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**TOWARDS A “EUROPEAN BANKING UNION”:
THE EUROPEAN COMMISSION’S PROPOSALS
ON THE CREATION OF A
‘SINGLE SUPERVISORY MECHANISM’
IN THE BANKING SECTOR**

by Professor Christos Vl. Gortsos

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Towards a “European banking union”: the European Commission’s proposals on the creation of a ‘single supervisory mechanism’ in the banking sector

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October 2012

Abstract

The launch on 1 January 1999 of the Economic and Monetary Union within the European Union did not bring about any changes to the regime on the authorisation and micro-prudential supervision of credit institutions incorporated in euro area member states. The academic debate on the creation of supranational supervisory authorities for the European financial system can be tracked back to mid-2000s. On political level, this prospect was essentially put forward, for the first time, in 2009, and only recently, at the 29 June 2012 Euro Area Summit, the euro area Heads of State or Government asked the European Commission to present specific legislative proposals on the establishment of a single supervisory mechanism over credit institutions, in the context of a wider political initiative on the creation of a ‘European Banking Union’. The subject of this paper is to provide a systematic overview of the main provisions of the two Regulation proposals tabled by the Commission on 12 September 2012.

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Issues at hand

(a) The launch on 1 January 1999 of the Economic and Monetary Union (hereinafter ‘EMU’) within the European Union (hereinafter the ‘EU’) did not bring about any changes to the regime on the authorisation and micro-prudential supervision of credit institutions incorporated in euro area member states.¹ Contrary to what was established with regard to the definition and implementation of the single monetary and exchange rate policy, which became supranational, the European Central Bank (hereinafter ‘ECB’) did not shift into a supranational supervisory authority for the financial system, or at least one of its sectors, given that relevant competencies remained at national level. This is explicitly clear from the provisions of **Article 127, para. 5**, of the Treaty on the Functioning of the European Union (hereinafter the ‘TFEU’),² carried over verbatim in **Article 3.3** of the Statute of the European System of Central Banks and the ECB,³ which stipulates that: “*the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system*”.^{4,5} The relevant competence which lies with the ECB is only to submit opinions, in accordance with **Article 127, para. 4, of the TFEU**, within the limits and under the conditions set out in **Decision 98/415/EC of the Council**, issued on the basis of this TFEU provision.⁶

(b) The academic debate on the creation of supranational supervisory authorities for the European financial system can be basically traced back to the mid-2000s.⁷ On a political level, this prospect was essentially put forward, for the first time, in 2009 by the *de Larosière* report,⁸ following the onset of the recent international financial crisis.⁹

¹ The only policy means used to meet the demand for safeguarding the stability of the banking system, which was *de facto* assigned to the ECB following the launch of the EMU, even without the relevant statutory basis, was last-resort lending addressed to solvent banks exposed to illiquidity problems, which forms an integral part of central bank functions.

² OJ C 83, 30.3.2010, pp. 47-199.

³ Protocol No. 4 TEU and TFEU (OJ C 83, 30.3.2010, pp. 230-250).

⁴ These provisions are in force since the launch of Stage III of the EMU (Treaty establishing the European Community, Article 116, para. 3, second indent, with a reference to the provisions of Article 105, para. 5). For a historical background of their content, see **Smits (1997)**, pp. 334-338. They do not apply to Member States with a derogation (TFEU, Article 139, para. 2, point 3, and ESCB Statute, Article 42.1, respectively), nor to the United Kingdom (Protocol No. 15 (OJ C 83, 30.3.2010, pp. 284-286)).

⁵ The fact that micro-prudential supervision of credit institutions does not form part of the ECB’s tasks is one of the two main asymmetries of the EMU. The other is the fact that, while within the framework of the ‘monetary union’, the Union has exclusive competence on monetary policy (TFEU, Article 3(1)(c)), the same does not hold for fiscal policy within the framework of the ‘fiscal union’ (*ibid.*, Article 5.1).

⁶ OJ L 189, 3.7.1998, pp. 42-44.

⁷ See, merely by means of indication, **Lastra (2006)**, pp. 324-328 (with extensive further bibliographical references).

⁸ *The High-Level Group on Financial Supervision in the EU, Chaired by Jacques de Larosière, Report*, Brussels, 25 February 2009. This Report is available at: http://ec.europa.eu/commission_barroso/president/pdf/statement_20090225_en.pdf (hereinafter the ‘De Larosière Report’).

⁹ On this crisis, see indicatively **Gortsov (2012b)**, pp. 127-129, with extensive further references.

This report concluded that it was neither necessary nor feasible – in the near future – to set up supranational supervisory authorities at European level.¹⁰ On the contrary, it proposed the creation of a European System of Financial Supervisors (hereinafter ‘ESFS’), along with three European Supervisory Authorities, which are mainly regulatory authorities and exercise supervisory competencies only in exceptional circumstances (see below, under A.5.).

As a result, the creation of the European System of Financial Supervisors (hereinafter the ‘ESFS’) did not, literally speaking, lead to the creation of supranational supervisory authorities of the financial system at EU level, either.

(c) However, the current fiscal crisis in the euro area which became manifest in 2010,¹¹ triggered – just a year following the publication of the *de Larosière* report – a new debate on the need to set up supranational supervisory authorities for the European financial system. At the current juncture, the debate has taken a broader focus, with a view to creating a “European Banking Union”,¹² which would include setting up at European (Union) level:

- a supranational supervisory authority exclusively for the banking sector (that is, not for the other two sectors of the financial system),
- a supranational ‘resolution’ authority for unviable credit institutions,
- a supranational resolution fund to cover any funding gaps, provided that a decision is made in favour of the resolution of unviable credit institutions,¹³ and
- a supranational deposit guarantee scheme.¹⁴

¹⁰ **De Larosière Report (2009)**, paragraph 218. This report (Chapter III, Section V “*Reviewing and possibly strengthening the European System of Financial Supervision*”) also includes a proposal on the possibility of moving towards a system which would rely on only two Authorities – apart from the ECB – mainly following the ‘functional approach’ pattern in relation to the institutional set-up of the financial system’s micro-prudential supervision.

As regards this approach (adopted by the Netherlands), as well as its alternatives, i.e., the ‘sectoral approach’ and the ‘full integration approach’ for supervisory authorities of the financial system, see **Lastra (2006)**, pp. 324-328, **Group of Thirty (2008)**, **Seelig and Novoa (2009)**, and **Central Bank Governance Group (2011)**.

¹¹ For an evaluation of this crisis, see **Eichengreen, Feldmann, Liebman, von Hagen and Wyplosz (2011)**, pp. 47-64, and **Stephanou (2012)**.

¹² For arguments in favour or against setting up a European banking union, see (in chronological order) **Carmassi, Di Noia and Micossi (2012)**, **Pisani-Ferry, Sapir, Véron and Wolff (2012)**, **Constâncio (2012)**, and **Pisani-Ferry and Wolff (2012)**.

¹³ If, in the context of resolution, the decision is made to have recourse to a ‘bridge bank’ or transfer assets to the existing credit institution, a ‘funding gap’ emerges as a result of the mismatch between assets and liabilities (the latter’s value is greater) transferred onto the bridge bank or the existing credit institution, respectively. This gap is covered by a special-purpose vehicle (which may, but must not necessarily, be the same as the fund which manages the deposit guarantee scheme).

¹⁴ It should be noted, however, that the proposal on setting up a single deposit guarantee scheme, at international rather than European Union (or, at the time, European Community) level, was first tabled by **Grubel (1979)**.

(d) At the 29 June 2012 Euro Area Summit, the euro area Heads of State or Government asked the European Commission to present specific legislative proposals on the establishment of a single supervisory mechanism over credit institutions, in the context of a wider political initiative on the creation of a ‘European Banking Union’. The European Summit which was held later on the same day decided¹⁵ to invite the European Commission to develop, in close collaboration with the President of the Commission, the President of the Eurogroup and the President of the ECB, a specific and time-bound road map for the achievement of a genuine Economic and Monetary Union (in accordance with the relevant report tabled on 26 June of the same year by the President of the European Council),¹⁶ one of the four elements of which is the creation of a European banking union.¹⁷

(e) In response to this demand, the Commission issued on 12 September 2012:

- an announcement regarding “*A roadmap for a Banking Union*”,¹⁸
- a proposal for a Council Regulation “*conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions*”¹⁹ (hereinafter ‘Council Regulation proposal’), and
- a proposal for a Regulation of the European Parliament and of the Council “*amending Regulation (EU) No 1093/2010 establishing the European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No.../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions*”²⁰ (hereinafter ‘European Parliament and Council Regulation proposal’).

In this Announcement, the Commission calls on the European Parliament and the (EcoFin) Council to do the following:²¹

(i) Firstly, to reach agreement by end-2012 on the two (2) above-mentioned Regulation proposals, as a first step in the creation of a European Banking Union.

This could play a decisive role in assigning to the European Stability Mechanism (ESM)²² the recapitalisation of credit institutions short of capital, yet viable according to national supervisory authorities, and, consequently, reducing the public debt of Member States in which such credit institutions are incorporated. This prospect is explicitly mentioned in the above-mentioned 29 June 2012 Euro Area Summit Statement, i.e.:

¹⁵ **European Council Conclusions, 28/29 June 2012**, EUCO 76/12, paragraph 4(b).

¹⁶ **Van Rompuy Report (2012): Towards a Genuine Economic and Monetary Union**, EUCO 120/12.

¹⁷ *Ibid.*, Section II.1.

¹⁸ COM(2012) 510.

¹⁹ COM(2012) 511.

²⁰ COM(2012) 512.

²¹ COM(2012) 510, section 4.

²² The ESM, based on an intergovernmental Treaty signed by the seventeen (17) euro area Member States, has fully replaced the European Financial Stability Mechanism, fully operative since October 2012. For more details on both facilities, see **Stephanou (2012)**, pp. 17-20.

*“When an effective single supervisory mechanism is established, involving the ECB, for banks in the euro area the ESM could, following a regular decision, have the possibility to recapitalize banks directly”.*²³

(ii) Secondly, to approve, also by end-2012, the proposals for the Regulations and Directives (of the European Parliament and of the Council) on:

- amending the applicable regulatory framework on micro-prudential regulatory intervention in the banking system,²⁴ and setting up a new regulatory framework on macro-prudential regulatory intervention in the banking system, reflecting (in both cases) the relevant proposals of the Basel Committee on Banking Supervision (also known as the ‘Basel III framework’),²⁵
- establishing pan-European rules on the recovery and resolution of credit institutions (and investment firms) under distress,²⁶ and

²³ **Euro Area Summit Statement, 29 June 2012**, first paragraph, fourth sentence. It should be noted, however, that the Finance Ministers of certain Member States (in particular, Germany, the Netherlands and Finland) argued that *“direct bank recapitalisation by the ESM should take place based on an approach that adheres to the basic order of first using private capital, then national public capital and only as a last resort the ESM”* (**Joint Statement of the Ministers of Finance of Germany, the Netherlands and Finland**, 25 September 2012)

²⁴ This regulatory framework is based on two legal acts of the European Parliament and of the Council:

(a) **Directive 2006/48/EC** *“relating to the taking up and pursuit of the business of credit institutions (recast)”* (OJ L 177, 30.6.2006, pp. 1-200) (also known as the ‘Capital Requirements Directive’ or ‘CRD’), as (repeatedly) amended by:

- **Directive 2007/44/EC** (OJ L 247, 21.9.2007, pp. 1-16),
- **Directive 2007/64/EC** (OJ L 319, 5.12.2007, pp. 1-36),
- **Directive 2009/83/EC** (OJ L 196, 28.7.2009, pp. 14-21),
- **Directive 2009/110/EC** (OJ L 267, 10.10.2009, pp. 7-17),
- **Directive 2009/111/EC** (OJ L 302, 17.11.2009, pp. 97-119, also known as ‘CRD II’), and
- **Directive 2010/76/EC** (OJ L 329, 14.12.2010, pp. 3-35, also known as ‘CRD III’).

(b) **Directive 2006/49/EC** *“on the capital adequacy of investment firms and credit institutions (recast)”* (OJ L 177, 30.6.2006, pp. 201-255), as applicable.

²⁵ COM(2011) 452 final, and COM(2011) 453 final. More particularly:

- the proposal for a Regulation of the European Parliament and of the Council *“on prudential requirements for credit institutions and investment firms”* (also known as ‘Capital Requirements Regulation’, hereinafter the ‘CRR’), and
- the proposal for a Directive of the European Parliament and of the Council *“on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate”* (hereinafter the ‘CRD IV’). For a detailed overview of the rules included in the Basel III regulatory framework, see **Gortsos (2012)**.

²⁶ COM(2012) 280.

- amending the existing regulatory framework²⁷ on deposit guarantee schemes.^{28,29}

(iii) Finally, to examine, in the medium term, how to shape the conditions for the establishment of:

- a supranational entity for the resolution of unviable credit institutions,
- a supranational resolution fund for covering funding gaps, provided that a decision is made in favour of the resolution of unviable credit institutions, and
- a supranational deposit guarantee scheme,

allowing the completion of the European Banking Union.

(f) The subject of this article is to provide a systematic overview (and, partly also, analysis) of the main provisions of these two above-mentioned Regulation proposals tabled by the Commission on 12 September, i.e.:

- a (longer) proposal for a Regulation of the Council, the provisions of which it is proposed to enter into force from 1 January 2013 (phasing-in approach),³⁰ and
- a (shorter) proposal for a Regulation of the European Parliament and of the Council, the provisions of which will enter into force on the day following that of its publication in the Official Journal of the European Union.³¹

²⁷ **Directive 94/19/EC** of the European Parliament and of the Council (OJ L 135, 31.5.1994, pp. 5-14), as modified by **Directive 2009/14/EC** (OJ L 68, 13.3.2009, pp. 3-7).

²⁸ COM(2010) 369 final.

²⁹ For more details on the currently applicable European banking law, see **Tridimas (2011)**, and **Gortsos (2012a)**.

³⁰ Council Regulation proposal, Article 28(a).

³¹ Council Regulation proposal, Article 3(a).

A. The main elements of the proposed regulatory framework

1. General overview

The regulatory framework designed by the Commission, as set out in the provisions of the two above-mentioned Regulation proposals, includes five (5) main elements, which reflect specific policy choices:

- conferring specific tasks on the ECB concerning the micro-prudential supervision of certain financial system participants, in transfer from national supervisory authorities (for more details, see A.2. below),
- performing (as regards the scope *ratione personae*) these specific tasks on the micro-prudential supervision of credit institutions, principally those seated in euro area Member States (see A.3. below),
- establishing a ‘single supervisory mechanism’ in relation to the *exercise* of the specific tasks conferred on the ECB (see A.4. below),
- incorporating this ‘single supervisory mechanism’ in the European System of Financial Supervision (ESFS), without, in principle, touching upon the current tasks of the newly (2011) established European Banking Authority (see A.5. below), and
- creating ‘Chinese walls’ within the ECB, in order to ensure the effective separation of its monetary and other tasks from its (future) supervisory tasks (see A.6. below).

2. Conferment on the European Central Bank of specific tasks concerning policies relating to the micro-prudential supervision of certain financial system participants

First of all, the Council Regulation proposal includes a ‘vertical’ transfer, from the Member States to the European Union, of specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to promoting the safety and soundness of credit institutions and the stability of the financial system, with due regard for the unity and integrity of the internal market.³² Among several alternative options that could have been implemented, the Commission opted for³³ conferring the relevant ‘specific tasks’ on the ECB.³⁴

³² Council Regulation proposal, Article 1.

³³ *Ibid.*, Article 1.

³⁴ The alternative options were:

- either assigning micro-prudential supervision to one or more of the European Supervisory Authorities-members of the ESFS,
- or creating a new pan-European supervisory authority.

In both cases, however, specific tasks would be conferred on the ECB, in accordance with the Euro Area Summit Statement of 29 June 2012 (see the following footnote, below).

In this regard, it should be noted that the current proposals run counter to the proposals of the de Larosière report, which had reached the conclusion that micro-prudential supervision of credit institutions should not be assigned to the ECB (ibid., paragraph 146).

As a result, the legal basis chosen for the Council Regulation is **Article 127, para. 6, of the TFEU**,³⁵ according to which:

*“The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.”*³⁶

If the Commission proposal is implemented, the following tasks will be assigned to the ECB:

- the main tasks set out in **Article 127, para. 2, of the TFEU**, pre-eminently the definition and implementation of the monetary policy of the Union, as the core of the European System of Central Banks (hereinafter ‘ESCB’),
- other duties set out in the TFEU (including those under **Article 128 of the TFEU** concerning the issuance of euro banknotes and coins),
- the specific tasks assigned to it pursuant to **Council Regulation 1096/2010** (also based on Article 127, para. 6, of the TFEU) concerning the macro-prudential oversight of the European financial system (rather than merely that of the euro area) in the context of the functioning of the European Systemic Risk Board,³⁷ which is one of the components of the ESFS, and
- the specific tasks to be conferred pursuant to the Council Regulation under review concerning issues of micro-prudential supervision of certain financial system participants (the proposed new category of tasks).

3. Performance of specific tasks exclusively in relation to micro-prudential supervision of credit institutions

(a) The conferment upon the ECB of specific tasks in relation to the micro-prudential supervision of financial system participants is proposed to cover exclusively:

- credit institutions, and
- two categories of holding companies:

³⁵ In reality, the European Commission had to opt for this particular legal basis, because the Euro Area Summit of 29 June 2012 had decided that: “the Commission will present proposals on the basis of Article 127(6) for a single supervisory mechanism shortly” (ibid., first point, second sentence). This decision was also confirmed by the European Council of the same day (**European Council Conclusions, 28/29 June 2012, paragraph 4(b), in finem**).

³⁶ Here, it should be noted that: any Regulation adopted on the basis of this Article of the TFEU is issued by the EcoFin Council in accordance with a special legislative procedure (TFEU, Article 289, para. 2), in which the European Parliament’s contribution is limited to an advisory role, and such a Regulation must be unanimously approved by the EcoFin Council.

³⁷ **Regulation (EU) No. 1096/2010** of the Council of 17 November 2010 “conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board”, OJ L 331, 15.12.2010, pp. 162-164. The ESRB was established by **Regulation (EU) No. 1092/2010** of the European Parliament and of the Council of 24 November 2010 “on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board”, OJ L 331, 15.12.2010, pp. 1-11.

- ‘financial holding companies’, in the context of the conduct of consolidated supervision of banking groups,³⁸ and
- ‘mixed financial holding companies’, in the context of the conduct of supplementary supervision on financial conglomerates³⁹ including credit institutions, respectively.⁴⁰

The scope, ratione personae, of the relevant provisions covers mainly (but not exclusively credit institutions⁴¹ incorporated in euro area Member States (hereinafter ‘participating Member States’).⁴²

The proposed timeframe for the ECB’s supervisory competence over such credit institutions is as follows:

- as of **1 January 2013** over those credit institutions which have received or requested to receive state aid,⁴³
- as of **1 July 2013** over ‘systemically important’ credit institutions,⁴⁴ and
- as of **1 January 2014** over all credit institutions.⁴⁵

(b) Special provisions are proposed to be enacted regarding both:

- branches established in participating Member States of credit institutions incorporated in non-participating Member States (i.e., Member States with a derogation, see below, under B.1.2), and
- credit institutions incorporated in non-participating Member States which have opted for this regime, i.e. for specific (supervisory) tasks to be performed by the ECB over their credit institutions (under B.1.3 below).

³⁸ **Council Regulation proposal**, Article 2, para.4, with a reference to Article 4, para. 19, of the above-mentioned Directive 2006/48/EC.

³⁹ Ibid., Article 2, para. 6, with a reference to Article 2, para. 14, of **Directive 2002/87/EC** of the European Parliament and of the Council “*firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council*” (OJ L 35, 11.2.2003, pp. 1-27).

⁴⁰ Ibid., Article 2(5), with a reference to Article 2, para. 15, of the Directive 2002/87/EC.

⁴¹ The definition of ‘credit institutions’ makes a reference to Article 4, point 1, of the above-mentioned Directive 2006/48/EC.

⁴² **Council Regulation proposal**, Article 2, para. 1.

⁴³ Ibid., Article 27, para. 3.

⁴⁴ Ibid., Article 27, para. 1. The “systemic importance” of credit institutions (as well as of the above-mentioned types of holding companies) shall be evaluated on the basis of two criteria:

- their size, and
- their cross-border activity within the euro area.

In this context, it is also proposed to assign to the ECB the adoption and publication of the list of those institutions (and the above-mentioned categories of holding companies).

⁴⁵ Ibid., Article 27, para. 2. Certain Member States, including Germany, the Netherlands and Finland, have already voiced their opposition to subjecting all credit institutions incorporated in euro area Member States to the ECB micro-prudential supervision. Finance Ministry sources from these countries have pointed out that the micro-prudential supervision of smaller credit institutions, mainly those without any cross-border activity which do business exclusively at local level (e.g., Sparkassen in Germany), should still lie with national authorities.

(c) By contrast, micro-prudential supervision will remain an exclusive national competence in relation to the following types of financial system participants, subject to regulatory intervention under European financial law:

- branches of credit institutions incorporated in non-EU countries, established in participating Member States,
- financial institutions (e.g. leasing, factoring and credit companies),⁴⁶ including, since 2009, electronic money institutions,⁴⁷
- payment institutions,⁴⁸
- investment firms,⁴⁹ UCITS management companies,⁵⁰ and alternative investment fund managers (mainly hedge funds),⁵¹ as well as
- insurance and reinsurance undertakings, the micro-prudential supervision of which could not have been assigned to the ECB without prior amendment of **Article 127, para. 6, of the TFEU**, as mentioned above.

Category of ECB tasks	Legal basis	Implementation in euro area Member States	Implementation in Member States with a derogation
1. <i>Basic</i> tasks	TFEU, Article 127, para. 2	Yes	No
2. <i>Other</i> tasks	Several TFEU articles	Yes	As a rule, No
3. <i>Specific</i> tasks on macro-prudential supervision over the European financial system	Regulation 1096/2010 of the Council (based on Art. 127, para. 6, of the TFEU)	Yes	Yes
4. <i>Specific</i> tasks on micro-prudential supervision over credit institutions (<i>new</i>)	Council Regulation under review (based on Article 127, para. 6 of the TFEU)	Yes	Under certain conditions

⁴⁶ For a detailed definition of the term ‘financial institution’ under European financial law, see Article 4, para. 5., of Directive 2006/48/EC as above.

⁴⁷ Electronic money institutions were included among financial institutions (although initially falling under credit institutions) by means of Article 20 of **Directive 2009/110/EC**.

⁴⁸ For a detailed definition of the term ‘payment institution’ under European financial law, see Article 4, para. 4, of **Directive 2007/64/EC** of the European Parliament and of the Council (OJ L 319, 5.12.2007, pp. 1-35).

⁴⁹ For a detailed definition of the term ‘investment firm’ under European financial law, see Article 4, para. 1, point 1, of **Directive 2004/39/EC** of the European Parliament and of the Council (OJ L 145, 30.4.2004, pp. 1-44).

⁵⁰ For a detailed definition of the term ‘UCITS management company’ under European financial law, see Article 2, para. 1, point (b), of **Directive 2009/65/EC** of the European Parliament and of the Council (OJ L 302, 19.11.2009, pp. 32-96).

⁵¹ For a detailed definition of the term ‘alternative investment fund manager’ under European financial law, see Article 4, para. 1, point (b), of **Directive 2011/61/EU** of the European Parliament and of the Council (OJ L 174, 1.7.2011, pp. 1-73).

4. Establishment of a ‘single supervisory mechanism’ in relation to the performance of the specific tasks conferred on the ECB

The specific tasks to be conferred on the ECB will be carried out within the framework of a ‘single supervisory mechanism’ (hereinafter ‘SSM’) consisting of two (2) pillars:⁵²

- the ECB itself, and
- the competent national supervisory authorities, not necessarily national central banks, given that in many euro area Member States, micro-prudential supervision has been assigned to independent national authorities (other than the central bank) (hereinafter ‘competent national authorities’).⁵³

As a result, these tasks will be carried out based on the ‘decentralisation principle’, i.e. competent national authorities will be the ECB’s ‘executive arm’ (see B.2. below), exactly as in the case of euro area member state central banks in the context of the implementation (and not definition of course) of the single monetary policy.⁵⁴

5. The ‘single supervisory mechanism’ as part of the European System of Financial Supervisors (ESFS)

(a) The provisions of the two above-mentioned Regulation proposals are aimed at incorporating the SSM in the ESFS, which is in operation since 1 January 2011.⁵⁵ In this respect, the ECB is called upon to work closely with the three ‘European Supervisory Authorities’,⁵⁶ i.e.:

- the ‘European Banking Authority’ (hereinafter ‘EBA’) established by **Regulation (EU) 1093/2010** of the European Parliament and of the Council,⁵⁷
- the European Insurance and Occupational Pensions Authority (hereinafter ‘EIOPA’) established by **Regulation (EU) 1094/2010** of the European Parliament and of the Council,⁵⁸
- the European Securities and Markets Authority (hereinafter ‘ESMA’) established by **Regulation 1095/2010** of the European Parliament and of the Council.⁵⁹

⁵² **Council Regulation proposal**, Article 5, para. 1.

⁵³ *Ibid.*, Article 2, para. 2.

⁵⁴ **Statute of the ESCB and of the ECB**, Article 14.3, point (a).

⁵⁵ On the composition of the ESFS, see **Gortsos (2011)**, p. 10-14.

⁵⁶ **Council Regulation proposal**, Article 3.

⁵⁷ **Regulation (EU) No 1093/2010** of the European Parliament and of the Council of 24 November 2010 “*establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC*”, OJ L 331, 15.12.2010, pp. 12-47.

⁵⁸ **Regulation (EU) No 1094/2010** of the European Parliament and of the Council of 24 November 2010 “*establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC*”, OJ L 331, 15.12.2010, pp. 48-83.

⁵⁹ **Regulation (EU) No 1095/2010** of the European Parliament and of the Council of 24 November 2010 “*establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC*”, OJ L 331, 15.12.2010, pp. 84-119.

(b) In accordance with the proposed regulatory framework, the ECB will not take on the EBA's tasks. It was, however, deemed necessary to introduce changes to certain provisions of Regulation 1093/2010 in order to bring EBA's function (basically a regulatory, rather than supervisory, authority)⁶⁰ in line with the ECB's function as a (future) supervisory authority over credit institutions.⁶¹ In this context, the proposal for a Regulation of the European Parliament and of the Council includes amendments to Regulation 1093/2010 on:

- EBA's powers as regards action in emergency situations and mediation between competent authorities in cross-border situations,⁶² as well as the collection of information,⁶³
- EBA's Board of Supervisors, and in particular:
 - the composition of the independent panel set up within the Board, its voting modalities and rules of procedure,⁶⁴ as well as the independence of the Board of Supervisors' members,⁶⁵ and
 - the voting modalities in the Board of Supervisors, ensuring single representation of any member who is also a member of ECB's Supervisory Board,⁶⁶ and
- the term of office of EBA Management Board members.⁶⁷

Furthermore, in view of future developments, the Commission has to submit by 1 January 2016 a report on the suitability of the voting modalities of EBA's Board of Supervisors, the composition of the independent panel set up within its framework, and the composition of EBA's Management Board.⁶⁸

⁶⁰ This is why the author is of the view that these are 'quasi'-supervisory authorities (**Gortsos (2011)**, p. 15-16). To put this into perspective, there are by two innovative elements which point to a tendency for a gradual, albeit substantial, further strengthening of these Authorities' powers *vis-à-vis* competent national authorities:

(a) First of all, a partial reversal can be seen in the EBA's (as well as other Authorities') right to replace competent national authorities, if the latter fail to comply with the European Commission's opinions or EBA's decisions, as laid down in **Articles 17-19** of Regulation 1093/2010.

(b) Furthermore, the supervision of credit rating agencies operating in the European Union has been specifically (and directly) assigned to ESMA, in accordance with Regulation (EU) No **1060/2009** of the European Parliament and of the Council '*on credit rating agencies*' (OJ L 302, 17.11. 2009, pp. 1-31), as modified by **Regulation (EU) No 513/2011** (OJ L 145, 31.5.2011, pp. 30-56) (*ibid.*, p. 16-17).

⁶¹ The legal basis of this Regulation proposal is Article 114 TFEU, which is also the legal basis of Regulation 1093/2010.

⁶² **Proposal for a Regulation of the European Parliament and of the Council**, Article 1((2) and (3), which have been omitted, obviously by mistake. The provisions of these two paragraphs amend Article 18(1) of Regulation 1093/2010, and add a new paragraph (3a) to Articles 18 and 19 (*ibid.*, Explanatory Memorandum, section 4, first point).

⁶³ *Ibid.*, Article 1, para. 4 (amending Article 35, paras. 1-3, of Regulation 1093/2010).

⁶⁴ *Ibid.*, Article 1, para. 5 (amending Article 41, paras. 2-4, of Regulation 1093/2010).

⁶⁵ *Ibid.*, Article 1, para 6 (new paragraph added to Article 42 of Regulation 1093/2010).

⁶⁶ *Ibid.*, Article 1, para. 7 (amending Article 44, para. 1, of Regulation 1093/2010).

⁶⁷ *Ibid.*, Article , para.8 (amending Article 45, para. 1, of Regulation 1093/2010).

⁶⁸ *Ibid.*, Article 2.

(c) It should also be pointed out that **Article 7 of the Council Regulation proposal** stipulates that, without prejudice to the respective competences of the Member States and the other Union institutions, in relation to the tasks conferred on the ECB by the proposed Regulation, the ECB may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, always subject to coordination with the EBA.⁶⁹ Those arrangements shall not create legal obligations in respect of the Union and its Member States.⁷⁰

6 Creation of “Chinese walls”

In the author’s view, the main elements include the creation of ‘Chinese walls’ within the ECB in order to ensure the effective separation of its monetary and other tasks from its (future) supervisory tasks.

Here, it is worth noting that although micro-prudential supervision over credit institutions has historically been the main competence of central banks in many countries (with the exception of a few central European states), in the course of the last twenty years, an ever increasing number of countries across the world have assigned this supervision to independent authorities other than the central bank.⁷¹ This was based on the thought that the exercise of supervisory powers by the central bank may give rise to conflicts of interest as far as the achievement of its monetary objectives is concerned (not least in terms of maintaining price stability).⁷²

In any event, this trend tends to be reversed in the aftermath of the recent international financial crisis as a result of the relevant failures attributed to independent supervisory authorities in many member states.⁷³

The Council Regulation proposal lays down the following two (2) principles:

(a) When carrying out the specific tasks conferred upon it, the ECB must pursue the objectives set in the Council Regulation proposal.⁷⁴

(b) The ECB must also carry out these tasks ‘separately’ from both the tasks relating to the definition and implementation of the single monetary policy and its other tasks,⁷⁵ avoiding any interference between them:

“The tasks conferred upon the ECB by this regulation shall not interfere with the ECB’s tasks relating to monetary policy and any other tasks”.⁷⁶

For the above purposes, the ECB will adopt any necessary internal rules, including rules regarding professional secrecy.⁷⁷

⁶⁹ Ibid., Article 7, first sentence.

⁷⁰ Ibid., Article 7, second sentence.

⁷¹ See **Herring and Carmassi (2008)**.

⁷² For a more detailed overview of arguments in favour and against the principle of separation of monetary and supervisory competences in central banks, see the fundamental work of **Goodhart and Schoemaker (1993)**, as well as **Goodhart (2000)**.

⁷³ See **Davies and Green (2010)**, pp. 187-213.

⁷⁴ **Council Regulation proposal**, Article 18, para. 1.

⁷⁵ Ibid., Article 18, para. 2, first sentence.

⁷⁶ Ibid., Article 18, para. 2, second sentence.

⁷⁷ Ibid., Article 18(3).

B. In particular: tasks conferred on the ECB and their discharge within the framework of the ‘single supervisory mechanism’

1. Individual specific tasks conferred on the ECB

1.1 Specific tasks in relation to credit institutions incorporated in participating Member States

The Council Regulation proposal confers on the ECB an extensive range of specific tasks in relation to credit institutions incorporated in participating Member States, covering the principal areas of micro-prudential supervision and regulatory intervention, as well as macro-prudential regulatory intervention. More particularly, the ECB will be assigned tasks in relation to such credit institutions in accordance with the provisions of:

- the above-mentioned Directives 2006/48/EC and 2006/49/EC of the European Parliament and of the Council, as applicable,
- the above-mentioned proposal for a Regulation of the European Parliament and of the Council (hereinafter ‘CRR’),
- the above-mentioned proposal for a Directive of the European Parliament and of the Council (hereinafter ‘CRD IV’), and
- the above-mentioned proposal for a Directive of the European Parliament and of the Council on the recovery and resolution of unviable credit institutions.⁷⁸

The proposed tasks are the following:⁷⁹

(a) Authorisation and withdrawal of authorisation of credit institutions.⁸⁰

(b) Assessment of acquisitions or disposals of qualifying holdings in credit institutions.⁸¹

(c) Ensuring compliance on the part of credit institutions with European banking law provisions on:

- micro-prudential supervision (rules on capital adequacy,⁸² large credit exposures,⁸³ liquidity,⁸⁴ and leverage of credit institutions⁸⁵), as well as
- public disclosure of information and data on those matters (‘Pillar 3’ of the current regulatory framework).⁸⁶

(d) The regulatory power to set higher micro-prudential requirements and apply additional measures to credit institutions, on condition of a delegation of power under a Union act that is a source of European banking law.

⁷⁸ On this, see under (e) of the introductory section (“Issues at hand”) above.

⁷⁹ **Council Regulation proposal**, Article 4, para. 1.

⁸⁰ **Directive 2006/48/EC**, Articles 6-18, as modified by Articles 9-21 of the CRD IV.

⁸¹ **Directive 2006/48/EC**, Articles 19-21, as modified by Articles 22-27 of the CRD IV.

⁸² **Directive 2006/48/EC**, Articles 56-105, as modified by Articles 22-399 of the CRR.

⁸³ **Directive 2006/48/EC**, Articles 106-119, as modified by Articles 376-392 of the CRR.

⁸⁴ **CRR**, Articles 400-415.

⁸⁵ *Ibid.*, Articles 416-417.

⁸⁶ **Directive 2006/48/EC**, Articles 145-149, as modified by Articles 418-440 of the CRR.

(e) Imposing capital buffers to be held by credit institutions in addition to own funds requirements, in accordance with European banking law provisions to be adopted on macro-prudential regulatory intervention.⁸⁷

(f) Monitoring the implementation of European banking law provisions by credit institutions, as to the existence of:

- robust corporate governance processes and mechanisms,⁸⁸ as well as
- effective internal capital adequacy assessment processes.⁸⁹

(g) Supervisory review of credit institutions and imposing (ad hoc) – on the basis of relevant findings and in accordance with European banking law provisions (‘Pillar 2’ of the current regulatory framework) – specific additional own funds requirements, disclosure obligations, liquidity obligations and other micro-prudential measures.⁹⁰

(h) Carrying out ‘stress-tests’ on credit institutions to support the supervisory review.⁹¹

(i) As regards supervision on a consolidated basis over banking groups:

- supervision on a consolidated basis over credit institutions’ parents incorporated in one of the participating Member States, and
- participation in the supervision on a consolidated basis (including in colleges of supervisors) in relation to parent companies not incorporated in one of the participating Member States.⁹²

(j) In the area of supplementary supervision of financial conglomerates:

- participating in supplementary supervision in relation to the credit institutions included in such financial conglomerates, and
- assuming of the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the relevant EU law provisions (Directive 2002/87/EC).⁹³

(k) Carrying out supervisory tasks in relation to ‘early intervention’ where a credit institution does not meet or is likely to breach the applicable micro-prudential supervision requirements (including recovery plans and intra group financial support arrangements) in coordination with the competent resolution authorities.

(l) Coordinating and expressing a common position of representatives from competent authorities of the participating Member States when participating in the

⁸⁷ **CRD IV**, Articles 122-132.

⁸⁸ **Directive 2006/48/EC**, Article 22, as modified by Articles 72-74 and complemented by Articles 86-91 of the CRD IV.

⁸⁹ *Ibid.*, Article 123, as modified by Article 72 of the CRD IV.

⁹⁰ *Ibid.*, Article 124, as modified by Article 105 of the CRD IV.

⁹¹ Given that the Proposal for a Regulation of the European Parliament and of the Council amending Regulation 1093/2010 on EBA’s function does not propose an amendment of Article 32, para. 2, of this Regulation, EBA will maintain the stress-testing powers provided for in this Article. However, in the author’s view, this might give rise to controversies and conflicts of interest, if the relevant Regulation proposal does not set out the precise tasks of the ECB more clearly.

⁹² **Directive 2006/48/EC**, Articles 125-143, as modified by Articles 106-121 of the CRD IV.

⁹³ For more details on this Directive’s provisions, see **Gortsos (2010)**.

Board of Supervisors and the Management Board of the European Banking Authority, for issues relating to the tasks conferred on the ECB, in accordance with the above-mentioned Council Regulation proposal (as mentioned under A.5.(b) above).

1.2 Specific tasks concerning branches of credit institutions incorporated in non-participating Member States

As regards credit institutions incorporated in non-participating Member States, which establish a branch or provide cross-border services in a participating Member State (in accordance with the provisions of European banking law),⁹⁴ the ECB is proposed to exercise the specific tasks mentioned above (under B.1.1) in cases where national authorities are competent as host supervisors in accordance with European banking law.⁹⁵

1.3 Specific tasks in relation to credit institutions incorporated in non-participating Member States

Credit institutions incorporated in a non-participating Member State may also be subject to the supervisory authority of the ECB, once the procedure of ‘close cooperation’ provided for in **Article 6, para. 1 (first sentence) of the Council Regulation proposal** has been established.⁹⁶ This ‘close cooperation’ procedure will be established by a ECB decision, if a non-participating Member State so wishes, provided that the other requirements under **Article 6, para. 2, of the Council Regulation proposal** are met.

Article 6, paras. 3-5, sets additional procedural requirements for the implementation of this ‘close cooperation’ procedure.

1.4 Regulatory powers

Without prejudice to the legal acts that constitute sources of European banking law (applied on credit institutions) and in compliance with these tasks, the ECB will have the power to adopt regulations and recommendations and take decisions to implement or apply these provisions, to the extent necessary to carry out the tasks to be conferred upon it.⁹⁷

⁹⁴ **Directive 2006/48/EC**, Articles 23-28, as modified by Articles 35-39 of the CRD IV.

⁹⁵ **Council Regulation proposal**, Article 4, para. 2. See **Directive 2006/48/EC**, Articles 29-37, as modified by Articles 40-46 of the CRD IV.

⁹⁶ In accordance with the provisions of Article 6, para. 1 (second sentence) of this Regulation proposal, the ECB may issue guidelines or requests to the competent national authorities of these Member States.

⁹⁷ *Ibid.*, Article 4, para. 3. The ECB’s independent regulatory power is based on **Article 132, para. 1, of the TFEU**.

2. The manner in which specific tasks are carried out within the framework of the ‘single supervisory mechanism’

As already mentioned (under A.4. above) the specific tasks to be conferred upon the ECB will be discharged (according to the Council Regulation proposal) within the framework of the SSM, consisting of the following pillars: the ECB itself, and the competent national authorities (and not necessarily the national central banks) of the euro area Member States.⁹⁸ The same Article of the Regulation proposal sets the following specific provisions establishing the ‘decentralisation principle’:

(a) National competent authorities shall assist the ECB on its request with the preparation and implementation of any acts relating to the specific tasks to be conferred on it.⁹⁹

(b) The ECB shall organise the practical modalities of implementation of the above provision by the national supervisory authorities in discharging its tasks. It shall clearly define the framework and conditions under which national competent authorities shall carry out those activities.¹⁰⁰

(c) Competent national authorities shall follow the ECB’s instructions, i.e. they will function (as mentioned above under A.4.) as the ECB’s ‘executive arm’.¹⁰¹

(d) It should also be pointed out that, to the extent that the provisions of the Council Regulation proposal do not confer specific tasks upon the ECB, the powers of competent national authorities remain intact. As a result (and by contrast), competent national authorities maintain their competencies, *inter alia*, on:

- protecting the economic interests of consumers trading with financial service providers,
- overseeing the smooth functioning of retail payment systems and instruments, and
- combating the use of the financial system for committing economic crimes, such as money laundering, terrorist financing and fraud in payment instruments and systems.

⁹⁸ Council Regulation proposal, Article 5, para. 1.

⁹⁹ Ibid., Article 5, para. 2.

¹⁰⁰ Ibid., Article 5, para. 3.

¹⁰¹ Ibid., Article 5, para. 4.

C. Other provisions of the Council Regulation proposal: an overview

The Council Regulation proposal's other provisions, apart from those mentioned above, regulate the following aspects of the ECB's function as supranational supervisory authority over the European banking sector:

(a) They detail the ECB's powers of supervision and control as part of the discharge of the specific tasks to be conferred upon it, including the power to impose sanctions.¹⁰²

(b) They provide for the creation and operation, within the ECB's framework, of an internal body, the Supervisory Board, responsible for "planning and execution" of the ECB's specific tasks.¹⁰³ The Supervisory Board will include:

- a Chair elected by the members of the Governing Council (hereinafter the 'GC') from the members, with the exception of the President, of the Executive Board,
- a Vice-Chair elected by and from the members of the GC of the ECB (obviously with the exception of the President in this case too),¹⁰⁴
- four (4) representatives of the ECB appointed by the Executive Board of the ECB, and
- one representative of the national authority competent for the supervision of credit institutions in each participating Member State (given the current membership of the euro area, the Supervisory Board will have twenty-three (23) members).¹⁰⁵

The Chair of the EBA and a member of the European Commission may participate as observers in the meetings of the Supervisory Board.¹⁰⁶ There is also a special provision regarding the participation in the Supervisory Board of a representative of the competent authority of non-participating Member States which incorporated a close cooperation in accordance with Article 6 of the Council Regulation proposal (as detailed above, under B.1.3).¹⁰⁷

*As specified in the Explanatory Memorandum of the Council Regulation proposal, the ECB GC will be ultimately responsible for taking decisions, but may decide to delegate certain tasks or decision-making power to the Supervisory Board.*¹⁰⁸

¹⁰² Ibid., Articles 8-15.

¹⁰³ Ibid., Article 19, para. 1. Consequently, the Supervisory Board is not promoted to an ECB body, obviously in order to avoid having to amend the TFEU.

¹⁰⁴ The proposed term of office of the Chair and Vice-Chair will not exceed five years and will not be renewable (ibid., Article 18, para. 7, second sentence).

¹⁰⁵ Ibid., Article 19, paras. 1-2.

¹⁰⁶ Ibid., Article 19, para. 6.

¹⁰⁷ Ibid., Article 19, para. 5..

¹⁰⁸ Ibid., Explanatory Memorandum, section 4.5.2, fourth sentence, along with Article 19, para. 3.

(c) Finally, the proposal also includes specific provisions on:

- consolidating the institutional independence of the ECB in the discharge of the tasks conferred upon it,¹⁰⁹
- its accountability to the European Parliament and to the Council,¹¹⁰
- professional secrecy of the members of the Supervisory Board and staff of the ECB carrying out the specific tasks to be conferred upon the ECB,¹¹¹
- the ECB's obligation to devote the necessary resources to the exercise of the specific tasks to be conferred upon it,¹¹²
- its budget,¹¹³
- its power to roll the cost of micro-prudential supervision over to credit institutions subject to supervision,¹¹⁴ and
- the exchange and secondment of staff, under the responsibility of the ECB, with and among competent national authorities.¹¹⁵

¹⁰⁹ Ibid., Article 16. The ECB's institutional independence, in relation to its main tasks, is laid down in **Article 130 of the TFEU**.

¹¹⁰ Ibid., Article 17, 21 and 23, para. 2. The ECB's accountability, in relation to its main tasks, is laid down in **Article 284, para. 3, of the TFEU**.

¹¹¹ Ibid., Article 20.

¹¹² Ibid., Article 22.

¹¹³ Ibid., Article 23, para. 1.

¹¹⁴ Ibid., Article 24.

¹¹⁵ Ibid., Article 25.

Critical overview

(a) The European Commission's proposals tabled on 12 September 2012 initiated a process – on the basis of the political decisions taken on 29 June – that will bring about a significant breakthrough in the functioning of the banking system in the euro area, without TFEU amendment.¹¹⁶ Although the implementation timeframe of the proposal, once approved by the Council, seems to be quite ambitious¹¹⁷ in terms of its extent, micro-prudential supervision of credit institutions incorporated in the euro area member states (referred to as 'participating Member States' in the Council Regulation proposal) is going to be gradually assigned to the ECB, which will carry out the relevant specific tasks in cooperation with competent national supervisory authorities, along with other tasks already conferred upon it (particularly in relation to the definition and implementation of the single monetary policy in the euro area and the contribution to macro-prudential supervision of the European financial system).

These proposals are the first substantial step in the creation of a European Banking Union, the final stage of which will include setting up – as already mentioned in the introductory section of this Article ('Issues at hand', under (c)) – at euro area level:

- a single pan-European supervisory authority over credit institutions (the ECB, as stipulated in the Council Regulation proposal under review),
- a single pan-European body for the resolution of unviable credit institutions,
- a single pan-European resolution fund for covering funding gaps, provided that a decision is made in favour of the resolution of unviable credit institutions, and
- a single pan-European deposit guarantee scheme.

(b) There is no doubt that the above-mentioned European Commission proposals are a development of outmost importance to the European internal market, and beyond. Once the authorisation and micro-prudential supervision of participating credit institutions is assigned to the ECB, government influence over credit institutions in these Member States will be significantly weaker.¹¹⁸

*The conditions under which credit institutions will invest in sovereign bonds will change substantially in future, since banks' dependence on the State (where applicable) will be kept under bounds.*¹¹⁹ *Weaning national banking systems from government*

¹¹⁶ In the author's view, it would be necessary, for reasons of legal certainty, to amend **Article 3, para. 1(c) of the TFEU**, in order to specify that the Union now has exclusive competence on micro-prudential supervision over credit institutions with headquarters in the euro area. The author understands, however, that such an amendment could be deemed excessive (particularly given the political difficulties that would arise from amending the TFEU merely for this reason), since the conferment upon the ECB of specific tasks concerning micro-prudential supervision of credit institutions may reasonably be argued to be based on **Article 107, para. 6, of the TFEU**, and thus covered, to a great extent, by the existing institutional framework of the EU.

¹¹⁷ The Finance Ministers of Germany, the Netherlands and Finland expressed their reservations on this issue in a joint statement issued on 25 September 2012.

¹¹⁸ The relevant wording of the above-mentioned **Euro Area Summit Statement** of 29 June 2012 (point 1, first sentence) is indicative of this:

"We affirm that it is imperative to break the vicious circle between banks and sovereigns".

¹¹⁹ Here, it is worth pointing out the need to amend, in due course, the provisions of **Directive 2006/48/EC** (as modified by the CRR), which stipulate, in relation to the calculation of capital requirements for credit risk, that claims on Member State governments in the form of bonds have a zero percent risk weight. The experience from the 'voluntary' haircut on Greek

influence might thus become an important springboard for creating the institutional conditions that could lead to a European fiscal union, provided the necessary political will exists.

(c) In accordance with the above-mentioned provisions of the Council Regulation proposal, mergers and acquisitions of businesses in the banking sector will be subject to approval by the ECB rather than national competent authorities.¹²⁰ With this in mind, the European banking landscape will be shaped at supranational level in the next few decades, and, most definitely, in this decade. This would lead, in the author's view, to a greater degree of concentration in the European banking system and, as a result, to a very significant decline in the number of credit institutions operating across euro area Member States.

(d) The ECB's function as supervisory authority over participating credit institutions has many positive effects. Without doubt, the ECB has the necessary expertise for discharging supervisory tasks over euro area credit institutions, particularly taking account of:

- its unquestionably successful contribution to the management of the recent international financial crisis, and
- its substantial contribution to addressing the current fiscal crisis in the euro area.

In this respect, the provisions of the Council Regulation proposal are positively evaluated by the author.

(e) However, these proposals need to be read with some scepticism as well. There are two main reasons for this:

- (i) Conferring supervisory competences over financial system participants to a monetary authority, in general, raises issues of conflicts of interests, particularly putting into question the ECB's ability – in its capacity as monetary authority – to pursue consistently its primary objective of maintaining price stability.¹²¹
- (ii) The (undesirable) eventuality of one or more systemically important financial institutions under ECB supervision becoming insolvent in the first few years of the ECB's term of office as supervisory authority – which could also be attributed to a deficient performance of its duties – cannot be precluded.¹²² In that case, the ECB's reliability as monetary authority would be strongly called into question (not in terms of substance, but from a political point of view), with all the negative consequences that this would entail for the sustainability of the euro area.

government bonds (see **Stephanou (2012)**, pp. 25-28) has shown that these provisions are now ineffective (apart from the fact that credit institutions are given perverse incentives when implementing capital adequacy rules).

¹²⁰ See under B.1.1 (b) above.

¹²¹ TFEU, Article 127, para. 1., first sentence.

¹²² This is, of course, a visible risk for all central banks with statutory competence on micro-prudential supervision over credit institutions, and it is one of the main concerns as to the assignment of such competencies upon central banks.

(f) In conclusion, there must be quite an efficient planning of the institutional, organisational and operational framework governing the ECB's exercise of supervisory tasks over euro area credit institutions, including mainly 'Chinese walls' (as detailed above, under A.6.), in order to ensure that the ECB's stature as an institutional body is fully safeguarded. At the end of the day, the onus of the successful performance of these tasks will be on the ECB itself.

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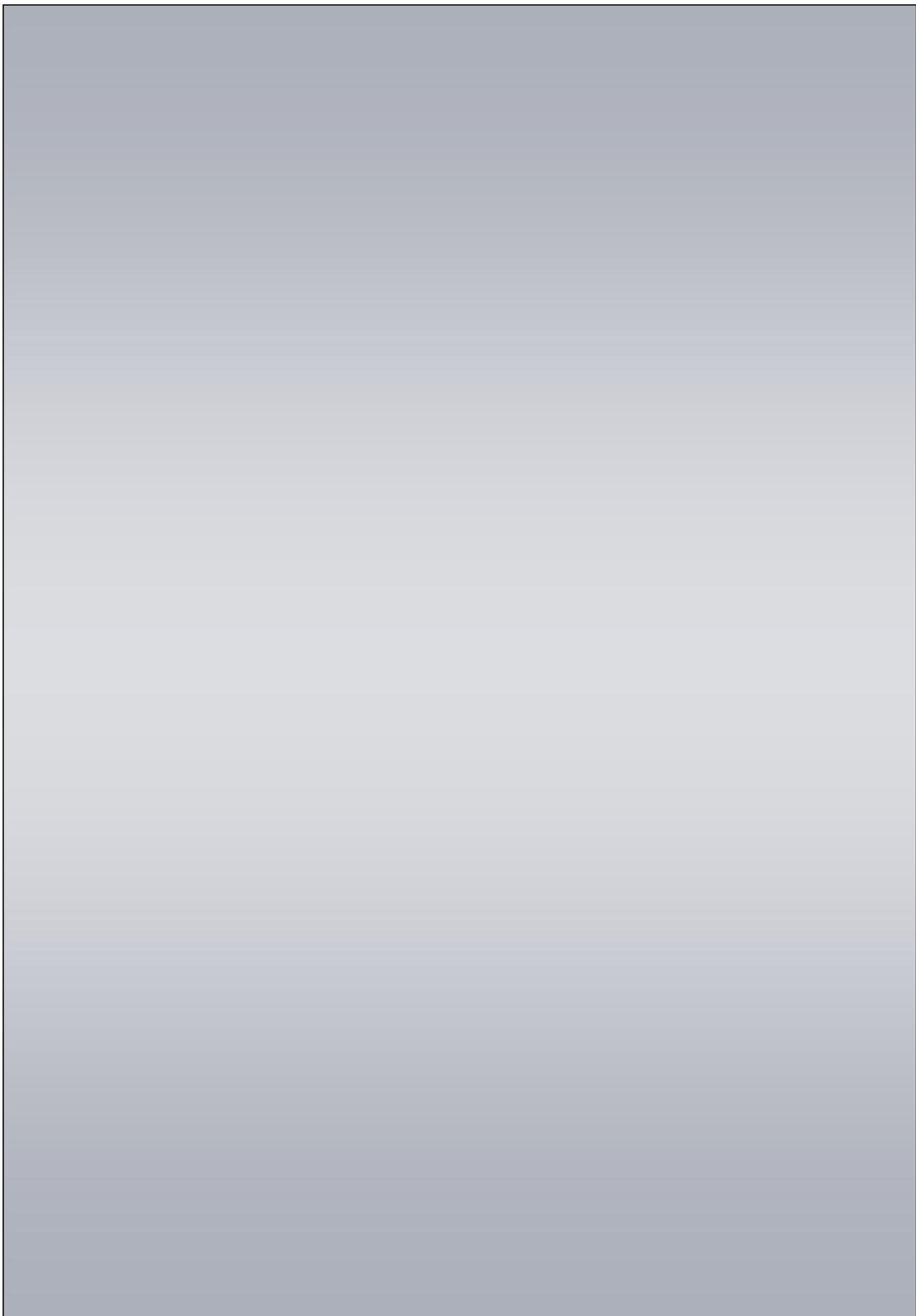
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