

Binder / Gortsos

The European Banking Union

A Compendium

C.H.BECK · Hart · Nomos

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by

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Preface

The creation of the European Banking Union is clearly the most significant step towards financial integration in Europe since the creation of the Monetary Union. With the Single Supervisory Mechanism as the new architecture for the prudential supervision of significant credit institutions in Europe and the Single Resolution Mechanism as the corresponding framework for centralised decision-making in the area of bank resolution, Eurozone Member States have agreed to transfer responsibilities and powers to the supranational level at an unprecedented scale. With the ECB assuming its powers as sole supervisor for significant credit institutions and groups of such institutions in the Eurozone (at least) and the Single Resolution Board expected to become in 2016 fully operational as a single resolution authority, the new regime is bringing about substantial changes to the way credit institutions are being supervised, and ultimately resolved (if needed), in Europe.

The long-term effects in terms of both further market integration and preservation of financial stability both within the Eurozone and within the EU as a whole are likely to be enormous. Nevertheless, this also applies to the range of yet unresolved questions with regard to the practical viability of the new regime, the cooperation between the EU authorities and national agencies, and the relationship between the Banking Union and the remainder of the EU as a whole (to name but a few areas of concern).

As the supervisory arrangements and practices are yet unfolding, both authorities (at the EU and the national levels) and the industry are grappling with a vast number of problems regarding the application and interpretation of the underlying legal provisions. Reflecting its origins in the wave of post-fiscal euro area crisis emergency legislation, the legal basis has evolved in a rather complex, haphazard way and should be regarded as a result of manifold political compromises rather than optimal institutional design. The Banking Union was created within the existing legal and institutional environment as created by the Treaty on European Union and the Treaty on the Functioning of the European Union and notably without any single amendment to these Treaties.

The legal foundations are thus to be found not in primary but in a rather complex array of instruments in secondary EU law, the most fundamental being the *SSM Regulation* (Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions) and the *SRM Regulation* (Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 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). These two Regulations have been supplemented with an Intergovernmental Agreement

(on the transfer and mutualisation of contributions to the Single Resolution Fund), as well as with a considerable number of delegated legal acts, decisions and other legal instruments (mainly of the European Central Bank), all of which jointly constitute the legal basis for the creation and the day-to-day operations of centralised banking supervision and resolution within the Eurozone.

This Compendium seeks to introduce this new framework and the underlying legal instruments in a systematic and transparent form. Two introductory chapters – on the evolution of the Banking Union concept as well as the underlying policy considerations and on the institutional setup, respectively – provide readers with the relevant background. A comprehensive bibliography then follows, listing the relevant literature (as of summer 2015) for further reference. Finally, the relevant legal instruments are reprinted, arranged a systematic way.

It is our hope that this collection of texts will prove a useful source of information for readers in supervisory agencies, the regulated industry, academia, and other interested circles.

Tuebingen and Athens, September 2015

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List of Abbreviations

BRRD	Bank Recovery and Resolution Directive
CRD IV	Capital Requirements Directive
CRR	Capital Requirements Regulation
DGS	deposit guarantee scheme
DGSD	Deposit Guarantee Schemes Directive
EBA	European Banking Authority
ECB	European Central Bank
ESCB	European System of Central Banks
ESFS	European System of Financial Supervision
ESRB	European Systemic Risk Board
EU	European Union
JST	joint supervisory team
SSM	Single Supervisory Mechanism
SSMR	Single Supervisory Mechanism Regulation
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

