The Banking Union was created as a response to the financial crisis and currently has two elements, the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). The SSM supervises the largest and most important banks in the euro area directly at European level, while the purpose of the SRM is to resolve failing banks in an orderly manner with minimal costs for taxpayers and for the real economy. A third element, a European Deposit Insurance Scheme (EDIS), has been accepted as a legislative priority for 2021.

LEGAL BASIS

Articles 114 and 127(6) of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The Banking Union (BU) is an essential complement to the Economic and Monetary Union (EMU) and the internal market, which aligns responsibility for supervision, resolution and funding at EU level and forces banks across the euro area to abide by the same rules. In particular, these rules ensure that banks take measured risks and that failing banks can be resolved in an orderly manner, with as little impact as possible on the real economy and public finances of the participating EU countries.

ACHIEVEMENTS

A. Roadmap for Banking Union

In December 2012, the President of the European Council, in close collaboration with the Presidents of the European Commission, the European Central Bank (ECB) and the Eurogroup, drew up a specific and time-bound roadmap for the achievement of a genuine EMU. One of the vital parts of this roadmap was the creation of a more integrated financial framework, i.e. the BU.

B. Agreement on the SSM

In March 2013, Parliament and Council reached a political agreement to establish the first pillar of the BU, the Single Supervisory Mechanism (SSM), covering all banks in the euro area. Non-euro area Member States may opt in to the SSM. Operational since November 2014, the SSM has been placed within the ECB and is responsible for the direct supervision of the largest and most significant banking groups, while national supervisors continue to supervise all other banks, under the ultimate responsibility of the ECB. The criteria for determining whether banks are considered significant — and
therefore fall under the ECB’s direct supervision — are set out in the SSM Regulation and the SSM Framework Regulation, and relate to a bank’s size, economic importance, cross-border activities and need for direct public support. In line with the development of these criteria, the actual number of banks directly supervised by the ECB changes over time; the ECB can moreover decide at any time to classify a bank as significant if that is necessary to ensure that high supervisory standards are consistently applied. In order to avoid a potential conflict of interests, clear rules govern the organisational and operational separation of the ECB’s roles in the areas of supervision and of monetary policy.

C. Comprehensive Assessment

Prior to assuming its supervisory responsibilities, the ECB conducted a ‘financial health check’ called the Comprehensive Assessment, which consisted of an asset quality review and a stress test. The aim of that exercise was to achieve greater transparency in the banks’ balance sheets in order to ensure a reliable starting point. The results, published in October 2014, showed that 25 out of 130 participating banks had capital shortfalls.

All banks undergo a similar kind of ‘financial health check’ when they first come under direct supervision; following Bulgaria’s request to establish close cooperation between the ECB and the Bulgarian National Bank, for example, the ECB carried out a comprehensive assessment of six Bulgarian banks, the results of which it published in July 2019.

D. SRM

In March 2014, Parliament and the Council reached a political agreement to establish the second pillar of the Banking Union, the Single Resolution Mechanism (SRM). The main objective of the SRM is to ensure that bank failures in the Banking Union are managed efficiently, with minimal costs to taxpayers and the real economy. In the event that action is needed, a central authority — the Single Resolution Board (SRB) — will take charge of the decision to initiate the resolution of a bank, while from an operational point of view, the decision will be implemented in cooperation with national resolution authorities. The SRB started its work as an independent EU agency in January 2015, and became fully operational in January 2016.

In June 2017, the SRB adopted its first resolution decision in the case of Banco Popular. In June 2017, the SRB decided not to take resolution action in relation to Banca Popolare di Vicenza and Veneto Banca, and in February 2018 it reached the same decision concerning ABLV Bank AS and its subsidiary ABLV Bank Luxembourg S.A.

E. SRF

While the rules governing the Banking Union aim to ensure that any resolution is financed first by a bank’s shareholders and, if necessary, also partly by a bank’s creditors, there is now another funding source available - namely the Single Resolution Fund (SRF) - that can step in if the contributions of shareholders and creditors are insufficient. The contributions to the SRF are paid in by the banks over the course of eight years. The target size of the SRF is set at 1% of covered deposits by the end of 2023. In 2020, the total of all contributions paid in stood at approximately EUR 42
billion. Taking into account the current annual growth in covered deposits, the fund will end up at close to EUR 70 billion. In November 2020, the Eurogroup agreed to advance the ‘common backstop’ to the SRF (a credit line from the ESM, in case of need) by the beginning of 2022.

F. BRRD

The new rules for burden-sharing that are applicable in the case of bank resolutions are set out in the Bank Recovery and Resolution Directive (BRRD), adopted by Parliament in April 2014. The BRRD provides for ways in which ailing banks can be resolved without requiring taxpayer bailouts, implementing the principle that losses have to be borne first by shareholders and creditors, rather than through recourse to state funds. Legislative procedures to amend the BRRD, in particular in order to incorporate international standards on loss-absorbing and recapitalisation capacities, were adopted by Parliament in April 2019 (see point G).

G. CRD/CRR

Minimum capital requirements define how much capital a bank must hold to be considered safe to operate and able to deal with operational losses on its own. The financial crisis demonstrated that previous regulatory minimum capital requirements were actually too low in a major crisis. It was therefore agreed at international level to increase the respective minimum thresholds (Basel III principles). In April 2013, Parliament adopted two legal acts which transpose the prudential capital requirements for banks into European law, the fourth Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR). The CRD and CRR entered into force in January 2014.

The level playing field inside the single market is strengthened by a Single Rule Book applicable to all banks in the EU. In the legal acts that were adopted by Parliament, some technical details still needed be finalised. The Commission was therefore empowered to draft complementing legislative acts (so-called level-2 measures) that specify the missing technical details.

In November 2016, the Commission presented a comprehensive package of reforms to amend the rules set out in the CRD and the CRR. Within Parliament, the two legislative proposals amending the CRD and CRR have been negotiated in parallel. ECON adopted its full report on the amending proposals in June 2018. In June 2019, the amended Capital Requirements Directive (CRD V) and Capital Requirements Regulation (CRR II) were published in the Official Journal of the European Union.

H. EDIS

In November 2015, the Commission presented a legislative proposal that aims to add another element to the Banking Union, namely the European Deposit Insurance Scheme (EDIS). The Commission’s initial proposal built on existing national deposit guarantee schemes and recommends a gradual introduction of EDIS. It conceived the proposal as cost-neutral overall for the banking sector (though riskier banks will be asked to pay higher contributions than safer banks), and suggested complementary safeguards and measures to reduce banking risks.
The European Parliament’s rapporteur published her draft report on EDIS in November 2016. Subsequent discussions in Parliament and the Council revealed divergent positions as regards the design of the system at its final stage. In order to facilitate progress, the Commission published an additional communication in October 2017, proposing some options for the design of EDIS. In December 2020, the three EU institutions agreed on the legislative priorities for 2021, including EDIS in the related working document.

ROLE OF THE EUROPEAN PARLIAMENT

As a response to the roadmap on a genuine EMU, Parliament adopted a resolution entitled ‘Towards a genuine Economic and Monetary Union’ on 20 November 2012, with recommendations to the Commission to establish a real Banking Union. By adopting legislative acts on the SSM, SRM, DGS, BRRD and CRD IV in 2013 and 2014, Parliament contributed significantly to establishing a real Banking Union.

These legislative acts give Parliament a role in the scrutiny of the newly established institutions. The ECB is, in its supervisory role (i.e. in the SSM), accountable to Parliament and to the Council. Details of its accountability towards Parliament are laid down in an Interinstitutional Agreement (IIA) between Parliament and the ECB.


Details of the SRB’s accountability towards Parliament and related practical modalities are laid down in an Interinstitutional Agreement between Parliament and the SRB that was published on 24 December 2015.

Marcel Magnus
04/2021