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This handbook analyses the European Banking Union legal framework focusing on legislative acts (regulations and directives), case law and the resolution procedures. In addition, it will pay attention to the division of responsibilities between the ECB and the national authorities, with special attention to the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). To give a more complete picture, the book will also cover the implementation of European Deposit Insurance Scheme (so called third pillar) still under construction.

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# The Palgrave Handbook of European Banking Union Law

Edited by Mario P. Chiti · Vittorio Santoro

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- Case T-786/14, *Bourdouvali/Council of the European Union*, 13.7.2018  
 Case T-680/13, *Chrysostomides/Council and Others*, 13.7.2018  
 Case T-733/16, *Banque Postale/ECB*, 13.7.2018  
 Cases T-133/16 to T-136/16, *Caisse régionale de crédit agricole mutuel Alpes Provence/ECB*, 13.7.2018  
 Case T-712/15, *Crédit mutuel Arkéa/ECB*, 13.12.2017; on appeal before the Court of Justice in Case C-152/18  
 Case T-247/16, *Trasta Kommerbanka/ECB*, [order] 12.9.2017  
 Case T-122/15, *Landeskreditbank Baden-Württemberg/ECB*, 16.5.2017; on appeal before the Court of Justice in Case C-450/17  
 Case T-191/99, *David Petrie and others/European Commission*, 11.12.2001  
 Case T-132/96 and T-143/96, *Freistaat Sachsen and Others/Commission*, 15.12.1999

**European Court of Human Rights**

- Decision 9.4.2015, *Adorisio/The Netherlands*, no. 47315/13, 48490/13 and 49016/13  
 Decision 10.7.2012, *Grainger/United Kingdom*, no. 34940/10  
 Decision 24.11.2005, *Capital Bank AD/Bulgaria*, no. 49429/99  
 Decision 21.10.2003, *Credit and Industrial Bank/the Czech Republic*, no. 29010/95

**Austria**

Verfassungsgerichtshof, 3.7.2015, G 239/2014 ua, G 98/2015-27

**Germany**

- Bundesverfassungsgericht, 2 BvR 1685/14, 2BvR 2631/14 (Bankenunion) [pending]  
 Landesgericht (LG) München I, 8.5.2015, 32 O 26502/12, *Bayern LB/Hypo Alpe Adria*, 32 O 26502/12  
 Bundesgerichtshof (BGH), 1.7.2014, II ZR 381/13

**Spain**

- Tribunal Supremo, Sala de lo Civil, 20.1.2014, *Caixa d'Estalvis del Penedès (hoy la entidad Mare Nostrum, S.A.)/Marbres Togi S.L.*  
 Tribunal Supremo, Sala de lo Civil, 9.5.2013, *Asociación de Usuarios de los Servicios Bancarios/Banco Bilbao Vizcaya Argentaria, SA*  
 Tribunal Supremo, Sala de lo Civil, 21.11.2012, 2012:11052

**United Kingdom**

- UK Supreme Court, 24.11.2016, *Goldman Sachs International/Novo Banco SA*, [2016] EWCA Civ 1092  
 UK High Court of Justice, Commercial Court, 7.8.2015, *Goldman Sachs International/Novo Banco SA*, [2015] EWHC 2371 (Comm)

**Contents**

## Part I The European Banking Union and the European Union Architecture

### 1 Multilevel Governance in Banking Regulation

*Rosa M. Lastra*

- |   |   |    |
|---|---|----|
| 1 | Introduction  | 3  |
| 2 | The Rationale for Regulation  | 3  |
| 3 | Historical Developments   | 6  |
| 4 | Regulatory Responses  | 8  |
| 5 | The Impact of the Global Financial Crisis upon Global and EU Developments | 12 |
| 6 | Concluding Observations   | 15 |
|   | References  | 17 |

### 2 European Banking Union Within the System of European Banking and Monetary Law

*Christos V. Gortsos*

- |     |   |    |
|-----|---|----|
| 1   | A Definition of EU Banking Law and Its Evolution  | 19 |
| 2   | On the Establishment of the Banking Union   | 21 |
| 3   | The Legal Acts Establishing the Two First Main Pillars of the Banking Union and the Related Single Rulebook | 24 |
| 3.1 | The First Pillar: The Single Supervisory Mechanism (SSM)  | 24 |
| 3.2 | The Second Pillar: The Single Resolution Mechanism and the Single Resolution Fund                           | 25 |
| 3.3 | The Underlying Single Rulebook  | 27 |

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

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

<b>7 The Future of the European Banking Union: Risk-Sharing and Democratic Legitimacy</b>	<b>135</b>
<i>Pedro Gustavo Teixeira</i>	
1 Introduction	135
2 The Legal History of Risk-Sharing and Democratic Accountability in the Single Financial Market	136
2.1 Beginnings	136
2.2 Multilevel Governance	137
2.3 The Financial Crisis	138
3 Risk-Sharing in the Banking Union	140
3.1 The Direct Recapitalisation of Banks by the ESM	140
3.2 The Prohibition of Bail-Outs and the Introduction of Bail-In	141
3.3 The Single Resolution Fund	142
3.4 The Privatisation of Risk-Sharing	143
4 The Democratic Legitimacy of the Banking Union	144
4.1 Legal Safeguards for Decision-Making	144
4.2 Institutional Independence	145
4.3 Multilevel Accountability	146
4.4 Achieving Legitimacy	148
5 The Future Sustainability of the Banking Union	148
5.1 A Future Without Risk-Sharing?	148
5.2 A Future Without Democratic Legitimacy?	151
5.3 Conclusion	152
References	152
 <b>Part II The Three Pillars of the European Banking Union</b>	 <b>155</b>
<b>8 Single Supervision Mechanism: Organs and Procedures</b>	<b>157</b>
<i>Raffaele D'Ambrosio</i>	
1 Outlook	157
2 The Incomplete Separation of the Monetary Policy From the Supervisory Functions and Its Side Effects on the ECB Organization and Decision-Making Process	158
3 The Uncertain Allocation of Some Supervisory Tasks and Powers to the ECB and to the NCAs	160
3.1 Tasks Conferred on the ECB and Tasks Remaining in the Remit of NCAs	160

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

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

4	Recovery Plans: Their Structural Characteristics and Strategic Aims	276
4.1	The EBA Regulatory Technical Standards	277
4.2	Drawing up a Recovery Plan. From Theory to Practice	278
4.3	Integrating the Recovery Plan into a Bank's Corporate Governance	280
4.4	Scenarios and Trigger Events in the Recovery Plan	283
4.5	Recovery Measures (Options) and Recovery Plan Assessment	284
5	Resolution Plans. Systematic Profiles	288
5.1	Content and Evaluation of Resolution Plans	289
6	Planning and Coordination at Group Level	291
7	Responsibility for Resolution Plans	293
8	Conclusions	295
	References	297
<b>13</b>	<b>The Relevance of the Resolution Tools Within the Single Resolution Mechanism</b>	299
	<i>Jens-Hinrich Binder</i>	
1	Introduction	299
2	The Toolbox and First Cases—Overview	301
2.1	The Elements of the Toolbox and the Framework for Its Application	301
2.2	The First Cases	303
3	The Relevance of the Toolbox Within the SRM: Functional Characteristics and Limitations	304
3.1	Overview	304
3.2	Delineating the Lower Threshold: The Function and Implications of the 'Public Interest Test'	305
3.3	Redefining the Relevance of the Resolution Tools: Functional Characteristics, Strengths and Weaknesses	310
3.4	Delineating the Upper Threshold: Limitations in Large-scale Insolvencies and Systemic Crises	315
4	Conclusions	316
	References	317
<b>14</b>	<b>Minimum Requirement for Own Capital and Eligible Liabilities</b>	321
	<i>Marco Lamandini and David Ramos Muñoz</i>	
1	Introduction	321

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

3	First Resolution Experiences: The BES Case in Portugal, An Overall View	379
3.1	The BES Precedent in Context	379
3.2	The BES Precedent: Key Issues at Stake	381
4	BES Case: Other Recent Developments with Supranational Corollaries and Relevant for Post-resolution Stages	385
4.1	Recent Developments with Supranational Corollaries	385
4.2	BES Case: Other Recent Developments Relevant for Post-resolution Stages	387
5	Enforcement of EU Resolution Regime and Public Interest Test: Recent Cases of Banks in Financial Distress Dealt with at National Level	388
5.1	Relevant Precedents	388
5.2	Final Considerations	389
	References	390
<b>17</b>	<b>The Third Pillar of the Banking Union and Its Troubled Implementation</b>	<b>393</b>
	<i>Concetta Brescia Morra</i>	
1	The Rationale for Deposit Insurance Schemes	393
2	The Evolution of the European Regulation of DGSs	394
3	The Main Features of the Current DGSD	395
4	The Proposal for an EDIS	396
5	The Obstacles for Establishing a Fully-Fledged EDIS	398
5.1	Different Banking Systems in Europe	398
5.2	The Discussion on the Legal Basis	401
6	The Limited Mandate of the EDIS Under the Current Commission's Proposal	405
	References	407
	<b>Index</b>	<b>409</b>



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## 5

## The System of Administrative and Jurisdictional Guarantees Concerning the Decisions of the European Central Bank

Marcello Clarich

### 1 Introduction

The administrative and jurisdictional remedies provided for by the European legal system in relation to the acts of the European institutions and agencies constitute an essential feature which concurs to define the European Union as an entity founded on the principle of the rule of law. The latter, in addition to other fundamental values (dignity, freedom, democracy, etc.), is referred to in Article 2 of the Treaty on European Union.

Jurisdictional remedies are recognized in the Treaties. Article 263 of the Treaty on the Functioning of the European Union grants in general terms to the Court of Justice of the European Union the power to review the legality of the acts of all the institutions and bodies, of the Union intended to produce legal effects toward third parties (Chiti 2013). The European Central Bank is certainly included in such institutions.

Administrative mechanisms of review are foreseen in several European regulations and directives, and therefore, the non-judicial review of the decisions of the European Central Bank (ECB) on banking supervision as foreseen by Council Regulation (EU) 15 October 2013 no. 1024/2013 establishing the Single Supervisory Mechanism on European Credit Institutions and

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entrusted to the Administrative Board of Review does not in itself constitute a novelty (Article 24) (Barucci and Messori 2014; Chiti and Santoro 2016; Clarich 2014).

In particular, in the banking sector, Regulation (EU) no. 1093/2010, establishing the European Banking Authority, provides for a competent Board of Appeal to decide requests for review filed against acts of the same authority (Article 60) (Brescia Morra et al. 2017; Brescia Morra 2018; Blair 2016). In addition, Regulation (EU) 15 July 2014 no. 806/2014 establishes an Appeal Panel for the purposes of deciding on appeals against decisions of the Board of Appeal on the procedures for the resolution of credit institutions (Article 85).

Administrative remedies are provided also with reference to other sectors of activity in which the regulatory authorities operate at national level. The electricity sector can be taken as an example, in fact, Regulation (EC) of 13 July 2009 no. 713 establishing the Agency for the Cooperation of National Energy Regulators grants the right of appeal against decisions of such Agency before the Board of Appeals (Article 19).

Considering the administrative nature of the remedies, according to the principles of the rule of law, it is nevertheless ensured that judicial remedies can be brought against the final decision which concludes the procedure. Administrative and jurisdictional remedies should therefore be considered as tools to be used generally in sequence. As will be seen, also Regulation (EU) no. 1024/2013 establishing the Administrative Board of Review of acts taken by the European Central Bank on banking supervision, without prejudice to the right to appeal before the Court of Justice of the European Union under the Treaties.

This essay examines the procedure and the nature of the review before the Administrative Board of Review established by Regulation (EU) no. 1024/2013 with the aim of highlighting its specific features especially concerning the parallel remedies provided for by the aforementioned European banking legislation (see De Lucia 2013).

## 2 The General Features of the New Administrative Remedy

The discipline of the Administrative Board of Review and the procedure rules are contained in the Article 24 of Regulation no. 1024/2013 and, on the basis of the delegation contained in para. 10 of the Article, by an ECB Decision approved on 14 April 2014 (ECB/2104/16 in GUCE 14.6.2014 L175/47).<sup>1</sup>

<sup>1</sup> See ECB/2104/16 in GUCE 14.6.2014 L175/47.

It is convenient to start from the recitals of the Regulation from which at least three indications are drawn.

Firstly, the recital no. 60 states that the Court of Justice of the European Union (CJEU) exercises, pursuant to Article 263 of the TFEU, the review of the legality of acts of, inter alia, the ECB, other than recommendations and opinions, intended to produce legal effects vis-à-vis third parties. Therefore, the last para. of the Article 24 of the Regulation, as mentioned above, expressly reserves the right to bring proceedings before the CJEU in accordance with the Treaties.

Secondly, the recital no. 64 describes the review mechanism in general terms. It clarifies that it should pertain to the procedural and substantive conformity with such Regulation of the decisions of the European Central Bank "while respecting the margin of discretion left to the ECB to decide on the opportunity to take those decisions".

Furthermore, it specifies that this is an "internal review" and that the procedure should "provide for the Supervisory Board to reconsider its former draft decision as appropriate".

Thirdly, it should be noted that the Administrative Board of Review must be composed of individuals of a high repute, ensuring an appropriate geographical and gender balance across the Member States.

Given these indications, Article 24 regulates both the composition of the Administrative Board of Review and the review mechanism.

For what concern the first aspect, the Administrative Board of Review is composed of five individuals (with two additional substitutes) of high repute, with proven record of relevant knowledge and professional experience in the field of banking services or other financial services, named afterward a public call for expressions of interest (para. 2). However, it is excluded that in-service employees of the ECB and of the European and national authorities involved in the supervisory functions can be appointed in order to avoid the internal remedy from becoming too internal. The term is of five years and can be extended only once.

Members of the Administrative Board of Review shall act "independently and in the public interest" and must therefore make a public declaration indicating any direct or indirect interest which might be considered prejudicial to their independence (para. 4).

Ultimately, the Administrative Board of Review, although incardinated within the ECB, enjoys organizational and functional autonomy which makes it a third part compared to the ECB's apparatus and other bodies. Independence is also guaranteed particularly with regard to regulated subjects through the obligation to declare conflicts of interest.



Compared to administrative remedies established in other contexts, including the financial one (Regulations (EU) no. 1093/2010 and no. 806/2014 (respectively, Article 60, para. 6, and Article 85, para. 10),<sup>2</sup> the Administrative Board of Review cannot adopt rules for its own functioning and procedure which Article 24 (10) refers to a decision adopted by the ECB.

Such difference is explained, as will be further examined in the next paragraph, by the nature of internal organ of the Commission.

The ECB Decision adopted pursuant to Article 24 takes over the provisions of the latter and adds some element of detail.

The Administrative Board does not have a structure of its own as the secretary functions are carried out by the Secretary of the Supervisory Board (Article 6). The Secretary carries out the examination of reviews, organizes the hearings, drafts the reports of works and keeps the register of reviews. In a broader perspective, the ECB provides the Administrative Board with adequate support including legal competences. The appropriateness of these choices, perhaps dictated by the need to contain the costs of the structure, can lend itself to some doubts, since greater division between the internal structures of the two above-mentioned organs would have ensured more clearly, even in terms of its external image, the distinction between the controlling and the controlled organ.

So far, compared to other similar commissions, especially those set up in financial matters, the Administrative Board of Review does not present particular features. For example, Article 85 (1) of the Regulation (EU) no. 806/2014 governing the Appeal Board contains provisions identical to those examined so far.

The first specific characteristic of the new remedy foreseen in the banking sectors is represented by its relationship with the appeal before the Court of Justice of the European Union. As mentioned above, para. 11 of Article 24 expressly reserves the right to bring proceedings before the CJEU in accordance with the Treaties. Therefore, as explained in recital 4 of the ECB Decision of 14 April 2014, the review is optional.

On the other hand, further sectoral disciplines generally provide that the activation of non-jurisdictional remedies is preliminary to the jurisdictional proceedings.

For instance, Article 91 of the Statute for Officials of the European Community provides that the administrative complaint (proposed before the appointing authority) constitutes a condition for the admissibility of the judicial remedy

<sup>2</sup> Thus, in the financial sector, in the case of the Boards of Appeal provided for by Regulations (EU) no. 1093/2010 and no. 806/2014 (respectively, Article 60, para. 6, and Article 85, para. 10).

(para. 2). Even in the case of Community trademarks, the appeal at administrative level is prejudicial to the appeal before the Court of Justice of the European Union (Article 65 of Regulation (EC) 26 February 2009 no. 207/2009).

The purpose of such remedies is to deflate jurisdictional litigation, especially in the areas, as those mentioned above, which involve a large number of stakeholders, have lower costs and short-term decision-making, and guarantee a greater specialization.

Even in financial matters, both in the case of the European Banking Authority and in the case of the Board responsible for the resolution of credit institutions (Single Resolution Board), the provisions issued by the competent bodies can be appealed before the Court of Justice of the European Union only when there is no right of appeal before the Board of Appeal (Article 61 of Regulation no. 1093/2010 and Article 86 of Regulation (EU) no. 806/2014) (see Lamandini 2014).

To sum up, the new administrative remedy established under the Single Supervisory Mechanism is not conceived as a filter for the access to European jurisdiction with deflationary purposes. Instead, it can represent a first form of less costly protection for the subjects of ECB measures characterized by short-time decisions.

### 3 The Internal Character of the Review

The optional nature of the administrative remedy now examined constitutes an obligatory choice considering the fact that the Treaty envisages the Governing Council and the Executive Board as the only decision-making bodies of the ECB (Article 283 of the TFEU).

Without a modification of the TFEU, it would not have been possible with Regulation no. 1024/2013 to establish a new body with autonomous powers.

Moreover, the newly established Supervisory Board, which is responsible for banking supervision functions, is also defined as an internal body of the ECB (Article 26, para. 1). It is responsible for carrying out preparatory works regarding the supervisory tasks conferred on the ECB and proposing to the Governing Council "complete draft decisions" to be adopted by the latter (generally through a mechanism of silent consent) (para. 8). In substance, from a formal point of view, the provisions on banking supervision are imputed, not on the Supervisory Board, but on the Governing Council. This solution guarantees, as far as possible, the distinction between the new supervisory functions and those, more traditional, concerning monetary

policies. The Article 25 of Regulation no. 1024/2013 provides for a series of measures aimed to implement such division, establishing for example that the Governing Council operates with separate meetings and agendas.

According to the same logic, the Administrative Board of Review, as specified in para. 1 of Article 24 of the Regulation (EU) no. 1024/2013, is established for the purposes of carrying out “an internal administrative review of the decisions taken by the ECB in the exercise of the powers conferred on it by this Regulation”.

The internal nature of the review necessarily implies that the decisions taken by the Administrative Board of Review in relation to the requests of re-examination submitted by natural or legal persons are not binding. In fact, they are defined by the Regulation as an “opinion” of which the ECB Supervisory Board must take into account by submitting to the Governing Council of the ECB a new draft decision (Article 24, para. 7).<sup>3</sup> Article 16(5) of the ECB Decision of 14 April 2014 clarifies that the opinion “does not bind the Supervisory Board, nor the Governing Council”.

Once the opinion has been obtained, the Supervisory Board adopts a new draft decision that repeals the previous one and replaces it with a decision with identical content or with an amended one that is submitted to the Governing Council of the ECB for formalization through the silent assent mechanism (para. 7). Ultimately, the opinion, which must contain reasons,<sup>4</sup> to resume the traditional classifications in terms of advisory function, is not binding and takes the form of a request for re-examination by the institution that issued the provision.

Furthermore, neither Article 24 of the Regulations, nor Article 17 of the ECB Decision of 14 April 2014 implementing the aforementioned Regulation, expressly provides for a specific obligation to state reasons which may induce the Supervisory Board to confirm the draft decision by disregarding the opinion. In reality, such an obligation seems to be implicit in the duty to take into account and evaluate the opinion of the Administrative Board of Review provided for by the above provisions.

A detail which confirms the particular nature of the remedy consists in the fact that the Supervisory Board in assessing the opinion of the Board of Review is not limited to the examination of the grounds relied upon by the applicant as set forth in the notice of review. The proposal for a new draft decision to be

<sup>3</sup>Article 16(5) of the ECB Decision of 14 April 2014 clarifies that the opinion “does not bind the Supervisory Board, nor the Governing Council”.

<sup>4</sup>See Article 16(4) of the ECB Decision of 14 April 2014.

sent to the Governing Council of the ECB “may also take other elements into account” (Article 17, para. 1, of the ECB Decision of 14 April 2014).

In conclusion, the administrative review is part of the decision-making process aimed at adopting the provisions on banking supervision in continuity with the functions assigned to the Supervisory Board, which, in considering the Board’s opinion and submitting a new draft decision to the Governing Council, doesn’t have any particular limitation in re-evaluating the case in question.

This means that the administrative review should be framed, rather than in the logic of the *adjudication* typical of alternative remedies to jurisdiction, in that of *implementation*, that is, the best application of sector regulations to specific concrete cases (see De Lucia 2013, p. 331).

This approach is confirmed by the first jurisprudential interpretations. In deciding an appeal for the annulment of an ECB decision on banking supervision, the Fourth Extended Chamber of the General Court considered that the opinion of the Administrative Board of the Review and the final decision of the ECB should be considered in a unitary way in order to identify the reasoning behind the latter (judgment of the General Court (Fourth Chamber, Extended Composition) of 16 May 2017 in Case T-122/15 on an action brought by the Landeskreditbank Baden-Württemberg—Forderbank against the European Central Bank). It would be suitable to focus more closely on the case.

The applicant bank challenged an ECB’s decision to subject it to its direct supervision as a significant entity within the meaning of the Regulation (EU) no. 1024/2013, requesting for this reason a re-examination of the decision by the Administrative Board of Review. The latter had issued an opinion which concluded for the legitimacy of the decision of the ECB. The ECB then issued a new substitutive decision of the previous one which confirmed however the qualification of the applicant as a significant entity. The appeal lodged at the Court of First Instance raised several grounds, among which the violation of the obligation to state reasons in relation to the withholding tax does not have any particular circumstances that could make the classification as significant entity to be subject to direct supervision by the ECB.

However, the Court firstly recalls the case law according to which the statement of reasons does not necessarily have to specify all the relevant elements of fact and law, having to refer not only to its content but also to its context and to the legal rules governing the matter in question (para. 124). Then, the Court notes that the contested ECB decision followed the proposal contained in the opinion of the Administrative Board of the Review and considers that “the explanations contained therein may be taken into account for the purpose of determining whether the contested decision contains a sufficient statement of rea-

sons" (para. 127). Basically, from "*a combined reading of the contested decision and the Administrative Board of Review's Opinion*" (Part 128) could be deduced the reasons why the ECB had considered that the particular circumstances that would have justified the maintenance of supervision by the national authority were not demonstrated by the applicant.

Lastly, despite the formal autonomy of the internal opinion of the Administrative Board of Review and of the ECB's decision, the two acts should be considered as steps in a unitary procedure for implementing European banking supervision legislation.

The internal non-binding review model for the deciding authority introduced by Regulation no. 1024/2013 is therefore a peculiarity that can't be found in other contexts.

Indeed, the degree of binding nature of decisions on administrative petitions is generally higher. For some remedies, the decision is extended to the merit of the issues and replaces the one under review. For example, in the case of Community trademarks, the Board of Appeal may "*exercise any power within the competence of the department which was responsible for the decision appealed*" (Article 64 (1) of Regulation (EC) 207/2009). Alternatively, the Board of Appeal may remit the case to the department whose decision was appealed which is however bound by the *ratio decidendi* of the Board of Appeal's decision (para. 2).

In the case of the Board of Appeal competent to examine appeals against the provisions of the European Banking Authority (and other financial authorities), the decision of merit taken at the end of the procedure, if it does not confirm the contested provision, is binding on the Authority to which case is remitted and which is required to adopt an amended decision (Article 60 (5)). The same model is established by Regulation (EU) 806/2014 on the resolution of credit institutions (Article 8, para. 8).

#### 4 Other Procedural Profiles

Another feature of the administrative review of the ECB's decisions on banking supervision concerns the interim measures.

In fact, on the one hand, according to the general rule applied for this type of remedies, the request for re-examination has no suspensive effect; on the other hand, however, the Administrative Board of Review cannot directly grant any interim measures, but can only propose the Governing Council of the ECB to do so (Article 24, para. 8, of Regulation 1024/2013). The Governing Council takes a decision, after having heard the opinion of the

Supervisory Board as appropriate (Article 9 (2) of the ECB Decision of 14 April 2014).

As a general rule, for other types of non-jurisdictional remedies, the suspension of the measure under review is one of the powers of the quasi-judicial body. Thus, in particular the Boards of Appeal provided for by Regulation (EU) no. 1093/2010 and by the Regulation (EU) no. 806/2014 mentioned several times may suspend the execution of the contested decision (respectively, Article 60 (3) and Article 85 (6)).

The failure to assign this power to the Administrative Board of Review is justified once again in relation to the internal character of the remedy.

The same reason justifies the exception to the general principle concerning administrative remedies according to which the decisions of the deciding body are published. In particular, according to Regulation (EU) no. 1093/2010, the decisions taken by the Board of Appeal are published by the Authority (Article 60, para. 7).

On the contrary, according to Regulation (EU) no. 1024/2013, the opinions expressed by the Administrative Board, as well as the new draft decision presented by the Supervisory Board and the final decision adopted by the Governing Council of the ECB, are notified to the parties. Publication is therefore not foreseen. The same rule is also set by Article 85, par. 9, of the Regulation (EU) no. 806/2014 on the resolution of banking crises.

In the event of an appeal against the new ECB decision which is not in accordance with the Administrative Board's opinion, the appellant can certainly use the content of the opinion of the latter for its review in its favor and therefore the Court of Justice of the European Union can decide the case based on a variety of views and therefore more thoughtfully. However, the failure to publish the opinions prevents the establishment of a "jurisprudence" of the Administrative Board of Review aimed at guiding the behavior of operators in the sector.

It is not relevant at this point to give a detailed account of all the procedural rules contained specifically in the ECB Decision of 14 April 2014.

However, it should be noted that Regulation (EU) no. 1024/2013 provides a very tight time scan, and this is in line with the requirement, typical of non-jurisdictional remedies, that the administrative review phase will run out quickly. The review request must be submitted within one month of the date of notification of the contested decision, and the Administrative Board of Review shall express the opinion within two months (Article 24, paras. 6 and 7). The ECB Decision of 14 April 2014 provides for short deadlines for the adoption of a new draft decision by the ECB Supervisory Board. The deadline is 10 days in the case of a new draft decision of identical content and 20 days in the case

of a new draft decision abrogating or amending the initial decision (Article 17 (2) of the ECB Decision of 14 April 2014).

The two-month time limit for issuing the opinion may appear to be very tight, especially in the more complex cases in relation to which the Administrative Board may perhaps authorize to call a witness or an expert to give oral evidence at the hearing (Article 15 of the ECB Decision of 14 April 2014).

The judicial nature of the remedy emerges from a few normative provisions.

Firstly, the Administrative Board's review shall be limited to examination of the grounds relied on by the applicant as set out in the notice of review, in application of the principle of demand (Article 10 (2) of the ECB Decision of 14 April 2014). Such a provision would not be justified if the remedy, on the other hand, was considered to be a more direct involvement of the Administrative Board in the function of active administration.

Secondly, the applicant may at any time withdraw the review request (Article 7 (6) of the ECB Decision of 14 April 2014).

Thirdly, at the hearing for discussion, both the applicant and the ECB are required to make oral representations (Article 14 (1) of the ECB Decision of 14 April 2014). Such provision leads into the proceedings a moment of direct debate between the "parties concerned".

The scope of review, according to Regulations (EU) no. 1024/2013, concerns "the procedural and substantive conformity with this Regulation of such decisions" (Article 24, para. 1, and Article 10, para. 1, of the ECB Decision of 14 April).

A narrow interpretation of the two articles could be that the Administrative Board of Review cannot apply general principles and other relevant provisions not expressly referred to in the Regulation and must take as a normative parameter for its decisions only express provisions of this normative text.

According to the ECB Decision of 14 April 2014, the petition can be filed by any natural or legal person in respect of a decision of the ECB to which it "is addressed, or to whom such decision is of direct and individual concern" (Article 7 (1)).

This requirement is assessed by the Administrative Board of Review before examining whether the review request is legally founded. In the absence, the request for review is declared inadmissible. However, a request submitted in relation to the decision of the Governing Council of the ECB taken on the new draft decision prepared by the Supervisory Board (Article 11 of the ECB Decision of 14 April 2014) is inadmissible. Against this last one, however, the way of the appeal to the Court of Justice of the European Union according to the Treaties remains open.

The right of defense is guaranteed by the fact that the applicant has the right to access the ECB file, within the limits of protection of business secrets and confidential information (Article 20 of the ECB Decision of 14 April 2014).

## 5 Concluding Remarks

As highlighted in the previous paragraphs, the administrative review of the ECB's decisions regarding banking supervision presents various elements of specificity compared to the models usually established by other sector disciplines. Moreover, given the first case law indications mentioned above, the opinion issued by the Administrative Board of Review is to be integrated in some way in the final decision of the ECB and therefore fits into a unitary process of implementation of the European legislation on banking supervision.

The main reason for the specificities of the administrative review is linked, as we have seen, to the fact that the ECB is an institution governed directly by the Treaty which defines the two fundamental organs (the Governing Council and the Executive Board). The Regulation (EU) no. 1024/2013 could therefore establish only internal bodies.

Furthermore, the whole operation of granting supervisory powers to the ECBs took place under the pressure of a financial crisis exacerbated by the risk of insolvency of some Member States whose effects would have spread to the balance sheets of the credit holders of high shares of public securities. This implied that the way of a modification of the TFEU was not feasible. Moreover, the recital no. 85 of the Regulation (EU) no. 1024/2013 seems to assume the chance to "go even further in the internal separation of decision-making on monetary policy and on supervision". Instead, the Regulation is based on the "enabling clause" established by Article 127, para. 6, of the TFEU. The latter provides the possibility to confer specific tasks upon the ECB, whose primary functions are those, as is known, of the central bank which guarantees the monetary stability and to carry out specific supervisory tasks. Indeed, in the new regulatory framework, the powers of the ECB in this matter are so pervasive that legitimate the question whether the principle set by the Article now cited is fully respected.

A second reason could be, but caution is a must, given that the ECB enjoys of a status guaranteed by the Treaty and cannot be fully assimilated to the several European agencies established above all in the last decades. In this regard, it is worth pointing out that, at a national level, the Bank of Italy has always had a legal position distinct from the other independent authorities.

Moreover, non-jurisdictional remedies have not been envisaged for central bank functions, even in cases where the operations of the central bank are substantiated, rather than in market transactions, by administrative measures in the strict sense. It must be considered not accidental that Council Regulation (EC) no. 2532/98 of 23 November 1998 concerning the sanctioning powers of the ECB provides for the sole remedy to appeal to the Court of Justice of the European Union according to the terms of the Treaty.

It is also true that the banking supervision function differs from the monetary functions precisely because it is largely expressed in regulatory acts and in specific administrative measures intended to produce significant effects on supervised banks (as in the case, e.g., withdrawal of authorization). In the exercise of the central bank function, on the other hand, the ECB gets much more rarely in touch with the legal sphere of individual recipients.

In conclusion, the provision of non-jurisdictional remedies is justified the most in the first area. In this sense, the discipline introduced by Regulation (EU) no. 1024/2013 is an important innovation. It may be redesigned and refined on the occasion of a comprehensive review of the current legislation.

It will be important to see how the Administrative Board of Review will be able to interpret its role, although early commentators have stressed how it struggles to live up to the expectations of a fully independent appeal procedure (Lackhoff and Meissner 2015). In these first years of activity, the Board has examined a limited number of appeals (4 in 2014, 8 in 2015, 8 in 2016, 5 in 2017) involving mainly cases concerning *corporate governance* issues, revocation of the banking license, regulatory compliance and administrative sanctions (ECB Annual Report on supervisory activities 2017). As opinions are not published, it is not possible to offer a full evaluation of the work of the Administrative Board of Review. In the report on the Single Supervisory Mechanism published in application to Article 32 of the Regulation (EU) no. 1024/2013, the European Commission only reports that, according to the ECB, the opinions issued at the end of the review process have influenced the operational practice of the ECB even beyond the individual cases handled and advocates greater transparency on the activity carried out by the Commission, for instance through the publication on the website of the summaries of their decisions, with due observance of confidentiality rules (COM (2017) 591 final 11 October 2017).

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