

Some Considerations Regarding the European Banking Union

Marius Eugen Radu

Faculty of Law and Administrative Sciences, “Dimitrie Cantemir” Christian University,
Bucharest, Romania, E-mail: mariusavocat@yahoo.com

Abstract *Union Bank is a surveillance system and an EU bank resolution, which operates on the basis of EU wide rules. It aims to ensure that the banking sector in the euro area and the EU in general is safe and reliable and viable banks benefiting from resolution without recourse to taxpayer funds and with minimal impact on the real economy. Banking union members are all euro-zone countries and EU Member States that have chosen to participate. All countries will adopt the euro in the future will automatically become members of the banking union. Countries that are not part of the euro area can join by establishing a close cooperation agreement.*

Key words banking supervision, the European Union, single mechanism, bank policy, Member States

JEL Codes: K20

1. Introduction

The specific objective of the Union Banking is the establishment of integrated mechanisms of supervision and resolution Union bank whose role will be to ensure, on the one hand, high and uniform standards on surveillance (with an emphasis on creating a single authority for supervision) on the other hand, common rules on bank resolution, and the legal basis is Article 114 and Article 127 (6) of the Treaty on the functioning of the European Union (TFEU).

In perspective, the architecture of the future banking union would be complemented by a common deposit guarantee scheme.

The European Banking Union is based on three pillars:

1. The single supervisory mechanism,
2. The unique resolution
3. National deposit guarantees funds.

At European level, they were adopted in 2014 three European Banking Union regulations, namely Directive on bank recovery and resolution, Single Resolution Mechanism Regulation and the Directive on Deposit Guarantee Schemes.

Single supervisory mechanism under the first pillar of European Banking Union, the European Central Bank (ECB) acts as supervisor of banks in the euro area since November 2014.

The ECB will directly supervise significant banks, banks that have requested or received financial assistance direct public banks less significant (it is necessary to ensure consistent application of high standards of supervision) and the three largest banks in each participating Member State, that and major banks in Romania given that our country has Union expressed its commitment to participate in Banking.

The capitalization of the Romanian banking system is comfortable, from 18.07% in June 2015, while the minimum threshold established under the European regulatory framework CRD IV/CRR is 8%.

2. Literature review

Banking Union project (UB) was launched in May 2012 as part of EU efforts to strengthen the Economic and Monetary Union and to interrupt the vicious circle between banks and sovereign debt.

Targeting in particular the euro area, but open to non-euro states, the Union Banking aims to complete the institutional framework of the EU financial system. UB project is based on a single set of rules (single rulebook) setting capital requirements for banks, to ensure better protection for savers and regulating the prevention and management of bank failures.

The consistent application of these rules in UB is ensured by single supervisory mechanism (SSM) and single resolution mechanism (SRM), which governs prudential issues and crisis management. UB to complete, in addition to implementing the legislation already agreed upon in order to strengthen financial stability, it is considered necessary to adopt a European Deposit Insurance Scheme (EDIS).

3. Methodology of research

During research use multiple research methods and their correlation in particular: the logical method; the historical method; the comparative method and the quantitative method.

The historical method is used to highlight how the European Central Bank has evolved from a simple idea to the institution responsible for monetary policy in the euro area - the largest economy in the world after the United States.

The logical method contributes to the understanding of the fundamentals considerations and regulations in the field of the European Union, highlighting the theoretical and practical aspects thereof, and synthesizing research results, the conclusions drawn in the final analysis.

The comparative method is effective in analyzing various existing financial institutions both at EU level and internationally and also in the evaluation of the opinions in literature. Directly by its quantitative method we capitalize on the most important decisions of the Court of Justice of the European Union.

The scientific approach is facilitated by consultation and interpretation of the main doctrinal views, Romanian and foreign.

We also use, including electronic information resources available, particularly through access to databases containing national legislation and jurisprudence, namely the European Union, and dictionaries, encyclopedias and other materials available electronically. However, in this paper, we present and interpret the main regulations of the European Union, meaning the state that ministry is considering legislation and jurisprudence published until May 1, 2016.

4. Data analysis

1. The single supervisory mechanism (MUS) - a major pillar of the banking union - is a system of prudential supervision in the EU credit institutions in the euro area and the EU Member States outside the euro area that choose to join the mechanism. Its purpose is to ensure improved supervision of the banking sector in Europe.

Supervision is done through an integrated architecture that combines a supranational authority - European Central Bank - and national supervisory authorities, in close cooperation under a single set of high-level standards and requirements.

Activities common mechanism of supervision rests on another pillar of the banking union - the only mechanism for resolution, which consists of a single authority resolution (Committee) and a single fund for a resolution to contribute to the resolution of distressed banks majeure .

The main tasks:

- supervise compliance by the lending institutions prudential requirements
 - detect weaknesses in early stage
 - Ensure that actions are taken to correct these weaknesses in order to prevent a change in a threat to financial stability
- General single supervisory mechanism is composed of the European Central Bank (ECB) and the national supervisory authorities of the EU Member States participating.

Practical cooperation agreements between the ECB and national supervisory authorities established by Regulation ECB are known as "Regulation Framework MUS". They were signed similar cooperation agreements between the EU Council and the ECB and between Parliament and the ECB.

ECB will directly supervise the largest 120 banks in the euro area, which covers over 85% of banking assets, and will oversee indirectly around 3 400 smaller

institutions the ECB is responsible for the overall operation of the common mechanism of supervision.

This directly supervising all banks 'significant' in the euro area (especially large banks, systemic) in close cooperation with national supervisors. Banks subject to direct supervision bodies have assets of more than € 30 billion or equivalent to at least 20% of the GDP of their country of origin.

Currently, there are about 120 such banks in the euro area, representing almost 85% of its total banking assets. Supervision means making regular checks to ensure the efficient operation of the banks.

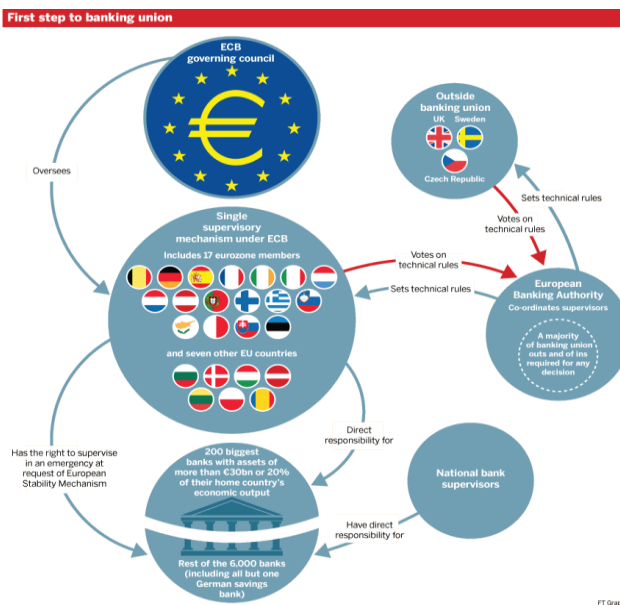


Figure 1. First step to banking union

This includes an examination of how banks credits, borrow and invest, or more generally, how they comply with the rule book. The ECB has fully assumed supervisory duties in November 2014. In preparation, check the soundness of banks as a "detailed assessment", including analysis of banks' balance sheets, particularly the quality of assets and the "stress tests" which are designed to test whether banks are capitalized and sufficiently prepared to deal with crises. ECB performs these analyzes in cooperation with the European Banking Authority as appropriate.

The ECB has also the power to grant or revoke banking licenses, in cooperation with national supervisory authorities, as well as that of punishing banks in cases of non-compliance. The ECB monitors the supervision of smaller banks conducted by national supervisors. ECB may decide to directly supervise any bank in the Member States participating in MUS to ensure consistent application of supervisory standards.

ECB accountable to the EU Council and the European Parliament for the implementation of these rules.

ECB specific agreements on transparency and accountability to both the European Parliament and the Council. The ECB's supervisory tasks performed by specially established a Supervisory Board. Decisions of the Board shall be deemed adopted unless they are rejected by the Governing Council.

The Council has the following members:

- President
- Vice
- 4 representatives of the ECB
- 1 representative from each national supervisory authority of the EU Member States participating in the Supervisory Board shall be granted to countries outside the euro area participating in MUS voting rights fully and equal to euro area countries.

In December 2013, Danièle Nouy was named President of the Supervisory Board of the ECB, and in February 2014 was appointed Vice-President Sabine Lautenschlager of the Supervisory Board.

Both were appointed for a term of 5 years, which is renewable. National supervisors are responsible for supervision of smaller banks and perform other daily tasks related to consumer surveillance, money laundering, payment services and bank branches from third countries.

Council appoints the President and Vice President of the Supervisory Board. Candidates are proposed by the ECB and the European Parliament must give its consent.

In addition, Parliament and Council have the right to initiate a procedure for removing the president, although the ECB's sole discretion to take any action in response.

EBA is responsible for ensuring effective implementation and consistent regulatory framework unique in the banking sector. It also participates in the preparation of bank stress tests to be executed by the ECB, while EBA stress test exercise coordinated at a global level across the EU.

Integrated EU banking supervision has become necessary to address the growing risk of side effects and cross-border contagion in the EU banking crisis cases. The

risk increased with cross-border activities of the European banking sector and their interdependencies arising.

The Eurozone sovereign debt crisis highlighted the potentially vicious circle between banks and sovereign debt.



Source: http://europa.eu/rapid/press-release_MEMO-14-294_en.htm

Figure 2. The vicious circle between banks and national finances

The risk proved to be particularly acute in the euro area, the recent financial crisis has shown that simple coordination of banking supervision at national level was not sufficient for crisis management and financial stability.

Therefore, Member States decided that it needed a single system of banking supervision.

2. *The unique resolution (MUR)* will be operational in 2016 and will include single resolution fund (FUR) of 55 billion euros fueled by banks.

Directive on bank resolution and recovery (BRRD) is applicable to all Member States of the European Union and introduces an extensive set of tools and harmonized resolution to bail out banks in crisis situations.

The mechanism consists of the following steps:

1. The European Central Bank, the supervisory authority, inform the Committee unique resolution if a bank is in serious difficulties or is likely to enter into difficulty. This decision may be taken also in the executive session of the Committee unique resolution at its own initiative, where, after being informed, the ECB does not react within 3 days.

2. Executive Session decide whether it is possible private solution and if the resolution is necessary in the public interest.

3. In case of failure to resolution, the bank is liquidated in accordance with national law.

4. If the conditions for resolution, the Committee adopted a single resolution scheme resolution. Scheme determines the resolution tools and use single resolution fund. The Committee submits to the Commission resolution scheme as soon as it adopts.

5. Scheme shall enter into force 24 hours after its approval by the Committee. Meanwhile, the Commission can either adopt the scheme, either:

- to object to aspects discretionary Scheme resolution adopted by the Committee unique resolution
- advise the Council to object to the scheme on the grounds that the resolution is not necessary in the public interest. In such a case, the Council shall act by a simple majority
- propose to the Council to approve an amendment significant amount of fund provided for in resolution scheme or to object to it (a variation of 5% or more of the amount of fund proposed the committee is considered to be significant).

If the Commission decides to propose to the Council to object, the Commission must do so within 12 hours of approval by the scheme resolution allows the Board to adopt a decision within 12 hours.

If the Council objects to the resolution of an institution, that institution is wound up in accordance with applicable national law. 6. The Committee shall ensure that measures are taken necessary resolution by national relevant resolution.

3. *National deposit guarantee funds* represent the third pillar of European Banking Union. Directive reviewed and published in reconfirms the coverage of 100,000 euros per depositor per bank and a gradual reduction from 20 days to 7 days the deadlines for repayment in case of unavailability of deposits.

The Directive also introduces the obligation of ex-ante funding guarantee schemes (in advance) in each European state. According to its coverage of deposits would be 0.8% of covered deposits within a decade.

From this perspective, Romania is doing well since the coverage of guaranteed deposits is over 2.8%. Shaping European Banking Union is one of the most important projects of the European Union after its creation, given the responsibility involved in the application and its implications and challenges of the new capital distribution plans at European level.

Risks involved in shaping, implementing and regulatory compliance exposure and consist of restricting the withdrawal of capital from credit institutions with foreign capital. 90% of bank assets are held by institutions with foreign capital. In Romania,

banks provide over 90% of the financing of the economy, and if we include the funding IFNs belonging to banking groups, mean that only 5% of the funding is provided by the Romanian economy other financial markets.

At European level, banks provide 75-80% of the financing of the economy, the rest being carried through the capital market. In the US, companies are financed through a bank loan at a rate of only 15%.

Single Resolution Fund/SRF, whose establishment is provided for by the draft Regulation on SRM, aims to provide funding in the SRM resolution, consisting of contributions from the banks of the participating Member States. Future Single Resolution Fund will be governed by the agreement for the transfer and pooling of contributions to the Single Resolution Fund that will provide the legal basis to allow the transfer of amounts from national departments to SRF and the pooling of contributions collected nationally.

This agreement will be an additional document SRM Regulation, taking as an instrument of public international law, to be ratified by all Member States participating. The agreement will enter into force once ratified by Member States participating in the Single Supervisory Mechanism/Single Resolution Mechanism representing 90% of the votes weighted aggregate of all participating Member States.

Single resolution fund is a fund established at supranational level. It will be used for resolution of banks in major difficulty after exhausting other options, such as instrument bail. Single resolution fund will be financed by contributions from the banking sector. SRF will be established over a period of 8 years. It should reach at least 1% of the guaranteed deposits of all credit institutions authorized in all Member States of the banking union.

The estimated value of SRF will be about 55 billion. The individual contribution of each bank will be calculated in proportion to the total value of its liabilities (excluding own funds and deposits guaranteed) by liabilities units (excluding own funds and deposits guaranteed) of all credit institutions authorized in the Member States participating.

Contributions will be adjusted in proportion to the risks assumed by each institution. A precondition for accessing the fund is applying the rules and principles of bail set out in the directive on bank recovery and resolution mechanism and regulation on the single resolution. This is necessary to ensure compliance with one of the basic principles of banking union: the cost of bank statements of difficulty should be borne by the financial industry, not taxpayers.

The fund will initially consist of "national departments". They will be joined gradually during a transition phase that will last 8 years. This "pooling" the use of funds subscribed and paid-up starts with 40% in the first year and continue with 20% in

the second, increasing then continuously with equal amounts during the six years remaining until compartments national their cease to exist. Transfer and mutualisation funds are provided in a separate intergovernmental agreement between Member States joining the banking union.

The Council adopted this decision to ensure maximum legal certainty, given the legal and constitutional problems in certain Member States. Single resolution fund is designed to protect banks from dependence on support from national budgets and the differing approaches of Member States to use funding mechanisms. In addition, it will help to avoid situations where national bank resolution would have a disproportionate impact on the real economy.

Finally, supranational resolution system is needed to complete the system of EU supervision - unique mechanism of supervision. This helps prevent tensions between the ECB and national resolution authorities. Single resolution mechanism objectives are therefore to strengthen confidence in the banking sector to prevent situations banking panic and contagion, to minimize the negative relationship between banks and sovereign debt and to eliminate fragmentation in the internal market for financial services.

The provisions of the resolution on the preparation of planning, gathering information and cooperation with the authorities at national resolution applies from 1 January 2015. The provisions on resolution planning, early intervention measures of resolution and resolution tools, including internal recapitalization of shareholders and creditors, applies from 1 January 2016, if the conditions for transferring single resolution fund contributions.

The intergovernmental agreement will enter into force after ratification by Member States participating in MUS/MUR, representing 90% of total weighted votes of all participating Member States.

5. Conclusions

Analysis of the concept of independence of the central bank theoretically and practically, revealed the importance of respecting this principle, both at EU level and at national level.

In the context of those shown, we appreciate that, by law ferenda, should consider the possibility of regulation at national level, even in the Constitution, which is the fundamental legal document of a state. In this way, the central bank would have an important lever to protect against potential attempts to influence exerted by the political factor.

The research, conducted on Banking Union project, revealed a number of uncertainties concerning the situation of euro area countries that want to participate in banking union. In order to clarify all the problems in the legislation on unique

mechanism of Supervision on this topic, we appreciate that the European Union should pay more attention to this issue and to regulate in detail not only the procedure followed in order to join, but concrete way in which this cooperation will take place.

Therefore, we have proposed the development of legislation at EU level in the field, by adopting an act that could acquire the form of a binding act (decision, regulation) or the form of an explanatory non-binding.

References

- Allgrove B.D. (2004), *Legal Personality for Artificial Intellects: Pragmatic Solution or Science Fiction?*, a dissertation submitted at the University of Oxford, SSRN, New York, USA;
- Bedi J. (2012), *Is the importance attributed to central-bank independence justified?*, *Financial Organisation and Economic Growth*, University of Cambridge 2012-2013;
- Binder A.S. (1998), *Central Banking in Theory and Practice*, the MITPRESS, Cambridge, Massachutes, London, England;
- Brown B. (2012), *Euro Crash-The exit route from monetary failure in Europe*, Second edition, Palgrave Macmillan;
- Casu B., Girardone C., Molyneux P. (2006), *Introduction to banking*, Prentice Hall, Financial Times, 2006;
- http://ec.europa.eu/economy_finance/euro/communication/index_ro.htm;
- http://ec.europa.eu/economy_finance/publications/european_economy/2014/ee4_en.htm;
- <http://www.ecb.europa.eu/pub/pdf/conrep/cr201406ro.pdf>;
- http://www.ecb.europa.eu/ecb/educational/facts/euint/html/ei_005.ro.html.