews may be requested by any person or legal entity directly affected by an ECB supervisory decision.

The ABoR may also propose to the Governing Council that it suspend the application of the contested decision for the duration of the review procedure.

The ABoR is composed of five independent members who are not staff of the ECB or an NCA.

A request for a review of an ECB decision by the ABoR does not affect the right to bring proceedings before the General Court / Court of Justice of the EU and is no legal requirement for an action.

Administrative Board of Review (II)



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The ABoR must adopt an opinion on the review no later than two months from the date of receipt of the request for review.

Based on the opinion of the ABoR, which is not binding, the Supervisory Board decides whether to make a proposal to the Governing Council to abrogate the contested decision, to replace it with a decision of identical content or to replace it with an amended decision.

To carry out these reviews, the ABoR relied in the previous cases on the written submissions made by the applicants and also invited each of them to an oral hearing in Frankfurt am Main.

Cost of the review-process: ” 500 for natural persons and ” 5.000 for legal persons. No costs are to be borne if ECB abrogate or amends the initial decision.

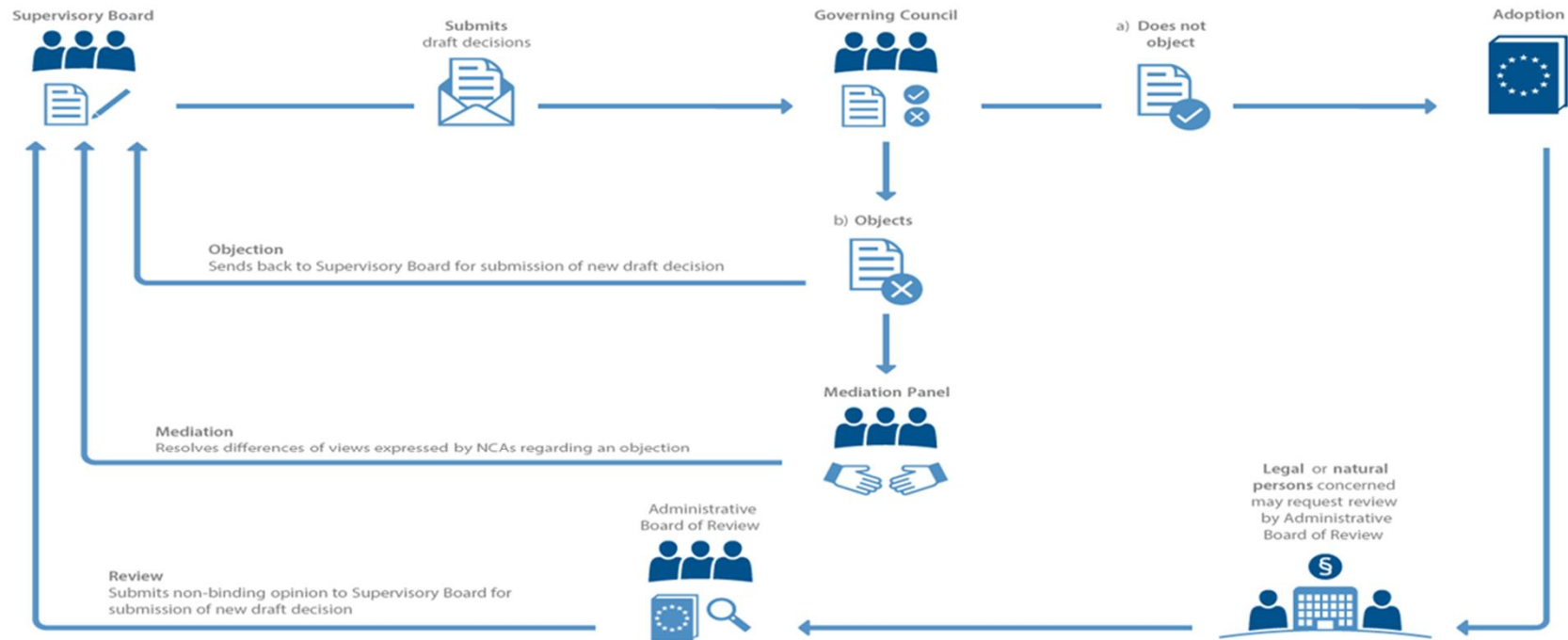
Administrative Board of Review (III)



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Non-objection procedure and involvement of the ABoR



Source ECB



According to Art. 24 para. 11 SSM-Regulation competent court is CJEU and in light of the TFEU in first instance the General Court.

Procedural Law: TFEU / Rules of Procedure of the General Court

Main proceeding: Action for annulment or action for failure to act (Art. 263, 265 TFEU).

Applications for interim measures (Art. 278f, 256 para. 1 TFEU)

Legal standard: Substantiv Union law

SSM-Regulation, SSM-Framework-Regulation, CRR, CRD IV/KWG
Intended German MaRisk-Regulation ?

Action against direct supervision by the ECB (I)



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Current Case sL-Bank Action for failure to act seeking end of direct supervision (I)

Balance sheet total of the sL-Bank ” 70 billions

Threshold of ” 30 billion for a direct supervision by the ECB exceeded.

But: sL-Bank is just a regional active state owned development bank;
there is a direct state guarantee for all creditors.

sL-Bank carried - unsuccessfully - out the ECB-internal administrative review procedure by the ABoR.

Preliminary procedure according to Art. 265 para. 2 TFEU = ECB-internal administrative review procedure.

Action against direct supervision by the ECB (II)



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Current Case ~~L-Bank~~ Action for failure to act seeking end of direct supervision (II)

Legal basis for the claim:

Art 43 para. 6 SSM-Framework-Regulation (*if the ECB decides that the direct supervision of a supervised entity or supervised group by the ECB shall end, it shall*).

Art. 46, 47 SSM-Framework-Regulation (*End of direct supervision*).

Art. 70 SSM-Framework-Regulation (*Particular Circumstances for the classification of a significant supervised entity as less significant*).

Interesting Aspects:

Questionable: Conditional decision or discretion?

Incidental review of the law by the General Court?

Action against direct supervision by the ECB (II)



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Action for annulment (Art. 263 TFEU), conceivable e.g. against

decisions in the context of SREP (e.g. additional capital requirements) or
in general decisions with regard to supervisory requirements.

Relation to extrajudicial remedies

Right to be heard (Art. 31 SSM-Framework-Regulation)
ECB-internal administrative review (Art. 24 SSM-Regulation)

Time limit for bringing an action: Within two month of the publication of the
measure.

Incidental review of the law?