



# Regulatory architecture and competitiveness

Comments on European banking supervision

Berlin, January 2026

# Foreword

The introduction of the Single Supervisory Mechanism (SSM) and the European Supervisory Authorities (ESAs) in the wake of the financial and euro crisis has led to the widespread harmonisation of banking supervision in Europe. This has resulted in highly complex and detailed banking regulations and complex institutional structures being established across the European administrative cooperation network. This development and the current debates on Europe's competitiveness raise the question as to whether and in what form the present supervisory system should be reformed.

In cooperation with the Association of German Banks, White & Case LLP hosted a symposium entitled "Towards more efficient banking supervision: clear rules for the SSM and ESAs" in Frankfurt on 11 June 2025. Representatives from academia, banking supervision, the banking industry and legal practice discussed the work and role of the SSM and the ESAs, as well as possible reforms, in two separate panel discussions.

Both panels agreed that the new supervisory system has contributed to harmonisation and greater professionalisation of banking supervision in Europe and has promoted financial stability. Nevertheless, they also pinpointed challenges and possible starting points for improvements. Against the backdrop of the different administrative cultures in Europe, this included, for example, identifying the appropriate degree of supervisory harmonisation. Participants also discussed whether the SSM's mandate should go beyond securing financial stability and include promoting European competitiveness. Another topic under discussion was the scope and degree of regulatory complexity in Level 2 and Level 3 measures.

The present publication aims to address the content discussed at the event and outline possible solutions to further advance the discussion. The article 'Considerations on legal protection against Level 2 and Level 3 measures in European banking supervision before the courts of the European Union' highlights the legal difficulties faced by supervised CRR credit institutions when challenging the relevant measures. 'Simplifying banking supervision: A joint task that must not jeopardise resilience' argues that simplifying banking supervision is a necessary and achievable goal, but one that should not be confused with calls for deregulation. 'Against the flood of standards and excessive bureaucracy in the European financial supervisory system' analyses the state of the European financial supervisory system and highlights possible consequences and improvements.

Berlin, January 2026

Association of German Banks

# The authors

Dr. Henning Berger is a partner at White & Case LLP, Berlin and Co-Head of the firm's EMEA Financial Services Regulatory.



Sarah Cichon LL.M. (King's College), Maîtrise en Droit (Paris II) is a research assistant in Financial Services Regulatory at White & Case LLP, Berlin and is a doctoral candidate at the Humboldt University of Berlin.



Dr. Klaus Lackhoff is Head of Section at the European Central Bank.



Prof. Dr. Edgar Löw is programme director for the master's degree programme in Auditing, a professor specialising in Banking Accounting and National and International Accounting at the Frankfurt School of Finance & Management.



Prof. Dr. Rolf Sethe LL.M. is Chair of Private, Commercial and Economic Law at the University of Zurich.



Dr. Dirk H. Bliesener LL.M. (Yale) is a partner at Hengeler Mueller, Frankfurt.



Prof. Dr. Christoph Kumpan LL.M. (Univ. of Chicago) is Chair of Civil Law, Corporate Law and Capital Markets Law at the Bucerius Law School in Hamburg.



Prof. Dr. Matthias Lehmann D.E.A. (Paris II), LL.M., J.S.D. (Columbia) is Chair for Private Law, International Private Law and Comparative Law at the University of Vienna.



Prof. Dr. Frank A. Schäfer LL.M. (UCLA) is a partner at Sernetz-Schäfer Rechtsanwälte and an honorary professor at Ruhr University Bochum.

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# Considerations on legal protection against Level 2 and Level 3 measures in European banking supervision before the courts of the European Union

Dr. Henning Berger  
Sarah Cichon

The Less Is More report from February 2025<sup>1</sup> also promoted discussion of the legal protection available to CRR credit institutions against increasing banking regulation through sub-statutory Level 2 and Level 3 measures imposed by European authorities.

Level 2 and Level 3 measures are intended to further concretise the standards of European banking supervision and promote uniform supervisory practices in all Member States. They are issued in particular by the European Commission, the European Banking Authority (EBA) and the European Central Bank (ECB) (hereinafter also referred to as: Union bodies). The scope of these measures is steadily increasing in practice. This also makes the question of their legality particularly important, as such measures sometimes place a considerable burden on the institutions affected. A measure may be considered unlawful if, among other things, the Union bodies has exceeded the limits of its mandate and therefore acted beyond its powers, or if the requirements of a measure are disproportionate.

<sup>1</sup> See Less Is More report, 10 February 2025, available at [https://v3.globalcube.net/clients/eacb/content/medias/publications/eacb\\_studies/report\\_lessismore\\_fin.pdf](https://v3.globalcube.net/clients/eacb/content/medias/publications/eacb_studies/report_lessismore_fin.pdf), p. 24 et seq.

Some of these issues were discussed at the symposium organised by the Association of German Banks in cooperation with White & Case LLP and held on 11 June 2025 in Frankfurt (“Towards more efficient banking supervision: clear rules for the SSM and ESAs”). Given this background, in the following, we present an overview of some aspects of legal protection against Level 2 and Level 3 measures before the EU courts, reserving a more in-depth representation, including legal protection at national level, for another occasion.

## Legal protection against Level 2 measures

Level 2 measures are legally binding acts adopted by a Union body. Accordingly, any natural or legal person may institute proceedings against such acts before the Union courts in Luxembourg in accordance with Article 263 TFEU. Level 2 measures include, in particular, delegated acts and implementing acts in the form of regulatory technical standards (RTS) and implementing technical standards (ITS).<sup>2</sup> The RTS and ITS are drafted by the EBA in accordance with the procedures set out in the EBA Regulation<sup>3</sup> and adopted (bindingly) by the European Commission. A legal act of the European Commission is amenable to judicial review and the European Commission is the opposing party in proceedings before the courts of the European Union.<sup>4</sup>

However, if institutions intend to seek legal protection against Level 2 measures, they face considerable difficulties. They will regularly find it difficult to substantiate the necessary legal standing to bring an action, as they are only affected individually and directly by the measures in exceptional cases. As a general rule, therefore, bringing an action for annulment against Level 2 measures is inadmissible. Where this is the case, legal protection may be directed solely against any implementing acts, such as measures taken by the ECB on the basis of Article 16 of the SSM Regulation, against significant institutions within the meaning of Article 6(4) of the SSM Regulation.

In the context of an action for annulment against implementing acts for Level 2 measures, the institution may, where appropriate, assert the illegality of the Level 2 measure under Article 277 TFEU. The argument of illegality serves as a kind of ‘safety net’ for judicial review of Union acts that cannot be directly challenged by means of an action for annulment.<sup>5</sup>

<sup>2</sup> See Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

<sup>3</sup> See Articles 10-15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12 et seq. (EBA Regulation).

<sup>4</sup> The EBA draft, on the other hand, is not legally binding and cannot, therefore, be challenged by means of an action for annulment. See also Appeals Committee, decision of 13 September 2019, BoA 2019-D-05 (Creditreform Rating AG/EBA), paragraph 60 et seq.

<sup>5</sup> ECJ, 6 March 1979, SpA Simmenthal v Commission, C-92/78, ECLI:EU:C:1979:53, paragraph 39; CFI, 30 April 2019, Wattiau v Parliament, T-737/17, ECLI:EU:T:2019:423, paragraph 57. For further details, see Alexander H. Türk, *Judicial Review in the European Union*, Edward Elgar 2025, p. 419 et seq.

## Legal protection against Level 3 measures

Level 3 measures are legal acts without formal binding effect (soft law) that serve to ensure the uniform application of Level 1 and Level 2 measures and the harmonisation of supervisory practices in the Member States without further action being required by European legislators or the European Commission.<sup>6</sup> Measures may include, in particular, guidelines, recommendations, opinions and Q&A documents issued by the EBA and the ECB.<sup>7</sup>

Despite their considerable de facto binding effect on CRR credit institutions, Level 3 measures do not have any binding legal effect according to the case law of the CJEU.<sup>8</sup> CRR credit institutions wishing to challenge the Level 3 measures in question by bringing an action for annulment before the EU courts will therefore lack a suitable legal basis for their action. The CJEU has expressly clarified this with regard to guidelines under Article 16 of the EBA Regulation<sup>9</sup> and recommendations under Article 17 of the EBA Regulation.<sup>10</sup>

Since a direct challenge to Level 3 measures by way of an action for annulment (unlike Level 2 measures) is generally precluded, the only option in this respect is an indirect or incidental review of Level 3 measures under Article 277 TFEU, in particular in the context of an action for annulment brought by a significant institution within the meaning of Article 6(4) of the SSM Regulation against a supervisory decision of the ECB. In such an action, the institution would assert the defence of illegality of a Level 3 measure, whereby the institution would have to demonstrate that the supervisory measure directly contested is essentially based on the (legally non-binding) Level 3 measure.<sup>11</sup> Comparable constellations can be found, for example, in competition and state aid law.<sup>12</sup> In terms of content, the institution could, for example, complain that the Union body that adopted the

<sup>6</sup> Article 8(1)(a) and Article 16(1) EBA Regulation.

<sup>7</sup> For the setting of general rules by the ECB, see Henning Berger, *Limited Powers – On the Judicial Review of Supervisory Measures of the European Central Bank before the Court of Justice of the European Union*, *Journal of International Banking Law and Regulation* 2025, 259 (260).

<sup>8</sup> CJEU, 15 July 2021, *FBF/ACPR*, C-911/19, ECLI:EU:C:2021:599, para. 35 et seq.; CJEU, 25 March 2021, *BT v Balgarska Narodna Banka*, C-501/18, ECLI:EU:C:2021:249, paragraph 82.

<sup>9</sup> See CJEU judgment of 15 July 2021, *FBF/ACPR*, C-911/19, ECLI:EU:C:2021:599, paragraph 35 et seq. The CJEU examines whether a legal act has 'binding legal effects', taking into account its content, the intention of its author and the context in which it was adopted. To date, it has not classified any soft law act in the context of banking supervision as directly contestable by way of an action for annulment.

<sup>10</sup> CJEU judgment of 25 March 2021, *BT v Balgarska Narodna Banka*, C-501/18, ECLI:EU:C:2021:249, paragraph 82.

<sup>11</sup> Koen Lennaerts et al., *EU Procedural Law*, 2nd edition 2023; online edn, 9.09. See, for example, General Court judgment of 27 October 2016, *ECB v Cerafogli*, T-787/14 P, ECLI:EU:T:2016:633, paragraph 44; of 10 June 2020, *Oosterbosch v Parliament*, T-131/19, ECLI:EU:T:2020:623, paragraph 55.

<sup>12</sup> See, for example: CJEU, 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P and *Others*, ECR 2005, I-5425, paragraph 212 et seq.; General Court judgment of 16 September 2013, *Aloys F. Dornbracht v Commission*, T-386/10, ECLI:EU:T:2013:102, paragraphs 68-79; 6 April 2017, *Regione autonoma della Sardegna v Commission*, T-219/14, ECLI:EU:T:2017:63, paragraphs 188-203; of 9 September 2020, *Kerkosand v Commission*, T-745/17, ECLI:EU:T:2020:518, paragraph 63.

Level 3 measure exceeded its legal mandate, violated an essential procedural requirement or infringed higher-ranking Union law.

If the complaint is justified, the court shall declare the Level 3 measure inapplicable for the purposes of the specific proceedings between the parties (*inter partes*).<sup>13</sup> This legal infringement could then affect the specific individual legal act being contested and lead to its annulment. However, due to the *inter partes* effect, other institutions cannot directly invoke an incidental objection that has been successful in another party's proceedings.<sup>14</sup> Nevertheless, the enacting Union body may be obliged to remedy the established unlawfulness of the Level 3 measure.<sup>15</sup>

## Conclusion

Given the broad scope and sometimes considerable impact of Level 2 and Level 3 measures in banking regulation, legal protection for affected CRR credit institutions is potentially of great importance. However, judicial review and legal protection options are essentially limited to incidental review by the EU courts in the context of actions for annulment pursuant to Article 263 TFEU against, for example, supervisory measures taken by the ECB. Within this framework, excessive burdens on the banking industry, which exceed mandates or relate to matters outside the relevant areas of competence and are therefore unlawful, imposed by Level 2 and Level 3 measures can be (indirectly) challenged. In order to maintain checks and balances in the institutional structure of the banking union and to protect the individual rights of the institutions affected, these should be consistently applied by the relevant institutions in practice and, where possible, strengthened and further developed by the EU courts.

<sup>13</sup> See, for example, CJEU judgment of 5 October 2000, *Council v Busacca and Others*, C-434/98 P, ECLI:EU:C:2000:429, paragraph 26.

<sup>14</sup> CJEU judgment of 21 February 1974, *Kortner and Others v Council and Others*, 15/73 and Others, ECR 1974, 177, paragraph 37; of 11 July 1985, *Salerno and Others v Commission and Council*, 87/77 and Others, ECR 1985, 2523, paragraph 36.

<sup>15</sup> See, for example, Advocate General Lagrange, 4 April 1961, *Meroni and Others v High Authority*, 14/60 and Others, ECR 1961, 161, 174.



## Simplifying banking supervision: A shared task that must not jeopardise resilience

Dr. Klaus Lackhoff<sup>16</sup>

European banking supervision: embedded in broader economic, social, environmental and political developments

European banking supervision, like any banking supervision, is embedded in wider economic, social, environmental and political developments. This also includes increasing competitive pressure resulting from a number of factors, including differing legal and political approaches to banking supervision in the US and Europe. Against this background, following a phase in which the focus was primarily on strengthening the resilience of the financial system, the simplification of banking supervision has emerged as a key issue.

From a regulatory perspective, it is crucial to distinguish between simplification and deregulation. The aim of simplification is to improve efficiency, transparency and proportionality within the regulatory framework without compromising the robustness of the financial system.<sup>17</sup>

<sup>16</sup> This text represents the views of the author only.

<sup>17</sup> S. Claudia Buch, "Simplification without deregulation: European supervision, regulation and reporting in a changing environment", Goldman Sachs European Financials Conference 2025, 11 June 2025, Berlin, hereafter referred to as "*Buch, Simplification*" and available at: <https://www.bankingsupervision.europa.eu/press/speeches/date/2025/html/ssm.sp250611~e309f5bec9.en.html>. "*Simplification means maintaining resilience with a more effective and efficient supervisory and regulatory framework; deregulation means weakening regulation and supervision at the expense of resilience.*"

In order to advance simplification without compromising the stability of EU credit institutions, a collective effort is required by all stakeholders – legislators, supervisory authorities and credit institutions – in an increasingly complex economic and geopolitical environment. The European Central Bank (ECB) is taking significant steps within its mandate to promote simplification while remaining true to its core objective of financial stability.

## Simplification is not deregulation

Simplification, even when driven by legislative measures, aims to eliminate unnecessary complexities, streamline processes and improve transparency. Yet, in doing so, the protective mechanisms that ensure financial stability remain in place. Deregulation, on the other hand – understood as a relaxation of the rules that support financial stability, deviating from international standards or less stringent supervision – increases the vulnerability of the financial system.<sup>18</sup> Historical experience, particularly from the global financial crisis of 2008, shows that deregulation often leads to systemic weaknesses and significant long-term costs. François Villeroy de Galhau, Governor of the Banque de France, warned that deregulation “would sow the seeds of future financial crises”, particularly at a time of increasing systemic risks from crypto-assets and financial intermediaries that are not credit institutions.<sup>19</sup>

The resilience of European banks in recent years highlights the importance of robust regulation. During the COVID-19 pandemic, the 2022 energy crisis caused by Russia’s war against Ukraine, the 2023 banking crisis in the US and other shocks, European banks proved their stability and continued to support the real economy. This resilience was not achieved by accident. It was the result of targeted, careful policy measures and increased supervision based on lessons learned from the global financial crisis.<sup>20</sup>

Weakening these protective mechanisms under the pretext of simplification would jeopardise public confidence and undermine the stability of the financial system. The aim of simplification cannot therefore be to relax or abandon protective mechanisms, but rather to make the system more effective and efficient. Simplification must improve the clarity and comprehensibility of the regulatory framework while maintaining its robustness. As Sharon Donnelly, member of the ECB’s Supervisory Board, pointed out, “Simplification must mean making the

<sup>18</sup> See François Villeroy de Galhau, A European approach to simplification: avoiding three misconceptions, and suggesting concrete milestones, Eurofi Summit, 11 April 2025, Warsaw, available at: <https://www.banque-france.fr/en/governors-interventions/european-approach-simplification-avoiding-three-misconceptions-and-suggesting-concrete-milestones>, under 1.4, (hereafter referred to as *Villeroy de Galhau, Simplification*).

<sup>19</sup> Villeroy de Galhau, Simplification, under 1.1.

<sup>20</sup> S. Buch, Simplification: “The resilience that was built over the past decade is no coincidence. It is the result of concrete policy action and good supervision in Europe. This is an achievement that should not be put at risk. Improvements should not come at the expense of weaker standards that would expose depositors and taxpayers to increased risk.”

framework more efficient, more transparent and more proportionate, without sacrificing resilience”.<sup>21</sup>

In an exchange between the Chair of the ECB Supervisory Board and the Eurogroup on 12 May 2025, the situation was summarised as follows:

“As regards regulation, we need to avoid a race to the bottom. Pressure to lower standards in order to maintain the competitiveness of European banks is mounting. However, lower standards would weaken banks, not strengthen them. Well-capitalised and well-supervised banks are in fact more competitive. With the implementation of the Basel framework, capital requirements will be better aligned with relevant risks. Europe is showing its commitment to adhere to international standards. Implementing the “last mile” of the Basel III framework does not put undue pressure on banks. Transition periods are relatively long, allowing banks to adjust their balance sheets. For some banks, capital requirements will actually decline.”<sup>22</sup>

## The joint responsibility of all participants

Simplifying banking supervision is not a task that can be achieved by one party alone. Rather, it is a joint task that requires the active participation of all stakeholders – legislators, supervisory authorities and credit institutions.

### **Role of the legislator:**

#### **Simplifying rules and reducing fragmentation**

European and national legislators play a crucial role in shaping the regulatory framework and harmonising it across the various legal systems. One major cause of complexity within the European Union (EU) is the fragmentation that occurs from differences in the implementation of regulations among the various Member States.<sup>23</sup> These differences often arise when EU directives are implemented differently into national law or in exercising national discretionary powers. By addressing these differences, unnecessary duplication can be eliminated and a more integrated internal market promoted.

The European Commission plays a key role in EU legislation. With its Omnibus Package, for example, the European Commission has already taken measures to simplify ESG reporting requirements and due diligence obligations, among other

<sup>21</sup> Sharon Donnery, “Less regulation, more growth? It’s not that simple”, SSM Senior Forum organised by A&O Shearman, 25 June 2025, Königstein im Taunus, available at: <https://www.bankingsupervision.europa.eu/press/speeches/date/2025/html/ssm.sp250625~cacfd2977b.en.html> (hereinafter referred to as *Donnery, Less regulation*).

<sup>22</sup> See Written overview for the exchange of views of the Chair of the Supervisory Board of the ECB with the Eurogroup on 12 May 2025, under ‘Enhancing efficiency and effectiveness’ available at [https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.written\\_overview250512.en.pdf](https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.written_overview250512.en.pdf).

<sup>23</sup> Sharon Donnery, “Making banking simple: one market, one rulebook”, Handelsblatt Jahrestagung Bankenaufsicht, 29 April 2025, Frankfurt am Main, in “The regulatory angle”, available at: <https://www.bankingsupervision.europa.eu/press/speeches/date/2025/html/ssm.sp250429~a8ece83650.en.html>.

things. Its aim is to simplify EU regulations, strengthen competitiveness and tap into additional investment capacity.<sup>24</sup>

Another legislative step towards promoting the competitiveness of the EU banking sector and reducing the regulatory burden is the European Commission's strategy for a Savings and Investments Union (SIU) of 19 March 2025.<sup>25</sup> The elements of the strategy include, among other things, (i) promoting competitiveness and integration within the banking sector and (ii) reforming the securitisation framework. Among other things, the SIU aims to strengthen market-based financing and advance the completion of the banking union. This includes appropriate regulations for the resolution of medium-sized banks in the event of failure and the further development of discussions on the European Deposit Insurance Scheme (EDIS).

Furthermore, the European Commission is conducting a comprehensive review of the EU regulatory framework to ensure a level playing field with other major jurisdictions. To support these efforts, in April 2025, the ECB created a high-level task force to address the simplification of EU banking regulation.<sup>26</sup> It addresses issues such as capital requirements and reporting processes, emphasising that simplification must not jeopardise financial stability or lower capital requirements.

The European Banking Authority (EBA) also plays an important role in simplifying the regulatory framework.<sup>27</sup> The EBA is committed to actively contributing to these efforts, as demonstrated, for example, by its report on the efficiency of the regulatory and supervisory framework (EBA/REP/2025/26).<sup>28</sup>

This EBA report focuses on improving the efficiency of the EU's regulatory and supervisory framework by addressing four key areas: (i) regulatory mandates, (ii) reporting, (iii) supervisory processes and (iv) internal EBA structures. It contains recommendations for short, medium and long-term measures, and emphasises the importance of simplification, proportionality and reducing the regulatory burden without jeopardising financial stability or the Single Market.

<sup>24</sup> European Commission, press release, 26 February 2025, Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_614](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_614).

<sup>25</sup> See European Commission, press release, 19 March 2025, Commission presents strategy for a savings and investment union to improve the financial opportunities of citizens and businesses in the EU, and the Commission Communication (COM(2025) 124 final) of 19 March 2025 on Savings and Investment Union – A Strategy to Foster Citizens' Wealth and Economic Competitiveness in the EU, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0124>.

<sup>26</sup> See ECB, What was the ECB high-level task force on simplification? <https://www.ecb.europa.eu/ecb-and-you/explainers/html/high-level-task-force.en.html>.

<sup>27</sup> The role of the EBA goes far beyond its preparatory role in relation to Commission regulations in that it establishes 'soft law' through its guidelines, recommendations and reports. On soft law in banking supervisory law, see Lackhoff, Ein Kessel Buntes zum Bankenaufsichtsrecht – Soft Law, Pillar-Maßnahmen und gerichtliche Kontrolle, in: Glos et al. (eds.), Demokratie. Regulierung. Freiheit. Festschrift für Thomas Emde, 2025, p. 217.

<sup>28</sup> EBA Report on the Efficiency of Regulatory and Supervisory Framework (EBA/REP/2025/26), 1 October 2025, <https://www.eba.europa.eu/sites/default/files/2025-10/b8e0ef8e-2d49-43fc-b917-dbca3423588c/Report%20on%20the%20efficiency%20of%20the%20regulatory%20and%20supervisory%20framework.pdf>.

Key proposals include revising the Single Rulebook with modular components (e.g. credit risk and governance), streamlining reporting requirements and improving data exchange between authorities. The report also proposes establishing supervisory platforms and IT tools to improve coordination. Furthermore, it advocates a reallocation of resources from ex ante harmonisation efforts to ex post supervisory convergence in order to strengthen consistency within the EU.

The report emphasises that simpler rules for small and non-complex institutions (SNCI) must be applied more systematically. It recommends improving the balance between home and host country responsibilities within the banking union and strengthening supervisory convergence tools such as peer reviews. Furthermore, a review of the roles of the various regulatory levels (Level 1, Level 2, Level 3) is proposed, with an emphasis on directly applicable regulations and improvements to the EBA's internal structures by reducing substructures and promoting strategic guidelines.

The recommendations are aimed at maintaining the resilience of the EU financial system, deepening the Single Market and banking union, and ensuring a level playing field. While some proposals are likely to lead to legislative changes, others focus on better coordination and operational adjustments that do not require changes to Level 1 provisions.

#### **Role of the supervisory authorities: Simplifying processes and increasing efficiency**

Supervisory authorities such as the ECB are responsible for applying and enforcing applicable banking supervision law such that it is efficient, risk-based and proportionate. The ECB is taking significant steps to simplify its supervisory processes without compromising the resilience of the banking sector.

A key initiative in this context is the reform of the Supervisory Review and Evaluation Process (SREP). By introducing a multi-year, risk-focused framework, the ECB has reduced the workload for banks while ensuring that the supervision remains targeted and effective. For example, banks with a low risk profile are no longer subject to the same intensive scrutiny as institutions with high risks. This enables supervisors to deploy their resources where they are most urgently needed. In addition, the ECB has introduced a simplified SREP decision template that provides banks with clear and concise information on supervisory requirements and recommendations. This enables banks to remedy deficiencies more effectively and approach future planning with greater confidence.<sup>29</sup>

Digitalisation is also a key element of the ECB's simplification agenda. Platforms such as CASPER and the IMAS portal have simplified interactions between banks and supervisory authorities by enabling real-time tracking of processes and

<sup>29</sup> See Patrick Montagner, "Developments in banking supervision: the quest for simplification in an ever more complex world", at the AEFR, 9 September 2025, Paris, available at: <https://www.bankingsupervision.europa.eu/press/speeches/date/2025/html/ssm.sp250909~227ce975c0.en.html>.

reducing administrative burdens. These advances help to identify risks at an early stage and improve the overall efficiency of the supervision.

Another area that can benefit from simplification is reporting. The ECB is actively working to map the entire reporting landscape, identify overlaps and eliminate redundancies. Initiatives such as the Banks' Integrated Reporting Dictionary and the Integrated Reporting Framework aim to create a simplified and proportionate reporting system. By adjusting materiality thresholds and consolidating data collection templates, the ECB aims to make reporting requirements both more efficient and more effective.<sup>30</sup> The use of data platforms such as CASPER and the IMAS portal enables institutions to automatically pre-validate their submissions and easily track supervisory processes. Proposals such as the Integrated Reporting Framework are designed to reduce redundancies and standardise reporting requirements. These measures not only simplify data collection and the reporting framework, but also increase the transparency and comparability of data, enabling more effective supervision.

### **Role of credit institutions: Standardisation and simplification**

Credit institutions also have an important role to play in simplifying the regulatory framework. Banks can contribute to this, for example, by introducing standardised processes and streamlining their internal models.

One example of this is the accelerated procedure for assessing significant risk transfer, which the ECB developed together with the sector for standardised securitisation transactions. This cooperation between banks and supervisory authorities shows how simplification can lead to tangible efficiency gains without compromising standards.<sup>31</sup>

In addition, banks can simplify their internal processes by consolidating fragmented IT systems and introducing more efficient data management practices. Sharon Donnery, member of the ECB's Supervisory Board, stated, "As supervisors, we are committed to doing our part: streamlining decision-making, improving communication, ensuring stable supervisory methodologies and adjusting reporting requirements where possible. But simplification also requires action from the industry, through standardised products and more efficient structures that support a more integrated and navigable financial system."<sup>32</sup>

<sup>30</sup> Sharon Donnery, "Less regulation, more growth? It's not that simple", SSM Senior Forum organised by A&O Shearman, 25 June 2025, Königstein im Taunus, in "Enhancing the efficiency and effectiveness of supervision", available at: <https://www.bankingsupervision.europa.eu/press/speeches/date/2025/html/ssm.sp250625~cacfd2977b.en.html>

<sup>31</sup> Buch, Simplification, in Enhancing supervisory efficiency and effectiveness and the focus on risks.

<sup>32</sup> Donnery, Less regulation.

## Addressing complexity with European solutions

Efforts to make simplifications must be consistent with the overarching objective of promoting European integration. The fragmentation of the Single Market, caused by continuing national differences in rules and practices, is a significant source of complexity. Harmonising these rules and introducing a uniform, common framework would reduce the burden on banks and promote cross-border financial integration.

As Donnery emphasises, “The goal should not be to lower regulatory standards, but to reduce complexity by aligning and harmonizing rules across Europe.”<sup>33</sup> Further improvement of the Single Market is crucial to realising this vision. In this context, simplification not only means reducing complexity, it also means creating a more strongly integrated and more efficient regulatory environment.

## Conclusion

Simplifying banking supervision is a necessary and achievable goal, but it must be clearly distinguished from deregulation. Simplification must be aimed at efficiency, transparency and proportionality, without endangering the resilience of the financial system.

Achieving this balance will require joint efforts by legislators, supervisory authorities and credit institutions alike. The ECB has demonstrated its commitment to this objective within the scope of its mandate through initiatives such as the SREP reform, digitalisation and simplified reporting requirements.

Real progress, however, will require European solutions that reduce fragmentation and promote integration. By working together, we can continue along this path and thereby strengthen the resilience of the European banking system for years to come.

<sup>33</sup> Donnery, Making banking simple.

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# Countering the flood of standards and excessive bureaucracy in the European financial supervisory system

Dr. Dirk Bliesener

Prof. Dr. Christoph Kumpan

Prof. Dr. Matthias Lehmann

Prof. Dr. Edgar Löw

Prof. Dr. Frank A. Schäfer

Prof. Dr. Rolf Sethe

## A plea for appropriate and effective banking supervision law that promotes competition

In 2024, the European System of Financial Supervision (ESFS) celebrated its tenth anniversary. Looking back over the last decade, we can take pride in the stabilisation achieved in the European banking landscape. However, the benefits have been overshadowed by the burdens of regulation and supervision. It weighs heavily on Europe's credit institutions and hinders their activities. The situation threatens to damage the EU's competitiveness and its economic and innovative strength.

In the following, we will consider four questions: What exactly is the current state of the ESFS? What are the consequences? What are the underlying reasons for this? And how can they be remedied?

## The current situation

### **Enormous volume of regulation**

The vast number of regulations is very striking. The numerous Level 1 acts are accompanied by a **flood of Level 2 acts**, which are adopted by the European Commission on the recommendation of the European Banking Authority (EBA). In addition, there is a bewildering **jungle of Level 3 acts** that are not formally binding

but have a legally binding effect in practice. No one can determine the exact number of these acts – a fact that speaks volumes in itself. Some of them are very extensive, with a tendency to be constantly extended.

### **Extreme regulatory density**

Another characteristic feature of the current state of the ESFS is the [extreme detail](#) of the requirements. The conduct and organisation of the institutions are [meticulously](#) regulated. Even seemingly minor issues are regulated in detail – one of the reasons for the enormous volume of regulations. In addition to the EU requirements, there are also [national requirements](#), which further increase the density of regulations.

### **Unsatisfactory regulatory style**

Most Level 1 and Level 2 acts are [overly complex, confusing and difficult to understand](#). Many new acts have their own terminology and sometimes contain hundreds of recitals. The requirements are sometimes [contradictory](#), and the various language versions are often [inconsistent](#). Furthermore, the acts are [changed](#) often. This makes them difficult to understand, increases the costs of implementation and reduces the chances of compliance. There is a significant risk that many of the requirements are implemented incorrectly or not at all.

### **Exceeding enabling provisions**

Level 2 and Level 3 acts often go beyond the legal requirements. The regulator [tightens requirements](#) or introduces [additional](#) rules that were not provided for in the previous levels. This stems from the commendable effort to give greater effect to legislative objectives. However, it is not uncommon for the supervisor to act [contrary to the law](#) and therefore against the [will of the legislator](#).

### **Explosion of requirements**

The flood of standards in the ESFS has led to a [manifold increase in the requirements](#) placed on institutions. They have become increasingly detailed and extensive. This is evident in [reporting](#), for example. In some cases, the necessary information is not available, for example in the areas of the environment and supply chains. Nevertheless, strict regulatory penalties are likely to be imposed in the event of non-compliance.

### **Pre-emptive implementation by national legislators**

In many cases, national legislators are impatient and do not wait for the adoption of planned European regulations. They enact national legislation before it is officially adopted (an example from Germany: *Honorar-Anlageberatungsgesetz* (Fee-Based Investment Advice Act)). This law had to be later adapted to conform with the final version of the EU directive. This further increases implementation costs for the industry.

## The consequences

### **Overburdening of institutions**

In general, institutions are heavily burdened by regulation and supervision in the ESFS. They must devote enormous amounts of **time, energy and personnel** to meet their regulatory obligations. The flood and density of regulations promote a **culture of mere compliance** in which one requirement after another must be 'ticked off' without questioning their purpose.

### **Overburdening of supervision**

The enormous volume of regulation and its high degree of complexity also affect the supervisory authorities themselves. They are finding it difficult to fulfil the tasks assigned to them. For example, Level 1 acts are increasingly **coming into force with delays** because the accompanying Level 2 acts have not yet been adopted. In addition, due to the ongoing focus on regulatory tasks, there is a risk that the supervisory authority will not pay sufficient attention to unforeseen risks.

### **Legal uncertainty**

The flood and density of regulations is leading to increasing uncertainty about the current legal situation. Hardly any institution is **aware of all the requirements that must be implemented**. The regulators and supervisory authorities themselves find it difficult to keep track of the complex regulatory framework. This leads to differing interpretations by the supervisory authority in some cases. The contradictions between Levels 1, 2 and 3 and within the act itself further add to the uncertainty. Paradoxically, despite the dense network of regulations, it is impossible to predict how the supervisory authorities will react to new developments or products.

### **Democratic deficit**

By deviating from the enabling provisions, the will of the democratically legitimised legislative bodies is disregarded. Instead, the regulator imposes its own opinions. These tend to aim at strengthening the stability of the financial system but usually come **at the expense of economic freedom**. As a result, this shifts the balance between the two objectives negotiated during the legislative process.

### **Changing the banking landscape**

**Smaller institutions**, in particular, are struggling to keep pace with the ever-increasing regulatory requirements. They lack both the personnel and the expertise to meet the many obligations. This **makes it difficult for new competitors to enter the market**. Since only very large institutions can meet the regulatory requirements, the **number of banks will be reduced**. The outcome is not the emergence of European champions capable of keeping pace with their US and Asian competitors. Instead, **national and European monopolies and oligopolies** have been created that are less innovative, cumbersome and inflexible.

### **Restricting competitiveness**

Given the wide range of regulatory requirements, institutions have **ever fewer resources left to improve the services** they offer their customers. The tight regulatory framework leaves **little room for innovation**. This restricts competition within the EU and damages the competitiveness of European banks at international level. The European banking system may be more secure than that of other regions, but it is **less agile, inflexible and inefficient**. Its task of providing liquidity to the economy – including to start-ups – cannot be adequately performed.

## The reasons

### **Working method of the regulator**

One of the main reasons for the current situation is the tendency of the European Commission and the EBA to formulate regulatory requirements with **microscopic precision**. Not only does this increase the volume of regulations, it also restricts the institutions' scope for action. The reason for this excessive love of detail is due to the regulatory focus on the stability of the financial markets. Other considerations, such as competitiveness, are sidelined or not pursued at all. This attention to detail is also the reason for the complexity and lack of clarity within the European regulatory framework.

### **Choice of regulatory instrument**

Part of the reason lies with the **European legislators themselves**. Many aspects of banking law are still regulated by directives rather than regulations. And even when a regulation is chosen as the regulatory instrument, it often leaves many questions unanswered, requiring implementing legislation by the Member States. Despite apparent attempts at standardisation, the legal situation remains inconsistent and fragmented as a result. The reason for this is often the inability of the EU institutions to reach a political compromise.

### **Transfer of legislative power to authorities**

For the same reason – the inability to reach political compromise – the Council and Parliament are increasingly **shifting more tasks to lower levels**. Delegating to regulators is seen as a convenient way of achieving positive outcomes. In doing so, they are also shirking their political responsibility. This effect is further amplified by the increasing complexity of the regulatory framework, which hardly any parliamentarians understand anymore.

### **High diversity of national legal systems**

Another reason for the extensive and complex regulatory framework is the **breakdown into national legal systems**. In addition to the European requirements, there are 27 **different national regimes** in the EU and as many as 30 in the EEA. These all have their own supervisory authorities and legislative bodies, which enact

legislation at various levels. Even though the ESFS harmonises the requirements considerably, there are still **too many 'national options and discretions'**.

### **Lack of coordination of the regulatory framework**

Another flaw in the regulatory framework is that **no authority checks it for consistency**. Since no one knows the entire content, individual measures **may cancel each other out or contradict each other**. In the worst case, this leads to the opposite of what was intended. The contradictions between the European and national legal frameworks are also serious. This is made even more problematic as national authorities often no longer publish the reasons why they deviate from European Level 3 recommendations.

### **No judicial or other legal remedies**

Most institutions are reluctant to challenge unlawful, disproportionate or contradictory regulations. True to the motto **'never mess with the regulator'**, they prefer to adhere to regulatory or supervisory requirements rather than risk ruffling the feathers of the supervisory authority. Furthermore, many requirements **lack a basis for legal action**, e.g. in the case of Level 3 acts.

## Possible remedies

### **Principle-based legislation**

Improving the current situation requires a fundamentally different approach. Instead of specifying every detail in advance, legislation should focus on **principles**. Instead of focusing on preventative supervision, greater emphasis should be placed on **ex-post penalties**.

**Principle-based regulation** would have a number of advantages. Firstly, it would leave more scope for **market mechanisms**. Secondly, it would be more **open to innovation**. Thirdly, it would **relieve the burden** on supervisory authorities. Fourthly, it would provide more **scope** to respond to **new, unforeseen developments**. Fifthly, it would be **clearer, more accessible and easier to understand**. Lastly, it would also promote **equality** among those subject to the law, as it involves fewer exceptions and special rules for individual actors.

Currently, the scope of many legal acts is **very narrowly** defined. This leads to interpretation problems because the individual circumstances of each case must be clearly identified. In addition, there are always **gaps** between the enumerated list of circumstances, which are exploited by unscrupulous market participants, triggering yet another wave of regulation. In order to put a stop to this **cat and mouse game** it would be better to define the scope of application by means of a **catch-all provision** and to provide for precisely defined exceptions. Examples from Switzerland show that this method leads to much clearer regulations.

Many see the lack of legal certainty as a disadvantage of principle-based legislation. However, even a strictly rule-based method cannot guarantee legal certainty. In particular, it is difficult to draw conclusions about the application of the law in

unforeseen cases on the basis of these guidelines. Principle-based legislation, on the other hand, provides guidelines for supervision that govern its conduct far beyond the present. This makes the law more predictable and, at the same time, more consistent. It is important here that the regulator clarifies the meaning and purpose of the regulations so that an appropriate interpretation of individual cases can be deduced from them.

### **Drastic reduction in delegations to the Commission**

One key to improving the regulatory framework is that **questions of principle** must be decided by the Council and Parliament themselves. Political decisions ought **not** to be delegated to the European Commission or the EBA. All important decisions must be taken at Level 1. Level 2 and Level 3 should only be used to **clarify technical details** in accordance with their original purpose. Not only does this strengthen the democratic legitimacy of the regulations, it also relieves the burden on the supervisory authorities, allowing them to concentrate on their actual tasks.

### **No gold-plating**

The practice of imposing stricter legal requirements than those set out in EU legislation – known as gold-plating – **should be scrapped**. This should apply **at all levels**. Firstly, Member States should no longer go beyond European requirements through their own national regulations. Secondly, the EBA should not tighten requirements at Level 2. Thirdly, the EU should also adhere to international supervisory standards without going beyond them (for example, by extending Basel III to non-systemic and non-internationally active institutions). This will ensure a level playing field in the Single Market and safeguard the international competitiveness of the Union. In addition, the supervisory framework will become much clearer and easier to apply.

### **Limitation on new legal acts**

Before introducing any new legislation, legislators should pause and ask themselves the following questions: Is it really necessary? Can its goals be achieved in other ways? Is the effort required by the institutions proportionate to the intended benefits?

This requires **more realistic cost analyses** than have been carried out to date, which have sometimes been sporadic, superficial and not backed up by data. In addition, the **consistency** of new regulations with the existing legal framework should be examined. **Consultations** must be taken seriously and not be implemented at the last minute as a formality. Legislators should do more than just pay lip service to the principles of **proportionality and subsidiarity**.

In addition, consideration should be given in each individual case to the **temporary validity of new legal acts**. Continuation would then require a separate impact analysis, including a cost-benefit analysis.

The questions raised above should be considered not only before enacting a new legal act, but also some time after its implementation. It is therefore recommended

that a [post-implementation review project](#) be introduced for certain legal acts, in which the intended benefits are compared with the implemented reality and the outcomes achieved by the regulation.

### **Institutional changes**

Simply changing the rules is not enough to improve European banking supervision, institutional reforms are also required. A particularly effective means of reducing the number of regulatory texts would be to [cap the number of employees at European authorities](#). Instead of employing more and more regulators, fewer but [highly qualified individuals](#) should be hired. A fixed proportion of the vacant positions should be filled exclusively by personnel [with industry experience](#) – even if this means offering higher salaries. In order to provide the right incentives, the EU and [Member States should cover a share of the supervisory costs](#) themselves (e.g. 10%) and not pass them on entirely to the industry, as has been the case to date.

Supervisory processes such as reporting should be made more efficient (e.g. according to the principle of 'report once, use multiple times').

## **Outlook**

European banking supervision is at a crossroads. A reset is needed, an 'ESFS 2.0'. It no longer needs to focus solely on averting banking crises, but also on supporting institutions and the entire EU economy in the face of international competition.

[Only a competitive banking system is stable](#) and generates the profits necessary to maintain social prosperity. A rigid banking system, on the other hand, leads to economic activity moving to third countries and, as a result, would also hamper the practical effectiveness of banking supervision. Experience shows that crises usually originate abroad, where European supervision does not apply. Of course, reforms involve costs and transitional difficulties. However, continuing as before is not an option, as it would jeopardise the long-term success and stability of the real and financial economies in the EU.

Published by

Bundesverband deutscher Banken e.V. (Association of German Banks)

Burgstraße 28 | 10178 Berlin

Germany

Lobby Register No R001458

EU Transparency Register No 0764199368-97

USt-IdNr.: DE201591882

Contact:

[kontakt-presse@bdb.de](mailto:kontakt-presse@bdb.de)

+49 30 1663-0

[bankenverband.de](http://bankenverband.de)

Responsible for content:

Michaela Zattler, Director, Head of Banking Supervision and Accounting

Ingmar Wulfert, Director, Banking Supervision and Accounting