

A standard without force of law

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The Basel Committee has no legal personality, no treaty basis and no power to bind its members. Its charter, adopted in 2013, describes it as the primary global standard setter for the prudential regulation of banks and states expressly that its decisions have no legal force. The members commit to implement the standards in their jurisdictions within the agreed timeframes, but this commitment is political. No international court can enforce it. A member that fails to honour it faces no sanction beyond the reputational cost of a negative assessment.¹

This soft-law character is the reason why the national translation matters so much. A Basel standard is a model text that members undertake to adopt, comparable in its legal effect to a model law. International lawyers have described the Committee as a prime example of a transgovernmental network, in which officials of national agencies cooperate directly without passing through the classical channels of diplomacy and treaty making.² The legitimacy of such networks rests on the democratic legitimacy of the national procedures through which their output becomes law. In Switzerland, those procedures include the parliamentary legislative process and the regulatory powers of the Federal Council and of FINMA, with the optional referendum hovering behind them.

The Swiss case shows both sides of this arrangement. On the one hand, a small country with a large banking sector gains influence through membership that it could never exercise through bilateral bargaining. On the other hand, the national legislature retains the last word, which allows domestic politics to reshape a standard in ways that the negotiators in Basel did not foresee. The Swiss debates after 2023 about the capital of UBS demonstrate how far that reshaping can go.

1 Notes

1. Basel Committee on Banking Supervision, Charter (January 2013, as amended), in particular the sections on the mandate of the Committee, the responsibilities of members and the statement that the Committee's decisions do not have legal force. To be verified. ↩
2. On the Basel Committee as a transgovernmental regulatory network and the soft-law character of its standards, see Anne-Marie Slaughter, *A New World Order* (2004), and the literature on international financial soft law, for example Chris Brummer, *Soft Law and the Global Financial System* (2nd edn, 2015). To be verified. ↩

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