International Journal of Business and Social Research
Volume 06, Issue 11, 2016
ISSN 2164-2540(Print), ISSN 2164-2559(Online)

The European Banking Union: will it be sufficient to avert another debt crisis in Europe?

Ross Alexander Spence[1]

ABSTRACT

The European Banking Union ("EBU") came into existence to help address crucial problems caused by the global financial crisis ("GFC") and subsequent European sovereign debt crisis ("SDC"). In order to reinstate stability and credibility back into the European banking system, a stronger and more centralized set of criteria was required, to avert another debt crisis in Europe. Whether the EBU is sufficient, however, remains to be seen. Nonetheless, The EBU is a significant step towards a genuine Economic and Monetary Union ("EMU"). It enables the application of consistent banking rules, with new tools and procedures designed to result in a more unified, transparent and safer marketplace for banks. The EBU currently has two functioning pillars consisting of the SSM and SRM respectively. A third pillar, although not yet operational, is in the pipeline in the form of the European Deposit Insurance Scheme ("EDIS"). These pillars are underpinned by the Single Rulebook ("SR"), which provides administrative and legal standards to ensure the efficient distribution of supervision, regulation and governance procedures.

Keywords: Debt crisis; European Banking Union (EBU); regulation of international finance.
Available Online: 30-11-2016

1.0 INTRODUCTION

The rationales for the creation of the European Banking Union ("EBU"), what its objectives are and the main pillars of support for such a scheme, are worthy of investigation. This essay means to critically discuss the various elements of the EBU and determine whether the Single Supervisory Mechanism ("SSM") and the Single Resolution Mechanism ("SRM"), the main pillars underpinning the structure, are robust enough to avert another debt crisis in Europe.

At the EBU's heart lies the Single Rulebook ("SR"), which aims to counter the risk of fragmentation and nationalist tendencies. This inward looking trend became apparent in the recent financial crises, and contributed greatly to them. In an effort to avoid repeating the divisive and disjointed mistakes of the past, the SR is instead looking to provide unity and harmonisation across all participating member states.

[1] The University of Edinburgh. Email: rossalexanderspence@gmail.com

2.0 EUROPEAN BANKING UNION

2.1 A EUROPEAN BANKING UNION PRIMER

The EBU came into existence to help address crucial problems caused by the global financial crisis ("GFC") and subsequent European sovereign debt crisis ("SDC"). In order to reinstate stability and credibility back into the European banking system, a stronger and more centralised set of criteria was required. It was seen as a formula which would bring balance into the financial sector[2]. Vitor Constancio has described the EBU as "a transfer to the European level of the regulatory and institutional framework, responsible for safeguarding the robustness and stability of the banking sector"[3]. The EBU is a significant step towards a genuine Economic and Monetary Union ("EMU")[4]. It enables the application of consistent banking rules, with new tools and procedures designed to result in a more unified[5], transparent[6] and safer[7] marketplace for banks[8].

The EBU currently has two functioning pillars consisting of the SSM and SRM respectively. A third pillar, although not yet operational, is in the pipeline in the form of the European Deposit Insurance Scheme ("EDIS")[9]. These pillars are underpinned by the Single Rulebook ("SR"), which provides administrative and legal standards to ensure the efficient distribution of supervision, regulation and governance procedures[10]. The SR also includes rules on resolution and recovery procedures, a harmonised framework for the EDIS when it comes into play in 2017, and rules on capital requirements. The EBU ensures the consistent application of these rules across participating member states[11].

2.2 RATIONALE FOR THE EUROPEAN BANKING UNION

"The double whammy of the international financial crisis and the sovereign debt crisis"[12] is pivotal in having led to the creation of the EBU. These inter-related events highlighted the major deformities and shaky foundations on which Europe's financial framework rested. To prevent the European financial structure from collapsing[13], it was necessary to revisit the existing financial architecture in order to improve it with underpinning structures of economic growth and financial stability[14]. The crises identified major structural problems and had "shaken to its foundations the banking system of the Eurozone"[15].

---

[2] E Ferran, "European Banking Union: Imperfect, But It Can Work" (2014) page 2, available at: http://ssrn.com/abstract=2426247. The legal basis for an EBU comes from Articles 114 and 127 (6) of the Treaty of the Functioning of the European Union.

[3] V Constancio, "Towards a European Banking Union" (7th September 2012), available at: https://www.ecb.europa.eu/press/key/date/2012/html/sp120907.en.html.

[4] European Central Bank, Banking Supervision, "Banking Union" (2016), available at: https://www.bankingsupervision.europa.eu/about/bankingunion/html/index.en.html.

[5] By treating national and cross-border banking activities equally and by de-linking the financial health of banks from the countries in which they are located.

[6] By consistently applying common rules and administrative standards for supervision, recovery and resolution of banks.

[7] By intervening early if banks face problems in order to help prevent them from failing, and, if necessary, by resolving banks efficiently.

[8] European Central Bank (n 3).

[9] This is the last pillar of the EBU and is currently still in the consultation phase. It will only briefly be covered in this essay. However, it is also worth noting that a fourth pillar may be included in the future – the so-called Capital Markets Union. This was discussed by Clifford Chance Partner, Simon Gleeson, in a guest lecture on 3rd March 2013 at the University of Edinburgh. This will not be discussed further.

[10] European Central Bank (n 3).

[11] *Ibid.*

[12] D Howarth and L Quaglia, "The Steep Road to European Banking Union: Constructing the Single Resolution Mechanism" (2014) 52 *JCMS* 125 at 125.

[13] E Avgouleas and D W Arner, "The Eurozone Debt Crisis and The European Banking Union: A Cautionary Tale of Failure and Reform" (2013) page 18, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2347937.

[14] Avgouleas and Arner (n 12) at 16.

[15] Avgouleas and Arner (n 12) at 18.

A serious design flaw in Europe's financial architecture was due to the absence of resolution and supervision mechanisms[16]. This had led to a previously flawed supervisory model, which proved to be crucial in justifying the sceptics who doubted whether the so-called financial trilemma of a stable financial system, national financial policies and financial integration, were simultaneously compatible[17].

The failure of financial institutions operating both globally and cross-border within Europe, was due to weak structural laws in co-ordination and co-operation and given the inter-connectedness of financial institutions, it soon became a systemically important issue[18]. These failed financial institutions revealed the level of distrust that was apparent amongst national supervisors[19]. As a result, when it came to dealing with cross border issues, such as in the Icelandic banks and Fortis case, rather than following a supra-national approach, regulators followed a national one[20]. Consequently, three main problems became apparent:

1. The macro-prudential oversight framework in the EU, which monitors systemic risk, was non-existent;
2. The collapse of Icelandic banks exposed a failure in "home country control"[21];
3. The Fortis case highlighted issues in the cross-border framework in relation to bank resolution and crisis management[22].

Political factors also compromised the "credibility of rule-based frameworks for co-ordination of national fiscal policies in the Euro area"[23]. For example, the Stability and Growth Pact ("SGP") was intended to protect public finances and prevent Eurozone members, by enforcing budgetary discipline, from embracing fiscal policies, leading to unmanageable debt levels[24]. However, lenient enforcement of the SGP, due to a loophole in the Maastricht Treaty, led to the SGP becoming a political bargaining chip in the EU, at the expense of important economic issues[25].

> "As a result, European financial stability was hampered. Colossal pre-crisis and private debt piles, a flawed macro economic framework and an absence of institutions capable of handling effectively a cross border banking crisis had simply been ignored for far too long[26]... The incomplete institutional design was the true mark of an imbalanced and disjointed monetary union, also characterized by the absence of effective fiscal convergence mechanisms to enforce budget discipline"[27].

In the midst of crisis, members of the Eurozone fought the crisis and supported bailout mechanisms, which led to the formation of the so-called European Financial Stability Facility ("EFSF")[28]. Simultaneously, the EBU, based on structures safeguarding centralisation of bank supervision, deposits insurance arrangements and a central crisis resolution mechanism[29] – was founded.

The noticeable impact to the Eurozone caused by "economic and financial imbalances" with the Union itself lacking a "central fiscal authority" that, had one existed, would have been a valuable weapon and a "credible mechanism to enforce budget" discipline[30].

---

[16] E Avgouleas, *Governance of Global Financial Markets: The Law, The Economics, The Politics* (2012) 263-265.
[17] D Schoenmaker, "The financial trilemma" (2011) 111 *Economic Letters* 57 at 57. See also, Avgouleas, *Governance* (n 15) 263-265.
[18] Avgouleas, *Governance* (n 15) 263-265.
[19] *Ibid.*
[20] *Ibid.*
[21] Avgouleas, *Governance* (n 15) 264.
[22] *Ibid.*
[23] Avgouleas and Arner (n 12) at 18.
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*
[27] Avgouleas and Arner (n 12) at 17.
[28] This has been superseded by the so-called "European Stability Mechanism".
[29] Avgouleas and Arner (n 12) at 17.
[30] *Ibid.*

2.3 OBJECTIVES OF THE EUROPEAN BANKING UNION

The EBU, as an essential component of the EMU and internal market, ensures that banks abide by a harmonised set of rules regarding resolution and supervision[31]. These rules are specifically designed to ensure that banks do not take unnecessary risks, with the erring bank paying for its mistakes with the possibility of closure, whilst minimising taxpayer costs[32]. Adherence to the rules is crucial in order to avert another crisis. It is important in this regard to ensure that banks are robust, there is minimal market fragmentation and financial stability is secure[33]. Light-touch supervision and self-regulation are ineffective in the financial sector[34].

2.3.1 PROTECT EU TAXPAYERS' MONEY

The 2008 GFC encountered enormous bank bailout packages, like that of Fortis[35] and the Royal Bank of Scotland[36], who were funded by the taxpayer to safeguard against failure. A main objective of the EBU is to protect EU taxpayers' money should another crisis ensue. Despite policy-makers' best efforts to provide all the necessary tools[37], for instance the un-tested Basel III and new EBU frameworks, Georg Ringe[38] argues that this objective is far from complete, stating that:

> "In my opinion the union in its current agreed-on incarnation is unable to handle major incidents. Depositors and short-term creditors enjoy insufficient protection in the event of a collapse, and chances are that the stabilization of large banks will, again, be at the expense of EU taxpayers"[39].

According to Jeffrey Gordon[40], it is not possible to rely on the so-called Single Resolution Fund ("SRF"), intended to come into play when a bank is in crisis and Basel III requirements, because it will not be enough to absorb a shock[41]. Instead, Gordon and Ringe argue that banks themselves should have the necessary extra capital buffers in place. This way, banks, not taxpayers, carry the burden of responsibility[42]. The SRM currently has capital backstops in place as a last resort precaution, but this is essentially taxpayer funded[43].

2.3.2 MAKING SURE THAT BANKS SERVE SOCIETY AND THE REAL ECONOMY

[31] European Parliament, "Banking Union" (2016), available at: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_4.2.4.html.
[32] *Ibid.*
[33] Eurpoean Parliament, "Euro Area Summit Statement" (29th June 2012) page 2, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf.
[34] W Schauble, "How to protect EU taxpayers against bank failures" (30th August 2012) *Financial Times*, available at: http://www.ft.com/cms/s/0/d270a89e-f213-11e1-8973-00144feabdc0.html#axzz43inAaL6r.
[35] F Dierckx, "Deal agreed for Euro bank Fortis" (29th September 2008) *BBC*, available at: http://news.bbc.co.uk/1/hi/business/7641132.stm - where an €11.2 billion bank bail-out package was agreed.
[36] J Treanor, "RBS sale: Fred Goodwin, the £45bn bailout and years of losses" (3rd August 2015) *The Guardian*, available at: http://www.theguardian.com/business/2015/aug/03/rbs-sale-fred-goodwin-bailout-years-of-losses, where a £45 billion bailout package was agreed.
[37] European Commission Memo, "Towards a Banking Union" (10th September 2012), available at: http://europa.eu/rapid/press-release_MEMO-12-656_en.htm.
[38] Professor of International Commercial Law with Copenhagen Business School Law Department.
[39] W G Ringe and C S Hansen, "*The recently passed EU banking union does not achieve its objective*" (2014) page 2, available at: http://www.cbs.dk/en/research/cbs-publications/cbs-research-reporter/news/the-recently-passed-eu-banking-union-does-not-achieve-its-objective.
[40] Professor of Law at Columbia Law School.
[41] J N Gordon and W G Ringe, "Bank Resolution in the European Banking Union: A Transatlantic Perspective on What It Would Take" (2014) page 2, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2361347.
[42] *Ibid.* See also, Ringe and Hansen (n 38) at 2.
[43] M Grande, speech at the Florence School of Banking & Finance (11th December 2015), available at: http://fbf.eui.eu/starting-up-the-single-resolution-mechanism/.

A banking system that is resilient, serving society and the economy productively, while not being founded on moral hazard, is pivotal[44]. For example, the EBU's new bail-in regime should, theoretically, discipline the market, consequently reducing moral hazard, whilst improving the standard of risk taking. As a result, Benoit Lallemand[45] argues that lending will improve in the real economy, banks will become more diversified and financial stability will be strengthened[46]. In essence this would mean that banks are transparent, sustainable and effective, with funds financing the economy[47].

Conversely, many banks have a high degree of inter-connectedness due to being part of a bigger mega-bank structure[48]. Until these structures are broken down, the bail-in tool may not be workable, as supervisors will not want to provoke a domino of bank failures[49]. Without any sort of structural reform on the issue of too-big-to-fail, the EBU could potentially make matters worse by federalising risk and thus re-igniting the issue of moral hazard[50]. Given that "we are still [living] in a paradigm where it's all up to the financial markets to decide what is good or not"[51], reforms must be made in this area if confidence is to be restored.

2.3.3 RESTORING CREDIBILITY OF THE FINANCIAL SECTOR

The new EBU framework of improved regulation of the financial system, with better supervision and resolution mechanisms, can be said to be the starting point for restoring the credibility of the financial sector[52]. The SSM ensures there is constant rigorous and independent supervision while the SRM ensures the smooth resolution of banks[53]. Ultimately, these mechanisms will increase confidence and financial stability within Europe and therefore the credibility of the financial sector[54].

The author would argue however, that in order to restore credibility in the banking sector, improvements have to go beyond better regulation. A change in financial sector culture, which implants appropriate behaviours and values, is also required[55]. According to John Mellor[56], "responses from regulators to the failure in bank governance and standards of conduct revealed by the Financial Crisis, fall short of what is needed to restore credibility and trust in the financial sector"[57]. What is required is the restoration of financial ethics, behaviours and values[58].

As highlighted by the Larosiere Report, proper governance establishes strong core values that underpin the ethos of a firm[59]. This culture comes from the top and is filtered into the organisation, which influences decision-making. However, the changing of culture is only a part of the bigger picture, but is an important element for the retention of trust[60]. In a speech by Mark Carney[61], he stated that the

---

44 B Lallemand and F Keegan, "Executive Briefing" (2016), available at: http://webcache.googleusercontent.com /search?q=cache:p-JzfS9P554J:www.finance-watch.org/ifile/Press%2520coverage/Lafferty%2520Insights%2520OCT14%2520-%2520Benoit%2520Lallemand%2520Interview.pdf+&cd=1&hl=en&ct=clnk&gl=uk.
45 Secretary General of Brussels based "Finance Watch".
46 Lallemand and Keegan (n 43).
47 *Ibid.*
48 *Ibid.*
49 *Ibid.*
50 *Ibid.*
51 *Ibid.*
52 European Commission Memo (n 36).
53 *Ibid.*
54 *Ibid.*
55 J Mellor, "Regulation and Culture Change In Banks" (30th September 2015) available at: http://www.worldfinancialreview.com/?p=4462.
56 Professor of Governance in Banking and Finance at the University of Leicester.
57 Mellor (n 54).
58 *Ibid.*
59 European Commission, "Internal Market" (2016) page 2, available at: http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf.
60 Mellor (n 54).
61 Governor of the Bank of England.

financial sector still has a long way to go in restoring credibility and trust[62]. One only has to view past events driven by self-interest, to realise how much still has to be done before this objective can be achieved[63].

2.3.4 BREAKING THE LINK BETWEEN MEMBER STATES AND THEIR BANKS64

The SDC highlighted the "vicious circle" that exists between member states and their banks[65]. Certain EU member states[66] were materially exposed as "lender of last resort to their domestic banks, whilst those domestic banks, in turn, held considerable amounts of sovereign debt issued by their home EU Member State and thereby exposed the creditworthiness of that state"[67]. To break the bank-sovereign nexus, an objective of the EBU is to ensure the cost of bank failure is borne by the private sector, not the taxpayer[68]. The introduction of the bail-in tool under the Bank Recovery and Resolution Directive (`"BRRD") is a crucial step towards this[69].

As the author currently writes this paper however, it appears that the bank-sovereign "doom-loop is rearing its ugly head again"[70]. Italy is a case in point. Currently, Italy's debt is just under €2.2 trillion[71], or about 133% of its annual economic output[72]. Despite this astronomical debt burden, and achieving the status of one of the world's most indebted nations, last year the Italian government managed to sell two-year bonds at a negative yield[73]. Such a situation fails to instill the reasonable man with confidence in the financial sector[74]. It also leads to the important question of whether Italian banks own too much Italian government debt[75]. This situation has proved to be disturbing for the Single Resolution Board ("SRB"), whose objective is to ensure that Europe's banks remain on a stable foundation[76]. Despite the argument that Europe does not yet have the resources to handle a full meltdown of such magnitude, Italy is fast becoming "the greatest threat to the world's already burdened financial system"[77].

It is clear that robust change is needed[78]. The German government and SRB have called for a 'ceiling' to be placed on banks' holding of sovereign debt. The SDC, and now Italy, has shown that the lethal connection between weak banks and risky sovereigns is a recipe for disaster[79]. If the link between the bank-sovereign were not severed, then rather than averting a future debt crisis, it would encourage it.

---

62 Mellor (n 54).

63 For example the ENRON and LIBOR scandals, the multiple insider dealing cases, and RBS's "Fred the Shred" and his constant desire for "more".

64 See "Figure 1" below. See also, European Parliament (n 32) at 1.

65 See "Figure 1" below.

66 For example, Greece, Ireland, Spain and Portugal to name but a few.

67 D Singh and J Hodges, "Turning The Tide? How European Banking and Financial Services Legislation are Making Waves on the Enforcement Front" in R P Buckley, E Avgouleas and D W Arner, *Reconceptualising Global Finance and its Regulation* (2016) 308 at 310.

68 Deloitte, "The Single Supervisory Mechanism: Banking on the Banking Union" (2016) page 2, available at: http://www2.deloitte.com/content/dam/Deloitte/fr/Documents/services-financiers/publications/deloitte_etude_Banking-on-the-banking-union_oct2014.pdf.

69 *Ibid.*

70 A Evans-Pritchard, "Europe's 'doom-loop' returns as credit markets seize up" (9th February 2016), available at: http://www.telegraph.co.uk/finance/economics/12149114/Europes-doom-loop-returns-as-credit-markets-seize-up.html.

71 See National Debt Clocks, available at: http://www.nationaldebtclocks.org/debtclock/italy - for an up to date report.

72 T Barber, "The doom-loop that ties Italian banks" (7th March 2016), available at: http://blogs.ft.com/the-world/2016/03/the-doom-loop-that-ties-italian-banks/.

73 *Ibid.*

74 This is because Italian banks held about €410 billion in domestic government securities in January 2016. These securities account for roughly 10.4% of the banks' assets, which is a much higher proportion than any other major EU economy.

75 Barber (n 71).

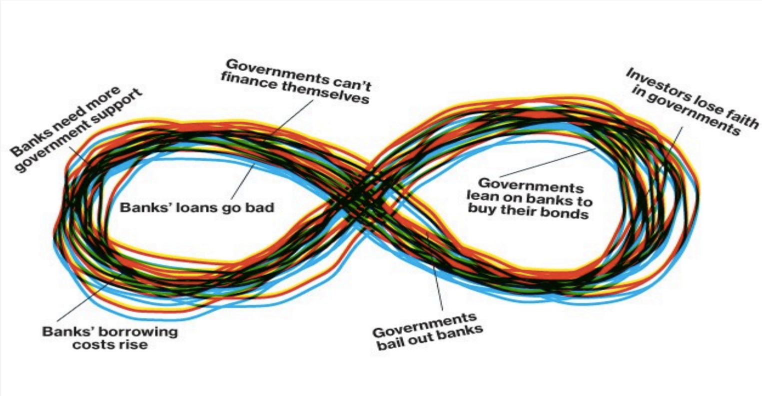
76 *Ibid.*

77 J Moore, "Will Italian banks spark another financial crisis?" (7th March 2016), available at: http://globalriskinsights.com/2016/03/will-italian-banks-spark-another-financial-crisis/.

78 Barber (n 71).

79 *Ibid.*

Figure 1: The "doom loop"[80]



3.0 THE MAIN PILLARS OF THE EUROPEAN BANKING UNION

3.1 SINGLE SUPERVISORY MECHANISM

During the financial crises, due to EU member states applying inconsistent standards when evaluating banks, the Euro area became particularly affected. The rationale for a SSM, which is a supra-national prudential supervisory body, ensuring that the same rules apply to all "credit institutions"[81] and to permanently monitor performance[82] was created to make the Euro area more financially stable[83] and prevent "regulatory arbitrage"[84].

As one of the main pillars, the SSM is both a supervisory mechanism and legal framework embedded in a functioning EBU architecture[85]. The legal structure consists of the SSM Framework Regulation[86] and the SSM Regulation[87]. Having regard to the proportionality principle[88], under the SSM the ECB, as the ultimate supervisor[89], has legal and prudential authority[90] to carry out key supervisory duties[91] for participating member states[92] in the EBU, with other supervisory tasks being assigned to national competent authorities ("NCAs")[93].

---

[80] P Coy, "A way to break out of Europe's 'Doom Loop' (26th June 2012), available at: http://www.bloomberg.com/news/articles/2012-06-26/a-way-to-break-out-of-europes-doom-loop.
[81] Articles 1, 2 (3), 4 (1) and 14 (1) Council Regulation 1024/2013. Hereafter the words "credit institutions" and "banks" will be used interchangeably – both referring to the same issue.
[82] European Central Bank, Banking Supervision, "Single Supervisory Mechanism" (2016), available at: https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html.
[83] C Roux, "Working with the Single Supervisory Mechanism regime" (27th November 2015), available at: http://www.bis.org/review/r151204e.htm.
[84] Article 1, Council Regulation 1024/2013.
[85] Roux (n 82).
[86] Regulation 468/2014.
[87] Council Regulation 1024/2013. See also, M Magnus, J Backman and C Power, "Banking Union" (September 2015), available at: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_4.2.4.html; Roux (n 82).
[88] Article 1 Council Regulation 1024/2013. See also, Practical Law, "Single supervisory mechanism (SSM)" (18th March 2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/5-536-2625#.
[89] As defined in the Capital Requirements Regulation 575/2013. See also, Practical Law (n 87).
[90] Article 1 Council Regulation 1024/2013. See also, Recital 1 Regulation 468/2014.
[91] Articles 1 and 4 Council Regulation 1024/2013.
[92] "Participating member state" refers to Eurozone member states and non-Eurozone member states that have established "close co-operation", see Article 2 (1) Council Regulation 1024/2013. See also, Practical Law (n 87). It is also worth noting that the UK, for example, is a non-participant in the SSM and therefore credit institutions established in the UK are not subject to supervision by the ECB, see Practical Law, "European banking union: overview" (18th March 2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/6-521-6054#a325494. See also, CRD IV Directive 2013/36/EU.
[93] Recital 1 Regulation 468/2014. See also, Practical Law (n 87). See also, Roux (n 82).

The SSM ensures that banks comply with EBU rules and assesses whether banks are fit to operate[94]. The main objectives of the SSM are to:

1. Increase financial stability and integration;
2. Ensure that supervision is consistent; and
3. Ensure that the EU banking system is safe, healthy and resilient to outside shocks, like financial crises[95].

3.1.1 DIVISION OF LABOUR

Labour has been divided between the ECB and NCAs. For example, the ECB supervises banks deemed "significant"[96] while NCAs supervise "less significant"[97] credit institutions[98]. However, supervision does not cover the shadow-banking sector[99]. The criteria that determine whether banks are significant, and therefore falling under ECB supervision, relate to the banks' economic significance, their size, cross border activities[100] and need for Eurozone support[101]. Essentially the most systemically important banks are supervised by the ECB with less important banks being supervised by NCAs[102]. The ECB however, has the overarching authority for every credit institution within the EBU framework[103] but several member states[104] have stated that the SSM should be restricted to systemically important institutions only. Given that local regional banks[105] are not systemically important because they are classed as low risk, it may be argued that supervising over 6,000 European banks is too onerous a task for the SSM[106].

3.1.2 SUPERVISORY RESPONSIBILITIES

The ECB has far reaching powers and can conduct on-site inspections[107] and launch investigations[108]; grant, revoke, limit or sanction[109] the business[110]; conduct assessments[111]; monitor compliance[112]; and determine capital requirements[113]. ECB Regulation, accompanied by the CRD IV Directive 2013/36/EU provides "exclusive competence" on the ECB when a bank breaches, or risks breaching, its regulatory capital requirements and remedial action is needed[114]. The ECB's supervisory responsibilities depend on whether a credit institution is deemed 'significant' or not. Although for all credit institutions participating in the SSM, supervisory responsibilities include[115]:

1. Licensing and authorising credit institutions[116];

---

[94] Article 1 Council Regulation 1024/2013.
[95] European Central Bank (n 81).
[96] Article 6 (4) Council Regulation 1024/2013. Currently the ECB supervises 129 banks accounting for 82% of bank assets. See European Central Bank (n 81).
[97] Article 6 (4) Council Regulation 1024/2013. See also, European Central Bank (n 81).
[98] Recital 5 Regulation 468/2014.
[99] For example, the insurance sector, investment firms, hedge funds etc.
[100] Article 59 Regulation 468/2014, suggests that a credit institution will be significant if the ratio of cross-border assets/liabilities to its total assets/liabilities is above 20%.
[101] Article 6 (4) Council Regulation 1024/2013.
[102] Magnus *et al* (n 86).
[103] Article 6 Council Regulation 1024/2013.
[104] Germany, Austria and Italy; see N Veron, "Europe's Single Supervisory Mechanism: most small banks are German (and Austrian and Italian)" (22nd September 2014), available at: http://bruegel.org/2014/09/europes-single-supervisory-mechanism-most-small-banks-are-german-and-austrian-and-italian/.
[105] Whereas banks that are out-with these countries are usually part of a bigger conglomerate. See Veron (n 103).
[106] Veron (n 103).
[107] Recital 47 and Article 12 Council Regulation 1024/2013.
[108] Recital 47 Council Regulation 1024/2013.
[109] Articles 18 and 120-137 Council Regulation 1024/2013. See also Council Regulation 2532/98, Amending Council Regulation 2015/159 and ECB Regulation 2157/99.
[110] Article 16 (2) (e) Council Regulation 1024/2013.
[111] Recital 37 and Article 6 (4) Council Regulation 1024/2013.
[112] Recital 9 and Article 4 (1) (d) (e) Council Regulation 1024/2013.
[113] Recital 34 and Article 16 (2) (a) Council Regulation 1024/2013. See also, European Central Bank (n 81).
[114] Article 4 (1) Council Regulation 1024/2013.
[115] Practical Law (n 87).
[116] Article 14 (2) Council Regulation 1024/2013.

2. Assessing the qualifying holdings of credit institutions[117].

For significant credit institutions, the supervisory responsibilities of the ECB include[118]:

1. Assessment of passport applications[119];
2. Impose credit institutions with various prudential requirements[120];
3. Impose governance requirements on credit institutions, for example, leverage, liquidity and capital requirements[121];
4. Carry out stress tests and supervisory reviews[122];
5. Participate in supervising a financial conglomerate[123]; and
6. Supervisory tasks are carried out in relation to recovery plans[124].

Despite these detailed supervisory responsibilities, Andreas Dombret[125] has highlighted a weakness in the SSM structure. Dombret argues that supervisors are able to use their discretion when interpreting prudential national rules due to various available options under the law[126]. It is submitted that such a situation creates an un-level playing field, especially when a key objective of the SSM is consistent supervision.

3.1.3 CONFLICTS OF INTEREST

To prevent conflicts of interest, the legislation provides clear rules that identify the operational and organisational separation of power in the area of monetary policy and supervision[127]. According to Professor Avgouleas, supervision is a politically charged issue and given that the ECB is impartial and independent, this may be compromised. Therefore, it is crucial that this supervisory function is distinct from the ECB in order to preserve its autonomy. However, conflicts of interest are still deemed a concern. Bundesbank Deputy President Claudia Buch recently raised concerns calling "for a clearer line to be drawn between SSM activities and monetary policy, since both sets of tasks are housed at the ECB, with the ECB Governing Council as the supreme decision-making body. This set-up is a potential source of conflicts of interest, which only an amendment of the EU Treaties could resolve"[128]. This opinion is in line with that of Professor Isabel Schnabel[129], who believes that conflicting interests are a noticeable issue because housing the SSM at the ECB has not only created an institution that is too powerful, but also an institution that may be open to abuse[130].

3.1.4 JOINT SUPERVISORY TEAM

Supervision of a credit institution that is deemed 'significant', lies with the so-called 'joint supervisory team' ("JST"), which is an international team housed in Frankfurt[131]. The JST comprises staff of the

[117] Recital 2 CRD IV Directive 2013/36/EU.
[118] Practical Law (n 87).
[119] Article 4 (1) (b) Council Regulation 1024/2013. See also, Practical Law, "Passporting under CRDIV: general issues" (2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/6-518-5627#a1058143.
[120] Article 4 (1) (d) Council Regulation 1024/2013.
[121] Article 4 (1) (e) Council Regulation 1024/2013.
[122] Article 4 (1) (f) Council Regulation 1024/2013.
[123] Article 4 (1) (h) Council Regulation 1024/2013. See also, Financial Conglomerates Directive 2002/87/EC.
[124] Article 4 (1) (i) Council Regulation 1024/2013.
[125] Professor at the European Business School in Oestrich-Winkel and Bundesbank Executive Board Member.
[126] A Dombret, quoted in, "Challenges Lie Ahead for the Single Supervisory Mechanism" (10th February 2016), available at: https://www.bundesbank.de/Redaktion/EN/Topics/2016/2016_02_10_surf_colloquium.html.
[127] Article 25 Council Regulation 1024/2013. See also, Practical Law (n 87); Magnus *et al* (n 86).
[128] C Buch, Deputy President of Bundesbank, "Challenges Lie Ahead for the Single Supervisory Mechanism" (10th February 2016), available at: https://www.bundesbank.de/Redaktion/EN/Topics/2016/2016_02_10_surf_colloquium.html.
[129] Chair of Financial Economics at the University of Mainz and Member of the German Council of Economic Experts.
[130] I Schnabel, quoted in, "Challenges Lie Ahead for the Single Supervisory Mechanism" (10th February 2016), available at: https://www.bundesbank.de/Redaktion/EN/Topics/2016/2016_02_10_surf_colloquium.html.
[131] European Central Bank, Banking Supervision, "Joint Supervisory Teams" (2016), available at: https://www.bankingsupervision.europa.eu/banking/approach/jst/html/index.en.html.

national supervisors and ECB[132] and effective functioning is based on their co-operation with each other[133]. Having such a multi-talented and skilled team would undoubtedly be regarded as one of the JST's strengths. Yet having such a diverse set of individuals can also be problematic. Cyril Roux argues that:

> "The functioning of the JST's faces the combined management challenges of international public institutions, matrix structures and the tensions brought by the transfer of powers and responsibilities. Familiar in other contexts, these management challenges are specific to the conduct of supervision at a new supra-national level. Delivering consistent, timely and effective supervision, including the issuance and follow up of remediation programs, is proving challenging for issues that go beyond capital requirements. So too is keeping staff motivated through the complex network of national authorities and the ECB"[134].

3.1.5 THE SUPERVISORY BOARD

The Supervisory Board ("SB") and Governing Council ("GC") control the SSM[135]. The SB is the prominent body of the ECB where debates take place on supervisory issues. Essentially, proposals are brought to the SB by the JST, with a view to making them a reality. The GC can either adopt or object the decisions[136].

The SB and GC are composed of senior, skilled and experienced professionals, bringing both challenges and strengths to its function. The combined knowledge of personnel has been classed as "formidable" where decisions are challenged, debated and approached with the rigour necessary to provide a thorough analysis[137]. Yet there is an argument that the SB and GC do not have enough first hand experience in banking specific matters, making the process laboured and cumbersome at times[138]. It has also been argued that reducing the personnel and bringing in a new skill set that relates specifically to the banking sector would be far more effective[139].

Furthermore, as every decision relating to prudential supervision goes through the SB and subsequently the GC because of EU legislative requirements; Cyril Roux argues that due to the centralised and blinkered decision making procedure, the whole process is no longer efficient:

> "Not a single decision, even the most routine and least consequential one, has been delegated. Electronic mailboxes of Supervisory Board members and Governors are clogged with a daily shower of insignificant written procedures, and unproblematic fitness and probity applications can take months to be processed. Legal impediments need to be lifted to make delegation possible and bureaucracy reduced" [140].

3.1.6 ENFORCEMENT

It is the ECB's view that enforcement is a fundamental component of supervision. As yet, the SSM has not managed nor concluded a case by utilising their enforceability mechanism effectively[141]. It is submitted, that to supervise such a self-interested and insular industry effectively, and given that the SSM has "yet to find its feet as an enforcer", it is imperative that prudential regulation is an enforceable mechanism[142]. Despite the EBU being a "major step" towards enhancing the monitoring of risk and the

---

[132] European Central Bank (n 81).
[133] Roux (n 82).
[134] *Ibid*.
[135] Both the SB and GC are comprised of six ECB members and nineteen national members. For the SB, the deputy governor in charge of supervision is the national member.
[136] Roux (n 82).
[137] *Ibid.*
[138] *Ibid.*
[139] *Ibid.*
[140] *Ibid.*
[141] *Ibid.*
[142] *Ibid.*

efficient management of distress within the financial sector, it is submitted that further reforms and challenges lie ahead for the SSM[143].

3.2 SINGLE RESOLUTION MECHANISM

The SRM[144] is the second pillar of the EBU and compliments the SSM. The SRM ensures the smooth resolution of banks. When a bank is failing or likely to fail, a new framework exists to resolve the problems and the Single Resolution Board ("SRB")[145] is the authority within the SRM to handle the resolution of those banks[146].

Eurozone and EU member states participating in the EBU have signed an inter-governmental agreement on transferring finances and sharing them in a common SRF[147] designed to help ailing banks[148]. The fund is part of the SRM, which consists of the SRB, whose key objective is to plan and decide how to wind down or restructure banks that are no longer viable within the harmonised framework[149]. The SRM Regulation ("SRMR")[150] is correlated with the BRRD[151], setting out a new recovery and resolution framework for credit institutions[152] within the EU[153].

3.2.1 RATIONALE FOR THE SINGLE RESOLUTION MECHANISM

According to the initial legislative proposal for the SRMR, the European Commission ("EC") did not feel it was wise to leave the resolution of banks to the SSM, but instead have a separate SRM pillar, dealing exclusively with recovery and resolution with the help of National Resolution Authorities ("NRAs") in participating member states[154]. Once established the EC's view was that the SRM would detach risk arising from market skepticism; a lack of centralised system to deal with distressed banks; and the tensions arising between the ECB (as the SSM head body) and NRAs[155]. Moreover, apart from helping to avert any looming crises, the mechanism is expected to boost economic growth, due to confidence that Europe's banks are all using the same rulebook, thus stabilising expectations of investors, consumers and depositors in the marketplace[156].

3.2.2 OBJECTIVES OF THE SINGLE RESOLUTION MECHANISM

According to the EC, there are four key objectives of the SRM, namely:

1. Break the vicious 'doom loop'[157] circle between sovereigns and banks;

---

[143] Buch (n 127).
[144] The SRM was established by Regulation 806/2014 and has applied in full from the 1st January 2016, see Article 99 (2) Regulation 806/2014. Although there are exceptions that apply in that certain issues came into force prior to this date. These will be dealt with when they arise in the body of the text.
[145] Article 42 (1) Regulation 806/2014 established the SRB. See also, Articles 42 (2) and 48 Regulation 806/2014, which gives the SRB its own legal personality and is based in Brussels.
[146] Grande (n 42).
[147] This inter-governmental agreement was signed in Brussels on the 21st May 2014, European Commission, "Member states sign agreement on bank resolution fund", available at: http://www.consilium.europa.eu.ezproxy.is.ed.ac.uk/uedocs/cms_Data/docs/pressdata/en/ecofin/142710.pdf.
[148] Practical Law, "Single resolution mechanism (SRM)" (2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/8-536-9946#.
[149] G S Zavvos and S Kaltsouni, "The Single Resolution Mechanism in the European Banking Union: Legal Foundation, Governance Structure and Financing", (15th September 2014) page 11, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2531907.
[150] Regulation 806/2014.
[151] 2014/59/EU.
[152] Capital Requirements Regulation 575/2013.
[153] Practical Law (n 147).
[154] COM (2013) 520. See also Article 4 (1) Regulation 806/2014. Also, Article 99 (3) Regulation 806/2014 relates to co-operation between the SRB and NRA, which came into force on the 1st January 2015.
[155] Practical Law (n 147).
[156] Single Resolution Board, "Mission" (21st March 2016), available at: http://srb.europa.eu/en/mission.
[157] See "Figure 1" above.

2. Sidestep the risk of contagion and bank runs;
3. Remove internal market fragmentation; and
4. Reinforce confidence in the banking industry[158].

The SRM is also aimed at protecting public funds, taxpayers, and the economy as a whole, from the excessive costs from bank failures by applying and implementing effective and swift resolution procedures[159].

3.2.3 SINGLE RESOLUTION BOARD

> "The Single Resolution Board has been created to respond to the Euro area crisis… By avoiding bail-outs and worst-case scenarios, the SRB will put the banking sector on a sounder footing – only then can we achieve economic growth and financial stability"[160].

The SRB, as the central decision maker,[161]consists of a full-time chair[162], four full-time members[163] and a member appointed from each participating member state[164]. They are responsible for the functioning of the SRM in terms of adopting consistent and relevant plans in terms of 'significant', 'less significant' and cross border banks[165]. Moreover, due to the "potentially systemic nature of all [financial] institutions", the SRB and NCA work in co-operation with one another[166]. The ECB, as supervisor, has a Memorandum of Understanding ("MoU") with the SRB regarding information exchange and co-operation[167], and will alert the SRB if a bank is in trouble or likely to fail. As well as the ECB, the SRB is accountable to the EC, the Council of the EU ("COEU") and the European Parliament ("EP")[168], who have the power to object to proposed resolution procedures[169]. Having many policy actors can be viewed positively because of constant checks and balances but the down side is the potential for a multi-layered and bureaucratic political process resulting in an ineffective and overly complex system.

3.2.4 DECISION MAKING PROCESS

The decision making process is split between executive and plenary sessions[170] and there is a distinction between the two[171].

1. *Plenary Sessions:*

---

[158] European Council, "Single resolution Mechanism" (18th March 2016), available at: http://www.consilium.europa.eu/en/policies/banking-union/single-resolution-mechanism/.
[159] Article 14 **Regulation 806/2014.**
[160] E Konig, Chair of the Single Resolution Board, "The Single Resolution Board" (21st march 2016), available at: http://srb.europa.eu/en.
[161] Practical Law (n 147).
[162] Articles 43 (1) (a) and 56 (1) Regulation 806/2014.
[163] Article 43 (1) (b) Regulation 806/2014.
[164] Article 43 (1) (c) Regulation 806/2014.
[165] For example the systemic importance of each bank. NRA's remain competent in less significant (not systemically important) national banks, but the SRB has the overarching authority.
[166] Recital 46 Regulation 806/2014.
[167] Single Resolution Board, "Memorandum of Understanding between the Single Resolution Board and European Central Bank in Respect of Co-operation and Information Exchange" (21st March 2016), available at: http://srb.europa.eu/sites/srbsite/files/en_mou_ecb_srb_cooperation_information_exchange_f_sign_.pdf. See also, Articles 30 (7) and 34 (5) Regulation 806/2014.
[168] As well as other national and international institutions. Article 45 (7) and (8) Regulation 806/2014. See also, Single Resolution Board (n 155);
Practical Law (n 147).
[169] Practical Law (n 147).
[170] Articles 50 and 54 Regulation 806/2014.
[171] Practical Law (n 147).

The SRB considers general issues correlated with the functioning of the SRM[172]. A plenary session consists of all members of the SRB[173], EC and ECB representatives[174]. The voting procedure is a simple majority with the Chair having the deciding vote in the event of a tie[175]. Any resolution decisions involving the SRF over €5billion, will be decided in this session, while anything under this amount allows the SRB to make individual decisions[176].

2. *Executive Sessions:*
An executive session is for the resolution, or potential resolution, of individual ailing banks. During this session, the SRB consists of the Chair and full-time SRB members[177], along with the participating member state representative, the EC, ECB[178] and members representing member states in which there are bank subsidiaries[179]. Like the plenary session, the voting procedure is by simple majority with the Chair casting the deciding vote if there is a tie[180].

Lucia Quaglia[181] has stated that due to the many policy actors that are involved[182], the decision making process is extremely convoluted and there is a severe lack of clarity when it comes to understanding the overarching procedures[183]. Furthermore, the SRB is accountable to the EC, EP and COEU for any decisions that it makes[184]. The SRB is also required to submit annual reports[185] and to reply in writing to national parliaments, should they so request[186]. This arguably adds further layers of confusion, underpinned by political agendas and interferences. The voting procedure has also raised concerns because it has been argued that a simple majority does not go far enough and may allow larger banks to exert their authority[187]. Given that member states would not have a veto if they were against any decisions, it may potentially lead to problems[188].

3.2.5 PHASE-IN PROCESS

Starting in 2015, the SRB has been responsible for collecting information in co-operation with NRA's for resolution planning activities[189]. The resolution planning is the preparation for an actual resolution case[190]. For each bank under the SRB's remit, an *ex ante* approach is adopted on how the crisis would be managed when/if it comes[191]. This preparatory phase also allows banks to have adequate internal resources to be able to finance whatever resolution strategy is most appropriate; this is the so-called minimum requirement and eligible liabilities element[192]. There will always be an element of risk attached

---

[172] As outlined in Article 50 Regulation 806/2014.
[173] Article 49 Regulation 806/2014.
[174] Article 43 (3) Regulation 806/2014. The SRB may also invite a representative from EBA if it so wishes, see Article 51 (3) Regulation 806/2014.
[175] Article 52 (1) Regulation 806/2014.
[176] Articles 50 (1) (c) and 43 (3) Regulation 806/2014.
[177] Article 53 (1) Regulation 806/2014. See also, Practical Law (n 147).
[178] Article 43 (3) Regulation 806/2014.
[179] Article 53 (3) and (4) Regulation 806/2014.
[180] Article 55, Article 43 (3) Regulation 806/2014.
[181] Professor of Political Science at the University of York.
[182] For example the SRB members, see section "Single Resolution Board" above. Also the ECB and EC have representatives that are entitled to participate in the plenary and executive sessions – see Article 43 (3) Regulation 806/2014.
[183] L Quaglia, Speech at the Florence School of Banking and Finance (10th November 2015), available at: http://fbf.eui.eu/lucia-quaglia-hints-at-a-convoluted-decision-making-process-on-banking-resolution/.
[184] Article 45 (1) Regulation 806/2014.
[185] Article 45, (2) Regulation 806/2014.
[186] Article 46 Regulation 806/2014.
[187] Clifford Chance Partner, Simon Gleeson, alluded to this in a guest lecture on 3rd March 2013 at the University of Edinburgh.
[188] R Ruparel, "Second pillar of banking union looks insufficient to hold Eurozone up in crisis" (2016), available at: http://openeurope.org.uk/intelligence/eurozone-and-finance/banking-union/.
[189] Article 99 (3) Regulation 806/2014.
[190] Articles 10 and 11 Regulation 806/2014.
[191] Grande (n 42).
[192] Article 12 Regulation 806/2014. This is the "MREL" element.

to working on an *ex ante* premise as predicting future events can never be completely accurate[193]yet the nature of commerce is about future projections and these can only be calculated based on past events.[194].

As of 1st January 2016, the SRB became fully operational. Mauro Grande[195] stated the SRB "stands ready", but was also quick to point out that the main challenge is that the resolution framework in Europe is completely new. The "paradigm shift from bail-out to bail-in" is a new concept and it appears the SRB is learning and adapting as it goes along[196]. This fledgling approach instils little confidence in respect of averting another crisis.

3.2.6 SINGLE RESOLUTION FUND

Once the bail-in process and regular financing options have been exhausted, the SRB could draw on the SRF[197], which will eventually total €55 billion and is financed by the banking sector[198] over an eight year period[199]. This will help limit costs to average European citizens and the real economy, which means that taxpayers no longer bail out failing banks, due to the eradication of national resolution funds, but are instead bailed in by investors[200].

The purpose of the SRF is to ensure that the appropriate funding is available for a failing bank, but is not a bailout fund[201]. According to Article 76 of Regulation 806/2014, the SRB can utilise the SRF to compensate shareholders and creditors; to contribute to a bridge financing structure; purchase assets; make loans to the failing institution; to guarantee the assets or liabilities of the failing institution; and to contribute to failing institution[202].

However, given that "the cost of bank failures should be borne by the financial industry and not by taxpayers"[203], it is interesting to discover that the bridge financing structure comes from the national government if/when the SRF runs out of capital. Furthermore, in a recent speech, Mauro Grande stated that where the SRF does not have enough capital to finance a resolution case, then a financial backstop would be implemented, which is essentially a public bailout[204] - how the bank-sovereign nexus is to broken therefore, remains a mystery. This brings an argument by Claus Rosenkratz Hansen[205] into sharp focus, where he strongly argues that €55 billion will be nowhere near enough money to stabilise a systemically important bank[206]. One has to wonder if indeed "there has been a paradigm shift from bail-out to bail-in"[207], but also, given the inter-connectedness of banks and the potential risk of contagion, when one bank fails others undoubtedly follow.

These mechanisms are supposed to be in place to avert another crisis, yet it may actually contribute. A potential solution could be to break the bank structure down into smaller more manageable businesses, which would be easier to handle in the event of another crisis.

---

193 The Economist, "Does the past predict the future?" (2009) available at: http://www.economist.com/blogs/freeexchange/2009/09/does_the_past_predict_the_futu.
194 P Moles, R Parrino, D Kidwell, *Corporate Finance* (2011) 376.
195 Member of the SRB.
196 Grande (n 42).
197 Articles 67 (1) and (3) Regulation 806/2014.
198 Article 70 Regulation 806/2014. European Council (n 157).
199 Article 69 (1) Regulation 806/2014. The funds target should be equal to 1% of the amount of deposits of all banks in line with the Deposit Guarantee Schemes Directive 2014 49/EU.
200 European Commission, "Member states sign agreement on bank resolution fund", available at: http://www.consilium.europa.eu.ezproxy.is.ed.ac.uk/uedocs/cms_Data/docs/pressdata/en/ecofin/142710.pdf.
201 Practical Law (n 147).
202 *Ibid.*
203 European Council (n 157).
204 Grande (n 42).
205 Fellow at Copenhagen Business School.
206 Ringe and Hansen (n 38) at 2.
207 Grande (n 42).

4.0 EUROPEAN DEPOSIT INSURANCE SCHEME208

Although not yet in force, the EC, in November 2015, put forward a proposal to implement the third pillar of the EBU with a EDIS. This is "a further step to a fully fledged Banking Union... which would provide a stronger and more uniform degree of insurance cover for all retail depositors" within the EBU[209].

In its simplest form, the proposal by Lord Commissioner Hill intends to move the current system of national deposit guarantee schemes ("NDGS") to EDIS, which essentially underwrites deposits across the EBU[210]. EDIS applies to deposits below €100,000 of all EU banks. The purpose of EDIS ensures the equal protection of deposits within the EBU, regardless of which participating member state the funds were deposited[211]. A harmonised scheme ensures that banks would be better protected in the event of larger local shocks by thus relying on the central fund[212]. EDIS has several safeguards in place against moral hazard and abuse, which incentivise NDGS to manage risk prudently until EDIS takes over[213].

EDIS will be cost neutral for the banking sector, which means that the contributions that were already being paid to NDGS will be switched to EDIS[214]. Riskier banks will pay higher contributions than safer banks so the process is risk weighted, which will be strengthened as EDIS is implemented[215]. There is also the crucial issue of the bank-sovereign nexus, where measures will be implemented to ensure that banks are adequately diversified[216].

It is proposed to commence EDIS in 2017 based over a three-stage process.

1. The first stage involves the re-insurance of NDGS, which will last three years. In this stage the idea is that the NDGS is able to access EDIS funds, up to a certain amount, when all other options are exhausted. This first stage is said to weaken the bank-sovereign nexus, but does not go far enough to provide equal levels of protection for depositors[217].
2. The second stage, starting in 2020, will see EDIS becoming gradually mutualised, but still subject to specific safeguards and limits with regard to abuse. The difference with this stage is that NDGS would not be required to exhaust its own funds before accessing EDIS funds. Thus introducing a higher risk between EDIS and NDGS[218].
3. The final stage is a fully-fledged EDIS by 2024. This is done by gradually increasing the share of risk so that EDIS assumes 100%[219].

Although not yet in force, and despite arguments to the contrary[220], commentators, particularly German, have been highly critical of EDIS, especially Ludger Schuknecht[221] who states that:

[208] As this scheme is not yet in force, it will only briefly be covered.
[209] European Commission, "Banking Union" (8th March 2016), available at: http://ec.europa.eu/finance/general-policy/banking-union/index_en.htm.
[210] Speech given by Commissioner Lord Hill at the Press Conference on the EDIS Proposal at the European Parliament on 24th November 2015 in Strasbourg, available at: http://europa.eu/rapid/press-release_SPEECH-15-6154_en.htm.
[211] European Commission (n 208).
[212] *Ibid.*
[213] Commissioner Lord Hill, European Commission, "A Stronger Banking Union: New measures to reinforce deposit protection and further reduce banking risks" (24th November 2015), available at: http://europa.eu/rapid/press-release_IP-15-6152_en.htm?locale=en.
[214] *Ibid.*
[215] *Ibid.*
[216] G B Wolff, "Getting Eurozone deposit insurance right promises benefits" (5th January 2016), available at: http://bruegel.org/2016/01/getting-eurozone-deposit-insurance-right-promises-benefits/. See also, Commissioner Lord Hill (n 212).
[217] Commissioner Lord Hill (n 212).
[218] *Ibid.*
[219] *Ibid.*
[220] N Veron, "European Deposit Insurance: a response to Ludger Schuknecht" (16th February 2016), available at: http://bruegel.org/2016/02/european-deposit-insurance-a-response-to-ludger-schuknecht/.
[221] Chief Economist of the German Ministry of Finance.

> "There are no convincing answers to a number of important questions, such as this: Is this new European insurance product even necessary? How would incentives for governments, markets and banks change? Would more solidarity in this respect really lead to more stability in Europe? Is the proposal compatible with the foundations of the market economy and the subsidiarity principle in Europe? And what would it mean for the economic and political future in Europe?"[222].

Angela Merkel has also been vocal as to why German depositors should be liable to help bail-out failing banks elsewhere within the EU as, she states, risk should first be minimised before proposals are tabled regarding shared responsibility[223]. "It is not hard to see why domestic politicians from the stronger economies would be extremely reluctant to assume open-ended responsibility for other countries' financial woes, as manifested in the state of their banks, given lines of responsibility and accountability to domestic populations"[224]. Given that EDIS is still being negotiated, it may be prudent to leave this part of the argument to rest for the moment.

5.0 CONCLUSION

That there are weak points of the emerging architecture of EBU is indisputable[225]. 'Political will', or the lack of it, in the form of national interests taking precedence over wider geographical concerns remains an obstacle to a more stable banking union. The legalities of what is permissible under EU law, in terms of strengthening the EBU structure without amendment to the Treaty, are also problematic[226]. These issues in particular have a knock on effect which spiral downwards, creating a multi-layered bureaucracy which is not always helpful when speedy decisions are called for. It is imperative, that with the speed of societal changes in modern times, the mechanisms that uphold the EBU have the flexibility to move at a rate to meet those needs. There are additional weaknesses in the structure. Reform is required on the "too big to fail" issue. Banks and financial institutions need to provide further capital backstops to absorb shock. A more uniform approach is required when interpreting prudential national rules. The argument also exists regarding housing the SSM at the ECB in that, that institution may be too powerful and open to abuse. The JST now faces the pressure of management challenges on a new supra-nationalist level. It is debatable whether the SB and GC have the right skill sets for the job. Are bail-in procedures really going to obviate the need for bail-outs? All these, and many more, controversial issues require to be debated extensively, and decisions made that strengthen the overall structure.

Whether in favour of its creation or not, given its handicaps, the EBU has done remarkably well. It has not had the luxury of remaining in an embryonic state for any length of time and, regardless of its tender years, has been forced to hit the ground running. What it has achieved in that time, in the form of improved regulation, supervision and resolution mechanisms, is significant.

Its main pillars in the form of the SSM and SRM (and proposed EDIS) are sturdy foundations on which to build a strong and shock proof structure. Of course the real proof of whether any piece of architecture can weather the storm is only ever evidenced after the event but that does not mean that every possibility to prevent damage is not considered ahead of time and every calculation done to mitigate loss.

The cost in human suffering can never be accurately weighed against monetary loss, but the two are indisputably linked in the effects of the GFC and SDC. People lost their jobs, their life savings, their homes and consequently many families broke up. For future disasters of a similar nature to be avoided, it is imperative that the players in the negotiation processes, responsible for building upon the structure of

---

[222] L Schuknecht, "An insurance scheme that only ensure problems" (8th February 2016), available at: http://blogs.faz.net/fazit/2016/02/08/an-insurance-scheme-that-only-ensures-problems-7298/.

[223] J Strupczewski, "'EU deposit insurance' vanishes from EU leaders' draft conclusions" (18th December 2015), available at: http://uk.reuters.com/article/uk-eurozone-banks-deposits-idUKKBN0U11KP20151218. See also, Buch (n 127).

[224] Ferran (n 1) at 25.

[225] Ferran (n 1) at 26.

[226] Ferran (n 1) at 25.

the EBU, put self-interest aside. If these players are capable of this, and additionally have the will as well as the ability to address the many diverse problems that weaken the structure, then the writer submits, albeit it is a mammoth task, the EBU would have the ability to avert another debt crisis in Europe.

BIBLIOGRAPHY

Textbooks

Avgouleas E, *Governance of Global Financial Markets: The Law, The Economics, The Politics* (2012).

Busch D and Ferrarini G, *European Banking Union* (2015).

Chaiechi T, *Post-Keynesian Empirical Research and the Debate on Financial Market Development* (2014).

Damodaran A, *Applied Corporate Finance* (2015).

de Haan J, Oosterloo S and Schoemaker D, *Financial Markets and Institutions* (2015).

Germain R, *Global Politics and Financial Governance* (2010).

Gregory J, *Central Counterparties: Mandatory Clearing and Bilateral Margin Requirements for OTC Derivatives* (2014).

Grier N, *Company Law* (2009).

Gurusamy S, *Financial Services and Systems* (2009).

Heng Y K, *Managing Global Risks in the Urban Age: Singapore and the Making of a Global City* (2015).

Moles P, Parrino R and Kidwell D, *Corporate Finance* (2011).

Chapter in Edited Book

Singh D and Hodges J, "Turning The Tide? How European Banking and Financial Services Legislation are Making Waves on the Enforcement Front" in R P Buckley, E Avgouleas and D W Arner (eds), *Reconceptualising Global Finance and its Regulation* (2016).

Journal Articles

Howarth D and Quaglia L, "The Steep Road to European Banking Union: Constructing the Single Resolution Mechanism" (2014) 52 *JCMS* 125.

Schoenmaker D, "The financial trilemma" (2011) 111 *Economic Letters* 57.

Online Journal Articles

Avgouleas E and Arner D W, "The Eurozone Debt Crisis and The European Banking Union: A Cautionary Tale of Failure and Reform" (2013), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2347937.

BarberT, "The doom-loop that ties Italian banks" (7th March 2016), available at: http://blogs.ft.com/the-world/2016/03/the-doom-loop-that-ties-italian-banks/.

Buch C, Deputy President of Bundesbank, "Challenges Lie Ahead for the Single Supervisory Mechanism" (10th February 2016), available at: https://www.bundesbank.de/Redaktion/EN/Topics/2016/2016_02_10_surf_colloquium.html.

Constancio V, "Towards a European Banking Union" (7th September 2012), available at: https://www.ecb.europa.eu/press/key/date/2012/html/sp120907.en.html.

Coy P, "A way to break out of Europe's 'Doom Loop' (26th June 2012), available at: http://www.bloomberg.com/news/articles/2012-06-26/a-way-to-break-out-of-europes-doom-loop.

Deloitte, "The Single Supervisory Mechanism: Banking on the Banking Union" (2016), available at: http://www2.deloitte.com/content/dam/Deloitte/fr/Documents/services-financiers/publications/deloitte_etude_Banking-on-the-banking-union_oct2014.pdf.

Dierckx F, "Deal agreed for Euro bank Fortis" (29th September 2008) *BBC*, available at: http://news.bbc.co.uk/1/hi/business/7641132.stm

Dombret A, quoted in, "Challenges Lie Ahead for the Single Supervisory Mechanism" (10th February 2016), available at: https://www.bundesbank.de/Redaktion/EN/Topics/2016/2016_02_10_surf_colloquim.html.

Evans-Pritchard A, "Europe's 'doom-loop' returns as credit markets seize up" (9th February 2016), available at: http://www.telegraph.co.uk/finance/economics/12149114/Europes-doom-loop-returns-as-credit-markets-seize-up.html.

Ferran E, "European Banking Union: Imperfect, But It Can Work" (2014), available at: http://ssrn.com/abstract=2426247.

Gordon J N and Ringe W G, "Bank Resolution in the European Banking Union: A Transatlantic Perspective on What It Would Take" (2014), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2361347.

Grande M, speech at the Florence School of Banking & Finance (11th December 2015), available at: http://fbf.eui.eu/starting-up-the-single-resolution-mechanism/.

Konig E, Chair of the Single Resolution Board, "The Single Resolution Board" (21st march 2016), available at: http://srb.europa.eu/en.

Lallemand B and Keegan F, "Executive Briefing" (2016), available at: http://webcache.googleusercontent.com/search?q=cache:p-JzfS9P554J:www.finance-watch.org/ifile/Press%2520coverage/Lafferty%2520Insights%2520OCT14%2520-%2520Benoit%2520Lallemand%2520Interview.pdf+&cd=1&hl=en&ct=clnk&gl=uk.

Magnus M, Backman J and Power C, "Banking Union" (September 2015), available at: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_4.2.4.html.

Mellor J, "Regulation and Culture Change In Banks" (30th September 2015) available at: http://www.worldfinancialreview.com/?p=4462.

Moore J, "Will Italian banks spark another financial crisis?" (7th March 2016) available at: http://globalriskinsights.com/2016/03/will-italian-banks-spark-another-financial-crisis/.

Practical Law, "European banking union: overview" (18th March 2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/6-521-6054#a325494.

Practical Law, "Passporting under CRDIV: general issues" (2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/6-518-5627#a1058143.

Practical Law, "Single resolution mechanism (SRM)" (2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/8-536-9946#.

Practical Law, "Single supervisory mechanism (SSM)" (18th March 2016), available at: http://uk.practicallaw.com.ezproxy.is.ed.ac.uk/5-536-2625#.

Quaglia L, Speech at the Florence School of Banking and Finance (10th November 2015), available at: http://fbf.eui.eu/lucia-quaglia-hints-at-a-convoluted-decision-making-process-on-banking-resolution/.

Ringe W G and Hansen C S, "*The recently passed EU banking union does not achieve its objective*" (2014), available at: http://www.cbs.dk/en/research/cbs-publications/cbs-research-reporter/news/the-recently-passed-eu-banking-union-does-not-achieve-its-objective.

Roux C, "Working with the Single Supervisory Mechanism regime" (27th November 2015), available at: http://www.bis.org/review/r151204e.htm.

Ruparel R, "Second pillar of banking union looks insufficient to hold Eurozone up in crisis" (2016), available at: http://openeurope.org.uk/intelligence/eurozone-and-finance/banking-union/.

Schauble W, "How to protect EU taxpayers against bank failures" (30th August 2012) *Financial Times*, available at: http://www.ft.com/cms/s/0/d270a89e-f213-11e1-8973-00144feabdc0.html#axzz43inAaL6r.

Schnabel I, quoted in, "Challenges Lie Ahead for the Single Supervisory Mechanism" (10th February 2016), available at: https://www.bundesbank.de/Redaktion/EN/Topics/2016/2016_02_10_surf_colloquium.html.

Schuknecht L, "An insurance scheme that only ensure problems" (8th February 2016), available at: http://blogs.faz.net/fazit/2016/02/08/an-insurance-scheme-that-only-ensures-problems-7298/.

Strupczewski J, "'EU deposit insurance' vanishes from EU leaders' draft conclusions" (18th December 2015), available at: http://uk.reuters.com/article/uk-eurozone-banks-deposits-idUKKBN0U11KP20151218.

The Economist, "Does the past predict the future?" (2009) available at: http://www.economist.com/blogs/freeexchange/2009/09/does_the_past_predict_the_futu.

Treanor J, "RBS sale: Fred Goodwin, the £45bn bailout and years of losses" (3rd August 2015) *The Guardian*, available at: http://www.theguardian.com/business/2015/aug/03/rbs-sale-fred-goodwin-

bailout-years-of-losses.
Veron N, "European Deposit Insurance: a response to Ludger Schuknecht" (16th February 2016), available at: http://bruegel.org/2016/02/european-deposit-insurance-a-response-to-ludger-schuknecht/.
Veron N, "Europe's Single Supervisory Mechanism: most small banks are German (and Austrian and Italian)" (22nd September 2014), available at: http://bruegel.org/2014/09/europes-single-supervisory-mechanism-most-small-banks-are-german-and-austrian-and-italian/.
Wolff G B, "Getting Eurozone deposit insurance right promises benefits" (5th January 2016), available at: http://bruegel.org/2016/01/getting-eurozone-deposit-insurance-right-promises-benefits/.
Zavvos G S and Kaltsouni S, "The Single Resolution Mechanism in the European Banking Union: Legal Foundation, Governance Structure and Financing", (15th September 2014) page 11, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2531907.

Official Publications
Commissioner Lord Hill at the Press Conference on the EDIS Proposal at the European Parliament on 24th November 2015 in Strasbourg, available at: http://europa.eu/rapid/press-release_SPEECH-15-6154_en.htm.
Commissioner Lord Hill, European Commission, "A Stronger Banking Union: New measures to reinforce deposit protection and further reduce banking risks" (24th November 2015), available at: http://europa.eu/rapid/press-release_IP-15-6152_en.htm?locale=en.
European Central Bank, Banking Supervision, "Banking Union" (2016), available at: https://www.bankingsupervision.europa.eu/about/bankingunion/html/index.en.html.
European Central Bank, Banking Supervision, "Joint Supervisory Teams" (2016), available at: https://www.bankingsupervision.europa.eu/banking/approach/jst/html/index.en.html
European Central Bank, Banking Supervision, "Single Supervisory Mechanism" (2016), available at: https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html.
European Commission Memo, "Towards a Banking Union" (10th September 2012), available at: http://europa.eu/rapid/press-release_MEMO-12-656_en.htm.
European Commission, "Banking Union" (8th March 2016), available at: http://ec.europa.eu/finance/general-policy/banking-union/index_en.htm.
European Commission, "Internal Market" (2016) page 2, available at: http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf.
European Commission, "Member states sign agreement on bank resolution fund", available at: http://www.consilium.europa.eu.ezproxy.is.ed.ac.uk/uedocs/cms_Data/docs/pressdata/en/ecofin/142710.pdf.
European Parliament, "Banking Union" (2016), available at: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_4.2.4.html.
Eurpoean Parliament, "Euro Area Summit Statement" (29th June 2012) page 2, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf.
inter-governmental agreement was signed in Brussels on the 21st May 2014, European Commission, "Member states sign agreement on bank resolution fund", available at: http://www.consilium.europa.eu.ezproxy.is.ed.ac.uk/uedocs/cms_Data/docs/pressdata/en/ecofin/142710.pdf.
National Debt Clocks, available at: http://www.nationaldebtclocks.org/debtclock/italy.
Single Resolution Board, "Memorandum of Understanding between the Single Resolution Board and European Central Bank in Respect of Co-operation and Information Exchange" (21st March 2016), available at: http://srb.europa.eu/sites/srbsite/files/en_mou_ecb_srb_cooperation_information_exchange_f_sign_.pdf.
Single Resolution Board, "Mission" (21st March 2016), available at: http://srb.europa.eu/en/mission.