



Leibniz Institute for Financial Research SAFE  
Sustainable Architecture for Finance in Europe (<https://safe-frankfurt.de/>)

## SAFE Finance Blog

### The Judgement in the Case of L-Bank is Unsatisfactory

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07/03/2017

Tobias Tröger: The European General Court missed the chance to address substantive matters



The Judgement of the European General Court (EGC) in the Case Landescreditbank Baden-Württemberg (L-Bank) versus the European Central Bank (ECB) is the first statement of the European judiciary on the substantive law of the Banking Union. According to Tobias Tröger (<https://safe-frankfurt.de/research/researchers/researchers-details/showauthor/56-troeger.html>), SAFE Professor of Economic Law, Civil Law and Legal Theory at Goethe University Frankfurt, the Court's formalist handling

of prudential regulation provokes criticism as the court does not address the substantive questions at hand. "Moreover, the EGC takes a vigorous pro-centralization stance in construing the division of competences between the ECB and National Competent Authorities (NCAs), although the case would not

have required such a positioning,” Tröger states in a recent SAFE Policy Letter (<https://safe-frankfurt.de/policy-center/policy-publications/policy-publ-detailsview/publicationname/how-not-to-do-banking-law-in-the-21st-century.html>).

The ECB had assessed the L-Bank on account of its size as being subject to its supervision. The L-Bank, which is owned by the state of Baden-Württemberg, disputed its classification as “significant institution” although its balance sheet positions exceeded the critical asset value of 30 billion euros. It argued that, given its low risk profile, supervision conducted by the NCA would be sufficient. However, the EGC followed the ECB’s assessment according to which the L-Bank did not demonstrate that it would be better supervised by national authorities. Moreover, the Luxembourgian judges stated that the ECB’s competence is exclusive and comprehensive not only for significant but also for less significant banks, even if supervision is executed in a decentralized way by NCAs.

Tröger criticizes that the EGC’s mode of reasoning remained predominantly formalistic instead of reaching a well-founded decision on the question of whether the risk-profile of a bank should play a role in the ECB’s assessment whether this bank is a significant or a less-significant institution.

In addition, he argues that the EGC downgraded NCA supervision without need and expects this assessment to have a negative impact on the day-to-day operations of the Single Supervisory Mechanism (SSM). “The indispensable flow of information (...) is not optimally induced, if the law instead of providing positive incentives only bolsters the role of the ECB as a whipper-in for inherently untrustworthy NCAs,” Tröger states.

He doubts that the objectives of the SSM can be achieved primarily through extensive ECB supervision and reminds that it is theoretically as well as empirically disputed whether centralized supervision yields higher quality: “It seems intuitive that NCAs which are closer to the institutions in every respect are in a better position to consider special peculiarities of national banks than the remote center that has to care for 19 Member States.”

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