

# THE EPPO and EU law: a step forward in integration



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## **EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION**

TOPIC 6: THE EPPO AND OTHER  
JUDICIAL BODIES JOINING  
FORCES

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# THE EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION



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## The EPPO and banking supervisory authorities The cooperation between Judicial and Banking Supervisory Authorities

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# ...TO GET STARTED: BANKING SUPERVISION AT A GLANCE

## Why do banks need to be supervised?



## To safeguard an essential service

Banks provide financial services that we all use. We deposit our money with them, borrow from them, take out mortgages with them. We as individuals rely on them, as do households, businesses and governments. Banks enable the financial markets to function, thereby enabling economic activity.

## To instil confidence

The financial system is tightly knit. Its components are held together by confidence. The failure of just one bank could shake confidence in the system and jeopardise its integrity. For example, bank runs can quickly spread from troubled institutions to healthy ones, harming them in turn. Like dominoes, the fall of one bank can lead to the collapse of many more.

Knowing that banks are supervised reassures both markets and depositors, reducing the likelihood of bank runs and other forms of financial contagion.

## To protect savers

Ordinary savers are not able to evaluate a bank's safety and soundness. They do not have access to the necessary information and perhaps lack the required background knowledge. Therefore, supervisors act in the public interest by regularly checking banks' risk culture and corporate governance, and by granting (or withdrawing) banking licenses.

# EUROPEAN BANKING SUPERVISION

## THE SINGLE SUPERVISORY MECHANISM (SSM)

The **Single Supervisory Mechanism (SSM)** refers to the system of banking supervision in Europe. It comprises the ECB and the national competent supervisory authorities (NCAs) of the participating countries.



The ECB supervises the largest banks (**Significant Institutions**) in these countries while the smaller banks (**Less Significant Institutions**) are under national supervision.

### The main objectives



**Safe and sound banks**



**Stable and integrated financial system**



**Consistent supervision of all banks**



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

European banking supervision is one of the two pillars of the **EU Banking Union**, along with the **Single Resolution Mechanism**

# THE SINGLE SUPERVISORY MECHANISM (SSM) FACTS AND FIGURES

**1,100** supervisors



More than 1,100 supervisors at the ECB

**4,700** supervisors



More than 4,700 supervisors at national authorities

**115** significant banks



115 significant banks under direct ECB supervision, representing 81% of euro area banking assets

**2,552** less significant banks



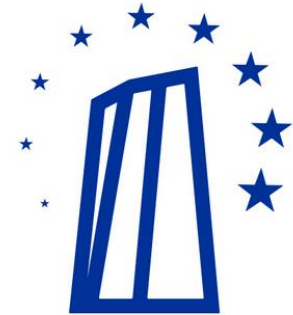
2,552 less significant banks under direct national supervision, representing 19% of euro area banking assets

21 countries of the European Union have joined European banking supervision

# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES



**Why is it so important that supervisory Authorities and the Judiciary cooperate in the performance of their duties?**



**General shared interest to preserve legality as a condition of economic growth**

**Fostering a compliance culture in the financial system is crucial to improve the effectiveness of the banking supervision**

**Legal obligation to report suspected criminal offences to the competent Authority**

# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES

**General shared interest to preserve legality as a condition of economic growth**

- ✓ **Criminal activity acts like a tax on the entire economy:** it discourages domestic and foreign direct investments, it reduces firms' competitiveness, and reallocates resources creating uncertainty and inefficiency.
- ✓ The integrity of the banking and financial services marketplace depends heavily on the perception that it functions within a framework of high legal, professional and ethical standards. **A reputation for integrity is the one of the most valuable assets of a financial institution.**
- ✓ The (real or perceived) lack of integrity of a financial institution **may lead to a loss of confidence** by investors and depositors and ultimately to its financial crisis.

# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES

Fostering a compliance culture in the financial system is crucial to improve the effectiveness of the banking supervision



Core Principles for effective banking supervision

[https://www.bis.org/basel\\_framework/](https://www.bis.org/basel_framework/)

*The supervisor determines that banks have adequate policies and processes, including **strict customer due diligence** rules to promote **high ethical and professional standards** in the financial sector and **prevent the bank from being used, intentionally or unintentionally, for criminal activities.***

BIS/ Basel Principle 29 – Abuse of financial services

In some jurisdictions, other authorities, such as a financial intelligence unit, rather than a banking supervisor, may have primary responsibility for assessing compliance with laws and regulations regarding criminal activities in banks, such as fraud, money laundering and the financing of terrorism. Thus, in the context of this Principle, **“the supervisor” might refer to such other authorities ... and in such jurisdictions, the banking supervisor cooperates with such authorities to achieve adherence with the criteria** mentioned in this Principle.



# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES

Fostering a compliance culture in the financial system is crucial to improve the effectiveness of the banking supervision

The Basel “Essential criteria” used for the IMF FSAP principles assessment further develop the principle:

(1) Banks duty to report: “Banks policies and processes should include the **prevention and detection of criminal activity, and reporting of such suspected activities to the appropriate authorities**”.

(2) Supervisors cooperation with judicial authorities: “The supervisor, directly or indirectly, shares information related to suspected or actual criminal activities with relevant authorities”.





# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES

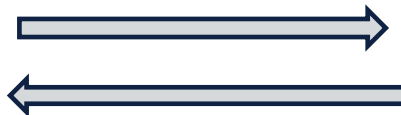
**Supervisory Authorities:**  
wide range of powers and tools to timely intervene  
to restore legality and sound and prudent management



**Interplay**  
between Judicial and Supervisory authorities

**Prevention of financial  
crimes**

**Collection of information  
deemed relevant for  
institutional purposes**



**Sound and prudent  
management of banking and  
financial entities without  
distortions caused by undue  
criminal influence**

# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES

## Two-way information exchange

The Supervisory Authorities may benefit from knowing the outcomes of the investigations carried out upon Supervisory Authorities' input.

- Tailored supervisory actions
- Closer monitoring of certain intermediaries/specific phenomenon



# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES

## HOW COOPERATION WORKS IN PRACTICE

### THE COOPERATION BETWEEN THE BANK OF ITALY AND INVESTIGATIVE AUTHORITIES

- a. **Reports of suspected criminal offences** detected in supervisory activities and information exchange with the regulated entities
- b. **Advisory activities and technical assistance** in the context of investigations
- c. **Training activities**
- d. **Cooperation arrangements**

# THE COOPERATION BETWEEN JUDICIAL AND SUPERVISORY AUTHORITIES

Within SSM different level of interaction

## Less Significant Institutions (LSIs)

The Bank of Italy cooperates with the Judicial Authority and the investigative bodies pursuant to national provisions.

## Significant Institutions (SIs):

Matters falling within the competence of the Bank of Italy:  
Cooperation pursuant to national provisions + eventual report to ECB.

**Matters falling within the competence of the ECB:  
coordination ECB and Bank of Italy.**



**Art. 136 (reg. EU 468/2014)**  
**Evidence of facts potentially giving rise to a criminal offence**

Where, in carrying out its tasks under the SSM Regulation, the ECB has reason to suspect that a criminal offence may have been committed, it shall request the relevant NCA to refer the matter to the appropriate authorities for investigation and possible criminal prosecution, in accordance with national law

# EPPO/SSM: AN INSTITUTIONAL COMPARISON

	EPPO	SSM
Legal basis	Art. 86 TFEU Council regulation (EU) 2017/1939	art. 127(6) TFEU (attributing specific tasks to the ECB) Council Regulation 1024/2013
Legal nature	Body of the Union	The ECB is EU Institution (since the Treaty of Lisbon 2009) . The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities
Independence	Institutional and personal independence	Institutional and personal independence

# EPPO/SSM: AN INSTITUTIONAL COMPARISON

	EPPO	SSM
Shared competence	«This Regulation provide for a system of shared competence between the EPPO and national authorities» (rec 13)	“This Regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not conferred on the ECB by this Regulation” (art. 1).
Structure	<p>Central level (European Chief Prosecutor, Permanent Chambers and European Prosecutors)</p> <p>Decentralised Level (European Delegated Prosecutors)</p>	<p>Central decision making (Supervisory Board and Governing Council) and JST central coordinator</p> <p>JST NCA Local coordinators and staff</p> <p>NCA to prepare proposals for common procedures</p>



# EPPO/SSM: AN INSTITUTIONAL COMPARISON

	EPPO	SSM
Competence	<p>EU level: based on type of offence EPPO responsible for investigating , prosecuting the perpetrators of offences against Union's financial interests (as determined by the Regulation) with evocation procedure</p> <p>National level: all other offences</p>	<p>EU level:</p> <ul style="list-style-type: none"><li>(i) direct supervision based on distinction significant/less significant institution</li><li>(ii) common procedures for all banks (mixed proceedings)</li></ul> <p>National level: all other financial intermediaries/types of supervision</p>

# EPPO/SSM: AN INSTITUTIONAL COMPARISON

## ■ EPPO as a mix between supranationalism and transnationalism?

### ■ Supranationalism:

- ✓ New EU body established
- ✓ Strong powers attributed to the central level
- ✓ Right of evocation

### ■ Transnationalism:

- ✓ The European Delegated Prosecutor when conducting an investigation may «instruct the competent authorities in his MS. Those authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them» (art. 28)
- ✓ Proceedings in front of national criminal courts

# EPPO AND SUPERVISORY AUTHORITIES: TOWARD AN ENHANCED COOPERATION?

## Upon EPPO's institution, any room to enhance cooperation?

(Article 99 EPPO REG.)

- The EPPO may establish and maintain cooperative relations with institutions, bodies, offices or agencies of the Union and with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the authorities of third countries and international organisations.
- In compliance with some limitations provided by law, the EPPO may directly exchange information with the entities referred above.
- The EPPO may also conclude working arrangements with the entities referred above with aim of facilitating cooperation and the exchange of information between the parties.

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THANK YOU!



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