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Does Banking Union Worsen the EU's Democratic Deficit? The Need for Greater Supervisory Data Transparency*

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Abstract

Does banking union exacerbate the European Union's democratic deficit? Using Scharpf's 'input' and 'output' legitimacy concepts, it is argued in this article that its design does worsen the democratic deficit. There are good reasons to limit 'input legitimacy' for politically independent institutions. 'Output legitimacy' is then even more relevant. Transparency is a key part of 'output legitimacy'. It enables actors to judge whether the regulator is acting in the public's interest and can improve their outputs. This article focuses on the banking data that the supervisors collect. Data available to the European public is evaluated and compared to America's banking union. European practices are not comparable in terms of availability or detail. An original survey of relevant officials is conducted, which results in the finding that only 11 of 28 Member States release any information on the banks they supervise. Both EU and national supervisors should provide publicly available, timely and consistent individual bank data.

Introduction

One response European Union Member States have made to the recent financial crisis is increased integration of their banking supervision under a system known as the 'single supervisory mechanism' (SSM) (see Howarth and Quaglia, 2013). In autumn 2014, a new supervisory board within the European Central Bank (ECB) has been given the primary task of supervising large and systemically important banks in participating Member States, whose own supervisors will continue to regulate smaller banks (Gros and Schoenmaker, 2014). The stakes for the EU are large. As the recent financial crisis illustrates, inadequate supervisory actions can have significant costs for taxpayers not only in the Member State where failed banks are based, but also in other Member States in terms of lost revenue, output and jobs. This is going to become even more of an issue within Europe as the single resolution mechanism (SRM) commits public resources to deal with failing banks.

We use Scharpf's (1970; 1999) well-established *input* and *output* legitimacy concepts to assess the democratic legitimacy of financial supervision in the European banking union. *Input legitimacy*, which is the responsiveness to citizen concerns through their participation, is typically low for regulators. Citizens generally do not directly elect them,

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and it is usually difficult for the ‘people’s representatives’ (that is, the government) to hold them accountable once they have been appointed. There is a consensus around the rationale for limiting input legitimacy – political independence makes it more likely that the body acts in the best interests of the population (for example, Kydland and Prescott, 1977; Majone, 2000; Rogoff, 1985). However, we show that by the standard set by the highly independent conduct of monetary policy under the European Central Bank (ECB), the SSM is even further removed from citizens. This makes output legitimacy especially important.

We show that the SSM’s output legitimacy is also weak when compared to the legitimacy of monetary policy actors in the ECB and when compared to other settings, such as supervision in the United States. This is because of a lack of supervisory data transparency that would make it easier for observers to evaluate whether the supervisor is acting in citizens’ best interests.

Supervisory transparency ‘can be defined as the extent to which the supervisor discloses information that is related to the supervisory process’ (Liedorp *et al.*, 2013, p. 313). Sundararajan *et al.* (2003) highlight three types of transparency: consistent policy objectives; well-founded legal, institutional and economic basis; and the provision of data and information needed to create an informed view of supervisory decisions. Similarly, building on Eijffinger and Geraats’ (2006) measure of monetary policy transparency, Liedorp *et al.* (2013) identify the importance of what they call ‘economic transparency’ – the data and information used as input for supervisory policy-making.¹ In this article we focus on the striking lack of data and information transparency in the European banking union.

Bank data transparency is a key component of output legitimacy because it allows parliaments and the public to judge supervisors’ decisions and it improves supervisory outputs – namely financial stability and market efficiency. Transparent individual bank supervisory data has a number of characteristics – all of which make it feasible to create an informed view of supervisors’ decisions. First it needs to be publicly available. Given current technology, this means it is available through an open and easy-to-use website. The data needs to be released in a timely manner so that ideally it can be evaluated before severe problems emerge, rather than after. The reporting period also needs to be relatively frequent (for example, quarterly) so that it can provide relevant snapshots of banks and banking system health. Data should also be consistent both in terms of file format and in the reporting and definitions of variables. This enables easy analysis and comparison across banks and supervisors. It is beyond the scope of this article to stipulate exactly which quantities should be reported. At the very least, the quantities that regulators use should be reported, as should quantities that are necessary for judging the health of banks and banking systems, such as capital adequacy ratios and non-performing loan ratios. Ideally, these sets of data overlap.

The current lack of transparency is particularly striking when compared to well-established practices in another large banking union – the United States. The Federal Financial Institutions Examination Council (FFIEC) co-ordinates the reporting of timely, consistent and publicly accessible quarterly supervisory filing data on all American banks

¹ Liedorp *et al.* (2013) also identify other components of supervisory transparency: political, procedural, policy and operational. We focus on data transparency in this article because it is particularly lacking in the emerging banking union.

that receive Federal Deposit Insurance Corporation (FDIC) coverage, or roughly 8,200 banks. Moreover, with minor exceptions, it makes this data entirely public in consistent file formats in a timely manner. We would like to make clear that this data is far from perfect. Yet it is useful to compare the availability of data in Europe to the American benchmark.

We will first explain why it is important for democratic legitimacy, and particularly output legitimacy, that SSM regulators provide publicly accessible, timely and consistent data. We then review the American framework and benchmark the current state of supervisory information from both the EU and Member States with the American system. There is only limited data available from EU-level authorities. We conducted an original survey of relevant supervisors in all EU Member States in an attempt to access individual bank data from their jurisdictions. None approaches the United States' level of regulatory filing transparency. This lack of data transparency damages the European banking union's efficiency and, in so doing, its democratic legitimacy.

I. Individual Bank Regulatory Data Availability and Democratic Legitimacy

The EU is often accused of lacking democratic legitimacy and having a 'democratic deficit' (for example, Hix, 2008). There are many reasons given for this: national executives may be subject to less oversight and scrutiny at the European level than domestically; the one directly elected body, the European Parliament, is institutionally weak; there is a lack of democratic contestation (for example, Follesdal and Hix, 2006; Scharpf, 1999; Schmidt, 2006).

Arguments in defence of the democratic merits of technocratic governance in the EU focus on the governance of specific policy areas (for example, Majone, 2000; Moravcsik, 2002). In those areas in which the EU has the most competence, such as monetary policy and regulation, many polities delegate their decision-making and implementation to a body of experts.

One way to address this debate is to consider legitimacy at two stages of the policy process (see Schmidt, 2012, p. 3) – namely through inputs and outputs. Scharpf (1999) is a proponent of using this approach to considering the EU, and he argues that it is too removed from 'input legitimacy' so reformers should therefore concentrate on 'output legitimacy'. He also notes that 'input legitimacy' for technical areas such as monetary policy and bank supervision is not even desirable because political influence may lead to sub-optimal outcomes (Scharpf, 1999, p. 188). In practice, it is extremely rare for countries to have voters elect regulators directly. Rather than try to address problems of democratic input legitimacy through limiting regulators' independence, it should be possible to assess output legitimacy and there should be strong checks and balances in place to hold regulators accountable for deviating from their objectives (Majone, 1999).

What 'legitimacy' exists for the supervision in the banking union and the SSM in particular? For context and given existing arguments that monetary policy lacks input legitimacy (again intentionally so), it is useful to compare the appointment process of the SSM supervisory board with the process to appoint members of the ECB's governing council. The ECB's executive board is appointed by a qualified majority of the European Council, itself composed of elected Member State governments. The larger governing

council includes the executive board and the governors of the eurozone national central banks. Their elected Member State governments appoint the governors. Nominated board members appear before the ECON committee of the European Parliament after their nomination to make a statement and to ask questions. While its role is only consultative and it cannot block candidates, the ECON committee does make a recommendation to the European Parliament on the approval of the candidate and it can ask the Council to nominate another candidate (Claeys *et al.*, 2014).

There is some debate over whether or not the ECB's monetary policy governance structures impair democratic legitimacy (for example, Jabko, 2003; Moravcsik, 2002; Verdun, 1999). Nevertheless, the appointment of SSM policy-makers is closer to the voters in one respect, but further removed in others. The SSM supervisory board consists of a chair, a vice chair, four ECB representatives and one representative from the competent supervisory authority² in each SSM Member State.³ The legislation that establishes the SSM strengthens the role of the European Parliament in comparison to the selection of the ECB board – this body needs to confirm the selection of the chair and the vice chair of the supervisory board.⁴ This power makes it more similar to the appointment process of the chair of the Federal Reserve Bank or the FDIC, which require United States Senate confirmation. Nevertheless, the ECB maintains agenda-setting power in terms of appointing the nominees, and while the vice chair receives European Parliamentary approval she is a current member of the ECB executive board. The four additional ECB representatives are chosen internally and their selection is constrained only by the requirement that they not be directly involved in monetary policy-making. When combined with the vice chair, five of the six non-national representatives come from the ECB, which proposes all of them. The selection of the Member State representatives is less defined; the legislation states only that they be from Member State supervisory authorities. These authorities generally are either independent central banks or separate financial regulators. It is not yet clear how these authorities will select their supervisory board representative or how involved national parliaments will be in their selection, if at all.

In general, the SSM supervisory board has no more 'input legitimacy' than the ECB, and perhaps less. In most cases, holding the SSM supervisory board accountable through appointments means changing policy-makers that are primarily responsible for monetary policy.

II. Transparency and Observing Outputs

For regulators in general and the SSM in particular, the focus of ensuring legitimacy is therefore on 'output legitimacy'. Do supervisors take actions that are in the best interests of the publics they are supposed to serve? Or do they make decisions that favour a narrower interest, such as particular banks? As Moravcsik (2002, p. 612) argues, 'transparent policy-making' is an important component of 'democratic legitimacy' and he suggests that *ex ante* and *ex post* parliamentary scrutiny of EU actions creates this transparency.

² The EBA maintains a list of these authorities at: <http://www.eba.europa.eu/supervisory-convergence/supervisory-disclosure/national-authorities>.

³ Eurozone countries participate automatically in the SSM, while other Member States may apply to participate.

⁴ See 'Inter-Institutional Agreement (IIA) between European Parliament and ECB on the cooperation on procedures related to the Single Supervisory Mechanism (SSM)', Brussels, 12 September 2013.

In practice, there are two ways to monitor supervisor performance to assess output legitimacy according to the literature: 'police patrols' and 'fire alarms' (McCubbins and Schwartz, 1984). The former involves regular oversight. Consistent with Moravcsik (2002), a common way of running 'police patrols' on supervisors is to have a legislative committee hold regular hearings where the supervisor is expected to brief the legislators and respond to questions and concerns legislators have.

In Germany, the Bundestag Finance Committee holds hearings involving the supervisors. Given privacy laws, the regulator is not allowed to divulge specific details about bank balance sheets even in confidence before the committee. This means that Members of Parliament do not have access to any more balance sheet information than members of the public. This creates large information asymmetries between regulators and MPs, inhibiting effective, already costly, monitoring (see McCubbins *et al.*, 1987, p. 247). Based on the passage of a recent law that implements Basel III in national legislation, however, this changed on a need-to-know basis – as of 2014, parliamentary investigative committees are allowed access to such information.⁵ Rather than 'police patrols', such power amounts to 'police investigations' – that is, there is a potential ability to check, but not regular oversight of the books of individual banks.

There will be a similar sort of arrangement in the European Parliament for the SSM. Based on an inter-institutional agreement between the European Parliament and the ECB,⁶ there will be hearings of the ECB before a committee of the European Parliament twice a year to enable 'procedural oversight' (see Majone, 2000, pp. 293–4). More specific hearings are confidential, as is potentially much of the information the ECB will give the European Parliament regarding specific companies and individuals. Moreover, the ECB has pledged to co-operate with European Parliament investigations. Whether MEPs will have access to the same amount of detail about the balance sheet of a specific bank is unclear, but it appears that, as in the German case, this would presumably be an agenda item only when there is an 'investigation'.⁷

These 'police patrols' are certainly useful, but one should consider to whom they report and where they patrol. The information in both the German and European cases is often presented in a confidential forum, and only the members of the respective parliaments have a chance to participate. This means that MEPs will have the chance to review what the ECB is doing, while German MPs can investigate the German supervisor. The ECB will supervise about 130 of the largest banks, while the national supervisors will be responsible for the remainder. Taken together, the 'police patrols' will generally occur in isolation. This is fine if one thinks that supervisors will be equally tough across all Member States. There may be concern, however, that national supervisors will choose forbearance for national firms; a given Member State's supervisor may give its banks more time, possibly creating negative externalities for other Member State banks and ultimately other Member States' public finances. There will be no opportunity for other Member State or MEPs to evaluate or question the supervisor. This is a fundamental

⁵ See Deutscher Bundestag, 'Beschlussempfehlung des Finanzausschusses', Drucksache 17/13524, 15 May 2013, p. 29. Available at: <http://dipbt.bundestag.de/dip21/btd/17/135/1713524.pdf>.

⁶ The text of the agreement can be found at: <http://www.europarl.europa.eu/document/activities/cont/201311/20131107ATT74064/20131107ATT74064EN.pdf>.

⁷ See <http://www.europarl.europa.eu/news/en/news-room/content/20130912IPR19704/html/Declaration-of-the-President-of-the-EP-and-of-the-President-of-the-ECB>.

problem of the ‘police patrol’ method of providing output legitimacy in the European banking union. Even in the best circumstances, ‘police patrols’ are costly for parliamentarians (Lupia and McCubbins, 1994, p. 104). It takes time, effort and expertise to analyze complex financial data.

‘Fire alarms’ are another device used to address ‘output legitimacy’. The public receives regular information about a given topic, and the public (typically expert interest groups) will set off an alarm if there really is a problem. *This type of oversight works only if there is data transparency – it must be possible for non-policy-makers to evaluate what the supervisor is doing.* Nongovernmental actors cannot perform this function if individual bank filing data is secret. To make a judgment on regulator decisions, the public needs to be able to observe not only supervisory actions, but also the context in which they were made. If supervisors know the public will have the same data and are therefore able to scrutinize them, they may be more likely to take actions in the public’s interest in the first place.

It is useful to again compare the SSM to the ECB’s conduct of monetary policy. Though many aspects of European monetary policy-making are secret (governing council minutes are not published), basic data like the inflation rate that the public needs to assess ECB monetary policy outputs is readily available and released shortly after policy-makers themselves obtain it. As such, it is possible to observe changes in the price level in near real time, conduct ‘police patrols’ and ring ‘fire alarms’ well before price instability becomes a major problem. The same rationale exists for supervisory data. This data is more complex than information on inflation and analysts in the private sector and NGOs need time to scrutinize the data before a ‘fire alarm’ can be rung. As the purpose of financial regulation is to prevent the negative externalities of bank failures, it is preferable to assess regulator outputs before it is ‘too late’ and one or more banks fail.

Supervisory transparency is an important component of democratic accountability of any regulatory agency (Amtenbrink and Lastra, 2008; Liedorp *et al.*, 2013).⁸ It may also lead to greater independence from political principals because accountability generates legitimacy among the population, and this legitimacy translates into greater support for independence (Hüpkens *et al.*, 2005).

III. Transparency and Improving Outputs

Not only is transparency important for assessing if regulators are effective, it also directly contributes to output legitimacy because it leads to efficient outcomes for the public in terms of a more integrated single market in financial services and more disciplined financial markets generally. It may also lower the public costs of bank resolution. The European financial market is fragmented. Borrowers predominantly borrow from domestic banks and lenders predominately lend to domestic borrowers. Banks ask for high premiums when they do lend across borders. Failed bank resolution is more difficult because banks are less willing to merge with or acquire banks in other Member States, thus limiting the number of potential private sector resolution options (Sapir and Wolff, 2013). An important impediment to the development of a single European financial services market is a lack of trust that banks have in the stability of other Member State banks. The 2014 asset quality review and the SSM in general are meant to overcome this

⁸ Quintyn *et al.* (2007, p. 11) similarly suggest that transparency ‘encourages open administration and serves the function of enhancing public confidence in the financial supervisor’.

problem. However, without supervisory data transparency, regulators are asking banks to trust that they are adequately enforcing regulations. Transparency could improve supervisor credibility with market actors and would be helpful for improving the European single market in financial services.

In terms of the private sector, previous research has shown that the more and higher quality data companies make available, the better understanding analysts have of the companies. This improves their predictions about bank profits and losses, thus improving investor decisions (Roulstone, 2003; Yu, 2010). When investors have better information, banks make better decisions. If investors and depositors can observe bank decisions, then they will 'punish' banks for risky decisions through higher borrowing costs.⁹ Banks therefore have an incentive to decrease their risk profile when there is higher transparency. If risk-taking is unobservable, banks will take positions with higher risk (see Blum, 2002; Cordella and Yeyati, 1998; Baumann and Nier, 2003).

A common argument against regulatory data transparency is that it is bad for financial stability. If investors learn that a bank is in trouble, there may be a run on it, and this could hurt the whole system. This would be especially troublesome for banks that suffer from exogenous shocks and that had not engaged in overly risky behaviour before (Cordella and Yeyati, 1998). However, Nier (2005) found that more transparent banks (that is, those that reported data in their published accounts) were less likely to experience a crisis. Similarly, in a cross-country study, Tadesse (2006) found that countries with greater regulated bank disclosure requirements have fewer banking crises. This suggests that the net effect of transparency on financial stability is positive.

There is another efficiency reason why greater transparency is relevant, especially for Europe given the introduction of tougher rules in the SRM that require a significant bail-in of junior asset holders if a decision is taken to resolve a bank. Investors will become junior asset holders only if they have information on the health of each bank. If that information is not forthcoming, they will demand a premium. This, in turn, will make capital more expensive in Europe.

While unexpected revelations of significant bad financial data may lead to a bank run and thereby undermine stability, this is actually a reason to report regularly trusted financial data for individual banks. Regular data releases allow the public to be better aware of overly risky behaviour before problems reach a crisis point. It incentivizes regulators to take actions before they build up as they know that parliamentarians and the public would be critical of them looking the other way. And it incentivizes banks to make more prudent lending decisions as their cost of capital is more likely to increase if markets have a full understanding of their risky behaviour.

Another argument concerns the privacy rights of companies. In stark contrast to regulators in the United States, a significant proportion of European supervisors do not release individual bank filing data because they treat this information as confidential and often regard it as commercially sensitive. Disseminating the data may reveal information that competitors could use to their advantage, especially competitors based in jurisdictions that do not make such data available.

In an ideal world where banks do not create significant negative externalities – including large public costs for containing and resolving financial crises – it would indeed be

⁹ This assumes that creditors and depositors are not fully insured.

reasonable not to release such data. However, the line between private sector banks and the public sector is blurry. As the recent financial crisis has reminded us, bank liabilities are effectively contingent liabilities for the public. Private sector (and publicly owned) banks can create very significant negative externalities (De Nicolò *et al.*, 2012). The public interest in transparency for enabling effective supervision outweighs general privacy concerns. Nonetheless, there is certainly a case to be made that specific information that is private to individuals, such as individuals' bank records, should remain confidential. In general, this information is not needed to judge supervisors' outputs nor would its release enhance financial stability or the integration of Europe's financial markets.

In short, with few exceptions, good information on the health of European banks could lead to a more efficient banking union and thus more legitimate supervisory outcomes.

IV. Assessing Supervisory Data Transparency in the EU

Given the important role that supervisory data transparency could play in enhancing the otherwise weak legitimacy of the European banking union, it is important to assess the level of transparency of European supervisors. This will help us judge legitimacy during the crucial early stages of banking union and highlight what needs to be improved. To do this we first establish a feasible real-world benchmark for timely, consistent and publicly available data found in the United States' large banking union. Then we compare this to European practices learned from a new survey of European supervisors.

V. An Established Banking Union Benchmark: The United States

The United States has adopted a highly transparent system of individual bank regulatory filing data dissemination. Its example demonstrates that a relatively high level of supervisory transparency is compatible with a large and vibrant banking sector. All banks that receive federal deposit insurance are required to make 'call reports' every quarter. Information includes earnings, balance sheet, asset quality, liquidity and capital (Flood *et al.*, 2012). These are typically available the day after the regulator receives them, and they are freely available for download from the FFIEC's website¹⁰ in a number of file formats that can be opened by a variety of software programs. Quarterly data is available from 2001 through the present. The data can be bulk downloaded all at once for each quarter. Quarterly files can be easily merged using widely available software, allowing both bank-level and banking system-level analyses over time. Consistent definitions and tags are used for each quantity in the data set. The level of balance sheet disaggregation is fine grained. This allows one to examine a bank's exposure to specific sectors. Importantly, there is detailed data on non-performing loans – a key indicator of bank health. Quantities are typically presented in three ways: domestic, foreign and consolidated between the two, allowing researchers to examine how exposed individual banks are to difficulties in foreign financial markets.¹¹

In addition to call reports, the Federal Reserve requires larger and more diverse bank holding companies that often engage in investment as well as retail banking to submit

¹⁰ See <https://cdr.ffiec.gov/public/PWS/DownloadBulkData.aspx>.

¹¹ It is important to note that the specific markets are not recorded in this data.

reports every quarter. The reports are co-ordinated with the call reports and contain income and balance sheet information, as well as supporting schedules on quantities such as off-balance sheet items. The Federal Reserve uses them as 'a primary analytical tool [for monitoring] financial institutions between on-site inspections'.¹² The Federal Reserve Y-9C reports are generally public,¹³ and can be accessed electronically either on an individual bank holding company basis from the FFIEC¹⁴ or as a bulk download in a variety of formats.¹⁵ Usually the data is available within 24 hours of its submission or revision.

Data in these reports is designed to work with data sets created by other government agencies enabling relatively easy analysis of supervisors' outputs. For example, the Federal Reserve Bank of Chicago maintains a list of mergers, acquisitions and failures that have occurred between banks and bank holding companies since 1976. This data base's design intentionally allows it to be easily merged with the bank holding company and call reports data bases. It contains data not only on mergers, acquisitions and failures, but also whether public assistance was used. Being able to easily combine individual bank supervisory filings with decisions to provide individual banks with public assistance in the event that they fail makes the process of evaluating public institutions' resolution decisions relatively straightforward.

We would like to emphasize that this discussion does not mean that the American system is perfect. Levine (2012) chronicles a number of examples where regulators in the United States took actions that were not in the public interest and directly contributed to the recent financial crisis. He argues that one of the primary reasons that regulators were able to take these decisions is that the public and elected officials did not have enough information to evaluate them. The desired standard of transparency may therefore be *higher* than what one finds in the United States.

VI. Practice in the EU

The ECB is only just beginning its SSM role. As of 2014 it does not release any supervisory data on individual banks that it will supervise and it has not decided whether or not it will release the data in the future.¹⁶ There have been some recent moves by the European Banking Authority (EBA) to increase transparency. However, these efforts fall far short of the benchmark set in the United States for enabling output legitimacy. We also surveyed all EU Member States and found that, especially among eurozone Member States that are in the SSM, national regulators release very little, if any, data.

VII. Reporting through the EBA

The current initiatives to increase transparency have significant deficiencies in terms of making data publicly available in timely and consistent formats. Furthermore, there is poor compliance by banks and Member States with the standards that are in place. To

¹² See <<http://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDal8cbqnRxZRg==>>.

¹³ A few items in the report are automatically treated as confidential, and confidentiality can be requested in order to protect a significant competitive position or personal privacy.

¹⁴ See <<https://www.ffiec.gov/nicpubweb/content/help/helpFinancialReport.htm>>.

¹⁵ See <http://www.chicagofed.org/webpages/banking/financial_institution_reports/bhc_data.cfm>.

¹⁶ This was verified in a number of exchanges with ECB officials.

promote greater 'market discipline and financial stability' in 2012 and 2013, the EBA conducted 'transparency exercises' for the 64 banks that were part of the 2012 recapitalization exercise. These have fairly detailed data about individual banks, including their capital, risk weighted assets and sovereign exposure.¹⁷ The data is downloadable in a variety of formats. Nonetheless, it has a number of limitations. The data is collected only for an important, but nonetheless very small, subset of European banks. Many key banks are not included, such as all of the banks in Spain that received public assistance to strengthen their capital in the recent financial crisis.¹⁸ The data is not particularly timely; the 2013 exercise was released in December 2013, but it only covers the first half of 2013. As the EBA does not independently gather data but relies on Member State supervisors, the International Monetary Fund has raised concerns about the EBA's ability to verify the accuracy of the data (IMF, 2013, p. 4). Finally, the recapitalization exercise upon which the transparency exercise is based is a 'one-off'.¹⁹

One place that the EU has mandated regular individual bank transparency is with the recent Capital Requirements Directive (CRD IV).²⁰ This implements Basel Pillar 3 and mandates that individual banks publicly disclose information related to their capital adequacy and risk exposure. The EBA will issue further guidelines in 2014 on how banks should make these disclosures. Though this is a positive step, it has a number of drawbacks. As of 2013, banks have the leeway to choose what information to report, what format to report it in and at what frequency. So far compliance with Pillar 3 requirements has been poor. The EBA has been critical of the lack of information that banks provide. In its 2012 assessment of 19 bank reports, the EBA (2013, p. 4) states that, as with the year before, 'no institution has fully complied with all of the requirements assessed'. Apart from monitoring the reports and establishing best practices, the EBA is unable to compel banks to meet the requirements.

In addition to establishing guidelines for Pillar 3 reports and monitoring these reports, the EBA and its predecessor, the Committee of European Banking Supervisors (CEBS), have gathered and released Member State-level macro-prudential data required by the 2006 Capital Requirements Directive (CRD III)²¹ since 2007.²² Importantly, this data is only at the aggregate level; one cannot trace the health of any individual bank, which means that it is a less effective way to evaluate what the supervisor is doing. The type of data reported includes the number of credit institutions in each Member State; overall asset and capital levels; key measures of credit, operational and market risk; and national supervisory actions, such as the number of on-site inspections (Table 1). This could be used as a way of developing a basic understanding of regulator actions in the absence of bank-level data. However, even though the data is only reported in aggregate, it is up to Member State regulators to determine if the data is confidential. The EBA has no ability to gather the data on its own.

¹⁷ See the EBA press release at: <http://andrewgelman.com/2013/12/17/replication-backlash/>.

¹⁸ 'European Banking Authority Releases "Transparency Exercise" of Major EEA Banks Ahead of ECB Asset Quality Review'. *Euro Intelligence News Briefing*, 18 December 2013.

¹⁹ See the EBA description at: <http://www.eba.europa.eu/risk-analysis-and-data/eu-capital-exercise>.

²⁰ For the full text, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0001:01:EN:HTML>.

²¹ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:177:0001:01:EN:HTML>.

²² See <http://www.eba.europa.eu/supervisory-convergence/supervisory-disclosure/aggregate-statistical-data>.

Table 1: Overview of Individual Bank Data Dissemination Practices in the European Union (as of December 2013)

Country	Agency	Confidential/ Available	Time span of electronic availability	Frequency	Format	URL
Austria Belgium	<i>Finanzmarktaufsicht Nationale Bank van België/ Banque Nationale de Belgique</i>	Confidential Confidential				
Bulgaria	Bulgarian National Bank	Available	2004–Present	Quarterly	Excel sheets by company-quarter	«http://www.bnb.bg/BankSupervision/ BSCreditInstitution/BSCIFinansReports/ BSCIFRForeignBanks/BS_Q_201306_EN» «http://www.hnb.hr/supervizija/index.html»
Croatia	Croatian National Bank	Available	2001–Present	Quarterly	Excel sheets by quarter. Also PDF	
Cyprus Czech Republic	Central Bank of Cyprus Czech National Bank	Unavailable Available	1999–Present	Quarterly	Excel and PDF by quarter	«http://www.cnb.cz/en/ supervision_financial_market/ information_published_issues/» «https://www.finanstilsynet.dk/en/Tal-og-fakta/ Statistik-noegletal-analyser.aspx» «http://www.fi.ee/index.php?id=1174» «http://www.finanssivalvonta.fi/en/Statistics/ keyfinancialfigures/Pages/ Keyfinancialfigures.aspx»
Denmark	<i>Finanstilsynet</i>	Available	2000–2013	Yearly	Excel sheet by company-year	
Estonia Finland	<i>Finansinspeksioon Finanssivalvonta</i>	Available Available	1999–2007 2002–2012	Yearly Yearly	Web form Web page (downloadable as CSV)	
France Germany	<i>Autorité de contrôle prudentiel Bundesbank, Bundesanstalt für Finanzdienstleistungsaufsicht</i>	Unavailable Confidential				
Greece Hungary	Bank of Greece Central Bank of Hungary	Confidential Available				
Ireland	Central Bank of Ireland/ <i>Banc Ceannais na hÉireann</i>	Confidential	2005–2012	Yearly	Excel sheets by filing category	«http://felugyelet.mnb.hu/en/left_menu/ pszafen_publication/golden_books.html»
Italy	<i>Banca d'Italia</i>	Unavailable				

Table 1: (Continued)

Country	Agency	Confidential/ Available	Time span of electronic availability	Frequency	Format	URL
Latvia	<i>Finanšu un kapitāla tirgus komisija</i>	Available	3rd Quarter 2012– Present	Quarterly	Excel sheet by quarter	«http://www.fktk.lv/en/statistics/ credit_institutions/ bank_public_quarterly_reports/ 2013-03-21_public_quarterly_reports/» «http://www.lb.lt/stat_pub/ statbrowser.aspx?group=8070&lang=en»
Lithuania	Bank of Lithuania	Available	4th Quarter 2012– Present	Quarterly	Excel sheet by quarter	
Luxembourg	<i>Commission de Surveillance du Secteur Financier</i>	Confidential				
Malta	Malta Financial Services Authority	Confidential				
Netherlands	<i>De Nederlandsche Bank</i>	Unavailable				
Poland	Polish Financial Supervision Authority	Unavailable				
Portugal	<i>Banco de Portugal</i>	Available	2006–Present	Quarterly	PDF versions of bank filings in Portuguese	«http://www.bportugal.pt/pt-PT/Supervisao/ Paginas/Contasdasinstituicoes.aspx»
Romania	National Bank of Romania	Confidential				
Slovakia	<i>Národná banka Slovenska</i>	Unavailable				
Slovenia	<i>Banka Slovenije</i>	Unavailable				
Spain	<i>Banco de España</i>	Available				
Sweden	<i>Finansinspektionen</i>	Unavailable				
United Kingdom	Financial Conduct Authority, Bank of England	Confidential				
			Savings banks: 2002–present Commercial banks: 2004–present	Savings banks: Quarterly Commercial banks: Monthly	Savings banks: PDF and XBRL Commercial banks: PDF, Excel and XBRL	Savings banks: «http://www.cajasdeahorros.es/ #/PAGIestados» Commercial banks: «http://www.aebanca.es/ en/EstadosFinancieros/index.htm»

Source: Survey of responsible regulatory institutions, supplemented with information on the organizations' websites. When data is listed as 'Unavailable', the responsible authority told us that the data was not regularly released, but did not indicate that this was for confidentiality reasons.

VIII. Member State Data Availability

To examine further how timely, consistent and publicly available individual bank regulatory filing data is in the EU compared to the United States we conducted a survey of Member State regulators based on a list created by the EBA.²³ We asked each agency²⁴ if it or any other agency in the country makes supervisory filing data available. We then examined the data and noted its basic characteristics. Of the 28 EU Member States, the data is available electronically in some form in 11. This includes Bulgaria, Denmark, Finland and Spain. Of the remaining 17, nine stated that this data was treated as confidential and so do not make it available. In some cases, such as in the United Kingdom and Germany, confidentiality has a legal basis. In others, such as Austria, confidentiality is based on the supervisor's 'professional obligations'. A total of eight countries neither described the data as confidential to us nor made it available electronically.²⁵ In sum, individual bank filing data of any kind was only accessible in about 40 per cent of EU Member States. Of the 18 SSM countries, as of January 2014, only five (Estonia, Finland, Latvia, Portugal and Spain) have *any* accessible data.

Moreover, among the countries that make some data available, the frequency of reporting as well as its quality varies. For example, data is available monthly for Spanish commercial banks, but only annually in Finland. The time span of the coverage also varies: the Czech Republic makes data available going back to the year 2000, while Latvia has only released data from the third quarter of 2012. The data is not reported in a consistent file format across the countries. Bulgaria releases a Microsoft Excel workbook every quarter with income statements in English for each bank on their own sheet. Portugal makes supervisory data available in PDF files, one per bank per filing period. It is also only available in Portuguese. Spain, through the Spanish Bankers Association (*Asociación Española de Banca*) and Spanish Savings Bank Association (*Sector Cajas*), makes the most complete data set available of any EU Member State. Monthly filing data is available from 2002 until the present for savings banks and on a quarterly basis from 2004 for commercial banks. For most months, individual bank filing data is available in a variety of file formats. Given the rules at the beginning of 2014, it is up to national regulators to make any of this data available. If regulators or national governments felt it is in their interest to stop publishing the data, there is no European-level requirement to continue.

From this survey of *minimal* data availability practices, we have found that the majority of European countries do not make individual bank data electronically available to the public. Even among countries that do make data available, there are a variety of practices concerning the timeliness and consistency of the data. It is therefore difficult for the European public, and publics in individual Member States, to be able to hold their supervisors accountable for their actions.

It is important to emphasize that this survey was of *minimal* data sharing practices. We did not fully catalogue the range of quantities being recorded (for example, breakdowns of assets by class and non-performing loans) in the individual bank filing data. For most

²³ See «<http://www.eba.europa.eu/risk-analysis-and-data/credit-institutions-register>».

²⁴ We emailed each agency at least twice. If we did not receive a response, we followed up with telephone calls.

²⁵ In these cases, we received written or verbal confirmation from the relevant agency that the information is not regularly electronically available to the public. In some of these countries, such as Sweden, data can be accessed on a case-by-case basis by contacting the supervisor directly.

countries that reported data, they reported fairly simple balance sheet data. Even in Spain, which has some of the most complete reporting, non-performing loans – a crucial quantity for determining a bank's health – are not included in any detail. No Member State reports data at the level of detail that one finds in the United States.

There are recent moves at the European level, particularly at the EBA, to standardize individual bank regulatory filing data collection and dissemination. The common reporting (COREP) for capital adequacy and financial reporting (FINREP) for financial information standards aim, for the first time, to establish standardized quarterly regulatory reporting requirements for European banks.²⁶ Clearly having common reporting standards will improve the ECB supervisors' ability to monitor European banks under the SSM. Nonetheless, though common reporting standards will be adopted by all EU Member States and the ECB will develop its own capacity to gather information on some of the eurozone's major banks, this will likely have little impact on the public's ability to access the data unless the regulators and Member States decide to make it publicly available. As such, the banking union's output legitimacy remains low.

Conclusions

Making individual bank filing data publicly available in a timely and consistent manner does not guarantee that banks will not fail and financial crises will not happen. Spain, which, compared to its European counterparts has good though minimal data reporting, nonetheless has suffered from a difficult banking crisis. Despite availability, the data certainly did not prevent the crisis in the United States. Perhaps part of the problem is that the level of detail available even in these two countries is still inadequate. For example, the United States failed to increase transparency in derivatives markets despite an initiative in 1998–2000, and this transparency would have been helpful in the run-up to the 2008 crisis (Admati and Hellwig, 2013, p. 204). In Spain, important quantities such as non-performing loans are not in any detail. Furthermore, just because data is available to the public to be used to hold regulators accountable it does not mean that they will actually do so. This lends support to Levine's (2012) argument that bank regulatory filing data needs to not only be publicly available, but that there needs to be an independent and skillful institution that regularly evaluates banking system health and raises issues that may be of public concern.²⁷ In the European case, the EBA could possibly take on such a role. However, as we have shown, it has little ability on its own to gather information from banks or Member States. Its ability to access data necessary for this role is limited.

Greater supervisory transparency is important. It facilitates a more efficient distribution of capital, increases market discipline on banks and contributes to a decreased fractionalization of the European market for financial services. As such, it increases the legitimacy of regulators' outputs. It also enables the public to understand and evaluate how supervisors contributed to these output. In so doing, it increases the legitimacy of actions that the regulator takes against banks and is a basic requirement for making it possible to hold regulators accountable. The EU receives justified flak that there is distance between

²⁶ See [«https://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/implementing-technical-standard-on-supervisory-reporting»](https://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/implementing-technical-standard-on-supervisory-reporting).

²⁷ This argument is justification for the creation of the Office of Financial Research under the Dodd-Frank Act in the United States.

European citizens and the institutions that make decisions on their behalf. Transparency in terms of the data the supervisors themselves use to make decisions would allow the public, and more realistically the various interest groups one finds in civil society, to judge whether regulators chose actions consistent with protecting the public interest. Such 'fire alarms' represent one small step towards addressing the democratic deficit that most citizens think exists in Europe.

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