

Banking Union in Europe: legal and policy issues

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What is 'Banking Union'?

- Euro-jargon for single supervision, resolution and deposit insurance in EU/Euro Area
- Because “it is imperative to break the vicious circle between banks and sovereigns” (Euro Area Summit, 29 June 2012)
- Consists of:
 - ✓ Single Supervisory Mechanism (SSM)
 - European Recovery and Resolution Regime
 - European Deposit Insurance Mechanism

Mandatory information exchange

- Major stumbling block in 2008 crisis: (cross-border) information exchange froze
- Reliance on multiple, less-than-clear ;-)
provisions on EU banking supervisory rules:
patchwork of clauses on information exchange
among supervisors and NCBs
- Far stronger language needed in Regulation
establishing SSM (my proposal)

Single rule book

- ECB to apply EU-harmonised national rules (directives leave scope for national choice in implementing EU supervisory standards, plus ‘gold-plating’) written in national languages, embedded in State legal regimes (**sanctions**, **review**)
- No single rule book yet
- ... even Basel-III to be implemented in directive and regulation: CRD-IV and CRR
- State differences among banks and their supervision become acutely visible in SSM

(Limitation of) supervisory liability

- Not included in draft regulation, merely a reference to Article 340 TFEU:
 - *In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.*
 - *Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.*
- Supervisor's dilemma
- Who decided? ECB or national supervisor?

Cross-border business notifications

- Since 1993 banks can establish branches and provide cross-border services without establishment with mere notifications ('European passport')
- ECB to take over role of national authorities in determining whether banks are fit to establish branch in other State
 - small step towards EU-granted banking license
 - but (Ecofin amendment) only between SSM States and others
- Further divisions in Europe:
 - <ins> vs. <outs> €
 - <participating> vs. <non-participating> **SSM / Fiscal Compact / 'Schengen'**
 - 'enhanced cooperation' vs. EU-wide: **Financial Transaction Tax**
- After euro area crisis 'balkanization' of the single banking market, a return to EU-wide banking?

Other issues in finance

- Urgent need: proposal for EA R&R regime
- NO to waiting for implementing Commission proposals of June 2012, based on harmonised national R&R regimes
- Linked to budgetary autonomy of Member States
- EU-wide approach on 'splitting' banks (*Liikanen, Vickers*)
- FTT: financial transaction tax for Euro Area
- Linked to own 'fiscal capacity' for Euro Area
- To be used for EU/Euro Area Deposit Insurance Fund?

Legal traps facing the ECB

The European Central Bank is set to gain supervisory powers over the continent's banks via the single supervisory mechanism.

René Smits explains the practical issues linked with the banking union

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Categories: [Central Banks](#)

Topics: [European Union \(EU\)](#), [European Commission](#), [Single supervisory mechanism](#), [ECB](#)

Source: <http://www.centralbanking.com/central-banking-journal/opinion/2231988/legal-traps-facing-the-ecb>



Other issues beyond finance

- **Well-functioning labour market** (cross-border mobility: pension portability, reduction of bureaucracy, single free movement regulation)
- **Fiscal capacity (budget) to allow automatic stabilisers to function** across Euro Area (potential sources of income: VAT, FTT, CO₂ levy)
- Governments jointly tapping markets (**'Eurobonds'**)
- **Cultural element**: language, common media space
- **Applying 'troika' method** to other areas than conditionality and beyond programme States

Open letter to Herman Van Rompuy - II

René Smits

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<http://fd.nl/beurs/columns/rene-smits/>



Comments and requests for advice are welcome at rs@renesmits.eu

