

## Legal and Institutional Design of EMU

### Session 4: Banking Union

The legal framework in this field is gigantic and it is not the purpose of this session to review each aspect in detail. Rather, the aim is to map out the major aspects of the so-called banking union and to identify the major legal risks in its design and operation. The discussion is structured in this way: first we look generally to the various legal instruments and assess major concerns and then we focus specifically on the single resolution mechanism.

### Reading

Niamh Moloney 'European Banking Union: Assessing Its Risks and Resilience' (2014) 51 Common Market Law Review 1609

Christos Hadjemmanuil 'Bank Resolution Financing in the Banking Union' LSE Law, Society and Economy Working Papers 6/2015

Federico Fabbrini 'Of Banks, Courts and International Law' (2014) 21(3) Maastricht Journal of European & Comparative Law 444

Stefano Micossi, et al 'Bail-in Provisions in State Aid and Resolution Procedures: Are they consistent with systemic stability?' CEPS Policy Brief No. 318, 21 May 2014

### For discussion

#### Overall structure of the Banking Union

1. Identify and the various elements of banking union and the institutions responsible for executing it. Identify also the relevant legal instruments for each element and institution.
2. Explain and discuss the 'narrative' that led to the banking union and then examine how far the narrative is matched by the legal framework that has been set up.

To address this you will find it helpful, in addition to the readings above, to review the information on the following websites:

<http://srb.europa.eu/>

[http://ec.europa.eu/finance/general-policy/banking-union/index\\_en.htm](http://ec.europa.eu/finance/general-policy/banking-union/index_en.htm)

<https://www.bankingsupervision.europa.eu/home/html/index.en.html>

## Major legal challenges

1. Assess how far banking union is vulnerable to legal challenge, for example:

- The legal basis for the measures
- The use of an international agreement to supplement SRM
- The powers of the various agencies created
- The relation among the various actors
- The ECB's double role as bank supervisor and central banker
- The membership of SSM – which banks are included, and from which Member States? Is the incompleteness of the 'single' supervisory mechanism a problem?

2. Explain the operation of the Single Resolution Mechanism

- In particular explain the role of 'bail-ins' and the role of other sources of financing banks in trouble.
- What do you consider will be the main legal risks as this framework is implemented?
- For example, what legal action might be taken by those who suffer from a 'bail-in'? (See the pleas in Case T-405/14 and T-680/13, both still pending.)
- What is the role of state aid law in the resolution procedure?

3. Identify other legal risks that might emerge from banking union, both in its design and in its future operation.

### **Further Reading**

Chamon 'The Empowerment of Agencies Under the Meroni Doctrine and Article 114 TFEU: Comment on *United Kingdom v. Parliament and Council (Short-Selling)* and the Proposed Single Resolution Mechanism' (2014) 39(3) *European Law Review* 380

Alexander 'European Banking Union: a Legal and institutional analysis of the Single Supervisory Mechanism and the Single Resolution Mechanism' (2015) 40(2) *European Law Review* 154

Busch and Ferrarini (eds) *European Banking Union* (2015)

Karatsia 'Cypriot Depositors Before the Court of Justice of the European Union: Knocking on the Wrong Door?' (2015) 26(2) *King's College Law Journal* 175

Chiu 'Power and Accountability in the EU Financial Regulatory Architecture: Examining Inter-agency Relations, Agency Independence and Accountability' [2015] 8(1) *European Journal of Legal Studies* 68