Contents

Part	I		uropean Banking Union and the European Union ecture	1
1	Μι	ıltileve	l Governance in Banking Regulation	3
	Ros	sa M. L	astra	
	1	Intro	oduction	3
	2	The	Rationale for Regulation	3
	3	Histo	orical Developments	6
	4		ılatory Responses	8
	5		Impact of the Global Financial Crisis upon Global and	
			Developments	12
	6	Con	cluding Observations	15
	Ref	ference	S	17
2	Fin	ronear	Banking Union Within the System of European	
_		_	and Monetary Law	19
		_	Gortsos	1)
	1		efinition of EU Banking Law and Its Evolution	19
	2		he Establishment of the Banking Union	21
	3		Legal Acts Establishing the Two First Main Pillars of the	
			king Union and the Related Single Rulebook	24
		3.1	The First Pillar: The Single Supervisory Mechanism	- 1
		3.1	(SSM)	24
		3.2	The Second Pillar: The Single Resolution Mechanism	- 1
		٥.2	and the Single Resolution Fund	25
		3.3	The Underlying Single Rulebook	27
		3.3	and orderlying ombie removaling	-/
				xiii

xiv	Contents	
	4 The Sources of EU Banking Law After the Establishment of the Banking Union	31
	5 The Links Between EU Monetary Law and the Banking	
	Union	32
	5.1 The Sources of EU Monetary Law	32
	5.2 The Main Links	34
	6 Concluding Remarks: 'European Central Banking Law' or	
	'ECB Law' as the Result of a (Partial) Synthesis	36
	References	38
3	European Banking Union and Its Relation with European	
	Union Institutions	41
	Alexander H. Türk	
	1 Introduction	41
	The Single Supervisory Mechanism: Centralisation,	/0
	Fragmentation and the Quest for a New Institutional Balance	42
	3 What Kind of Accountability for the European Central	40
	Bank Within the Single Supervisory Mechanism?	49
	4 Single Resolution Mechanism: Complexity, Agency	52
	Empowerment and an Attempt for a Paradigm Shift The CIEU and Institutional Balance: The Silent Influencer	53 58
	5 The CJEU and Institutional Balance: The Silent Influencer6 Conclusion	61
	References	63
4	Proportionality in the Single Rule Book	65
	Bart Joosen and Matthias Lehmann	
	1 The Need for Proportional Regulation and Supervision	65
	1.1 A Diversified Banking Landscape	65
	1.2 Proportionality and Financial Stability	66
	1.3 Proportionality and Regulatory Competition	69 70
	2 Legal Aspects of Proportionality	70
	2.1 Proportionality as a Principle of Primary Law2.2 Is Proportionality Incompatible with the Single Rule	70
	2.2 Is Proportionality Incompatible with the Single Rule Book?	71
	2.3 The Requirements of Proportionality	73
	3 The Current Approach of the EU to Proportionality	73 74
	3.1 Proportionality with Regard to the Banking and	/ 4
	Insurance Sector	74
	3.2 Elements of Substantive Proportionality in Banking	/ - I
	Regulation	75
	3.3 Procedural Proportionality	77
	5.5 Procedural Proportionality	/ /

		Contents	χV			
		3.4 Proportionality in the Context of Better Regulation and Regulatory Fitness and Performance (REFIT)				
		Programme	78			
		3.5 Proposals for Reform: CRR2 and CRDIV3.6 Net Stable Funding Ratio for Small Non-Complex	80			
		Institutions	83			
		3.7 State of Play as Regards Proportionality in the Single Rule Book	84			
	4	An Outlook: A Differentiated Approach to EU Bank				
		Regulation and Supervision	86			
	Refe	erences	88			
5		System of Administrative and Jurisdictional Guarantees				
		ncerning the Decisions of the European Central Bank recello Clarich	91			
	1	Introduction	91			
	2	The General Features of the New Administrative Remedy	92			
	3	The Internal Character of the Review	95			
	4	Other Procedural Profiles	98			
	5	Concluding Remarks	101			
	Refe	erences	103			
6	The European Banking Union in the Case Law of the Court of					
		tice of the European Union rio P. Chiti	105			
	1v1ar	Introduction. The Role of the European Union Judges: The				
	1	Judicial Building of the Banking Union	105			
	2	Judicial Review and Administrative Appeals	108			
	3	The Workload of Case Law	109			
	4	The Main Themes of the Case Law of EU Judges	111			
	5	The Founding Jurisprudence of the ECJ. The <i>Pringle</i> Case	112			
	6	The Esma Case	116			
	7	The ECB Powers and Their Justiciability. The Gauweiler	110			
	/	Case	120			
	8	The Principle of Financial Stability and the Protection of	120			
	U	Fundamental Rights	123			
	9	The SSM and SRM in Action. The Case Law of the General	140			
		Court	127			
	10	Conclusions	132			
	Refe	erences	133			

xvi Con	tents

7	The	Future of the European Banking Union: Risk-Sharing and	
	Der	mocratic Legitimacy	135
	Ped	ro Gustavo Teixeira	
	1	Introduction	135
	2	The Legal History of Risk-Sharing and Democratic	
		Accountability in the Single Financial Market	136
		2.1 Beginnings	136
		2.2 Multilevel Governance	137
		2.3 The Financial Crisis	138
	3	Risk-Sharing in the Banking Union	140
		3.1 The Direct Recapitalisation of Banks by the ESM	140
		3.2 The Prohibition of Bail-Outs and the Introduction of	
		Bail-In	141
		3.3 The Single Resolution Fund	142
		3.4 The Privatisation of Risk-Sharing	143
	4	The Democratic Legitimacy of the Banking Union	144
		4.1 Legal Safeguards for Decision-Making	144
		4.2 Institutional Independence	145
		4.3 Multilevel Accountability	146
		4.4 Achieving Legitimacy	148
	5	The Future Sustainability of the Banking Union	148
		5.1 A Future Without Risk-Sharing?	148
		5.2 A Future Without Democratic Legitimacy?	151
		5.3 Conclusion	152
	Refe	erences	152
	101		1)2
			1
Par	t II	The Three Pillars of the European Banking Union	155
8	Sin	gle Supervision Mechanism: Organs and Procedures	157
		faele D'Ambrosio	
	1	Outlook	157
	2	The Incomplete Separation of the Monetary Policy From the	
		Supervisory Functions and Its Side Effects on the ECB	
		Organization and Decision-Making Process	158
	3	The Uncertain Allocation of Some Supervisory Tasks and	
	-	Powers to the ECB and to the NCAs	160
		3.1 Tasks Conferred on the ECB and Tasks Remaining in	
		the Remit of NCAs	160

		Contents	xvii
		3.2 Uncertainties About the Scope of Some of the ECB's	
		Prudential Tasks	162
		3.3 Cases of Misallocation Between the ECB's Tasks and	
		the NCAs' Powers	164
	4	What are Referred to as National Powers and the	
		Heightened Uncertainty About the Allocation of	
		Supervisory Powers Within the SSM	165
		4.1 The ECB's View on Article 9 SSMR	165
		4.2 The Author's Criticism of the ECB's and the	
		Commission's Views	167
	5	The ECB's Remedy to the Unintended Side Effects of the	
		Increase of its Supervisory Powers: Delegation to the ECB's	
		Internal Divisions	169
		5.1 The ECB's Delegation Framework	169
		5.2 Advantages and Disadvantages of the ECB's	
		Delegation Framework	171
	6	The Other Ways Round: The Two Distinct Delegations by	
		the Supervisory Board and the Governing Council of the	
		Powers They Respectively Enjoy Under the SSMR or the	
		NCAs' Responsibility for Assisting the ECB in the	
		Performance of its Supervisory Tasks	174
	7	What Is the Most Appropriate Form of NCAs' Assistance to	
		ECB?	179
	Refe	erences	182
9	The	Concept of Systemic Importance in European Banking	
	Uni	on Law	183
	Pab	lo Iglesias-Rodríguez	
	1	Introduction	183
	2	Systemic Importance in EBU Supervision	185
	3	Systemic Importance in EBU Resolution	192
		3.1 Systemic Importance in the SRM Pre-Resolution	
		Stages	194
		3.2 Systemic Importance in the SRM Resolution Stages	196
	4	An Inconsistent Regime in Action: The Failure and	
		Nonresolution of Banca Popolare di Vicenza and Veneto	
		Banca	200
		4.1 BPV and VB Were Deemed Systemically Important	
		Banks for Supervisory Purposes	200
		-	

xviii	Contents	
	4.2But Nonsystemically Important Banks for	
	Resolution Purposes	202
	4.3And Yet Systemically Important Banks for State	/
	Aid Purposes	204
	5 Conclusions	207
	References	208
10	Non-Performing Loans and the European Union Legal	
	Framework	213
	Elisabetta Montanaro	
	1 Introduction	213
	2 NPL Crises in Euro Area Countries	215
	3 Country-Specific Constraints Upon Solutions for the NPL	
	Legacy	220
	4 Regulatory and Supervisory Aspects of NPLs: Divergences	226
	and Loopholes in the EU Rules	226
	5 Towards a European Strategy on NPLs	232
	6 Conclusions References	239 240
11	The Single Resolution Mechanism: Authorities and	210
11	Proceedings	247
	Olina Capolino	21/
	1 Introduction	247
	2 SRM: A Brief Description of the Framework and of Critical	21/
	Aspects	248
	3 The Division of Tasks Within the SRM	252
	4 Relationship Between the SRM and the SSM	254
	5 Financing Banking Crisis Solutions	255
	6 Resolution vs National Insolvency Proceedings	257
	7 SRM: Initial Experience	260
	8 Public Interest in Resolution: Just One of the Many	264
	9 Conclusion	268
	References	269
12	Recovery and Resolution Planning	271
	Marilena Rispoli Farina and Luigi Scipione	
	1 Introductory Notes	271
	2 The Living will Approach in US Law. An Outline	273
	3 Recovery and Resolution Plans. The Regulatory Framework	274

			Contents	xix
	4	Reco	overy Plans: Their Structural Characteristics and	
			tegic Aims	276
		4.1	The EBA Regulatory Technical Standards	277
		4.2		278
		4.3	Integrating the Recovery Plan into a Bank's Corporate	
			Governance	280
		4.4	7	283
		4.5	V 1 / V	
			Assessment	284
	5		olution Plans. Systematic Profiles	288
		5.1	Content and Evaluation of Resolution Plans	289
	6		ning and Coordination at Group Level	291
	7	_	ponsibility for Resolution Plans	293
	8		clusions	295
	Ref	erence	es es	297
13	The	Rele	vance of the Resolution Tools Within the Single	
			on Mechanism	299
	Iens	-Hinr	rich Binder	
	1		oduction	299
	2	The	Toolbox and First Cases—Overview	301
		2.1	The Elements of the Toolbox and the Framework for	
			Its Application	301
		2.2	The First Cases	303
	3	The	Relevance of the Toolbox Within the SRM: Functional	
		Cha	racteristics and Limitations	304
		3.1	Overview	304
		3.2	Delineating the Lower Threshold: The Function and	
			Implications of the 'Public Interest Test'	305
		3.3	•	
		- /	Functional Characteristics, Strengths and Weaknesses	310
		3.4	Delineating the Upper Threshold: Limitations in	~ -
	,		Large-scale Insolvencies and Systemic Crises	315
	4		clusions	316
	Ref	erence	es es	317
14	Miı	nimuı	m Requirement for Own Capital and Eligible	
		bilitie		321
	Ma	rco La	mandini and David Ramos Muñoz	
	1	Intro	oduction	321

XX	Contents

	2	Burden-Sharing and Its Implications: Bail-in and	
		Fundamental Rights	322
		2.1 Bail-in of Financial Instruments and Its Difficulties	323
		2.2 Bail-in, Burden-Sharing and Their Fundamental	
		Rights Implications	325
		2.3 Preliminary Conclusions	331
	3	MREL in the Context of Bank Resolution Planning	333
	4	MREL, Financial Stability and Investor Protection	341
		4.1 Spain: The Pendular Movement from Pro-bank to	
		Anti-bank Stance, and Its Implications	342
		4.2 Italy: A Long Tradition of Bail-outs, a Perceived	
		Equivalence Between Deposits and Bonds (What	
		Could Possibly Go Wrong?) and the Long, Winding	
		Road Towards Clear Transparency Requirements	345
	Refe	erences	347
	101		3 17
15	Wri	te-down and Conversion of Capital Instruments	349
		orio Santoro and Irene Mecatti	0 27
	1	Rationale and Functioning of Write-down and Conversion	
		Powers	349
	2.	Preliminary Remarks	352
	3	The Objectives of the Bank Resolution	353
	4		356
		Write-down and Mis-selling of Financial Products	359
		Ex Ante Remedies to Prevent Mis-selling: The New MiFID	
	O	Framework	362
	7	Ex Post Remedies to Prevent Mis-selling	364
	,	erences	368
	TCT	refrees	300
16	Les	sons from the First Resolution Experiences in the Context	
10		Banking Recovery and Resolution Directive	371
		Silva Morais	3/1
	1	Introduction	371
	2	First Resolution Experiences Within a BRRD Paradigm—	3/1
	2	Why National Cases Matter	374
		2.1 National Regimes of Resolution in EU Member States	J/ T
		and the Emergence of a BRRD Paradigm of Banking	
		Resolution	374
		2.2 Inherent Complexities of the BRRD Paradigm of	JI
		Banking Resolution and Why Lessons Arising from	
		•	270
		National Experiences of Its Implementation Matter	378

		Contents	xxi
	3	First Resolution Experiences: The BES Case in Portugal, An	
		Overall View	379
		3.1 The BES Precedent in Context	379
		3.2 The BES Precedent: Key Issues at Stake	381
	4	BES Case: Other Recent Developments with Supranational	
		Corollaries and Relevant for Post-resolution Stages	385
		4.1 Recent Developments with Supranational Corollaries	385
		4.2 BES Case: Other Recent Developments Relevant for	
		Post-resolution Stages	387
	5	Enforcement of EU Resolution Regime and Public Interest	
		Test: Recent Cases of Banks in Financial Distress Dealt with	
		at National Level	388
		5.1 Relevant Precedents	388
		5.2 Final Considerations	389
	Refe	erences	390
	_		
17		Third Pillar of the Banking Union and Its Troubled	202
		blementation	393
		ncetta Brescia Morra	202
	1	The Rational for Deposit Insurance Schemes	393
	2	The Evolution of the European Regulation of DGSs	394
	3	The Main Features of the Current DGSD	395
	4	The Proposal for an EDIS	396
	5	The Obstacles for Establishing a Fully-Fledged EDIS	398
		5.1 Different Banking Systems in Europe	398
		5.2 The Discussion on the Legal Basis	401
	6	The Limited Mandate of the EDIS Under the Current	10=
	D C	Commission's Proposal	405
	Rete	erences	407
Ind	O.V.		409
IIIU	LA		せいり