

Luís Máximo dos Santos: 10 years of Single Supervisory Mechanism (SSM) – a *Pari Passu* journey

Opening remarks by Mr Luís Máximo dos Santos, Vice-Governor of the Banco de Portugal, at the 4th edition of *Pari Passu*, Fórum de Regulação e Assuntos Europeus "10 years of SSM – a *Pari Passu* journey", Lisbon, 6 June 2024.

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Ms. Claudia Buch, Chair of the Supervisory Board of the European Central Bank,

Mr. Rui Pinto, Portuguese Supervisory Board Member and Board Member of the Banco de Portugal,

Distinguished speakers,

Ladies and gentlemen,

It is a pleasure to welcome you all here today at this beautiful Money Museum in Lisbon, for another edition of our Forum for Regulation and European Affairs, *Pari Passu*.

In particular, I would like to extend a warm welcome to Ms Claudia Buch, Chair of the Supervisory Board of the European Central Bank, whose presence makes this a very special edition of *Pari Passu* and is greatly appreciated. We are very much looking forward to hearing from you, along with the other distinguished speakers who form the high-quality panel of the event we have ahead of us.

I would also like to congratulate both the Legal Services Department and the Banking Prudential Supervision Department of the Banco de Portugal for the enlightened idea of organising this *Pari Passu* Forum and dedicating it to the Single Supervisory Mechanism on its tenth anniversary. This gives us the opportunity to reflect on this current system of banking supervision.

I believe we should take this opportunity, not simply to celebrate the SSM, to look at it from a reflective and critical point of view, based on its history, of course, but also as a means to project the SSM into the future, aiming to improve, enhance, and clearly strengthen it.

The SSM, as with all, or at least, most European institutions, goes straight to the heart of Jean Monnet's memoirs and his oft-quoted words : "*Europe will be forged in crises and will be the sum of the solutions adopted for those crises.*" The SSM was certainly forged during a crisis, and ten years after its inception, it stands as a prominent example of the solutions adopted for that crisis.

Allow me to take the discussion a step further and highlight an aspect of paramount importance to the SSM: compromise.

Every crisis sheds light on rival opinions, which diverge on causes and solutions. The European banking crisis and the institutional negotiations that led to the creation of the

SSM were no exception. Only with much compromise was it possible to bridge the gap between "law in books" and "law in action."

On the one hand, I would like to recall the institutional and political compromises that were necessary to establish the SSM. As President Herman Van Rompuy stated at the inauguration of the SSM,¹ "the notion of centralised banking supervision was politically unthinkable." These political compromises were necessary because, continuing in the words of President Van Rompuy, "[b]anking supervision is not just a technical matter between public authorities and financial institutions [- it is also] a deeply political affair."

In this sense, some literature² argues that the wording of Article 1 of the SSM Regulation, which confers tasks on the ECB relating to the prudential supervision of credit institutions and contributing to the safety and soundness of such institutions and above all, the stability of the financial system, "reflecting the uneasy compromise between the Union-wide ambition of the [Banking Union] project and the still significant national realities in its construction."

Indeed, the Euro Area Summit Statement of 29 June 2012,³ which many regard as the "birth certificate" of the Banking Union, stated that the establishment of a single supervisory mechanism held the initial purpose of breaking the [quoting] "vicious cycle between banks and sovereigns." Remarkably, this "vicious cycle" had not been fully revealed in its full destructive power, until then. The tool to break this cycle was well-established by early two thousand twelve. During the crisis, through hard work and compromise, Europe was finding solutions and the three pillars of the Banking Union were clearly emerging.

Therefore, it was only in the context of the existential crisis which our single currency – the euro – was suffering, that it became politically possible to establish the SSM, based on Article 127(6), of the Treaty on the Functioning of the European Union, also known as the "enabling clause" to transfer prudential supervision competence.

On the other hand, the need for compromise did not stop with the establishment of the Banking Union at large, and the SSM in particular. It continued every day over these past ten years. One important field of compromise relates to the fundamental rights of the individuals and institutions that the SSM supervises.

Of course, effective supervision must be trusted with effective skills and powers to pursue it. In line with its demanding mission, the SSM was entrusted with a wide array of investigatory, supervisory, sanctioning, and early intervention powers, the effective application of which aim to fulfil the goal of this institutional architecture. Those skills and powers must be exercised and complemented by a strong safeguard of fundamental rights.

Looking forward, to continue preserving and enhancing its well-earned reputation, the SSM must hold itself to the highest standard. In line with the case-law of the Court of Justice, among other safeguards, it must continue to ground its decisions on clear and sufficient reasoning, particularly when applying penalties.

Clear reasoning enhances transparency and makes it more likely for supervised entities to understand and comply with the decisions, and in the event of a judicial challenge, strengthens the likelihood of the Court upholding those decisions.

In a nutshell, there is a strong complementarity between the SSM's regulations and the Charter of Fundamental Rights of the European Union. Fundamental rights, built on top of effective supervision, will strengthen supervisory activity. Both certainly are *pari passu* !

Another field of tensions where compromise is necessary is the interaction between EU and national law within the SSM. This interaction results from the "composite" nature of our banking supervision system, which reflects a "differentiated governance".⁴ It must be nothing new for this audience that the intertwining of EU and national legal orders can be challenging, giving rise to several rulings by the Court of Justice. Beyond the demanding application of national law by the ECB in certain circumstances, regulatory challenges continue even after the establishment of the single rulebook as a body of Union law containing a unique set of rules to regulate financial services.

These challenges can be the result of transposition and implementation issues, the amount of flexibility provided through options and national discretion, and from the non-binding nature of certain acts and instruments, with consequences for supervisors, regulators and supervised institutions that have to apply and interpret this single rulebook.

But, as a general remark, I would like to share my belief that, whilst always preserving the legal boundaries of national and EU law, the SSM and the National Competent Authorities must continue to hold themselves to the highest standard and apply the law with due regard to principles of the primacy of EU and the protection of fundamental rights.

An important field of compromise is common supervisory culture. This "composite" banking supervision system could not have been upheld without a strong compromise in fostering a common supervisory culture. When I was preparing these remarks, I considered how it was possible to gather twenty Member States under a single banking supervision system. I can only imagine the initial challenges faced by the first group of single supervisors working together for the first time, each with their own backgrounds, working habits, methodologies, expertise, track record, priorities, and national preconceptions of the banking industry and of the supervisory mission. Such an accomplishment would not have been possible without a strong basis of daily concessions. I am looking forward to hearing from you about your experiences in facing and overcoming this challenging task.

I would also very much like to hear your thoughts and predictions on the challenges facing the SSM in the next ten years. What institutional changes could be envisaged in the future? Ten years from now, will the Banking Union continue to be a three (or two-and-a-half) pillar-based composite system, or will it evolve towards a more integrated and centralised system? How will technology, particularly artificial intelligence, change

the face of single banking supervision? What risks will put the SSM's supervisors to the test? Geopolitical risks? Market risks? Climate risks? Other sustainability-related risks? What role will compromise play in overcoming these (and other) challenges?

Let me conclude by wishing that all of us make the most out of this *Pari Passu* Forum by exchanging views, opinions, and reflections, and that, in the end, we all leave richer than we were when we first stepped into this beautiful Money Museum.

Thank you very much for your attention.

¹ <https://www.consilium.europa.eu/media/25009/145893.pdf>.

² Christy Ann Petit, *Differentiated Governance in the Banking Union: Single Mechanisms, Joint Teams, and Opting-ins*, *European Papers*, vol. 7, 2022, no. 2, p. 891.

³ <https://www.consilium.europa.eu/media/21400/20120629-euro-area-summit-statement-en.pdf>

⁴ Christy Ann Petit, ditto.