IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

Istituto Affari Internazionali

European Banking Union: An Immediate Tool for Euro Crisis Management and a Long-Term Project for the Single Market

by Giulia Rosa Maria Cavallo

ABSTRACT

After the adoption of a single monetary policy which commits the European Central Bank to maintaining the euro's purchasing power and price stability in the Eurozone, the European Union is facing a new, but equally fundamental challenge: the implementation in a relatively short time of the so-called "Banking Union". Its purpose is twofold: (1) breaking the link between banking and sovereign risk, with the ultimate goal of achieving full protection of EU savers in the event of a crisis; and (2) ensuring uniformity of credit conditions - which are still too fragmented - within the European banking market, to ensure greater EU integration of the financial system. Starting from the communication in which the European Commission stressed the need for a banking union, this paper intends to explore the complex process towards its establishment by looking at the EU institutional mechanisms and the legal aspects. In particular, the analysis will be based on two building blocks: (1) the Single Supervisory Mechanism, with a single supervisor at the heart of the banking union; and (2) the Single Resolution Mechanism as a new integrated resolution framework and a resolution fund to address the failure of banking institutions. The paper then assesses the next steps for a fully fledged banking union, necessary in order for this new instrument to lay the foundations for a genuine Economic and Monetary Union, thereby fostering financial and economic stability in the euro area and in the EU as a whole.

European Union | Economic and Monetary Union (EMU) | European Central Bank (ECB) | Eurozone crisis | Financial services | European Commission | European banking union

keywords

European Banking Union: An Immediate Tool for Euro Crisis Management and a Long-Term Project for the Single Market

by Giulia Rosa Maria Cavallo*

Introduction

At the end of the 80s, the "Delors Report" recommended the creation of the Economic and Monetary Union (EMU) in three stages, moving from the completion of the liberalisation of capital movements between Member States to a closer economic and monetary coordination, with a final replacement of national currencies with a single currency. In 1992 these ideas were formalised in provisions within the Treaty on European Union (TEU, informally known as the Maastricht Treaty). The subsequent Treaty of Lisbon - in force since 1 December 2009 - has left almost intact the so-called "bare-bones EMU of Maastricht."[1] The reproduced construction is nothing more than an asymmetric system that entrusts the conduct of monetary policy to the exclusive competence of the European Union (EU), and specifically to the European Central Bank (ECB) because of its technical neutrality (combined provisions of Articles 3 and 282 of the Treaty on the Functioning of the European Union, TFEU), while retaining the sovereignty of Member States relating to fiscal and economic policy (Art. 121 TFEU).

In June 2012 the urgent need to remedy the increasingly serious economic and financial crisis prompted the President of the European Council, Herman Van Rompuy, to realise that these original plans for the EMU had to be overhauled and deepened in order to ensure economic and social welfare as well as stability and sustained prosperity. This consideration has been followed by a Report -

[1] Jean Pisani-Ferry, "The Known Unknowns and the Unknown Unknowns of the EMU", in *Bruegel Policy Contributions*, No. 2012/18 (October 2012), p. 6, http://www.bruegel.org/publications/publication-detail/publication/756-the-known-unknowns-and-the-unknown-unknowns-of-the-emu.

* Giulia Rosa Maria Cavallo did an internship at the Istituto Affari Internazionali (IAI), within a Master programme in Diplomacy and International Politics at the University of Bologna. Currently she studies to obtain the professional title of lawyer.

. Paper prepared for the Istituto Affari Internazionali (IAI), October 2014.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

prepared in close cooperation with José Manuel Barroso, Jean-Claude Juncker and Mario Draghi as the Presidents of the Commission, the Eurogroup and the ECB respectively - proposing a coherent architecture of the EU based on four major building blocks: (1) an integrated financial framework; (2) an integrated public budgetary framework; (3) an integrated economic policy framework; and (4) strengthened democratic legitimacy and accountability of decision-making.[2]

Focusing on the EU financial architecture - the first building block indicated by the Four Presidents' Report - and in light of the events of the past two years, this paper aims to provide a snapshot of the complicated process directed to the creation of the banking union as a milestone in the achievement of a successful and well-functioning EMU. It will first explain how both the necessity of the realisation of the Single Market in financial services and the pressure exerted by the crisis which broke out in Europe in 2008 have led the EU institutions to take substantial steps to give life to the project of the banking union for the Eurozone and other Member States desiring to participate. After this assessment of the underlying reasons for its importance, the paper will then analyse what the expression "banking union" involves, that is to say its key components, with a view to identifying opportunities and challenges. Finally, it will give a perspective on the outstanding issues for the implementation of the banking union as a priority of the EU's agenda.

1. Call for a banking union

1.1. From financial integration to market fragmentation

For the last quarter of a century, the creation of a Single Market for capital and financial services has been a remarkable ambition of the EU. To serve this purpose, there have been many policy initiatives, among which the launch of the euro, the European single currency, was definitely the landmark achievement in this regard. Particularly, the introduction of the euro has given a decisive impetus to the realisation of an integrated financial market, dropping the main obstacle to the provision of financial services on a cross-border basis.

In essence, "financial integration" can be defined as a situation in which there are no friction elements - to be perceived as technical, regulatory and fiscal elements - that may differentially impact the ability of economic agents to raise and invest capital, primarily because of their geographical location.[3]

[2] Herman Van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, 26 June 2012, p. 3, http://ec.europa.eu/economy_finance/crisis/documents/131201_en.pdf.

[3] Lieven Baele et al., "Measuring Financial Integration in the Euro Area", in *ECB Occasional Paper Series*, No. 14 (April 2004), https://www.ecb.europa.eu/pub/pdf/scpops/ecbocp14.pdf.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

Basically, to ensure the functioning of the Single Market, the financial integration involves a gradual elimination of the barriers of diverging legislations, cause of persistent market fragmentation. These disparities reflect the diversity of the legal systems, as well as the mosaic of applicable laws, tax regimes and cultural specificities proper to each Member State.

Therefore, an integrated financial market - after the elimination of restrictions on cross-border financial operations and the harmonisation of regulations of financial systems - would be synonymous with a better allocation of capital, that is, credit is allocated efficiently and without reference to location.[4] To this extent, the complete elimination of barriers would enable firms to choose the most efficient trading, clearing and settlement platforms. In addition, investors would be permitted to invest their funds wherever they believe these funds are allocated to the most productive uses. Overall, this means more choices for individuals and better business opportunities for firms at lower cost, ultimately increasing the potential for economic growth. Moreover, a well-integrated financial system allows financial stability in the EU by creating larger, more liquid and competitive markets, which offer increased possibilities for risk diversification. In other words, financial markets would be integrated in such a way as to help companies and households cushion local shocks.[5] Overall, it can be argued that financial integration and financial stability are highly interconnected: an integrated financial sector would lead to greater stability of the European financial system, which in turn would contribute to greater financial integration.

As for the Eurozone, the ECB, in its role of guarantor of price stability, has a more specific interest in further integration of the financial system. This interest stems from the fact that a well-integrated and efficient financial system is essential for the smooth implementation of monetary policy and the balanced transmission of its effects throughout the euro area.[6] However, following the onset of the crisis in 2008 there has been a tipping point with a consequent shutdown of the financial integration process. As might be expected, the crisis has raised the issue of market

[4] Mario Draghi, *Welcome Remarks at the ECB-EC Conference on Financial Integration and Stability*, Speech at the ECB-EC Conference on "Financial Integration and Stability: Towards a More Resilient Single Financial Market", Frankfurt am Main, 26 April 2012, http://www.ecb.europa.eu/press/key/date/2012/html/sp120426.en.html; Lieven Baele et al., "Measuring Financial Integration in the Euro Area", cit.

[5] Benoît Cœuré, *Completing the Single Market in Capital*, Speech at ICMA Capital Market Lecture Series 2014, Paris, 19 May 2014, http://www.ecb.europa.eu/press/key/date/2014/html/sp140519_1.en.html.

[6] On 1 January 1999 the euro, the European single currency, was launched to substitute for the national currencies of the 11 Member States initially participating in the Monetary Union, at the conversion rates irrevocable fixed. For the first three years, in Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain the euro was introduced only for commercial and financial transactions, e.g., in electronic payments. Banknotes and coins came later on 1 January 2002 in these 11 initial Member States and in Greece, meanwhile admitted to join the Eurozone in 2001. Currently, the euro area consists of 18 Member States, since Slovenia (in 2007), Malta and Cyprus (in 2008), Slovakia (in 2009), Estonia (in 2011) and Latvia (in 2014) have in the meantime adopted the single currency.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

fragmentation along national borders - exactly what the integration process aims to counteract. This is a real source of concern in an internal market for banking services - the specific area of the internal market covered by this paper - in which banks should be able to carry out significant cross-border activities. Interbank markets have become less liquid and cross-border bank activities are decreasing due to fear of contagion and lack of confidence in other national banking systems as well as in the ability of Member States to support banks. A consequent need has taken shape to develop a system of shared rules for European banks, to intensify the integration of banking markets in order to bolster the Union, restore financial stability and lay the basis for economic recovery.

In April 2012, the ECB President Mario Draghi identified two main reasons to explain how this first setback in the EU's quest to achieve a Single Market for capital and financial services has come about. First, some market developments before the crisis were not really signs of growing integration.[7] And second, the pre-crisis EU institutional framework revealed structural shortcomings and vulnerabilities which made it unable to support the Single Market in times of crisis.[8]

1.2. The role of the banking sector

As pointed out by the European Commission, there are "specific risks within the euro area, where pooled monetary responsibilities have spurred close economic and financial integration and increased the possibility of cross-border spill-over effects in the event of bank crises."[9] These words clearly identify how addressing the EU shortcomings has been found to be particularly important for the euro area given the deep interdependences resulting from the single currency, as an integrated financial market where the imbalances in one country are transmitted quickly to the economies of the others.

The financial crisis that has hit a number of Member States has had the banking industry as its spark.[10] Specifically, a vicious circle has been created whereby struggling banks stop lending to the economy, making it slow down and needing to be bailed out by huge amounts of taxpayers' money used at the expense of other public objectives. This link between sovereign debt and bank debt has led to over €4.5 trillion of taxpayers' money being used to rescue EU banks perceived as "too

[7] The reference is to the complete compression of cross-country yield differentials before 2007. According to the ECB president, while the compression had been interpreted as an indicator of financial integration, it was, in fact, a sign of a systematic underpricing of credit risk.

[8] Mario Draghi, *Welcome Remarks at the ECB-EC Conference* ..., cit.

[9] European Commission, *A Roadmap towards a Banking Union* (COM(2012)510), 12 September 2012, p. 3, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0510.

[10] It is worth noting that banks play a prominent role in the euro area since they account for over two thirds of external financing of firms. Moreover, banks are especially important for small and medium-sized enterprises, which account for nearly three quarters of employment in the private sector.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

big to fail."

This, in turn, has also resulted in a worsening in the conditions of credit supply to customers. Accordingly, the need for more equitable conditions of access to credit, for both firms and households, in the perspective of economic recovery and growth throughout the EU has emerged.[11] Over the past few years in some countries the credit supply has been negatively affected and a turning point in which the credit supply meets the needs of the real economy has become highly desirable.

The soundness of banks' balance sheets is a key factor in facilitating an appropriate provision of credit to the economy, which is the banks' main task. In that sense, the establishment of a banking union would help to break the negative feedback loop between debt-burdened governments and troubled banks, thus shifting losses onto banks themselves without burdening taxpayers. In fact, such an interaction of troubled banks and troubled sovereigns has made it clear that the Eurozone would be considerably more stable if banks were anchored in Europe for regulation, supervision and crisis management and not tied so closely to the sovereigns of their home country. The result is the same consideration which can be reached starting from assessment of the consequences of the fragmentation of markets: an approach based on organisation along entirely national lines - despite the presence of some elements of cross-border cooperation - has proven to be not only incapable of adequately preventing the build-up of risks, but also of managing them once materialised.

In addition to dealing with banking difficulties that have already surfaced, there is the prospect that a banking union would avoid the worst of potential future troubles. At a minimum, it should make it easier to handle the troubles as they arise. Along these lines, a banking union would reduce the fears of depositors, investors and others that new countries will find themselves caught up in the downward spiral of failing banks leading to failing countries and vice versa.[12]

1.3. Towards a banking union for the Eurozone

In response to these critical issues, a deep process of regulatory reform has occurred to first set up a single standard of substantive norms applicable in all EU Member States. A number of specific steps have been taken: a) four Regulations which created in 2010 the so-called European System of Financial Supervision (ESFS)[13];

---

[11] For an analysis of the measures adopted in Italy to support firms and households in accessing to credit see, e.g., Laura Bartiloro et al., "L'accesso al credito in tempo di crisi: le misure di sostegno a imprese e famiglie", in *Questioni di economia e finanza*, n. 111 (gennaio 2012), https://www.bancaditalia.it/pubblicazioni/econo/quest_ecofin_2/QF_111.

[12] Douglas J. Elliott, "Key Issues on European Banking Union. Trade-offs and Some Recommendations", in *Global Economy & Development Working Papers*, No. 52 (November 2012), http://brook.gs/1vcbfGZ.

[13] The ESFS consists of a European Systemic Risk Board (ESRB, Reg. Eu 1092/2010) and three

b) the Capital Requirements Directive IV package (CRD IV) which transposed, via a Regulation[14] and a Directive,[15] the new global standards on bank capital (commonly known as the Basel III Agreement) into the EU legal framework, entered into force on 17 July 2013; c) the Bank Recovery and Resolution Directive (BRRD) adopted on 15 April 2014, where the tools for dealing with bank crises across the EU have been harmonised and upgraded; and d) the recast of the Directive on Deposit Guarantee Schemes (DGS), carried out on the same day and aimed at strengthening even further the protection of depositors.[16]

The establishment in January 2011 of the European Banking Authority (EBA) - an independent EU Authority within the wider ESFS - has undoubtedly contributed to improved cooperation between national supervisors and to the development of a single rulebook for financial services in all Member States, thus creating a level playing field by harmonising regulation at the EU level. However, as well explained by the European Commission, "supervision of banks remains to a large extent within national boundaries and thereby fails to keep up with integrated banking markets. Supervisory failings have, since the onset of the banking crisis, significantly eroded confidence in the EU banking sector and contributed to an aggravation of tensions in euro area sovereign debt markets."[17]

Hence, this new Eurozone architecture required a refinement: a stricter implementation among the only Eurozone states and the other EU Member States willing to accept such a "special" discipline. Thus the European Commission's decision in May 2012 to suggest moving "towards a banking union including an

European Supervisory Authorities (ESAs): 1) a European Banking Authority (EBA, Reg. Eu 1093/2010); 2) a European Securities and Markets Authority (ESMA, Reg. Eu 1094/2010); and 3) a European Insurance and Occupational Pensions Authority (EIOPA, Reg. Eu 1095/2010). In this way, the macro-economic level and the micro-economic one, which are clearly intertwined, complement each other. As indicated in the report of the High-Level Group on Financial Supervision in the EU (known as the "De Larosière Report") drawn up in 2009, "macro-prudential supervision cannot be meaningful unless it can somehow impact on supervision at the micro-level; whilst micro-prudential supervision cannot effectively safeguard financial stability without adequately taking account of macro-level developments." See Jacques de Larosière (ed.), *Report of the High-Level Group on Financial Supervision in the EU*, 25 February 2009, http://ec.europa.eu/economy_finance/publications/publication14527_en.pdf.

[14] European Parliament and Council, *Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms ...*, 26 June 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R0575.

[15] European Parliament and Council, *Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment ...*, 26 June 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0036.

[16] European Commission, *Proposal for a Directive on Deposit Guarantee Schemes* (COM(2010)368), 12 July 2010, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52010PC0368.

[17] Commission, *Proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions* (COM(2012)511), 12 September 2012, p. 2, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012PC0511. Along these lines, the European Commission will express in the explanatory memorandum before the outright proposal for a regulation establishing the first pillar of the banking union.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

integrated financial supervision and a single deposit guarantee scheme."[18] The need to complete the EMU was, in fact, exactly linked to the need to restore confidence in the euro area - i.e., credibility of the euro in international markets - and trust in the ability of Europe's political and economic system to deliver on the EU Treaty's ambition of "sustainable development [...] based on balanced economic growth" (Art. 2 (3) TEU).[19]

Almost a month later, in the aforementioned Four Presidents' Report, the President of the European Council, Herman Van Rompuy, presented the banking union as one of the four building blocks essential to the long-term stability and prosperity of the EMU. Ultimately, it should consist of three central elements: (1) a single European banking supervision; (2) a single European resolution framework; and (3) a common deposit insurance scheme.

Addressing the first pillar, the project of a banking union would imply a radical change in regime to be implemented by overcoming the model of harmonised national supervision - which had hitherto inspired the European legislation - with the creation of a single European banking supervision system where responsibility for supervision is elevated from the national level to the supranational one. Particularly, the crisis has shown the inadequacy of the harmonised supervision model, introduced - together with the principle of "home country control" - by European directives which had begun to regulate the banking sector since the end of the 70s.

This harmonised model has certainly put in contact banking systems and legal systems very different from each other, but the need for a change has arisen as the freedom of movement of capital and the adoption of the single currency have accelerated the integration of the EU financial markets. The effect, in fact, has been the birth of supranational banking firms, the size of which went significantly beyond the real possibilities of control by both the national competent authorities (NCAs), the Committees of the European Supervisory Authority and the colleges of supervisors for cross-border intermediaries.[20]

[18] European Commission, *Action for Stability, Growth and Jobs* (COM(2012)299), 30 May 2012, p. 5, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0299.

[19] Ibidem, p. 2.

[20] Marco Mancini, "Dalla vigilanza nazionale armonizzata alla Banking Union", in *Quaderni di ricerca giuridica*, n. 73 (settembre 2013), p. 7-8, http://www.bancaditalia.it/pubblicazioni/quarigi/qeg_73/qrg_73. The author also points out that the difficulties inherent in the process of European financial integration were well known to the founding fathers of the single currency. It's not a surprise that during the course of the work that led to the drafting of the Treaty of Maastricht, the Group of Governors of the European central banks had specifically requested that tasks of banking supervision be assigned to the ECB. However at that time the political resistance of the States, which were fearful of losing control of their banking systems, did not allow going beyond the harmonised national supervision model. Awareness of the need for a gradual overcoming of such a model re-emerged from the early analysis commissioned after the explosion of the crisis by national governments and European institutions.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

With hindsight, in the past, supervisors were often lenient towards "national champions," constrained either by their mandates or by other national pressures, or perhaps both. Indeed, supervisors must be free from local pressures and interests; they must be able to independently assess the situation of individual banks in a systemic context. Consequently, national bias and the associated supervisory forbearance that the financial crisis brought to the fore had to be completely removed.[21]

In a very similar way to the famous "monetary trilemma," but applied to international finance, the "financial trilemma" put forward by Professor Dirk Schoenmaker in 2011 illustrates the impossibility of simultaneously achieving three specific objectives in an environment with globalised financial markets: a) financial stability; b) financial integration; and c) national financial policies, especially supervision.[22] With the increasing level of financial integration required for monetary union and appropriate for well-functioning cross-border money markets, pursuing national financial policies - hence practicing national supervision - will generally put European financial stability at risk. This is due to the fact that policy responses given by a single Member State are rational from a national perspective, but suboptimal from a European point of view. Differently said, national policies seek to benefit national welfare, while not taking into account externalities of their supervisory practices on other countries. This leads to under-provision of financial stability as a public good. A lesson of the trilemma is that it is beneficial for the provision of financial stability to replace national policies with policies at the supranational level, thus geographically aligning supervisory incentives with the effect such supervision has on the financial sector as a whole.[23]

In relation to the second pillar, a European resolution mechanism - primarily funded by contributions of banks - would provide assistance in the application of resolution measures to banks overseen by the European supervision with the aim of orderly winding-down of non-viable institutions and thereby protecting taxpayers' funds. Such a mechanism would make it possible for banks to fail in an orderly manner while preserving financial stability.

Concerning the third pillar, a European deposit insurance scheme would introduce a European dimension to national deposit guarantee schemes for banks, under European supervision. It would serve as an important assurance that eligible deposits of all credit institutions are sufficiently insured. Shared deposit insurance

[21] Yves Mersch, *The Banking Union - a European Perspective: Reasons, Benefits and Challenges of the Banking Union*, Speech at the Seminar "Auf dem Weg zu mehr Stabilität - Ein Dialog über die Ausgestaltung der Bankenunion zwischen Wissenschaft und Praxis", Berlin, 5 April 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp130405.en.html.

[22] Dirk Schoenmaker, "The Financial Trilemma", in *Economics Letters*, Vol. 111, No. 1 (April 2011), p. 57-59, http://personal.vu.nl/d.schoenmaker/Financial_Trilemma.pdf.

[23] Vítor Constâncio, *Banking Union and the Future of Banking*, Speech at the IIEA Conference on "The Future of Banking in Europe", Dublin, 2 December 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp131202.en.html.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

would reassure depositors that their money is safe in any euro area bank, regardless of its country of operations or legal domicile. In this context, depositors would not need to consider shifting their funds across the continent in search of a safe haven, as all banks would offer the same insurance coverage.

Since the third pillar has still to be adopted in the euro area, this paper will focus its analysis on the implementation of the first two pillars of the banking union, i.e., the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM).

2. Key steps to the Single Supervisory Mechanism (SSM)

2.1. Euro area summit of 29 June 2012: the turning point

As a first step towards the banking union, the Single Supervisory Mechanism (SSM) would involve the creation of a single supervisor for major banks of Member States participating in the mechanism itself. In such a way, the SSM would ensure that rules relating to prudential supervision are applied in the same manner to credit institutions in all Member States concerned.

To this end, the Euro Summit on 29 June 2012 can be seen as a prime example of political momentum. Heads of State or Government, considering an "imperative to break the vicious circle between banks and sovereigns,"[24] launched the construction of a banking union. Particularly, EU leaders reached agreement on making a priority of the establishment of the SSM in order to re-unify the fragmented EU banking system. In this sense, the June Euro Area Summit has marked a considerable turning point since institutional changes that were not thinkable less than a year before have been put on the EU political agenda.

A crucial point of the Eurogroup statement of 9 July 2012 was the provision that, having created the SSM, the European Stability Mechanism (ESM) "could, following a regular decision, have the possibility to recapitalise banks directly."[25] In this respect, it must be pointed out that there is a close connection between the setting up of an SSM and the ESM's potential to inject funds into banks directly, whereby the former is a precondition of the latter. It appears, from the potential for direct recapitalisation of banks by the ESM, that an allocation of supervisory functions to the European level is assumed a "*condicio sine qua non*."[26] Likewise, European

[24] European Council, *Euro Area Summit Statement*, Brussels, 29 June 2012, p. 1, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf.

[25] Eurogroup, *Eurogroup Statement on the follow-up of the 29 June Euro Summit*, 9 July 2012, http://www.eurozone.europa.eu/media/367854/eg_statement_9_july_2012_final.pdf.

[26] Antonio Di Marco, "Il controllo delle banche nell'UEM: la (problematica) nascita di un sistema integrato di vigilanza prudenziale", in *Il diritto dell'Unione europea*, vol. 18, n. 3 (2013), p. 549. Giulio Napolitano, "La risposta europea alla crisi del debito sovrano: il rafforzamento dell'Unione economica e monetaria. Verso l'Unione bancaria", in *Banca, borsa, titoli di credito*, vol. 65, n. 6

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

recapitalisation creates an immediate need for European banking supervision.[27] After all, aid to banks would not be justified in the absence of a corresponding power control, nor there would be a political consensus to do so.[28]

To get a better sense of the argument it is worth recalling here that the ESM was constituted in 2012 as an international financial institution based in Luxembourg aimed at providing financial assistance to euro area Member States "which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States" (Art. 3 of the Treaty establishing the ESM).[29] Currently, the possibility for Eurozone banks to access European funding, such as the ESM, is related to the intermediation of the States. To do that, they are subject to strict conditionality, appropriate to the financial assistance instrument chosen. Such a conditionality may range from a macro-economic adjustment programme to continuous respect of pre-established eligibility conditions (Art. 12 (1) of the ESM Treaty). With this in mind, it can be realised how a direct recapitalisation of banks, implying the elimination of these intermediary States, would be a useful innovation.

2.2. European Commission's proposal to confer specific tasks on the ECB

In a timely way and introducing the establishment of the SSM as "a crucial and significant first step,"[30] in September 2012 the European Commission presented a *Proposal for a Council Regulation conferring specific tasks on the ECB*. The legal basis for this assignment of powers to the hands of the ECB was appropriately

(2012), p. 753.

[27] Vítor Constâncio, *Towards a European Banking Union*, Lecture held at the start of the academic year of the Duisenberg School of Finance, Amsterdam, 7 September 2012, https://www.ecb.europa.eu/press/key/date/2012/html/sp120907.en.html.

[28] Gian Luigi Tosato, "L'integrazione europea ai tempi della crisi dell'Euro", in *Rivista di diritto internazionale*, vol. 95, n. 3 (2012), p. 697, http://www.sidi-isil.org/wp-content/uploads/2012/04/Internazionale-3-12.pdf.

[29] The Treaty establishing the ESM was signed by the euro area Member States on 2 February 2012. The ESM was intended to replace the previous temporary rescue mechanisms, namely the European Financial Stabilisation Mechanism (EFSM) and European Financial Stability Facility (EFSF). In a nutshell, the EFSM is a provisional fund (up to a total of €60 billion) to support EU Member States in financial difficulties, adopted by the Regulation of the Council n. 407/2010 of 11 May 2010. By contrast, the EFSF is a provisional fund (up to a total of €440 billion) created by the euro area Member States which reached the so-called "EFSF Framework Agreement"- thus an agreement under international law, outside the EU legal order - following the decisions taken on 9 May 2010 within the framework of the Ecofin Council. This said, the granting of financial assistance in the framework of new programmes under the ESM was conditional, as of 1 March 2013, on the ratification of the Treaty on Stability, Coordination and Governance in the EMU (TSCG or more simply the Fiscal Compact) by the Contracting Party concerned and on compliance with Art. 3. It establishes the so-called "balanced budget rule" or "golden rule," which directs the general governments' Contracting Parties to incorporate into their constitutions a requirement that yearly budgets must be balanced or in surplus.

[30] European Commission, *A Roadmap towards a Banking Union*, cit., p. 6.

provided by Art. 127 (6) of the TFEU[31] which states that the Council may "confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions."[32] The importance of the presence in the TFEU of this article - repeated in Article 25 (2) of the ESCB Statute - is to be emphasised, as it makes it possible the creation of the first pillar of the banking union, without the necessity of a treaty change that would have been a much lengthier process.

Unification in the same decision-making authority, the ECB, of the determinations relating to a plurality of intermediaries forced to compete with similar difficulties, would serve as inescapable premise for a real homogenisation of financial systems. Generally, such a move would favour closer forms of cohesion within the EU. Despite this positive outcome, the major concern in attributing such a significant operation to the ECB was, however, that monetary policy functions already pertaining to the ECB had to be strictly separated from new supervisory tasks. This meant that the ECB's involvement in financial supervision should have no bearing whatsoever on its main statutory objective of maintaining price stability.

When integrating supervision in a central bank alongside monetary policy, it is legitimate to imagine that at least three types of challenges and risks would need to be managed: a) potential conflicts of interest between the objectives of monetary policy and prudential supervision, since the central bank would turn into a supervisor with access to central bank liquidity and could principally be inclined to continue lending to weak banks for fear that winding them up would trigger losses; b) reputational risks could arise negatively affecting the institution as a whole if competencies and policy instruments were not assigned to the SSM to conduct supervision effectively; and c) independence in performing all the tasks, especially from undue political influence and from industry interference.[33] Thereby, the ECB would have to carry out the tasks entrusted to it only by pursuing the objectives set, such as promoting the safety and soundness of credit institutions and the stability of the financial system of the Union, with due regard for the unity and integrity of the internal market.

For these reasons, the regulation proposed by the European Commission has called for a governance structure that strictly separates monetary functions from supervisory ones. The administrative divisions and bodies of the ECB are

[31] European Commission, *Proposal for a Council Regulation conferring specific tasks on the European Central Bank* ..., cit., p. 3.

[32] More precisely, Article 127(6) TFEU states that "The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings."

[33] Benoît Cœuré, *Monetary Policy and Banking Supervision*, Speech at the Symposium "Central Banking: Where Are We Headed?", Goethe University, Frankfurt, 7 February 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp130207.en.html.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

to be separated from those dealing with monetary policy. The operation of the Governing Council should also be completely differentiated as regards monetary and supervisory functions. Finally, Supervisory Board charged with preparation of supervisory tasks would be set up within the ECB, and non-Eurozone States participating in the SSM would have full and equal voting rights on this Board.

A natural consequence of having chosen the ECB as the subject liable for supervision is that the SSM would then be mainly recommended for the entire Eurozone, as the ECB can only have binding powers in relation to Member States that have adopted the euro. Nevertheless, as stated in Art. 127 (6) of the TFEU, the decision to create the SSM needs to be taken with the unanimous agreement of all EU Member States' finance ministers. The fact remains that the SSM would also refer to the "volunteers" from the remainder of the EU. In fact, non-Eurozone Member States wishing to participate in the SSM would be able to do so by simply entering into close cooperation arrangements. Obviously, by establishing a close cooperation they would have to adhere to the decisions taken by the ECB, if not the cooperation could be suspended or terminated. Needless to say that such a situation would facilitate further financial integration in the Single Market as a whole. In this way the banking union - whilst critical for the euro area countries (the "ins") - is also desirable for Member States which do not share the euro (the "outs").[34]

Moving ahead with shedding light on the European Commission's view, it was clear that the SSM should be composed of the ECB - within the framework of the ESFS - and national supervisory authorities. Notably, the ECB would become responsible for specific tasks concerning the prudential supervision of credit institutions which are established in Member States whose currency is the euro (the so-called "participating Member States"). These supervisory tasks would cover basically all credit institutions established in participating Member States, regardless of their business model or size since "recent experience has shown that difficulties, even in relatively small banks, can have significant negative impacts on the financial stability of Member States."[35] *De facto*, significant banks - at the level of individual credit institutions and banking groups or financial conglomerates - would fall under more direct ECB supervision. In addition, the ECB could also on its own initiative consider an institution to be of significant relevance and thus decide to exercise direct supervision on it.

As to the timing, the European Commission exhorted a phased approach to secure a straightforward start of the Mechanism. As a first step the ECB should be able to apply its supervisory tasks to any banks, in particular to banks which have received or requested public financial assistance. As a second step, banks of European systemic importance. as reflected in their total exposures and their

[34] Jörg Asmussen, *Banking Union - Essential for the Ins, Desirable for the Outs!*, Speech at the Danske Bank Financial Forum 2013, Stockholm, 5 November 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp131105.en.html.

[35] European Commission, *A Roadmap towards a Banking Union*, cit., p. 7.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

cross-jurisdictional activities, should be covered. Finally, the process should be completed within one year from the entry into force of the Regulation at the latest, so that all banks in the euro area would come under European supervision.

With a special focus on supervisory powers, the ECB would hold the position that the authorities of participating Member States have had to date. For example, the competence of the ECB would include powers such as the authorisation of credit institutions and withdrawal of authorisation, as well as assessment of acquisitions and disposals of holdings in credit institutions. Through the first competency, it is assumed essential for the effective and sound management of banking activity that the determination of the corresponding technical requirements be assigned to the same authority in charge of the SSM. Similarly, the second task is intended to verify the continuity of adequate and solid (in financial terms) ownership structures in order to avoid "undue restrictions to the internal market" (Recital n. 16).

To be able to fulfil its tasks, the ECB would have all necessary investigatory powers. In particular, the ECB would be able to request all relevant information from supervised entities and persons involved in their activities. It would also be empowered to conduct all necessary investigations - including on-site inspections - with appropriate safeguards. The ECB would act within the framework of the ESFS, closely cooperating with the three European Supervisory Authorities (ESAs). The EBA would retain its powers and tasks to further develop the single rulebook and secure supervisory convergence and consistency of supervisory outcomes across the EU. Essentially, the EBA is entrusted with developing draft technical standards, guidelines and recommendations. The ECB should not replace the exercise of these tasks by the EBA and should therefore exercise powers to adopt regulations in accordance with Art. 132 of the TFEU only where Union acts adopted by the European Commission upon drafts developed by the EBA or guidelines and recommendations issued by the EBA do not deal with certain aspects necessary for the proper exercise of the ECB's tasks or do not deal with them in sufficient detail. In order to ensure full coordination with the activities of the EBA and with the prudential policies of the Union, the European Commission envisaged in the Proposal that the EBA and the Commission itself should be observers in the Supervisory Board.

Lastly, for a high quality of European supervision, the ECB should be assisted by national supervisors. Provision would be made for active involvement of the NCAs to ensure both the smooth preparation and the efficient implementation of supervisory decisions. They are "in many cases best placed to carry out such activities, due to their knowledge of national, regional and local banking markets, their significant existing resources and to locational and language considerations."[36] This should include the ongoing day-to-day assessment of a bank's situation and related on-site verifications. Moreover, the NCAs would retain all tasks not explicitly

[36] European Commission, *Proposal for a Council Regulation conferring specific tasks on the European Central Bank*, cit., p. 5.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

conferred upon the ECB, for instance powers in consumer protection and the fight against money laundering.

2.3. The green light at the EU level and adoption of the regulation on the SSM

When two months later the Council called on the European institution directly concerned to give its opinion on the proposal, the ECB broadly welcomed the program. It was deemed to be in line with the main findings of the European Council, including the conclusions of 19 October 2012 in which the objective of proceeding with work and agreeing on SSM continued to be "a matter of priority."[37] The ECB appreciated, *inter alia*, the inclusion of all credit institutions since "this is important to preserve a level playing field among banks and prevent segmentation in the banking system."[38]

The debate about the creation of the SSM for the euro area continued at a fast pace at the EU institutional level in the following months. The Four Presidents' Report, setting out a road map for the foundation of a genuine EMU, included the establishment of an effective SSM for the banking sector in the first phase of the stage-based process towards a deeper EMU, with the end of 2013 as the deadline.[39] Subsequently the ECOFIN Council (EU ministers of economics and finance) agreed unanimously on the European Commission's proposal. Hence, the European Council welcomed the agreement, calling on the Council, the European Commission and the European Parliament to agree quickly so that the plans could be implemented as soon as possible.

At last, in March 2013, the three EU lawmakers reached agreement and, on 15 October 2013, the Council adopted the so long-awaited Regulation 1024/2013 on the SSM.[40] Under the new system of supervision laid down in the Regulation, the ECB - being required to cooperate closely with the EBA and the other authorities which form part of the ESFS - will directly supervise "significant credit institutions," where the significance shall be assessed based on the criteria properly indicated.[41]

[37] European Council, *Conclusions of 18/19 October 2012* (EUCO 156/12), Brussels, 19 October 2012, p. 7, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/133004.pdf.

[38] European Central Bank, *Opinion on a proposal for a Council regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions and a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority)* (CON/2012/96), 27 November 2012, p. 3, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012AB0096.

[39] Herman Van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, 5 December 2012, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf.

[40] Council of the European Union, *Regulation (EU) No. 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions*, 15 October 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R1024.

[41] As stated in Art. 6 of the Reg. (EU) No. 1024/2013, the decision on whether credit institutions are "significant" or not must be based on the following criteria: a) size; b) importance for the economy

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

It is expected that these significant credit institutions will number around 130, representing almost 85% of total banking assets in the euro area. All other credit institutions in the participating countries will continue to be supervised by the NCAs, under the ultimate oversight and common guidelines of the ECB. However, the ECB can decide at any time to exercise direct supervision of any one of these credit institutions in order to ensure consistent application of high supervisory standards.

Generally speaking, in the Regulation there are no disruptions compared with what was provided for by the European Commission, to the point that the provisions contained in the Proposal have become secondary Union law. Only a few things remain to highlight.

If euro area countries participate automatically in the SSM, non-euro area Member States may choose to join. Entering into "close cooperation" with the ECB entails that the ECB and the competent authorities of non-participating Member States should conclude a "memorandum of understanding" describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law. When carrying out the tasks conferred on it, the ECB will act within the SSM independently, namely neither seeking nor taking instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body. In addition, without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB should have full regard for the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union.

Considering the responsibility for granting supervisory powers, the shift from Member States to the EU level should be balanced by appropriate transparency and accountability requirements. The ECB should be properly accountable to the European Parliament and the Council as democratically legitimised institutions representing the EU citizens and the Member States. This should include reporting on an annual basis to the European Parliament, to the Council, to the Commission and to the Eurogroup (when submitting this report the ECB should simultaneously forward it directly to the national parliaments of the participating Member States), and responding to questions by the European Parliament and by the Eurogroup.

of the Union or any participating Member State; c) significance of cross-border activities; and d) request or receipt of public financial assistance directly from the EFSF or the ESM. In any case, in each participating country, at least the three most significant credit institutions will be subject to direct supervision by the ECB, unless justified by particular circumstances.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

2.4. Preliminary step for the functioning of the SSM

Before the implementation of the new supervisory system, preparatory work is required. This is the so-called "comprehensive assessment," a term which indicates the assessment of banks' balance sheets aimed at increasing market confidence in the soundness of the European banking system, thereby contributing to the recovery of lending to the economy.

Specifically, the exercise is conducted by the ECB - in coordination with the NCAs of the Member States participating in the SSM and with the support of independent third parties at all levels - and, as already stated, involves 120 credit institutions[42] in 18 Member States,[43] which cover approximately 85% of the euro area banking system.

This financial health check of significant banks will consist of three elements, closely interlinked: (1) a supervisory risk assessment; (2) an asset quality review (AQR); and (3) a stress test. The supervisory risk assessment evaluates key risks factors in the banks' balance sheets, including liquidity, leverage and funding. In particular, it embodies quantitative and qualitative analysis based on backward- and forward-looking information aimed at assessing a bank's intrinsic risk profile, its position in relation to its peers and its vulnerability to a number of exogenous factors. The AQR reviews the quality of banks' assets with a broad and inclusive assessment on the adequacy of asset and collateral valuation and related provisions.[44] The stress test examines the resilience of banks' balance sheets to adverse scenarios. It is built on and complements the AQR by providing a forward-looking view of banks' shock-absorption capacity under stress. The ECB and the EBA have agreed to perform the stress-testing exercise in close cooperation.[45]

The goals of the comprehensive assessment are threefold: (1) *transparency* - to enhance the quality of information available on the condition of banks; (2) *repair* - to identify and implement necessary corrective actions, if and where needed; and (3) *confidence building* - to assure all stakeholders that banks are fundamentally sound and trustworthy, thereby unlocking a needed revival of credit to the euro

[42] On 4 September 2014, the ECB published the final list of the 120 significant credit institutions it will directly supervise, fourteen of which are Italian. For information, see the list available at https://www.ecb.europa.eu/ssm/list.

[43] The number of countries subject to the comprehensive assessment - and so covered by the SSM Regulation - will rise to 19 Member States in 2015, when Lithuania will join the euro area.

[44] On 11 March 2014, the ECB published a manual containing the set of rules and procedures to be complied with to complete the execution phase of the AQR in a uniform way. The *AQR Manual* is available at https://www.ecb.europa.eu/press/pr/date/2014/html/pr140311.en.html.

[45] On 8 August 2014, the ECB published a manual detailing how it will incorporate findings from its AQR into stress test projections and describing the stress test quality assurance process. The *Comprehensive Assessment Stress Test Manual* is available at https://www.ecb.europa.eu/press/pr/date/2014/html/pr140808.en.html.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

area economy.[46] This comprehensive assessment was begun in November 2013 and must be completed by October 2014. After the disclosure of the final results, banks will be expected to cover their possible capital shortfalls within six to nine months.

The ECB will assume its new banking supervision responsibilities on 4 November 2014, during the second half of the Italian Presidency of the EU Council, which commenced on 1 July 2014.[47]

3. Progress of the Single Resolution Mechanism (SRM)

3.1. An SRM to follow the SSM

As mentioned above, the SSM has doubtless laid the groundwork for a fully fledged banking union, but it is only one key component. In particular, a European framework for resolution of banks - with a Single Resolution Mechanism (SRM) centred on a Single Resolution Authority and a Single Bank Resolution Fund - needs to follow as a "natural complement to the establishment of [the SSM]."[48] The SRM would ensure that if a bank subject to the SSM faced serious difficulties, its resolution could be managed efficiently with minimal costs to taxpayers and the real economy. In fact, although the risk of a bank experiencing a severe liquidity or solvency problem can never be totally excluded, with the SRM and the Resolution Fund it would be banks themselves - and not European taxpayers - who would shoulder the burden of losses in the future.

Since November 2012 - in *A Blueprint for a Deep and Genuine Economic and Monetary Union Launching a European Debate* - the European Commission has recognised that a credible single resolution system and a powerful financial backstop would be fundamental to achieving a level of public trust comparable to that inspired by the best resolution authorities around the world.[49] It has, therefore, been necessary to set out a framework that would allow for the in-depth restructuring of banks to avoid the very significant risks to economic stability and costs derived from their disorderly liquidation under national insolvency laws, and to put an end to the necessity of financing the process with public resources.

[46] European Central Bank, *ECB starts comprehensive assessment in advance of supervisory role*, 23 October 2013, http://www.ecb.europa.eu/press/pr/date/2013/html/pr131023.en.html.

[47] The Italian government has expressed its intention to support all efforts to implement the banking union in respect of the appointed times. See, *Europe, a fresh start*, Programme of the Italian Presidency of the Council of the European Union, 1 July-31 December 2014, p. 29, http://italia2014.eu/media/1349/programma_en1_def.pdf.

[48] European Commission, *A Roadmap towards a Banking Union*, cit., p. 9.

[49] European Commission, *A blueprint for a deep and genuine economic and monetary union Launching a European Debate* (COM(2012)777/2), 30 November 2012, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0777R(01).

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

3.2. European Commission's proposal to address the failing banks

To address these problems, in July 2013 the European Commission put forward a proposal for a Regulation concerning the failing banks.[50] With the aim to preserve the integrity and enhance the functioning of the internal market, the proposal had its legal basis in Article 114 (1) of the TFEU, which admits the adoption of "measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market." Uniform application of a single set of resolution rules - that is the single Rulebook on bank resolution, set out in the Bank Recovery and Resolution Directive - together with access to a single European resolution fund under a central authority, foresaw restoring the orderly functioning of the Union banking markets.

There are two initial considerations. First of all, a separate European Authority, which would govern the resolution of banks within the banking union, is considered to be more efficient than a network of national resolution authorities, in particular concerning the cross-border banking groups for which, in times of crisis, speed and coordination in the application of resolution tools are vital.

Secondly, in the banking union, bank supervision and resolution need to be exercised by the same level of authority. Otherwise tensions between the supervisor (the ECB) and national resolution authorities may emerge over how to deal with failing banks, while market expectations about Member States' (in)ability to deal with bank failures nationally could continue, reinforcing feedback loops between sovereigns and banks and fragmentation and competitive distortions across the internal market.

That clarified, to ensure that all participating Member States have full confidence in the quality and impartiality of the bank resolution process, notably as regards local economic implications, according to the Proposal resolution decisions would be prepared and monitored centrally by a Single Resolution Board (SRB) and the resolution process would be initiated by the Commission. In addition, to support the resolution process and enhance its effectiveness, the proposed Regulation establishes a Single Resolution Fund (SRF). The Commission would also decide on the framework of the resolution tools that should be applied in respect of the entity concerned and on the use of the Fund to support the resolution action.

[50] European Commission, *Proposal for a Regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010* ... (COM(2013)520), 10 July 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013PC0520.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

3.3. Towards the adoption of the regulation on the SRM

"Alongside the already adopted [SSM], the SRM will represent a crucial step towards the completion of the banking union. The European Council calls on the legislators to adopt the SRM before the end of the current legislative period."[51] With these words pronounced at the 19/20 December 2013 European Council, EU leaders exhorted assiduous work to be undertaken in a spirit of compromise by both co-legislators, the European Parliament and the Council, which could lead them to reach a provisional agreement on the proposed SRM in a few months.

On 15 April 2014 - at the second plenary session in April, the last of this legislature - MEPs approved the SRM, thus achieving considerable legislative work since the same day also saw the adoption of the Bank Recovery and Resolution Directive (BRRD). In a few - but essential - lines, the BRRD will constitute the single rulebook for the timely and effective resolution of banks and large investment firms in all 28 EU Member States. Authorities will be provided with more comprehensive and effective arrangements to deal with failing banks at national level, as well as cooperation arrangements to tackle cross-border banking failures.

But above all, what constitutes an outstanding innovation is the fact that the new rules laid down in the BRRD replace the old paradigm of banking "bail-out" - with taxpayers being required to foot the bill for banks' mistakes - with the principle of "bail-in," where losses and costs are allocated to the banks' shareholders and creditors following a clearly defined hierarchy. Briefly, as of 2016, in all resolution cases, these parties will bear losses equivalent to 8% of the bank's total liabilities. Only after this 8% threshold will money from the resolution fund be used and for a maximum amount of 5% of the total liabilities of the bank in question. Public money for recapitalisation, whether national or European, can only be considered at the very end of the process after the other two sources of remedial action have been used.[52]

Finally, on 15 July 2014 the European Parliament and the Council adopted the Regulation 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions in the framework of a SRM.[53] The SRM Regulation

[51] European Council, Conclusions of 19/20 December 2013 (EUCO 217/13), 20 December 2013, p. 16, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140245.pdf.

[52] The amount of 8% is very substantial compared to the losses banks faced in the recent crisis. Between 2008 and 2010 only one bank had losses exceeding the 8% threshold, and the average for all other banks was slightly less than 3%. Therefore, under the BRRD, the injection of public money into banks, either from national governments or from direct European recapitalisation, will happen only in exceptional circumstances. See Vítor Constâncio, *Banking Union and European Integration*, Speech at the OeNB Economics Conference, Vienna, 12 May 2014, https://www.ecb.europa.eu/press/key/date/2014/html/sp140512.en.html.

[53] European Parliament and Council, *Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund* ..., 15 July 2014, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32014R0806.

will implement in the Eurozone and in any other participating Member State the new rules set for all 28 Member States by the BRRD. This will, however, not be the only normative source of the SRM. In fact, this mechanism will be governed by two texts: the SRM Regulation covering its main aspects - primarily the examination of the resolution process, hence the creation of a Single Resolution Board (SRB) and a Single Resolution Fund (SRF) - and an Intergovernmental Agreement (IGA), whose content will be strictly limited to certain elements related to the functioning of the SRF.

3.4. Resolution process

The SRM Regulation disciplines a new resolution process which will be applicable to all Member States participating in the SSM. It will involve the participation of three actors: the ECB, the SRB and the European Commission.

The ECB will be responsible for notifying the European Commission and the SRB that a bank is failing or likely to fail. Then, after an assessment that there are no alternative private solutions and a resolution action is necessary in the public interest, the Board will adopt a resolution scheme for the institution or group in question, drawing on the expertise and experience of national resolution authorities. The Board may act on its own initiative if the ECB, having been informed by the Board of its intention to make such a determination, does not make it within 3 days. In either case, the resolution scheme drawn up by the SRB will be thereafter transmitted to the Commission for validation. The Commission can approve it in one of two ways: confirming it upfront or raising no objections within 24 hours (silent procedure).

An important feature of the final text of the Regulation is that the Council can only become involved in the decision-making at the explicit request of the European Commission. In fact, within 12 hours of transmission of the draft resolution by the Board, the Commission may propose to the Council to approve it or to reject it if it believes it is not in the public interest or that the amount of the Fund provided for should be changed.

In case of objections expressed by the Commission or by the Council, the Board will modify the resolution scheme (within 8 hours) to address the concerns raised. After this, the resolution scheme will be adopted and implemented by the national resolution authorities as instructed by the Board and in line with national company and insolvency law. Should a national authority not comply with a decision of the Board, the latter will be able to address executive orders directly to the troubled bank.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

Two elements of the resolution process must be noted: (1) in order to allow for resolving an ailing bank over the weekend, very tight deadlines are to be met;[54] and (2) even for the SRM - as planned for the SSM - Member States are integrated into the mechanism, being closely involved in the preparatory and implementation stage regarding banks in their jurisdiction.

3.5. Single Resolution Fund (SRF)

Within the architecture of the SRM, a Single Resolution Fund (SRF) will be created. It will be key to ensuring adequate resolution financing without drawing on public funds and for taking swift action, since it eliminates the need for protracted burden-sharing discussions for cross-border banks. In fact, a credible European resolution mechanism requires credible funding arrangements, financed *ex ante*. Otherwise the existing coordination problems in providing assistance for restructuring would persist and the link between States and banks would not be broken.

Although the SRM Regulation set up the Fund, the order by which bank contributions are raised at the national level and pooled at the EU level are detailed in accordance with an Intergovernmental Agreement (IGA) on the transfer and progressive mutualisation of those contributions into a single fund. Pursuant to the political agreement reached among the participating Member States, the target level for the Fund will be 1% of the amount of covered deposits of all banks authorised in the participating Member States. This target should be reached in eight years. Specifically, its coffers are to be filled starting from 2016. The Commission estimates the fund will eventually have €55 billion at its disposal. If a bank becomes insolvent, its shareholders and creditors are to be first in line to bear the losses before use can be made of SRF resources.

During this transitional period of eight years, the contributions collected at national level will be allocated to separate national compartments corresponding to each participating Member State. These national compartments will be subject to progressive mutualised usage - starting with 40% of these resources in the first year, continuing with 20% in the second year and adding the remaining part with a linear progression in the following six years - and will cease to exist at the end of the transition period. If there is a requirement to draw on the Fund in the transition period, the IGA lays out a funding pecking order, which should be used by the Board.

[54] Criticisms have been submitted about the actual possibility to conclude the resolution process following such a timing. See, e.g., Silvia Merler, "European Bank Resolution: Don't Try This At Home", in *Bruegel blog Analyses*, 17 January 2014, http://www.bruegel.org/nc/blog/detail/article/1228-european-bank-resolution-dont-try-this-at-home. *Contra* Alan Lemangnen, "The Criticism Levelled Against the SRM is not (Entirely) Justified", in *Natixis Flash*, No. 292 (15 April 2014), http://cib.natixis.com/flushdoc.aspx?id=76257.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

3.6. Single Resolution Board (SRB)

With a fine view it can be understood that under the SRM, the division of powers of the SRB and the national resolution authorities will broadly follow the division of supervisory powers between the ECB and the national supervisors in the context of the SSM. This means that the Board will be empowered to quickly determine what to do with distressed banks in euro area countries in the interest of stability within the Eurozone itself and of the Union as a whole. It will be recalled that it is the major banks that are in question, namely all banks directly supervised by the SSM and all cross-border banks. Properly, any Member State outside the euro area which opts to join the SSM will automatically fall also under the SRM. The national resolution authorities will resolve banks which only operate nationally and so are not subject to full ECB direct supervision. However, Member States will be allowed to opt to have the Board directly responsible for all their banks, just as the Board will be able at any time - on its own initiative, after consultation with national resolution authorities - to decide to directly exercise all the relevant powers under the Regulation in relation to any of the indirectly supervised banks. In addition, the Board will decide for all banks, including those entrusted to the national resolution authorities' supervision, if resolution involves the use of the SRF.

With specific regard to the functioning of the SRB, it will meet in two different configurations: the plenary and the executive sessions. The executive session will consist of a Chairman, a Vice Chair, four independent full-time members and two observers from the Commission and the ECB, respectively. Appropriately, contrary to the original plan, the Commission and the ECB will only have permanent observer status and not be members of the Board. This fact - with the consequent absence of voting rights - is very significant: on the one hand, the need to have the ECB, the supervisor, involved in resolution matters is fulfilled while maintaining the necessary separation between the supervisory and resolution function in the banking union; on the other hand, a possible conflict between institutional responsibilities of the European Commission is avoided, given the instrumental role it will play in the SRM and its competence in monitoring State aid.

The plenary session will also include one member appointed by each participating Member State, representing the national resolution authorities. This session not only will decide on policy issues but also will take individual resolution decisions if at least €5 billion in fund resources is to be used or if liquidity assistance of €10 billion is planned. For use of resources below these thresholds, the decision is to be made by the Executive Board.

3.7. Entry into force of the SRM

The SRM Regulation will be applicable from 1 January 2016, together with the bail-in provisions under the BRRD, with certain specific exceptions: the provisions relating to the cooperation between the Board and the national resolution authorities for the preparation of the resolution plans will apply from 1 January

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

2015, and the provisions relating to the establishment of the Board and the SRM from the entry into force.

The application of the SRM Regulation may be postponed by periods of one month if, following a report of the Board to the Commission, the Council and the European Parliament, certain objective conditions for the transfer of contributions to the SRF are not met. The Member States have made a political commitment to ratify the IGA promptly, to avoid any delay in the establishment and functioning of the SRM.[55] The date of application of the SRM will mark the beginning of the aforementioned transitional period that will end when the Fund reaches the target level or 1 January 2024, whichever is earlier.

Obviously, before the SRM and the BRRD enter into force, bank crises will continue to be managed on the basis of national regimes. However, these regimes are set to converge increasingly towards agreed principles of resolution, namely the allocation of bank losses to shareholders and creditors instead of taxpayers. This is achieved by the revised guidelines on State aid to banks adopted in July 2013. Appropriate "burden-sharing" by private investors in a bank is a condition of public support by national and European resources (including the ESM).

4. Open issues

Some thorny problems which the EU leaders will likely have to deal with in the coming months are raised at this point.

First of all, the blazing issue of the necessity for adequate funding for the SRM. As stressed on several occasions at the EU institutional level, the borrowing capacity of the Resolution Fund has been recognised. But the key element is provided by the interpretation to be given to this capacity. Some look at it as an instrument valid only for the transitional phase before reaching the maximum amount of the SRF, others as a real backstop since situations may arise where the SRF is not sufficiently funded by the banking sector even in the steady state.

According to what was reported in the official notes during the negotiation phase, the EU institutions did not seem to be clearly oriented towards the acceptance of one solution to the prejudice of the other. The European Parliament and the Council did not express a clear position on the subject but simply asked the SRB to work hard - in cooperation with the participating Member States - "to *develop ways* to enhance the borrowing capacity of the SRF."[56] In vague terms, the ECB

[55] European Commission, *A Single Resolution Mechanism for the Banking Union - frequently asked questions* (MEMO/14/295), 15 April 2014, http://europa.eu/rapid/press-release_MEMO-14-295_en.htm.

[56] Emphasis added. Council of the European Union, *Single Resolution Mechanism: Council confirms deal with EP* (8273/14 Presse 192), 27 March 2014, p. 2, http://www.consilium.europa.eu/

welcomed the "greater firepower" the SRF would have in its "early years."[57] To a certain extent, the statement issued by the European Commission on 15 April 2014 - the day when the European Parliament approved the SRM - would appear more decisive. In its statement, the Commission specified that the Fund, before being sufficiently capitalised, could if necessary levy additional funds from the banking sector. It could borrow funds on the market if decided by the SRB. A public backstop could also lend money to the Fund but the loans would be recovered from banks in the medium term. Then, the Commission pointed out that "as the fund built up and banks' capital positions improved, the need for credit from the public backstop would decrease in corresponding fashion."[58]

Actually, in order to ensure sufficient funding, it is acknowledged that the Board, in cooperation with Member States, must contract a credit line to enhance the Fund's borrowing capacity by the entry into application of the SRM Regulation. It follows that, during the initial build-up phase of the Fund, appropriate funding measures will be adopted to address circumstances in which additional resources may be necessary. The controversial aspect is therefore that the SRM Regulation does not establish a common backstop to the Fund. *During the transitional period* - it has been said loud and clear since the Statement of Eurogroup and Ecofin Ministers in December 2013 - there will be the *development* of a public backstop. It will lend money to the Fund, being ultimately reimbursed by the banking sector. To ensure a fiscally neutral mechanism, the public assistance should be so recouped by means of *ex post* levies on the financial industry.[59] However, it remains ambiguous if this backstop should exist once the Resolution Fund has been widely implemented.

Secondly, there is the recurring question of whether the public backstop - if deemed necessary - may be constituted by the ESM, as a traditional fiscal backstop for the Eurozone. On 10 June 2014, after two years of discussion, the euro area Member States reached a political agreement on the future ESM direct recapitalisation instrument (DRI), to be added to the toolkit of the ESM by the start of the SSM in November 2014. Jeroen Dijsselbloem, the President of the Eurogroup, has explained the stringent conditions to obtain financing: a bail-in of 8% of all liabilities will be a precondition for using the instrument as well as the use of the resources available in the Member State concerned, including the indirect recapitalisation of the ESM. From 1 January 2016, the bail-in in line with the rules of the BRRD will be required.[60]

uedocs/cms_data/docs/pressdata/en/ecofin/142512.pdf.

[57] European Central Bank, *Statement of the ECB on SRM Agreement*, 20 March 2014, http://www.ecb.europa.eu/press/pr/date/2014/html/pr140320.en.html.

[58] European Commission, *A Single Resolution Mechanism for the Banking Union - frequently asked questions*, cit.

[59] Eurogroup, *Statement of Eurogroup and ECOFIN Ministers on the SRM Backstop*, 18 December 2013, http://www.eurozone.europa.eu/media/502738/20131218-SRM-backstop-statement.pdf.

[60] Jeroen Dijsselbloem, *Statement by the President of the Eurogroup - ESM Direct Recapitalisation Instrument*, 10 June 2014, http://www.eurozone.europa.eu/media/533095/20140610-eurogroup-president-direct-recapitalisation.pdf.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3 © 2014 IAI

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

This achievement has however not been exempt from criticism: few days after the announcement, the IMF declared that "while the proposal for ESM direct recapitalization is a step in the right direction, as currently envisaged, the thresholds for such support are too high."[61] Going deeper into the matter, it must be clarified that the ability to leverage the ESM as a public backstop would not be conceivable. Relevant EU legislation would, in fact, show that the DRI would be applicable to systemically relevant credit institutions, financial holding companies (i.e., financial institutions with subsidiaries that are exclusively or mainly financial institutions) and mixed financial holding companies (i.e., parent entities, which together with subsidiaries constitute a financial conglomerate), who are subjects different from those to whom the SRM will apply. Furthermore, the ESM is meant to provide loans only to Eurozone states, while the SRM and the whole banking union are designed to be open also to non-euro area Member States willing to join it.

Turning to what has been planned as the third pillar of the banking union, namely a centralised deposit insurance scheme applicable to the 18 countries of the Eurozone, it seems that the project has meanwhile been postponed, so changes are not expected to occur in the short run. Although the creation of this important component would be desirable for a successful banking union, a new Directive on Deposit Guarantee Schemes (DGS) - the original DGS was adopted in 1994 - will actually benefit all EU citizens. In a perspective this choice may be considered "appropriate" since it ensures that there will be no differences in the level of protection across the EU (deposits will be covered up to €100,000 per depositor per bank in all Member States and backed by funds to be collected in advance from the banking sector to the extent of 0.8% of covered deposits to be met in ten years). In addition, depositors will access the guaranteed amount more easily and quickly (repayment deadlines will be gradually reduced from the current 20 working days to 7 working days in 2024).

The way forward

"In the euro area we have a single monetary policy, but our economic and financial policies are only loosely coordinated. This is because the euro area is a union of nation-states with strong national traditions and preferences. While there was sufficient consensus to share a currency, economic and financial policies remained organised largely at the national level."[62] With this statement, in September 2012, the ECB President received the M100 Media Award 2012. In his remarks Mario Draghi highlighted the weaknesses of the EMU's model designed in Maastricht and substantially confirmed in Lisbon.

[61] International Monetary Fund, *2014 Article IV Consultation with the Euro Area Concluding Statement of the IMF Mission*, 19 June 2014, http://www.imf.org/external/np/ms/2014/061914.htm.

[62] Mario Draghi, *Remarks on Receiving the M100 Media Award 2012*, Potsdam, 6 September 2012, http://www.ecb.europa.eu/press/key/date/2012/html/sp120906.en.html.

In the specific area of banking system, divergences between national supervision rules in different Member States, on the one hand, and lack of a unified decision-making process for resolution able to ensure predictability as to the possible outcome of a bank failure, on the other, have undermined public confidence in the banking sector and obstructed the exercise of fundamental freedoms - the freedom of establishment (Art. 49 TFEU) and the free provisions of services (Art. 56 TFEU) - in this way distorting competition in the internal market. All this at the expense of the economic growth of the EU as a whole.

It is encouraging that since the second half of 2012 remarkable progress has been made. As shown, the EU has lived up to its commitments to tackle a tricky situation which became even more visible due to the crisis as well as being worsened by the crisis: the idea of a banking union has been turned into reality in less than two years. It is nevertheless true that European integration has always gone ahead imperfectly and then has been refined when necessary, in accordance with the functionalist method of successive stages. This logic of small steps has been followed once again with the banking union, as the extent and severity of the crisis in many European countries have threatened the cohesion of the euro area. Reacting to the pressure of events may seem unattractive, but it may also be the only way forward.

Not by chance, it must be recalled that the launch of the SSM was a consequence of the decision that the ESM could directly recapitalise weak banks. It was only later that the concept of a fully fledged banking union emerged, also containing an SRM and a possible Deposit Guarantee Scheme. That said, the ongoing process to build a banking union can be certainly regarded as the most far-reaching reform since the creation of the euro. In that sense, it would identify an additional check mark towards a genuine EMU, thus ensuring long-term financial and economic stability and reducing the potential public cost of possible future economic and financial crises. Significant steps have been taken with the objective of establishing a safe, stable and efficient banking system serving the EU economy, the Single Market and the needs of citizens.

However, the long and winding road towards the implementation of the banking union has not yet ended and further reform efforts are appropriately part of the journey. On the ground of a common backstop, what is interesting to illustrate here is that - as already stated at the EU institutional level - the need for it would decrease gradually with the construction of the Resolution Fund. Nonetheless, this is not to indicate that the existence of a common backstop for the Fund would not be essential also in the steady state. On the contrary, it would be highly advisable, used when needed as a last resort. Basically, it can be argued that the Resolution Fund is a suitable defensive line in isolated accidents that may occur. But, as can be inferred from the experiences of recent years, systemic crises require a greater commitment: such a fund can definitely represent a kind of first-aid kit to handle losses and costs, but the intervention of a credible fiscal backstop remains vital. Moreover, it would be actually possible to allow the ESM to act as an effective backstop to the SRF with an appropriate amendment - *rectius*, an extension - to the ESM Treaty, which takes into account the above considerations.

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

To conclude, undoubtedly all the reforms implemented to date are very significant and appreciable, and would likely not have been undertaken without the crisis. Nevertheless, it is also indisputable that financial integration is an ongoing process. Therefore, prospects are for a uphill path, in which achieving victory over complexity is entrusted mainly to a series of concrete actions performed in the pursuit of decisive and far-sighted reforms and, in essence, to the effectiveness of the intention to realise the "European dream."

Updated 15 October 2014

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

References

Jörg Asmussen, *Banking Union - Essential for the Ins, Desirable for the Outs!*, Speech at the Danske Bank Financial Forum 2013, Stockholm, 5 November 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp131105.en.html

Lieven Baele et al., “Measuring Financial Integration in the Euro Area”, in *ECB Occasional Paper Series*, No. 14 (April 2004), https://www.ecb.europa.eu/pub/pdf/scpops/ecbocp14.pdf

Laura Bartiloro et al., “L’accesso al credito in tempo di crisi: le misure di sostegno a imprese e famiglie”, in *Questioni di economia e finanza*, n. 111 (gennaio 2012), https://www.bancaditalia.it/pubblicazioni/econo/quest_ecofin_2/QF_111

Benoît Cœuré, *Completing the Single Market in Capital*, Speech at ICMA Capital Market Lecture Series 2014, Paris, 19 May 2014, http://www.ecb.europa.eu/press/key/date/2014/html/sp140519_1.en.html

Benoît Cœuré, *Monetary Policy and Banking Supervision*, Speech at the Symposium “Central Banking: Where Are We Headed?”, Goethe University, Frankfurt, 7 February 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp130207.en.html

Vítor Constâncio, *Banking Union and European Integration*, Speech at the OeNB Economics Conference, Vienna, 12 May 2014, https://www.ecb.europa.eu/press/key/date/2014/html/sp140512.en.html.

Vítor Constâncio, *Banking Union and the Future of Banking*, Speech at the IIEA Conference on “The Future of Banking in Europe”, Dublin, 2 December 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp131202.en.html

Vítor Constâncio, *Towards a European Banking Union*, Lecture held at the start of the academic year of the Duisenberg School of Finance, Amsterdam, 7 September 2012, https://www.ecb.europa.eu/press/key/date/2012/html/sp120907.en.html

Council of the European Union, *Regulation (EU) No. 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions*, 15 October 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R1024

Council of the European Union, *Single Resolution Mechanism: Council confirms deal with EP* (8273/14 Presse 192), 27 March 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/142512.pdf

Jeroen Dijsselbloem, *Statement by the President of the Eurogroup - ESM Direct Recapitalisation Instrument*, 10 June 2014, http://www.eurozone.europa.eu/media/533095/20140610-eurogroup-president-direct-recapitalisation.pdf

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

Antonio Di Marco, "Il controllo delle banche nell'UEM: la (problematica) nascita di un sistema integrato di vigilanza prudenziale", in *Il diritto dell'Unione europea*, vol. 18, n. 3 (2013), p. 549-592

Mario Draghi, *Remarks on Receiving the M100 Media Award 2012*, Potsdam, 6 September 2012, http://www.ecb.europa.eu/press/key/date/2012/html/sp120906.en.html

Mario Draghi, *Welcome Remarks at the ECB-EC Conference on Financial Integration and Stability*, Speech at the ECB-EC Conference on "Financial Integration and Stability: Towards a More Resilient Single Financial Market", Frankfurt am Main, 26 April 2012, http://www.ecb.europa.eu/press/key/date/2012/html/sp120426.en.html

Douglas J. Elliott, "Key Issues on European Banking Union. Trade-offs and Some Recommendations", in *Global Economy & Development Working Papers*, No. 52 (November 2012), http://brook.gs/1vcbfGZ

Eurogroup, *Eurogroup Statement on the follow-up of the 29 June Euro Summit*, 9 July 2012, http://www.eurozone.europa.eu/media/367854/eg_statement_9_july_2012_final.pdf

Eurogroup, *Statement of Eurogroup and ECOFIN Ministers on the SRM Backstop*, 18 December 2013, http://www.eurozone.europa.eu/media/502738/20131218-SRM-backstop-statement.pdf

European Central Bank, *Asset Quality Review. Phase 2 Manual*, Frankfurt am Main, ECB, March 2014, https://www.ecb.europa.eu/press/pr/date/2014/html/pr140311.en.html

European Central Bank, *Comprehensive Assessment Stress Test Manual*, Frankfurt am Main, ECB, August 2014, https://www.ecb.europa.eu/press/pr/date/2014/html/pr140808.en.html

European Central Bank, *ECB starts comprehensive assessment in advance of supervisory role*, 23 October 2013, http://www.ecb.europa.eu/press/pr/date/2013/html/pr131023.en.html

European Central Bank, *The list of significant supervised entities and the list of less significant institutions*, updated 4 September 2014, https://www.ecb.europa.eu/ssm/list

European Central Bank, *Opinion on a proposal for a Council regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions and a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010* *establishing a European Supervisory Authority (European Banking Authority)* (CON/2012/96), 27 November 2012, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012AB0096

European Central Bank, *Statement of the ECB on SRM Agreement*, 20 March 2014, http://www.ecb.europa.eu/press/pr/date/2014/html/pr140320.en.html.

European Commission, *Action for Stability, Growth and Jobs* (COM(2012)299), 30 May 2012, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0299

European Commission, *A blueprint for a deep and genuine economic and monetary union Launching a European Debate* (COM(2012)777/2), 30 November 2012, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0777R(01)

European Commission, *Proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions* (COM(2012)511), 12 September 2012, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012PC0511

European Commission, *Proposal for a Directive on Deposit Guarantee Schemes* (COM(2010)368), 12 July 2010, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52010PC0368

European Commission, *Proposal for a Regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund* ... (COM(2013)520), 10 July 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013PC0520

European Commission, *A Roadmap towards a Banking Union* (COM(2012)510), 12 September 2012, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0510

European Commission, *A Single Resolution Mechanism for the Banking Union - frequently asked questions*, (MEMO/14/295), 15 April 2014, http://europa.eu/rapid/press-release_MEMO-14-295_en.htm

European Council, *Conclusions of 18/19 October 2012* (EUCO 156/12), 19 October 2012, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/133004.pdf

European Council, *Conclusions of 19/20 December 2013* (EUCO 217/13), 20 December 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140245.pdf

European Council, *Euro Area Summit Statement*, Brussels, 29 June 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

European Parliament and Council, *Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment* ..., 26 June 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0036

European Parliament and Council, *Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms* ..., 26 June 2013, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R0575

European Parliament and Council, *Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund* ..., 15 July 2014, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32014R0806

International Monetary Fund, *2014 Article IV Consultation with the Euro Area Concluding Statement of the IMF Mission*, 19 June 2014, http://www.imf.org/external/np/ms/2014/061914.htm

Italian Government, *Europe, a fresh start*, Programme of the Italian Presidency of the Council of the European Union, 1 July-31 December 2014, http://italia2014.eu/media/1349/programma_en1_def.pdf

Jacques de Larosière (ed.), *Report of the High-Level Group on Financial Supervision in the EU*, 25 February 2009, http://ec.europa.eu/economy_finance/publications/publication14527_en.pdf

Alan Lemangnen, "The Criticism Levelled Against the SRM is not (Entirely) Justified", in *Natixis Flash*, No. 292 (15 April 2014), http://cib.natixis.com/flushdoc.aspx?id=76257

Marco Mancini, "Dalla vigilanza nazionale armonizzata alla Banking Union", in *Quaderni di ricerca giuridica*, n. 73 (settembre 2013), http://www.bancaditalia.it/pubblicazioni/quarigi/qeg_73/qrg_73

Silvia Merler, "European Bank Resolution: Don't Try This At Home", in *Bruegel blog Analyses*, 17 January 2014, http://www.bruegel.org/nc/blog/detail/article/1228-european-bank-resolution-dont-try-this-at-home

Yves Mersch, *The Banking Union - a European Perspective: Reasons, Benefits and Challenges of the Banking Union*, Speech at the Seminar "Auf dem Weg zu mehr Stabilität - Ein Dialog über die Ausgestaltung der Bankenunion zwischen Wissenschaft und Praxis", Berlin, 5 April 2013, https://www.ecb.europa.eu/press/key/date/2013/html/sp130405.en.html

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

Giulio Napolitano, "La risposta europea alla crisi del debito sovrano: il rafforzamento dell'Unione economica e monetaria. Verso l'Unione bancaria", in *Banca, borsa, titoli di credito*, vol. 65, n. 6 (2012), p. 747-765

Jean Pisani-Ferry, "The Known Unknowns and the Unknown Unknowns of the EMU", in *Bruegel Policy Contributions*, No. 2012/18 (October 2012), http://www.bruegel.org/publications/publication-detail/publication/756-the-known-unknowns-and-the-unknown-unknowns-of-the-emu

Dirk Schoenmaker, "The Financial Trilemma", in *Economics Letters*, Vol. 111, No. 1 (April 2011), p. 57-59, http://personal.vu.nl/d.schoenmaker/Financial_Trilemma.pdf

Gian Luigi Tosato, "L'integrazione europea ai tempi della crisi dell'Euro", in *Rivista di diritto internazionale*, vol. 95, n. 3 (2012), p. 681-703, http://www.sidi-isil.org/wp-content/uploads/2012/04/Internazionale-3-12.pdf

Herman Van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, 26 June 2012, http://ec.europa.eu/economy_finance/crisis/documents/131201_en.pdf

Herman Van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, 5 December 2012, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

IAI WORKING PAPERS 14 | 11 - OCTOBER 2014 ISSN 2280-4341 | ISBN 978-88-98650-16-3

Istituto Affari Internazionali (IAI)
Founded by Altiero Spinelli in 1965, does research in the fields of foreign policy, political economy and international security. A non-profit organisation, the IAI aims to further and disseminate knowledge through research studies, conferences and publications. To that end, it cooperates with other research institutes, universities and foundations in Italy and abroad and is a member of various international networks. More specifically, the main research sectors are: European institutions and policies; Italian foreign policy; trends in the global economy and internationalisation processes in Italy; the Mediterranean and the Middle East; defence economy and policy; and transatlantic relations. The IAI publishes an English-language quarterly (The International Spectator), an online webzine (AffarInternazionali), two series of research papers (Quaderni IAI and IAI Research Papers) and other papers' series related to IAI research projects.

Via Angelo Brunetti, 9 - I-00186 Rome, Italy
T +39 06 3224360
F + 39 06 3224363
iai@iai.it
www.iai.it

Latest IAI WORKING PAPERS

14 | 11	Giulia Rosa Maria Cavallo, *European Banking Union: An Immediate Tool for Euro Crisis Management and a Long-Term Project for the Single Market*
14 | 10	Kristina Kausch, *Competitive Multipolarity in the Middle East*
14 | 09	Eduard Soler i Lecha, *The Future of Multilateral Security Dialogue in the Mediterranean: Lessons Learnt, Opportunities and Choices*
14 | 08	Neera Chandhoke, *India 2014: Return of the One-Party Dominant System*
14 | 07	David Koranyi, *The Southern Gas Corridor: Europe's Lifeline?*
14 | 06	Ariel Cohen, *Caspian Gas, TANAP and TAP in Europe's Energy Security*
14 | 05	Elif Burcu Günaydın, *Turkey's Potential Role in the Emerging South-Eastern Mediterranean Energy Corridor*
14 | 04	Şaban Kardaş, *The Turkey-Azerbaijan Energy Partnership in the Context of the Southern Corridor*
14 | 03	Nona Mikhelidze, *Second Revolution on Euromaidan: What Next for Ukraine?*
14 | 02	Olgu Okumuş, *Erbil Sends Oil, Ankara Gets Trouble*