"Increasingly, standards and best practices are set and defined at global level, for example on accounting, auditing and banking capital requirements. Considering the size of the EU market and Europe’s experience in pragmatically uniting the legitimate call for harmonised rules and the diverging needs of different markets/cultures/players the EU must have a leading role in standard setting at global level.”¹

1. Introduction

The regulation of banking services within the European Union has increasingly moved outside the realm of the Member States and is now clearly a major focus of the European Community (EC). The EC is today the source of rule-making for diverse aspects of European banking regulation (such as minimum capital requirements, prudential supervision, accounting standards, etc.). Nevertheless, the globalization of the market for banking services leads to far-reaching efforts at banking regulation within standard-setting agencies at the international level. The Basel Committee on Banking Supervision (hereafter, Basel Committee) develops standards and principles on minimum capital requirements and banking supervision. The International Accounting Standards Board (IASB) drafts international accounting standards. These international principles and standards have a significant impact on the European regulation. Nevertheless, the EC is not a member of the Basel Committee, nor is it represented on the IASB.

The multilevel nature of banking regulation provides a good illustration of two dynamics that play when the European and international levels interact. (1) First, incoherencies that may exist only potentially at the international level between standards that are developed in separate institutions may manifest themselves in reality once they are implemented at the European level. While the Basel Committee and the IASB are different in nature and have different mandates, the standards that they develop nevertheless have an impact on each other. This impact may be signalled and remedied at the European level, which again may influence the international level. (2) Second, while international institutions may often face the criticism that they lack democratic legitimacy, effective systems of democratic control and stakeholder consultation at lower levels, which try to reconcile efficiency and legitimacy, may enhance the legitimacy of the standards developed. The sophisticated European regulatory system for implementing standards developed by the Basel Committee and the IASB may be an important factor in this regard.

In the discussion that follows I first briefly delineate the concepts of coherence and democratic legitimacy (section 2). Thereafter I address the two international institutions that play a central role in developing banking regulation (section 3). I discuss the development of the new Basel capital accord in the Basel Committee and the development of accounting standards in the IASB. Specific attention is paid to the potential impact of Basel II and the international accounting standards. I then go on to consider for both institutions the mechanisms through which the EC tries to influence the standard-setting at the international level (section 4). The European Commission claims that it should play a prominent role in international standard-setting, but it is not evident how the EC could legally adopt such role. Finally, I consider how the international standards are implemented in the EC (section 5). A complex system of adopting banking regulation has been in place since 2005. Basel II and international accounting standards need to be channelled through this system when they are implemented in the EC.

2. Coherence and Democratic Legitimacy

Since the role of the EC in multilevel banking regulation is here considered in the light of coherence and democratic legitimacy, it is necessary to explain briefly how I understand these concepts. This is not the place for an extensive analysis of the meaning and use of coherence and democratic legitimacy: I only provide working definitions for the purpose of the analysis.