CHAPTER 4

The Establishment of the (European) Banking Union

4.1 The Birth of the Banking Union as a Response to the Ongoing Fiscal Crisis in the Euro Area

4.1.1 The Political Decisions of June 2012 and the Commission's Initiatives

(1) Amidst the ongoing fiscal crisis in the euro area, which became manifest in 2010, the initiative to create the (European) Banking Union [hereinafter the 'BU', also referred to frequently by this author as well as the 'EBU'] was introduced in the Report submitted on 26 June 2012 by the (then) President of the European Council, Herman Van Rompuy, entitled "Towards a Genuine Economic and Monetary Union" (the so-called Van Rompuy Report).[1] One of the four elements of this report was the creation of "an integrated financial framework".[2] The creation of the BU was tabled immediately afterwards, at the Euro Area Summit of 29 June 2012, which included a phrase summarising the main rationale behind this initiative in its statement: "We affirm that it is imperative to break the vicious circle between

[1] Available at: https://www.consilium.europa.eu/media/33785/131201.pdf.

[2] The other three elements were setting up an integrated budgetary framework ('European Fiscal Union'), an integrated economic policy framework ('European Economic Union') and a democratic legitimacy and accountability framework ('European Political Union').

C. V. Gortsos, *European Central Banking Law*, Palgrave Macmillan Studies in Banking and Financial Institutions,
https://doi.org/10.1007/978-3-030-34564-8_4

banks and sovereigns."[3] The European Summit which was held concurrently on 28 and 29 June invited the President of the European Council to develop, in close collaboration with José Manuel Barroso, President of the Commission, Jean-Claude Juncker, President of the Eurogroup and Mario Draghi, President of the European Central Bank (ECB), a specific and time-bound roadmap for the achievement of a genuine Economic and Monetary Union (EMU), in accordance with the Van Rompuy Report. This roadmap took the form of a Report, entitled "Towards a Genuine Economic and Monetary Union" (the 'Four Presidents' Report), published on 5 December 2012.[4]

(2) Against this political background, the Commission issued on 12 September 2012 an announcement regarding "A Roadmap for a Banking Union", a proposal for a Council Regulation "conferring specific tasks on the [ECB] 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 [the EBA] Regulation (…) as regards its interaction with [the above-mentioned] Council Regulation (…)".[5] In its Announcement the Commission called on the European Parliament and the Council to reach agreement by end-2012 on the two above-mentioned Regulation proposals, as a first step towards the creation of the BU. It also called upon them to approve, also by end-2012, the proposals for the Regulations and Directives on amending the applicable regulatory framework on micro-prudential banking regulation, and setting up a new regulatory framework on macro-prudential banking regulation, establishing pan-European rules on the recovery and resolution of unviable credit institutions (and investment firms), and amending the existing regulatory framework on deposit guarantee schemes (DGSs). Finally, it should examine, in the medium term, how to shape the conditions for the establishment of a supranational entity for the resolution of unviable credit institutions, a supranational resolution fund for covering

[3] Euro Area Summit Statement, 29 June 2012, first paragraph, first sentence, available at: https://consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf. For a historical perspective on the 'vicious circles' (also called 'vicious cycles', 'diabolic loops' or 'doom loops') between the banking sector and sovereign bond markets, see Mitchener (2014).

[4] Available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134069.pdf.

[5] COM(2012) 510 final, 511 final and 512 final, respectively.

funding gaps, provided that a decision were to be made in favour of the resolution of an unviable credit institution, and a supranational deposit guarantee scheme, allowing the completion of the BU.

(3) On the basis of this political agenda, the establishment of the BU should create a 'Europeanised bank safety net' consisting of three main pillars:[6] first, a Single Supervisory Mechanism (SSM) exclusively for the banking sector (i.e. not for the insurance and securities sectors) and mainly for credit institutions incorporated in euro area Member States, with regard to their micro-prudential supervision (the 'first pillar'); second, a Single Resolution Mechanism (SRM) for unviable credit institutions (also mainly incorporated in euro area Member States) and a Single Resolution Fund (SRF), provided that a decision were to be made on the resolution of such credit institutions (the 'second pillar'); and third, a single deposit guarantee scheme, which coupled with the Single Resolution Board (a part of the SRM), could form a 'European Deposit Insurance and Resolution Authority' (EDIRA) (the 'third pillar').

(4) These pillars should be premised on a 'single rulebook'[7] containing substantive rules on all previous aspects as part of the single market for financial services[8] and developed either by the EU institutions [legislative acts under Article 289 Treaty on the Functioning of the European Union TFEU)] or by the EU institutions with the direct involvement of and contribution of the EBA (delegated and implementing acts in accordance with Articles 290–291 TFEU).[9]

[6] For arguments for or against establishing the Banking Union, see indicatively (out of a vast existing literature) Eijffinger and Nijskens (2012), Louis (2012), Beck (2012), Bofinger et al. (2012), Carmassi et al. (2012), House of Lords (2012), Pisani-Ferry et al. (2012), Schoenmaker (2012), Sibert (2012), Wyplosz (2012), Goyal et al. (2013) and Herring (2013). On various aspects of the functioning of the BU, see also the contributions in Allen et al. (2013, 2014, 2015).

[7] This term is used to refer to the total harmonisation of rules pertaining to the prudential regulation and supervision of financial firms and was first introduced in June 2009, when the European Council called for the establishment of a "European single rulebook applicable to all financial institutions in the Single Market" (11225/2/09 REV 2, paragraph 20, available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf). For a detailed analysis on the single rulebook, see Lefterov (2015).

[8] On the link between the BU and the single market, see Lastra (2013), Binder (2016), pp. 13–15, and Alexander (2016), pp. 258–260.

[9] On Articles 289–291 TFEU, see Appendix of Chap. 5.

4.1.2 *Legislative Actions—The New Institutional and Regulatory Framework*

The First Wave of Measures

(1) The most significant institutional and regulatory developments towards establishing the BU took place during 2013–2014. Taking into account the normal response time of European institutions, these legislative measures were taken, based on proposals by the Commission, in an exceptionally short amount of time. Except for the single deposit insurance scheme, the other components are in place.[10] It is noted that the BU agenda does not include, so far at least, the centralisation of last-resort lending, which Lastra and Goodhart (2015) correctly consider to be the "missing fourth pillar of the banking union", since the role of the ECB within the "Emergency Liquidity Assistance Mechanism" is still limited.[11]

(2) The pillars of the BU, notably the new EU mechanisms and funds, are "children" of the ongoing fiscal crisis in the euro area and are designed to apply mainly (albeit not exclusively) to the euro-area Member States.[12] On the other hand, the legislative acts which constitute the main corpus of the single rulebook are "children" of the recent international financial crisis. In particular, those on the prudential regulation and supervision of credit institutions and on DGSs repealed pre-existing legislation in those two issue areas, while that on the resolution of credit institutions introduced for the first time such a regime—all of them under the influence,

[10] For a general overview and assessment of the legal framework on the BU, see indicatively Binder (2013), Moloney (2014), various contributions in Castaneda et al. (2015, editors), Lastra (2015), pp. 355–382, the contributions of the co-authors in Binder and Gortsos (2016) and individual contributions in Busch and Ferrarini (2015, editors) and Chiti and Santoro (2019, editors). On the specific aspect of how the BU framework also impacts on private law relationships (duties), see Grundmann (2015). On extending the framework governing single supervision and resolution also to systemically important non-bank EU financial institutions, see Busch and van Rijn (2017) and (in relation to resolution) Binder (2019).

[11] Lastra and Goodhart (2015), p. 16. The three main pillars of the BU and the related single rulebook are presented, in turn, in Sects. 4.2–4.4. Table 4.1 summarises the key legal sources thereof and Table 4.2 the addressees of and the dates by which the main provisions are applicable. Table 4.3 presents the content of EU banking law before and after the establishment of the BU, denoting the elements of continuity and change. On the ELA, see Chap. 9, Sect. 9.3.

[12] On the potential application of the BU on Member States with a derogation under the so-called close cooperation procedure, see Chap. 5, Sect. 5.2.5.

Table 4.1 The key legal sources of the Banking Union

	Prudential supervision and regulation of credit institutions	*Resolution of non-viable credit institutions*	*Deposit guarantee schemes*
European 'Single Mechanisms'	Single Supervisory Mechanism: Council Regulation (EU) No 1024/2013 ('SSM Regulation') ECB Regulation (EU) No 468/2014 ('SSM Framework Regulation') Other ECB legal acts	Single Resolution Mechanism and Fund: Regulation (EU) No 806/2014 of the European Parliament and of the Council ('SRM Regulation'), and Commission's delegated and implementing acts Intergovernmental Agreement (2014) ('SRF')	Proposal for a Regulation of the European Parliament and of the Council "amending Regulation EU No 806/2014 in order to establish an 'EDIS'"
Harmonisation of substantive rules ('single rulebook')	Regulation (EU) No 575/2013 of the European Parliament and of the Council ('CRR'), and Commission's delegated and implementing acts Directive 2013/36/EU of the European Parliament and of the Council ('CRD IV'), and Commission's delegated and implementing acts	Directive 2014/59/EU of the European Parliament and of the Council ('BRRD'), and Commission's delegated and implementing acts	Directive 2014/49/EU of the European Parliament and of the Council, and a Commission's delegated act ('DGSD')

to a higher or lower degree, from developments in public international banking law after that crisis.[13] The single rulebook, adopted by the European Parliament and the EcoFin Council and further fleshed out by the Commission and the EBA, is applicable across all EU Member States; it forms part of the single market for financial services and is based on a 'total harmonisation approach'.

[13] See Chap. 3, Sect. 3.2.3.

Table 4.2 Addressees of and date by which the main provisions of the key legal sources pertaining to the Banking Union are applicable

Legal act	*Addressees*	*Date of start of (full) application*
A. Authorisation—prudential supervision—prudential regulation		
Regulation (EU) No 1024/2013 ('SSM Regulation')	19+ Member States	4 November 2014
ECB 'SSM Framework Regulation'	19+ Member States	15 May 2014
Regulation 575/2013 ('CRR')	28 Member States	1 January 2014
Directive 2013/36/EU ('CRD IV')	28 Member States	1 January 2014
B. Recovery and resolution		
Regulation (EU) No 806/2014 ('SRM Regulation')	19+ Member States	1 January 2016
Intergovernmental Agreement on the 'SRF'	19+ Member States	1 January 2016 (upon ratification by contracting parties)
Directive 2014/59/EU ('BRRD')	28 Member States	1 January 2015
C. Deposit guarantee		
Directive 2014/49/EU on deposit guarantee schemes	28 Member States	4 July 2015

The Commission's Most Recent Reform Agenda: A General Overview

(1) The legal framework governing the BU and (mainly) the underlying single rulebook is currently under (partial) amendment. On 23 November 2016, the Commission tabled, on the basis of its Communication of 24 November 2015 "Towards the completion of the Banking Union",[14] a legislative 'banking package' concerning the amendment of several aspects of the SRMR, the Bank Recovery and Resolution Directive (BRRD), the Capital Requirements Regulation (CRR) and the Capital Requirements Directive No IV (CRD IV) with a view to reducing risks in the financial system and further strengthening the resilience of EU credit institutions. The components of this package have gradually already been adopted and are briefly presented below, as appropriate.

(2) The Commission Communication of 11 October 2017 "On completing the Banking Union",[15] which is broadly based on the conclusions of its Reflection Paper "on the deepening of the economic and monetary

[14] COM(2015) 587 final.
[15] COM(2017) 592 final.

Table 4.3 European (EU) banking law before and after the Banking Union: Elements of continuity and change

Financial policy instruments	*Institutions/rules*	
A. Prudential requirements		
	Until 31 December 2013	By 2014 (gradually) (italics denote change or new element)
1. Authorisation and micro-prudential supervision of credit institutions	National supervisory authorities Minimum harmonisation of rules (Directive 2006/48/EC)	Single Supervisory Mechanism ('SSM Regulation') (for euro area +) NCAs (for Member States with a derogation) Single rulebook ('CRD IV') (for all Member States)
2. Micro- and macro-prudential regulation of credit institutions	Minimum harmonisation of rules (Directives 2006/48/EC and 2006/49/EC)	Single rulebook ('CRR' and 'CRD IV') (for all Member States)
3. Evaluation of recovery plans	–	Single Supervisory Mechanism ('SSM Regulation') (for euro area +) NCAs (for Member States with a derogation) Single rulebook ('BRRD')
4. Resolution planning	–	Single Resolution Mechanism ('SRM Regulation') (for euro area +) NRAs (for Member States with a derogation) Single rulebook ('BRRD')
5. Macro-prudential oversight of the financial system	European Systemic Risk Board	European Systemic Risk Board
B. Crisis prevention		
	Until 31 December 2013	By 2014 (gradually) (italics denote change or new element)
1. Adoption of 'alternative measures' within the framework of recovery plan evaluation	–	Single Supervisory Mechanism ('SSM Regulation') (for euro area +) NCAs (for Member States with a derogation) Single rulebook ('BRRD')

(*continued*)

Table 4.3 (continued)

Financial policy instruments	*Institutions/rules*	
2. Repair or removal of impediments to resolvability	–	Single Resolution Mechanism ('SRM Regulation') (for euro area +) NRAs (for Member States with a derogation) Single rulebook ('BRRD')
3. Early intervention—special administrator	–	Single Supervisory Mechanism ('SSM Regulation') (for euro area +) NCAs (for Member States with a derogation) Single rulebook ('BRRD')
4. Write-down and conversion (without bail-in)	–	Single Resolution Mechanism ('SRM Regulation') (for euro area +) NRAs (for Member States with a derogation) Single rulebook ('BRRD')
C. Crisis management		
	Until 31 December 2013	By 2014 (gradually) (italics denote change or new element)
1. Reorganisation of credit institutions	National authorities (Directive 2001/24/EC) No harmonisation of rules	National authorities (Directive 2001/24/EC) No harmonisation of rules
2. Winding up of credit institutions	National authorities (Directive 2001/24/EC) No harmonisation of rules	National authorities (Directive 2001/24/EC) No harmonisation of rules
3. Deposit guarantee schemes	National schemes Minimum harmonisation of rules (Directive 94/19/EC)	From national schemes to the EDIS (proposal) Single rulebook (Directive 2014/49/EU) (for all Member States)
4. Resolution of credit institutions	–	Single Resolution Mechanism ('SRM Regulation') (for euro area +) NRAs (for Member States with a derogation) Single Resolution Fund (Intergovernmental Agreement) (for euro area +) Single rulebook ('BRRD') (for all Member States)

(*continued*)

Table 4.3 (continued)

Financial policy instruments	*Institutions/rules*	
5. Provision of state subsidies to systemically important credit institutions	Member States Indirectly the ESM	Member States Indirectly the ESM Directly the ESM ('DRI')
6. Last-resort lending to solvent but illiquid credit institutions	National central banks [Emergency Liquidity Assistance (ELA) in the euro area]	National central banks [Emergency Liquidity Assistance (ELA) in the euro area]

Table 4.4 Key Reports and Commission Communications relating to the Banking Union

Date	*Report/communication*
26 June 2012	'Van Rompuy' Report "Towards a Genuine Economic and Monetary Union"
5 December 2012	'Four Presidents' Report "Towards a Genuine Economic and Monetary Union"
22 June 2015	'Five Presidents' Report' "Completing Europe's Economic and Monetary Union"
21 October 2015	Commission Communication "On steps towards Completing Economic and Monetary Union"
24 November 2015	Commission Communication "Towards the completion of the Banking Union" (the basis of the 2016 legislative 'banking package')
31 May 2017	Commission Reflection Paper "on the deepening of the economic and monetary union" of 31 May 2017 (the 'EMU reflection paper')
20 September 2017	Commission Communication "Reinforcing integrated supervision to strengthen Capital Markets Union and financial integration in a changing environment"
11 October 2017	Commission Communication "On completing the Banking Union"
6 December 2017	Commission Communication "Further steps towards completing Europe's Economic and Monetary Union: A roadmap"

union" of 31 May 2017[16] (the 'EMU reflection paper') (as well as in previous documents submitted by the Council and by the Commission), laid down in this respect the following six priorities, which can be categorised in two groups.

[16] Available at: https://ec.europa.eu/commission/publications/reflection-paper-deepening-economic-and-monetary-union_en.

The first group contains 'risk reduction' measures, including the following: the (quick) adoption of the 2016 legislative 'banking package', the creation of sovereign bond-backed securities (the 'SBBSs'), the undertaking of actions to address non-performing loans, in accordance with the Council Action Plan "on Non-Performing Loans" of July 2017,[17] and the sustained attempt to ensure high-quality supervision (see the concluding remarks). The initiative to introduce the 'SBBSs' can be viewed as a by-product of the need to overcome in a smooth manner a major 'regulatory failure' linked to the provisions of the CRR, which stipulate, in relation to the calculation of capital requirements for credit risk (mainly under the 'standardised approach',[18] still used by several less sophisticated credit institutions), that claims on Member State governments, if denominated in the local currency, have a 0% risk weight.[19] In this respect, on 24 May 2018 the Commission submitted a Proposal for a Regulation of the European Parliament and the Council on sovereign bond-backed securities[20] aiming to establish a "general framework" for SBBSs in the EU.

[17] Its conclusions are available at: https://www.consilium.europa.eu/en/press/press-releases/2017/07/11/conclusions-non-performing-loans. The Commission's proposals are laid down in pp. 17–18 of its Communication of 11 October 2017. Developments on this field are constant; for a detailed overview, see Montanaro (2019).

[18] For the calculation of their capital requirements in accordance with the (alternative) 'internal ratings-based approach', credit institutions must take into account four specific parameters for each exposure: a borrower's probability of default (the 'PD'); loss given default (the 'LGD'), which refers to the calculation of a bank's (average) expected loss per claim (a function of accepted collateral) in the event of a borrower's inability to meet liabilities (a concept which incorporates capital losses, loss of interest income and operating expenses); exposure at default (the 'EAD'); and the loan contract's maturity (see Gleeson (2010), pp. 75–77).

[19] For an analytical study of this case, see European Systemic Risk Board (2015). On the same aspect from a global point of view, see the discussion paper of the Basel Committee of 7 December 2017 on the "Regulatory treatment of sovereign exposures" (available at: https://www.bis.org/bcbs/publ/d425.htm). The experience from the 'voluntary' haircut on Greek government bonds under the Private Sector Involvement (the 'PSI'), which resulted in Greek credit institutions suffering extremely severe losses from their participation therein to the extent that their capital basis was depleted, has shown that these provisions are not appropriate. They provide credit institutions with perverse incentives when including government bonds in their portfolios, especially in their banking books (on the key terms of the PSI following the 26 October 2011 Euro Summit, see Gortsos (2013), pp. 166–169, more analytically Zettelmeyer et al., Gulati (2013) and Buchheit (2016)) and Hadjiemmanuil (2019), pp. 73–77. Nevertheless, any (even adequate) increase of risk weights might lead to a distortion of capital markets, given the volumes of higher risk government bonds involved.

[20] COM(2018) 839 final. The text of the Commission's Staff Working Document "Impact Assessment" (SWD(2018) 252 final, 24.5.2018) is available at: https://ec.europa.eu/info/

The second group comprises two 'risk sharing' measures (the adoption and implementation of which was deemed to have to follow the efficient application of the risk reduction ones), and in particular the establishment of the European Deposit Insurance Scheme (EDIS) (see Sect. 4.4.1) and the creation of a 'common backstop' to the (Single Resolution) Board for the SRF (Sect. 4.3.3).[21]

(3) The priority character of the above-mentioned actions was further reinforced in the Commission Communication of 6 December 2017 "Further steps towards completing Europe's Economic and Monetary Union: A roadmap",[22] which outlines the comprehensive package of six proposals to strengthen the EMU—including the BU and the Capital Markets Union (the 'CMU'),[23] which constitute the two pillars of the 'Financial Union'. *Inter alia*, this package also included a proposal for a Council Regulation on the establishment of the European Monetary Fund, which was initially considered to be the basis for the 'common backstop'.

In Particular: Increasing the Quality of Supervision

(1) Notwithstanding its overall positive assessment of the work of the SSM with regard to the micro-prudential supervision of credit institutions in the euro area,[24] the Commission also submitted on 20 September 2017 a Communication on "Reinforcing integrated supervision to strengthen Capital Markets Union and financial integration in a changing environment".[25] This was coupled by four Proposals for three Regulations and one Directive of the European Parliament and of the Council for the amendment of the Regulations

law/ better-regulation/initiatives/ares-2018-400473. This proposal is analysed in Gortsos (2018), with extensive further references.

[21] All these initiatives were without prejudice to other regulatory developments designed for the enhancement of financial stability and affecting the operation of EU credit institutions, such as the new international accounting standard 'IFRS 9' on the classification and measurement of financial instruments, whose application started on 1 January 2018. On this accounting standard and its implications for financial stability, see European Systemic Risk Board (2017).

[22] COM (2017) 821 final, 6.12.1017, pp. 11–12.

[23] On the CMU, see by way of mere indication Dixon (2014), Ringe (2015), Véron and Wolff (2015), the individual contributions in Busch et al. (2018, editors) and Lannoo and Thomadakis (2019).

[24] Commission Communication (11.10.2017), Section 7, first paragraph.

[25] COM(2017) 542 final.

governing the European Supervisory Authorities and the European Systemic Risk Board, of several legal acts constituting the sources of EU capital markets law,[26] the objective of which is to ensure stronger and more integrated financial supervision across the EU by improving their mandates, governance and funding. In addition, there are proposals to enhance the micro-prudential supervision of investment firms, especially in view of the fact that, due to the existing potential for regulatory arbitrage, some large investment firms (in certain cases, part of complex banking groups) carry out investment banking services which are outside the reach of the existing regulatory/supervisory framework and raise concerns of financial stability.[27]

Of particular institutional importance (even though outside the reach of this book) are also the proposals to develop the European Securities and Markets Authority into a 'Single Capital Markets Supervisor', by extending its direct supervision to selected capital market sectors, beyond those of credit rating agencies and trade repositories.[28] This initiative is linked with the creation of the CMU.

(2) With regard to this aspect and notwithstanding the rationale underlying the current regulatory reform, the author notes that legal certainty and efficiency dictate a 'regulatory pause' (even though current and forthcoming developments signal the opposite). Taking into account, in particular, the difficulties arising from the appropriate application and interpretation of several provisions of the extensive new regulatory framework in the BU era (CRR and the national legislation having incorporated the CRD IV and the BRRD), the steady state should be reached soon and not be distorted by a new wave of regulations before the recent ones have been fully and adequately absorbed.[29] In any case, it is the author's strong belief that the preservation of systemic stability is not a linearly positive function of extensive and extremely detailed micro- and macro-prudential regulations, such as those contained in the Basel III regulatory framework and in the CRR.

[26] Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-536_en.

[27] Commission Communication (11.10.2017), Section 7, second paragraph.

[28] Commission Communication (20.09.2017), pp. 9–10.

[29] This argument is further developed in Gortsos (2015b).

4.2 The First Main Pillar: Authorisation, Prudential Regulation and Prudential Supervision of Credit Institutions

4.2.1 The Legal Acts Governing the SSM

(1) Council Regulation (EU) No 1024/2013 (the 'SSMR') "conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions" is the main legal source of the SSM. It was adopted by the Council on 15 October 2013 (within 14 months from the submission of the Commission's proposal), was published in the Official Journal (the 'OJ') on 29 October 2013 and entered into force on 3 November 2013. The SSMR confers on the ECB specific tasks "concerning policies relating to the prudential supervision of credit institutions" (a phrase taken over *verbatim* from Article 127(6) TFEU) with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the EU and each Member State and to preventing regulatory arbitrage, fully taking into account and caring for the unity and integrity of the internal market based on equal treatment of credit institutions.[30] Obviously, this ECB objective is different from the primary objective of the European System of Central Banks under the TFEU, that is maintaining price stability. The eventuality of conflicts of interest arising from concurrently pursuing these two objectives was the reason behind the introduction of 'Chinese walls' separating the ECB's monetary and supervisory functions (in accordance with Article 25 SSMR).[31]

(2) In the prospect of conferring supervisory tasks upon the ECB, it was deemed necessary to introduce amendments to certain provisions of the EBA Regulation in order to bring the EBA's functions in line with the ECB's function as a supervisory authority over credit institutions. The above-mentioned circumstances encouraged the adoption by the European Parliament and the Council of Regulation (EU) No 1022/2013 of 22 October 2013 "amending Regulation (EU) No 1093/2010 establishing the European Supervisory Authority (…) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013".[32] This Regulation, adopted on the basis of Article

[30] SSMR, Article 1, first sub-paragraph.
[31] On these aspects, see Chap. 5, Sects. 5.1.1 and 5.2.4.
[32] OJ L 287, 29.10.2013, pp. 5–14.

114 TFEU, was drafted in parallel and adopted concurrently with the SSMR (hence the term 'twin' Regulations) and amends the EBA Regulation on several aspects.

(3) In consultation with the National Competent Authorities (NCAs) of participating Member States and on the basis of a proposal from the Supervisory Board, the ECB was required to adopt and make public a framework to organise the practical modalities of implementation of Article 6 SSMR. On the basis of this Article, the ECB adopted on 16 April 2014 Regulation (EU) No 468/2014 "establishing the framework for cooperation within the SSM between the [ECB] and [NCAs] and with national designated authorities ('SSM Framework Regulation') (ECB/2014/17)".[33] The subject matter and purpose of this Regulation is to lay down rules on several aspects and primarily a framework to organise the practical arrangements for implementing Article 6 on cooperation within the SSM.[34]

(4) The institutional and regulatory framework pertaining to the SSM is further specified in other ECB legal acts, containing provisions on the detailed operational arrangements for the implementation of the tasks conferred upon the ECB by the SSMR. These legal acts can be classified into two categories: the first contains the legal acts pertaining to the operation of the three bodies established within the ECB pursuant to the SSMR (i.e. the Supervisory Board, the Administrative Board of Review and the Mediation Panel);[35] the second category contains the ECB legal acts pertaining to various other aspects of the SSM, that is identifying the credit institutions subject to the comprehensive assessment, the close cooperation procedure, the ECB powers to impose sanctions, the provision to the ECB of supervisory data reported to the NCAs by supervised entities, the implementation of the separation between the monetary and supervision functions of the ECB, and supervisory fees.[36]

(5) On the basis of Article 20(8)–(9) SSMR, an Interinstitutional Agreement between the European Parliament and the ECB was also signed in October 2013 "on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the [SSM]".[37] In addition, in

[33] OJ L 141, 14.5.2014, pp. 1–50.

[34] SSM Framework Regulation, Article 1(1); see also Article 6(7) SSMR.

[35] On these bodies, see Chap. 6, Sect. 6.2.2.

[36] For a systematic overview of the ECB legal acts adopted in the (initial) period 2014–2015, see Gortsos (2015a), pp. 77–80 and 82–83.

[37] OJ L 320, 30.11.2013, pp. 1–6.

December 2013, the Council and the ECB signed a Memorandum of Understanding (the 'MoU') "on the cooperation on procedures related to the [SSM]", which entered into force on 12 December 2013.[38]

4.2.2 The Single Rulebook

General Overview

(1) The authorisation, prudential regulation and micro-prudential supervision of credit institutions in the EU (and not only in the euro area) are governed by two legal acts of the European Parliament and of the Council of 26 June 2013: Regulation (EU) No 575/2013 "on prudential requirements for credit institutions and investment firms (…)" ('Capital Requirements Regulation' or 'CRR')[39] and Directive 2013/36/EU "on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (…)"[40] ('Capital Requirements Directive IV'[41] or 'CRD IV'). Adopted on the basis of Articles 114 and 53(1) TFEU,[42] respectively, in force since 1 January 2014 and applying equally to credit institutions and investment firms (jointly referred to as 'institutions'), these legal acts set the framework governing the following aspects: first, access to activity of the business of institutions (granting and withdrawal of authorisation, as well as acquisition and disposal of qualifying holdings), and exercise of the right of establishment and the freedom to provide services in the single market; second, relations to third countries; third, prudential supervision of institutions, both on a solo and on a consolidated basis, including the Supervisory Review and Evaluation Process (the 'SREP');[43] and fourth, micro- and (for the first time) macro-prudential

[38] The main provisions of all these acts are presented in Chap. 5, Sect. 5.2.

[39] OJ L 176, 27.6.2013, pp. 1–337. This legislative act is in force as repeatedly amended and mainly in 2017 by two Regulations of the European Parliament and of the Council: Regulation (EU) 2017/2395 of 12 December 2017 mainly as regards the mitigation of the impact of the introduction of IFRS 9 on own funds (OJ L 345, 27.12.2017, pp. 27–33) and Regulation (EU) 2017/2401 of 12 December 2017 mainly on the treatment of securitisation positions (OJ L 347, 12.2.2017, pp. 1–34). In May 2019, it has been further amended (see later).

[40] OJ L 176, 27.6.2013, pp. 338–436. In May 2019, this legislative act has also been amended.

[41] In fact, this is a misnomer for the Directive, which addresses several other prudential aspects rather than merely capital requirements.

[42] Article 53 TFEU is analysed in Schlag (2019).

[43] CRD IV, Articles 8–27, 33–46, 47–48 and 49–117, respectively.

regulation of institutions.[44] Micro-prudential regulations, which are part of the so-called Pillar 1 of regulatory framework, include capital adequacy ratios against exposure to risks associated with the conduct of their business, liquidity ratios and a leverage ratio, corporate governance rules, limitation of credit institutions' holdings in companies outside the financial system and rules on 'large exposures'; 'Pillar 2' refers to the SREP and 'Pillar 3' to the public disclosure of information on those matters. Macro-prudential regulations include the imposition on institutions to build up capital buffers.[45]

(2) An integral part of the single rulebook are also the delegated and implementing acts (predominantly) adopted by the Commission, on the basis of the power conferred thereon under specific Articles of the CRR and the CRD IV in accordance with Articles 290–291 TFEU; their majority is based on draft technical regulatory and implementing standards developed by the EBA. Included in the single rulebook are also Guidelines adopted by the EBA, either on the basis of specific provisions of the CRR and the CRD IV or on its own initiative pursuant to Article 16 EBA Regulation.[46]

The Impact of Public International Banking Law

The rules of the CRR and of the CRD IV on the SREP and the micro- and macro-prudential regulation of credit institutions reflect to a large extent the framework developed in 2010 [immediately after the recent (2007–2009) international financial crisis] by the Basel Committee in this field (the 'Basel III regulatory framework').[47]

[44] CRR and CRD IV, Articles 128–142 (on capital buffers).

[45] On the SREP, see more details in Chap. 8, Sect. 8.2.3 and on the macro-prudential capital buffers Chap. 8, Sect. 8.1.3.

[46] All these draft technical standards and Guidelines adopted by the EBA are available at: https://eba.europa.eu/regulation-and-policy/single-rulebook; the related Q&As are available at: https://eba.europa.eu/single-rule-book-qa. The making of delegated and implementing acts and EBA Guidelines is briefly presented in Appendix of Chap. 5.

[47] The Basel III framework consists of three Reports: "Basel III: A global regulatory framework for more resilient banks and banking systems" (available at: https://www.bis.org/publ/ bcbs189.htm), "Basel III: The Liquidity Coverage Ratio [LCR] and liquidity risk monitoring tools" (at: https://www.bis.org/publ/bcbs238.htm), and "Basel III: The net stable funding ratio [NSFR]" (at: https://www.bis.org/publ/bcbs295.htm). On this framework and its evolution, see Gortsos (2012), pp. 250–281, McNamara et al. (2014a) and (2014b) and Bodellini (2019).

Adoption of the 2016 'Banking Package'

The above-mentioned 2016 'banking package'[48] provided for the amendment of the CRR and the CRD IV as well. The amendments to the CRR are included in Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019[49] and refer to the following: the leverage and the net stable funding ratios, requirements for own funds and eligible liabilities, counterparty credit and market risks, exposures to central counterparties and collective investment undertakings, large exposures and reporting and disclosure requirements (the 'CRR II'). On the other hand, the amendments to the CRD IV are included in Directive (EU) 2019/878 of the same institutions and of the same date and refer to exempted entities, financial holding companies and mixed financial holding companies, remuneration, supervisory measures and powers, as well as capital conservation measures[50] (the 'CRD V').

The vast majority of the proposals on the amendment of the CRR and the CRD IV are broadly based on aspects of the "Basel III regulatory framework", which were not included in these legislative acts at the time of their adoption (in 2013). It is noted, however, that the Basel Committee's framework has been amended again after the endorsement, on 7 December 2017, from its oversight body, the Group of Central Bank Governors and Heads of Supervision of the Report entitled "Basel III: Finalising post-crisis reforms"[51] (also referred to as the "Basel IV regulatory framework", even though the Basel Committee tends to view it as a Complement to "Basel III"). Accordingly, it is expected that in the near future, the Commission will submit new proposals for further amendments to these EU legislative acts.

[48] See Sect. 4.1.2.

[49] OJ 150, 7.6.2019, pp. 1–225. The consolidated version of the CRR contains 814(!) pages.

[50] OJ 150, 7.6.2019, pp. 253–295.

[51] Available at: https://www.bis.org/bcbs/publ/d424.htm. The EBA already conducted and published an ad hoc cumulative impact assessment of this new regulatory reform package for the EU banking system (available at: https://www.eba.europa.eu/documents/10180/1720738/Ad+Hoc+Cumulative+Impact+Assessment+of+the+Basel+reform+package.pdf).

4.2.3 The Relationship Between the SSMR and the Single Rulebook

For the purpose of carrying out its tasks under the SSMR and with the objective of ensuring high standards of supervision, the ECB must apply all relevant legal acts which constitute sources of European (EU) banking law, that is the CRR and the CRD IV, as well as the delegated and implementing acts of the Commission adopted on the basis of these legislative acts. The said EU law is composed of Directives or Regulations. To the extent that national legislation is either transposing those Directives or implementing Member States' options available under those Regulations,[52] the ECB is called upon to apply not only uniform EU law but also national law, which may vary among participating Member States.

4.3 The Second Main Pillar: Resolution of Credit Institutions

4.3.1 The SRM and the SRF

(1) In 2014, a Single Resolution Mechanism (SRM) and a Single Resolution Fund (SRF) were established on the basis of 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 (...)" (the 'SRMR').[53] This legislative act was adopted on the basis of Article 114 TFEU and (with some exceptions) is applicable (mainly) since 1 January 2016.[54] Its adoption was a necessary complement to the SSMR, as it would constitute a paradox if credit institutions were directly supervised (by the ECB) at European level, but, in the event of a need for resolution (upon determination by the ECB—or the Single Resolution Board (SRB)—that a credit institution is failing or likely to fail), the relevant decision were to be made at national level.[55] The SRM, supported by the SRF, constitutes the second main pillar of the BU.[56]

[52] SSMR, Article 4(3), first sub-paragraph.
[53] OJ L 225, 30.7.2014, pp. 1–90.
[54] SRMR, Article 99(2).
[55] See also recital (14) SRMR; on this aspect, see details in Chap. 9, Sect. 9.2.3.
[56] The main provisions of this legislative act, which was amended in May 2019 (see Sect. 4.3.2), are presented in Chap. 5 (Sect. 5.3).

(2) The SRF is also governed by the Intergovernmental Agreement (No 8457/14) "on the transfer and mutualisation of contributions to the Single Resolution Fund" (the 'SRF Agreement').[57] The SRF Agreement is an instrument of public international law and, as such, the rights and obligations laid down therein are subject to the principle of reciprocity, that is the equivalent performance of those rights and obligations by all Contracting Parties;[58] it must be applied and interpreted by them in conformity with the Treaties and with EU law, and in particular with Article 4(3) TEU[59] and EU banking law concerning resolution, that is the BRRD[60] and the SRMR.

Under this Agreement, which is also applicable from 1 January 2016,[61] complements and supports the SRMR which established the SRF[62] and applies to the Contracting Parties whose institutions are subject to the SSM and the SRM, these parties committed to transfer the contributions raised at national level to the SRF in accordance with the BRRD and the SRMR. In addition, they must allocate the nationally raised contributions to the different SRF 'compartments', corresponding to each of them during a transitional period of eight years in accordance with the abovementioned legal acts. The use of these compartments is subject to a 'progressive mutualisation', meaning that they will cease to exist at the end of the transitional period in order to secure the effectiveness of the operations and functioning of the SRF.[63]

(3) The SRF should reach a target level of at least 1% of the amount of 'covered deposits' of all credit institutions authorised in all participating Member States (about 55 billion euros).[64] In principle, it is financed by the participating institutions' *ex ante* contributions, while the EU budget

[57] Available at: https://register.consilium.Europa.eu/content/out?lang=EN&typ=ENTRY&i=SMPL&DOC_ID=ST%208457%202014%20COR%201.

[58] The only Member States which are not Contracting Parties to the Agreement, which is subject to ratification, approval or acceptance by its signatories under their respective constitutional requirements, are Sweden and the UK.

[59] This Article provides that Member States must, *inter alia*, facilitate the achievement of the EU's tasks and refrain from any measure which could jeopardise the attainment of its objectives; see on this indicatively Lenz (2010), pp. 19–20 and, in detail, Hatje (2019), pp. 69–91.

[60] See Sect. 4.3.2.

[61] SRF Agreement, Article 12.

[62] SRMR, Articles 1, second sub-paragraph, second sentence and 67(1), first sentence.

[63] SRF Agreement, Article 1.

[64] Ibid., Article 1(1), point (b), with reference to Article 68 SRMR.

or the national budgets may not be held liable for expenses or losses incurred by the SRF.[65] The *ex post* financing (i.e. raising of extraordinary *ex post* contributions from institutions, voluntary borrowing between resolution financing arrangements and alternative funding means) is governed by Articles 71–74 SRMR.[66]

4.3.2 The Single Rulebook

General Overview

(1) The single rulebook on banking resolution is governed by Directive 2014/59/EU of the European Parliament and the Council of 15 May 2014 "establishing a framework for the recovery and resolution of credit institutions and investment firms"[67] (the 'Bank Recovery and Resolution Directive' or 'BRRD').[68] The BRRD, which as the CRR and the CRD IV also applies to investment firms (also jointly referred to therein as 'institutions'), was adopted on the basis of Article 114 TFEU and is applicable (with some exceptions) since 1 January 2015 to all Member States.[69] It was the first time that harmonised rules were adopted at the EU level in this field, as opposed to the fields of authorisation, micro-prudential supervision and micro-prudential regulation of credit institutions (macro-prudential regulation under the CRR and the CRD IV is another innovative element), as well as deposit guarantee schemes, for which a regulatory framework has been in place since the late-1980s and mid-1990s, respectively.

(2) The BRRD lays down a comprehensive framework of substantive rules on the resolution of credit institutions (and investment firms) and contains provisions pertaining to three main aspects (its pillars): the first pillar contains the so-called preparatory measures, including recovery planning, resolution planning and intra-group financial support agreements (Articles 4–26); the second pillar refers to the 'early intervention measures', including the appointment of a special administrator (Articles

[65] SRMR, Articles 70 and 67(2), respectively.

[66] On the SRF Agreement, see by way of mere indication Fabbrini (2014), Burke (2015), Hadjiemmanuil (2014), pp. 26–29, Zavvos and Kaltsouni (2015), pp. 36–49, Wolfers and Voland (2018) and Gortsos (2019b), pp. 99–106 and 263–271.

[67] OJ L 173, 12.6.2014, pp. 190–348.

[68] For an analytical commentary, see Haentjens (2017) and the various contributions in World Bank (2017) (in particular Freudenthaler (2017) on its scope); see also Huber and Merc (2014), Thole (2014) and Ventoruzzo and Sandrelli (2019).

[69] BRRD, Article 130(1), second sub-paragraph.

27–30); and the third pillar covers the 'resolution tools and powers' (the most extensively regulated aspect, Articles 31–86).[70] All these measures are divided into two categories: 'crisis prevention' and 'crisis management': 'crisis-prevention measure' means the exercise of powers to direct removal of deficiencies or impediments to recoverability, the exercise of powers to address or remove impediments to resolvability, the application of an early intervention measure, the appointment of a temporary administrator or the exercise of the write-down or conversion powers; on the other hand, 'crisis management measure' means a resolution action or the appointment of either a special manager (in accordance with Article 35) or a person as provided for in Articles 51(2) or 72(1).[71]

(3) For the above purpose, four 'resolution tools' are available: the sale of business tool, the bridge institution tool, the asset separation tool, and the bail-in tool.[72] 'Sale of business tool' means the mechanism for effecting a transfer by a resolution authority of instruments of ownership issued by a bank under resolution, or assets, rights or liabilities of an institution under resolution, to another bank that is not a bridge institution, while 'bridge institution tool' is the mechanism for transferring instruments of ownership issued by a bank under resolution, or assets, rights or liabilities of an institution under resolution, to a bridge institution. In both these cases, the authorisation of the bank under resolution is withdrawn and the bank is placed under liquidation (hence, they are called 'gone-concern' resolution tools). Nevertheless, its deposits up to the level of their coverage under the DGS are previously transferred either to another bank or to the bridge institution; hence, DGSs are not activated. On the other hand, 'going-concern' resolution tools are the 'asset separation tool', meaning the mechanism for effecting a transfer of assets, rights or liabilities of a bank under resolution to an 'asset management vehicle' and the 'bail-in tool', which is defined as the mechanism for effecting the exercise of the write-down and conversion powers in relation to liabilities (including deposits up to the level of their coverage under the DGS) of a bank under resolution.[73]

[70] Ibid., Articles 4–26, 27–30 and 31–86, respectively.

[71] Ibid., Article 2(1), points (101) and (102), respectively.

[72] These resolution tools are defined (in a similar way) in Articles 3(1), points (30)–(33) SRMR and 2(1), points (55), (57)–(58) and (60) BRRD and are governed by Articles 24–27 SRMR and 37–44 BRRD. For an overview, see Haentjens (2017), pp. 230–255, Binder, J.-H. (2019) and Gortsos (2019b), pp. 193–203.

[73] On the bail-in instrument, see by way of mere indication Coffee (2010), Huertas (2012), Goodhart and Avgouleas (2014), Joosen (2014), Hadjiemmanuil (2014) and (2019), Avgouleas and Goodhart (2015), Krahnen and Moretti (2015) and Tröger (2015) and (2017).

(4) As in the case of the CRR and the CRD IV, the single rulebook consists also of Commission delegated and implementing acts. These are adopted on the basis of the power conferred upon it in specific Articles of the BRRD in accordance with Articles 290–291 TFEU and (mainly) are based on draft technical regulatory and implementing standards developed by the EBA in accordance with Articles 10–14 and 15 EBA Regulation. In this case as well, the single rulebook also encompasses EBA Guidelines adopted either on the basis of specific provisions of the BRRD or on its own initiative in accordance with Article 16 EBA Regulation.[74]

The Impact of Public International Banking Law

As in the case of the CRR and the CRD IV, the impact of public international law on the BRRD was considerable as well. In particular, its content was heavily influenced by the 2011 Financial Stability Board (FSB) Report entitled "Key Attributes of Effective Resolution Regimes for Financial Institutions".[75] On 15 October 2014, the FSB adopted additional guidance documents elaborating on specific Key Attributes relating to information sharing for resolution purposes and sector-specific guidance, setting out how they should be applied for insurers, financial market infrastructures (the 'FMIs') and the protection of client assets in resolution; these documents have been incorporated as annexes into the 2014 version of the Key Attributes, which did not modify the text of the abovementioned 2011 Key Attributes.[76] Finally, in October 2016, the FSB adopted the "Key Attributes Assessment Methodology for the Banking

[74] Along with the CRR and the CRD IV, the draft technical standards and Guidelines adopted by the EBA are available at its website.

[75] Available at: https://www.financialstabilityboard.org/publications/r_111104cc.htm. These Key Attributes laid down the core elements considered to be necessary for an effective regime governing the resolution of any type of financial institutions that could be systemic in failure, and in particular: the scope of application, the resolution authority, the resolution powers, set-off, netting, collateralisation and segregation of client assets, safeguards, funding of firms in resolution, legal framework conditions for cross-border cooperation, crisis management groups ('CMGs'), institution-specific cross-border cooperation agreements, resolvability assessments, recovery and resolution planning, and access to information and information sharing. For an overview, see Grünewald (2014), pp. 79–80 and Kleftouri (2015), pp. 160–165.

[76] Available at: https://www.financialstabilityboard.org/2014/10/r_141015.

Sector", which lay down essential criteria guiding the assessment of national bank resolution frameworks' compliance with the key attributes.[77]

Of specific importance in the application of resolution tools is the 'no creditor worse off principle' (the 'NCWO' principle), according to which creditors should be worse off in a resolution than they would be in liquidation. This principle, specified in Section 5 (mainly Sect. 5.3) of the 2011 FSB "Key Attributes of Effective Resolution Regimes for Financial Institutions", is regarded as the cornerstone of resolution regimes. It provides the following: "Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime ("no creditor worse off than in liquidation" safeguard)". Under this principle, *inter alia*, deposits covered by DGSs are not bail-inable.[78]

4.3.3 Recent Modifications and Pending Amendments

The Impact of the 2016 'Banking Package' on the SRMR and the BRRD

In accordance with the above-mentioned 2016 "banking package", the Proposal for a Directive of the European Parliament and of the Council "amending [the BRRD] as regards the ranking of unsecured debt instruments in insolvency hierarchy",[79] which provides for the amendment of Article 108 BRRD, was adopted on 12 December 2017 (Directive (EU) 2017/2399).[80] In addition, a combined legislative proposal referred to the amendment of both the SRMR and the BRRD, reviewing the minimum requirement for own funds and eligible liabilities (the 'MREL') and implement in the EU legal framework the total loss-absorbing capacity (the 'TLAC') standard of the FSB.[81] This led to the adoption on 20 May 2019 and publication on 7 June 2019 of two legislative acts: Regulation

[77] Available at: https://www.fsb.org/2016/10/key-attributes-assessment-methodology-for-the-banking-sector.

[78] On the NCWO principle and its application under EU resolution law, see (by way of mere indication) Grünewald (2014), pp. 92–93, Wojcik (2015), de Serière and van der Houwen (2016), Grünewald (2017), pp. 302–307, and Haentjens (2017), pp. 272–274. See also the 2016 FSB "Key Attributes Assessment Methodology for the Banking Sector", pp. 38–39.

[79] COM(2016) 853 final.

[80] OJ L 345, 27.1.2.2017, pp. 96–101.

[81] COM(2016) 851/2 final and 852/2 final, respectively.

(EU) 2019/877 of the European Parliament and of the Council "amending the SRMR as regards loss-absorbing and recapitalisation capacity for credit institutions and investment firms"[82] (the 'SRMR II') and Directive (EU) 2019/879 of the same institutions "amending the BRRD on loss-absorbing and recapitalisation capacity of credit institutions and investment firms (…)"[83] (the 'BRRD II').

It is noted that, from an operational point of view, the harmonised minimum level of the TLAC standard for global systemically important institutions (the 'G-SIIs') (referred to as 'TLAC minimum requirement') will be introduced in the EU through the CRR II.[84] On the other hand, the 'institution-specific add-on' for G-SIIs and the 'institution-specific requirement' for non-G-SIIs will be addressed through the targeted amendments to the BRRD and the SRMR (BRRD II and SRMR II, respectively). This institution-specific add-on will be imposed when the TLAC minimum requirement is not sufficient to absorb losses and recapitalise a G-SII under the preferred resolution strategy.[85]

Towards a 'Common Backstop' to the (Single Resolution) Board for the SRF

An Overview

(1) One of the elements of the comprehensive package of measures proposed by the Commission in its Communication of 6 December 2017 to strengthen the EMU[86] was the proposal for a Council Regulation "on the establishment of the European Monetary Fund" (the 'EMF' and the 'EMF Regulation'). This proposal was submitted on 12 December 2017[87] and was to be adopted on the basis of Article 352 TFEU. In its Annex, this proposal contains the EMF's Statute.[88] The objective of the EMF, a successor to the European Securities and Market (ESM) would be to contribute to safeguarding financial stability in the euro area and its participating Member States. In order to achieve this objective, it was proposed that the EMF should be assigned two tasks: first, to mobilise funding and provide

[82] OJ 150, 7.6.2019, pp. 226–252.
[83] OJ 150, 7.6.2019, pp. 296–344.
[84] See Sect. 4.2.2; on the definition of G-SIIs, see Chap. 8, Sect. 8.1.3.
[85] For a brief overview of the TLAC and of the new framework, see Gortsos (2019b), pp. 175–179.
[86] See Sect. 4.1.2.
[87] COM(2017) 827 final, 6.12.2017.
[88] EMF Regulation, Article 1(2) and recital (18).

stability support under strict policy conditions, appropriate to the chosen financial assistance instrument, to the benefit of its Members experiencing, or threatened by, severe financing problems (including), *inter alia*, the provision of direct public financial assistance to credit institutions through the Direct Recapitalisation Instrument (the 'DRI');[89] and second, to provide credit lines or setting guarantees in support of the Board (the 'common backstop').[90]

(2) Any progress on the adoption of this legal act is halted. Nevertheless, in the Euro Summit meeting, of 29 June 2018, agreement was reached that the common backstop should be activated and be provided by a more strengthened ESM.[91] Taking also into consideration the relative urgency of the situation, the Summit noted that the Eurogroup should prepare the terms of reference of the common backstop and agree on a term sheet for further developing the ESM by December 2018.[92] The Euro Summit meeting of 14 December 2018 agreed then on endorsing the terms of reference for the operationalisation of the common backstop, as developed by the Eurogroup, on condition that "sufficient progress has been made in risk reduction". It also endorsed the term sheet elaborated by the Eurogroup on the reform of the ESM.[93] The latest Euro Summit meeting, of 21 June 2019, noted the broad agreement reached by the latter on the revision of the ESM Treaty, stating its expectation that it will continue its work so as to allow for a final agreement in December 2019.[94] Under the current political agenda, the common backstop will thus be provided by an enhanced ESM;[95] the establishment of the EMF is not envisaged.

[89] Ibid., Article 19(1), second sentence; on this instrument, see later.

[90] For a systematic presentation and an assessment of the proposed legal framework on the EMF, see Louis (2017) and (2018), pp. 23–27, as well as Gortsos (2017) and in particular pp. 28–31 and 53 on the common backstop. On the case for establishing a common backstop, see Schoenmaker (2014) and (2017) and Schlosser (2017).

[91] The text of this Statement is available at: https://www.consilium.europa.eu/media/35999/29-euro-summit-statement-en.pdf.

[92] Euro Summit meeting (29 June 2018), Statement, point 2.

[93] Euro Summit meeting (14 December 2018), Statement, points 1 and 2. The terms of reference are annexed to the Statement of the Eurogroup's report of 4 December 2018 (available at: https://www.consilium.europa.eu/media/37268/tor-backstop_041218_final_clean.pdf); the term sheet is annexed to the Statement as well and available at: https://www.consilium.europa.eu/media/37267/esm-term-sheet-041218_final_clean.pdf.

[94] Euro Summit meeting (21 June 2019), Statement, point 1, first bullet (available at: https://www.consilium.europa.eu/media/39968/20190621-euro-summit-statement.pdf).

[95] On this aspect, see also the Assessments and Conclusions, Sect. 2.3, when discussing liquidity in resolution in the context of the euro area. On the ECB's role in supporting the ESM, see Zilioli and Athanassiou (2018), pp. 649–650 and O'Gorman (2019), pp. 246–251.

In Particular: The Direct Recapitalisation Instrument

(1) On 10 June 2014, the euro-area Member States reached a preliminary agreement on a new ESM instrument, the 'Direct Recapitalisation Instrument' (DRI). This instrument entered fully into operation on 8 December 2014, after the requisite national procedures were completed by the euro-area Member States, by means of a unanimous Resolution of the ESM Board of Governors.[96] On the same day, the ESM Board of Directors adopted a detailed Guideline on the modalities, including, *inter alia*, the eligibility criteria for the requesting ESM Member and the institution concerned, and the allocation of specific tasks to the Managing Director of the ESM, the Commission, the ECB and, wherever appropriate, the IMF, for providing financial assistance in the form of DRI.[97]

(2) The aim of the DRI is safeguarding financial stability in the euro area as a whole and in each individual Member State, by catering for those specific cases in which an ESM Member is confronted with severe financial disturbances that cannot be remedied without significantly jeopardising fiscal sustainability given the heightened risk of contagion from the financial sector to the sovereign. Thus, such financial assistance must seek to remove this contagion risk, thereby mitigating the effect of a vicious circle between a fragile financial sector and a deteriorating creditworthiness of the sovereign. The DRI is available (mainly) to systemically relevant credit institutions that are unable to meet the capital requirements established by the ECB in its capacity as single supervisor within the SSM, and obtain sufficient capital from private sources, if a bail-in cannot adequately meet the anticipated capital shortfall.[98] A burden-sharing scheme determines the contributions of the requesting ESM Member and the ESM[99] to be granted under strict conditionality, accompanied by an MoU addressing both the sources of difficulties in the financial sector and, where appropriate, the overall economic situation of the requesting ESM Member.

[96] Available at: https://www.esm.europa.eu/pdf/Establishment%20of%20the%20instrument%20for%20the%20direct%20recapitalisation%20of%20insti%20.pdf.

[97] Available at: https://www.esm.europa.eu/pdf/20141208%20Guideline%20on%20Financial%20Assistance%20for%20the%20Direct%20Recapitalisation%20of%20Institutions.pdf; on this instrument, see details in Hadjiemmanuil (2014), pp. 29–34 and Vovolinis (2015).

[98] BRRD, Articles 43–62.

[99] See, on this, European Stability Mechanism (2014).

(3) As to the implementation of the DRI, the ESM Board of Governors must establish, through a unanimous Resolution, a subsidiary body to undertake the recapitalisation operations. In order to enable external investors to participate in the recapitalisation alongside the ESM, the Board may also establish sub-entities dedicated to the financing, implementation and ownership of capital instruments related to the recapitalisation process.[100]

4.3.4 The Relationship Between the SRMR and the Single Rulebook

(1) Under EU financial law, it is the BRRD that lays down the substantive rules pertaining to resolution planning with regard to early intervention in and resolution action taken in relation to credit institutions of designated entities and groups. The SRMR is consistent with the BRRD and adapts its rules and principles to the specificities of the SRM and ensures that appropriate funding is available to the latter.[101] In addition, the SRMR is based on the BRRD and makes such a continuous reference to its provisions (as the reader of this book will realise) that the analysis of the latter is indispensable for the understanding of the former. It is noted that several aspects covered by the BRRD are not, for various reasons, addressed in the SRMR, including mainly the following:[102] recovery planning,[103] intra-group financial support,[104] government financial stabilisation tools ('GFSTs'),[105] resolution powers, cross-border group resolution[106] and the ranking of deposits in insolvency hierarchy.

(2) On the relationship between the two legal acts, Article 5(1) SRMR provides that if, in accordance with the SRMR, the Board performs tasks and exercises powers which, under the BRRD, are to be performed or exercised by National Resolution Authority (NRAs), for the application of

[100] In principle, the DRI must be conducted against the acquisition of common shares satisfying the Common Equity Tier 1 (the 'CET1') requirements laid down in Articles 28–29 CRR.

[101] SRMR, recital (18), first and second sentences.

[102] BRRD, Articles 5–9, 19–26, 56–58, 63–72, 87–92 and 108, respectively.

[103] On this aspect, see more details in Chap. 8, Sect. 8.1.2.

[104] On this arrangement, see Haentjens (2017), pp. 210–213.

[105] On this form of state aid and the conditions under which it can be provided in accordance with Articles 37(10) and 56–58 BRRD, see Gortsos (2016b), Haentjens (2017), pp. 252–254 and Huber (2017).

[106] On these two aspects, see Haentjens (2017), pp. 256–272 and 285–296, respectively.

both the SRMR and the BRRD, the Board is considered to be the 'relevant national resolution authority' or, in the case of a cross-border group resolution, the 'relevant group-level resolution authority'.[107]

4.4 The (Still Pending) Third Main Pillar: Deposit Guarantee

4.4.1 The (Single) European Deposit Insurance Scheme

An Overview on the Basis of the Commission's 2015 Proposal for a Regulation

(1) Unlike the SSM and the SRM, which are already operational, the third main pillar of the BU, that is a European Deposit Insurance Scheme (the 'EDIS'), has not yet been put in place. In political terms, its creation was first presented in the June 2012 'Van Rompuy Report', which paved the way for the decisions of the Euro Area Summit and the European Summit of 28–29 June on building the BU, and then in the December 2012 'Four Presidents' Report'.[108] The need for the EDIS was further discussed in the so-called Five Presidents' Report, of 22 June 2015, "Completing Europe's Economic and Monetary Union". According to that Report, which was included in the framework of the proposals on the creation of an (EU) 'Financial Union',[109] and a follow-up Commission Communication of 21 October 2015 "On steps towards Completing Economic and Monetary Union",[110] the EDIS would increase the resilience against future crises, since a condition for a truly single banking system is for confidence in the safety of bank deposits to be the same across the EU, irrespective of the Member State in which a credit institution operates. It is also more likely to be fiscally neutral over time than national DGSs, since risks will be spread more widely and private contributions will be raised over a larger pool of financial firms.

(2) Immediately afterwards, on 24 November 2015, the Commission submitted a proposal for a Regulation of the European Parliament and of

[107] SRMR, Article 5(1) (the definition of the two terms is given in Article 3(1), points (4) and (27), respectively). On this aspect, see more details in Gortsos (forthcoming).

[108] On both these reports, see Sect. 4.1.1.

[109] Available at: https://ec.europa.eu/priorities/economic-monetary-union/docs/5-presidents-report_en.pdf.

[110] COM(2015) 600 final.

the Council "amending Regulation (EU) No 806/2014 in order to establish a European Deposit Insurance Scheme"[111] (the 'proposed SRMR'). This proposal envisages the establishment of the EDIS through an amendment of the SRMR without any modification of the rules on the functioning of the SRM. According to this proposal, the EDIS will be established by the (amended) SRMR (the SRM's founding regulation) gradually, in three successive stages: reinsurance, co-insurance and full insurance. In all three stages, it will provide funding to and cover losses of 'participating DGSs',[112] with the level of funding provided and the share of loss covered increasing gradually.

(3) For the purposes of the EDIS, the SRMR will apply to all participating DGSs and to all credit institutions affiliated to them.[113] The cover to be provided by the EDIS will be limited to the mandatory functions of DGSs under the DGS Directive (2014/49/EU), that is payouts to depositors and contributions to resolution.[114] The EDIS will be administered by the Single Resolution Board (the 'Board', to be renamed "Single Resolution and Deposit Insurance Board") in cooperation with the participating DGSs; it will be supported by a Deposit Insurance Fund (the 'DIF') to be also set up from the outset as part of the EDIS, directly financed by risk-adjusted contributions made by credit institutions.[115] Accordingly, the Board will become responsible for the administration of both the SRM and the EDIS. In addition, it will administer two funds: the SRF and the DIF. Specific safeguards against incorrect or unwarranted access to the EDIS by participating DGSs have also been proposed for all three stages, in order to ensure that only those having observed their obligations in relation to the limitation of risk at EDIS level may benefit from its protection.[116]

(4) On the basis of this proposal, the process of the adoption of which is still halted, the three stages in the evolution of the EDIS should be as

[111] Available at: https://ec.europa.eu/finance/general-policy/docs/banking-union/european-deposit-insurance-scheme/151124-proposal_en.pdf.

[112] 'Participating DGSs' means DGSs, which are introduced and officially recognised in a participating Member State (proposed SRMR, Article 3(1), point (55)).

[113] Ibid., Article 2(2), first sub-paragraph.

[114] On this Directive and on these functions, see Sect. 4.4.2.

[115] Proposed SRMR, Article 1(2), second sub-paragraph.

[116] Ibid., Articles 41i and 41j. On various aspects of this proposal, see Gros (2015), Carmassi et al. (2018), Brescia Morra (2019) and in details Gortsos (2019c). On the adequacy of Article 114 TFEU as the legal basis for the establishment of the EDIS, see Herdegen (2016).

follows:[117] during the first 'reinsurance phase', national DGSs would have access to EDIS funds only when all their own resources would be exhausted, subject to appropriate limits and safeguards against abuse; EDIS funds would provide additional funds to a national DGS only up to a certain level and the latter would access the EDIS only when justified. Use of EDIS funds would be closely monitored, and any such funds found to have been received inappropriately by a national DGS would have to be fully reimbursed. The EDIS would then become a progressively mutualised system (the 'co-insurance phase'), still subject to appropriate limits and safeguards against abuse; during this phase, a national DGS would not be required to exhaust its own funds before accessing EDIS funds and the EDIS would be available to contribute a share of the costs from the moment when the DGS would have been activated and depositors were to be reimbursed, leading to a higher degree of risk sharing between national DGSs through the EDIS. The share to be contributed by the EDIS would start at a level of 20% and gradually increase to 80% over a four-year period. The EDIS should fully insure national DGSs as of 2024 (the 'full insurance phase'), that is the same year when the SRF and the requirements of the DGS Directive will be fully phased in; the mechanism would be equal to that in the co-insurance stage, with the EDIS covering, albeit, in this case, a share of 100%.

Current Developments

(1) The progress on adopting the Regulation establishing the EDIS on the basis of the 2015 Commission's proposal has been slow, predominantly because the previous adoption of the above-mentioned risk reduction measures is considered as a *conditio sine qua non*. Nevertheless, the Commission identified in its EMU reflection paper the establishment of the EDIS (ideally by 2019, with a view to be in place and fully operational by 2025) as a key outstanding component for completing the BU.[118] In this respect, in its above-mentioned Communication of 11 October 2017 concerning the completion of all parts of the BU by 2018, the Commission submitted a compromise solution, proposing a more gradual introduction of the EDIS compared with the original proposal in only two phases. In particular, during the more limited 'reinsurance stage', the EDIS would only provide liquidity coverage to national DGSs, temporarily providing the means to ensure full payouts if a credit institution's deposits were to become

[117] Ibid., Articles 41a–41c, 41d–41g and 41h, respectively.
[118] EMU reflection paper (2017), pp. 19–20.

unavailable. National DGSs would need to pay back this support, ensuring that any losses would continue to be covered at national level; during the following 'co-insurance stage', the EDIS would also progressively cover losses; nevertheless, the migration to this phase should be conditional on progress achieved in reducing risks.

(2) The above-mentioned Euro Summit meeting of 14 December 2018 did not make any explicit reference to the progress of negotiations on the EDIS. Nevertheless, according to the "Eurogroup report to Leaders on EMU deepening", of 4 December 2018,[119] work has started on a roadmap for launching political negotiations on the EDIS in line with the mandate from the June 2018 Euro Summit. In addition, the establishment of a high-level working group was decided to work on the next steps and report to the Euro Summit of June 2019. The latest Euro Summit meeting, of 21 June 2019, on the other hand, was silent on this subject, even though the risk reduction measures had been adopted a month ago. Its statement concluded with a general remark: "We look forward to the continuation of the technical work on the further strengthening of the Banking Union."[120] Nevertheless, the establishment of the EDIS (and the DIF) is not envisaged before 2020.

4.4.2 The Single Rulebook

General Overview

(1) The operation of national DGSs is governed by Directive 2014/49/EU of the European Parliament and of the Council "on deposit guarantee schemes"[121] (the 'DGSD'), which was adopted on 16 April 2014 as part of the single rulebook and repealed Directive 94/19/EC since 3 July 2015.[122] Its legal basis being Article 53(1) TFEU, it lays down rules and procedures on the establishment and functioning of national DGSs in Member States.[123] According to this legal act, 'deposit guarantee scheme' (DGS) means a DGS introduced and officially recognised by a Member State. This covers 'statutory DGSs' set up by law and usually administered by a public entity, 'contractual DGSs' to the extent that they are officially

[119] The text of this report's statement is available at: https://www.consilium.europa.eu/en/press/press-releases/2018/12/04/eurogroup-report-to-leaders-on-emu-deepening/pdf.

[120] Euro Summit meeting (21 June 2019), Statement, point 2.

[121] OJ L 173, 12.6.2014, pp. 149–178.

[122] DGSD, Article 21; on Directive 94/19/EC, see above in Chap. 3, Sect. 3.2.2.

[123] Ibid., Article 1(1).

recognised as DGSs, by complying with the requirements imposed by the DGSD, as well as 'institutional protection schemes' (the 'IPSs'), also to the extent that they are officially recognised as such.[124]

(2) The DGSD substantially modified certain aspects of Directive 94/19/EC, while concurrently containing several innovative elements. In particular,[125] as to the elements of continuity, it is noted that DGSs remain national, even though the merger of DGSs or the establishment of cross-border DGSs is not ruled out. Member States are not liable for the funding adequacy of their DGSs (their responsibility being confined to the establishment and official recognition of at least one DGS in their territory, the 'mandatory membership rule' for credit institutions and the fact that DGSs are activated when a credit institution's deposits become 'unavailable'). In addition, the main function of DGSs, the 'payout (or paybox) function',[126] has been retained but ranks first among four functions that DGSs may serve. It is noted in this respect that DGSs may be called upon to contribute to the financing of the resolution of unviable credit institutions as well.[127] On the other hand, elements of change include (*inter alia*) the rules adopted on the supervision of DGSs by designated authorities with regard to their operation, the introduction of provisions pertaining to the financing of DGSs (in that respect *ex ante* financing is the rule, while *ex post* financing arrangements are also prescribed and regulated), the fixing of the level of coverage at 100,000 euros per depositor per credit institution (minimum and maximum) and the gradual reduction of the repayment period from twenty to seven working days at the latest by the end of 2023.

(3) Unlike the above-mentioned cases of the CRR, the CRD IV and the BRRD, the DGSD provides for the adoption by the Commission of

[124] Ibid., Article 2(1), point (1), with reference to Article 1(2), points (a)–(c). 'IPS' means an agreement meeting the requirements laid down in Article 113(7) CRR (ibid., Article 2(1), point (2)). On these three types of DGSs under the DGSD (including an analysis of this CRR Article), see Gortsos (2014), pp. 37–40.

[125] This legal act is analysed in Gortsos (2014).

[126] This traditionally primary function of DGSs is to serve as a 'paybox' for depositors, guaranteeing the default-free character of deposits in the event of a bank failure. In this respect, DGSs pursue two objectives: protecting retail depositors and acting as a buffer in the event of a banking crisis and contributing to safeguarding the stability of the banking system (being part of the bank safety net), thus curbing the likelihood of banking panics. For an overview of banking panic models, see Calomiris and Gorton (1990).

[127] See on this Gortsos (2019a), with extensive further references.

only one delegated act (no implementing acts are envisaged in this case).[128] In addition, it provides for the adoption by the EBA of Guidelines in accordance with Article 16 EBA Regulation.

The Impact of Public International Banking Law

The impact of public international financial law on the content of the DGSD is less important than in the case of the CRR, the CRD IV and the BRRD, since the majority of the principles contained in the "IADI Core Principles for Effective Deposit Insurance Systems"[129] of 1 November 2014 were already incorporated into EU law. These core principles, adopted by the International Association of Deposit Insurers (IADI)[130], are also a by-product of the recent (2007–2009) international financial crisis and reflect the need for effective deposit insurance in preserving financial stability.

Secondary Sources

Alexander, K. (2016). The ECB and Banking Supervision: Does Single Supervisory Mechanism Provide an Effective Regulatory Framework? In M. Andenas & G. Deipenbrock (Eds.), *Regulating and Supervising European Financial Markets – More Risks than Achievements* (pp. 253–276). Basel: Springer International Publishing.

Allen, F., Carletti, E., & Gray, J. (Eds.). (2013). *Political, Fiscal and Banking Union in the Eurozone?* FIC Press, Wharton Financial Institutions Center, Philadelphia, USA. Retrieved from https://hdl.handle.net/1814/28478.

Allen, F., Carletti, E., & Gray, J. (Eds.). (2014). *Bearing the Losses from Bank and Sovereign Default in the Eurozone*. FIC Press, Wharton Financial Institutions Center, Philadelphia, USA. Retrieved from https://hdl.handle.net/1814/34437.

Allen, F., Carletti, E., & Gray, J. (2015). *The New Financial Architecture in the Eurozone*. European University Institute (EUI).

[128] This delegated act, based on EBA's draft regulatory technical standards, provides for the adjustment of the amount of coverage level laid down in Article 6(1) DGSD (i.e. 100,000 euros per depositor per credit institution), in accordance with inflation in the EU on the basis of changes in the harmonised index of consumer prices published by the Commission since the previous adjustment (ibid., Article 6(6)–(7)).

[129] Available at: https://www.iadi.org/en/assets/File/Core%20Principles/cprevised2014nov.pdf. Noteworthy are the differences in terminology between the IADI report and the EU Directives, since the report makes use of the terms 'deposit insurance' instead of 'deposit guarantee', and 'deposit insurance systems' instead of 'deposit guarantee schemes'.

[130] On these principles, see Gortsos (2016a), pp. 8–15.

Avgouleas, E., & Goodhart, Ch. (2015). Critical Reflections on Bank Bail-ins. *Journal of Financial Regulation*, *1*. Retrieved from https://jfr.oxfordjournals.org/content/early/2015/02/03/jfr.fju009.

Beck, T. (2012). *Banking Union for Europe. Risks and Challenges*. London: Centre for Economic Policy Research (CEPR).

Binder, J.-H. (2013). Auf dem Weg zu einer europäischen Bankenunion? Erreichtes, Unerreichtes, offene Fragen. *Zeitschrift für Bankrecht und Bankwirtschaft, 25*(5), 297–372.

Binder, J.-H. (2016). The European Banking Union – Rationale and Key Policy Issues. In J.-H. Binder & C. V. Gortsos (Eds.), *Banking Union. A Compendium*. München: C.H. Beck Verlag – Baden-Baden: Nomos Verlagsgesellschaft – Oxford: Hart Publishing.

Binder, J.-H. (2019). Resolution Regimes in the Financial Sector. In *Need of Cross-Sectoral Regulation?*, European Banking Institute Working Paper Series 2019, no. 33. Retrieved from https://ssrn.com/abstract=3346455.

Binder, J.-H., & Gortsos, Ch. V. (2016). *Banking Union. A Compendium*. München: C.H. Beck Verlag – Baden-Baden: Nomos Verlagsgesellschaft – Oxford: Hart Publishing.

Bodellini, M. (2019). The Long 'Journey' of Banks from Basel I to Basel IV: Has the Banking System Become More Sound and Resilient than It Used to Be. *ERA Forum, Journal of the Academy of European Law, 20*(1).

Bofinger, P., Bush, C. M., Feld, L. P., Franz, W., & Schmidt, C. M. (2012). *From the Internal Market to a Banking Union: A Proposal by the German Council of Economic Experts. VOX*, November 12.

Brescia Morra, C. (2019). The Third Pillar of the Banking Union and Its Troubled Implementation. In M. P. Chiti & V. Santoro, *The Palgrave Handbook of European Banking Union Law* (Chapter 17, pp. 393–407). Basingstoke: Palgrave Macmillan.

Buchheit, L. C. (2016). The Greek Debt Restructuring of 2012. In European Central Bank (Ed.), *ECB Legal Conference 2016 – In Memory of Ron Luberti, General Counsel of De Nederlandsche Bank and member of the Legal Committee of the ESCB*, pp. 46–51. Retrieved from https://www.ecb.europa.eu/pub/pdf/other/escblegalconference2016_201702.en.pdf.

Burke, J. V. (2015). *Building a Bank Resolution Fund Over Time: When Should Each Individual Bank Contribute?* Retrieved from https://ssrn.com/abstract=2535722.

Busch, D., & Ferrarini, G. (Eds.). (2015). *European Banking Union*. Oxford: Oxford University Press.

Busch, D., & van Rijn, M. (2017). *Towards Single Supervision and Resolution of Systemically Important Non-Bank Financial Institutions in the European Union*. Retrieved from https://ssrn.com/abstract=2899753.

Busch, D., Avgouleas, E., & Ferrarini, G. (Eds.). (2018). *Capital Markets Union in Europe*. Oxford EU Financial Regulation Series. Oxford: Oxford University Press.

Calomiris, Ch. W., & Gorton, B. G. (1990). *The Origin of Banking Panic Models: Facts and Banking Regulation*. The Wharton School, University of Pennsylvania, No. 11.

Carmassi, J., Di Noia, C., & Micossi, S. (2012). *Banking Union: A Federal Model for the European Union with Prompt Corrective Action*. CEPS Policy Brief, No. 282, September 18.

Carmassi, J., Dobkowitz, S., Evrard, J., Parisi, L., Silva, A., & Wedow, M. (2018). *Completing the Banking Union with a European Deposit Insurance Scheme: Who Is Afraid of Cross-Subsidisation?* Occasional Paper Series ECB, No. 208, April.

Castaneda, J., Karamichailidou, G., Mayes, D., & Wood, G. (Eds.). (2015). *European Banking Union. Prospects and Challenges*. Routledge. Retrieved from https://ssrn.com/abstract=2540038.

Chiti, M. P., & Santoro, V. (Eds.). (2019). *The Palgrave Handbook of European Banking Union Law*. Basingstoke: Palgrave Macmillan.

Coffee, J. C. (2010). *Bail-ins versus Bail-outs: Using Contingent Capital to Mitigate Systemic Risk*. The Center for Law and Economic Studies, Columbia University School of Law, Working Paper No. 380. Retrieved from https://www.law.columbia.edu/lawec.

De Serière, V., & van der Houwen, D. (2016). "No Creditor Worse Off" in Case of Bank Resolution: Food for Litigation? *Journal of International Banking Law and Regulation*, *7*, 376–384. Retrieved from https://ssrn.com/abstract=2856370.

Dixon, H. (2014). *Unlocking Europe's Capital Markets Union, Centre for European Reform*. October. Retrieved from https://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2014/unlocking_europes_capital_markets_union_hugodixon_15.10.14-9870.pdf.

Eijffinger, S., & Nijskens, R. (2012). *Banking Union and Ambiguity: Dare to Go Further*. *VOX*, November 23.

European Stability Mechanism. (2014). *FAQ on the ESM Direct Bank Recapitalisation Instrument, Luxembourg*. December. Retrieved from https://www.esm.europa.eu/pdf/2014-12-08%20FAQ%20DRI.pdf.

European Systemic Risk Board. (2015). *ESRB Report on the Regulatory Treatment of Sovereign Exposures*. Retrieved from https://www.esrb.europa.eu/pub/html/index.en.html.

European Systemic Risk Board. (2017). *Financial Stability Implications of IFRS 9*. July. Retrieved from https://www.esrb.europa.eu/pub/pdf/reports/20170717_fin_stab_imp_IFRS_9.en.pdf.

Fabbrini, F. (2014). On Banks, Courts and International Law: The Intergovernmental Agreement on the Single Resolution Fund in Context. *Maastricht Journal of European & International Law, 21*(*3*), 444–463.

Freudenthaler, D. (2017). The BRRD – An Overview of Its Scope, Objectives, Powers and Tools. In World Bank Group (Ed.), *Understanding Bank Recovery and Resolution in the EU: A Guidebook to the BRRD* (Chapter 3, pp. 29–34). World Bank Group, Finance & Markets, Financial Sector Advisory Center (FinSAC), April. Retrieved from https://pubdocs.worldbank.org/en/609571482207234996/FinSAC-BRRD-Guidebook.pdf.

Gleeson, S. (2010). *International Regulation of Banking – Basel II: Capital and Risk Requirements*. Oxford and New York: Oxford University Press.

Goodhart, Ch., & Avgouleas, E. (2014). A Critical Evaluation of Bail-in as a Bank Recapitalisation Mechanism. In F. Allen, E. Carletti, & J. Gray (Eds.), *Bearing the Losses from Bank and Sovereign Default in the Eurozone* (Chapter 7, pp. 65–97). FIC Press, Wharton Financial Institutions Center, Philadelphia, USA. Retrieved from https://hdl.handle.net/1814/34437.

Gortsos, Ch. V. (2012). *Fundamentals of Public International Financial Law: International Banking Law Within the System of Public International Financial Law*. Schriften des Europa-Instituts der Universität des Saarlandes – Rechtswissenschaft, Baden-Baden: Nomos Verlagsgesellschaft.

Gortsos, Ch. V. (2013). The Impact of the Current Euro Zone Fiscal Crisis on the Greek Banking Sector and the Measures Adopted to Preserve Its Stability. In O. Hieronymi & C. A. Stephanou (Eds.), *International Debt: Economic, Financial, Monetary, Political and Regulatory Aspects* (Chapter 6, pp. 164–188). Basingstoke and London: Palgrave Macmillan.

Gortsos, Ch. V. (2014). *The New EU Directive (2014/49/EU) on Deposit Guarantee Schemes: An Element of the European Banking Union*. Athens: Nomiki Bibliothiki.

Gortsos, Ch. V. (2015a). *The Single Supervisory Mechanism (SSM): Legal Aspects of the First Pillar of the European Banking Union*. Athens: Nomiki Bibliothiki – European Public Law Organisation (EPLO).

Gortsos, Ch. V. (2015b). The Crisis-Based EU Financial Regulatory Intervention: Are We on the Top of the Prudential Wave? *ERA Forum, Journal of the Academy of European Law*, 89–110. Retrieved from https://link.springer.com/article/10.1007/s12027-015-0375-2.

Gortsos, Ch. V. (2016a). *Deposit Guarantee Schemes: General Aspects and Recent Institutional and Regulatory Developments at International and EU Level*. Retrieved from https://ssrn.com/abstract=2758635.

Gortsos, Ch. V. (2016b). *A Poisonous (?) Mix: Bail-out of Credit Institutions Combined with Bail-in of Liabilities Under the BRRD – The Use of 'Government Financial Stabilization Tools' (GFSTs)*. Paper presented at the Workshop of the Financial and Monetary Law Working Group of the European University

Institute (EUI, Florence, 12 October 2016). Retrieved from https://ssrn.com/abstract=2876508.

Gortsos, Ch. V. (2017). *The Proposed Legal Framework for Establishing a European Monetary Fund (EMF): A Systematic Presentation and a Preliminary Assessment*. Retrieved from https://ssrn.com/abstract=3090343.

Gortsos, Ch. V. (2018). *Financial Engineering Coupled with Regulatory Incentives: Is There a Strong Market Case for Sovereign Bond-Backed Securities (SBBSs) in the Euro-Area? – A Brief Analysis of the European Commission's Proposal for a Regulation on SBBSs*. Retrieved from https://ssrn.com/abstract=3244320.

Gortsos, Ch. V. (2019a). *The Role of Deposit Guarantee Schemes (DGSs) in Resolution Financing*. European Banking Institute Working Paper Series 2019 – no. 37. Retrieved from https://ssrn.com/abstract=3361750.

Gortsos, Ch. V. (2019b). *The Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF): Legal Aspects of the Second Main Pillar of the European Banking Union* (e-book, 5th ed.). Retrieved from https://ssrn.com/abstract=2668653.

Gortsos, Ch. V. (2019c). The European Deposit Insurance Scheme (EDIS). In F. Fabbrini & M. Ventoruzzo (Eds.), *Research Handbook of EU Economic Law* (Chapter 13, pp. 366–395). Cheltenham, UK and Northampton, MA: Edward Elgar Publishing.

Gortsos, Ch. V. (forthcoming). Banking Resolution: The EU Framework Governing the Resolution of Credit Institutions. In F. Amtenbrink & Ch. Hermann (Eds.), *Oxford Handbook on the EU Law of Economic and Monetary Union*, Part 8, 8.4. Oxford: Oxford University Press.

Goyal, R., Brooks, P. K., Pradhan, M., Tressel, Th., Dell' Ariccia, G., Leckow, R., Pazarbasioglu, C., & IMF Staff Team. (2013). *A Banking Union for the Euro Area*. IMF Staff Discussion Note, SDN/13/01, International Monetary Fund, February.

Gros, D. (2015). *Completing the Banking Union: Deposit Insurance*. CEPS Policy Brief No. 335, December, Centre for European Policy Studies. Retrieved from https://ssrn.com/abstract=2721668.

Grundmann, S. (2015). The Banking Union Translated into (Private Law) Duties: Infrastructure and Duties. In S. Grundmann & J.-H. Binder (Eds.), *The Banking Union and the Creation of Duties, European Business Organisation Law Review (EBOR), 16*(3), Springer – Asser Press, 357–382.

Grundmann, S., & Binder, J.-H. (Eds.). (2015). *The Banking Union and the Creation of Duties, European Business Organisation Law Review* 16(3), Springer – Asser Press.

Grünewald, S. N. (2014). *The Resolution of Cross-Border Banking Crises in the European Union – A Legal Study from the Perspective of Burden Sharing*. International Banking and Finance Law Series, Volume 23, Wolters Kluwer Law & Business, Kluwer Law International, The Netherlands.

Grünewald, S. N. (2017). Legal Challenges of Bail-in. In *ECB Legal Conference 2017 – Shaping a New Legal Order for Europe: A Tale of Crises and Opportunities*, European Central Bank, December, pp. 287–310. Retrieved from https://www.ecb.europa.eu/pub/pdf/other/ecblegalconferenceproceedings201712.en.pdf.

Hadjiemmanuil, Ch. (2014). Special Resolution Regimes for Banking Institutions: Objectives and Limitations. In W. G. Ringe & P. M. Huber (Eds.), *Legal Challenges in the Global Financial Crisis – Bail-outs, the Euro and Regulation* (Chapter 13). Oxford: Hart Publishing; Oregon: Portland.

Hadjiemmanuil, Ch. (2019). The Euro Area Crisis, 2008–2018. In F. Amtenbrink & Ch. Hermann (Eds.), *Oxford Handbook on the EU Law of Economic and Monetary Union*, Part 8, 8.4. Oxford: Oxford University Press (forthcoming), LSE Law, Society and Economy Working Papers 12/2019. Retrieved from https://ssrn.com/abstract=3413000.

Haentjens, M. (2017). Selected Commentary on the Bank Recovery and Resolution Directive. In G. Moss, B. Wessels, & M. Haentjens (Eds.), *EU Banking and Insurance Insolvency* (Chapter IV, 2nd ed., pp. 177–318). Oxford: Oxford University Press.

Hatje, A. (2019). Artikel 4 des EUV. In J. Schwarze, U. Becker, A. Hatje, & J. Schoo (Hrsg.), *EU-Kommentar*, 4. Auflage, Baden-Baden: Nomos Verlagsgesellschaft, pp. 59–91.

Herdegen, M. (2016). *The European Commission Proposal for a Regulation Establishing a European Deposit Insurance Scheme – Assessment Under European and Constitutional Law*. Opinion on behalf of the German Banking Industry Committee (GBIC), March. Retrieved from https://die-dk.de/en/topics/press-releases/opinion-confirms-inadequate-legal-basis-european-deposit-insurance-scheme-edis-en.

Herring, R. J. (2013). The Danger of Building a Banking Union on a One-Legged Stool. In F. Allen, E. Carletti, & J. Gray (Eds.), *Political, Fiscal and Banking Union in the Eurozone?* (Chapter 2, pp. 9–28). FIC Press, Wharton Financial Institutions Center, Philadelphia, USA.

House of Lords. (2012). *European Banking Union: Key Issues and Challenges*. European Union Committee, 7th Report of Session 2012-13, HL Paper 88, London, 12 December.

Huber, D. (2017). The Government Stabilization Tools. In World Bank Group (Ed.), *Understanding Bank Recovery and Resolution in the EU: A Guidebook to the BRRD* (Chapter 19, pp. 136–138), World Bank Group, Finance & Markets, Financial Sector Advisory Center (FinSAC), April. Retrieved from https://pubdocs.worldbank.org/en/609571482207234996/FinSAC-BRRD-Guidebook.pdf.

Huber, D., & Merc, G. (2014). The Banking Recovery and Resolution Directive and the EU's Crisis Management Framework: Principles, Interplay with the Comprehensive Assessment and the Consequences for Recapitalizing Credit Institutions in Crisis Situations. *Financial Stability Report, 28*, 75–90.

Huertas, T. (2012). *The Case for Bail-ins*. Wharton Financial Institutions Center, Working Paper No. 17.

Joosen, B. (2014). *Bail in Mechanisms in the Bank Recovery and Resolution Directive*. Working Paper, Netherlands Association for Comparative and International Insolvency Law, Annual Conference, 6 November.

Kleftouri, N. (2015). *Deposit Protection and Bank Resolution*. Oxford: Oxford University Press.

Krahnen, J. P., & Moretti, L. (2015). Bail-in Clauses. In E. Faia, A. Hackethal, M. Haliassos, & K. Langenbucher (Eds.), *Financial Regulation – A Transatlantic Perspective* (Chapter 6, pp. 125–149). Cambridge: Cambridge University Press.

Lannoo, K., & Thomadakis, A. (2019). *Rebranding Capital Markets Union: A Market Finance Action Plan*. CEPS-ECMI Task Force Report, Centre for European Policy Studies. Retrieved from https://www.ceps.eu/wp-content/uploads/2019/06/Rebranding-Capital-Markets-Union.pdf.

Lastra, R. M. (2013). Banking Union and Single Market: Conflict or Companionship? *Fordham International Law Journal, 36*, 1189–1223.

Lastra, R. M. (2015). *International Financial and Monetary Law* (2nd ed.). United Kingdom: Oxford University Press.

Lastra, R. M., & Goodhart, Ch. (2015). *Interaction Between Monetary and Bank Regulation*. In-Depth Analysis, European Parliament, Directorate General for Internal Policies, IP/A/ECON/2015-07, September.

Lefterov, A. (2015). *The Single Rulebook: Legal Issues and Relevance in the SSM Context*. European Central Bank, Legal Working Paper Series, No 15, October.

Lenz, C. O. (2010). Artikel 4 des EUV. In C. O. Lenz & K. D. Borchardt (Hrsg.), *EU-Verträge: Kommentar nach dem Vertrag von Lissabon*, 5. Auflage, Europa – Staat – Verwaltung, Bundesanzeiger Verlag, Köln – Linde Verlag, Wien, pp. 16–24.

Lenz, C. O., & Borchardt, K. D. (Hrsg.). (2010). EU Verträge – Kommentar nach dem Vertrag von Lissabon, 5. Auflage, Europa – Staat – Verwaltung, Bundesanzeiger Verlag, Köln – Linde Verlag, Wien.

Louis, J.-V. (2012). Vers une Union bancaire. *Cahiers de droit européen*, (2), 289–304.

Louis, J.-V. (2017). L'union économique et monétaire face à la réforme. *Cahiers de droit européen, (3)*, 589–610.

Louis J.-V. (2018). The EMU and the EBU: Time for Reform. *Revista de Derecho Communitario Europeo, 59*, 11–38. Retrieved from https://doi.org/10.18042/rcde.59.01.

McNamara, Ch., Wedow, M., & Metrick, A. (2014a). *Basel III A: Regulatory History*. Yale Program on Financial Stability Case Study 2014-1A-V1. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2576906.

McNamara, Ch., Wedow, M., & Metrick, A. (2014b). Basel III B: Basel III Overview, Yale Program on Financial Stability Case Study 2014-1B-V1. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2576939.

Mitchener, K. J. (2014). The Diabolic Loop: Precedents and Legacies. In F. Allen, E. Carletti, & J. Gray (Eds.), *Bearing the Losses from Bank and Sovereign Default in the Eurozone* (Chapter 12, pp. 165–180). FIC Press, Wharton Financial Institutions Center, Philadelphia, USA. Retrieved from https://hdl.handle.net/1814/34437.

Moloney, N. (2014). European Banking Union: Assessing Its Risks and Resilience. *Common Market Law Review, 51*(6), 1609–1670. Retrieved from https://eprints.lse.ac.uk/60572.

Montanaro, E. (2019). Non-Performing Loans and the European Union Legal Framework. In M. P. Chiti, & V. Santoro (Eds.), *The Palgrave Handbook of European Banking Union Law* (Chapter 10, pp. 213–246). London: Palgrave Macmillan.

O'Gorman, R. (2019). Adjustment Programmes, the European Central Bank and Conditionality. In F. Fabbrini, & M. Ventoruzzo (Eds.), *Research Handbook of EU Economic Law* (Chapter 9, pp. 232–260). Cheltenham and Northampton, MA: Edward Elgar Publishing.

Pisani-Ferry, J., Sapir, A., Véron, N., & Wolff, G. B. (2012). *What Kind of European Banking Union*. Bruegel, D121, A-2012, 25 June.

Ringe, W. G. (2015). Capital Markets Union for Europe: A Commitment to the Single Market of 28. *Law and Financial Markets Review, 9*, 5–7.

Schlag, M. (2019) Artikel 53 des AEUV. In J. Schwarze, U. Becker, A. Hatje, & J. Schoo (Hrsg.), *EU-Kommentar*, 4. Auflage, Baden-Baden: Nomos Verlagsgesellschaft, pp. 935–944.

Schlosser, P. (2017). Still Looking for the Banking Union's Fiscal Backstop. In F. Allen, E. Carletti, J. Gray, & M. Gulati (Eds.), *The Changing Geography of Finance and Regulation in EUROPE*, European University Institute (EUI), pp. 163–178.

Schoenmaker, D. (2012). Banking Union: Where We're Going Wrong. In T. Beck (Ed.), *Banking Union for Europe. Risks and Challenges* (pp. 97–103). London: Centre for Economic Policy Research (CEPR).

Schoenmaker, D. (2014). *On the Need for a Fiscal Backstop to the Banking System, Duisenberg School of Finance*. DSF Policy Paper, No. 44, July. Retrieved from https://www.dsf.nl/wp-content/uploads/2014/10/DSF-Policy-Paper-No-44-On-the-need-for-a-fiscal-backstop-to-the-banking-system.pdf.

Schoenmaker, D. (2017). A Macro Approach to International Bank Resolution, Bruegel, Policy Contribution, Issue no. 20, July. Retrieved from https://bruegel.org/wp-content/uploads/2017/07/PC-20-2017-100717.pdf.

Sibert, A. (2012). *Banking Union and a Single Bank Supervisory Mechanism, Directorate-General for Internal Policies, Banking Union and a Single Banking Supervisory Mechanism*. Monetary Dialogue 2012, European Parliament. Retrieved from https://www.europarl.europa.eu/RegData/etudes/note/join/2012/492449/IPOL-ECON_NT(2012)492449_EN.pdf.

Thole, Ch. (2014). *Bank Crisis Management and Resolution – Core Features of the Bank Recovery and Resolution Directive*. Retrieved from https://ssrn.com/abstract=2469807.

Tröger, T. H. (2015). *Regulatory Influence on Market Conditions in the Banking Union: The Cases of Macro-Prudential Instruments and the Bail-in Tool. European Business Organization Law Review (EBOR), 16*(4), Springer – Asser Press, October. Retrieved from https://ssrn.com/abstract=3023185.

Tröger, T. H. (2017). Too Complex to Work: A Critical Assessment of the Bail-In Tool Under the European Bank Recovery and Resolution Regime. *Journal of Financial Regulation, 4*(1), SAFE Working Paper No. 179, European Banking Institute Working Paper No. 12. Retrieved from https://ssrn.com/abstract=3023184.

Ventoruzzo, M., & Sandrelli, G. (2019). *Oh Tell Me the Truth About Bail-in: Theory and Practice*. ECGI, Law Working Paper No. 442/2019, March. Retrieved from https://ssrn.com/abstract=3343324.

Véron, N., & Wolff, G. (2015). *Capital Markets Union: A Vision for the Long Term*. Bruegel Policy Contribution, Issue 2015/05, April.

Vovolinis, D. (2015). *The European Stability Mechanism Direct Recapitalisation Instrument: An Element for a complete European Banking Union*. ECEFIL Working Paper Series, No. 13, March, Retrieved from https://www.ecefil.eu//UplFiles/wps/wps2015-13.pdf.

Wojcik, K.-P. (2015). The Significance and Limits of the 'No Creditor Worse Off Principle for an Effective Bail-in. In *ECB Legal Conference 2015 – From Monetary Union to Banking Union, on the Way to Capital Markets Union: New Opportunities for European Integration*. European Central Bank, December, pp. 253–258. Retrieved from https://ssrn.com/abstract=2688953.

Wolfers, B., & Voland, T. (2018). Bankenrestrukturierung und Bankenabwicklung – Die Bankenabgabe im Rahmen des Single Resolution Mechanism. In J.-H. Binder, Al. Glos, & J. Riepe (Hrsg.), Handbuch Bankenaufsichtsrecht, RWS Verlag Kommunikationsforum GmbH, Köln, Teil II, Kapitel 121, S. 947–970.

World Bank Group. (2017). *Understanding Bank Recovery and Resolution in the EU: A Guidebook to the BRRD*. World Bank Group, Finance & Markets, Financial Sector Advisory Center (FinSAC). Retrieved from https://pubdocs.worldbank.org/en/609571482207234996/FinSAC-BRRD-Guidebook.pdf.

Wyplosz, Ch. (2012). Banking Union as a Crisis-Management Tool. In T. Beck (Ed.), *Banking Union for Europe. Risks and Challenges* (pp. 19–23). London: Centre for Economic Policy Research (CEPR).

Zavvos, G., & Kaltsouni, S. (2015). The Single Resolution Mechanism in the European Banking Union: Legal Foundation, Governance Structure and Financing. In M. Haentjens & B. Wessels (Eds.), *Research Handbook on Crisis Management in the Banking Sector*. Cheltenham: Edward Elgar Publishing. Retrieved from https://ssrn.com/abstract=2531907.

Zettelmeyer, J., Trebesch, Ch., & Gulati, G. M. (2013). Managing Holdouts: The Case of the 2012 Greek Exchange. In R. M. Lastra & L. Buchheit (Eds.), *Sovereign Debt Management* (Chapter 3, pp. 25–38). Oxford: Oxford University Press.

Zilioli, Ch., & Athanassiou, Ph. (2018). The European Central Bank. In R. Schütze & T. Tridimas (Eds.), *Oxford Principles European Union Law – Volume I: The European Union Legal Order*, Part III: Institutional Framework (Chapter 19, pp. 610–650). Oxford: Oxford University.