

Editorial

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The creation of the Banking Union, whose first step, the Single Supervisory Mechanism, has been operational since November 2014, has dramatically changed the institutional environment for the prudential supervision already. From 2015, under the Single Resolution Mechanism (SRM), responsibility for the resolution of banking institutions within the eurozone is also centralised and is moving away from the national to the European level. This holds true not just for those systemically important institutions that fall under the direct supervision of the ECB, but also for less significant institutions for which national supervisory and resolution authorities retain primary responsibilities. Throughout the legislative process leading to the enactment, in 2014, of the Regulations establishing the SSM and the Single Resolution Mechanism, respectively, both the academic debate and the political discussion have focused more or less exclusively on the legal foundations in the EU treaties, as well as the institutional design of the two ‘mechanisms’. This Special Issue of EBOR, by contrast, is dedicated to the translation of the new regime into individual duties and rules of conduct which will be relevant for all actors and stakeholders taking part in decision processes in the banking business, as well as for the future shape of national banking markets within the eurozone and perhaps beyond. The collection of papers, presented at a symposium at the European University Institute in Florence in March 2015, thus looks into the future of the Banking Union and examines its likely impact on market participants, market

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functions and market infrastructure, and, last not least, on the relationships between banks and their counterparties.

The centralisation of supervisory and resolution powers within the eurozone builds on the general framework for banking regulation and supervision in the EU as a whole, which itself has undergone substantial changes in response to lessons learned throughout the global financial crisis. In this general setting, the European Banking Authority (EBA) has been operational for some time and has become instrumental for the further integration of regulatory standards across the entire Union. This framework will be particularly relevant in determining the scope for the development of supervisory concepts and strategies within the Banking Union, as both the ECB, in its capacity as sole supervisor, and the Single Resolution Board will be operating under the general EU law framework (as complemented and further elaborated by Level 2 and 3 instruments developed by EBA). In a way, the centralisation of powers under the auspices of the Banking Union is merely a logical further step on top of the substantive harmonisation of rules accomplished thus far. Against this backdrop, the papers collected in this Special Issue of EBOR explore the possible implications of the Banking Union not just for any of the groups mentioned before, but also for the future development of the ‘Single Rulebook’, composed of the secondary law instruments on prudential regulation, prudential supervision and bank resolution as well as the complementing instruments promulgated under the reformed Lamfalussy process.

Many of the papers focus on private law duties (in a broader sense not confined to contractual duties), namely directors’ duties, contractual standards or the question how the goals of banking supervision affect recovery and resolution proceedings and the rights of affected parties therein. In fact, the interaction of regulatory requirements, encompassed in public law and enforced by administrative bodies, with arrangements under private law, including company law, is probably the overarching theme addressed throughout the entire collection of papers. In this respect, the analyses presented here directly relate to a much broader range of issues that have been debated in other contexts already—which therefore also serve as a starting point here. These are contexts of both institutional and market order—like the regulatory regime of the European Banking Union—and of the integration dynamism more generally. In this respect, the discussion is by no means confined to details and single rules. In fact, reformulated in this way, the discussion touches upon general aspects of institutions design and the ‘economic constitution’. As will be explained in the single contributions, it relates to truly fundamental questions and discussions which were prominent in shaping the European Union.

Specifically, this Special Issue of EBOR is about individual duties of the relevant actors within the Banking Union. This covers three dimensions: (1) requirements and duties relating to the organisation and funding of banks, including both relevant decisions to be taken by directors and legal consequences for shareholders and stakeholders; (2) implications for the relationships between actors on markets, with a focus on structural arrangements which help to form and shape markets; and finally (3) implications for individual relationships between banks and clients. These aspects will be covered in the papers by Binder and Davies, Ferrarini and Nieto, and, ultimately, Möslein and Tröger, which, in turn, will be introduced by the

general reports on the institutional foundations and fundamental issues by Grundmann, Hadjiemmanuil, Gortsos, while Capiello and Singh take up one specific cross-cutting institutional question each.

Following this editorial, Stefan Grundmann first sets out and analyses the entire agenda and puts it into the broader context of the foundations of the legal basis of the internal market, regulatory theory and the relationship between public and private law. Further to the general framework, these issues are then taken up and elaborated by Christos Hadjiemmanuil, while Christos Gortsos further explores the delineation of powers between the SSM and the national level in more detail. Stefano Capiello follows suit with an analysis of the relationship with EBA, whereas Dalvinder Singh examines whether the Single Rulebook should, in the future, be coupled with a Single Enforcement Handbook. On this basis, the paper by Jens-Hinrich Binder turns to a discussion of the possible implications of the Banking Union for the governance of credit institutions. Focusing, again, on implications for individual market participants, Paul Davies specifically addresses the interplay between the Banking Union and the general framework for bank capital regulation, including bail-ins of creditors in insolvency. With the implications for market participants discussed, the analysis then takes a broader perspective and turns to market functions and market structures as a whole. These are explored in a paper by Guido Ferrarini, followed by comments by Maria Nieto. The final sections further complement the analysis by looking at the implications for counterparties of banks (Florian Möslein) and market conditions in general (Tobias Tröger).

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