

The role of the Basel Committee on Banking Supervision (BCBS)

A de facto standard setter In banking legislation

This briefing gives an overview of the role of the Basel Committee on Banking Supervision (BCBS) in setting international standards in banking regulation and supervision. It also raises the questions on how the preparatory work is organised in the European Union in order to enhance transparency and co-operation.

Relevance as non-legislative standard setter

The Basel Committee on Banking Supervision (BCBS) is a pivotal standard-setter in the banking sector, mandated to strengthen the regulation, supervision and practices of banks worldwide. It has a specific focus on large, internationally active banks.

Membership in the BCBS is restricted to a number of central banks and banking supervisors from currently 28 jurisdictions (see Annex A for a presentation of all members).

The BCBS is no formal supranational authority, and the prudential rules it proposes are per se not legally binding.

Central banks and banking supervisors of course hold expert knowledge about banking matters, but may not necessarily have a formal right of initiative to propose new laws (such as the European Commission has on matters contained in the EU treaties). The BCBS work in practice very much as a network of experts in banking supervision taking also into account that any agreement among them requires consensus. However, there has been some indication in some jurisdiction of wanting to have a stronger political say in these negotiations (see [letter of January 2017 from the Vice Chairman](#) of the Financial Services Committee to the Federal Reserve Board).

Nevertheless, the rules agreed in Basel have de facto a strong impact on subsequent legislative processes via the commitment of its members to implement them, and - as its rules



are “*applied by more than 100 jurisdictions worldwide*”¹ - the agreed standards obviously put pressure on other countries to follow suit.

For example, the "Basel III" agreement, developed by the BCBS and [endorsed](#) by the G20 delivered the key parameters of the most comprehensive set of reform measures in banking regulation in the EU, while the legislative process forming the corresponding Capital Requirements Regulation/Capital Requirements Directive IV (“[CRR/CRD IV reform package](#)”) mainly added some additional elements (e.g. as regards remuneration practices and corporate governance arrangements) and expanded the scope, as the EU legislation applies not only to internationally active but to banks of all sizes (as was already the case with CRD which transposed the Basel 2 agreement).

Enforcing the adoption of Basel standards

Though the Basel standards are not legally binding, the BCBS still monitors both the timeliness and the substance of the subsequent legislative process, seeking to ensure that the standards are implemented with no or little deviation.

Monitoring hence consists of two distinct work streams: The first work stream checks whether Basel standards are timely adopted, and the second work stream - the “[member jurisdiction assessments](#)” - assesses the consistency and completeness of the domestic regulations, also judging the significance of any deviations. The whole process is set out in the Regulatory Consistency Assessment Program (RCAP) that was formally adopted in 2012.

Compliance of the members’ jurisdictions with the Basel III capital standards, the Liquidity Coverage Ratio, and the framework for Systemically Important Banks are all subject to different RCAP reports. The RCAP’s grading system uses four categories: the regulatory framework can be judged to be compliant, largely compliant, materially non-compliant, or non-compliant.

For example, in December 2014 the prudential regulatory framework in the EU was evaluated to be “materially non-compliant” with the minimum standards prescribed under the Basel III framework. That assessment conceded that the EU framework is in several areas more rigorous than the Basel framework, yet the overall grade was coined by deviations regarding the Internal Ratings-Based (IRB) approach for credit risk and the counterparty credit risk component (see Annex 2 for an overview of the related compliance assessments published by the BCBS; those assessments were carried out at different points in time, the publication dates of the reports hence differ).

¹ See Lucia Quaglia (2015): “[The European Union's Role in International Economic Fora - Paper 5: The BCBS](#); in-depth analysis for the ECON Committee”, p. 7.

Consultation and transparency

In general, the BCBS is committed to consulting widely on its activities with non-member authorities through fora like the Basel Consultative Group, gathering senior representatives from various countries, international institutions and regional groups of banking supervisors that are not members of the Committee. When the BCBS develops its standards, it typically initiates a public consultation, seeking input from all relevant stakeholders on policy proposals. Unless respondents request confidential treatment, their comments are published on the BCBS website. The positions of its members, on the other hand, and those of international bodies with an observer status (such as the European Banking Authority, European Commission, and International Monetary Fund) are not made public on the BCBS homepage.

The input is hence partially documented, but the decision making process is not directly observable: *“The BCBS and its working groups are not open to the public and there is no public record of their meetings.* (Lucia Quaglia, *The European Union's Role in International Economic Fora*, [Paper 5: The BCBS](#), March 2015, p. 14)

Co-ordination and co-operation

Given that the rules agreed in the BCBS have a strong impact on subsequent legislative processes - not de jure but de facto - the question merits closer examination how legislators might best co-ordinate and co-operate with the BCBS.

In the following, three aspects are touched upon:

- whether a binding mandate is conceivable,
- how in particular the EU representation in the BCBS can be streamlined, and
- how the preparatory work can be organised in the EU to enhance transparency and co-operation.

Is a strictly binding mandate conceivable?

As set out above, membership in the BCBS is according to its [Charter](#) restricted to central banks and banking supervisors. Other international institutions such as the European Commission, the European Banking Authority, the International Monetary Fund, or the Bank for International Settlements, can only be given an observer status.

Independence is widely considered to be a key principle required for the proper functioning of both central banks and banking supervisors.

The [practical implications](#) of that principle for central banks – primarily targeting the conduct of monetary policy – are that in the EU “[n]either the ECB nor the national central banks (NCBs), nor any member of their decision-making bodies, are allowed to seek or take

instructions from EU institutions or bodies, from any government of an EU Member State or from any other body“.

Likewise, operational independence is one of the key requirements for banking supervisors. The BCBS states that “[t]he operational independence, accountability and governance of the supervisor are prescribed in legislation and publicly disclosed. There is no government or industry interference that compromises the operational independence of the supervisor [...]”. ([BCBS: Core Principles for Effective Banking Supervision](#), p. 22)

It is difficult to imagine how a strictly binding mandate could be aligned with the operationally independent status of banking supervisor representatives (or central bank representatives).

Moreover, the concept of a binding mandate ignores to some extent that the process in the BCBS is all about consensus building. According to the BCBS’ charter, all decisions are taken by consensus among its members, and not, for example, by majority voting. A binding mandate that would for any reason not find the consensus of all other members might therefore just prevent coming to any decision at all. If there was consensus about certain standards among all BCBS members except one, it would therefore seem more appropriate if that member just signalled that those standards will not be implemented in their own jurisdiction - given that BCBS standard are not binding in legal terms anyway - rather than obstructing the decision making process as such. The drawback of such an approach would consequently be less international harmonisation implying curtailed equal treatment, a pitted level playing field, and fewer possibilities to use mutual recognition between jurisdictions as a basis for providing banking services.

Naturally, all jurisdictions of the BCBS may decide to provide political guidelines for any on-going negotiations, if it is deemed useful for the outcome from their perspective. For example, the European Parliament adopted in November 2016 a [resolution](#) in the view of the finalisation of Basel III.

How can the EU representation in the BCBS be streamlined?

Seats in the BCBS are in principle granted with respect to the importance of the national banking sectors to international financial stability. After having started life as a G10 body, the BCBS now has 45 members from 28 jurisdictions.

As regards the representation of the EU in the BCBS, one should know that nine national jurisdictions are also individually represented. These are Sweden and the United Kingdom on the one hand, as well as seven national jurisdictions of the euro area on the other hand (Belgium, France, Germany, Italy, Luxembourg, The Netherlands, and Spain)².

² Germany (Deutsche Bundesbank and Federal Financial Supervisory Authority), France (Bank of France and Prudential Supervision and Resolution Authority), Italy (Bank of Italy), Spain (Bank of Spain), Netherlands (Netherlands Bank), Belgium (National Bank of Belgium), Luxembourg (Surveillance Commission for the Financial Sector), United Kingdom (Bank of England and Prudential Regulation Authority, Sweden (Sveriges Riksbank and Finansinspektionen).

The reason why some jurisdictions hold two seats while others just one is that banking supervision can either be undertaken in-house in the central bank or in a separate specialised supervisory institution³. Only the United States actually hold four seats in the BCBS, as the US jurisdiction is represented by the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

Moreover, following the agreement to create a Banking Union and to assign the responsibility for the direct supervision of the most significant banks in the euro area to the European Central Bank (ECB) and its separate supervisory arm the Single Supervisory Mechanism (SSM), those two institutions now also each hold a seat in the BCBS.

The general concept underlying the SSM, as stipulated in the respective [Regulation](#), is based on the cooperation between the ECB and national supervisors, whereas each of them has a dedicated area of responsibility, namely the ECB for significant banks, national supervisors for less significant banks. From that perspective, the scope of the ECB and its supervisory arm is more aligned with that of the BCBS than that of national supervisors, as the BCBS likewise focusses on large, internationally active banks.

As the BCBS's overall objective is to enhance financial stability by building a consensus around which standards serve that objective the best, a variety of views can contribute to the breadth of discussion. However, if the EU shall be perceived and treated as a single jurisdiction⁴, the input of national supervisors in the EU would have to be coordinated beforehand.

The European Commission has concluded that there is generally room for improvement with respect to the external representation: *“The Union has also put in place a Banking Union with centralized supervision and resolution for banks in the euro area and open to all other Member States. The external representation of the Union, when exercising its competences specific to the euro area [...] has not kept up with those developments. This limits the effectiveness of the euro area voice in the international financial institutions.”* ([COM \(2015\) 602 final](#): “A roadmap for moving towards a more consistent external representation of the euro area in international fora”, published on 21.10.2015, p.2).

The European Parliament (EP) consequently asked for a more effective, streamlined representation of the Banking Union, having adopted a [resolution](#) on 12 April 2016 regarding the EU role in the framework of international financial, monetary and regulatory institutions and bodies, which inter alia

- *“Calls on the Member States to accept the representation of the Banking Union in the Basel Committee on Banking Supervision through the Single Supervisory Mechanism;*

³ See Goodhart “The Organisational Structure of Banking Supervision”, [FSI Occasional Papers](#), no. 1, 11/2000

⁴ See, for example, the [EBA report](#) on the implementation and design of the MREL framework of 14 December 2016.

- *Considers that [...] progressive streamlining of the EU representation should be implemented over the next years [...] through the unification of seats...”⁵*

Moreover, the EP, in its 2016 [Annual Report on Banking Union](#) recalled the conclusions of the 12 April 2016 resolutions and further stated inter alia

- *“[...] stresses the importance of the role of the Commission, the ECB and the EBA in terms of engaging in the work of the BCBS and providing Parliament and the Council with transparent and comprehensive updates on the state of play of the BCBS discussions; considers that the EU should work on having an appropriate representation in the BCBS, notably for the euro area;”*

How can the preparatory work be organised to enhance transparency and co-operation?

According to the BCBS’ Charter, its members are committed to implement BCBS standards in their domestic jurisdictions. That commitment, however, points to the crucial problem that the BCBS members – central banks and banking supervisors – are not legislators. Any subsequent smooth implementation of Basel standards into law requires that the legislator is well informed about the agreed standards, the underlying reasoning, and that the legislator accepts them as they stand. For that very reason BCBS members should seek the cooperation with the legislator as early as possible and provide the legislator with as much information as needed.

“The positions of the ECB representatives are determined on the basis of internal analyses and discussions among staff participating in technical working groups and senior ECB officials (whether responsible for supervision or other central banking tasks) involved in the decision-making process of the BCBS. The internal preparations take place also via dedicated and internal contact groups (established upon Executive Board decision) and via joint preparatory meetings ahead of BCBS meetings, in which staff from both the supervisory and central bank functions take part. (Lucia Quaglia, The European Union's Role in International Economic Fora, [Paper 5: The BCBS](#), March 2015, p. 16f.)

There is no specific dedicated mechanism for the ECB or the SSM to report back to the EP on issues that are dealt with by the BCBS.

However, the EP has already established formal regular dialogues both with the ECB and with its supervisory arm: According to the [Interinstitutional Agreement](#) between the EP and the ECB, the Chair of the Supervisory Board of the SSM regularly participates in public hearings, and can also be invited to additional ad hoc exchanges of views. Moreover, as the ECB over the years developed an accountability framework that goes beyond the Treaty requirements, the President of the ECB regularly takes part in the institutionalised “[Monetary Dialogue](#)” with the EP’s competent committee.

Those regular hearings with the ECB and its supervisory arm, both members of the BCBS, may be used to enhance the transparency and co-operation on issues dealt with in the BCBS.

As stated in the [resolution](#) on 12 April 2016 mentioned above, the EP

- *“Views favourably the willingness of the ECB President to further cooperate with Parliament regarding the ECB's role in banking matters, in particular in the framework of global standards-setting bodies such as the FSB...”*

In the same vein, exchanges of views on the Basel process with the Commission and the EBA (that hold observers' seats in the Basel committee) may be organised regularly in the EP.

Finally, a direct dialogue with the BCBS can also enhance the understanding of issues dealt with by the BCBS, and provide early feedback about the legislator's view of standards under discussion. The BCBS is externally represented by its Chairman, or by its Secretary General. On 12 October 2016, the EP's Committee on Economic and Monetary Affairs held a first [public exchange of views](#) with Mr Coen, the Secretary General of the BCBS, discussing regulatory reform measures in progress. Such exchange of views gives the legislator the chance to feed his position about standards under discussion into the decision making process, which, if taken into account, later on facilitates the implementation of the BCBS standards. On 24 October 2017 William Coen will come to the Banking Union Working Group for a second exchange of views.

Disclaimer and Copyright

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to the Members and staff of the EP for their parliamentary work. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2017.

Contact: egov@ep.europa.eu

This document is available on the Internet at: www.europarl.europa.eu/supporting-analyses

Annex A: BCBS members and observers

Members - i.e. Country jurisdictions whose institutions are considered as Members of the BCBS Committee.

Argentina, Australia, Belgium, Brazil, Canada, China, European Union (European Central Bank and European Supervisory Mechanism), France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America

Observers - i.e. Country jurisdictions, supervisory groups, international agencies and other bodies considered as observer.

Countries/jurisdictions:

Chile, Malaysia, United Arab Emirates

Supervisory groups, international agencies and other bodies:

Bank for International Settlements, Basel Consultative Group, European Banking Authority, European Commission, International Monetary Fund

Annex B: Example of member jurisdiction assessments - implementation of Basel III standards pertaining to Risk-based capital and Liquidity coverage ratio and G-SIB requirements

Jurisdiction	Risk-based capital regulations assessment grade	LCR assessment grade	G-SIB assessment grade	RCAP latest report -risk-based capital regulations requirements	RCAP latest report - LCR requirements
Argentina	Compliant	Compliant	Compliant	September 2016	September 2016
Australia	Compliant	Under way	NA	March 2014	NA
Brazil	Compliant	Under way	NA	December 2013	NA
Canada	Compliant	Under way	NA	June 2014	NA
China	Compliant	Compliant	Compliant	September 2013	July 2017
European Union*	Materially non-compliant	Largely Compliant	Compliant	December 2014	July 2017
Hong Kong SAR	Compliant	Largely Compliant	NA	March 2015	March 2015
India	Compliant	Largely Compliant	NA	June 2015	June 2015
Indonesia	Largely Compliant	Compliant	NA	December 2016	December 2016
Japan	Compliant	Compliant	Compliant	October 2012 December 2016	December 2016
Korea	Largely Compliant	Compliant	NA	September 2016	September 2016
Mexico	Compliant	Compliant	NA	March 2015	March 2015
Russia	Compliant	Compliant	NA	March 2016	March 2016
Saudi Arabia	Compliant	Largely Compliant	NA	September 2015	September 2015
Singapore	Compliant	Compliant	NA	March 2013	December 2016
South Africa	Compliant	Compliant	NA	June 2015	June 2015
Switzerland	Compliant	Under way	Compliant	June 2013	NA
Turkey	Compliant	Compliant	NA	March 2016	March 2016
United States	Largely Compliant	Compliant	Compliant	December 2014	July 2017

* European Union: The assessment covered those nine Member States which at that time were home to 14 global systemically important banks (G-SIBs).