CENTRO STUDI SUL FEDERALISMO
PERSPECTIVES ON FEDERALISM

ISSN: 2036-5438

The Single Market and Synchronized Mechanisms for the Exercise of Administrative Functions: Converging Pathways or New Pathways for Integration? The Case of the European Banking Union

by

Fabio Giglioni*

Perspectives on Federalism, Vol. 9, issue 2, 2017

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

Abstract

The EBU represents a clear investment in administrative integration with clear implications for the constitutional features of the EU. This paper aims to give an analysis of the administrative arrangements, through which the functions of supervision and resolution are affecting the single financial market. This case study is very interesting because these functions represent a genuine novelty in the history of financial integration since they are pre-ordained to a specific public interest: financial stability. Particularly, they cause a shift in the decision gradient from the technical to the political, as market integrity is less and less the key interest compared to financial stability. However, this wider discretionary power is not adequately counteracted by checks and balances in favour of accountability. As a result, the EBU makes a new contribution to the well-known 'fragmentation of the executive power' of the EU by introducing a new governance tool positioned between the Communitarian and Intergovernmental Method, but its development is still full of uncertainties given that constitutional equilibrium is far from being definitively reached.

Key-words

European Banking Union, financial market, financial stability, EU integration

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

1. Introduction

In this particularly delicate stage of EU history there are increasing initiatives that attempt to establish new governance mechanisms with the purpose of strengthening the effective functioning of European institutions and policies. Primarily political difficulties contend with organizational engineering solutions that appear to be trying out new ways to strengthen reasons for unity. The European Banking Union (EBU) is a paradigmatic example that lends itself to analyzing such choices.

Many early comments dedicated to the EBU stressed the originality of this solution, opining that it represented a new stage of administrative European integration (Clarich 2013; Laguna de Paz 2014; Kern 2015). The EBU is a powerful investment in administrative integration (E. Chiti 2013), whose principal innovation is to create complex operating mechanisms based on a combination of different techniques (Ibrido 2017, 205-216). For instance, exclusivity, direction, coordination and cooperation together define lines of transmission in the exercise of administrative functions for supervising and resolving credit institutions, which allow national and European administrative structures to act in a synchronized manner.[1] Not surprisingly, when we speak of the EBU, reference is made to system contexts and to operations portrayed as operating mechanisms, where ordinary operating techniques of administration are not distinct but assembled to yield a single definition of administrative issues. There is no simplistic European-type predominance of national administrations, nor is there any direct reliance on national authorities to apply the rules, decisions and measures agreed on at the European level. The boundaries between the two classic models of administration, a centralized one and a decentralized, indirect one – more or less hardened, have become decidedly fuzzier (Avbelj 2015, 792-795).

This work focuses on verifying which elements this solution adds to the already varied and imaginative outcomes to which the EU has accustomed us. Is the EBU the new tribute paid to the EU's fervent engineering innovation? Are we in the presence of a new kind of public power? What is added by this new stage of development in organizational models? What constitutional implications are involved? And, most importantly, what is the relationship with the internal market, and especially the credit market?

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

Answering these questions means checking if the new solution simply establishes a line of continuity with more traditional solutions, or if it marks, if not a discontinuity, a change. In order for this work to be at all useful, Section 2 will deal with the causes that led to the establishment of the EBU; Section 3 the links between the EBU and the internal market, especially (in Section 4) the regulation of State aid in troubleshooting procedures; Section 5, the extent to which financial stability in the single market involves the public interest; Section 6, issues concerning accountability; and Section 7, concluding remarks.

2. Origin of the EBU

When in 2012 the EBU project was launched with a communication from the European Commission,[II] the EU had already been hit by the financial crisis, and had already taken steps to define its new supervisory financial system (ESFS), based on the De Larosière report. What followed was that the EBU embodied a reaction that, on the one hand, signalled the inadequacy of the tools designed until then, and, on the other, grappled with more specific problems, especially regarding Eurozone stability, greatly threatened by the precarious control of national budgets.

Starting with the first point, namely the inadequacy of the tools designed up to 2012, this means emphasizing that the EBU intended to interrupt the hitherto firm principle of home country control, which established rule sharing at the European level, leaving the Member States with the task of ensuring the supervision of financial institutions (Schoenmaker 2012). Of course, the *pre*-EBU scenario was not the result of an unchanged status of decades, but was in turn the result of several phases, all centred on bringing about a single internal market (Lamandini 2003). The first phase was characterized by the jumble of classic tools through which the EU reinforced its integration through law over the years, namely the case law of the Court of Justice of the European Union (CJEU) and the legislative technique of harmonisation (Bartl 2015). With these tools the EU simply removed the legal and administrative obstacles that prevented the completion of the single internal market in the financial sector. It defined an operating system whose administrative machinery of government remained largely national, albeit increasingly conditioned by European rules.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

The establishment of European administrative machinery with a supportive, coordinating function was unsuccessfully attempted in 1999 on the basis of the Financial Services Action Plan, but just ten years later, when the financial crisis erupted, it came into being thanks to the establishment of three agencies and of the European Systemic Risk Board (ESRB).[III] The construction of a new administrative apparatus alongside the European Commission aimed to create a more careful and precise system of unitary regulation that was not limited to general aspects, but that could draw up more focused rules, reference standards and guarantees of shared information, more timely interventions in times of crisis, as well as rules for resolving conflicts between national authorities in the various financial market segments. In other words, the ESFS reinforced the European dimension of financial market governance by acting mainly on technical and administrative control, but with the intent to totally restrict itself to improving the internal market (Simoncini 2015b). The agencies did not strip administrative functions from the national to the European level, but had a purely technical, supportive role toward the European Commission, being connected directly to the Member States and their technical representative authorities. The traditional model of building the single market remained substantially respected through certain constants: a) action was primarily focused on regulation; b) the purpose was to level the playing field of market participants mainly in order to achieve freedom of movement of capital; c) the technical function of European regulators remained unchanged, both those of an institutional nature, such as the Commission, and new ones, represented by agencies that guaranteed a balanced regulatory framework.

In this context the substantial cohesiveness of European interventions, albeit marked by distinct phases, is useful in order to further emphasize that recourse to the system of agencies in the financial field was not – in turn – without innovative elements. The financial agencies were also granted direct decision-making powers that seemed to clearly exceed the historic, consolidated system of the "Meroni doctrine", in keeping with a recently emerged revision of European law. Proof of this were the powers granted to the European Banking Authority (EBA) in cases of emergency, and those in which it resolves conflicts with national authorities. This statement is confirmed by the ESMA case,[IV] where the CJEU ruled that the granting of discretionary powers to the European Securities and Markets Authority (ESMA) did not of itself constitute a violation of the "Meroni doctrine"

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

if power granted was exercised within the context of well-defined principles that, however, made it possible to circumscribe its exercise in such a way as to not give the agency a power free from any predetermined limit. Although the judge strove to contain the decision within a framework of consolidated compatibility of jurisprudence in respect of delegated powers, commentators have correctly pointed out that the decision confirmed the revised formulation that was handed down.[V]

Therefore, the aim of finalizing a single market suffused successive interventions in the financial sector up to the EBU, though not without the transposition of some important developments concerning the attribution of greater regulatory powers at the European level. Consequently, the need to construct the EBU a few years after the establishment of the ESFS highlighted the inadequacy of these solutions. So our investigation will now indicate the extent to which the EBU represented an element of discontinuity and what elements it was able to change.

Before plunging into this field of investigation it is important to emphasize that the EBU also responded to diverse needs and, in particular, the need to interrupt the perverse link between the crisis of the private financial system, especially banks, and sovereign government debt. In this perspective, some substantial differences clearly emerged with the establishment of the ESFS, first among them being the limited scope of the EBU, which is focused only on countries with the euro as its official currency. This limited scope is in itself a clear reference to the support of another specific European policy, monetary union, that has a range of powers different from those of the single market, being centred primarily on the European Central Bank (ECB). Although the EBU is ring-fenced by guarantees that ensure its separation from the direct governance of the single currency, it is clear that its task also exceeds the mere assurance of the single financial market. The uncertainties and fibrillations of the credit market are indeed capable of causing serious indirect interference in the stability of the single currency and, therefore, ensuring direct intervention to prevent and resolve banking crises has become a task entrusted to the EU through the controversial use of Article 127.6 TFEU, within mechanisms that affect the monetary union. Thus, inevitably, new purposes were added to the task of managing European financial entities, even if limited to those having jurisdiction in countries that have adopted the single currency. Proof of this is also the fact that the EBU provides a coherent response within the Euro-unitary framework of the founding treaty, first, of the

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

European Financial Stability Facility (EFSF), and, second, of the European Stability Mechanism (ESM), which offered an immediate, temporary response outside the treaties that founded the EU. Somehow the EBU is inscribed in the more general new European governance mechanisms which the EU started after the Eurozone crisis erupted (Kjaer 2010, 25-30).

However, in the case of the EBU, since its purpose was to create mechanisms ensuring the effective transmission of administrative decisions between the European and national levels, there was (i) the establishment of new entities, such as the Single Resolution Board (SRB) or the Supervisory Board (SB) with effective powers, (ii) complex and multiple organizational relations with other European and national authorities, including the ESFS, where there are mixed decision-making and coordination needs of very diversified interests, (iii) complex procedures with guarantees of participation by interested parties, aimed at diversified macro- and micro-prudential decisions, supervision and control, and propositions of possible measures of resolution. In this light it is interesting to explore how this division of structures and decisions, and complexity of purposes, also includes that of ensuring the single market, since reconciliation with the rules that support the single market is not called into question (Camilli 2015, 51-52). There are, for example, many links that oblige the EBU to operate consistently with the EBA. Indeed, the EBA has the task of defining the technical rules of the financial markets through the *Single Rulebook* which the ECB, in its supervisory role, must implement; it likewise establishes a reciprocal conditioning link between the EBA and the SRB, since a representative of the latter may be appointed to the EBA's decision-making committee and – in turn – the EBA, whenever issues within their jurisdiction are at stake, can delegate a representative to participate in the partial or plenary sessions of the SRB's governing bodies (Cappiello 2015, 434-437). In short, the connections with the guarantors of the single market are established precisely to ensure the orderly coexistence between the single market and the supervision/resolution functions regarding it (Lastra 2013).

It is important to understand whether this further stage of evolution of European organizational models is pursuing this objective as it always has, or whether it is introducing innovative elements, and – if so – what results it is producing for bringing about the single market. What we need to understand is if another route to the single market has been taken.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

3. The single market in the EBU framework

In the rationales which accompany the founding acts of the EBU there are recurrent references to the internal market, for which supervisory and resolution functions are important conditions to help build a framework of uniform rules within which credit sector operators can work (Magliari 2015). However, besides these basic connections of a general nature, there are far more obvious influences that have a significant impact on the single market.

First, we must distinguish between the EBU's supervisory and resolution functions. The first operates, except for some limited power of macro-prudential policy, toward ensuring a preventive control of the soundness of credit companies where the single market is taken only as a benchmark to be observed without exercising any direct powers, as specified in Article 1.1, Reg. EU 1024/2013 (Reg. SSM). However, the second function has a direct impact on the functioning of credit companies, determining the conditions for continuing or discontinuing its action, with all the implications that this produces. So, although EU Reg. 806/2014 (Reg. SRM) also identifies, in the integrity and unity of the market, the criteria of action that should inspire the resolution authorities (Article 6.2), the constraint of the single market is a much more important condition when making decisions on the resolution of credit institutions. References to the internal market and to safeguarding its integrity recur far more often with regard to exercising the resolution function (Lastra 2013, 1220-1223).

In particular, this is clear from the objectives listed in Article 14 Reg. SRM, which includes, of course, three aims intended to protect the market and two aimed at protecting specific subjects for which European legislation provides safeguards. The first three aims encompass the guarantees that ensure the continuity of operators in order to alter the market as little as possible, to avoid adverse effects on financial stability that could jeopardize market order, in particular by preventing contagion, and to minimize public financial support, which could alter market conditions. Conversely, among the objectives for establishing guarantees for certain categories of subjects, are those aimed at depositors of under one hundred thousand euros, investors, as covered by Directive 97/9/EC, funds and customers. It would seem, then, that the role of the single market has a specific

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

importance in the exercising of resolution functions, to the extent that it still appears to be a central purpose.

In a similar way, the assessment that the SRB has to make, in developing plans for a resolution, is aimed at safeguarding market rules as much as possible. The primary objective of the SRB is to decide whether a particular entity can either be subjected to ordinary insolvency rules, in the case that financial instability is not at stake, the latter meaning that neither the proper functioning, efficiency and integrity of the internal market, nor the financial system of one or more Member states are compromised (Art. 10.5). In this case the resolution power is that of ordinary provision. Significantly, it is recommended that this SRB assessment should take into account the warnings and recommendations of the ESRB and the criteria formulated by the EBA.

What we derive from this is that for the EBU the single market and its smooth functioning continues to be a benchmark for measuring the actual achievement of financial stability, but the following paragraphs can lead to a different interpretation of these conclusions.

4. The concurrence of the State aid framework

The principal test of the relationship between the EBU and the internal market, in the component that is most exposed to this relationship – i.e., the resolution function – is the assumption that resolution programs allow for recourse to State aid, when this assumption, though discouraged by the SRM, becomes viable (Lastra 2013, 1215). In such circumstances, Article 19, Reg. SRM provides that the implementation of the resolution program is subject to the favourable, or conditioned, decision expressed by the European Commission on compatibility with the internal market, even when recourse to the single resolution fund is permitted. The European Commission exercises control on the basis of standard procedural, interpretative and regulatory tools, that also utilize procedures for State aid unrelated to those for banking resolution. This is very interesting to note because, by deferring to normal procedures, it obliges a scrutiny of the kind of assessment that in such circumstances the Commission conducts as an independent body that participates in the responsibilities of resolution.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

In such cases, the Commission applies the acts of communication approved since 2008. Faced with the threat of massive national bailouts of firms immediately after the start of the financial crisis, which would have seriously undermined the single market,[VI] the European Commission, prompted in particular by the European Council, issued a 'package' of special measures between 2008 and 2011, with which it gave the Member States a wide range of tools of public support to financial institutions, especially banks and businesses.[VII] The tools available to the States ranged from public guarantees on liabilities and on interbank lending, to the recapitalization of banks and firms; from the supervised and controlled liquidations of businesses and banks in serious trouble to measures intended to free banks of devalued and "toxic" financial assets, to facilitating access to credit for nationalization in extreme cases. These were all measures that the Commission deemed legitimate under Article 107.3.b., TFEU, with regard to the serious disturbance of national economies that the crisis brought about.

Specifically, the permitted measures were nothing new in themselves, since a large part of them were already planned and governed by previous communications issued by the Commission under Article. 107.3.c. TFEU (Liberati 2014), particularly in the field of bailouts and restructuring of firms in trouble.[VIII] Despite this, and despite the fact that the Commission refers precisely to this discipline to reaffirm their validity, even in the presence of the new 'package' of measures, the Commission considered it equally urgent to provide further guidance for facing the extraordinary situation that had arisen as a result of the international financial crisis (Tonetti 2009). The EU's approach was therefore incremental: it did not so much intend to extend the tools that the States already had available, even though in truth this occurred in some cases,[IX] as much as to make them more effective, in view of the extraordinary situation that had arisen.

In fact these rules reaffirm certain principles established at the European level, now summarized in the *Banking Communication*.[X] The permissible aid must be capable of producing minimal distorting effects, and subsequently: the beneficiary enterprises and market sectors must be identified in a clear and non-discriminatory way; the beneficiaries are also called on to share part of the burden in order not to gain advantages over their competitors; the aid must be indispensable,[XI] namely the aid must be well targeted, proportionate and necessary; there is a set of safeguards for minimizing competitive risks;

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

the duration of the aid must be temporary; the rules for selecting beneficiaries are very strict and binding (Tridimas 2010).

This makes it possible to highlight some interesting aspects. The Commission, despite an emergency situation, did not abandon the general principles that guide it in the field of State aid.[XII] The consequence is that the communications adopted are reminders that the ordinary way to restore an orderly condition of the progress of economic relations remains that of the competitive market, limitable only in the cases already anticipated under previous guidelines and notices adopted by the Commission. The actual interpretation of serious disturbance of national economies to justify the extra aid should be made in accordance with the strict criteria established by judicial reviews.[XIII] Competition and free trade among the Member Countries are therefore still the first objectives to be protected. Nevertheless, given the situation, the Commission considered it necessary to adopt a new aid discipline to prevent and correct grave consequences due to the destabilization of the private financial system and systems of production. Their aim therefore was not to rewrite the rules of economic relations (Napolitano 2008), but to direct national public initiatives within a framework of common European principles.

It thus seems clear that Article 107.3.b. TFEU was used by the Commission to actively coordinate public intervention in the economy of Member States; the norm is not an excuse for a general prohibition, but, as has been said,[XIV] a regulatory clause for the coordination of national economic policies. Many of the communications adopted by the Commission to tackle the financial crisis explained that the procedure adopted was intended to prevent a 'rush to subsidies' which would be created among Member States if the Commission should fail to take measures of active support (Schwarze 2010). In essence, the EU, in facing the onslaught of the crisis, found itself faced with two extreme positions: to forbid any state aid that exceeded the limits already defined in other communications, a move that would have been totally ineffective during the crisis, or to allow Member States to act freely, given that they considered the measures hitherto permitted by the EU to be inadequate.

In other words, the Commission, called upon to choose on whether to adopt a policy that privileged a consistency of regulations, trusting in market rules, or to adopt a policy that enhanced extreme differentiation but with the risk of compromising the unitary principles of European law, chose a middle ground, namely regulating the aid policy of the

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

Member States. In this role, the discretion exercised by the European Commission was necessarily significant, because, as was also reaffirmed recently in the *Kotnik* case,[XV] the communications issued by the European Commission, while determining a self-limitation of the power of restraining aids granted by Member States, also did not oblige them to accord to them, from which it follows that the Member States were still free to notify aid granted under conditions other than those set out by the communications, and to submit themselves to the Commission's discretional evaluation.

In the case of resolution procedures operated by the SRB that provided for the use of a single fund, its discretional power was further accentuated. Article 19 Reg. SRM provided for the possibility of the Commission to review its decision at any time, based on a recommendation submitted by the SRB or on its own initiative, so that, in essence, the Commission was endowed with a sort of *jus poenitendi* that was subject to a very limited judicial review. Such broad discretionary features were further confirmed by Article 20 Reg. SRM, which provided that, if the revision of an earlier decision on State aid is requested by a Member State, the Council, acting unanimously, must decide on derogation within seven days, or, in the event of inaction, the Commission itself may do so again. Note that the Commission in this latter circumstance exercises power that the Council failed to use, which characterizes it as a true outcome of a highly discretionary decision.

What has been observed up to now highlights the fact that the application of guidelines on State aid, theoretically aimed at protecting the internal market, is a source of more complex indications than appears at first sight. In part this is due to the very nature of the guidelines on State aid that grant the European Commission a true active coordinating power over State policies and, if it is the SRB that acts, also over European subjects; but, in the case of resolution procedures which result in the use of the single fund, the Commission's power is characterized in actual political terms, meaning by this expression of a power more of pure discretion than a technical power (M. P. Chiti 2014). In other words, the market-based paradigm is not the only yardstick of the resolution procedure (Ioannidis 2016): even if State aids are a measure of last resort, they are a possible tool in the event of the use of the single fund meaning that internal market protection can be subordinated to other interests of financial stability.

Moreover, the Commission's discretion, which occurs within the framework of the SRM, or when the assessments regarding only the countries which have adopted the euro,

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

is wider when compared to when the Commission, but also the Council, applies the guidelines on State aid outside EBU borders, thus marking a difference, albeit contained. As we have seen, the Commission is not only authorized to intervene with another EU body (i.e. SRB) but can review its position even at very short notice.

5. The protection of the public interest: financial stability

Recourse to State aid is, as mentioned in resolution procedures, an extreme solution, since it is conditioned by a prior appeal to shareholders, bondholders and creditors for burden-sharing. This is the so-called bail-in system, which derives from concerns on the limiting of the use of tools that alter competitive market conditions (Wojcik 2016). Nevertheless, even from this perspective one can see how administrative procedures at the European level subsequent to the SRM produced effects of innovation in safeguarding the internal market.

Indeed, Article 18.1 established that among the conditions that make the resolution program applicable, with its typified contents, there is a recognition of the public interest in such measures (Sciascia 2015a, 111-115). Public interest acts, therefore, as a legitimizing factor of the resolution power, which gives the responsible parties – the European bodies, as will be seen shortly – the authority to restrict the liberty of financial operators (Wojcik 2016, 116-126). Citing the public interest as a legitimizing factor highlights the fact that the legislative provision for resolution power is, by itself, not considered a sufficient condition to thus qualify the intervention of subjects entrusted with this task, almost as if one wished to attribute to this express qualification an additional decisional capacity (De Vauplane 2012, 274).

It is actually a rather unusual condition in the panorama of EU law, which rarely explicitly assigns the task of protecting public interests to bodies of the European Union. Actually, as demonstrated by abundant case law,[XVI] the European legal system is usually willing to accommodate reasons of public interest, claimed by Member States, as a suitable motivation to allow for exemptions to prohibitions or obligations originating from the EU.

The confirmation of this additional meaning, which the explicit mention of public interest grants, emerges in paragraph 5 (Article 18), where it is clarified that the public interest includes the resolution measures that proportionately pursue the aims defined in

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

Article 14 Reg. SRM, cited above, and on the proviso that there is evidence of impairment of the ordinary provisions for managing the conditions of insolvency. In other words, the qualification of public interest serves to legitimize the power of imposing resolution measures to compel subjects, that legitimately boast claims against the credit institution subject to resolution, to fulfil their duties.

Article 18 Reg. SRM actually explains that qualifying certain measures as being of public interest authorized the imposition of restrictions on the freedoms of individuals and, in this case, the right of ownership of securities and their values. The imposition of bail-in measures can end up obliging private investors to suffer the hardships of the credit institution's losses, the conversion of venture capital, the devaluation of values, and much more. It was therefore a classic dynamic of conflict between authority and freedom, where the freedoms curtailed by European authorities would in this case be precisely that of the investors.

This prediction received notable confirmation by the CJEU in the course of 2016 about resolution cases activated by the Member States on the basis of legal premises, in which the EU acted in a conditioning capacity. In the *Kotnik* case, for example, the CJEU described the guarantee of the stability of the financial system as a public interest, and this reduced the ability of the principle of legitimate expectation to protect the subjective condition on some investors, who complained about the alleged (and illegitimate) modification of the Commission's conduct in relation to state aid to banking credit (Raganelli 2016). In its judgment the Euro-unitary judge made it clear that even if the European Commission had actually adopted different decisions from past ones to protect the stability of the financial system, the decision can be intended to protect a *superior public interest*, to which other prominent *public interests would be subordinated*, such as legitimate expectations. However, in the *Kotnik* case the possibility of compressing the full right to property consisting of credit loans, as well as the limitation of subordinated rights, was justified by the fact that, according to the CJEU, the banking communication limited itself to setting a condition for State aid to be granted. But it was clearly a logical artifice, since that condition led in any case to utilizing restrictive instruments of credit when – as in the *Kotnik* case – the banks had capital shortfalls that could not be dealt with by using ordinary tools. In other words, *Kotnik* confirmed the full application of Article 18 Reg. SRM, where the binding effects of the resolution are clearly spelled out.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

In the *Ledra* case,[XVII] the issue was the legitimacy of restrictive provisions put in place by Cypriot authorities of some Cypriot banks' creditors' rights, based on a conditioning agreement in accordance with the ESM Treaty. Here, the CJEU assigned to financial stability the qualification of general interest, on the basis of which Article 52 of the Charter of Fundamental Rights justified limitations on the right of ownership, thus equating it with what Article 18 SRM qualifies as public interest.

Lastly, in the *Dowling* case,[XVIII] which also emerged from a recapitalization program undertaken on the basis of conditions set out for financing within the ESM framework, the CJEU countered the arguments of the shareholders, obliged to participate in a recapitalization program with a consequent devaluation of their securities, with the higher public interest of financial stability. Interestingly, the CJEU stressed that, although there is in the EU a public interest for safeguarding shareholders and creditors, "this interest cannot be considered dominant in all circumstances with respect to the public interest in ensuring the stability of the financial system". Thus, here again the idea emerges of a superior interest in financial stability which is also able to prevail over the interests of creditors, even though these too are classified as public.

Therefore, from the perspective of case-law, the public interest in Article 18 Reg. SRM is revealed as a *higher* interest, a *general interest* legitimized directly by the Charter of Fundamental Rights, and even a public interest hierarchically superior to those of other public interests (Raganelli 2016). As just noted, it marries significantly with the provisions of Article 18.7 Reg. SRM, which establishes that the resolution program is subject to the Commission, which can suggest that the Council deny its adoption in the absence of the public interest. It follows, in accordance with the findings in the previous section on State aid, that the assessment of public interest is subject to a highly discretionary prerogative by the Commission and Council. Thus it is evident that the power of resolution presents itself as a broad discretionary power, which is exercised through the consideration of other interests, some of which are also public, and able to restrict basic rights that are traditionally protected by the EU (Macchia 2016).

There is a significant coincidence with the opinions of some authors drawing the same conclusions about the predominance of financial stability when they commented on the OMT case:[XIX] market integrity is less and less a key interest compared to financial stability (Beukers 2014; Ioannidis 2016; Pennesi 2016).

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

6. Accountability and legitimacy

The EBU presents itself as a composite structure, whose responsibilities are shared among various authorities, partly national and partly European, where among the latter some are newly created as a result of secondary legislation, while others were already in force. This complex of authorities and relationships between authorities, combined with the growth of discretionary powers highlighted above, raises important questions for the responsibility which must be exercised and the forms of guarantee of the stakeholders (Lenaerts 2014, 767-769). In this sense both the SSM and the SRM devote specific provisions to the issue by adopting a variety of solutions that can be divided into three categories: i) responsibility for activities carried out in general; ii) responsibilities for individual measures; iii) transparency.

With regard to the first category, firstly the authorities appointed at the top of the two mechanisms, i.e., the SB of the ECB with regard to the SSM and the SRB with regard to the SRM, are required to link up with the European Parliament and, as appropriate, also with the Council, the Commission, the Eurogroup and the Court of Auditors. The presidents of the SB and the SRB transmit to all these subjects the Annual Activity Report (Article 20 Reg. SSM; Article 45 Reg. SRM), which the relative presidents must submit to the European Parliament at a public hearing, as well as to the Eurogroup in the case of the SB, and to the Council in the case of the SRB. Public hearings before the authorized bodies of the Parliament, the Eurogroup and the Council can be arranged at the request of the latter in relation to the performance of the duties assigned by the regulations to the SB and the SRB, in the same way that a duly motivated written response has made them compulsory to queries or issues raised by the Parliament or the Council and the Eurogroup. Of interest in this respect are also inter-institutional agreements, that the two EBU authorities have signed with the European Parliament, that regulate in minute detail ways of reinforcing the relationship between these institutions, and the possibility of calling restricted meetings between representatives of the SB and the SRB and presidents of Parliament and/or presidents of the relevant parliamentary committees for specific in-depth examinations. However, relations with the European Parliament do not stop at the activity carried out in verifying formally assigned tasks, but also develop around other

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

information, since the SB and the SRB are also required to take into account the use of allocated resources, organization and personnel with regard to selection procedures, informal communications given to operators and subjects who the SB and the SRB address, informal consultations, and yet more. In other words, all the activity undertaken by the top authorities of the EBU is connected with the European Parliament in the form of sharing a massive quantity of information (De Bellis 2015, 87; Ibrido 2017, 238-244).

To this must also be added a specific connecting procedure with national parliaments, to which the presidents of the SB and the SRB must also transmit their annual report, with the possibility of critical feedback (Ibrido 2017, 248-252). The involvement of national parliaments makes a less invasive check than in the European Parliament possible, because the powers of the SB and the SRB involve no legal obligations, yet there can be forms of connection that resound more forcefully on public opinion than are available to the European Parliament. Indeed, national parliaments can ask to express their explicit remarks in writing, and may even invite the presidents or other members of the authorities for an exchange of opinions about the interventions regarding specific Member States.

Overall the top-level structures of the EBU are required to give an account of their activities and to answer the observations made by various relevant authorities, and especially to parliamentary authorities in a circuit of democratic accountability that seems resilient. However, a point to be stressed in this context is that no specific form of connection has been developed for the Commission and the Council, though they too are resolution authorities with broad powers. This can of course be explained by the fact that these authorities already receive specific linkage attention with the European Parliament, directly governed by the founding treaties, but we stress the fact to indicate the special condition of the Council, which is both a resolution organ, hence theoretically subject to supervision, and an organ of assessment of the SRB's resolution activities, thus forming a kind of self-controlling authority. In this sense, therefore, the circuit of democratic accountability does not appear even well defined, not least in view of the fact that the Council, though made up of national government representatives, is still a distinct, autonomous body.

As to the responsibility for singular acts by the authorities of supervision and resolution functions, general provisions hold, and Article 263 TFEU is applied in the judicial review of actions taken by the Commission, the Council and the ECB. An indirect confirmation

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

comes from Article 86 Reg. SRM, which recalls Article 263 TFEU regarding provisions made by the SRB, which are therefore covered by general conditions required for the other authorities. This means that at the level of judicial review the expansion of discretionary powers established in the above-mentioned cases has no specific balancing of the judges' powers. This can also be argued in the light of Article 13 Reg. SSM and 37 Reg. SRM, which, with reference to another very effective power attributed to the SB and the SRB, namely the inspection of market players, state that, even where it is necessary to obtain the prior written consent of national judicial authorities, this is limited to checking that the reasons for the inspection are not arbitrary and disproportionate, without actually reviewing the merits, or having the right to get additional information about the request. This is a clear limitation of national judicial power, even if at the same time the cited provisions establish the jurisdiction of the CJEU on the matter, though it has no preventive power of authorization.

The administrative bodies designed for the review, respectively the Administrative Board of Review (Directive 24 Reg. SSM) and the Appeal Panel (Directive 85 Reg. SRM) at least partially compensate for these deficits of pinpointed control of jurisdiction (Sciascia 2015b, 383-387). However, while Article. 24 Reg. SSM gives a generalized competence of control over supervisory acts regarding both procedural and substantive matters, Article 85 Reg. SRM is not as broad and, above all, only limits powers of control to certain provisions that the SRB can take, which do not include those established in Article 18 and 19, to which special attention has been given in this paper. Therefore, even with reference to a review of an administrative nature, the broad discretionary powers exercised, especially in relation to the resolution, do not find adequate counter-measures in terms of controls.

Lastly, still in regard to the individual measures, the regulations establishing the SSM and the SRM regulate procedural right in a variety of ways. In particular, the hearing of a contradictory opinion and an ample right of access in the proceedings relating to supervision by the persons directly affected by the final acts are recognized, in accordance with Article 22 Reg. SSM, while this extension of rights is limited only to penalty proceedings in the case of a resolution function, as per Article 40 Reg. SRM. In general terms the SRM simply foresees applying the general rules of access to documents established in Reg. EC 1049/2001, which is thus also extended to the SRB. It follows that from the perspective of procedural and participatory rights, the reinforcement of

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

protection is partial and, in any case, absent in the presence of the very incisive powers over internal markets that governance over the resolution function provides.

The last parameter by which to measure accountability in exercising the functions included in the EBU is transparency (Alemanno 2014). In spite of a general reference to the right to access and some specific disclosure requirements regarding penalizations, according to Article 41 Reg. SRM, there are a lot of references in which the regulations concerning supervision and resolution ensure the secrecy or confidentiality of information. Starting with the relationships that the SB and the SRB develop with the European Parliament, where specific procedures are provided, private meetings can be held with no obligation to keep records or give news through press conferences. The protocol on the resolution function also expressly refers to the general protection protocol regarding personal data but, unlike its function in regulating access, it extends the relative obligations to the Commission and the Council as well, in their exercise of resolution powers and not only, therefore to the SRB (Article 89 Reg. SRM).

This tendency to enhance the confidentiality of information is even clearer in the regulation on resolution, which refers to Article 88 Reg. SRM's scrupulous safeguard of professional secrecy. The activity carried out by SRB officials and other authorities involved is definitely based on the principle of official secrecy. The same Article 88.5 Reg. SRM establishes a relationship between the presupposition of confidentiality of information and public interest, in the sense that disclosure of information must be conditioned by assessing the impact this can have on the public interest concerning financial, monetary or economic policies, commercial interests on operators and inspections, and investigations and audits. Confidentiality is therefore considered a value for protecting the public interest.

Conclusively, the value of transparency of the acts and activities included in the supervisory and resolution procedures is impaired in favour of confidentiality, so as to become an essentially useless tool in enforcing the accountability of authorities who perform administrative functions in the credit sector. This is due to the assumption that performance of supervision and resolution in financial policies hinges on the ability to keep restricted data and information, but transparency seems destined to get a broad scope of derogation, even beyond what is appropriate. It is worthwhile noting that transparency is never associated with public interest, as opposed to confidentiality.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

7. Concluding remarks

The EBU represents a case in which the EU is experimenting with original forms of administrative integration, in respect of functions that have an impact on the single market. Unlike the architectures of authority employed so far by the EU to safeguard the internal market, the EBU introduces significant innovations that can be summarized thus: decisions relating to the internal market tend to take on a connotation of increasing political discretion at the expense of technical judgment. Until now the growth of the administrative apparatus at the supranational level has functioned to neutralize the political conditioning that especially characterizes national governments, which is usually considered as an obstacle to completing the internal market. However, it now seems that the proliferation of authorities, and the complexity of the mechanisms that govern coexistence, find in discretionary political judgment its extreme synthesis for leading everything back to unity. In this sense the EBU strengthens the well-known phenomenon of 'fragmentation of the executive powers' (Ibrido 2017, 278-286) in the EU legal system with the introduction, though, of an acknowledged discretionary power, particularly in the monetary and financial policy. Overall the EBU seems likely to be able reproduce two types of trends: an administrative integration that actually contains a problematic coexistence of conflicting interests, or an administrative integration that develops a unified process based on several gradated layers (Magliari 2015, 207-210).

This is not at odds with the internal market, but establishes renewed equilibriums. It distinguishes and identifies the public interest, that of financial stability (Tuori-Tuori 2014), which becomes the ranking point to which all other interests, including public ones, are subordinated. The technical assessment of the conditions that sustain the market turns out to be an essential element of knowledge, which, however, is not automatically a rule, an act or a decision. The decisive moment is distinct and separate. Somehow a dynamic between the time for evaluation and the time for decision, which until a few years ago was the exclusive purview of nation states, has been reconstituted on a larger scale, but in the meantime the answerable subjects have changed and only partly coincide with national ones.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

If the understanding of the internal market, measured till now on a kind of gradient of technical/political rapport, established a clear predominance of the former element, the EBU manifests a shift of this balance towards the political nature of decisions, whose main attribution is given to supranational bodies (Veitch 2012). This is evident when the Council comes into play, but is not that different from the hypothesis in which the Commission and even the new supranational authorities of the EBU intervene. Tipping the balance towards the side of political terms means taking on the dialectic of interests with greater care, recognizing a number of rationales and attempting to adopt solutions that establish a dynamic and non-automatic equilibrium (Macchia 2015, 1617-1618; Ibrido 2017, 194). Something new, probably in the middle of a Communitarian Method and an Intergovernmental Method, is coming into view.

Is this step accompanied by adequate safeguards for democratic control (Curtin-Mendes 2011, 116-121)? The answers the EBU case offers tell us that this only partially occurs. We are definitely witnessing a trend toward strengthened connections with parliamentary institutions, primarily the European parliament, and then national parliaments, which gain some freedom for direct contacts with the European authorities, though this does not take place without the presence of important limitations and some exceptions. On other fronts, however, the truth is even less reassuring. Judicial review is very limited and in some cases even virtually absent (De Vauplane 2012, 574); administrative safeguards, which must still be concretely tried, appear only partially capable of filling the gaps of jurisdictional protection. Even the limited recognitions of procedural rights are scarcely encouraging, since at best they are reaffirmed in their general terms in the face of new powers that appear much more incisive. Publicity and transparency seem recessive values in contrast to confidentiality and secrecy, indicating a deep link of the latter with public interests. Basically the gradient shift does not seem to find a strong balance in terms of accountability, formerly sacrificed exclusively in favour of organized interests when the technical component prevailed.

In a complex system, like the European, the transfer of decision quota from the technical to the political level certainly involves a shift in the balance of power, which apparently sees that of the economic operators as recessive, as compared with that of the governing authorities. However, the still insufficient balance of control tools for democratic governance conceals the emergence of power relationships that seem to

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

coalesce according to the prevalent interests of certain Member States. It is worth recalling the role of the Intergovernmental Agreement of 2014 in heavily affecting the use of the Single Resolution Fund in order to prevent the real mutualisation of losses. Restoring the political gradient of decisions does not favour solidarity issues, but new public interests (Baroncelli 2016) behind which other partial pre-existing interests are hidden. A new financial constitution is emerging (Mostacci 2013), without reliable linkages capable of challenging what Lindseth called the 'democratic disconnect' (Lindseth 2010, 234).

Time, and the consolidation of such solutions, will tell us which direction will prevail; in the meantime, guarantees for the internal market are bound to change shape and equilibriums.

---

[*] The author is a associate professor of Administrative Law at the Sapienza University of Rome. Email: fabio.giglioni@uniroma1.it.

[I] I skip any comment on this feature to my previous writing (Giglioni 2015).

[II] See the Commission communication *A roadmap towards a Banking Union*, COM/2012/510 final.

[III] The ESAs were established by the EU Regulations 1093/2010 (EBA), 1094/2010 (EIOPA), 1095 (ESMA) and 1092/2010 (ERSB).

[IV] CJEU, Case C-270/12, *United Kingdom v. European Parliament and Council*.

[V] See Adamski (2014), Chamon (2014) and Simoncini (2015a).

[VI] The crisis was triggered in 2007 in the USA because of sub-prime mortgages and it spread rapidly to Europe because of the high exposure of banks and European financial institutions with regard to these tools. Initially Europe reacted with some rescue measures that were already governed appropriately by some of the Commission's communications on state aid in the rescue and restructuring of enterprises (see the decisions: June 4, 2008, 2009/341/EC, *Sachsen LB*, in Guce, 2009, L 104, October 21, 2008, 2009/775/CE, *IKB*, in Guce, 2009, L 278, October 28, 2009, 2010/262 / EC, *Northern Rock*, in Guce, 2010, L 112). But after the failure of *Lehman Brothers* the crisis worsened significantly and the ordinary tools adopted until then no longer seemed adequate, given the fact that the Commission normally takes at least a year to decide on the aid notifications for which it considers it necessary to initiate a conformity evaluation procedure. Given the gravity of the situation, in two cases at least, by the Commission's own admission (see the report on state aid updated to spring 2009 COM (2009) 164 final), aid was granted to the limits of legitimacy in the absence of restructuring plans by the recipient firm, which led the Community authorities to adopt new, more effective and timely tools; see decisions October 1, 2008, C(2008)5673 final, *Bradford & Bingley* and October 2, 2008 C(2008)5735, *Hypo Real Estate*.

[VII] The tools permitted were those included in the following Commission communications: one on the banking sector, *The application of the rules on State aid adopted for financial institutions in the context of the current global financial crisis* 2008/C 270/02 and subsequent amendments; the one on recapitalization, *The recapitalization of financial institutions in the current financial crisis: limitation of aid to a necessary minimum and safeguards against undue distortions of competition*, 2009/C 10/03; the one on impaired assets, *treatment of activities that have suffered an impairment loss in the Community banking sector*, 2009/C 72/01; *Temporary Community framework for measures to support access to finance the current situation of financial and economic crisis*, 2009/C 83/01; the one on restructuring, *the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the rules on State aid*, 2009/C 195/04; the one on exiting from the crisis, *relative to the application, from January 1, 2011, of the rules on state aid to support measures for banks during the financial crisis*. Another is in the works and is founded on the basis of the *DG Staff Working Document*, with the title *The application of state aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011*, which marks a further step for exiting the system of exceptional aid under Directive 107, p. 3, letter b) TFEU.

[VIII] The reference is to the Communication from the Commission, *Community guidelines on State aid for rescuing and restructuring firms in difficulty*, 2004/C 244/02, enacted on the basis of Directive 107, p. 3, letter c) TFEU.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

The communication is also taken into account with a view to phasing out the emergency aid package that the European Commission has followed so far as ordinary future reference discipline.

[IX] The aid measures of the Impaired Assets Communication appear to innovate the range of tools made available by the communication on rescue and restructuring of firms in difficulty. An example is the opportunity that is given to the beneficiaries not to include in the budget heavily devalued securities or to allocate public resources to equalize the losses due to the devaluation of the securities; see communication 2009/C 72/01, p. 15. See also Liberati (2014).

[X] The new communication in force since August 2013 is exactly that of the Commission, *The application of rules on State aid to support measures for banks during the financial crisis* in 2013/C 216/01.

[XI] In the case of Austria, the Commission noted for instance that no private investor would have offered a series of bank guarantees that for intensity and breadth covered practically the full Austrian banking system under great stress, and this is considered as an essential element for judging the help granted as being indispensable; see Decision, December 9, 2008, C(2008) 8408 final.

[XII] Explicit in this regard is the Banking Communication: see 2008/C 270/02, p. 3.

[XIII] See Court of First Instance, December 15, 1999, T-132/96 and T-143/96, *Freistaat Sachsen and Volkswagen Sachsen GmbH c. Commission*, Rec. 1999, II-3663, p. 167, where it is clear that the serious disturbance in the national economy should be understood as concerning the economy of the entire country and not just certain territorial areas. That approach was also followed by the European Commission: see the decisions of the Committee, May 20, 1998, 98/490/EC, Crédit Lyonnais, in Guce, 1998 L 221; June 27, 2007 2008/263 / EC, *BAWAG-PSK*, in Guce, 2008, L 83.

[XIV] See Battini (1994), who has stressed the primarily function of coordination of State aids rather than the function of safeguarding competition.

[XV] CJEU, Case C-526/14, *Kotnik et al. v. Drzavni zbor Republike Slovenije*.

[XVI] See, for instance, CJEU, Case C-399/14, *Grüne Liga Sachsen eV et al. v. Freeistaat Sachsen*, related to the use of public interest for the inclusion of the sites of Community importance; CJEU, Case C-346/14, *European Commission v. Austria,* related to the sustainable development principle; CJEU, Case C-15/13, *Technische Universität Hamburg-Harburg et al. v. Datenlotsen Informationssystheme GmbH*, related to the use of public interest for in-house providing; CJEU, Case C-351/12, *OSA v. Léčebné lázně Mariánské Lázně a.s.*, related to the limits for the freedom to provide sevices.

[XVII] CJEU, Case from C-8/15-P to C-10/15-P, *Ledra Advertising Ltd. et al. v. European Commission and European Central Bank*.

[XVIII] CJEU, Case C-41/15, *Gerard Dowling et al. v. Minister for Finance*.

[XIX] CJEU, Case C-62/14, *Gauweiler v. European Central Bank*.

References

- Adamski Dariusz, 2014, 'The ESMA Doctrine: A Constitutional Revolution and the Economics of Delegation', *European Law Review*, XXXIX(6): 812-834.
- Alemanno Alberto, 2014, 'Unpacking the Principle of Openness in EU Law: Transparency, Participation and Democracy', *European Law Review*, XXXIX(1): 72-90.
- Avbelj Matej, 2016, 'Constitutional and Administrative Pluralism in the EU System of Banking Supervision', *German Law Journal*, XVII(5): 779-797.
- Baroncelli Stefania, 2016, 'The *Gauweiler* Judgement in View of the Case Law of the European Court of Justice on European Central Bank Independence between Substance and Form', *Maastricht Journal of European and Comparative Law*, XXIII(1): 79-98.
- Bartl Marija, 2015, 'Internal Market Rationality, Private Law and the Direction of the Union: Resuscitating the Market as the Object of the Political', *European Law Journal*, XXI(5): 572-598.
- Bassan Fabio, 2014, 'The resolution procedure: misunderstanding the institutional balance', in Barucci Emilio and Messori Marcello (eds), *Towards the European Banking Union*, Passigli, Florence, 101-107.
- Battini Stefano, 1994, 'Gli aiuti pubblici alle imprese', in Massera Alberto (ed), *Ordinamento comunitario e pubblica amministrazione*, il Mulino, Bologna, 295-338.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

- Beukers Thomas, 2013, 'The new ECB and its relationship with the Eurozone Member States: between central bank independence and central bank intervention', *Common Market Law Review*, L(6): 1579-1620.
- Camilli Enrico Leonardo, 2015, 'The Governance of EU Regulatory Powers in the Banking Sector', in Chiti Edoardo and Vesperini Giulio (eds), *The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives*, il Mulino, Bologna, 23-59.
- Campbell Andrew and Lastra Rosa Maria, 2011, 'Definition of Bank Insolvency and Types of Bank Insolvency Proceedings', in Lastra Rosa Maria (ed), *Cross Border Bank Insolvency*, OUP, Oxford, 29.
- Cappiello Stefano, 2015, 'The EBA and the Banking Union', *European business organization law review*, XVI(3): 421-437.
- Chamon Merijn, 2014, 'The Empowerment of Agencies under the *Meroni* Doctrine and Article 114 TFEU: Comment on *United Kingdom v Parliament and Council (Short-selling)* and the Proposed Single Resolution Mechanism', *European Law Review*, XXXIX(3): 380-403.
- Chiti Edoardo and Teixeira Pedro Gustavo, 2013, 'The constitutional implications of the European responses to the financial and public debt crisis', *Common Market Law Review*, L(3): 683-708.
- Chiti Edoardo, 2013, 'Il meccanismo di vigilanza unico: un passo avanti e tre problemi', *Giornale di diritto amministrativo*, XIX(11): 1025.
- Chiti Mario Pilade, 2014, 'The new Banking Union: the passage from banking supervision to banking resolution', *Rivista italiana di diritto pubblico comunitario*, XXIV(2): 607-616.
- Chiti Mario Pilade, 2016, 'La legittimazione per risultati dell'Unione europea quale "comunità di diritto amministrativo"', *Rivista italiana di diritto pubblico comunitario*, XXVI(2): 397-420.
- Clarich Marcello, 2013, 'I poteri di vigilanza della Banca centrale europea', *Diritto pubblico*, XIX(3): 975-1009.
- Craig Paul and Markakis Menelaos, 2016, '*Gauweiler* and the Legality of Outright Monetary', *European Law Review*, XLI(1): 4-24.
- Curtin Deirdre and Mendes Joana, 2011, 'Transparence et participation: des principes démocratiques pour l'administration de l'Union européenne', *Revue française d'administration publique*, CXXXVII-CXXXVIII: 109-121.
- De Bellis Maurizia, 2015, 'European Financial Supervision after the Crisis: Multi-Speed Models within a Two-Track Framework', in Chiti Edoardo and Vesperini Giulio (eds), *The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives*, il Mulino, Bologna, 61-92.
- De Lucia Luca, 2013, 'I ricorsi amministrativi nell'Unione europea dopo il Trattato di Lisbona', *Rivista trimestrale di diritto pubblico*, LXIII(2): 323-368.
- Giglioni Fabio, 2015, 'The European Banking Union as a New Model of Administrative Integration?', in Chiti Edoardo and Vesperini Giulio (eds), *The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives*, il Mulino, Bologna, 123-151.
- Ibrido Renato, 2017, *L'Unione bancaria europea. Profili costituzionali*, Giappichelli, Torino.
- Ioannidis Michael, 2016, 'Europe's new tranformations: how the EU Economic Constitution changed during the Eurozoe crisis', *Common Market Law Review*, LIII(5): 1237-1282.
- Kern Alexsander, 2015, 'European Banking Union: A Legal and Institutional Analysis of the Single Supervisory Mechanism and the Single Resolution Mechanism, *European Law Review*, XL(2): 154-187.
- Kjaer Poul F., 2010, *Governing and governance. On the emergence, function and form of Europe's post-national constellation*, Hart, Oxford.
- Krauskopf Bernd, Langner Julian and Rötting Micheal, 2014, 'Some Critical Aspects of the European Banking Union', *Banking & Finance Law Review*, XXIX(2): 241-270.
- Laguna de Paz José Carlos, 2014, 'El mecanismo europeo de supervisión bancaria', *Revista de Administración Pública*, CLXXXXIV(2): 49-77.
- Lamandini Marco, 2003, 'Autorità di vigilanza e mercati finanziari: verso un ridisegno di competenze?', *Mercato Concorrenza Regole*, V(1): 117-128.
- Lastra Rosa Maria, 2013, 'Banking Union and Single Market: Conflict or Companionship?', *Fordham International Law Journal*, XXXVI: 1190-1224.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

- Lenaerts Koen, 2014, 'EMU and the European Union's Constitutional Framework', *European Law Review*, XXXIX(6): 753-769.
- Liberati Matteo, 2014, 'La crisi del settore bancario tra aiuti di stato e meccanismi di risanamento e risoluzione', *Rivista italiana di diritto pubblico comunitario*, XXIV(6): 1339-1366.
- Lindseth Peter, 2010, *Power and Legitimacy: Reconciling Europe and the Nation-State*, Oxford University Press, Oxford.
- Macchia Marco, 2015, 'L'architettura europea dell'unione bancaria tra tecnica e politica', *Rivista italiana di diritto pubblico comunitario*, XXV(6): 1579-1618.
- Macchia Marco, 2016, 'Modelli di coordinamento della vigilanza bancaria', *Rivista trimestrale di diritto pubblico*, LXVI (2): 367-402.
- Magliari Andrea, 2015, 'The Implications of the Single Supervisory Mechanism on the European System of Financial Supervision. The Impact of the Banking Union on the Single Market', in Chiti Edoardo and Vesperini Giulio (eds), *The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives*, il Mulino, Bologna, 185-210.
- Moloney Niahm, 2010, 'EU financial market regulation after the global financial crisis: "more Europe" or more risks', *Common Market Law Review*, XLVII(5): 1317-1383.
- Mostacci Edmondo, 2013, 'La sindrome di Francoforte: crisi del debito, *costituzione finanziaria europea* e torsioni del costituzionalismo democratico', *Politica del diritto*, XLIV(4): 481-558.
- Napolitano Giulio, 2008, 'Il nuovo Stato *salvatore*: strumenti di intervento e assetti istituzionali', *Giornale di diritto amministrativo*, XIV(11): 1083-1094.
- Napolitano Giulio, 2010, 'L'assistenza finanziaria europea e lo Stato "co-assicuratore"', *Giornale di diritto amministrativo*, XVI(10): 1085-1097.
- Pennesi Francesco, 2016, 'The impossibile constitutional reconciliation of the BVerfG and the ECJ in the OMT case. A legal analysis of the first preliminary referral of the BVerfG', *Perspectives on Federalism*, VIII (3): 1-21.
- Raganelli Biancamaria, 2016, 'Gli aiuti di stato alle banche nel contesto della crisi finanziaria', *Giornale di diritto amministrativo*, XXII(6): 773-785.
- Randell Charles, 2013, 'European banking union and bank resolution', *Law and Financial Markets Review*, VII(1): 30-35.
- Sbrescia Vincenzo Mario, 2011, 'Verso il superamento dello Stato regolatore? Poteri pubblici e mercati dopo la crisi economica internazionale', *Rivista giuridica del Mezzogiorno*, XXV(3): 671-710.
- Schwarze Jürgen, 2010, 'The Future of the European Public Law', in Birkinshaw Patrick and Varney Mike (eds), *The European Union Legal Order after Lisbon*, Kluwer Law International, Amsterdam, 3-31.
- Sciascia Giuseppe, 2015a, 'Recovery and Resolution in the EU: Devising a European Framework', in Chiti Edoardo and Vesperini Giulio (eds), *The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives*, il Mulino, Bologna, 93-120.
- Sciascia Giuseppe, 2015b, 'Unione bancaria – La revisione quasi giurisdizionale delle decisioni in materia di supervisione e risoluzione', *Banca Impresa Società*, XXXIV(3): 363-390.
- Simoncini Marta, 2015a, 'The Erosion of the *Meroni* Doctrine: the Case of the European Aviation Safety Agency', *European Public Law*, XXI(2): 309-342.
- Simoncini Marta, 2015b, 'Legal boundaries of European Supervisory Authorities (ESAs) in the fincial markets. Tensions in the development of true regulatory agencies', *Yearbook of European Law*, XXXIV(1): 319-350.
- Tonetti Alessandro, 2009, 'La disciplina comunitaria e globale degli aiuti a favore del sistema bancario', *Giornale di diritto amministrativo*, XV(6): 659-672.
- Tosato Gian Luigi, 2014, 'The governance of the banking sector in the EU – A dual system', in Barucci Emilio and Messori Marcello (eds), *Towards the European Banking Union*, Passigli, Florence, 23-31.
- Tridimas Takis, 2010, 'EU Financial Regulation: From Harmonization to the Birth of EU Federal Financial Law', in Birkinshaw Patrick and Varney Mike (eds), *The European Union Legal Order after Lisbon*, Kluwer Law International, Amsterdam, 117-135.
- Tuori Kaarlo and Tuori Klaus, 2014, *The Eurozone crisis. A constitutional analisys*, Cambridge University Press, Cambridge.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License

- Veitch Scott, 2012, 'Juridification, Integration and Depoliticisation', in Augenstein Daniel (ed), *'Integration through Law' Revisited: The Making of the European Polity*, Ashgate, Farnham, 85-97.
- Wojcik Karl-Philipp, 2016, 'Bail-in in the Banking Union', *Common Market Law Review*, LIII(1): 91-138.

Except where otherwise noted content on this site is licensed under a Creative Commons 2.5 Italy License