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The establishment of the European Banking Union as a decisive step towards the completion of the Economic and Monetary Union The latest developments

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Abstract

The financial and economic crisis occurred since 2008, has threatened economic stability in the whole euro zone. Besides it showed that the EU banking system was highly vulnerable to turbulences. This is why the EU competent institutions have elaborated since 2012 a strategy for the implementation of reforms in the financial, fiscal and economic sectors with the ultimate aim of strengthening the institutional architecture of Economic and Monetary Union (EMU). One of the building blocks on which is based the above project is the establishment of the European Banking Union (EBU). The EBU is based on a single regulatory framework, known as the single rulebook. This is a set of rules contained in EU regulations and directives governing the single market of financial services. The EBU covers three crucial for the stability of the financial system issues namely: (a) the supervision of banks which is necessary to prevent banking crises, (b) the management (settlement) of banking crises and (c) the deposit guarantees. The primary element of the EBU is the creation of a supranational (European) banks prudential supervision framework including on the one hand uniform rules on financial services applicable to all Member States and on the other a Single Supervisory Mechanism (SSM). This supranational system is complemented by the creation of an integrated European framework of banking sector crises settlement. Main pillar of this framework is a central supranational financial institutions resolution authority, the Single Resolution Mechanism (SRM) which is the necessary complement of SSM. The EBU last component is the establishment of an appropriate regulatory framework to provide

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effective deposit protection across the EU. The purpose of this paper is to analyze the general principles and specific rules governing the functioning of EBU, the emphasis given to the most recent developments related to this matter.

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1 Introduction

As any crisis, the financial crisis occurred (broke) since 2007, has created risks and threatened economic stability in the whole euro zone. However, it is possible to draw lessons and conclusions from this crisis, in order to adopt all necessary measures creating the appropriate framework to prevent similar crises in the future or at least ensure their efficient management.
Having faced the aforementioned crisis, the EU has, since 2012, developed a strategy with the ultimate goal to achieve the institutional strengthening of the Economic and Monetary Union (EMU) architecture. A key pillar of this strategy is the establishment of the European Banking Union (EBU) based on a single regulatory framework, the single rulebook. This is a set of rules contained in EU regulations and directives governing the single market of financial services.
The EBU covers three major issues for the stability of the financial system, first the prudential supervision of credit institutions (banks), secondly the settlement / management of banking sector crisis and, thirdly, the protection of bank deposits. Its key elements are the creation of a supranational credit institutions (banks) supervision system at EU level as well as the creation of a supranational banks resolution framework. Regarding the issue of deposit protection, the establishment of a regulatory framework has been achieved, but the main objective remains the creation of a central deposit guarantee system within the EU.
The purpose of this article is a summary analysis of the principles and rules governing the establishment of the EBU, the emphasis given on the most recent institutional and regulatory developments relating to the above issues.

2 The imperative necessity to establish the EBU

In 2008 broke out the international financial crisis that affected the EU member states' banks (Hardouvelis, 2011). At the heart of this crisis were found mainly European banks whose investments connected with the US mortgage loans market. Most banks have faced the risk of bankruptcy. This risk led banks to stop lending to each other. This evolution pushed banks depended upon these loans to bankruptcy.
With a view to prevent that risk, credit institutions facing problems, resorted to the aid of governments. Since the cost of support of these institutions was very high,

concerns began to rise in financial markets about the ability of States to rescue the banking sector.
This concern led, within a recessionary environment, investors to focus on the health of member states public finances. This evolution has highlighted the accumulation of huge debts by states who had borrowed for a long time huge amounts of money to ensure the financing of their budget. The result was the unwillingness of the markets to continue to lend to those countries facing additionally problems of decreasing competitiveness.
Thus, the crisis in the banking sector begun to hit the States. The banking crisis finally triggered the debt crisis in the EU, it evolved into sovereign debt crisis. Many countries have entered a vicious cycle of financial instability, recession, public revenue decline, public debt increase, state borrowing cost increase and formation of financial instability conditions.
The financial and economic crisis raised doubts about the adequacy of the EMU institutional framework to respond to and manage such crises. Specifically they demonstrated that the EU banking system was highly vulnerable to turbulences. So it became necessary to draw up strategy to implement reforms aiming at the institutional strengthening of the EMU architecture. One of the building blocks on which is based the above project is the implementation of the Banking Union.

3 The involvement of EU institutions in the EBU establishment process

Already in 2010, the European Parliament had recommended the adoption of measures in the direction of creating a banking union, in its Resolution on cross-border crisis management in the banking sector[2].
For its part, the Commission had requested a banking union, which would put this sector on a more stable basis by restoring confidence in the euro as part of a long-term vision for economic and fiscal integration.
On 26.06.2012 the President of the European Council in close collaboration with the President of the Commission, the European Central Bank (the ECB) and the Euro Group, drew up a report which proposed the formation of a strong and stable architecture in the financial, fiscal and economic sectors, with a view to achieving a genuine EMU[3].
The European Council in its conclusions of 29.6.2012 invited the President to prepare a roadmap to achieve that final goal[4] while the Euro zone summit of the

[2] European Parliament resolution of 7 July 2010 with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector (2010/2006 (INI)).

[3] Van Rompuy Report, Towards a Genuine Economic and Monetary Union, EUCO 120/12, 2012.

[4] European Council. European Council 28/29 June 2012—Conclusions; 2012. Available at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/131388.pdf (access in 9-2-2016).

same date mandated the Commission to submit specific legislative proposals (Gortsos, 2014a).

The Commission in its Communication of 19.09.2012 to the European Parliament and the Council proposed a Roadmap to Banking Union (Gortsos, 2012)[5]. On 20.11.2012 the European Parliament adopted a resolution entitled "Towards a genuine EMU" containing recommendations to the Commission for taking far-reaching measures in order to implement a fully functioning European banking union[6].

The benchmark for the EMU completion is the specific roadmap drafted in December 2012 by the President of the European Council together with the Presidents of the Commission, the ECB and the Eurogroup. This roadmap sets binding deadlines for the achievement of a real, genuine EMU[7]. One of the key elements of this roadmap is to establish a more integrated financial framework namely a Banking Union (Papanikolaou, 2015).

The most recent major interventions for the promotion of the EBU implementation process are the report, in June 2015, of the five Presidents[8] entitled 'Completion of Economic and Monetary Union' and the subsequent Commission Communication[9] defining a clear plan for EMU deepening.

It is necessary for the completion of EMU, to progress in the direction of development of four interrelated unions, namely the Economic Union, the Financial Union, the Fiscal Union and Political Union.

One of the main fronts in which progress should be made is the implementation of a Financial Union which would guarantee the integrity of our currency throughout the Monetary Union and increase the risk sharing with the private sector[10]. To this end, it is proposed to complete the Banking Union by the creation of a deposit

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[5] Communication from the Commission to the European Parliament and the Council A Roadmap towards a Banking Union, COM (2012) 510.

[6] European Parliament. EP resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup 'Towards a genuine Economic and Monetary Union' (2012/2151(INI)); 2012. Available at : http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/2151(INI)&l=en access on 12.2.2016).

[7] See http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf.

[8] Report of five Presidents "Completion of Economic and Monetary Union", available at: http://ec.europa.eu/priorities/economic-monetary-union/docs/5-presidents-report_en.pdf. This is a document drawn up by the President of the European Commission, in close cooperation with the president of the summit on the euro, the Eurogroup President, the President of the European Central Bank and the President of the European Parliament.

[9] Communication from the Commission to the European parliament, the Council and the European Central Bank On steps towards Completing Economic and Monetary Union, COM(2015) 600 final, 21.10.2015.

[10] Report of five Presidents, p. 5

guarantee common mechanism[11] and accelerate the Capital Market Union aiming at the establishment of a capital market single European Supervisory Authority[12].

4 The key components of the EBU

The banking union covers three fundamental to the financial system stability issues namely (a) the supervision of banks which is necessary to prevent banking crises, (b) the banking crisis management and (c) the deposits guarantee. Regarding these three issues, a single regulatory framework in the EU has been established. Furthermore with regard to the first two issues, have already been established and operate banks supervision and resolution european, supranational mechanisms entrusted with the implementation of the above single substantive rules.

4.1 The supranational supervision framework in order to prevent crises in the banking sector

One of the lessons of the crisis was that, especially in the context of monetary union, it is not possible to ensure the stability of the financial system through simple coordination of the supervisory authorities of the Member States.
Supervision of complex and interconnected markets and institutions required instead the creation of an integrated single framework, a centralized supranational system of banking supervision.
Providing the basis to the implementation of the banking union, the operation of a single supervision system through the transfer of supervisory powers from national to supranational EU level, would cover a triple need, namely a) the need to implement in a coherent and effective way the EU policy for the prudential supervision of banks, (b) the need for an uniform implementation of a single regulatory framework governing the provision of banking services in all Member States and (c) the need to exercise a high quality banks supervision unaffected by considerations unrelated to prudential supervision.
The primary pillar of the EBU is the establishment of an integrated European framework for banking supervision, which includes on the one hand uniform rules applicable in all Member States and regulating the single market of financial services and on the other hand a Single Supervisory Mechanism.

4.1.1 The creation of the Single Supervisory Mechanism and the primary role of the ECB

Since 01.11.2014 the prudential supervision of Member States' banks has been carrying out by a supranational (European) financial supervision system, the

[11] See infra, pp. 15-16.
[12] Report of five Presidents, p. 14.

Single Supervisory Mechanism (hereinafter: SSM) (Gortsos, 2015a), established by the Regulation 1024/2013 of the Council (SSM Regulation)[13].

The SSM is composed by the ECB and the competent supervisory national authorities[14]. However, it should be stressed that the member states competent authorities must exercise their supervisory tasks under the guidelines and instructions of the ECB.

The participation to SSM is mandatory for the 19 member states whose currency is the euro. Regarding the remaining sates, the SSM Regulation provides for the possibility of voluntary participation. Specifically, the credit institutions whose establishment is situated in a member state with a derogation[15], fall under the ECB supervision, provided that close cooperation between the ECB and the national competent authority of that state has been established[16].

The following entities established in participating member states are supervised by the SSM: (a) credit institutions, (b) financial holding companies, (c) mixed financial holding companies, (d) branches of credit institutions established in member states not participating to SSM.

From the above entities, others come under direct supervision of the ECB and others under the supervision of national competent authorities. The first group includes the significant entities. To be considered as a significant entity, specific criteria must be met[17].

Analytically an entity is considered significant and is supervised by the ECB if the total value of its assets exceed 30 billion euro. Also is characterized as significant an entity or a banking group since the total assets of the entity or the parent company of that group which is established in a member state participating to the SSM, amounts to at least 5 billion euro and to 20% of the GDP of the participating member state of establishment.

The classification of a supervised entity as important imply the submission by the participating member state in which this entity is established, of a request to the ESM Board for the provision of direct public financial assistance pursuant to Article 19 of the ESM Statutes.

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[13] See Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions**,** EE L 287, 29-10-2013 (SSM Regulation).

[14] This term includes the authorities of the participating EU Member States, namely both those whose currency is the euro and those whose currency is not the euro. In most cases, the supervisory authorities are the member states central banks. Thus, with regard to Greece, the Bank of Greece is the competent supervisory authority. In some states, such as France, the competent supervisory authority is an independent administrative authority.

[15] See article 139 TFUE.

[16] See article 7 SSM Regulation.

[17] The criteria for assessing the significance of the supervised entities are determined by the SSM Regulation and specified in Regulation 468/2014 establishing a framework for cooperation between the ECB and the national supervisory authorities (SSM Framework Regulation).

A banking group is considered significant in the case of the creation by the parent of credit institution subsidiaries in more than one participating to the SSM member states and if the following conditions are fulfilled: a) the group's assets exceed 5 billion euro and (b) either the value of cross-border assets exceed 20% of the value of total assets or the value of cross-border obligations exceed 20% of the value of total liabilities.
At the direct supervision of the ECB is subject in each case a credit institution or a banking group provided that it is included in terms of assets among the three most significant credit institutions or the three most significant groups in member states participating in the SSM.
View of the above key criteria determining the supervised entities significance, at the direct prudential supervision of the ECB have entered the 123 greatest credit institutions (and their 1,104 subsidiaries) established in member states whose currency is the euro. Among these four Greek systemic banks are included.

In the second group of supervised entities are classified those identified as less significant because they don't meet the above criteria and as a result they are still supervised by the competent national authorities.
However ECB may engage in the supervision of entities identified as less important, if appropriate, and in particular if this is dictated by the need for consistent application of the supervisory rules.
In the framework of this mechanism, the ECB carries out the tasks conferred on it by the SSM Regulation in order to safeguard the safety and soundness of credit institutions and to detect and prevent threats to their viability. The ECB retains the ultimate responsibility for the efficient and consistent functioning of the SSM[18].
In particular, the ECB is exclusively under Article 4 (1) SSM Regulation, competent to perform specific supervisory tasks relating to all credit institutions established in participating to the SSM member states, namely:
(α) the task for the authorization to take up the business of credit institutions to be established in a participating member state according to the procedure and conditions set out in Article 14 (1), (2), (3) and (4) of SSM Regulation[19]. Additionally it may withdraw the authorization if there is any of the cases defined by the relevant EU legislation and in particular Directive 2013/36/EC (Article 18)[20]. The aim is to ensure that banking activities are exercised only by credit institutions with a sound economic basis, an adequate organization for the prevention of specific risks connected to deposit taking and credit provision.
(b) the task of assessing the acquisition and disposal of significant holdings in credit institutions, except in the case of bank resolution[21]. By fulfilling this task, the ECB will assess the suitability of new owners before they buy a significant

[18] See article 6 (1) SSM Regulation.
[19] See article 4 (1a) SSM Regulation.
[20] See article 14 (5) SSM Regulation.
[21] See article 4 (1c) SSM Regulation.

stake in credit institutions, which can contribute to ensuring the ongoing suitability and financial soundness of credit institutions owners.
(c) the task of ensuring compliance of credit institutions with the EU regulatory framework imposing on them the obligation:

i) to hold certain levels of capital against the risks inherent to their business activities

(ii) to limit the size of exposure to individual counterparties

(iii) to publish information on their financial situation

(iv) to dispose sufficient liquid assets to tackle extreme market situations

(v) to limit leverage[22].

(d) the duty to impose requirements that ensure that the credits institutions established in participating member states shall comply with Union rules on the internal organization and corporate governance. Specifically the ECB is empowered to check whether those institutions pursuant to these rules, have robust governance arrangements including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices[23].

e) the task of supervision not only of individual banks but also banking groups or financial conglomerates[24]. In particular, the ECB is entrusted to carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating member States and to participate in supplementary supervision of a financial conglomerate in relation to the credit institution included in it.

(f) the task of carrying out early intervention actions to remedy at an early stage of the deteriorating financial and economic situation of a credit institution. Specifically, the ECB has the power to exercise supervisory functions with regard to recovery plans and early intervention if an institution or group in respect of which the ECB is the consolidating supervisor authority does not meet or is likely not to comply with the applicable prudential supervision requirements. It is also competent to make structural changes required by the credit institutions in order to prevent the financial pressures or crashes.

To fulfill its tasks, the SSM Regulation confers on the ECB investigative powers (e.g. power to require the supply of all necessary information from legal entities established in the participating member states, such as credit institutions, financial holding companies, mixed financial holding companies or by third parties to

[22] See article 4 (1d) SSM Regulation.
[23] See article 4 (1e) SSM Regulation.
[24] See article (1g and h) SSM Regulation.

whom those entities have entrusted tasks)[25], special supervisory powers[26] and the power to impose administrative pecuniary penalties for infringement by the credit institutions, financial holding companies or mixed financial holding companies, of a requirement under the relevant EU legislative acts[27].

4.1.2 The applicable single regulatory framework for prudential supervision

In the framework of SSM functioning, the ECB undertakes the main responsibility to check whether the substantive EU law governing the prudential supervision of credit institutions is implemented (applied). This secondary EU law includes Directive 2013/36/EU (CRD IV)[28] and Regulation 575/2013 (CRR)[29]. Through these two Union acts was accomplished the incorporation into EU law of the rules of the Basel Committee regulatory framework for prudential supervision ("Basel III"). They establish the single framework for undertaking activities by credit institutions in the EU member states, the supervisory framework, micro-prudential and macro-prudential regulatory intervention to those institutions and investment firms functioning and investment firms.

Specifically, the Directive CRD IV lays down rules governing the freedom of establishment and the services supply freedom of credit institutions in the EU, the prudential supervision of credit institutions, the powers of supervisory authorities and administrative penalties which may be imposed on those institutions, the corporate governance of credit institutions, the remuneration policies and the introduction of capital buffers.

The Regulation CRR contains provisions on regulatory capital of credit institutions, the framework for calculating capital requirements to be fulfilled by credit institutions, their big exposures, the liquidity requirements to be respected and the obligation to disclose information.

4.2. The credit institutions European resolution framework

Despite the introduction of an integrated single prudential framework, a credit institution may face serious financial difficulties, become nonviable, so that it is necessary to pursue its resolution. It is crucial in such a case that the nonviable

[25] See articles 10-13 SSM Regulation.

[26] See articles 14-16 SSM Regulation.

[27] See article 18 SSM Regulation.

[28] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, EE L 176, 27.6.2013. It has been incorporated into Greek legal order with Law 4261/2014.

[29] See Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, EE L 176, 27.6.2013. Its dispositions have being applied to EU member states progressively since 1.1.2014.

institution is rescued in an effective way, without burden on taxpayers and without causing cost for the real economy. The function of effective resolution mechanisms can prevent the induction of negative, harmful impact of bank bankruptcies.
For this purpose was created the second pillar of European Banking Union, the Single Resolution Mechanism (hereinafter: SRM) whose full operation began on 1.1.2016 and from which the first pillar namely SSM is completed (Gortsos, 2014a), in order to ensure the effective management of any future credit institutions bankruptcies in the European Union Banking. The SRM was created by Regulation (EU) 806/2014 of the European Parliament and the Council (hereinafter: SRM Regulation)[30].
The SRM implement the uniform single regulatory framework for the recovery and resolution of credit institutions.

4.2.1. The necessity to create a Single Resolution Mechanism

It is undeniable that the introduction of bank resolution rules, the regulation of burden-sharing practices at national level and the concentration also at national level of resources that are needed to finance the resolution contributes to maintaining the fragmentation of the financial services internal market.
Regarding the regulatory framework, the fact is that the Directive 2014/59/EU[31] was a first step to reverse the above situation as it provides for the harmonization of credit institutions rules resolution in the EU and establish cooperation between resolution authorities in cases of cross-border banks bankruptcy. This step however was not complete since beyond the adoption of minimum harmonization rules, it doesn't provide for a decision-making framework at central European level on the subject of consolidation. It provides mainly common resolution tools and confers resolution powers on the national resolution authorities of the member states, but as regards the use of tools and national financial arrangements to support the resolution process, it leaves to them discretion.
Therefore it was necessary to create a single integrated framework for the management of banking sector crisis, with the main aim to restore financial stability in the EU and promote economic recovery.

In the framework of internal market, the entire EU financial stability may be threatened by the bankruptcy of the banks of just one member state. We should not forget that within the single financial market, banking systems are

[30] See 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 and amending Regulation (EU) No 1093/2010, EE L 225, 30.1.2014. The provisions relating the design of resolution, the timely intervention of the actions and resolution tools came in force on 1.1.2016.
[31] See infra pp. 14-15.

interconnected to a large extent, the banking groups are international and the credit institutions have large share of foreign assets. In order to apply a level playing field and to improve the functioning of the internal market a single resolution regulatory framework of credit institutions and investment firms should be applied uniformly in all member states. The SRM will precisely become the European authority being responsible for checking the consistent and uniform application of this framework. The creation of this central resolution authority constitutes an integral part of harmonization process in the area of resolution organized by Directive 2014/59/EU.

Since the crisis began, public assistance to financial institutions was considerable burdening unduly public finances and reducing the possibility of using fiscal policy to reduce the impact of the recession. The establishment of a comprehensive and robust framework for bank crisis management will contributes to reduce the cost of dealing with them for taxpayers and will break the mechanism that connects the banking sector to sovereign debt. A strong and independent supranational resolution authority supported by an adequate regulatory resolution framework will have the financial, legal and administrative capacity as well as the necessary independence to carry out efficiently and at the lowest possible cost of the banks resolution process within the EU.
The SRM will constitute the SSM necessary corollary ensuring that banks having fallen into bankruptcy situation will be restructured or cease their activities in a smooth and orderly way. It has the authority to manage the bankruptcy of credit institutions in a way that ensures their coordinate resolution.
It should finally be noted that the SRM will be more effective in resolving the banking crisis, compared with a network of national resolution authorities particularly in cross-border bankruptcies given the need for speed and reliability when dealing with credit institutions insolvencies and for the prevention of risks contagion.

4.2.2. The structure and Functioning of the SRM

If an institution is in a situation of non-viability, the functioning of the SRM ensures that shareholders and creditors would primarily cover the cost of consolidation and not the member states taxpayers. The creation of SRM is the logical consequence and the necessary complement to the SSM functioning. In case of insolvency of a credit institution directly supervised by a supranational (EU) supervision system for the prevention of crises, it is reasonable that the decisions on its resolution are taken respectively from a supranational banking crisis settlement mechanism and not by the national authorities of the member states. The banks prudential supervision and resolution are complementary aspects of the functioning of the financial services single market, and their application at the same level is interdependent.
The SRM covers all EU member states credit institutions (and investment firms) subject to prudential supervision of the SSM.

In the framework of SRM, the uniform rules established by the SRM Regulation and uniform resolution process are implemented by the Single Resolution Board (SRB) jointly with the Council and Commission and the national resolution authorities of the participating member states. The SRM has a federal structure and is composed of the SRB, the national resolution authorities and the Commission and the Council (ECOFIN) (Gortsos, 2015b). The states participating in the SRM are the member states participating in SSM[32].
The Regulation also provides for the establishment of a Single Resolution Fund to support the proper functioning of SRM. It is under the management of the SRB. In case of inadequacy of contributions primarily of shareholders and secondarily of bank creditors, the Fund may contribute to the financing of resolution.
Regarding the scope of the SRM Regulation[33], uniform resolution rules and a uniform resolution procedure apply to the following entities: (a) credit institutions established in participating member state as they defined in Article 4 of this Regulation, (b) parent companies, including financial holding companies and mixed financial holding companies, established in a participating member state, where they are subject to consolidated supervision exercised by the ECB, according to Article 4 paragraph 1 item g) of Regulation 1024/2013, c) investment firms and financial institutions established in the participating member states, if they are covered by the consolidated supervision of the parent company exercised by the ECB, according to Article 4 paragraph 1 item g) of Regulation.
We will analyze then the process to be followed in order to achieve the above entities resolution that is laid down by the Regulation SRM and the central role played in this process by the SRB after having first briefly examine its the structure and function.

4.2.2.1. The Single Resolution Board as a central pillar of SRM

In the framework of SRM, the central role is conferred on the Single Resolution Board (SRB). We examine briefly its legal status, function and powers.

i) The Legal Status and Functioning of the SRB

The establishment of the SRB is provided for in Article 42 (1a) of the Regulation. It is an EU body with special structure corresponding to the duties. It has legal personality.
As regards the composition of the SRB, it consists of: a) its President, b) four further full-time members, c) one member appointed by each participating member state, which represents its national resolution authorities. The President and the members have one vote each. The President represents the Council Resolution.

[32] See supra p. 4.
[33] See article 2 SRM Regulation.

The administrative and management structure includes: a) plenary session of the SRB[34], b) executive session of the SRB[35], c) a President, d) a Secretary.
The Commission and the ECB shall appoint a representative who is eligible to participate in the meetings of the executive meetings and plenary sessions as a permanent observer.

ii) The responsibility and the competencies of the SRB

The SRB has the main responsibility to assure the effective and consistent functioning of the SRM, in the framework of which it is competent regarding the institutions subject to the direct prudential supervision of ECB and the cross-border banks.
Specifically, under Article 7 (2) of the Regulation, it is empowered to draw up the resolution plans[36] and approve the decisions on the resolution concerning (a) those entities referred to in Article 2 of Regulation[37] which are not group members[38], (b) the groups considered as significant according to article 6 para. 4 of Regulation SRM or for which the ECB haw decided under the art. 6 (5) to exercise directly all the relevant powers, (c) other cross-border groups[39]. In other words, in the framework of SRM, the decisions on the resolution of significant credit institutions directly supervised by the ECB (among them the four systemic Greek credit institutions subject to the prudential supervision of the ECB) and the cross-border groups will be taken (from 1.1.2016) by the SRB[40].
Regarding the entities and groups not mentioned in the above provision, in other words the less significant institutions established in participating to the SRM member states, the responsibility for the preparation and approval of resolution

[34] See articles 49-52.

[35] See articles 53-55.

[36] The SRB elaborates the resolution plans after consultation with the ECB or with the competent national authorities and the national resolution authorities, including the resolution authority at a group level, of participating Member States where the entities are established as well as the resolution authorities of non-participating Member States in which significant branches are established.

[37] See supra, p. 9.

[38] The resolution plan provides for the resolution actions which the SRB may undertake. The article 8 (9) sets out the content of the plan elaborated for each entity.

[39] The Article 8 (10 and 11) contains rules relating to a group resolution plan.

[40] However it should be noted that the SRB, as it has the ultimate responsibility for all financial institutions participating in the European Union Bank, may at any time decide to exercise its powers in relation to any institution.

plans belongs to the national resolution authorities[41]. In particular, these authorities have the power on the resolution planning, the evaluation of possibility of resolution, the adoption of measures and the undertaking of resolution actions[42]. These powers must be exercised under the national legislative act transposing Directive 2014/59/EU into national law, and according to this, to the extent that there is no conflict with SRM Regulation. The abovementioned Directive was incorporated into Greek national law by Article 2 of Law 4335/2015.

When drawing up the resolution plans, the SRB has the authority to assess the extent to which an entity or a group can be resolved without necessarily requiring neither extraordinary public financial support in addition to the use of the SRF nor urgent support of liquidity by a central bank nor support of liquidity by central bank provided under unusual ensuring, duration and interest rate terms.

The SRB also empowered to take, where necessary, measures to address or eliminate barriers to the resolution possibility of any institution in the participating member states[43] and, after consultation with the competent authorities, including the ECB, it determines the level of the minimum requirement for own funds and eligible liabilities[44].

It chooses the resolution tools and powers that are appropriate for achieving the resolution goals[45] and has the power to prepare the resolution of an institution or group following the provision by the ECB or the competent national authority, of information on early intervention measures taken by them[46].

The SRB shall perform its functions in close cooperation with the national resolution authorities. For this purpose, it develops guidelines and general instructions according to which the national resolution authorities carry out their duties and approve resolution decisions.

iii) The powers of SRB relating to its tasks accomplishment

In order to fulfill its duties, the following basic powers are conferred on the SRB :

[41] See article 7(3) and article 9 of SRM Regulation. The national resolution authority in Greece is the Bank of Greece. But for investment firms, for financial institutions with investment firms subsidiaries or for branches of investment firms established outside the EU, the resolution authority is the Capital Market Committee.

[42] Regarding the powers of national resolution authorities under the Directive 2014/59/EU, see infra section 4.2.3.

[43] See article 10 (7-11) SRM Regulation.

[44] See article 12 SRM Regulation. The minimum requirement for own funds and eligible liabilities is calculated as the sum of own funds and eligible liabilities expressed as a percentage of total liabilities and own funds of the institution.

[45] These objectives are defined in article 14 (2) SRM Regulation.

[46] See article 13 SRM Regulation.

(a) the power to require from natural or legal persons to provide all necessary information in particular on capital, liquidity, assets and obligations concerning an institution which is subject to its resolution powers.

b) the power to carry out all necessary investigations concerning the abovementioned natural or legal persons who are established or located in a participating member state.

(c) the power to conduct all necessary on-site inspections at professional spaces of these persons.

d) the power to impose penalties on those entities (credit institutions) provided that the conditions laid down by the Regulation are met. Specifically it can impose fines if it establishes that a credit institution has committed intentionally or negligently one of the following infringements: it does not provide the information requested, it is not subjected to general inquiry or site inspection, it does not comply with the decision addressed to it by the SRB in accordance with Article 29 of Regulation SRM. It can also take a decision imposing a periodic penalty payment regarding a credit institution falling within the scope of the SRM Regulation[47].

4.2.2.2. The SRB role in the resolution process in the SRM framework

In order to initiate the resolution process in relation to a financial institution, to put it in such a procedure, the SRB must take a decision.

The SRM Regulation sets specific requirements to be met cumulatively in order to obtain the abovementioned decision. In particular:

(a) that institution must be under bankruptcy or be likely to bankrupt (must not be viable). The ECB has the responsibility to assess whether this condition is fulfilled or not (to determine whether that institution is viable or not). However, the SRB may, under conditions make that assessment.

In order to consider that an institution is in bankruptcy point or in potential bankruptcy point, one or more of the following cases must exist:

i) infringement by that institution of the requirements for maintaining the authorization (or existence of objective evidence on which is based the ascertainment that this institution will violate, in the near future, these requirements), in a way that would justify the withdrawal by the ECB of the authorization, because, inter alia, the institution has suffered or is likely to suffer damages that would exhaust its all own capital or a substantial part of them,

ii) the assets of the institution fall short of its obligations (or exist objective evidence according to which it may be established that the assets of the entity are going, in the near future, to fall short of obligations),

iii) inability of the institution to honor his debts or to respond to other obligations when they fall due (or existence of objective evidences leading to the

[47] See article 39 SRM Regulation. Concerning the enforcement process of fines and penalty payments, see articles 40-41.

conclusion that the institution is going, in the near future, to come to such a state of weakness,

iv) an exceptional public financial assistance is required unless, in order to face a serious disturbance in the economy of a member state and to maintain financial stability, this financial assistance takes for example the form of State guarantee to cover liquidity facilities provided by central banks, according to their terms.

(b) there is no reasonable prospect that the bankruptcy of the institution will be prevented within a reasonable time by adopting alternative measures of the private sector or by undertaking by the supervisory authorities of action in relation to this institution (including early intervention measures).
(c) there are public interest reasons which make it necessary to initiate resolution process and to undertake relevant action. In order to consider that a resolution action is an action serving the public interest (public interest action), it must be necessary to achieve the resolution targets (one or more) and proportional to these objectives which would not be possible to achieve to the same extent if liquidation of the institution was taking place under normal insolvency proceedings. As regards the resolution targets, it must seeks to ensure continuity of critical functions (basic financial services supply), to prevent significant adverse effects on financial stability, to protect public funds by minimizing dependence on extraordinary public financial assistance support, to protect depositors (covered by Directive 2014/49/EU) and investors (covered by Directive 97/9/EC), to protect customer funds and their assets.
In case that the SRB assess, at the executive meeting, that those conditions are satisfied, approves a resolution scheme, which (a) place the institution under resolution, (b) specifies the modes of resolution tools application to institution under resolution, (c) defines the use of the Single Resolution Fund to support the resolution action and transmit this resolution scheme to the Commission.

The article 22 (2) of SRM Regulation refers explicitly to the following tools-measures of resolution:

i) the sale of business tool. If this tool is selected, instruments of ownership issued by an institution under resolution or all or any assets, rights or liabilities of an institution under resolution are transferred to the buyer (not transitional institution)(article 24 of SRM Regulation),

ii) the bridge institution tool. When this tool is applied, any of the following elements is transferred to a transitional institution: a) instruments of ownership issued by one or more institutions under resolution, b) all or certain assets, rights or liabilities of one or more institutions under resolution

iii) the asset separation tool which consists in the transfer of assets, rights or liabilities from an institution under resolution or from a transitional institution to one or more asset management agencies,

iv) the bail in tool (Gortsos, 2015b). By using this tool, it is possible to pursue one of the following purposes: a) the recapitalization of the institution that meets the conditions of resolution to the extent that allows it to fulfill again the conditions for acquiring authorization, and to continue carrying out the activities for which it has been authorized, b) the conversion into share capital or the reduction in value of claims or debt instruments that are transferred: i) to a transitional institution, in order to provide capital for that institution; or ii) in the framework of the activities sales tool or the asset separation tool.
The resolution scheme adopted by the SRB lays down the details concerning the resolution tools to be implemented to the institution under resolution.

It should be stressed that the resolution scheme is applicable only if the Council or the Commission has not raised objections within 24 hours after its transmission to the Commission.
The Commission (within the aforementioned period) can either accept the resolution scheme or formulate objections to aspects of this scheme which are subject to discretion. It may, within 12 hours after the transmission of the resolution scheme by the SRB, to propose to the Council: (a) to raise objections to that scheme adopted by the SRB since it does not satisfy the criterion of public interest. The opposition of the Council for this reason entails the entry of the institution in a regular liquidation procedure under the applicable national rules, B) to approve or oppose to an important modification in the level of the Single Resolution Fund's resources defined by this scheme.
The SRB amends (within eight hours), the resolution scheme in case that the Council approve within 24 hours after its transmission (by the SRB) the Commission's proposal to modify the resolution scheme for the reasons listed above or in case that the Commission raises objections concerning that scheme aspects subject to discretion.
The SRB closely monitors the implementation of the resolution regime by national resolution authorities and ensure the necessary measures adoption for the functioning of the resolution mechanism by the relevant national resolution authorities.
In case that the resolution process has been initiated, the SRB, the Council and the Commission have the obligation to ensure that the undertaking of the resolution action is governed by certain general principles according to which:

- the first to bear the damages are the shareholders of the institution under resolution while the second to do so are the creditors according to the order of priority of their claims,
- the administration (administrative body and senior management) of the institution should in principle be replaced,
- the administrative body and senior management of the institution under resolution shall provide any assistance necessary to achieve the resolution targets

- the creditors of the same order are treated equally, unless otherwise specified in the SRM Regulation[48]
- no creditor should be subjected to greater losses than those which would have suffered if the institution had been liquidated under normal insolvency proceedings
- the covered deposits are fully protected.

4.2.2.3. The establishment and the mission of the Single Resolution Fund

The SRM Regulation provides for the establishment of a Single Resolution Fund (SRF)[49]. The SRB is the owner this fund and manages it. This Fund is governed by the articles 67-69 of SRM Regulation as well as the Intergovernmental Agreement No. 8457/2014 of 21.05.2014 on the transfer and the mutualisation of contributions to the Single Resolution Fund (Boskovits K., 2015). Parties to this agreement are all EU MS except Sweden and the United Kingdom.

In the SRM framework, use of the SRF by the SRB may only be made to the extent necessary in order to ensure the effective, efficient application of resolution tools and the exercise of resolution powers and for the following main purposes: to guarantee the assets or liabilities of the institution under resolution, of its subsidiaries, of a transitional institution or an asset management vehicle, to provide loans to that institution, its subsidiaries, to a transitional institution or an asset management body, to buy assets of this institution under resolution, to pay contributions to a transitional institution and an asset management body, to pay compensation to shareholders or creditors, who have suffered greater losses than those they would have suffered in case of liquidation under normal insolvency proceedings.

The resources of the SRF are formed by contributions paid by financial institutions falling within the scope of the SRM Regulation and collected and transferred to the Fund by the national resolution authorities of the participating member states. It should be noted that in no way neither the EU budget nor the member states national budgets are burdened for expenses or losses of the SRF.

By the end of an initial period of eight years from 1.1.2016 (2016-2023), the available financial resources of the Fund amount to at least 1% of the amount of guaranteed deposits of all credit institutions authorized in all states participating in the European Banking Union member states. If, after the initial period, the available financial resources fall below the target level, the regular contributions of credit institutions increase until they reach the target level.

The financial institutions pay regular contributions on a yearly basis (contributions ex ante). If the available financial instruments are not sufficient to cover the losses, costs or other expenses incurred in using the SRF to resolution actions, the

[48] If the creditors of the same class are treated differently in the framework of resolution action, such discrimination should be justified by the public interest and cannot be neither directly nor indirectly discriminatory on grounds of nationality.

[49] See article 67 (1) SRM Regulation.

credit institutions mentioned above pay extraordinary contributions (contributions ex post) in order to cover the additional amounts[50].

4.2.3. The applicable substantive law relating to the resolution and recovery of credit institutions

As has been pointed, the SRM shall apply, in the performance of his duties and the pursuit of its mission, the single regulatory framework for the recovery and resolution of credit institutions. This framework consists of substantive rules prescribed by the Directive 2014/59/EU on the recovery and resolution of credit institutions (hereinafter: BRRD) that has been incorporated into national law (as been mentioned above)[51]. As already noted, the BRRD provides mainly for common resolution tools and confers resolution powers on the member states competent authorities (Aloupi, 2015).

Analytically it determines the recovery and resolution framework that includes three stages.

In the first stage (preparation stage) it provides for the initiation of proceedings seeking to prepare the adoption of recovery and resolution measures if necessary. These procedures consist in:

(a) compulsory preparation by the credit institutions and updating on a regular basis (every year) of recovery plans[52] which provide for the measures which may take the institutions in order to restore their financial position[53],

(b) in the preparation by the resolution authority for each credit institution of a resolution plan setting out the resolution actions it will undertake if the institution meets the conditions for resolution [54],

(c) the assessment by the resolution authority of the institution's resolution capacity. As part of this process, the abovementioned authority assesses whether or not there are significant obstacles to the possibility of resolution and, in case of existence of such barriers, it decides to adopt the necessary measures including pause of certain activities, requirement for assets assignment[55] και

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[50] On 22.01.2015 was published the Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund.

[51] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, EE L 173, 12-6-2014.

[52] See articles 5-9, Sections A and B of BRRD Annex.

[53] The national supervisory authorities are competent to evaluate the recovery plans.

[54] See articles 10-14, Section C of BRRD Annex.

[55] See articles 15-18 BRRD.

(d) the conclusion between members of a group of agreements for the provision of group financial assistance[56]

In the second stage (early intervention stage), the Directive provides for the adoption of measures which aim to prevent an credit institution from falling in a state of insolvency.
Specifically it confers on the competent authority the power for early intervention in case of infringement by an institution of authorization and operating requirements or in case it is predicted that this institution will violate these requirements in the near future, due mainly to a rapid deterioration of its financial situation[57]. Specifically, in this context, it is possible (a) to apply the measures provided for in the recovery plan drawn up at the preparation stage, (b) to remove the senior management and the board, (c) to nominate a special manager (Commissioner) at the credit institution.
In the third stage (resolution stage), the Directive provides for measures aiming at the resolution of an institution fallen into insolvency. Specifically, it confers broad powers on national resolution authorities to take resolution measures[58] if they consider that certain cumulative conditions are met, conditions which are similar to those that must be met for the adoption by the SRB of a resolution regime[59].

4.3. The perspective of establishing a supranational (European) deposit guarantee scheme for the EBU completion

In the field of deposit guarantee, made to harmonize the rules through the adoption of Directive 2014/49/EU (hereinafter: DGSD) which is an element of the single regulatory framework governing the single market of financial services[60]. The DGSD lays down rules and procedures for the establishment and functioning of the national deposit guarantee schemes in EU member states (Gortsos, 2014b). It was incorporated into national law very recently through law 4370/2016[61].
However the equipment of the EBU with a centralized supranational deposit guarantee scheme has not yet been achieved. In other words, no supranational authority monitoring the implementation of these rules in the member states has been established.
The report of the five Presidents in June 2015, proposed to set up, in the long term, a European Deposit Insurance Scheme (EDIS), which is expected to constitute the third, after the SSM and the SRM, pillar of a fully-fledged banking union. The EDIS scope should be identical to that of the SSM.

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[56] See articles 19-26 BRRD.
[57] See articles 27-30, 59 BRRD.
[58] See articles 31-72 BRRD.
[59] See supra, pp. 12-13.
[60] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, EE L 173, 12.6.2014, pp. 149–178.
[61] FEK A' 37/7-3-2016.

The Commission committed itself in its Communication of 21 October, to submit a legislative proposal by the end of 2015 on the first steps towards establishing EDIS, so as to create a European system disconnected from the states. Actually it submitted on 24.11.2015 a proposal for a Regulation establishing a European Deposit Insurance Scheme[62]. According to this proposal, the amendment of the SRM Regulation is necessary in order to incorporate and take into account respectively the establishment of EDIS.
It is really important to confer on a central authority the responsibility for the uniform implementation of deposit guarantee requirements in the participating member states. For this purpose, in the EDIS framework , the powers for decision-making, monitoring and enforcement is proposed to be exercised at central level by the Single Resolution and Deposit Insurance Board. The objective is to create an integrated, European deposits guarantee system modeled on the supranational prudential supervision framework and the supranational resolution framework of credit institutions.

It is proposed to establish a framework for the gradual evolution of EDIS from a reinsurance system to a fully mutualized coinsurance system after several years. Specifically, its establishment will be achieved in three successive stages: first in a reinsurance system covering a part of the lack of liquidity and of the excess damage of the participating national deposit guarantee systems, secondly in a coinsurance system covering a gradually growing share of the lack of liquidity or of the damages of the participating national deposit guarantee systems and, thirdly in a fully insurance system covering all liquidity needs and damages of the above systems. The EDIS is proposed to be managed by the Single Resolution and Deposit Insurance Board and supported by a Deposit Insurance Fund.

5 Conclusion

The primary aim of the establishment of the European Union Banking is to address the of EMU institutional structure weaknesses, which the crisis revealed. In the new institutional and regulatory framework, the ECB and national authorities will control, in the framework of an integrated supervisory system, to what extent the credit institutions of the euro area Member States (and the Member States not having the euro as currency in case close cooperation) comply with Union rules in order to multiply the chances to prevent financial crises. Additionally, if, however, a crisis brakes out, there will be at a central (european) level the appropriate framework to adopt the necessary decisions for the settlement of this crisis and the resolution of a nonviable bank, according to

[62] See Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme, 24.11.2015 COM (2015) 586 final.

common rules specially designed to ensure minimization of cost for taxpayers. It is also important to have created an adequate framework for providing more effective protection for depositors throughout the EU. The implementation of these reforms will contribute to the establishment of a robust and resistant financial system as well as to its proper functioning which is necessary for stability and growth in the EU. This development is expected to enable the comprehensive regulation of the banking sector in order to prevent banking crises and to ensure early intervention so as to address the difficulties faced by banks and ensure their coordinate resolution.

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