

## 25 HOW NOT TO BUILD A MONETARY UNION?

### *The Structural Weaknesses of the EMU in the Light of the 2008 Crisis and the Institutional Reforms for Their Correction*

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#### 25.1 INTRODUCTION

The current article has a two-fold purpose: *firstly*, to study the connection between the financial crisis of 2008 and the crisis of the *Economic and Monetary Union* (EMU) – which became obvious in 2010, after the Greek sovereign debt crisis broke out–; namely to answer whether the preceding one was the cause or only the catalyst for the crisis of the latter one. *Secondly*, to examine and evaluate the institutional reforms of the EU, which are aimed to overcome the innate structural weaknesses of the EU: namely the *creation of a single supervisory system* and a *banking union*.

In the *first chapter* the author introduces how the crisis of 2008 highlighted the existence of a *regulation deficit* concerning the supervision of financial markets and institutions both in the US<sup>1</sup> and the EU. – Or rather the almost non-existent supervision in the case of the EU.<sup>2</sup> – It was the original sin of the founding fathers of the EMU: as a result of their political dissent, they gave up the creation of a real economic and monetary union and created an asymmetric monetary union with severe structural weaknesses instead. To say the least, the EMU in its original form was not prepared for a crisis and suffered from

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1 Some economists even argue that the crisis of 2008 was caused only by the lack of sufficient supervision; a legacy of the deregulation process, which took place during the Reagan era. The author of the current study in his earlier studies agreed that the lack of proper supervision was of paramount importance and argued according to this. Although it cannot be stated that the majority of the economist completely share this point of view; moreover the relevant literature is rather heterogeneous regarding the causes of the crisis. As Andrew Lo noted, the only thing economist can concur with each other is that they cannot agree at all. – A. Lo, ‘Reading About the Financial Crisis: A Twenty-One-Book Review’, *Journal of Economic Literature*, Vol. L, March 2012, pp. 151-178, p. 173; see also: Gy. Marinkás, ‘A 2008-as válság lehetséges okai és a válságra adott amerikai és európai válaszok, különös tekintettel a törvényi szabályozásra’ (To be published in the 2019 issue of *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*); Gy. Marinkás, ‘Változó közgazdasági elméletek, avagy a keynesi-modell alkalmazhatósága napjaink gazdasági válságának kezelésére’, Szakdolgozat, Miskolci Egyetem Gazdaságtudományi Kar Gazdaságelméleti Intézet Posztgraduális képzés, 2013), p. 104.

2 M. Dabrowski, ‘The Global Financial Crisis. Lessons for European Integration’, *CASE Network Studies & Analyses*, No. 384/2009, pp. 35; Z. Angyal, ‘A gazdasági és monetáris unió elsődleges jogi keretei Lisszabon után’, *Európai tükkör*, Vol. 13, No. 7-8, 2008, pp. 59-77.

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structural weaknesses: *e.g.* it lacked both proper supervisory authorities – which could have monitored and forecast a possible crisis –, and fiscal resources to provide rescue packages. At the same time due to its characteristics the EMU covered the constantly growing problems from those, who had not had deep knowledge of the subject.<sup>3</sup> Introducing the above is important in order to determine the role of 2008 crisis in eliciting the crisis of the EMU, namely that the crisis of 2008 was the basic cause or only the catalyst? Within the frameworks of the same chapter, the author introduces the proposals of the various authors on how the systematic shortcomings should have been remedied in order to compare these suggestions with the actual steps, which have been taken. – The latter ones are introduced in chapter three.

In the *second chapter* the author introduces the lessons of the Greek sovereign debt crisis and the chosen crisis management strategy, which became subject of severe criticism among theoretical and practicing economist as well. The author outlines the chosen concept of the crisis management, namely the restrictive economy policy and the expected outcomes of it and then compares it with the practical experiences.

In the *third chapter* the author introduces the institutional reforms: the creation of the single supervision system and the banking union. In a recent article<sup>4</sup> the author has already compared the legislative response of the US and the EU, however with an emphasis on the preceding. Thus in the current article the author focuses on the institutional answers of the EU: the reforms implemented, their reception and evaluation by the other EU institutions, think tanks, economist and last, but not least the affected *financial institutions*. The latter ones instituted several proceedings for annulment before the *General Court* (GC) and the domestic courts instituted preliminary ruling procedures before the European Court of Justice (ECJ) in cases pending before them. The author examines the case law of the forums of the *Court of Justice of the European Union* (CJEU) in order to draw conclusions based on the case law and compare this with the opinion of other authors or the reports of the EU institutions or think tanks.

Studying this topic, answering these questions and evaluating the reforms is of paramount importance: as an outcome of the crisis, trust in the EU and in its institutions, has lowered<sup>5</sup> significantly. – Although from 2015 it featured a slight growth.<sup>6</sup> – It is not hard to see the connection between the economic crisis and the ever growing Euroscepticism.<sup>7</sup>

3 As Marek Dabrowski warned as early as 2009, when a major part of EU policy makers were still downplaying the risks. – Dabrowski 2009, pp. 5, 13.

4 Gy. Marinkás, 'Institutional Answers to the 2008 Crisis in the US and the EU: a Comparative Study', *European Integration Studies*, Vol. 14, No. 1, 2018, pp. 55-65.

5 European Commission, Directorate-General for Communication, 'Major changes in European public opinion regarding the European Union', Exploratory study, Updated: November 2016 (Author: Jacques Nancy); F. Roth, 'The Effects of the Financial Crisis on Systematic Trust.' *CEPS Working Document No. 316*, July 2009, p. 8.

6 European Commission, 'Special Eurobarometer 461: Designing Europe's Future. Trust in institutions, Globalisation, Support for the euro, opinions about free trade and solidarity', *Report*, April 2017.

7 The author intends to elaborate on this matter in his next publications.

Although it was present long time before, it started to grow spectacularly as a result of the crisis. The question is whether the Brexit referendum was the zenith or we likely to face a higher one?

## 25.2 HOW TO BUILD AN IDEAL MONETARY UNION? AND HOW NOT TO BUILD ONE: THE CASE OF THE EMU

### 25.2.1 *The Basic Problem: The Lack of Proper Political Legitimation*

The EMU – to say the least – is far from being<sup>8</sup> a so called *optimum currency area* (OCA) described by Béla Balassa<sup>9</sup> and Robert A. Mundell.<sup>10</sup> One of the main critics of the EMU, Milton Friedman predicted the downfall of the EMU even before its establishment: he saw the structural weaknesses a decade earlier than they became unambiguous in the light of the 2008 crisis.<sup>11</sup> An investment advisor from the US stated it more bluntly: “The euro is nothing more than a system of fixed exchange rates covered by a glossy coat of political paint. The malfunctioning rules of the euro area unite countries that would otherwise be economically incompatible and which could easily be wrecked by a handful of global hedge funds. The luck of the euro is that – for the time being – it is not in the interest of hedge funds to do so”<sup>12</sup>

Returning to Friedman, he argued that the chosen approach itself was a mistake:<sup>13</sup> the creation of the EMU should have been preceded by the creation of the political union.<sup>14</sup> Instead, the founding states decided to create a monetary union<sup>15</sup> first – where monetary

8 As Wolfgang Münchau stated: the Eurozone not only lacked the conditions to become an OCA, but the will to become one. – W. Münchau, ‘The Euro at Crossroads’, *Cato Journal*, Vol. 33, 2013, pp. 535-540, p. 539.

9 B. Balassa, ‘*The Theory of Economic Integration*’, R.D. Erwin, Homewood, 1961, p. 324.

10 R.A. Mundell, ‘A Theory of Optimum Currency Areas’, *American Economic Review*, Vol. 51, No. 4, 1960, pp. 657-665.

11 M. Friedman, ‘The Euro: Monetary Unity to Political Disunity?’, *Project Syndicate*, 28 August 1997. – Online available at: <https://www.project-syndicate.org/commentary/the-euro--monetary-unity-to-political-disunity>

12 A. Marján, ‘The euro’s political economy relevance.’ *Pro publico bono – Magyar közgazdaság: a Nemzeti Közszerződési Egyetem közgazdaság-tudományi szakmai folyóirata*, 2014/3, p. 76.

13 Friedman 1997.

14 In this regard his study is more optimistic than the one of Annamária Artner and Péter Róna, who argue that in a world market based on nation-states the political union of states was never a widely accepted concept. Even if it was, creating a well-functioning OCA with member states of different economic development is impossible as the Greek sovereign debt crisis showed it. – A. Artner & P. Róna, ‘Euroszerződés: Az optimális valutaövezet elmélete és az euró gyakorlata’, *Közgazdaság* 2012/1, pp. 83-102, p. 100.

15 More on the history and the basic concepts of the monetary union: Z. Angyal, ‘Monetary Sovereignty and the European Economic and Monetary Union’, *European Integration Studies*, Vol. 7, No. 1, 2009, pp. 109-119.

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sovereignty is transferred to the union<sup>16</sup> – and let the fiscal sovereignty of the member states almost intact. Thus the EMU became *asymmetrical*, which – in contrast to what its name suggests – is a monetary union and not an economic one.<sup>17</sup> Friedman identified this as a factor that will enhance the political conflicts among the member states in case of a possible economic crisis. Friedman – based on historic examples – draws the conclusion that only those monetary unions proved to be successful, which were established along with political union. As an example he cites the United Kingdom, the Germany of the Bismarck era and last, but not least the United States. Friedman argues that the latter one is an ample example of creating a successful monetary union through political union: its citizens regard themselves as belonging to one nation – the nationality of the ancestors plays only a secondary role –, they speak the same language,<sup>18</sup> and the member states are more or less have a same level of economic development. Although an external economic trauma – like the 1973 oil crisis – may affect the states of the federation differently, the US federal government – unlike the governing institutions of the EU – disposes over a significant budget, which enables the counter-balancing of economic cycles.<sup>19</sup>

However, not everyone agrees with Friedman: *Martin Sandbu*, who also cites the US as an example argues that the first 150 years of the county could not be regarded as a fiscal union even with goodwill: in the first part of the XX century the revenues of the federal government only reached 5% of the country's GDP. It is worth mentioning that – as of 2016 – the same revenue is still only 15% of the country's GDP,<sup>20</sup> which is still far from the revenues of the governments of unitary states, which generally dispose above 50% of the GDP.

Friedman argues furthermore that the US is not only a single market, where the goods, the labour force, the services and the capital move freely, but a single market,

16 Some authors argue that only country that loose its monetary sovereignty was Germany: during the EMS era, most member states of the community followed the Bundesbank's interest rates. Thus these countries have a gained influence over common monetary policy by participating in the ECB's decision making. – C. Goodhard, 'The Political Economy of Monetary Union', in: Peter Kenen (ed.), *Understanding Independence. The Macroeconomics of the Open Economy*, Princeton University Press, Princeton NJ, 1995, pp. 457.

17 Dabrowski 2009, pp. 6-7; Artner & Róna 2012, pp. 83-84.

18 The picture as a whole is more complicated, when taking into account the ever growing dominance of the Spanish language at the Southern parts of the US. The clash of civilizations predicted by *Samuel P. Huntington* has not occurred yet: the identity of being a US citizen is still predominant over being Hispanic. – S.P. Huntington, 'The Hispanic Challenge', *Foreign Policy*, Vol. 141, No. 30, 2004, pp. 31-45; K.C. Davis, 'The founding immigrants', *New York Times*, 3 July 2007 – Online available at: <https://www.nytimes.com/2007/07/03/opinion/03davis.html>.

19 Friedman 1997.

20 M. Sandbu, *Europe's Orphan. The Future of the Euro and the Politics of Debt*, Princeton University Press, Princeton NJ, 2015, p. 336, p. 313.

where – unlike in the EU – the prices and wages are approximately identical in every state. Friedman believes that the latter two factors are the reason for the mobility of the employees in the US.<sup>21</sup>

Contrary to this, the EU is an ample counterexample of the above mentioned political union, and a place where the common currency should have never been introduced. *First of all*, the member states of the EMU feature serious differences in terms of economic development: while Spain suffers from a great – however decreasing – fiscal deficit<sup>22</sup> and high unemployment rates,<sup>23</sup> Germany has fiscal suffice starting from 2014<sup>24</sup> and the unemployment rates stayed below 8% even in 2010,<sup>25</sup> when the crisis reached its zenith. *Secondly*, the European people lack the identity that American people have, which could overwrite their national or ethnic origin: Europeans consider them as German, French, and Hungarian etc. at the first place.<sup>26</sup> As a result solidarity is very low or even non-existent among European people:<sup>27</sup> as an ample example it was hard to explain to the average German tax payer, why his/her tax should be spent on helping the Greek citizens, even if Germany was the main beneficiary of the Eurozone.<sup>28</sup> – As *Marek Dabrowski* wrote in his 2009 study, economic integration has advanced political integration.<sup>29</sup> – *Thirdly*, as Artner and Róna argue, the creation of a real EMU is not necessarily in the interest of the great enterprises: they are afraid of losing the advantages of the fragmented regulations and incentives.<sup>30</sup>

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21 In this regard, the picture should also be layered: in case of certain goods – e.g. houses and apartments in California – the price differences are prominent. These amplitudes are not affecting the validity of Friedman's theory however. – M. Levin, '5 reasons California's housing costs are so high', KPCC, 3 May 2018 – Online available at: <https://www.scp.org/news/2018/05/03/82720/five-reasons-california-s-housing-costs-are-so-high/>.

22 Trading Economics: Spain Government Budget 1995-2018. – Online available at: <https://tradingeconomics.com/spain/government-budget>.

23 The unemployment rate was higher than 25 % in 2014 and was approximately 15 % even in 2018. – Trading Economics: Spain Unemployment Rate 1949-2018. – Online available at: <https://hu.tradingeconomics.com/spain/unemployment-rate>.

24 Trading Economics: Germany Government Budget 1995-2018. – Online available at: <https://tradingeconomics.com/germany/government-budget>.

25 Trading Economics: Germany Unemployment Rate 1949-2018. – Online available at: <https://tradingeconomics.com/germany/unemployment-rate>.

26 Friedman 1997.

27 As *Kata Csankovszki* and *Júlia Mező* pointed out, this clearly demonstrated why a successful monetary union should consist of equally developed member states as the original theorists of the OCA argued. – K. Csankovszki & J. Mező, 'A görög válság – az euróövezet drámája', in: B. Farkas et al. (eds.), *Válság és válságkezelés az Európai Unió kohéziós országaiban?*, Szegedi Tudományegyetem Gazdaságtudományi Kar, Szeged, 2012, pp. 25-43, pp. 37-38.

28 Marján 2014, p. 76.

29 Dabrowski 2009, p. 6.

30 Artner & Róna 2012, p. 101.

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Due to the lack of the ‘single European identity’, the decision makers of the EU consciously avoided any issue related to the political union even though the establishment of the EMU was a political question rather than an economic one.<sup>31</sup> Instead they secured the independence of the *European Central Bank* (ECB) to an extent that – based on the wording of the Maastricht Treaty<sup>32</sup> – one could have regarded the ECB as being a *sui generis* entity outside the EU institutional framework.<sup>33</sup> The issue was finally settled in the Lisbon treaty. In the meantime the case law of the ECJ sealed the leak stating that ECB is an integral part of the community even if it has extraordinary independence.<sup>34</sup>

Summarizing the above mentioned the lack of proper political legitimation and the political union is the origin of the problems introduced below: both the asymmetric structure and the lack of proper supervision was a result of this.

## 25.2.2 Further Problems

### 25.2.2.1 The Asymmetric Structure of the EMU and the Lack of Common Fiscal Policy

Basically, the founding treaties left the member states’ fiscal sovereignty intact:<sup>35</sup> it is only restricted by the *Maastricht Convergence Criteria*. The compliance with them is supervised by the European Commission though with a limited scope of authority.<sup>36</sup>

*Attila Marján*<sup>37</sup> and *Georgios Kouretas*<sup>38</sup> argue that these shortcomings can only be avoided by further deepening the integration,<sup>39</sup> in this case placing the fiscal policy on community level by the member states, which should include: the creation of common financial minister’s office – or a *European Fiscal Agency*<sup>40</sup> – and increasing the EU budget. As mentioned above, while a modern unitary state redistributes approximately 40-50% of the GDP – even the federal government of the US disposes over 15% of the

31 Friedman 1997; M. Buti, ‘Europe’s Policy Trilemmas: Considering the Economic and Monetary Union’, *The Brown Journal of World Affairs*, Vol. 23, 2016, pp. 55-65, pp. 56-57; P.Á. Bod, ‘Az euró átvétele nem pénzügyi, hanem nemzetstratégiai döntés’, *Közgazdasági szemle*, Vol. 59, No. 6, 2012, pp. 695-698.

32 Treaty of Maastricht, Treaty on European Union (Consolidated Version), 7 February 1992, OJ C 325/5.

33 See: Angyal 2008, pp. 59-77.

34 C-11/00, *Commission v. ECB*, 10 July 2003, Judgment, paras. 122, 186.

35 Although the final communiqué of the 1969 Hague Conference of the Heads of States or Governments suggested that the economic and monetary union should be realized alongside with the harmonisation of economic policies. – *Final communiqué of the Hague Summit* (2 December 1969), para. 8.

36 Marján 2014, p. 76.

37 Id.

38 G. Kouretas, ‘The Greek Crisis: Causes and Implications’, *Panoeconomicus*, Vol. 57, No. 4, 2010, pp. 391-404.

39 The concept of further deepening the integration in order to tackle hardships is not new: in the 60s, when the problems of world economy and the risk of uncoordinated national economic and monetary policies endangered the achievements of the integration the Heads of States or Governments of the then member states decided that an economic and monetary union should be created. – Angyal 2009, p. 114.

40 A.Z. Nowak, ‘End of the Eurozone? An Economist’s Perspective’, *Yearbook of Polish European Studies*, Vol. 14, 2011, pp. 11-26, p. 23.

nation's GDP –, the EU budget is only 1% of the EU 28's GDP. It is simply unsuitable to perform macroeconomic stabilization functions if only because of its size.<sup>41</sup>

Agreeing with the need of a common fiscal policy, Münchau estimates that 5-10% of the GDP could be sufficient, provided that instead of structural policies, the fiscal union is based on cyclical shock absorbers.<sup>42</sup> Marján however is rather sceptical regarding its realization: the current political sphere<sup>43</sup> and economic possibilities together with the lost faith in the European integration and its institutions created a *self-perpetuating and self-increasing downward spiral*. His arguments are supported by the Eurobarometer data<sup>44</sup> and other authors, who argue that there is a serious *risk of re-nationalization*, when the integration would require quite the opposite.<sup>45</sup> Fred Bergsten on the other hand is more optimistic: he argues that the fiscal and political union – the only way out of the current crisis – will be realised. There is a price to pay however: the establishment of the two-speed Europe; that is to say the countries of the centre will not wait for the periphery states.<sup>46</sup>

Some authors went even further. Zoltán Gyévai argued that a common fiscal policy wouldn't be enough: it's necessary to monitor the possible imbalances in the macro economy and the competitiveness.<sup>47</sup> Münchau, who also supports the idea of a common fiscal policy, opted for three additional steps: (i) the creation of a real banking union,<sup>48</sup> which would separate the risk of the banks from the risks of the states. The (ii) creation of a real economic union in order to replace the dysfunctional single market of the EU. – In Münchau's view the current one does not really support the free moving of services and labour. – Last, but not least the (iii) creation of political union with proper parliamentary supervision of Eurozone level economic policies.<sup>49</sup> – Only the first one has been created out of Münchau's three suggestions so far.

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41 Traditionally governments have four functions regarding fiscal policy, namely: (i) allocations, (ii) distribution, (iii) stabilization, and (iv) regulation. Basically, the fiscal policy of the EU – as of the entry into force of the Maastricht Treaty – only covered allocation and distribution. – Moreover the latter one still does not cover social transfers or healthcare expenses. – Although the stabilizing and regulating function of the EU became more important as the single market evolved, the budget still not reflects this. Thus Kengyel's arguments stand still despite the institutional reforms and bailouts that took place in the meantime. – Á. Kengyel, 'Az európai integrációs folyamat és a közös költségvetés dilemmái', *Európai Tükör*, Vol. XIII, 2008/7-8, pp. 33-58, pp. 35-37, 54-55.

42 Münchau 2013, p. 537.

43 It is worth mentioning that the member states had always been debating on how the contributions should be distributed to achieve a fair balance. In case of a larger budget these conflicts would become sharper. – Kengyel 2008, p. 36.

44 See footnotes 22-25.

45 Nowak 2011, p. 23; Roth 2009, p. 8.

46 F. Bergsten, 'Why the Euro Will Survive? Completing the Continent's Half-Built House', *Foreign Affairs*, Vol. 91, No. 5, 2012, pp. 16-22.

47 Z. Gyévai, 'Görögország bukása – A görög válságkezelés', *Figyelő*, Vol. 54, No. 17, 2010, pp. 27-29.

48 Münchau wrote his article in 2013, when the current banking union – to be introduced in chapter three – was not yet created.

49 Münchau 2013, pp. 357-358.

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### 25.2.2.2 The Lack of Proper Supervision and Plans to Manage a Crisis

As mentioned above, due to the lack of political agreement, the founding member states of the GMU did not create a *proper supervision system*,<sup>50</sup> which could monitor and eliminate possible risks and coerce member states to hold fiscal discipline.<sup>51</sup> The system was created only after 2010, when the European states started to feel the effects of the 2008 crisis. – The author introduces the system in the third chapter.

Although the German government tried to implement immediate and automatic sanctions to the founding treaties, these elements were dismissed from the drafts. Instead, the effective wording of the treaties implies what the French government suggested: the *Economic and Financial Affairs Council configuration* (Ecofin) of the *Council of the European Union* shall decide on the sanctions. While the German version intended to convince the German taxpayers that the Euro as a currency will be as hard as the German Mark, the French government – and the others supporting its standing point – thought of greater possibility to perform political manoeuvres and avoid penalty.<sup>52</sup> The literature is heterogeneous on the topic: while some argue that the possibility of exclusion – or at least the suspension of the voting rights – for those countries,<sup>53</sup> which systematically breach the fiscal discipline should have been implemented, others argue that instead of fines more incentives should have been applied.<sup>54</sup>

Regarding the lack of any back-up plans, Wolfgang Münchau states that the ‘no bailout, no default, no exit’ assumption, which was accepted by the majority of the policy makers at the time of the creation of the EMU and in the first decade of its functioning proved to be wrong. – However it was overwritten in practice, the no bailout principle can still be found in the TFEU.<sup>55</sup>

50 On the characteristics of a proper supervision system see: Z. Nagy & A. Csizsár, ‘Aspects of the European system of financial supervision’, *Zbornik Radova – Novi Sad*, 3/2016, pp. 977-1001.

51 Tim Worstall, an economist of the *Adam Smith Institute* – and a stubborn euro-sceptic –, approves that the lack of supervision system played an important role in the problems. Furthermore, he blames the founding fathers of the GMU for not making any backup and wind-up plans for the possible fall of their project. He believes that one of the main causes for keeping the Euro alive by the member states is that they cannot even estimate the costs of winding it up. As *Joseph E. Stiglitz* – the Nobel Prize winner economist – remarked with malice: ‘It is going to be extremely difficult now to return from scrambled eggs back to intact ones.’ – T. Worstall, ‘Both Krugman And Friedman Said The Euro Was A Stupid Idea: But They Did It Anyway, Didn’t They?’, *Forbes*, 6 July 2015 – Online available at: <https://www.forbes.com/sites/timworstall/2015/07/06/both-krugman-and-friedman-said-the-euro-was-a-stupid-idea-but-they-did-it-anyway-didnt-they/#5a3b9f520e81>; J.E. Stiglitz, ‘Can the Euro be Saved?’, *Project Syndicate*, 5 May 2010 – Online available at: <https://www.project-syndicate.org/commentary/can-the-euro-be-saved?barrier=accesspaylog>.

52 Marján 2014, pp. 76-77.

53 S. Gomułka, ‘Perspectives for the Eurozone, Short Term and Long Term’, *The Polish Quarterly of International Affairs*, 2012/2, p. 16.

54 Münchau 2013, p. 636.

55 Consolidated version of the Treaty on the Functioning of the European Union OJ C 326, 26.10.2012, pp. 47-390.



### 25.2.2.3 The EMU Covered up the Differences

Another issue related to the loose supervision is the premature accession of some member states to the EMU, that is to say they were allowed to access the union without fulfilling the Maastricht Criteria. – It is worth mentioning that some authors even go further and argue that in case of Greece not only the accession to the EMU, but to the *European Economic Community* – the predecessor of the EU – was of premature nature.<sup>56</sup> The reasons for setting aside the otherwise arbitrary<sup>57</sup> and insufficient<sup>58</sup> criteria are numerous and various authors emphasize different reasons: *firstly* some argue that Greece and other co-founders of the EMU hoped that the economic possibilities provided by the common currency will facilitate the economic development of the country, so it may compete with the more developed states.<sup>59</sup> Their argument seemed to be verified by the economic growth in the first decade of the new millennium.<sup>60</sup> The mercy period did not last long, however; instead Friedman's prediction came alive: the EMU did not facilitate the catch-up of the poor member states; it only covered up the differences.<sup>61</sup> The Euro, instead of becoming a real single currency, facilitated the evolving of an EMU of 'as many euros as countries'.<sup>62</sup> During the preferable period of world economy the statistics showed the less developed member states – the so called periphery – to approach the more developed – or core – member states. In reality, however they were swiftly departing.<sup>63</sup> As an example, while Greece exhibited a firm growth in GDP, the country suffered from serious problems: the overwhelming national debt, the low competitiveness – arising from the expensive, and non-productive labour force–, the underperforming education system and the high level of corruption together with the irresponsible fiscal policy of the successive Greek governments all escalated the current situation.<sup>64</sup> That is why Münchau argues that not only nominal convergence targets should have been determined as admission criteria, but real economic indicators too, like employment rates.<sup>65</sup> In addition – as mentioned above – after allowing Greece to access the EMU without fulfilling the criteria at

56 J. Angelos, 'Why on earth is Greece in the EU? Reverence for the ancient Greeks led to the modern Greek crisis', *Politico*, 22 June 2015 – Online available at: <https://www.politico.eu/article/why-is-greece-in-the-eu-grexit/>; D. Somogyi, 'Az Európai Unióhoz való csatlakozás hatása Görögország külkereskedelmére', *Közgazdaság* 1999/11, pp. 48-69.

57 Münchau 2013, p. 538; P. Mihályi, 'Ez a hajó elment...: Az euró magyarországi bevezetése – múlt és jövő', *Közgazdasági szemle*, Vol. 59, No. 7-8, 2012, pp. 917-922.

58 Münchau 2013, p. 538.

59 L. Chiarella, 'The Single Supervisory Mechanism: the Building Pillar of the European Banking Union', *University of Bologna Law Review*, Vol. 1, No. 1, 2016, ISSN 2531-6133, pp. 34-90, pp. 41-42; I. Forgács, 'A görög válság néhány riasztó tanulsága', *Köz-gazdaság: tudományos füzetek*, Vol. 10, No. 3, 2015, pp. 41-56, pp. 42-44.

60 Indeed, until the arrival of the financial crisis of 2008, the EMU functioned better than it has been expected. – Gomulka 2012, p. 5.

61 See the next chapter for more information on this topic.

62 Chiarella 2016, p. 37.

63 Dabrowski 2009, pp. 29-30.

64 Csankovszki & Mező 2012, pp. 26-27.

65 Münchau 2013, p. 538.

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the time of the accession the EU did not have any effective tools to enforce measures needed to fulfil those criteria.

*Secondly*, some authors adopted a sinister view: they argue that the more developed countries – with the lead of Germany – let Greece access for self-seeking interest.<sup>66</sup> The argument is based on the fact that the German economy was the greatest beneficiary of the Eurozone, which protected the country's economy from the appreciation of the currency: had Germany had its own currency, appreciation – as an economic phenomenon<sup>67</sup> – should have been occurred counter-balancing the unprecedented expansion of the country's export. Instead, the weak economies of the Southern countries – including Greece – kept the exchange rate of the Euro low, allowing the undisturbed growth of the German export. As a side-effect, the over valued currency spoiled the competitiveness of the smaller economies, which did not have strong enterprises with a quasi-monopolistic status on the markets.<sup>68</sup>

### 25.2.3 *The Result of the Problems*

As a result Germany and the other well-performing 'Northern' states experienced superfluity of capital. This capital flowed to the South: having regarded that the countries of the EMU have identical credit rating; countries with a weak and underperforming economy too, could obtain cheap loans in an innumerable amount.<sup>69</sup> The Greek government obtained cheap loans in Euro with an interest rate of 3% instead of 18% back in the Drachma era,<sup>70</sup> creating a temptation for the less developed or periphery states to obtain greater amount of loans.<sup>71</sup> There were two original sins: *firstly*, the successive Greek governments instead of using those loans to stimulate the economy and to develop the infrastructure, spent the loans on enhancing the life standard of the citizens and *secondly* the decision-makers of the union did not prevent them from doing so.

66 Artner & Róna 2012, pp. 98-99.

67 R. Sanjay, *Advanced Macroeconomics*, Bookboon, 2015, ISBN 978-87-403-403-0278-3, p. 115.

68 Artner & Róna 2012, p. 100.

69 It is worth mentioning that the great availability of credits world-wide at the Millennium would have induced the Greek governments to obtain large amount of credit anyway, as Sandbu and Imre Tarafás argue. – Sandbu 2016, pp. 48-76; I. Tarafás, 'Az euró – vélt és valódi gyengeségek', *Közgazdasági szemle*, Vol. 60, No. 3, 2013, pp. 359-364, p. 362.

70 Forgács 2015, p. 42.

71 The Giovannini Group – an advisory committee to the European Commission on financial integration – proposed as early as 2000 that public dept issuance in the Eurozone should have been subjected to Community level co-ordination. – Giovannini Group, 'Co-ordinated Public Dept Issuance in the Euro Area' – *Report of the Giovnnini Group*, 8 November 2000, p. 10.

The attitude of the latter ones was based on two assumptions: *firstly*, they believed that the external trade balance of the GMU as whole will be the determinant factor and it will not be the trade balance between the member states. As *Gergely Rezessy* pointed out<sup>72</sup> this was not proved in practice: the markets punished countries with worse economic indicators. – Moreover the core countries were less affected by the 2008 crisis than the periphery states.<sup>73</sup> – Sandbu challenges this argument: the goods and services sold on the foreign markets did not exhibit significant differences, which should have affected the competitiveness of the member states.<sup>74</sup> *Secondly*, they believed that undeveloped countries may catch up due to a large amount of capital flow as Ireland and Denmark proved it. These two countries however spent the money very prudently: they spent it on stimulating the economy and enhancing their infrastructure and – last, but not least – on education and research. Alas, the Greek governments introduced thirteenth and fourteenth month bonus salaries and pensions to civil servants and pensioners, instead of development.<sup>75</sup> There was a price to be paid, however: when both production and consumption – including the tourism – started to decline, the government had to face severe problems. Although at the first time it was able to obtain credit from the markets, those sources drained out swiftly, when the investors realized the real condition of the Greek economy.<sup>76</sup> Moreover, credit rating agencies – which failed to forecast the 2008 crisis – were eager to find the traces of any potential risks. When they decreased the ratings of Greece, the country could not finance its debt servicing anymore.<sup>77</sup>

The government's only chance was to ask a bailout from the EU and the IMF.<sup>78</sup> Although some authors argue that by obtaining credits in Euro deprived the Greek governments from its monetary sovereignty – that is say they could not use inflation to reduce their debt servicing<sup>79</sup> – Sandbu points out that very few countries have the luxury to obtain credit in its own currency. Smaller states – regardless of being the member state of the GMU or not – have to pay in Dollar, Euro or other leading currencies.<sup>80</sup>

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72 G. Rezessy, 'Magyar alkalmazkodás az Európai Unió monetáris együttműködéséhez – tanulságok: az euró és Magyarország: kötelezettség vagy lehetőség?', *Köz-gazdaság: tudományos füzetek*, Vol. 7, No. 4, 2012, pp. 13-31, 24-27.

73 Dabrowski 2009, p. 23.

74 Sandbu challenges this argument: the goods and services sold on the foreign markets did not exhibit significant differences, which should have affected the competitiveness of the member states. – Sandbu 2016, pp. 25-47.

75 Rezessy 2012, pp. 24-27.

76 Forgács 2015, pp. 42-44.

77 Csankovszki & Mező 2012, pp. 37-38.

78 See the next chapter for more information on this topic!

79 Rezessy 2012, pp. 24-27.

80 Sandbu 2016, pp. 25-47.

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### 25.3 THE GREEK SOVEREIGN DEBT CRISIS: HOW NOT TO HANDLE A CRISIS

As mentioned above the EU didn't have proper institutions and plans to handle a possible crisis. As a result, when it became necessary the crisis was managed by an ad hoc basis. To be more precise there were at least three, overlapping crises: a (i) fiscal crisis, which realized in the Greek sovereign debt crisis, a (ii) competitiveness crisis – which means a large current imbalance between Eurozone countries – and a (iii) banking crisis.<sup>81</sup> As mentioned earlier some authors<sup>82</sup> argue that the supervisory system is still insufficient.

Handling of the crisis could possible include monetary and fiscal crisis management. The author staying within the frameworks of the current study – indicated by its title – only introduces the lessons of the Greek sovereign debt crisis.

The Greek government facing the fact that it cannot finance the country's debt servicing from the market anymore requested bailout from the EU and the IMF. Both of them prescribed not only strict, but economically unreasonable conditions, which aggravated the crisis. Most economists agree that the crisis management was blundered; even the IMF acknowledged that it had drawbacks. *Martin Sandbu* is among the most severe criticist of the chosen crisis management: he believes that *the first bailout was the original sin*, which proved to be a greater problem than the structural weaknesses of the EMU. Sandbu argues that the debt should have been written off. Instead, the German government – contrary to its own principles – decided to grant bailout for two considerations: *firstly*, in the preceding years the banks of the Western-European states granted credits into Greece in such a great amount that a write-off<sup>83</sup> could have destabilized the whole banking system. *Secondly*, this could have created a dangerous precedent for the other countries suffering from the high debts, which would be happy to cite the Greek example.<sup>84</sup> Taking into consideration these facts, the German government decided to apply the principle of *pacta sunt servanda*, and bailed out the Greek government even risking its own popularity among the German voters.<sup>85</sup>

Sandbu criticizes the chosen crisis management on two grounds: *firstly*, because it was built on restrictions and *secondly*, because the investors tried to avoid bankruptcy at all costs. The official statements emphasized that the restrictions were needed to prevent Greece ending up in the same situation again. The restrictions however deprived the country from the possibility of economic growth: the cutting of wages and prices instead of stimulating the economy and enhancing the competitiveness of the country – as the economist of the IMF hoped – induced deflation. Bergsten too, criticized the policy of restrictions, which the German government expected from every other state. He argues

81 Bergsten 2012, p. 16.

82 Namely Münchau and Bergsten.

83 It is worth mentioning that to a certain extent the country's public debt was written-off, despite the aversions of the Germans government. – Gomulka 2012, p. 13.

84 Gomulka 2012, p. 13.

85 Sandbu 2016, pp. 165-183.

that the German government – ever since it is headed by Merkel – overexerted the restrictive fiscal policy even in its own county: the wages and the domestic spending were kept too low, which resulted in a competitiveness problem for several EU member states. Instead – as Bergsten argues<sup>86</sup> – Germany should stop focusing on deficit reduction and spend more on Greece's and Italy's goods to boost their economy. That is how the Obama administration handled the crisis and what produced a much better result than the crisis management of the EU member states. – At least until 2014.<sup>87</sup>

Another problem of the imposed crisis management was that it limited the manoeuvrability<sup>88</sup> of the Greek government. As mentioned above, the German government favoured restrictions and had enough power to enforce its will in the EU institutions to the prejudice of the crisis management plans of other governments. No wonder one may ask why the German popular will would be more legitimate than the Greek one.<sup>89</sup> Hence some authors argue that the imposed crisis management can be regarded as an intervention or interference to the internal affairs of the state. This served as an excellent excuse for the government to act like a freedom fighter,<sup>90</sup> mainly after the almost collapse of the public health system.<sup>91</sup>

The second cardinal point of Sandbu's criticism was the fear of bankruptcy: the Greek government smelled the fear of the leaders of the EU and used it to enhance its negotiating power. The Greek government knew its limits, however: in case of non-bailout, their only chance would have been to leave the GMU, an unattractive possibility.<sup>92</sup> Sandbu argues that the fear of bankruptcy and the possible chain reactions were ungrounded: in the United States the 'ill' financial institutions were either restructured or winded-up successfully. The crisis management applied in Iceland also highlights the advantages of a well-prepared and controlled bankruptcy. The EU only started to wind up the financial institutions beyond repair late – only in 2014 – and half-hearted.<sup>93</sup>

86 Bergsten 2012, p. 22.

87 D. Beal et al., 'Why Well-Being Should Drive Growth Strategies. The 2015 Sustainable Economic Development Assessment' Boston Consulting Group, 28 May 2015 – Online available at: <https://www.bcgperspectives.com/content/articles/public-sector-sustainability-2015-sustainable-economic-development-assessment/>.

88 As an example the German finance ministers suggested that the Greek government should have postponed the popular votes in 2012 and establish a technical government with a one year mandate to secure the execution of the restrictive measures. – Csankovszki & Mező 2012, p. 40.

89 A. Radnóti, 'A szakadék széléről. A görög válság stratégiai aspektusai', *Mozgó Világ*, Vol. 4, October 2015, pp. 34-39.

90 Sandbu 2016, pp. 165-183.

91 L. Árva & L. Mádi, 'A görög válság és az Európai Unió jövője', *Valóság*, Vol. 58, No. 12, 2015, pp. 78-95, p. 82.

92 Although the Greek could have retrieved their monetary sovereignty, allowing them to make their economy more competitive by devaluating their currency, this solution can only be applied in the long run. As a side-effect it would also increase their debt servicing. Furthermore the cutting of wages can be regarded as a sort of devaluation, which proved to be counter-productive. – Sandbu 2016, pp. 48-80; Csankovszki & Mező 2012, p. 41.

93 Sandbu 2016, pp. 116-118.

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*Dimitris Konstantakopulos* – economist at the *Katehon* think-tank – challenges the opinion of Sandbu and states that Germany as the main beneficiary of the GMU had a moral obligation<sup>94</sup> to bailout Greece. He argues that in case the Germans fail to help the member states in trouble, Brussels will lose its influence in those countries, while Washington or – as a worst case scenario – Moscow<sup>95</sup> will gain influence.<sup>96</sup> Konstantakopulos believes that it would be a crime to let others decide on the future of Europe.<sup>97</sup>

Although not every economist expresses themselves as extremely as Sandbu and Konstantakopulos, they agree that managing the Greek sovereign have never been an easy task: every possible solution has its own drawbacks. *Marco Buti*, the *Director-General for Economic and Financial Affairs at the European Commission* argues that in order to enhance their competitiveness and to reduce their debt servicing the countries in crisis need low and high inflation at the same time: while competitiveness demands low inflation – compared to EU average –, fulfilling the debt servicing presumes higher inflation.<sup>98</sup> The Artner – Róna co-authors identified similar pitfalls.<sup>99</sup>

#### 25.4 INSTITUTIONAL ANSWERS TO THE CRISIS: CREATING A SYSTEM OF SUPERVISION AND BANKING UNION

##### 25.4.1 *Creating the European System of Financial Supervision*

The Ecofin Council of October 2007 acknowledged – though not *expressis verbis* – that the shaping crisis of the US finance sector could possibly affect the single market, thus further arrangements for enhancing financial stability are needed.<sup>100</sup> In responding to the

94 It is worth mentioning that – contrary to *Konstantakopulos* – the Commission was of the view as early as the 1990s that Greece never really intended to fulfil the criteria on the EEC or later the EU membership. Instead they maintained a closed market and never exhibited any solidarity toward other member states. – Csankovszki & Mező 2012, p. 28.

95 Although the Greek government contacted the Russian government, the latter one did not show willingness to interfere. The Árva – Mádi co-authors argue that Russia – deeply involved into the Ukrainian and the Syrian crisis – was simply not in the position to open another ‘front’ against the EU and the NATO. – Árva & Mádi 2015, pp. 80-81.

96 As mentioned above some authors argue that the then EEC member states left Greece to access only because they feared that otherwise Moscow would have gained influence. – Somogyi 1999, pp. 48-69.

97 D. Konstantakopulos, ‘A görög válság: az Európáért folytatott háború első csatája’, *Eszmélet*, Vol. 22, No. 87, 2010, pp. 91-97, pp. 95-97.

98 Buti 2016, pp. 55-65.

99 Artner & Róna 2012, pp. 83-84.

100 Ecofin, 2822nd Council meeting of Economic and Financial Affairs. *Press Release 13571/07*, Luxembourg, 9 October 2007 pp. 22-29.

crisis the EU was lagging behind the US, however.<sup>101</sup> Although some authors,<sup>102</sup> think tanks<sup>103</sup> and the expert group chaired by *Jacques de Larosière*<sup>104</sup> already suggested back in 2008/2009 that the EU should create some sort of community level supervisory system. It was not until 2011,<sup>105</sup> when the EU – as a response to the crisis and in order to prevent the possible risks threatening the stability of the European Financial System – established the *European System of Financial Supervision* (ESFS), which is built up as follows:

The European Parliament and the Council created the *European Systemic Risk Board* (ESRB) – by adopting *Regulation 1092/2010*<sup>106</sup> – and vested special spheres of authority on the *European Central Bank* (ECB) concerning the ESRB by adopting *Regulation 1096/2010/EU*.<sup>107</sup> The task of the ESRB is to continuously monitor and evaluate the innate risks of the system. Furthermore the ESRB contributes to financial stability and suppresses the impacts arriving outside the internal market, which may have an effect on it or on the real economy.<sup>108</sup> Although the ESRB is independent from the ECB, it is seated in the ECB headquarter and its secretariat is also provided by the ECB.

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101 See: Marinkás 2018; Marinkás 2013.

102 *Dennis Kelleher* and his fellow co-authors wrote – though regarding the situation in the US –, that strong and prospering market economies need strict and consequent regulation. Weak and recessing markets on the other hand need prompt and firm intervention of public authorities in order to avoid the total collapse of the financial system as Marek Dabrowski argued. – D.M. Kelleher et al., ‘The Dodd-Frank Act is Working and Will Protect the American People If It Is Not Killed before Fully Implemented’, *North Carolina Banking Institute*, Vol. 20, 2016, pp. 145-147; Dabrowski 2009, pp. 17-18.

103 CEPS, ‘Concrete Steps Towards More Integrated Financial Oversight. The EU’s Policy Response to the Crisis’, Rapporteur: Karel Lannoo, Brussels, 2008, p. 59.

104 The High-Level Group On Financial Supervision In The EU: *De Larosière Report*, 25/02/2009, Brussels. – Online available at: [http://ec.europa.eu/economy\\_finance/publications/pages/publication14527\\_en.pdf](http://ec.europa.eu/economy_finance/publications/pages/publication14527_en.pdf).

105 To be more precise in 2010 – before establishing the ESFS – the Council – as a transitional solution – called the *European Financial Stabilisation Mechanism* (EFSM) into being. The aim of the creation of the EFSM was to grant credit to the member states, which struggle with problems. The *European Stability Mechanism* (ESM) started to function in 2012. The aim of its creation was to provide the EU with a lender of last resort (LLR), which – in case of necessity – could grant credits to the member states and financial institutions facing crisis. – Council Regulation (EU) No. 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, pp. 1-4); Council Regulation (EU) 2015/1360 of 4 August 2015 amending Regulation (EU) No. 407/2010 establishing a European financial stabilisation mechanism (OJ L 210, 7.8.2015, pp. 1-2); ESM Treaty – Treaty Establishing the ESM (signed on 2 February 2012, entry into force: 27 September 2017); see also: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/loan-programmes/european-financial-stabilisation-mechanism-efsm\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/loan-programmes/european-financial-stabilisation-mechanism-efsm_en) and <https://www.esm.europa.eu/financial-assistance>.

106 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).

107 Regulation 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).

108 Regulation No. 1092/2010, Preamble, Section 10.

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The EU legislation also created the *European Supervisory Authorities* (ESAs), which consists of: the *European Banking Authority*<sup>109</sup> – which is responsible for contributing to the formulation of EU-wide regulation and supervision standards –, the *European Insurance and Occupational Pensions Authority*,<sup>110</sup> which is also responsible for regulation and supervision and strives at enhancing the functioning of the internal market, and last, but not least, the *European Securities and Markets Authority*<sup>111</sup> (ESMA). The aim of the ESMA is the contribution to the stability and effectiveness of the financial system, including the protection of the interests of the citizens of the union and the enterprises seated in the union. In order to achieve this, the ESME strives to assure the transparency and the regular functioning of the financial markets and to enhance the international supervision cooperation. The sphere of authority of the ESMA was widened by *Regulation 236/2012 of the European Parliament and of the Council on short selling*<sup>112</sup> (*Regulation on short selling*) which was adopted on the ground provided by Article 114 of the TFEU.<sup>113</sup> The United Kingdom in its application challenged the mentioned article:<sup>114</sup> the government argued that Article 28 actually authorizes the ESMA to adopt quasi-legislative measures of general application without any ground implied in Article 114 and that such power is contrary to *the principle established in the Romano case*,<sup>115</sup> namely that legislative powers on the institutions shall only be vested by the founding treaties. The CJEU in contradiction with the opinion of the advocate general<sup>116</sup> did not state the infringement of the said principle.<sup>117</sup> – Moreover it did not bother to disprove the opinion of the advocate general. – As *Zoltán Angyal* wrote: the Court delivered an amicable decision for the EU in

109 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).

110 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).

111 Regulation (EU) No. 1095/2010 of the European Parliament and of the Council 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).

112 Regulation (EU) No. 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps Text with EEA relevance (OJ L 86, 24.3.2012, pp. 1-24).

113 Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, pp. 47-390).

114 For more details please see: Court of Justice of the European Union, Press Release, No. 7/14, Luxembourg, 22 January 2014; Z. Angyal, 'Jogvita az európai értékpapír-piaci hatóság rendkívüli körülményekkel kapcsolatos beavatkozási hatásköréről', *Publicationes Universitatis Miskolcensis. Sectio Juridica et Politica*, Tomus XXXIII, 2015, pp. 129-143.

115 C-98/80, *Giuseppe Romano v. Institut national d'assurance maladie-invalidité* case, Judgment, 12 May 1981.

116 C-270/12, *United Kingdom v. European Parliament and the Council of the European Union*, the opinion of advocate general Niilo Jääskinen, 12 September 2013, paras. 102-103.

117 C-270/12, *United Kingdom v. European Parliament and the Council of the European Union*, Judgment, 22 January 2014, paras. 119-120.



order to protect the authority of the ESMA, which is needed for the successful functioning of the banking union of the EU in the future.<sup>118</sup>

#### 25.4.2 Creating the Banking Union

In addition to the above mentioned the European legislator created the *banking union* of the EU, proposed by multiple authors years before. The banking union is based on two pillars, namely the *Single Supervisory Mechanism*<sup>119</sup> (SSM) and the *Single Resolution Mechanism*<sup>120</sup> (SRM).

The work started with the roadmap of the European Commission,<sup>121</sup> which outlined the current system. When creating the SSM, the decision makers had three models to choose, namely: (i) *cooperation and coordination* between national authorities; (ii) *lead home supervisor*, which means that the home authority has supervisory powers over the whole cross-border group; or (iii) *supranational authority*. As Luigi Chiarella pointed out<sup>122</sup> the previous banking supervision and resolution framework, which was based on cooperation failed in the crisis, because domestic authorities were prone to either turn a blind eye, when it came to their ‘national champions’ or to be reluctant to use public money for bailouts. The current structure of the SSM is the combination of these three methods, forming a two-tier system consisting of national and supranational level: the domestic authorities and the ECB are obliged to cooperate in good faith and share powers.<sup>123</sup> While the *less significant credit institutions*<sup>124</sup> fall under the supervision of the national authorities, the significant ones<sup>125</sup> are under the direct supervision of the ECB.<sup>126</sup> – It has to be pointed out that the notion of credit institution is a concept of

118 Angyal 2015, p. 143.

119 Council Regulation (EU) No. 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, pp. 63-89) (*SSM Regulation*).

120 Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010 (OJ L 225, 30.7.2014, pp. 1-90) (*SRM Regulation*).

121 European Commission: Communication from the Commission to the EP and the Council. A Roadmap towards a Banking Union. Brussels, 12.9.2012, COM (2012) 510 final.

122 Chiarella 2016, pp. 41-46, p. 85.

123 SSM Regulation, Art. 6(2).

124 The SSM Regulation does not contain the definition of credit institutions, instead it refers to Art. 4(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, which defines credit institutions as follows: ‘credit institution means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.’

125 The delimitation is to be made as contained Art. 6(4) of the SSM Regulation.

126 The decisions of the ECB can directly affect individual credit institutions, which are subject to a two-fold system of review: an *internal administrative review* and an *external judicial review*. – Chiarella, p. 70.

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the European Union Law, which shall prevail.<sup>127</sup> – The ECB’s *Framework Regulation*<sup>128</sup> for the SSM – alongside with the *ECJ’s case law*<sup>129</sup> – further refined the rules on cooperation, including: (i) the methodology for determining the quantitative criteria for classifying banks as significant or less significant; (ii) the exercise of powers; (iii) and the relations between domestic regulators and the ECB. A crucial point of the regulation is the *separation of the ECB’s functions as a central bank and as a financial supervisory authority*: while the Preamble records the general principles of this separation, Article 25 of the SSM Regulations contains the explicit rules.<sup>130</sup> Last, but not least, it is worth mentioning that, while the SSM applies to the member states of the Eurozone, it allows any EU member states to enter a ‘close cooperation scheme’.<sup>131</sup>

Both the European Institutions – namely the European Commission<sup>132</sup> and the ECA<sup>133</sup> – and also the *German Federal Ministry of Finance*<sup>134</sup> valued the first three years of the SSM as a success in their reports though indicated that there is still a room for further improvements. As an example it was a common and crucial point in both reports that the ECB should put further emphasis on maintaining a strict separation between the ECB’s monetary policy functions and its supervisory tasks as demanded by the SSM Regulation. The *Bruegel*<sup>135</sup> in its 2016 report – while also hitting a positive tone – criticized the black box nature<sup>136</sup> of the SSM’s decision making procedure. The *Bruegel* – just like the ECA<sup>137</sup> – suggested the streamlining of the decision making procedure and

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127 Chiarella 2016, p. 48.

128 Regulation (EU) No. 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17).

129 See Annex No. 1 for the SSM-related case law (preliminary rulings) of the ECJ! The number of the cases are respectively: C-594/16 – *Buccioni v. Banca d’Italia*; C-52/17 – *VTB Bank (Austria) AG v. Finanzmarktaufsichtsbehörde*; C-219/17 – *Berlusconi and Fininvest v. Banca d’Italia and IVASS*.

130 SSM Regulation, Preamble Arts. 65, 66, 73, 77, 85 and Art. 25.

131 SSM Regulation, Art. 7.

132 European Commission, Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism established pursuant to Regulation, COM(2017) 591 final, Brussels, 11.10.2017, pp. 18-19.

133 ECA, Single Supervisory Mechanism – Good start but further improvements needed. *Special Report No. 29*, 2016.

134 Federal Ministry of Finance (Bundesministerium der Finanzen), The Single Supervisory Mechanism: Lessons learned after the first three years. January 2018, pp. 4-5. – Online available at: [https://www.bundesfinanzministerium.de/Content/EN/Downloads/2018-01-26-SSM.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundesfinanzministerium.de/Content/EN/Downloads/2018-01-26-SSM.pdf?__blob=publicationFile&v=2).

135 European think tank that specialises in economics.

136 The lack of transparency was a key point of the Transparency International’s report too: B. Braun, ‘Two sides of the same coin? Independence and Accountability of the European Central Bank’, Transparency International EU, 2017. – Online available at: [https://transparency.eu/wp-content/uploads/2017/03/TI-EU\\_ECB\\_Report\\_DIGITAL.pdf](https://transparency.eu/wp-content/uploads/2017/03/TI-EU_ECB_Report_DIGITAL.pdf).

137 ECA, Special Report No. 29, Recommendation 1.

the delegation of decision making.<sup>138</sup> The SSM-related case law of the GC<sup>139</sup> – each of the judgments<sup>140</sup> delivered after the Bruegel's report – supports these findings: the pleas in law presented by the financial institutions were mostly based on the insufficiency of the ECB's reasoning. – Alongside with the incorrect interpretation of the EU-law and the excess of power.

The SRM – the second pillar of the banking union – covers the same scope as the SSM: that is to say banks that fall under the SSM are covered by the SRM too. The SRM Regulation established the framework for failing banks within the banking union. The resolution is managed by the *Single Resolution Board* (SRB), a new agency of the EU, established in 2015. The SRB cooperates with the *national resolution authorities*<sup>141</sup> (NRAs). The resolution procedure is financed through a single resolution fund, which is burdened on the bank sector. The purpose of the SRM is to ensure an orderly resolution of failing banks with minimal costs for taxpayers and to the real economy. Speaking of, based on a 2018 special report<sup>142</sup> of the *European Court of Auditors* (ECA), the first three years of the SRB's functioning showed a mixed picture:<sup>143</sup> e.g. its hesitation to order the liquidation of *Banca Popolare di Vicenza* and *Veneto Banca* only in 2017 instead of 2016 – when it should have been – cost the Italian taxpayers a significant amount as pointed out by *Nicolas Véron*,<sup>144</sup> an economist at the Bruegel.

The case law<sup>145</sup> of the General Court – even if five out of six cases<sup>146</sup> have been dismissed so far<sup>147</sup> as inadmissible – shows that the financial institutions do not evaluate the procedure of the SRB as transparent: as frequent legal pleas in their applications, they

138 The Bruegel referred to the more transparent US system as an example to be followed. – Bruegel, *European Banking Supervision: the First Eighteen Months*. See: D. Schoemaker & N. Véron (eds.), *Bruegel Blueprint Series*, Vol. XXV, 2016, ISBN: 978-9-07 8910-41-1, pp. 4-6.

139 See Annex No. 2 for a summary of the SSM-related case law (actions for annulment) of the GC.

140 GC, T-122/15, *Landeskreditbank Baden-Württemberg – Förderbank v. ECB*; GC, T-712/15, *Crédit Mutuel Arkéa v. ECB*; GC, T-133/16 – *Caisse régionale de crédit agricole mutuel Alpes Provence v. ECB*; GC, T-733/16 – *La Banque postale v. ECB*; GC, T-745/16 – *BPCE v. ECB*; GC, T-751/16 – *Confédération nationale du Crédit mutuel v. ECB*.

141 For details of the Hungarian regulation and domestic supervision system please see: Z. Nagy & A. Csiszár, 'A hazai pénzügyi felügyeleti szabályozás a változások tükrében', *Publicationes Universitatis Miskolciensis*, Vol. XXXIV, 2016, pp. 157-163.

142 ECA, Special report No. 23/2017: *Single Resolution Board: Work on a challenging Banking Union task started, but still a long way to go*.

143 On the negative side the agency was understaffed and resolution planning was not completed within the deadline. On the other hands these shortcomings were associated with the period of starting, which could be tackled in the future. – *Ibid* paras. 34, 55-56, 60, 63, 64-68, 103, 114, 125, 141.

144 N. Véron, 'Bad News and Good News for the Single Resolution Board', Bruegel, 15 January 2018 – Online available at: <http://bruegel.org/2018/01/bad-news-and-good-news-for-the-single-resolution-board/> (11/01/2019).

145 See Annex No. 3 for a summary of the SRM-related case law (actions for annulment) of the GC.

146 GC, T-645/16 – *Vorarlberger Landes- und Hypothekenbank v. SRB*; GC T-661/16 – *Credito Fondiario v. SRB*; GC T-14/17 – *Landesbank Baden-Württemberg v. SRB*; GC T-42/17 – *VR-Bank Rhein-Sieg v. SRB*; GC T-494/17 – *Iccrea Banca v. Commission and SRB*; GC T-618/17 – *Activa Minoristas del Popular v. ECB and SRB*.

147 20 January 2019.

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claim that (i) the SRB should have notified them on their decisions – not only the NRAs – (ii) and should have disclosed more details on the grounds of its decision.

## 25.5 CONCLUSIONS AND FUTURE PROSPECTS

The current article had a two-fold purpose: *firstly*, to study the connection between the financial crisis of 2008 and the crisis of the EMU, namely to answer whether the preceding one was the cause or only the catalyst for the latter one. In this regard the literature seems to be rather homogenous and the majority of the authors accept that the innate structural weaknesses of the EMU – namely its asymmetrical structure, the lack of proper control mechanism and the lack of political union – foreshadowed the crisis.<sup>148</sup> Thus, *the crisis of 2008 could only have been the catalyst of the crisis of the EMU*.

The *second purpose* of the article was to examine the institutional reforms of the EU, which sought to remedy the innate structural weaknesses of the EU. Although the EMU remained asymmetrical – that is to say the fiscal policy remained in the hand of the member states – a proper system of supervision have been created in the form of *the ESFS and the banking union* consisting of the SSM and the SRM. These systems *endured the difficulties of practice and the supervision of the CJEU*.<sup>149</sup> Although the author's research in the case law of the CJEU highlighted and verified the evaluations of EU institutions and think tanks; namely that the institutional reform had or still has some shortcomings these are associated with the initial phase of a newly established system and are possible to overcome in the future.

Regarding the future prospects the literature is rather heterogeneous: it is portrayed either dark or thriving. Joseph Stiglitz is among those, who predicted the fall of the EMU<sup>150</sup> when the current crisis broke out and is still very sceptical regarding its chances to survive.<sup>151</sup> He argues that *the only way out is putting an end to the policy of austerity*: if the European policy makers were to put emphasis on growth instead of austerity, the chances of the EMU not to fall apart would grow. – The historic moment has arrived as the Franco-German tandem seems to be revived.<sup>152</sup> – On the other hand: in his view it is still an open question whether it would ever retrieve its prosperity experienced in the

148 See among others: Sandbu 2016.

149 As Angyal wrote regarding the Case C-270/12: the ECJ delivered an amicable decision in order to protect the authority of the newly established system of supervision.

150 Stiglitz 2010.

151 J.E. Stiglitz, 'Can the euro be saved? An analysis of the future of the currency union', Rome, May 2014 – Online available at: [https://www8.gsb.columbia.edu/faculty/jstiglitz/sites/jstiglitz/files/2014\\_Rome\\_euro\\_ppt.pdf](https://www8.gsb.columbia.edu/faculty/jstiglitz/sites/jstiglitz/files/2014_Rome_euro_ppt.pdf).

152 The inauguration of Emmanuel Macron indicated the beginning of a new era, where France strives to become the equal partner of Germany again, which – since economic miracle of the 2000s – became the quasi singlehanded leader of the EMU. – S. Płóciennik, 'Recovery of the Eurozone and a New Dynamic in European Integration: Implications for Member States outside the Monetary Union', *The Polish Quarterly of International Affairs*, 26/2017, pp. 7-21, pp. 15-16.

first ten years of its experience.<sup>153</sup> One should not wonder that the member states, which have not strived to access earlier – because evaluating monetary sovereignty higher than the advantages of the common currency –, are less keen on adherence.<sup>154</sup>

The fall of the EMU would be a serious threat to the future of the integration as a whole: Artner and Róna argue that its fall would also probably mean the end of the integration.<sup>155</sup> Although a lot have been achieved – ESFS, banking union – since they wrote their study, the author of the current article believes that their argument still stands. The possible failure of the new supervisory system and the banking union poses a serious threat to the integration. Contrary to the others Fred Bergsten argues that the EMU and the EU will emerge even stronger once the crisis is over. He based his point of view on the history of the European project, which already survived several gross crises during its half-century long history.<sup>156</sup> – It is worth mentioning that *Chris Giles*, journalist of the *Financial Times* argues that the rest of World see the economic performance of the EU weak, because of the Europeans themselves consider it weak, even if the situation is not that bad.<sup>157</sup> – Bergsten’s prognosis is supported by two recent documents,<sup>158</sup> which points towards the consolidation of the euro area and the realisation of what several scholars already suggested: an ‘EU finance minister’, a ‘Treasury’ and an expanded EU budget.

The author of the current article agrees with Giles and reminds that, while as late as 2014 the crisis management of the US seemed to be more viable, starting from that year the economy of the EU 28 and the EMU 19 started to overtake the US economy in several economic indicators,<sup>159</sup> which were the result of the monetary, fiscal and institutional reforms. Although introducing the preceding two is beyond the scope of the current article, as a glancing and comparison of US and EU legislative answers: both legislations enhanced the supervision of financial markets and focused on monitoring and evaluating system-level risks in order to prevent any possible crisis in the future. There are differ-

153 J.E. Stiglitz, *The Euro. How a Common Currency Threatens the Future of Europe* (1st ed.), W.W. Norton & Company, New York, 2016.

154 Sebastian Plóciennik argues that there are three main reasons for this reluctance: (i) the EMU was on the margin of disintegration for years; (ii) they [non-members of the EMU] fear that losing their monetary sovereignty would impose them to a possible asymmetric shock; and last (iii) so far they did not have to fear of being marginalized by two-speed integration as the UK gave serious weight to the non-euro platform. The Brexit will change the game however: both the platform’s economic and political weight will shrink. – Plóciennik 2017, pp. 8-10, 13-14.

155 Artner & Róna 2012, p. 100.

156 Bergsten 2012, pp. 16-17.

157 C. Giles, ‘Eurozone economy quietly outshines the US. Positive data highlight strength of bloc despite depiction as underperformer’, *Financial Times*, 6 February 2017 – Online available at: <https://www.ft.com/content/0bbc026a-ea12-11e6-967b-c88452263daf?mhq5j=e1> (12/01/2019).

158 European Commission, *Completing Europe’s Economic and Monetary Union*. Report by: Jean-Claude Juncker in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz. ‘*The Five Presidents’ Report*’, 22 June 2015; European Commission, *Reflection paper on the Deepening of the Economic and Monetary Union*, COM(2017) 291 of 31 May 2017.

159 Plóciennik 2017, p. 10.

ences, however: while the EU created its own lender of last resort (LLR) for the first time, the US opted for cutting the powers of the Fed as LLR. Martin Sandbu argues that it is a key element in the US regulation, which – in his view – makes it better: instead of keeping alive the so called ‘ill enterprises’ it is more advisable to liquidate them before they cause more serious problems and let the market fill in the gap. Although the EU too, started to liquidate these enterprises in 2014, it was late and half-hearted. Furthermore the EU lags behind the US in one aspect and it does not seem to change in the near future: the EU is still not in phase of political union, which is one of the greatest shortcomings of the EMU as several authors argue. On the other hand, the supervising authorities of the US too, have to face some serious threats: the new president and his perception on economic policy hinder the results of the legislation achieved under the Obama administration. President Trump, as an entrepreneur and Republican opposes strict regulations and extensive financial market supervision. The case of the *Bureau of Consumer Financial Protection*<sup>160</sup> clearly demonstrates his attitude.

Summarizing the above mentioned the author believes that the EU took a huge step forward; however there is still a lot to be done in order to protect the results achieved so far. Should the EU policy makers fail to do so, EU scepticism will rise. In the introduction the author asked whether the Brexit referendum was the zenith of the Euroscepticism or there is still a prospect for a higher one? The author firmly believes that in case the problems introduced in the current article are not handled properly and the other related questions are not answered thoroughly, Brexit will prove to be the beginning.

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160 See: Marinkás 2018.

## APPENDIX 1

### ANNEX NO. 1: THE SSM RELATED PRELIMINARY RULINGS OF THE ECJ

Name of the case	Type of the case and the related EU-law	Question of the domestic court	Judgment of the ECJ
1. <b>Buccioni v. Banca d'Italia</b>	<b>Preliminary Ruling Procedure (Related EU law:</b> Article 53(1) of Directive 2013/36; Article 15 of TFEU, Articles 22(2) and 27 (1) of Regulation No. 1024/2013)	The applicant domestic court by its questions [...] asks [...], whether [the related EU law], <b>must be interpreted as precluding the competent authorities of the Member States from disclosing confidential information</b> to a person who so requests in order to be able to institute civil or commercial proceedings <b>with a view to protecting proprietary interests which were prejudiced as a result of the compulsory liquidation of a credit institution.</b> (Judgment, 13/09/2018, para. 19)	The ECJ was of the view that [the relevant EU law] must be interpreted <b>as not precluding the competent authorities of the Member States from disclosing confidential information</b> [in the above mentioned case]. However [...] <b>the applicant has to put forward precise and consistent evidence</b> plausibly suggesting <b>that it is relevant for the purposes of civil or commercial proceedings [...]</b> It is for the competent authorities and courts to weigh up the [clashing] interests <b>[of the parties]</b> . (Judgment, 13/09/2018, para. 41)

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Name of the case	Type of the case and the related EU-law	Question of the domestic court	Judgment of the ECJ
2. C-52/17 – VTB Bank (Austria) AG v. Finanzmarktaufsichtsbehörde	<b>Preliminary Ruling Procedure (Related EU law:</b> Articles 64 and 65(1) of Directive 2013/36; Article 395(1) of Regulation No. 575/2013; Article 48(3) of SSM Framework Regulation; Article 395 (1) of Regulation No. 575/2013)	By its first two questions [...] the referring court asks the Court whether [the related EU law] <b>is to be interpreted as precluding national legislation which provides that, where the exposure limits set out in [EU law] are exceeded [...] ‘absorption’ interest is to be levied automatically on a credit institution.</b> By its third question, the referring court asks the Court <b>whether [...] a supervisory procedure may be regarded as having been formally initiated,</b> within the meaning of that provision, <b>where a credit institution reports to the national supervisory authority [] or where that authority has already adopted a decision in a parallel procedure concerning similar breaches.</b> (Judgment 19/12/2018, paras. 29-30)	Regarding the first and second questions the ECJ was of the view that [the cited EU laws] are to be interpreted as <b>precluding national legislation, which provides that where the exposure limits set out in [EU law] are exceeded [...] ‘absorption’ interest is to be levied automatically on a credit institution.</b> Regarding the third question the court was of the view that [the cited EU law] is to be interpreted as meaning that <b>a supervisory procedure cannot be regarded as having been formally initiated</b> [in the cases mentioned in the questions] (Judgment 19/12/2018, para. 61)



Name of the case	Type of the case and the related EU-law	Question of the domestic court	Judgment of the ECJ
3. C-219/17 – Berlusconi and Fininvest v. Banca d'Italia and IVASS	Preliminary Ruling Procedure (Related EU law: Article 263 of the TFEU; Articles 22 and 23 of Directive 2013/36/EU(CRD); Articles 4(1)(c) and 15 of the SSM Regulation; Articles 85 to 87 of the SSM Framework Regulation)	The referring court asks, in essence, <b>whether Article 263 of the TFEU must be interpreted as precluding national courts from reviewing the legality of decisions to initiate procedures, preparatory acts or non-binding proposals adopted</b> [based on related EU law] <b>and whether the answer to that question is different where a specific action for a declaration of invalidity on the ground of alleged disregard of the force of <i>res judicata</i> attaching to a national judicial decision is brought before a national court.</b> (Judgment 19/12/2018, para. 39)	The ECJ was of the view that Article 263 TFEU must be interpreted as <b>precluding national courts from reviewing the legality of decisions to initiate procedures, preparatory acts or non-binding proposals adopted by competent national authorities</b> in the procedure provided in [related EU law]. <b>It is immaterial in that regard that a specific action for a declaration of invalidity on the ground of alleged disregard of the force of <i>res judicata</i> attaching to a national judicial decision has been brought before a national court.</b> (Judgment 19/12/2018, para. 60)

## APPENDIX 2

### ANNEX No. 2: THE SSM-RELATED CASE LAW OF THE GC (ACTIONS FOR ANNULMENT)

Name of the case	Type of the case	Pleas in law and main arguments of the parties	Judgment of the GC
1. T-122/15 Landeskreditbank Baden-Württemberg – Förderbank v. ECB	Action for annulment against ECB Decision (ECB/SSM/15/1) of 5 January 2015	<p><b>The applicant contested the ECB’s decision, in which it classified the applicant as significant and subject to its sole supervision.</b></p> <p>The applicant submitted <b>five pleas in law</b>, namely: (i) incorrect legal criteria applied by the ECB; (ii) manifest errors of assessment; (iii) infringement of the obligation to state reasons; (iv) misuse of powers by the ECB in unlawfully failing to exercise its discretion; (v) infringement of the ECB’s obligation to examine and take into consideration all relevant circumstances of the case. (Judgment, 16/05/2017, paras. 1-7, 17)</p>	<p><b>The court dismissed all the five pleas</b> as ill-founded: the applicant did not provide sufficient proof to support its allegation and consequently <b>upheld the ECB’s decision.</b> (Judgment, 16/05/2017, paras. 100, 112, 136, 142, 150)</p>

APPENDIX 2 ANNEX NO. 2: THE SSM-RELATED CASE LAW OF THE GC (ACTIONS FOR ANNULMENT)

Name of the case	Type of the case	Pleas in law and main arguments of the parties	Judgment of the GC
2. T-712/15 – <i>Crédit Mutuel Arkéa v. ECB</i>	<b>Action for annulment against ECB Decision</b> (ECB/SSM/2015 – 9695000CG 7B84NLR5984/40) of 4 December 2015	<b>The applicant in its letter of 19 September 2014 contested that the ECB has the right to exercise the sole supervisory authority.</b> As stated by the ECB in its decision. The applicant submitted <b>three pleas in law</b> , namely: (i) that it is not a credit institution pursuant to the SSM Regulation; (ii) there is no supervised group for the purpose of Article 2 (21) (c) of the SSM Framework Regulation and Article 10 of Regulation No. 575/2013; (iii) the contested lawfulness of Article 2(3) of and Annex II-2 to ECB Decision. (Judgment, 13 December 2017, paras. 3, 6, 26, 32, 38, 45)	<b>The GC rejected the ECB’s preliminary objections</b> , namely (i) the chairman of the board of directors of the applicant, does not have any powers of representation under French law; (ii) the lack of locus standi; the (iii) lack of interest on the applicant’s side and proceeded with the merits of the case. <b>Considering the merits, the GC rejected the applicant’s pleas and upheld the ECB’s decision.</b> (Judgment, 13 December 2017, paras. 108-109, 160-161, 212-214)
3. T-133/16 – <i>Caisse Régionale de Crédit Agricole Mutuel Alpes Provence v. ECB</i>	<b>Action for annulment against ECB Decision</b> ECB/SSM/2016–969500TJ5KRTCJQW-XH05/98,99,100 and 101 of 29 January 2016	The applicant submitted <b>four pleas in law</b> . The first three pleas in law alleged the incorrect interpretation by the ECB of the concept of ‘effective director’, the fourth plea in law alleged the infringement of Article L. 511-58 of the CMF* (Judgment 24/04/2018, paras. 33, 94)* French monetary and financial code	<b>The GC rejected all the four pleas in law</b> of the applicant as ill-grounded <b>and upheld the ECB’s decision.</b> (Judgment 24/04/2018, paras. 93, 103)

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Name of the case	Type of the case	Pleas in law and main arguments of the parties	Judgment of the GC
4. T-733/16 – La Banque Postale v. ECB	Action for annulment against ECB Decision ECB/SSM/2016-96950066U5XAAIRC-PA 78/16 of 24 August 2016	<b>The applicant asked for derogation from the ECB, which denied it. As pleas in law – totally three</b> – the applicant alleged that the ECB’s decision was an error of law in relation to the fact that (i) the contested decision was premature and (ii) ECB in interpreting the scope of its responsibility for implementation Article 429(14) of Regulation No 575/2013. Thirdly the (iii) illegality of the grounds for refusal by the ECB to grant the derogation requested under that provision. (Judgment, 13/07/2018, paras. 1-13, 22)	<b>The GC rejected the second plea and upheld the third – and thus annulled the contested decision</b> – dispensed with the examination of the first plea. <b>The GC was of the view that the ECB did not provide suffice and firm proof for necessity of denying the derogation.</b> (Judgment, 13/07/2018, paras. 23, 118)
5. T-745/16 – BPCE v. ECB	Action for annulment against ECB Decision ECB/SSM/2016-9695005MSX1OYEM-GDF46/195 of 24 August 2016	<b>The applicant asked for derogation from the ECB, which denied it. The applicant put forward five pleas in law:</b> (i) the contested decision was brought in the absence of competence; as an alternative the applicant alleged that the contested decision (ii-v) was brought by incorrect application of law, manifest errors of assessment, a breach of certain general principles of the EU law and insufficient reasoning. (Judgment, 13/07/2018, paras. 1-10, 19)	While the GC rejected the first plea in law, upheld the second, third and fourth pleas – thus <b>annulled the contested decision</b> – and dispensed with the examination of the fifth plea. <b>The GC was of the view that the ECB did not provide suffice and firm proof for necessity of denying the derogation.</b> (Judgment, 13/07/2018, paras. 20-21, 58, 112)

APPENDIX 2 ANNEX NO. 2: THE SSM-RELATED CASE LAW OF THE GC (ACTIONS FOR ANNULMENT)

Name of the case	Type of the case	Pleas in law and main arguments of the parties	Judgment of the GC
6. T-751/16 – Confédération nationale du Crédit Mutuel v. ECB	Action for annulment against ECB Decision ECB/SSM/2016-9695000CG7B84NL-R5984/92 of 24 August 2016	<b>The applicant asked for derogation from the ECB, which denied it.</b> The applicant in its application submitted <b>four pleas in law:</b> (i) the contested decision was brought in the excess of power. As an alternate the applicant alleged that the decision (ii) was brought by incorrect application of law and manifestly (iii) incorrect and (iv) disproportionate. The fourth plea alleged the breach of the obligation to state reasons and the principle of good administration. (Judgment, 13/07/2018, paras. 1-11)	<b>The GC rejected the first plea in law and upheld the second, third and fourth plea of law and as a consequence annulled the contested decision. The GC was of the view that the ECB did not provide suffice and firm proof for necessity of denying the derogation.</b> (Judgment, 13/07/2018, paras. 23-24, 59, 118)
7. T-757/16 – Société Générale kontra ECB	Action for annulment against ECB Decision ECB/SSM/2016-O2RNE8IBXP4R0TD 8PU41/72 of 24 August 2016	<b>The applicant asked for derogation from the ECB, which denied it. The alleged five pleas in law were identical to those in the T-745/16 case.</b> (Judgment, 13/07/2018, paras. 1-10, 19)	While <b>the GC rejected the first plea in law, upheld the second, third and fourth pleas – thus annulled the contested decision – dispensed with the examination of the fifth plea. The GC was of the view that the ECB did not provide suffice and firm proof for necessity of denying the derogation.</b> (Judgment, 13/07/2018, paras. 58, 111)

Name of the case	Type of the case	Pleas in law and main arguments of the parties	Judgment of the GC
8. T-758/16 – <i>Crédit Agricole SA v. ECB</i>	<b>Action for annulment against ECB Decision ECB/SSM/2016–969500TJ5KRTCJQW-XH05/165 of 24 August 2016</b>	<b>The applicant asked for derogation from the ECB, which denied it.</b> The applicant put forward <b>three pleas</b> , namely: (i) the incorrect interpretation of the law; (ii) an error in the assessment; (iii) and the infringement of the principle of proportionality. (Judgment, 13/07/2018, paras. 1-10, 23)	<b>The GC examining the first and the second pleas of law and dispense with examine the third, upheld the applicant’s pleas in law and annulled the contested decision. The GC was of the view that the ECB did not provide suffice and firm proof for necessity of denying the derogation.</b> (Judgment, 13/07/2018, paras. 24, 83-87)
9. T-768/16 – <i>BNP Paribas v. ECB</i>	<b>Action for annulment against ECB Decision ECB/SSM/2016-R0MUWSFPU8M-PRO8K5P83/136 of 24 August 2016</b>	<b>The applicant asked for derogation from the ECB, which denied it. The applicant put forward three pleas, identical to those in the T-578/16 case.</b> (Judgment, 13/07/2018, paras. 1-10, 23)	<b>The GC examining the first and the second pleas in law and dispense with examine the third, upheld the applicant’s pleas in law and annulled the contested decision. The GC was of the view that the ECB did not provide suffice and firm proof for necessity of denying the derogation.</b> (Judgment, 13/07/2018, paras. 24, 83-87)

## APPENDIX 3

### ANNEX No. 3: THE SRM-RELATED CASE LAW OF THE GC

Name of the case	Type of the case	Pleas in law and main arguments of the applicant	Decision on admissibility	Grounds of the decision
<b>10. T-645/16 – Vorarlberger Landes- und Hypothekenbank v. SRB</b>	<b>Action for annulment and interim measure</b> against SRB Decision SRB/ES/SRF/2016/06) of 15 April 2016	<b>Breach of essential procedural requirements</b> by (i) lack of (full) disclosure of the contested decision, (ii) inadequate statement of reasons for the contested decision. (Application, 07/09/2016)	<b>Admissible</b> , but the <b>action for interim measure was dismissed</b> (Order of the GC 06/02/2017, operative part)	The applicant has <b>failed to show that the implementation of the contested decision could result in serious and irreparable harm.</b> (Order of the GC, 06/02/2017, para. 42)
<b>11. T-661/16 – Credito Fondiario v. SRB</b>	<b>Action for annulment</b> against SRB Decisions SRB/ES/SRF/2016/06 of 15 April 2016 and SRB/ES/SRF/2016/13 of 20 May 2016	Summarizing the seven pleas in law the applicant contested the <b>breach of essential procedural requirements</b> : <i>e.g.</i> the two decisions were not communicated to the applicant. References were made to the <b>lack of transparency.</b> (Application, 19/09/2016)	<b>Inadmissible</b> (Order of the GC, 19/11/2018, operative part)	The applicant <b>submitted the application beyond the time period</b> set out in Article 263 of the TFEU <b>and failed to provide any reasonable excuse.</b> (Order of the GC, 19/11/2018, paras. 49, 55)

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Name of the case	Type of the case	Pleas in law and main arguments of the applicant	Decision on admissibility	Grounds of the decision
12. T-14/17 – Landesbank Baden-Württemberg v. SRB	<b>Action for annulment</b> against SRB Decisions (SRB/ES/SRF/2016/06) of 20 May 2016 and (SRB/ES/SRF/2016/13) of 15 April 2016	Summarizing the four pleas in law the applicant contested the <b>breach of essential procedural requirements</b> : the lack of hearing before bringing the decision, the lack of providing proper reasoning and the lack of proportionality. (Application, 12/01/2017)	<b>Inadmissible</b> (Order of the GC, 19/11/2018, operative part)	<b>Besides of submitting the request beyond the time period</b> set out in Article 263 of TFEU, the applicant <b>did not have a <i>locus standi</i></b> as set out in TFEU 263, since the SRB's decision was not capable of producing legal effects in regard to the applicant. That is to say the SRB's decision obliged the NRA, which – upon the decision of the SRB – obliged the applicant. (Order of the GC, 19/11/2018, paras. 33, 51)
13. T-42/17 – VR-Bank Rhein-Sieg v. SRB	<b>Action for annulment against</b> SRB Decisions (SRB/ES/SRF/2016/06) of 20 May 2016 and (SRB/ES/SRF/2016/13) of 15 April 2016 and request for confidential treatment for parts of certain documents.	In support of the action, the applicant relied on <b>four pleas in law which were essentially identical or similar to those in Case T-14/17</b> , Landesbank Baden-Württemberg v. SRB. Furthermore, <b>the applicant asked for confidential treatment</b> . (Application, 25/01/2017)	<b>While the GC granted the confidential treatment</b> with its decision (Order of the GC 17/10/17, operative part), <b>the application itself was dismissed as inadmissible</b> (Order of the GC, 19/11/2018)	<b>Besides of submitting the request beyond the time period</b> set out in Article 263 of TFEU, <b>the applicant did not have a <i>locus standi</i></b> .* (Order of the GC, 19/11/2018, paras. 24, 51) * See T-14/17 case above



## APPENDIX 3 ANNEX NO. 3: THE SRM-RELATED CASE LAW OF THE GC

Name of the case	Type of the case	Pleas in law and main arguments of the applicant	Decision on admissibility	Grounds of the decision
14. T-494/17 – <b>Ic-crea Banca v. Commission and SRB</b>	<b>Action for annulment</b> against SRB Decision No. SRB/ES/SRF/2016/06 of 15 April 2016	Summarizing the six pleas, the applicant alleged the <b>breach of essential procedural requirements</b> . References were made to the <b>lack of transparency</b> . (Application, 28/07/2017)	<b>Inadmissible</b> (Order of the GC, 19/11/2018 operative part)	Besides of submitting the request too late, the applicant <b>did not have a locus standi*</b> (Order of the GC, 19/11/2018, paras. 24-26, 69) * See T-14/17 case above
15. T-618/17 – <b>Activa Minoristas del Popular v. ECB and SRB</b>	<b>Action for annulment</b> against SRB Decision No. SRB/EES/2017/08 of the SRB of 7 June 2017	The pleas in law and main arguments are similar to those put forward in Cases T-478/17, T-481/17, T-482/17, T-483/17, T-484/17, T-497/17, T-498/17 (Application, 08/09/2017)	<b>Inadmissible</b> (Order of the GC, 18/09/2018, operative part)	<b>The GC stated the lack of locus standi</b> (Order of the GC, 18/09/2018, paras. 15, 23-27)