



The (multilevel) articulation of the European participation in international financial fora: the example of the Basel Accords

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Abstract

Following the Great Financial Crisis, European Union (EU) rules in the area of banking supervision have become ever more strongly influenced by the (formally non-binding) standards developed by international financial fora, chief of which are the G20 and the Basel Committee on Banking Supervision. European representation in these fora fluctuates, as varying, though, reduced groups of individual Member States are involved directly alongside EU institutions and bodies. Taking the example of the Basel Accords, this article sets forth to examine how the European participation in those fora is articulated, whilst also assessing the existing mechanisms of democratic accountability. Indeed, in view of the important constraints these standards impose on European legislators, it is of utmost importance that they be involved early on when they are defined to avoid any democratic accountability gap from arising.

Keywords Basel Committee on Banking Supervision · International Financial Forum · EU external representation · Banking supervision · Multilevel cooperation · Democratic accountability

Introduction

Like the Great Financial Crisis (GFC) before it, the ongoing COVID-19 pandemic and the economic downturn it has already provoked have evidenced the need to further reinforce the resilience of financial institutions within the European Union (EU), and globally. Traditionally, visions on how a banking crisis should be dealt with differed largely among EU Member States, and it is only in the 1990s that a consensus started to emerge [9 p. 13f for a historical account of the evolution of EU rules in the area of financial regulation]. However, at that time, cooperation was mostly based on minimum harmonisation, mutual recognition and cooperation between national authorities. In contrast to this, several initiatives were taken a decade ago to reinforce the stability and the resilience of the EU's banking sector. Among these was the creation, in 2010, of the European System of Financial Stability (ESFS) composed of the European Systemic Risk Board in charge of macroprudential oversight, and of the three European Supervisory

Agencies (ESAs—the European Banking Authority (EBA), the European Securities and Market Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA)), in charge of the micro-prudential supervision of banks, financial markets and insurance, respectively. Yet, further integration soon appeared to be necessary, and the project of the European Banking Union (EBU) was launched in 2012 [23]. Euro area Member States agreed to the creation of common mechanisms for banking supervision and banking resolution in the form of the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM), respectively. These two pillars should eventually be complemented by a common deposit insurance scheme, the European Deposit Insurance Scheme, but Member States are yet to agree on its establishment.¹ These institutional developments were accompanied as of 2009 by the adoption of a Single Rulebook to: remove differences among the different national norms resulting from the European rules being anchored in directives, which leave Member States some leeway in their transposition; to guarantee a level playing

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¹ This matter is now high on the European agenda as evidenced by the fact that it was included in the European Leaders' Agenda 2020–2021 devised by Heads of state and government (and is therefore also part of the Eurogroup's work programme until June 2021), and is regularly mentioned, for instance on the occasion of the 2020 Single Resolution Board Annual Conference.



field for banks; and to enhance the protection of European consumers [27 pp. 6–7]. Indeed, the Single Rulebook sets out minimum capital requirements for banks, reinforces the protection of depositors and regulates the prevention and the management of bank failures. These reforms affect Euro area and non-Euro area Member States in a distinct manner. The ESFS is an EU-wide initiative, whilst membership of the EBU is mandatory for Euro area Member States only. It is open to the rest of the EU Member States though, and Bulgaria and Croatia joined in October 2020 [21, 22]; other Member States, such as Sweden, have also considered joining the EBU independently of their adopting the common currency.²

Initiatives to strengthen the financial sector have, as is logical in view of its increasingly global nature [48 pp. 1–11 on this question and the debate on the absence of a global regulator], not been circumscribed to the European sphere [8 pp. 100f on the emergence of a global financial architecture, 16 on this architecture]. Several international forums exist that also aim at contributing to this goal. In fact, their large number and their largely informal character make it somewhat uneasy to delineate their role, and the dynamics between them [as noted for instance by the European Parliament 29 Recital F], despite the determining influence played by the (formally non-binding) standards they elaborate. The different nature of the instances tasked with enhancing the resilience of the global financial sector, that range from institutions such as the International Monetary Fund (IMF), to informal bodies such as the Basel Committee on Banking Supervision (BCBS), and include private specialist associations such as the International Accounting Standards Board, makes it particularly difficult to ensure adequate levels of accountability, transparency, democratic legitimacy and policy coordination.

When considering the question of the European participation in these forums—which has increased following the GFC—[45 p. 6], and the issues of (democratic) accountability that arise in this framework, it appears that the situation is even more complex. Indeed, as is evidenced in this article, the European representation varies across the different forums, both in terms of the EU institutions and bodies involved and in terms of the Member States which are (full) members or observers. Significant overlaps exist where some institutions participate in several of these forums, and several forums may be involved in the elaboration of the same

² This is, for example, evidenced by the fact that the Swedish government set up an inquiry on Sweden and the banking union in 2019 [51] and by the fact that the Swedish Institute for European Policy Studies (SIEPS), which is a Swedish independent governmental agency, organised an event on the Banking Union from a Nordic–Baltic perspective in March 2019 [53] and commissioned a couple of studies related to this question in 2019 and 2020 [7, 47].

common global standards. The dual simultaneous EU and national representation observed in some global forums may be explained by the fact that the EU has not been conferred exclusive competences in the affected policy areas. Had this been the case, single European representation would be the norm. The EU legal framework and its division of competences between, on the one hand, the EU and its Member States and, on the other, among its institutions additionally influences how the European participation in these forums may be articulated [11, 55 pp. 214f on this divide and especially on the complexity of the EU legal framework]. An additional element which could make the European representation even more complex is the duality between the EU and the Euro area. The Euro area's need to speak with one voice is particularly strong owing to the high degree of intertwinement of the Member States' economies within it. Yet, its external representation is generally fragmented [35 p. 8],³ and in some instances, it is only the EU that is represented without the Euro area's specific interest being dissociated from the EU's. Discussions regarding the need to conduct reforms and to introduce the Euro area's single representation within the IMF have regularly arisen over the past years and have led to initiatives being taken by both the European Commission and the European Parliament to this end [24, 29]. Nevertheless, this article posits that this distinction is perhaps less relevant than it would seem at first sight. On the one hand, with Brexit and with the adoption of the common currency by a larger number of Member States, the 'euro outs' are becoming less numerous, and less important economically. On the other hand, in the field of banking supervision for instance, rather than the distinction between Euro area and non-Euro area, what may matter most is the differences that exist, for instance, in the features of the different national banking sectors and the ensuing differing regulatory demands.⁴

In view of the characteristics of the European participation in international financial forums, its study therefore fits within both of the streams of analysis of this special issue, that is the role of soft law and multilevel (administrative) cooperation between EU and Member State authorities.

³ This issue had already been the subject of a recommendation in the de Larosière report adopted in 2009 to give advice on the future of European financial regulation and supervision [52 p. 66].

⁴ In fact, demands by the banking sector appear to have a strong influence on the position defended by national representatives [37]. Considering that banks operate in an increasingly difficult environment, which the COVID-19 crisis and the deterioration it has provoked to the overall financial situation have only worsened, it may be expected that banks will seek to have an ever greater influence on the content of the Capital Requirements Regulation III/Capital Regulation Directive VI package which seeks to incorporate the latest Basel Standards within the EU and is currently under discussion.



An exhaustive study of all financial forums is an impossible endeavour in a single article. Similar issues arise in other areas of financial supervision (i.e. insurance and financial markets [16 further on this]); however, the focus here is on the process leading to the adoption of the Basel Accords, and especially on the BCBS in which both a few Member States as well as a variety of EU institutions and bodies participate directly. This choice is justified, for instance, by the BCBS's growing role in recent times in the definition of standards in the area of Anti-Money Laundering in which the EU, too, has reinforced its action and is envisaging the creation of a dedicated agency and the adoption of more constraining norms.⁵ It is also—and primarily—the important influence on European legislation of the Committee's guidelines in the area of banking regulation (i.e. Basel III), which is examined more in-depth below, that explains the focus on these standards and this Committee. As they eventually determine the content of EU and national legislation, adequate democratic control over the European representatives in the BCBS—and in the other forums that influence the standards it agrees on where appropriate—must be guaranteed for the European Parliament's and national parliaments' margins of action when adopting the norms that implement those standards, and hence their capacity to provide democratic legitimacy, are limited. Adequate control over the European representatives in global forums is all the more important as the compromises reached in those instances are the fruit of concessions to other, non-EU, states which logically escape any European democratic control.

In spite of the significant influence of the Basel standards on the legal norms within the EU, the existing academic literature has, thus far, largely neglected the study of this issue from an institutional perspective, or it has solely focused on the BCBS [12 pp. 126–144, 56] without taking sufficiently into consideration that this Committee is embedded in a wider galaxy of international economic forums whose other components, too, have an influence on the standards adopted by the BCBS. Against this background, this article aims at mapping European representation in the BCBS and the global forums that influence the content of the standards it adopts and, in so doing, at examining if and how the European position is coordinated beforehand (i.e. if and how multilevel cooperation takes place) as well as determining whether adequate transparency is guaranteed and (sufficient)

democratic accountability mechanisms exist. An assessment of whether the fluctuating European representation in these forums, and the absence of a single EU-wide (or Euro area-wide) representation are an issue that needs reforming are matters that are beyond the scope of the present analysis.

Considering that the BCBS is not a self-standing organisation but that, instead, other international forums have an influence on its actions, the first part of this article re-situates the BCBS in the 'galaxy of international economic forums'. The second part shows the relevance of the BCBS' standards for European legislation, whilst the third part examines the European representation in the BCBS and the democratic controls in place. The final part concludes in proposing an evaluation of the current situation.

Re-situating the BCBS in the galaxy of international economic forums⁶

The BCBS is the international forum, which has historically served to promote harmonisation in the regulation of the banking sector. The Basel-based Bank for International Settlements hosts its secretariat. This group of experts, which, today, brings together 28 banking supervisors, is the outcome of an initiative launched in the 1970s by the Group of 10 (G10) industrialised countries (plus Luxembourg) to develop international regulatory cooperation after several bank crises had evidenced the fact that in the post-Bretton Woods era, national regulatory measures developed in isolation from one another were no longer suitable [48 Chap. 4 on the genesis of the BCBS]. Membership is based on 'the importance of their national banking sectors to international financial stability' [4 Art. 4]. The BCBS develops standards in the banking sector, which are applied by a very large number of countries: the main set of rules it has adopted are the Basel Accords, which define capital requirements for internationally active banks, and are followed by over 100 countries at present [45 p. 7]. According to its Charter therefore, the BCBS is the 'primary global standard setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability' [4 Art. 1]. 'The BCBS does not possess any formal supranational authority. Its decisions do not have legal force. Rather, the BCBS relies on its members' commitments' [4 Art. 3]. The BCBS's accountability is ensured through its reporting to the Group of Governors and Heads of Supervision (GHOS) and to the G20 for specific issues [45 p. 10].

⁵ The BCBS adopted guidelines on the 'Sound management of risks related to money laundering and financing of terrorism: revisions to supervisory cooperation' in July 2020 [6]. The EBA's powers in this matter were reinforced in early 2020. The EU's interest in strengthening this framework is visible in the numerous initiatives taken by the European Commission to this end. These include, inter alia, the conference 'Closing the door on dirty money' organised on 30 September 2020 [26].

⁶ 35 on these different institutions and forums and their relationship with one another



The G20 was created in 1999 upon an initiative of the G7 with a view to enhancing financial stability globally after several crises, such as the one that broke out in Asia at the end of the 1990s, had threatened it. As such, it was originally meant to bring together finance ministers and central bank governors of developed and emerging countries (actually: 19 countries plus the EU), but it also exists in two additional configurations today: one that brings together heads of state and government and another one that gathers employment ministers. Only three EU Member States (France, Germany and Italy) are full members; prior to Brexit, the UK, too, had to be added to this list. Spain and the Netherlands are, however, permanently invited to join the meetings [31]. At the level of G20 heads of state and government, the EU is represented by the President of the European Council and the President of the Commission, whereas the European Commission and the ECB represent the interests of the Euro area when the G20 finance ministers and central bank governors deal with issues that affect the governance of the Euro area.

As mentioned in the Introduction, the importance of global financial forums (and institutions) has significantly risen since the GFC, and some have even noted that '[t]he [...] financial crisis has shifted the centre of gravity of global governance and financial reform from national governments to supranational institutions led by the G-20 forum' [35 p. 11]. It has 'largely succeeded in asserting political control over SSBs [international standard-setting bodies], becoming the primary agenda-setting body for international financial and economic policy' [55 p. 210 in reference to 34]. The G20 'sets high-level objectives and guidelines that member countries and international financial institutions (IFIs) adhere to. [...] It has [thus] acquired a leading role in recent financial reform efforts and become more than a mere informal forum. G-20 objectives guide the work of regulators and supervisory authorities in key jurisdictions such as the United States and the European Union. It provides some sort of political oversight over technical decisions about global finance and financial regulation and supervision, e.g. prudential regulation' [35 p. 11].⁷ The soft law measures the G20 adopts hence do play a decisive role, to such an extent that the G20 has been found to have de facto policymaking capacities [31 p. 53].

In response to the GFC, the G20 created the Financial Stability Board (FSB), which replaced the Financial Stability Forum in 2009, and is composed of finance ministers and central bankers. Those central bankers which are also supervisors are both members of the FSB and the BCBS. The inclusion of finance ministers in this instance was deemed capable of leading to the consideration of broader

economic perspectives, as well as being conducive to 'more direct political responsiveness' [1 p. 305]. Contrary to central bankers, ministers may put a relevant issue on the political agenda of their respective state. European representation to the FSB is similar to the one in the G20 with the notable exception that the Netherlands is a full member alongside France, Germany and Italy [33]. On the EU's side, it is the ECB and the Commission that participate. The BCBS also sits on the FSB. The FSB, whose task it is 'to coordinate at the international level the work of national financial authorities and international standard setting bodies (SSBs) in order to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies' [32 Art. 1] but which has also developed its own standards on some occasions [13 p. 184], played an important role in shaping the Basel III Accords [1 p. 305], and, in fact, the division of tasks between the two forums may not be always easy to identify. The accountability of the FSB's actions is guaranteed through its reporting to the G20 [17 further on the FSB].

BCBS standards as influential soft law instruments

Before delving into the analysis of the BCBS standards and the influence they exert within the EU legal order despite their non-binding nature, note that this is, by no means, an isolated phenomenon; similar phenomena exist in other policy areas where, too, global standards turn into hard (European and national) law. The de facto strong influence of the BCBS's standards is, therefore, not unique.⁸

The role played by those standards may be best understood by examining the BCBS Charter. It provides that '[t]he BCBS expects full implementation of its standards by BCBS members and their internationally active banks [...] The Committee expects standards to be incorporated into local legal frameworks through each jurisdiction's rule-making process within the pre-defined timeframe established by the Committee' [4 Art. 12]. There is, therefore, an apparent contradiction in the BCBS's Charter itself as the instruments adopted by the Committee are, on the one hand, non-binding but, on the other, members' compliance is still expected [44 pp. 163–164], and the BCBS monitors their application [4 Art. 2 e)].⁹ This could, nonetheless, not be otherwise as the members of the BCBS are not legislators

⁷ See also on the history of the mobilisation of the G20 in banking regulation matters Jeffery Atik [1 p. 340f].

⁸ Even if BCBS standards have long existed, empirical studies that would seek to explain why states still comply with those standards have long been lacking; see Daniel E. Ho [38].

⁹ See on the qualification of their nature as soft law instruments (as opposed, inter alia, to norms of international law) Milano and Zugliani [44 p. 163].



and may, therefore, not commit to those standards being incorporated in national or supranational legislation in the case of the EU. An exception is if specific provisions have been adopted to allow for the direct implementation of Basel rules without any legislative implementation being required [10 pp. 347f on the USA]. Notwithstanding this, negotiators may lose credibility moving forward if the standards agreed upon at the global level fail to be (sufficiently) implemented at the domestic level [1 p. 315 with reference to the Commission's position]. Following the Regulatory Consistency Assessment Program adopted in 2012, monitoring takes place as a two-step procedure: first, the timeliness of the implementation of the standards is checked and second, the consistency and the completeness of the domestic legislation are examined [42 p. 2]. Despite the Basel standards' non-binding character, the press releases in which the outcome of the evaluations is publicised are formulated in strong terms. For instance, during the assessment of the CRD IV and the Capital Requirements Regulation, one element was deemed 'materially non-compliant', a categorisation applied, for example, 'if key provisions of relevant Basel standards have not been satisfied' [3].

The reasons why states still generally comply with soft law instruments despite not being under the obligation to do so have been defined as follows by Annamaria Viterbo: 'in spite of their non-binding nature, soft law standards produce a sense of legal commitment and compliance that is driven by the combined effect of a number of incentives: market sanctions (in particular, the threat of powerful States to restrict market access to firms and transactions from non-complying jurisdictions), institutional discipline (like International Monetary Fund (IMF) and World Bank's surveillance and conditionality), and reputational costs and benefits (like naming and shaming, peer reviews, and regular monitoring on deviations in implementation)' [56 p. 209]. In the specific case of the Basel standards [49 pp. 335f also generally on this], pressure to adopt them may additionally result from the fact that banks established in States that are compliant with those standards will have easier access to the markets of other Basel-compliant States [1 p. 229 on such easier access]. Furthermore, deviations from these standards may give rise to suspicion from the financial markets.

In the EU, no specific procedure exists with a view to implementing international standards in banking supervision, contrary to what applies to accounting standards [12 p. 133]. However, the reforms that have been conducted within the EU after the GFC have complied with international standards and guidelines adopted by the G20 [12 p. 134]. Indeed, contrary to what had been true in the past where neither the EU nor the USA had fully complied with

the Basel II prior to the GFC [46 p. 46],¹⁰ the Basel III Accords have significantly contributed to shaping the legislation adopted within the EU.¹¹ It will be interesting to observe how this continues to evolve in the future: in the framework of the on-going negotiations of the implementation of the Basel III reforms (also known as Basel IV), Commissioner McGuinness has indeed confirmed the EU's commitment to implement those standards 'faithfully and also tak[ing] account of the specificities of the European Market' [Mairead McGuinness as quoted in 15 p. 2]. This situation has, in fact, given rise to concerns within the EU.¹² The European Parliament has mobilised around this issue, noting that 'national parliaments and the European Parliament should not be reduced to a role of mere rubberstamping but must be incorporated, actively and comprehensively, into the whole decision-making process' [29].¹³ The European Parliament has actually voiced concerns in this regard by, inter alia, approving a resolution on the 'EU role in the framework of international financial, monetary and regulatory institutions and bodies' [29] in 2015. Among other things, it proposed the conclusion of an interinstitutional agreement 'with the aim of formalising a 'financial dialogue', to be organised with the European Parliament for the purpose of establishing guidelines regarding the adoption and the coherence of European positions in the run-up to major international negotiations, making sure that these positions are discussed and known ex ante and ensuring a follow-up, with the Commission reporting back regularly on the application of these guidelines and scrutiny' [29 para. 16].

This raises the question of how the European representation within the BCBS is organised, controlled and publicised, which is examined next.

The European representation in the process leading to the adoption of the Basel standards and its control

To set the overall background before delving into the question of the European representation in the BCBS, it should first be noted that following the creation of the EBU, the Euro area aggregate balance sheet is now among the largest ones worldwide together with the Chinese and the US American ones [54 p. 23]. This, in turn, means that the European voice now has stronger weight than it used to have in

¹⁰ *Contra* Jeffery Atik [1 p. 286].

¹¹ This was, for instance, noted by the European Parliament in a briefing [42].

¹² Similar concerns have also been voiced within the US Congress [43].

¹³ The European Parliament has been expressing its willingness to be more closely involved for long as it already did so in the framework of the negotiations of the Basel II agreement [2 p. 37].



the past and that the need for European representatives to speak with one voice has arguably increased. The European representation in the BCBS should also be evaluated in a context in which the simultaneous representation of the EU and (some) of its Member States in international economic forums has been qualified as ‘over-representation’ without coordination,¹⁴ thereby implying that this is to be evaluated more negatively than positively.

Belgium, France, Germany, Italy, Luxembourg, The Netherlands, Spain (and formerly the UK) are full members of the BCBS. The ECB, in its supervisory capacity (ECB–SSM), became a member of the BCBS in 2014, and so did the ECB (it had previously been an observer only) [56 p. 214], since the main body in charge of banking supervision within the EBU, the Supervisory Board, is an internal organ of the ECB and not an institution in its own right. Next to the ECB and the ECB–SSM, the EBA [12 on the participation of the ESAs in international economic forums] and the European Commission¹⁵ are also involved, although they are not full members, and the EBA provides its technical expertise to the Commission. The definition of the Commission’s position is the responsibility of DG FISMA, whereas the EBA’s is defined by the EBA’s Board of Supervisors composed of the EBA’s Chairperson and of the 27 national supervisors (the European Commission, the ECB–SSM, the ESRB and the other two ESAs participate with no voting rights, and the Single Resolution Board has observer status) [45 p. 17].

When considering the tasks fulfilled by the BCBS, i.e. the development of standards, the form of the EU’s representation may appear surprising: the ECB–SSM is the EU’s banking supervisor whilst the Commission and the EBA are the regulators. However, the European Commission could not be a full member, and the other members of the BCBS are central banks and supervisory authorities too, so that this situation is not specific to the EU [42 p. 3]. Note, though, that many of them do have regulatory powers contrary to the ECB and the ECB–SSM [45 p. 14]. Furthermore, this form of European representation may not be as problematic as it could seem at first sight as, for instance, the general impetus for the BCBS’s actions is given by the G20 of which the European Commission is a full member.

In the procedure of elaboration of Basel standards, we hence have seven out of 27 Member States which enjoy full membership next to the EU-wide representation in the BCBS, but three Member States only which, together with the European Commission, have a seat on the G20 to which the BCBS reports and on which it therefore depends. Of the

45 institutions that compose the BCBS, 13 are European (this may be explained by the fact that not all EU central banks are also competent in the field banking supervision). Besides, the ECB is in charge of the monetary policy of the Euro area only, whilst the ECB–SSM heads the SSM, which only involves EBU Member States. Consequently, formerly at least, the interests of non-Euro area Member States are only represented by the European Commission and the EBA which, however, only have observer status. Views differ as to whether the distinction between the status of observer and that of full member makes a difference in practice. It has actually been noted in reference to the relationship between the BCBS and the BIS—which, as explained above, hosts the BCBS’s secretariat—that ‘the BIS acts as secretariat of the Committee [BCBS] and in a fluid organizational environment, where decisions are currently taken by consensus and formal procedures are not established, the difference between official membership, secretariat role (and the observer status itself) is likely to blur: what it counts [sic] is being there and having the substantive possibility to express its views or, more importantly, to introduce proposals or problems, besides the role of keeping contacts with non-members’ [10 p. 328]. The conclusion regarding participation in the discussions would certainly apply to Commission and EBA observer’s statuses too. Amid the impossibility to obtain any data on the negotiation procedures themselves, which are, as already highlighted, confidential, it is impossible to know for sure whether this difference of status makes a difference. It is likewise impossible to assess whether principles of EU law such as loyal cooperation between the EU and its Member States or institutional balance—which should arguably be respected [11 pp. 146f, 55 pp. 219f on these points] are duly observed. Nonetheless, the European Commission did specifically underline this distinction in its report on the Single Supervisory Mechanism. It observed the following: ‘It is welcomed that the ECB has obtained and is actively using its membership status in the relevant international standard setting bodies, the FSB and the BCBS. In this capacity, *the ECB may actively contribute to the international standard setting relevant for the banking sector in a more influential way than the EBA or the Commission, which only have observer status in the BCBS*’ (emphasis added) [25 p. 17].

Rather than a simplification of the EU’s external representation and the ‘general reform of the allocation of competences between the EBA and the ECB[–SSM]’ this would require [12 p. 141], this situation arguably rather calls for the coordination of the European position. This is the case even if it is not unique in the sense that Basel standards are applied by a large variety of countries which do not participate in their definition, although they are involved in the International Conference of Banking Supervisors which brings together representatives from over 100 countries

¹⁴ Qualification made in relation to some G20 bodies in which both the ECB and some EU Member States are involved [35 p. 8].

¹⁵ The European Commission only became involved in 1987 as its participation had been deemed unproductive prior to this [56 p. 213].



every two years and is in charge of ‘promot[ing] the discussion of key supervisory issues and fosters continuing cooperation in the oversight of international banking’ [5]. Indeed, considering that full membership of the BCBS is limited to banking supervisors and central banks that assume supervisory functions, the only way such simplification could materialise would be for the ECB to also become the EU’s sole regulator. In other words, it would have to be both the regulator and the supervisor because any other reform which would, for instance, consist in the creation of a new separate institution dedicated to banking supervision would only enhance the already complex framework in place. Beyond the question of the desirability of entrusting the ECB with both of these tasks in terms of the applicable checks and balances or in the light of the constraints specific to the EU’s (supranational) legal order, the current coexistence of the Euro area and the EU-wide internal market make any reform in this sense impossible, as does the fact that the ECB–SSM is not in charge of other supervisory tasks whose standards are also defined by the BCBS (such as in the area of Anti-Money Laundering).

Several working groups and task forces exist within the BCBS (i.e. internal committees) [45 p. 12], and in their framework, observers (thus also the EBA and the European Commission) may participate and provide their input. As mentioned in the Introduction, single unitary EU representation by the Commission such as it exists in areas of exclusive competence where the Council defines a mandate for the Commission will hardly ever be provided, because the European Commission is not a central bank or a supervisor, but also for political reasons: membership of the BCBS is granted based on the importance of the banking sector to international financial stability as noted previously [4 Art. 4], and it seems hardly conceivable that the Member States that qualify as full members on this basis would ever be ready to share this source of influence with other Member States. The nationally oriented interests the Member States that are full members may have in the negotiations could explain why European representatives were unable to speak with one voice during the negotiations that led to the conclusion of the Basel III Accords.¹⁶

The ECB–SSM includes an account of its participation in international forums in its annual reports [19, 20], despite this dimension not being mentioned in the elements these reports should contain according to the interinstitutional agreement concluded between the ECB and the European Parliament to guarantee democratic accountability within the SSM (admittedly, the elements that are indeed mentioned do not constitute a closed list) [40 Art. I, 1]. Interestingly, in its

first annual report after it became a member of the BCBS, the ECB–SSM noted that ‘[its involvement] was coordinated by the ECB’s Supervisory Policies Division in liaison with counterparts from the ECB’s DG Macro-prudential Policy and Financial Stability and alongside several other euro area competent authorities and national central banks, the European Commission and the EBA, which are also represented in the BCBS’ [18 p. 60]. Such coordination is not mentioned in later annual reports, but this does not necessarily mean that it does not happen. The length and the level of detail of the part of the reports dedicated to this aspect have indeed varied over time and have tended to focus more on substantive issues. In any case, in 2015, ‘[t]here [wa]s no formal ex-ante coordination in the EU with reference to the BCBS’ [45 p. 17]. The European Commission’s Expert Group on Banking, Payments and Insurance—composed of national experts—sometimes discusses evolutions of the BCBS, as does the Economic and Financial Committee composed of Commission, Member States, ECB and national central bank representatives [45 p. 17]. Even if some shortcomings remain [25 p. 17] and if the European representatives that participate in the BCBS coordinate their position less closely than they do in the framework of their participation in other global forums, there appears though to have been efforts towards enhanced coordination of the European position, as in 2019 ‘a number of preparatory exchanges [... were reported to usually] take place among all European institutions concerned, even if not on a systematic basis. Often, before important meetings, a common understanding is sought by means of a teleconference organized by the ECB or the SSM. The SSM, in particular, is increasingly playing the role of coordinator of national authorities involved in the Basel Committee’ [55]. Coordination is of the essence as it eventually impacts directly on the EU’s capacity to impose its views, which has led the European Commission to call for further efforts in this regard [25 p. 17]. Basel standards, like other standards, may indeed both constrain EU and national authorities in their legislative choices, but also be a means for them to upload their preferences and impose them to other international partners.

No formal ex post reporting mechanisms exist—even if ex post coordination reportedly exists in the Economic and Financial Committee and in the Expert Group on Banking, Payments and Insurance [45 p. 17]. Additionally, other accountability mechanisms may be used for that purpose as questions could, for instance, be put to the Chairperson of the EBA when he appears before Parliament [28 Art. 3(4)]. Although no specific information is made public in that regard, it is likely that also informal exchanges take place between rapporteurs, group coordinators and the EU institutions and bodies that participate in global financial forums.

This situation has led the European Parliament to mobilise, and to demand the conclusion of a dedicated

¹⁶ This had not been the case in the process of drafting the Basel II Accords though [45 p. 17f].



interinstitutional agreement in 2015 as already noted. No further steps have since been taken in this direction though, and this proposal no longer appears to be on the political agenda, even if the European Parliament has recently been more active in this field again. Even if it may not be desirable for the positions of the EU institutions and the Member States to be discussed and coordinated in the open, measures to improve transparency should be introduced both whilst these negotiations take place and after their conclusion. This is all the more so as, for example, the minutes of the Economic and Financial Committee, to which any citizen may gain access by means of a request for access to documents, do not allow for the attribution of a position to any of the involved participants, thus making the identification of the respective national positions impossible.¹⁷ As Basel standards will influence national and European legislation as noted above, the European Parliament, ideally together with national parliaments, could—and should arguably—be kept informed of coordination efforts among European representatives. This would allow it (or them) to identify existing contentious points, which may be expected to endure during the adoption of the European pieces of legislation that incorporate Basel standards in the EU legal framework which they are required to adopt at a later stage. To this end, confidential oral discussions could be organised, and the practice established in the framework of the Banking Union could serve as a model for this. In this way, MEPs (and MPs) would be informed, and the confidentiality of the procedures would remain protected. A proposal was made to expand the already existing Banking dialogue between the ECB–SSM and the European Parliament for it to cover negotiations at Basel too [55 p. 226]. However, this proposal appears insufficient for a number of reasons. First, national parliaments should also be involved, because of their duty to adopt the national pieces of legislation necessary to transpose the EU directives in which Basel standards are incorporated. The involvement of the Member States is also allowed through their participation in the EBA and this national dimension could be viewed as an additional argument in favour of the involvement of national parliaments. Second, even if within the SSM attempts may have been made to coordinate the European position in preparation for BCBS meetings, it remains the case that this only involves EBU Member States and that other instances exist in which similar efforts are made as well. Third, as noted above, the distinction between observer and full member of the BCBS may, in practice, not be that crucial. As a consequence of

all this, it is the dialogue and the constant information with all institutions involved (i.e. the ECB, the ECB–SSM, the European Commission and the EBA) that should be fostered. This dialogue should be favoured to the EP's direct participation in BCBS consultations [a possibility envisaged by 55 p. 227] for a number of reasons. This would, for instance, on the one hand, upset the division of powers between the European Parliament and the EU executive powers whilst, on the other hand, potentially creating even more cacophony in the EU's voice in Basel.

Guaranteeing satisfactory levels of accountability, i.e. keeping the EU and the Member States' representatives who sit on the BCBS in check, will nonetheless, anyway, be particularly challenging. This is not only due to the diversity that characterises the EU's representation, or to the informal nature of the BCBS (as opposed to it being an international institution). It is also linked to the fact that BCBS meetings are not public. Brief accounts of the discussions that take place on their occasion are published since 2015, but these are not meeting minutes. Other documents including, for instance, the BCBS's work programme are made available on the Committee's website, and the confidential nature of some of the information shared during the negotiations which could, potentially, have an influence on the evolutions in the financial markets may justify the limited publicity currently applicable to the procedures of the BCBS. This notwithstanding, the BCBS has sought to increase its level of legitimacy and accountability over time [41 pp. 5–6], as is probably only welcome in view of the growing level of detail and indeed influence of the Basel Accords.

Furthermore, the national institutions involved in the BCBS—central banks and banking supervisory authorities—are commonly guaranteed a status of independence at the national level. This means that, on the one hand, informal forums such as the BCBS are particularly independent [55] and that, therefore, the control of their actions will be difficult to achieve. Thus, the accountability mechanisms in place between the BCBS and the Group of Governors and Heads of Supervision (GHOS) do not fundamentally increase the existing level of democratic accountability. The involvement of the European Commission and the Chair of the EBA in the GHOS [55 p. 213] does not alter this finding because even if they could be held more closely accountable for their actions than the Chair of the ECB's Supervisory Board or the President of the ECB, any of these democratic accountability channels would in any case only concern individual actors and would thus not suffice to guarantee the collective accountability of the GHOS. On the other hand, this also implies that, in most instances, compliance at the national level ultimately depends on national policy makers' readiness to adopt the norms necessary to implement the standards adopted at the international level. In fact, some aspects agreed upon at the BCBS and integrated in Basel

¹⁷ This conclusion is drawn on the basis of a request for documents addressing the meetings of the Economic and Financial Committee in which it discussed the negotiations of Basel III standards conducted at G20, FSB and BCBS levels.



Table 1 European representation in the G20, the FSB and the BCBS [50]

G20	
Heads of States and Governments	F, G, IT (ES, NL: permanently invited) Pres. of the European Council, Pres. of the European Commission
Finance ministers and central bank governors	F, G, IT (ES, NL) Commission and ECB for issues affecting the Euro area
FSB	F, G, IT, NL ECB, Commission
BCBS	B, F, G, IT, Lux, NL, ES ECB, ECB–SSM (EBA, Commission: observers)

III were later subject to new negotiations at the EU level in the framework of the adoption of the Capital Requirements Directive IV (CRD IV) as a result of the European Parliament's refusal to simply rubber stamp the agreement reached at the global level [1 pp. 286–287]. Interestingly, the Council, which in these procedures acts as the EU's co-legislator together with the European Parliament, also showed 'less willingness' to simply incorporate Basel III within the EU legal order [1 p. 311], even if national executives are involved in the G20 and the FSB. The fact that the BCBS is in some way influenced by the FSB and especially the G20 in its definition of the Basel standards only makes it even more arduous to guarantee adequate accountability.

First, the delimitation of, on the one hand, the BCBS' area of competence and, on the other, that of the FSB may not always be clear-cut. Second, the shortcomings that exist in relation to the BCBS also apply to the FSB and the G20 which, too, suffer from accountability deficits [31 pp. 10f]. In addition to the features that characterise forums of coordination among states already mentioned (e.g. informality, lack of transparency, etc.), it is not even easy to determine which level either national or supranational, could or should keep the G20 in check. As is also evidenced within the EU in relation to the Council (and the European Council), the sum of accountability requirements that may exist at the national level to hold the several national representatives to account cannot, in any case, suffice to guarantee the accountability of the supranational institution (or forum) as a whole [36 for a recent discussion and some proposals for reform]. Within the EU, this could, to some extent, be compensated by mechanisms of cooperation among national parliaments and with the European Parliament in the form of interparliamentary conferences which, at least, provide an opportunity for parliaments to collectively interact with the Council representative in the person of the responsible minister of the Member State holding the rotating Council presidency at a given point in time. The European Parliament also contributes to guaranteeing the democratic accountability of the European Council, even if the question may be asked whether this relationship does not upset the division of responsibilities and, therefore, the institutional balance

anchored in the Treaties. At G20 level though, there is little doubt that the Parliamentary Speakers' Summit at the G20 (P20) initiative launched in 2018 [39, 14 on the history of the P20 and its development to date], will hardly ever be in a position to fulfil such a function, albeit only because of the largely varying prerogatives with which parliamentary speakers are vested.¹⁸ This is all the more problematic as the FSB, and the BCBS in some instances, are accountable to the G20. Third, as is summarised in Table 1, it is not only the quality of the actors involved in the different forums that contribute to the definition of the Basel standards that differs (i.e. executives on the one hand and banking supervisors on the other). It is also the identity of the Member States that does. Belgium and Luxembourg are full members only of the BCBS, whereas France, Germany, Italy, Spain and the Netherlands are involved in the G20, the FSB and the BCBS. It could be expected that especially France, Germany and Italy that are full members of all three forums—Spain and the Netherlands are only permanently invited to participate in the G20—and have large banking sectors have a stronger influence than those states that are only represented by EU institutions, and that they could be tempted to use their voice in the various forums to their own benefit on occasions.

Finally, a further element that needs mentioning is the fact that the matters addressed by the Basel standards are of a particularly technical nature. In fact, in examining the accountability of the BCBS, it should also be mentioned that central bank governors' and supervisors' technical expertise could be viewed as a legitimising factor, and thus as a justification for looser (democratic) controls [56 for a discussion in favour and against this argument]. Consequently, the European Parliament, and national parliaments alike, may lack the necessary expertise to hold to account those from the technical and political institutions involved in these negotiations. The risk therefore exists that national and European parliamentarians become the voice of (private) lobbyists, a development which would *in fine* not necessarily increase

¹⁸ This discrepancy has played a role in preventing the EU Speakers' Conference from playing a more determining role.



the democratic credentials of those standards. It is therefore particularly necessary that they receive expert advice from parliamentary officials and external experts like in the European Parliament its Economic Governance Support Unit (EGOV) and academic and policy experts produce briefs on files as they arise or are discussed at the EU level, even if the MEPs' engagement with experts could perhaps be intensified. Next to this issue of expertise, as is generally the case of European affairs within national parliaments, and may be the case of other, technical, financial matters in the EP, the question of political attractiveness for parliamentarians deserves mentioning. To put it bluntly, it is doubtful whether scrutinising the negotiations that take place within the BCBS will contribute to a parliamentarian being re-elected. The link between these international standards, European and national legislation, the fate of banks operating at the national level and sovereigns' exposure should probably be made clear(er) to foster citizens' interest.

Conclusion

It is evident that, as a result of the evolution of the 'galaxy of international financial institutions' since the beginning of the 2000s as well as a result of changes induced by some reforms internal to the EU in the form of the creations of the ESFS and of the EBU, European representation in those bodies has increased, and become more varied and multiform. Some coordination efforts have been made for the position of the European representatives to be aligned, notably by the European Commission and the ECB. Yet, European representatives have failed to always speak with one voice in all instances. It matters that they do so for a variety of reasons. As noted in this article, the more unitary the European position, the higher the chances that European representatives succeed in imposing their view on non-European participants. This is all the more important as the compromise reached will necessarily include aspects supported by non-European representatives. As no *ex ante* scrutiny may be exercised by European democratic representatives on them, the democratic legitimacy of the standards adopted is diminished. This, in turn, is of paramount importance because these standards significantly influence European legislation, in spite of their non-binding character and their mere quality as 'standards'. Indeed, considering the pressure that exists for the EU and its Member States to comply with those standards, legislators are constrained in their policy choices as a result of their adoption. Consequently, much like within the EU, it is important for national parliaments to be involved in the decision-making process that takes place at the EU level instead of discovering EU legislation when they have to transpose or implement it. The European Parliament, and

national parliaments alike, must be duly informed and must scrutinise the European representatives that participate in global financial forums. Transparency should also be enhanced. With regard to Basel standards specifically, some improvement may be noticed, but important shortcomings remain, and some proposals in relation to the BCBS have been made to remedy those issues [42].

One possibility would be to adopt a binding mandate for the EU representative(s). This would be hardly conceivable, *inter alia* because of the independence of central banks and banking supervisors and because the BCBS operates on the basis of consensus [42 p. 4]. The European Parliament nonetheless approved political guidelines in the framework of the negotiations of the Basel III standards [30], and this practice could be repeated at both the European and the national levels. In fact, parliaments could share their position with their representatives on the negotiations taking place at G20, FSB and BCBS level. The European Parliament could systematically use the Monetary and the Banking dialogue with the ECB to be adequately informed [42 pp. 6–7], a factor that is key to the smooth implementation of the Basel standards in EU legislation. Using these two dialogues could prove helpful in reinforcing the EP's role and information. Yet, both types of dialogues have shown some shortcomings related to a lack of expertise, of (political) interest or media interest so that their potential may remain limited in practice. Secrecy may be a further hindrance to adequate parliamentary scrutiny, although the formula developed in the framework of the Banking dialogue with the ECB–SSM that allows, for instance, for confidential oral discussions and, which additionally, focuses on supervisory matters could perhaps be a useful tool. The dialogue that exists between the European Parliament and the Commission and the EBA, respectively, also bears some potential, even if perhaps the dialogue with the Commission has more potential as it is more frequent than the exchanges with the EBA, and as ultimately the Commission is the regulator. Also, the creation of a regular dialogue between the European Parliament and the BCBS has been suggested and has materialised on some occasions [42 p. 7]. This is potentially a politically attractive tool for the European Parliament, and even if the EU is but one of the actors involved in the BCBS, the fact remains that it has one of the largest banking sectors worldwide which grants it some political weight. But it is doubtful whether the BCBS' Chairperson or Secretary General appearing before the EP could provide anything that goes beyond further information on the BCBS's actions.

In any event, enhancing the sum of individual *ex ante* accountability channels at EU and national level would already be an improvement, especially if parliaments were able to, at least, exchange information by means of



interparliamentary cooperation or, better still, were able to collectively establish the dialogical procedures considered above. Nonetheless, it would not suffice to hold the G20 as a single entity to account, a task which the newly created P20 seems also unlikely to be able to fulfil.

Declarations

Conflict of interest The author states that there is no conflict of interest.

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