

ALJB Conference

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Competences within the Single Supervisory Mechanism: who is calling the shots?

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I. SSM Institutional Framework

- Key concepts
- Organisation of the SSM supervision
- Decision making process
- Regulatory framework

II. ECB/NCA Interaction in Practice

- General Principles
- Authorisations
- Ongoing Supervision

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Objectives of the SSM

SSM contributes to:

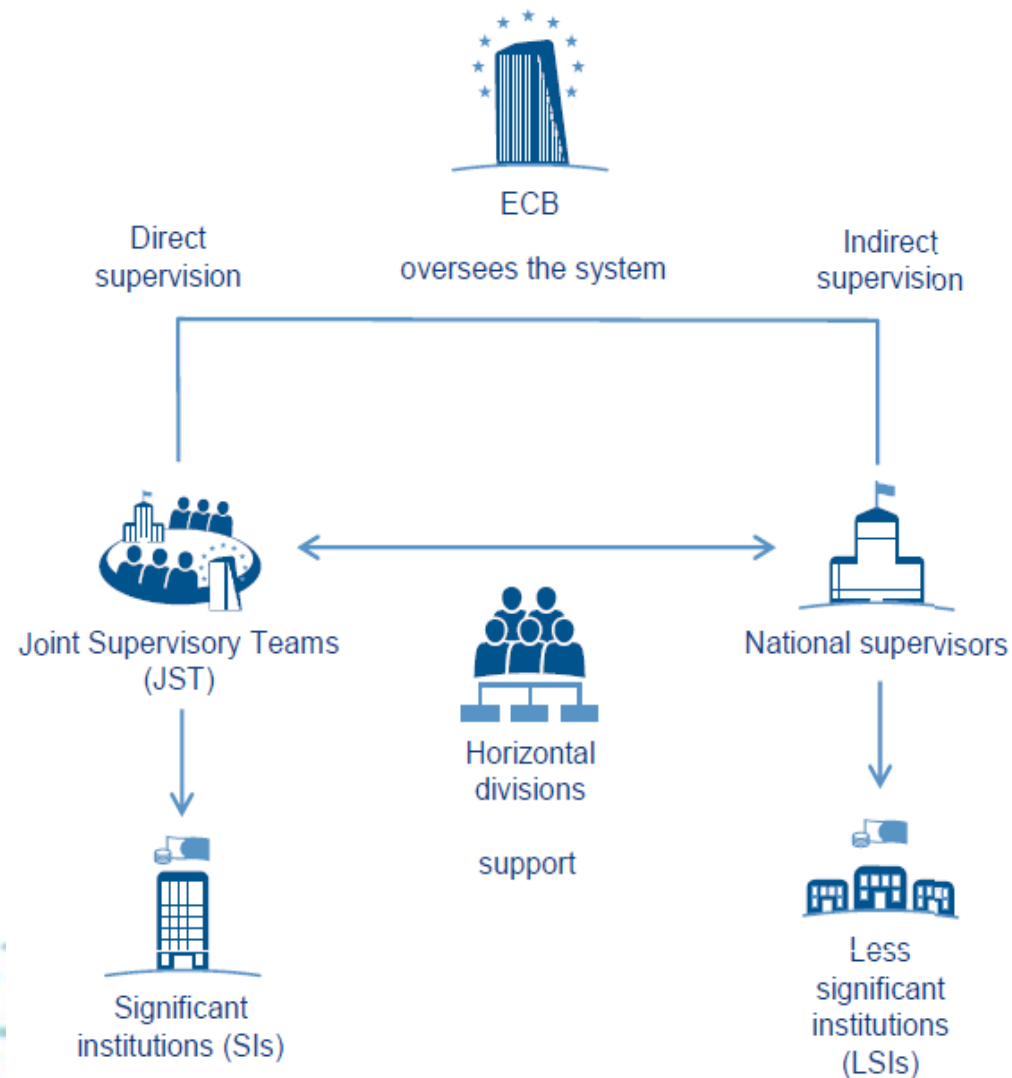
- to the **safety** and **soundness** of credit institutions, and
- the **stability of the financial system** within the Union and each Member State...

... with full regard and duty of care for

- the **unity** and **integrity** of the internal market,
- based on **equal treatment** of credit institutions
- with a view to **preventing regulatory arbitrage**

(Article 1 SSM Regulation)

Distribution of tasks within the SSM



- ✓ Significant vs. Less Significant Institution
- ✓ Direct vs. Indirect supervision
- ✓ National Competent Authority (**NCAs**)
- ✓ Joint Supervisory Teams (**JSTs**)
- ✓ Horizontal functions

Source: SSM Guide to banking supervision

Key concepts - Significance

- **Indicators of significance**

- Total assets exceed EUR 30 billion
- Total assets/GDP exceeds 20 %, unless total assets below EUR 5 billion
- Notification of significant relevance with regard to the domestic economy by its national competent authority to the ECB
- Banks that request or receive public financial assistance from the EFSF or the ESM
- Banks with significant relevance (significant cross-border activities)

- **Significance assessed at the highest level of consolidation**

- **Population**

- In the Banking Union, **120 banks**
- In Luxembourg, **4 SIs** plus **34 banks**, subsidiaries of SIs established in other participating Member States

Key concepts - Significance

List of Luxembourg SIs

Luxembourg		
Banque et Caisse d'Epargne de l'Etat, Luxembourg		Size (total assets EUR 30-50 bn)
J.P. Morgan Bank Luxembourg S.A.		Total assets above 20 % of GDP
Precision Capital S.A.		Size (total assets EUR 30-50 bn)
Banque Internationale à Luxembourg S.A.	Luxembourg	
Banque Paribas Luxembourg S.A.	Luxembourg	
KBL European Private Bankers S.A.	Luxembourg	
Paribas Luxembourg Private Bankers S.A.	Belgium	
KBL Richelieu Banque Privée S.A.	France	
Merck Finck Privatbankiers AG	Germany	
Theodoor Gilissen Bankiers N.V.	The Netherlands	
Bank Insinger de Beaufort N.V.	The Netherlands	
RBC Investor Services Bank S.A.		Total assets above 20 % of GDP
RBC Investor Services Bank France S.A.	France	

Source: ECB website

Key concepts - Significance

- **Less Significant Institutions (LSIs)**

- Banks that are not SIs
- In Luxembourg, **68 LSIs** including **7 branches** of banks established outside of the Banking Union
- 3 High Priority (HP) LSIs (as of 31 December 2016)

- **Out of scope of SSM**

- Branches of third country banks established in the Banking Union
 - ✓ Exclusive national competence

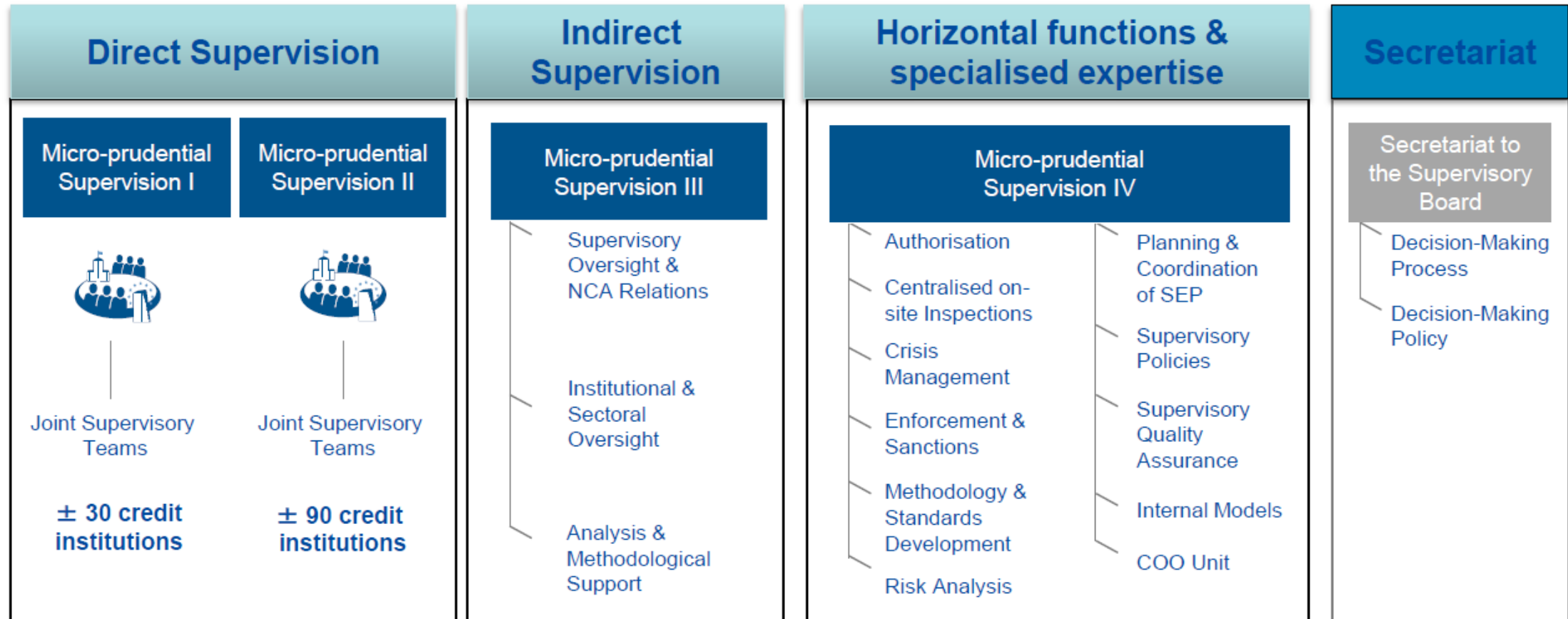
- **SSM Direct supervision → SIs**

- The ECB is the competent authority per the CRD IV/CRR and is directly responsible for the day-to-day supervision of SIs
- NCAs contribute to the supervision via JSTs
- NCA is the authority designated under national law responsible for the prudential supervision of banks (CSSF in Luxembourg without prejudice to the BCL's powers on liquidity aspects)

- **SSM Indirect supervision → LSIs**

- NCAs are directly responsible for the day-to-day supervision of LSIs (excl. common procedures)
- The ECB assumes an oversight and guiding function
- The ECB may decide to take a LSI under its direct supervision

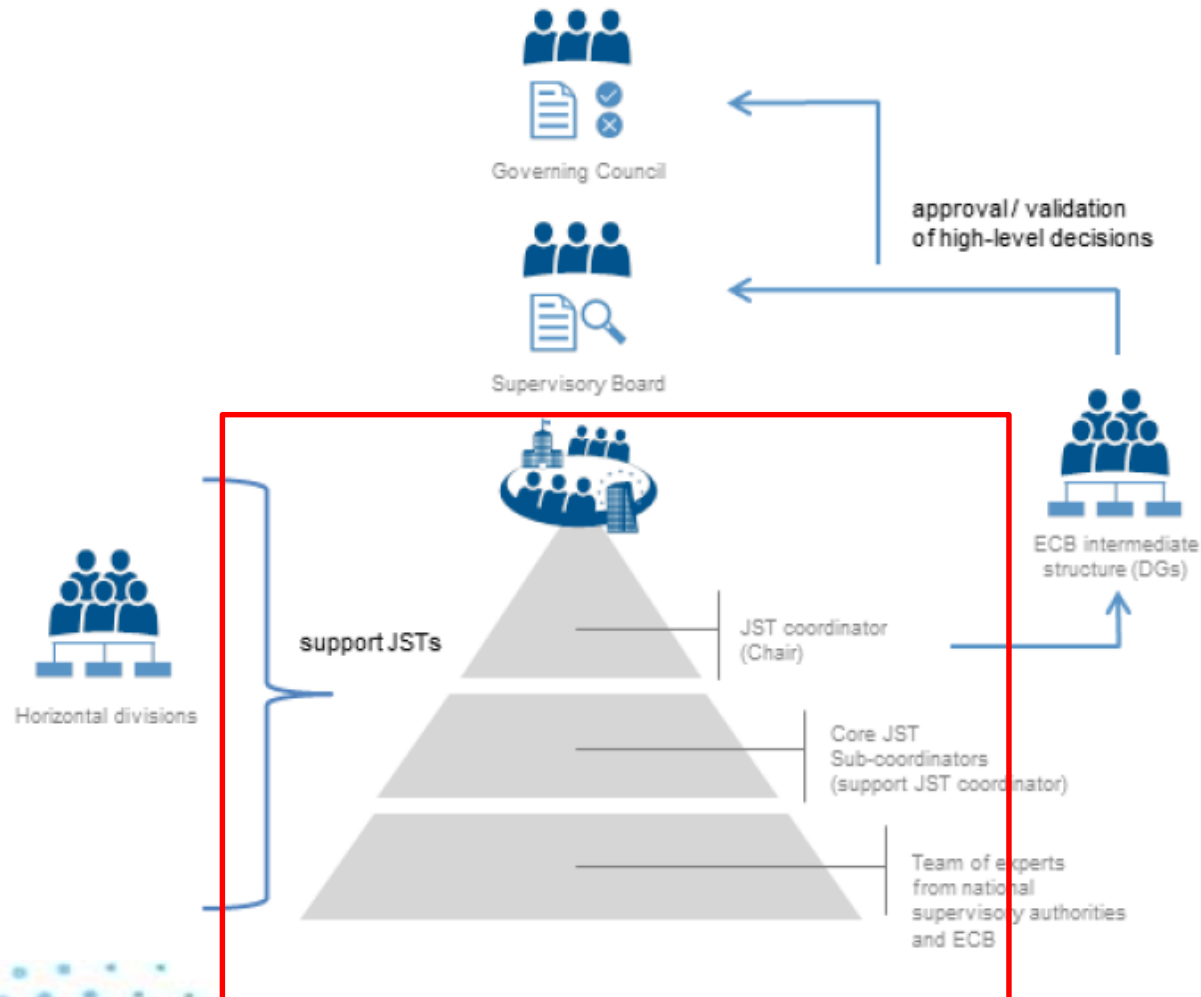
Organisation of the SSM supervision



Source: SSM Guide to banking supervision

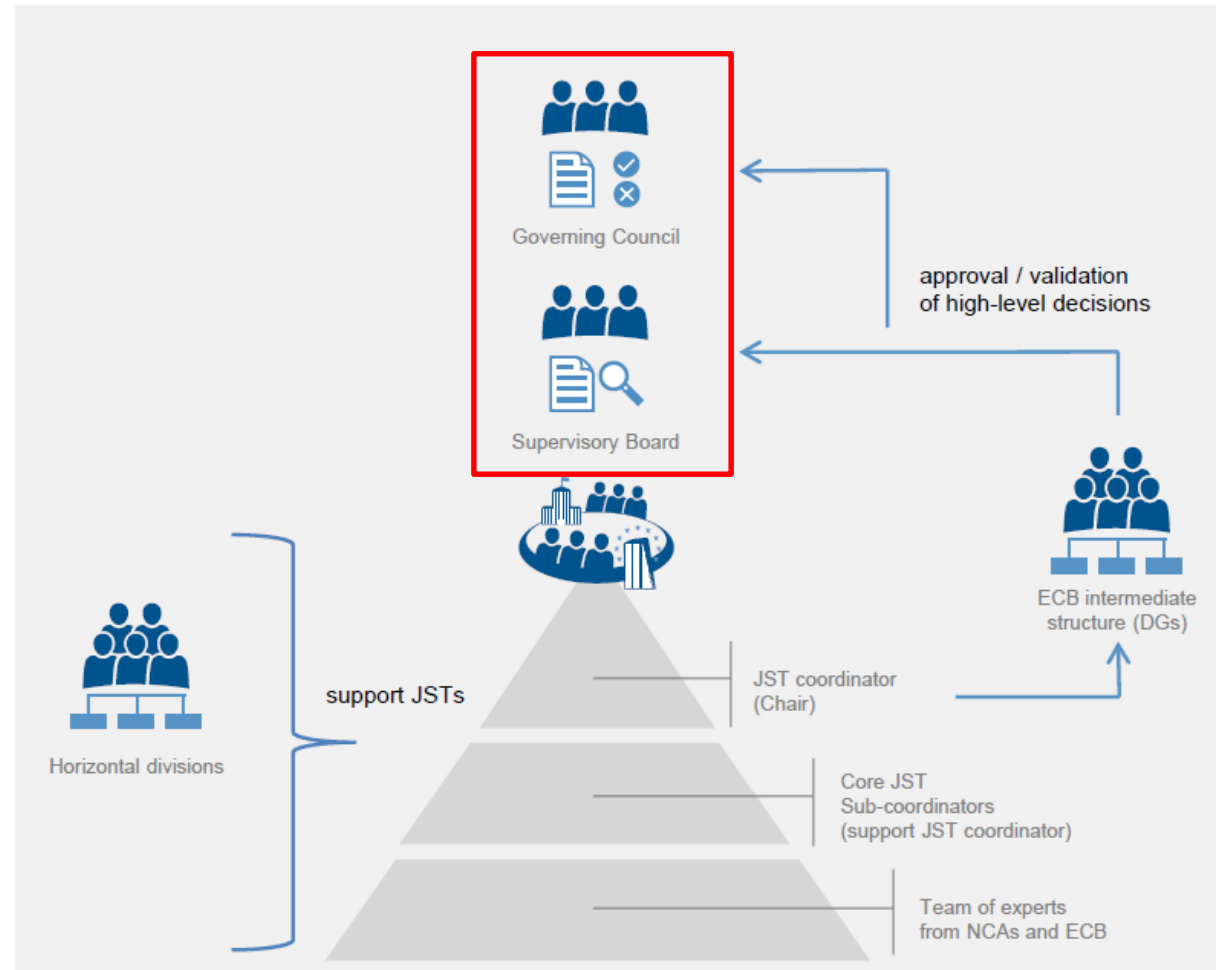
How is direct supervision organised ?

Joint Supervisory Teams



- Day-to-day direct supervision is assumed by a JST for each SI

Decision-making bodies within the SSM



Source: SSM Guide to banking supervision

Decision-making bodies within the SSM



Source: ECB website



Danièle Nouy (ECB)
Chair



Sabine Lautenschläger
(ECB)
Vice - Chair



Claude Simon (CSSF)
voting member



Norbert Goffinet (BcL)
non-voting member

Decision-making bodies within the SSM

Governing Council



6 members of
Executive Board



Governors of the
national central banks of
the 19 euro area
countries

Responsibilities:

The Governing Council is the sole ECB decision making body for the prudential supervision of credit institutions established in Member States participating in the SSM

Source: ECB website



Mario Draghi (ECB)
Chair



Gaston Reinesch
Governor BcL

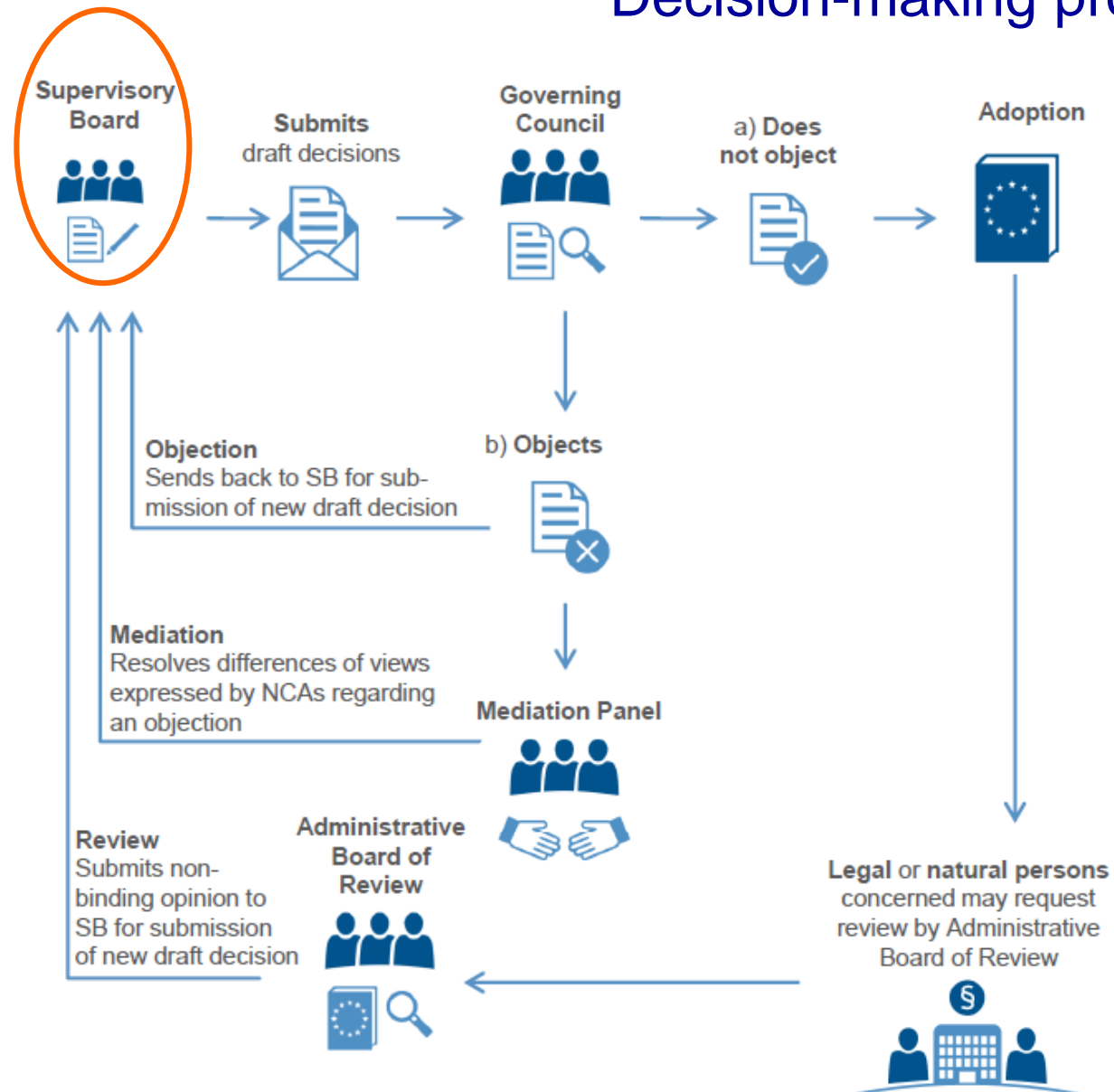
Decision-making bodies within the SSM

Supervisory Board
members



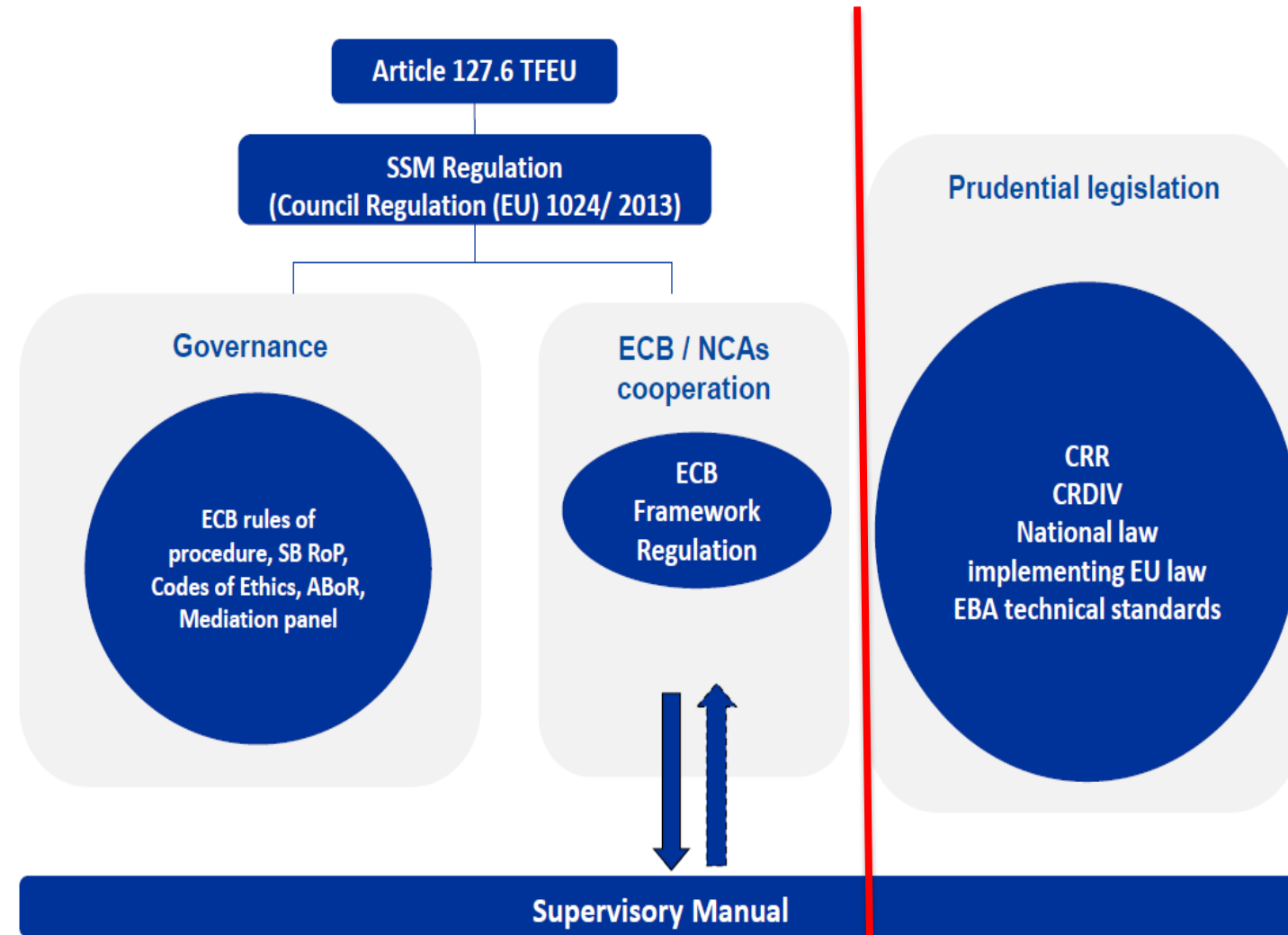
Source: ECB website

Decision-making process within the SSM



Source: SSM Guide on banking supervision

The SSM Framework



Source: ECB

Regulatory Framework applicable to the SSM

- The ECB shall apply all relevant Union Law
 - Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR)
 - Regulatory and Implementing Technical Standards (RTS/ITS)
 - EBA Guidelines
 - Out-of-scope: AML/CFT, MiFID, consumer protection

- **Specificities**
 - Where Union Law is a Directive, ECB applies the national law transposing those Directives
 - Where Union Law is a Regulation conferring
 - ✓ options for **Member States**, ECB applies the national legislation exercising those options
 - ✓ options for **Competent Authorities**, ECB applies its own rules
 - National powers granted under national law (eg. Article 57 LFS)

What is the SSM's supervisory approach?

- The SSM describes its supervisory approach in a Supervisory Manual (non public)
- The SSM develops dedicated policy stances (integrated in the SSM Supervisory Manual)
- The SSM organises public consultations and issues policy instruments on important topics of prudential supervision
 - Options and Discretions
 - ✓ ECB Regulation and Guide (SI)
 - ✓ ECB Guideline and Recommendation (LSI)
 - Guide to Fit and Proper
 - Guidance on Non Performing Loans
 - Draft guides to bank licensing and fintech bank licensing (Consultation)
 - “Relocating to the Euro area” (FAQs on Brexit)

- **Outline**
 - General Principles
 - Authorisations
 - Common procedures: licensing, qualifying holdings and withdrawals
 - Fit & proper assessments (FAP)
 - Passporting
 - Ongoing Supervision
 - General
 - Enforcement & Sanctions

- **SIIs:** Circular CSSF 14/596. Single point of Entry: ECB, subject to the following exceptions for which CSSF is entry point:
 - Outbranching or freedom to provide services within SSM (Articles 11 & 12 Framework Regulation)
 - Outbranching or freedom to provide services in a non-participating Member State (Article 17 Framework Regulation)
 - Authorisation of new credit institution (Article 73-78 Framework Regulation)
 - Lapsing of authorisation (Article 79 Framework Regulation)
 - Acquisition of qualifying holding (Articles 85-87 Framework Regulation)
 - FAP assessment (Articles 93-94 Framework Regulation)
- **LSIs:** CSSF

Authorisations – Common Procedures

- **Definition:**

- Those procedures for which the ECB is the ultimate decision-maker, regardless of the significance of the credit institution
- SIs and LSIs

- **Scope:**

- **Licensing**

- But not for third country branches (out of scope of SSM)
 - Article 2(1) LFS
 - Rejection remains a CSSF decision (Art 75 Framework Regulation)

- **Qualifying holdings**

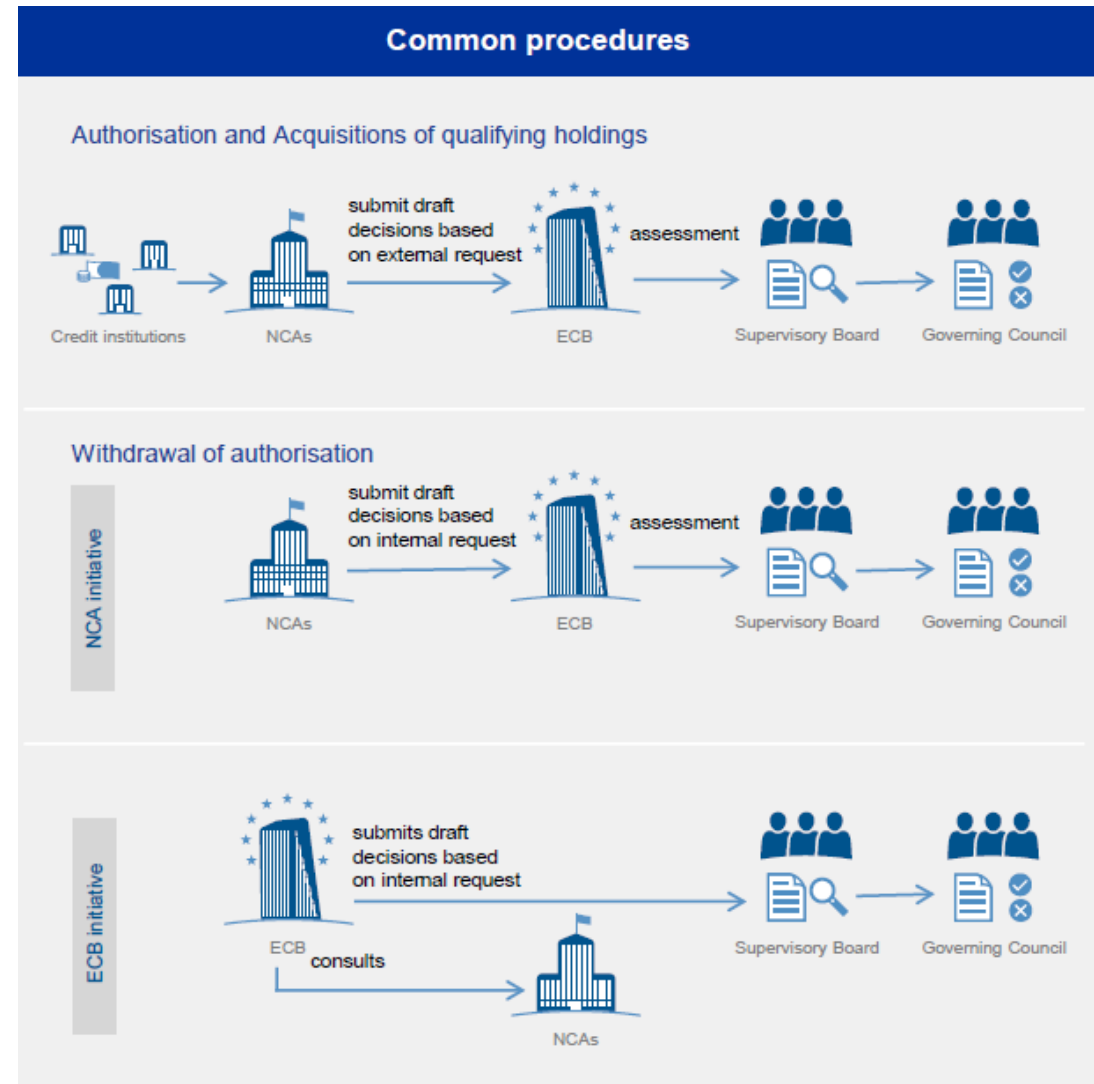
- QFH in Luxembourg credit institutions only (≠ Article 57 LFS)
 - Internal restructuring
 - Approval and rejections are ECB decisions (Article 87 Framework Regulation)

- **Withdrawal**

- But not lapsing

Authorisations - Common procedures (2)

The SSM Framework Regulation sets out how the ECB and the NCAs are involved in the common procedures



Authorisations – Common procedures (3) – Practical aspects

- ECB internal allocation: DG-III (LSIs) et DG-IV (SIs)
- Deadlines and completeness
 - CSSF upload deadlines
 - Licensing: Article 3(6) LFS
 - Qualifying holding: Article 6(7) LFS
- Pre-application contacts
 - Highlight blocking points
 - Ensure completeness
 - Synchronise parallel qualifying holding procedures
 - Ressources management
- Regulatory developments
 - Guidelines on Qualifying Holdings, Internal Governance, FAP, Remuneration, Authorisation RTS...
 - ECB Policy Stances
 - Brexit

- **Scope of FAP Authorisations**
 - CSSF Definition of KFH (including management)
 - EBA/ESMA FAP Guidelines (including CFO)

- **SIIs:** ECB competence but CSSF remains entry point
 - Recent developments:
 - ✓ FAP Questionnaire (as of 30 June 2017) – replacing DoH
 - ✓ CSSF Procedure on Appointment of KFH (as of 30 June 2017) – notification (not tacit approval); JST entry point for KFH
 - ✓ FAP Delegated Process
 - Future developments:
 - ✓ EBA/ESMA FAP Guidelines (ex ante/ex post approval of KFH)
 - ✓ FAP Alternative Process

- **LSIs:** CSSF

■ SIs:

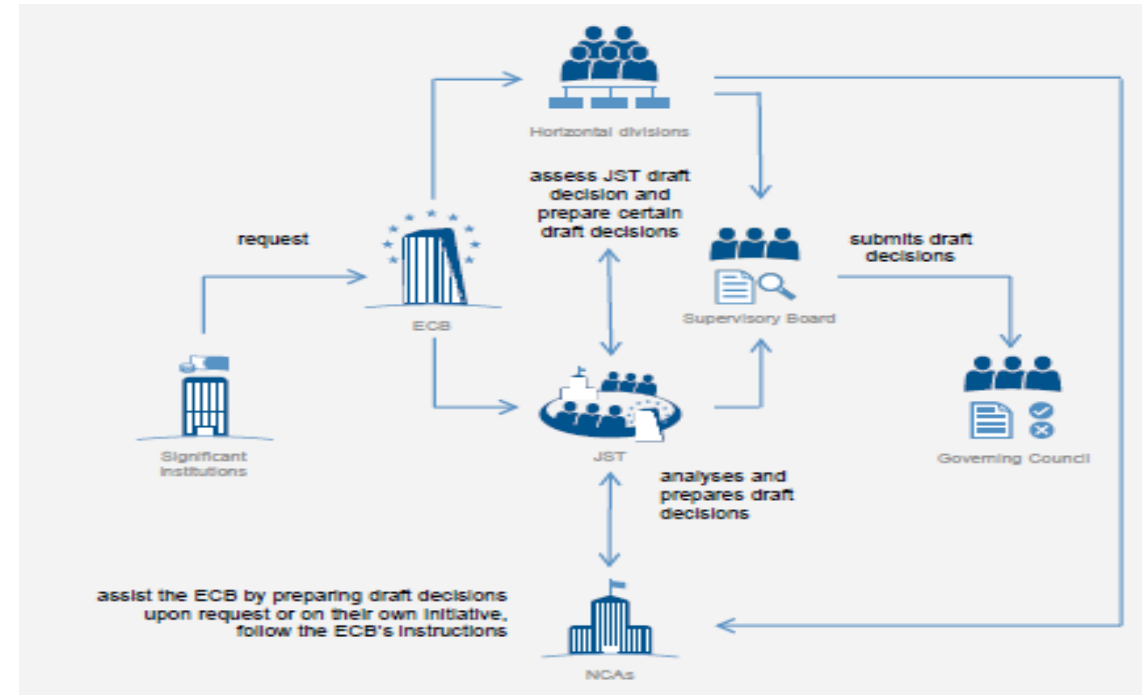
- Luxembourg SI wishing to establish a branch within the EEA: notification to CSSF (completeness check), ECB decision (based on adequacy of administrative structure), ECB notification to host MS
- Luxembourg SI wishing to provide services within non-participating MS: notification to CSSF, ECB decision, ECB notification to host MS
- Luxembourg SI wishing to provide services within participating MS: notification to CSSF, CSSF decision (ECB just informed), CSSF notification to host MS

■ LSIs:

- Luxembourg LSI wishing to establish a branch or provide services within the EEA: notification to CSSF, CSSF decision (ECB just informed), CSSF notification to host MS

■ SIs:

- ECB supervises directly via JST. All requests, notification and applications to ECB: Article 95 Framework Regulation.
- Functioning of permission requests



Source: SSM Guide on banking supervision

■ LSIs:

- CSSF competence except for common procedures
- ECB merely indirect supervision
 - ✓ High priority LSI (notifications)
 - ✓ LSI (reporting)

- **ISs:**

- ECB may impose:
 - ✓ an administrative pecuniary penalty for breach of regulatory requirements resulting from directly applicable Union law (up to twice the amount of profit gained or losses avoided from breach; 10% total turnover)
 - ✓ a fine or a periodic penalty payment, for breach of ECB supervisory decision or regulation (imposed on daily basis until compliance)
- In cases where the ECB has no direct sanctioning powers it may request the NCAs to impose sanctions
- Process - ECB's Enforcement & Sanctioning Division investigates alleged breaches of directly applicable EU law, of national law transposing EU directives or of ECB regulations and decisions
- Disclosure

- **LSIs: CSSF**

QUESTIONS?