

# **Towards a European Banking Union**

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<b>Table 1</b>		
<b>Institutional aspects with regard to the preservation of the stability of the banking sector</b>		
<b>Policy instruments</b>	<b>Competent institution</b>	<b>Attributes of the institution</b>
Bank authorisation	Supervisory authority	Central bank or other administrative authority
Micro-prudential and macro-prudential regulation of banks	<ul style="list-style-type: none"> <li>• Parliament</li> <li>• Supervisory authority</li> </ul>	<ul style="list-style-type: none"> <li>• General regulator</li> <li>• upon delegation</li> </ul>
Micro-prudential supervision of banks	Supervisory authority	Central bank or other administrative authority
Macro-prudential oversight of the financial system (including the banking sector)	Specific authority with the active involvement of the central bank (in most cases)	
Reorganisation and winding-up of banks	<ul style="list-style-type: none"> <li>• Supervisory or judicial authority</li> </ul>	On a case-by-case basis
Resolution of banks	<ul style="list-style-type: none"> <li>• Supervisory authority and Ministry of Finance (decision)</li> <li>• Resolution fund (financing of the funding gap)</li> </ul>	On a case-by-case basis
Deposit guarantee	Deposit guarantee scheme	Entity of private or public law
Last-resort lending	Central bank	
Provision of state subsidies to failing banks ('recapitalisation')	Ministry of Finance	

**TABLE 2**

**The *status quo* of European banking law (1):  
Provisions for EU credit institutions within the single financial area**

**A. Provisions on the rules according to which regulatory intervention is exercised**

<b>Financial policy instruments</b>	<b>Extent and level of harmonisation</b>
Authorisation of credit institutions	<ul style="list-style-type: none"><li>• full-extent harmonisation</li><li>• minimum harmonisation</li></ul>
Micro-prudential regulation of credit institutions	<ul style="list-style-type: none"><li>• limited-extent harmonisation</li><li>• minimum harmonisation</li></ul>
Reorganisation and winding-up of credit institutions	no harmonisation
Resolution of credit institutions	No rules - a proposal for a Directive was submitted in June 2010
Operation of deposit-guarantee schemes	<ul style="list-style-type: none"><li>• limited-extent harmonisation</li><li>• minimum harmonisation</li></ul>

**TABLE 3**

**The *status quo* of European banking law (2):  
Provisions for EU credit institutions within the single financial area**

**B. Provisions on the authorities and schemes competent for the implementation of regulatory intervention**

<b>Financial policy instruments</b>	<b>National vs. supranational competent authorities and schemes</b>	<b>Competent authorities and schemes for foreign establishments of EU credit institutions in other member states</b>	
		<b>Competent authorities and schemes for foreign branches</b>	<b>Competent authorities and schemes for foreign subsidiaries</b>
Authorisation of credit institutions	National supervisory authorities	home member state supervisory authorities	<ul style="list-style-type: none"> <li>• supervisory authorities of subsidiary's home member state</li> <li>• consultation and exchange of information between supervisory authorities of parent and subsidiary credit institutions</li> </ul>
Micro-prudential supervision of credit institutions	National supervisory authorities	<ul style="list-style-type: none"> <li>• home member state supervisory authorities (for solvency)</li> <li>• host member state supervisory authorities (for liquidity)</li> </ul>	<ul style="list-style-type: none"> <li>• on a solo basis: supervisory authorities of subsidiary's home member state</li> <li>• on a consolidated basis: supervisory authorities of parent credit institution</li> </ul>
Reorganisation and winding-up of credit institutions	National supervisory and/or judicial authorities	home member state competent authorities	competent authorities of the subsidiary's home member state
Operation of deposit-guarantee schemes	National deposit-guarantee schemes	<ul style="list-style-type: none"> <li>• home member state scheme</li> <li>• host member state scheme (in case of "topping-up")</li> <li>• cooperation between home and host member state schemes (in case of "topping-up")</li> </ul>	scheme of the subsidiary's home member state

<b>TABLE 4</b>			
<b>Arrangements at European level regarding the financial system's micro-prudential supervision:</b>			
<b>from informal <i>fora</i> to 'European (quasi-)supervisory authorities'</b>			
	Banking	Securities and Markets	Insurance, Reinsurance and Pension Funds
before adoption of the Lamfalussy process: informal (except BSC)	GdC (Group de Contact, 1972), and BSC (Banking Supervision Committee, European Central Bank, 1998) (*)	HLSSC (High Level Securities Supervisors Committee", 1985) FESCO (Forum of European Securities Commissions, 1997)	CIS (Conference of Insurance Supervisors, 1957)
after adoption of the Lamfalussy process: institutionalised	CEBS (Committee of European Banking Supervisors, 2004), and BSC (*)	CESR (Committee of European Securities Regulators, 2001)	CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors, 2004)
after establishment of the ESFS: institutionalised	EBA (European Banking Authority, 2011), and BSC (*)	ESMA (European Securities and Markets Authority, 2011)	EIOPA (European Insurance and Occupational Pensions Authority, 2011)
(*) within the context of the ESCB, with the representation of all member states' national central banks (with the euro as the currency or with a derogation)			

<b>TABLE 5</b>				
<b>The procedure for issuing legal acts constituting sources of European financial law after the start of operation of the ESFS(*)</b>				
	<b>Level 1 (*): legally binding acts</b>	<b>Level 2 (*): legally binding acts</b>		<b>Level 3 (*): non-legally binding acts (soft law)</b>
<b>Type of legal act</b>	legislative acts falling within the Authorities' scope of action (TFEU, article 289)	regulatory technical standards by means of delegated acts (TFEU, article 290)	implementing technical standards by means of implementing acts (TFEU, article 291)	guidelines and recommendations (Regulations establishing the Authorities)
<b>Body issuing the legal act</b>	European Parliament and Council (with the ordinary legislative procedure)	European Commission	European Commission	<b>EBA/ESMA/EIOPA</b> (according to the scope of action)
<b>Assistance to the issuing of a legal act</b>	EBC/ESC/EIOPC (**) (as advisory committees)  <b>EBA/ESMA/EIOPA</b> (as opinion-giving bodies)	<b>EBA/ESMA/EIOPA</b> (elaborating draft technical standards)	<b>EBA/ESMA/EIOPA</b> (elaborating draft technical standards)  EBC/ESC/EIOPC (as regulatory committees) (***)	
<p>(*) Reference to these "three levels" depicts the wording that was established (without any explicit legal basis) in the Lamfalussy Report</p> <p>(**) European Banking Committee, European Securities Committee, European Insurance and Occupational Pensions Committee</p> <p>(***) According to the comitology procedure (Regulation 182/2011)</p>				

<b>TABLE 6</b>	
<b>European arrangements under the conditions of a potential 'Banking Union':</b>	
<b>Elements of change and continuity (<i>italics denote new elements</i>)</b>	
<b>Financial policy instruments</b>	<b>Authority</b>
1. Authorisation and micro-prudential supervision of credit institutions	<p><i>Single European banking supervisory authority – three options:</i></p> <ul style="list-style-type: none"> <li>• <i>European Banking Authority (EBA)</i></li> <li>• <i>European Central Bank (TFEU, Article 127, paragraph 6)</i></li> <li>• <i>a new authority, with specific powers assigned to the European Central Bank (TFEU, Article 127, paragraph 6)</i></li> </ul>
2. Micro- and macro-prudential regulation of credit institutions	<p><i>Single rulebook by:</i></p> <ul style="list-style-type: none"> <li>• <i>European Parliament and EcoFin Council (by Regulations)</i></li> <li>• <i>European Commission (technical standards)</i></li> <li>• <i>EBA (recommendations)</i></li> </ul>
3. Macro-prudential oversight of the financial system	European Systemic Risk Board and European Central Bank (TFEU, Article 127, paragraph 6)
4. Reorganisation and winding-up of credit institutions	National authorities and mutual recognition (to be further discussed)
5. Resolution of credit institutions	<ul style="list-style-type: none"> <li>• <i>Single European resolution fund</i></li> <li>• <i>Single regulatory framework (Regulation of the European Parliament and the EcoFin Council)</i></li> </ul>
6. Operation of deposit guarantee systems	<ul style="list-style-type: none"> <li>• <i>Single European deposit guarantee system</i></li> <li>• <i>Single regulatory framework (Regulation of the European Parliament and the EcoFin Council)</i></li> </ul>
7. Last resort lending	<ul style="list-style-type: none"> <li>• European Central Bank</li> <li>• national central banks (Emergency Liquidity Assistance in the eurozone)</li> </ul>
8. Recapitalisation of credit institutions	<i>European Stability Mechanism</i>

**Critical issues:**

- which member states will be involved: eurozone (17) vs. European Union (27)
- which credit institutions will be involved: systemically important credit institutions ('two tier system') vs. all credit institutions