



The Speaker of the
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*Copie cfm.
to ECA*

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SUBJECT European banking union

Dear Ms Van Miltenburg,

We wrote to you on 2 July 2014, informing you about the transfer of supervisory tasks for the 'significant banks' in the euro area to the European Central Bank (ECB).¹ The Single Supervisory Mechanism (SSM) came into force on 4 November 2014. The SSM comprises both the ECB and the national competent authorities. The significant banks² in the euro area that are subject to the exclusive supervision of the ECB under the SSM's remit, had a combined balance sheet total of approximately €22,000 billion in 2014.³ There are seven significant banks in the Netherlands, with a combined balance sheet total of approximately €2,150 billion.⁴

We stated in our letter that the transfer of supervisory tasks from the member states to the EU needs to be accompanied by a clear division of responsibilities and clear arrangements for reporting to Parliament on how supervision is exercised in practice. We asked your attention for the way in which a long-term provision for independent external control of supervision could be made. We are now writing to recapitulate the main points and to inform you about the current state of affairs.

¹ House of Representatives, 2013-2014 session, 32 013 no. 78.

² Significant banks are banks with a balance sheet total of at least €30 billion.

³ This represents around 80% of the balance sheet total of all euro area banks. Source: European Central Bank, Aggregate Report on the Comprehensive Assessment, Frankfurt, October 2014.

⁴ ABN AMRO Bank N.V., Bank Nederlandse Gemeenten N.V., Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., ING Bank N.V., Nederlandse Waterschapsbank N.V., SNS Bank N.V. and the Royal Bank of Scotland N.V.

YOUR REF.
OUR REF.
ENCLOSURES



1 Implications of SSM for supervision, reporting and control in the Netherlands and the EU

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Prior to the entry into force of the SSM, the Dutch central bank (DNB) was responsible for all aspects of prudential supervision of banks in the Netherlands – a country with a relatively large financial sector. The Minister of Finance was responsible for the system of prudential supervision as a whole, on which matter he reported to Parliament. The Netherlands Court of Audit was entitled to exercise independent external control of banking supervision in the Netherlands.⁵

As a result of the entry into force of the SSM, the responsibility for prudential supervision of significant banks has been transferred from DNB to the ECB. DNB continues to exercise direct supervision on the non-significant banks, although the ECB is entitled to take over this form of supervision if according to the ECB there are good reasons for doing so. Another result of the entry into force of the SSM is that the Netherlands Court of Audit is no longer able to scrutinise the functioning of the supervision of the significant Dutch banks. Supervision is now the responsibility of the ECB, which does not fall within the Court of Audit's scope. This means that the Netherlands Court of Audit no longer can exercise independent external control of the functioning of the supervision of the significant Dutch banks in the Netherlands.

It would be logical if this mandate and responsibility would be passed on to our colleagues at the European Court of Auditors (ECA). The SSM Regulation (Council Regulation (EU) No. 1024/2013) states that the ECA, in performing its duties, must take account of the supervisory tasks conferred on the ECB.⁶ Whereas certain national audit institutions, in examining the functioning of supervision in the past, did have access to files on significant banks held by their national supervisory authorities, under the SSM the ECA has not been granted any explicit new powers to examine the supervision exercised by the ECB.⁷ This may well be tantamount to limiting the possibilities for exercising independent external control, thus creating an 'audit deficit'.

⁵ The general power of the Netherlands Court of Audit is enshrined in the Government Accounts Act, and is set out in detail in the amended 2013 version of the Financial Supervision Act. See the letter of 12 September 2013 from the Minister of Finance to the Dutch House of Representatives on the proposal to amend the Financial Supervision Act in connection with the provision of confidential information by the Dutch central bank (DNB) and the Netherlands Authority for the Financial Markets (AFM) to the Netherlands Court of Audit.

⁶ Council Regulation (EU) No. 1024/2013 states that "When the European Court of Auditors examines the operational efficiency of the management of the ECB under Article 27.2 of the Statute of the ESCB and of the ECB, it shall also take into account the supervisory tasks conferred on the ECB by this Regulation."

⁷ In his statement of 7 February 2013, the President of the European Court of Auditors said that "the Court considers that its examination of the operational efficiency of the management of the ECB in respect of its supervisory tasks encompasses the audit of sound financial management as applied to other bodies held accountable to the European Parliament and Council under the provisions of Article 287 TFEU".



2 Current state of affairs

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Together with the ECA and the German *Bundesrechnungshof*, the Netherlands Court of Audit has been planning collaborative audit work of bank supervision in the euro area since May 2014. The first step is a comprehensive analysis of the mandates and audit powers of national audit institutions and the ECA for the supervision of banks, before and since the entry into force of the SSM. The second step will involve preparing an audit on exercised banking supervision in the euro area since the entry into force of the SSM.

It came to light at the end of 2014, during the preparations of these joint activities, that the ECA will most likely not be given permanent access to the ECB information on subjects that fall beyond the scope of routine examinations of the operational efficiency of the management of the ECB. In this case, an audit deficit will indeed exist in relation to the independent external scrutiny of the supervisory tasks conferred on the ECB.

3 Future plans

In order to resolve the resultant situation, a comprehensive EU auditing and reporting system needs to be put in place for the SSM. A permanent mechanism needs to be created for ECA to perform independent, external audits of the supervision exercised by the ECB. The ECA needs to be able to do this on the basis of a wide-ranging mandate encompassing regularity, efficiency and effectiveness. This mandate should include unrestricted access to all supervisory files, the exchange of information with national audit institutions and customary publication possibilities.⁸

During the debate on the amendment of the Financial Supervision Act, there was broad support in your House for recognising the value of independent control and accountability regarding the supervision of financial institutions. Since the entry into force of the SSM, this is no longer possible, in as far as this supervision is exercised by the ECB. The implication for the Netherlands is that the supervision of the country's seven biggest banks can no longer be subjected to independent external scrutiny. Neither the Netherlands Court of Audit nor the European Court of Auditors will be able to supply your House with adequate information on this matter in the future, nor will they be able to assist you in your monitoring task.

⁸ It goes without saying that, as is customary, the national audit offices concerned will respect data confidentiality where this is relevant.

The Minister of Finance will also be unable to make use of the findings of such audits.


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We are sending a copy of this letter to the Speaker of the Senate, the Minister of Finance, the Governor of the Dutch central bank and the President of the European Court of Auditors.

Netherlands Court of Audit



Saskia J. Stuveling,
President



Ellen M.A. van Schoten RA,
Secretary-General