IN-DEPTH ANALYSIS

European Parliament

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BANKING UNION

Looking back at 10 years of Banking Union's case law

This briefing presents an overview of six papers prepared by academic expert panel for the Banking Union, covering 10 years of case law in the Banking Union. The studies focused on the evolution of Court of Justice of the European Union (CJEU) practices in shaping resolution and supervisory practices within the Banking Union. The studies were requested by the Committee on Economic and Monetary Affairs (ECON) of the European Parliament.

The Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM) have now been in place for a decade. Throughout this period, **banks and market participants have raised number of objections** and frequently pursued legal actions against the SSM and SRB before boards of appeal and relevant courts. These **legal challenges have contributed significantly to shaping and clarifying the supervisory and resolution processes**.

This paper provides a summary of six papers written by members of the Banking Union Expert Panel of the ECON Committee of the European Parliament. The papers try to illustrate these developments and identify areas where further improvements are needed.

All the papers agree on the idea that the courts have been essential in shaping the SSM and the SRM by their judgements in a variety of cases; given the complexity and novelty of both mechanism. The courts have helped with **clarifying supervisory practices**, and the **processes of resolution** in the banking union. The authors agree that the **courts have furthered the harmonisation and centralisation in the BU**. However, the authors of the papers have also **found areas with room for improvement**, namely with regards to resolution decisions, the **courts follow the strict letter of the law**, rather than engaging in more details on a case by case basis. This can **limit the external scrutiny** of the agencies as well as the effectiveness of legal redress.

Economic Governance and EMU Scrutiny Unit (EGOV)
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PE 760.255 - November 2024

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In the **first paper**, Judith Arnal, Costanza A. Russo, and Apostolos Thomadakis analyse key rulings on the supervision and resolution of credit institutions in the EU and their impact on the Banking Union (BU) framework. The authors highlight how **litigation has clarified processes**, rights, and the criteria for resolution.

However, authors also underscore the **need for heightened scrutiny of agencies to prevent political interference** and ensure effective scrutiny.

The **second paper** by Concetta Brescia Morra and Filippo Annunziata assesses the **impact of some of the key decisions** on the legal framework of BU, focusing more on how these **decisions have furthered the centralisation and integration of banking supervision** in the EU. Specifically, these decisions have cemented the roles the ECB and the national competent authorities (NCA) within the SSM; extending the ECB's supervision domain and relegating NCAs to de facto subsidiaries of the ECB. The authors ultimately consider the last 10 years to have been a success, and that **the SSM should be seen as a model to be reproduced in other areas of EU governance.**

Marco Lamandini and David Ramos Muñoz, the authors of the **third paper**, argue that the BU is a success and that the courts have been the key to this success. They consider that the **courts have shaped and solidified the constitutional legitimacy of the SSM and SRM** respectively. Finally, the authors believe that there should be **more harmonisation of Banking Union law** and that reforms should **streamline the organisation of administrative boards of appeal.**

The **following paper** by Christos V. Gortsos discusses and analyses the evolution of the case-law of the Court of Justice of the European Union with regards to the SSM and the SRM. Gortsos comes to the conclusion that case-law relating to Single Supervisory Mechanism Regulation established that **there is no distribution of competences between the ECB and NCAs**; which is in accordance with the second paper's findings. With regards to the SRM, the author finds that the Courts have not challenged decisions taken by the SRB.

The final paper by Bart JOOSEN, Juana PULGAR EZQUERRA and Tobias H. TRÖGER analyses how the Courts have shaped supervisory and resolution practices in the Banking Union. The authors consider **the Courts have taken a pro-centralisation stance**, and thus improved the functioning of supervision at the EU level. Moreover, the Courts have clarified the relationship between the ECB and the SRB within the SRM process.

The Judicial Scrutiny of the SSM and the SRB

by Judith ARNAL, Costanza A. RUSSO and Apostolos THOMADAKIS

This study by Judith Arnal, Costanza A. Russo and Apostolos Thomadakis analyses **rulings** on the **supervision and resolution** of the European Union (EU) credit institutions and assesses the impact of those rulings on the operational framework of the Banking Union (BU). These analyses specifically focus on how case law has **refined supervisory practices** relating to the European Central Bank (ECB)'s competencies and how litigations have made **resolution processes clearer**.

This study first tackles the regulatory framework of the **Single Supervisory Mechanism (SSM)** and the cases where the **ECB's supervisory decisions have been challenged**. The SSM allows the ECB to use investigative and administrative measures as well as administrative penalties for prudential supervision of credit institutions. However, this complicates the legal set-up of the SSM; under its rules, the ECB is obliged to enforce EU legislation and national laws adopted in the transposition of EU Directives or exercising options granted by EU legislation. As a result of this mechanism, the ECB cooperates closely with National Competent Authorities (NCAs) to ensure the single supervision of the banking sector of BU participating Member States.

Based on judicial cases' analysis, the study comes to three conclusions. Firstly, the jurisprudence of the Court of Justice of the European Union (CJEU) has played a **crucial** role in **clarifying supervisory practices** within the BU. The CJEU has set important precedents that help establish **clearer standards** for how prudential measures should be applied, enhancing the **consistency and transparency** of supervisory practices. Secondly, the study finds that **ad-hoc legal amendments** influenced by **political agreements** can be introduced to **circumvent** EU legislation and its interpretation by the ECB and the CJEU. This risks undermining the work of both the supervisory and the judiciary authorities, and can create a **perception of arbitrariness**, **weakening the credibility** of the supervisory framework. Therefore, the authors argue that efforts should be made to avoid these scenarios and **to reinforce the independence and objectivity** of supervisory and judicial bodies. Finally, the requirement for the ECB to **apply national legislation** according to the interpretation provided by national courts (only when it is compatible with EU law) highlights the **need for increased caution and proportionality** in the ECB's application of administrative measures.

The study also addresses the framework of the **Single Resolution Mechanism (SRM)** and a litigation procedure pertaining to a resolution decision. The SRM aims to create **a single set of rules** and a **uniform procedure** for the **resolution** of credit institutions and certain investment firms participating in the SSM. Additionally, it seeks to **centralise** resolution powers and decision-making activities at EU level. Regulation 806/2014 (SRM Regulation) establishes the SRM and allocates resolution responsibilities and tasks included in the Bank Recovery and Resolution Directive (BRRD) primarily to the **Single Resolution Board (SRB).** Indeed, when a failing or likely to fail declaration has been made, the SRB needs to decide whether the bank will be **liquidated under national insolvency proceedings** or **resolved** making use of resolution tools. Whilst the default option should be liquidation, the **existence of a public interest in resolution** due to relevance of the institution and the possibility of ensuring ensure **the continuity of critical functions** will ultimately determine the SRB's decision. Since its inception, the SRB has adopted a resolution scheme **only for two failing institutions**: ***Banco Popular in June 2017 and Sberbank in March 2022.***

The study focuses on the litigation related to the resolution of Banco Popular. These litigations highlight how **judge-made doctrines**, **fundamental principles of EU law** included in the Treaty, and the **fundamental rights** of the Charter are currently playing a prominent role in the application and interpretation of the provisions, or can be resorted to in filling a normative gap. This has led to a **better**

definition of a resolution procedure. These cases also make clear how long the path to resolution planning can be. This in turn makes the process more transparent and potentially more predictable. Furthermore, this study also concludes that the scrutiny of courts clarifies the division of power among EU entities responsible for resolution. However, the Court reasoning **strictly follows letter of the law**, rather than engaging in more details on a case by case basis. This may have the effect of **limiting the external scrutiny** of the agencies as well as the **effectiveness of legal redress** when stakeholders' claims may not be completely arbitrary or self-protective. Ultimately, the Court does not address the appropriateness of certain evaluations or decisions although addressing them could have impacted future cases.

In conclusion, regarding the SSM, **political agreements** can lead to **ad-hoc legal amendments overriding established EU legislation**, undermining the work of both the supervisor and the judiciary. This highlights the **vulnerability** of established regulatory frameworks **to political influence**. Furthermore, the requirement for the ECB to **harmonise** national legislative interpretations with EU law introduces a **layer of complexity**. With regards to the SRB, the Court's scrutiny of resolution decisions has significantly **clarified the resolution process**; but it's adherence to **procedural safeguards** without delving into the specific positions of claimants can **limit** external scrutiny and the effectiveness of legal redress for stakeholders.

Full paper available on the EP homepage: **The Judicial Scrutiny of the SSM and the SRB: A missed chance or a success story?**

The Banking Union and the decisions of the CJEU: Towards a complete legal order?

by Concetta BRESCIA MORRA and Filippo ANNUNZIATA

This paper by Concetta Brescia Morra and Filippo Annunziata attempts to show how the decisions of the CJEU have **advanced the centralisation and integration of banking supervision at the EU level** and specifically how they have turned the SSM into a truly integrated EU legislative system. These rulings have strengthened the ECB's supervisory role, addressed issues of sovereignty and the application of national laws and reshaped the relationship between EU institutions and Member States in banking supervision. Ultimately, this paper aims to provide an overview of the trends consolidated over the past ten years, focusing, more particularly, on the SSM and the role played by the ECB.

The paper analyses the structure of the SSM and the **relationship** between the **ECB** and the **national competence agencies (NCA).** In this context, the CJEU's ruling in Case C-450/17 P (the so-*called Landeskreditbank case*) and the Court's judgement in Case C-219/1710 (*Berlusconi I*) are deemed as fundamental as discussed by this paper. The Landeskreditbank decision as highlighted by the authors concerns the exercise of the discretions attributed to the ECB and the **distribution of authority** between the **EU** and **national institutions** in the context of EU banking supervision. The Court ruled that the **ECB** is entrusted with the **ultimate responsibility** for prudential supervisory functions over all credit institutions within the scope of the SSM, irrespective of whether the institution's classification (significant or less significant). As a result, according to the ruling, when NCAs supervise "*less significant institutions (LSIs)*", they do so on the basis of a "*decentralised exercise of the ECB's exclusive competence*". This decision was supported by the Berlusconi decision which ultimately echoed the approach taken by the Court in Landeskreditbank, fostering further levels of centralisation within the SSM to the hands of the ECB.

Authors also look at the repercussions of another important case, the Banco Popular case and how it refined the resolution process. The judgement restored core principles of the original Meroni decision (no discretionary or politically influential delegation of power can happen (1957/1958); which were apparently eroded over the last decades). The Court found that the exercise of the resolution powers under the Single Resolution Mechanism Regulation (SRMR) falls within the resolution policy of the EU, which **only EU institutions** may establish, and that the adoption of resolution schemes entail a margin of discretion that exceeds the SRB's powers.

Furthermore, due to the disparities of credit institutions legal regimes across national laws, article 4(3) SSMR, requires the ECB to directly apply **national laws** transposing EU directives when exercising supervisory tasks. As a result, the BU continues to place a **significant reliance** on the various national choices concerning the content of the applicable rules. In the context of judicial review, this interpretation of national statutes may be autonomous or deferential. The former implies **disregarding the traditional stance of the national courts, while the latter entails Union courts aligning with national jurisprudence**. Brescia Morra and Annunziata conclude that recent cases show that the CJEU has favoured a more autonomous interpretation which has resulted in an extension of the discretion afforded to the ECB under the BU.

This paper therefore analyses this discretion and how the CJEU's "*limited standard of review*" ensures that the ECB's decisions are subjected to robust judicial scrutiny, complying with fundamental principles of EU law, such as proportionality, legal certainty, and good administration. Overall, the authors conclude that the BU, though still evolving, has become a more integrated and resilient system over the

past decade mainly due to the CJEU's crucial role in its legal consolidation. They argue that the success of the BU's institutional and legal architecture, and particularly of the SSM, is seen as a model to be reproduced in other areas of EU (economic) governance.

Full paper available on the EP homepage: **The Banking Union and the decisions of the CJEU: Towards a complete legal order?**

10 years of Banking Union's case law: how did CJEU judgements shape supervision and resolution practice in the Banking Union?

by Marco LAMANDINI and David RAMOS MUÑOZ

This study by Marco Lamandini and David Ramos Muñoz **examines how the ECB, the SRB and especially the courts have been crucial for the success of the BU**, and how to **preserve** and **improve** their role. The first section of the study discusses the European courts' case law over the Banking Union's **supervisory decisions**, the second, the courts' scrutiny over banks' **resolution decisions** while the third section goes over European courts' review of administrative enforcement measures and **sanctions** in the Banking Union.

In bank supervision cases, **European courts have shaped the SSM's 'constitutional' legitimacy** (Landeskreditbank-SSM/SRM cases) as well as the tensions between the national and supranational levels, including the application by the ECB of national laws. In principle, supervisory authorities are expected to exercise strictly rule-bound competences. In practice, this depends on the text, context, logic and finality of the legal provisions devising those competences. According to the authors, **the questions facing the courts can be grouped into two main areas**: first, **the 'vertical' allocation of competences** between EU and national levels; second, **the 'horizontal' dimension** of courts' control over the application of the law by supervisors. In the first area, the Court of Justice held in the Landeskreditbank case that the **SSM did not distribute supervisory powers between national authorities and the ECB**. Instead, the Court held that all competences were vested on the ECB. In the second area, the courts have defined the extent of supervisory mandate and shaped the standard of review for bank supervision. Finally, Lamandini and Ramos Muñoz argue that these cases show how the Courts' interpretations have decisively given meaning to key legal concepts or balanced the respective roles of courts and financial authorities in applying the law (Crédit Lyonnais case).

In the second section, which deals with resolution cases, the authors explain that the SRM vest the SRB with intrusive powers. These powers can severely limit the rights of banks, their creditors and shareholders when deploying resolution tools upon a crisis. Furthermore, the SRB can also impose constraints as a result of resolution planning measures and setting levels for Minimum Requirements on own funds and Eligible Liabilities ("MREL"), to ensure that the bank can absorb losses upon a future crisis. Unsurprisingly, there have been many challenges to the SRM's allocation of powers. The authors argue that the **courts have dispelled doubts about the SRM constitutional legitimacy**. This was done through a careful balancing act of the tensions between the national and supranational levels (SSM/SRM case) as well as clarifying the doctrines of delegation to (and accountability of) agencies (ESMA/shortselling, Banco Popular cases).

Finally, authors discuss the challenges of exercising **sanctions** and enforcement measures by the EU financial authorities. Particularly the classification of sanctioning measures as **'criminal' or 'punitive'**, the court's standard of review and the specific safeguards. According to Lamandini and Ramos Muñoz, **measures** need to be seen as **reactions** to imbalances and **not as sanctions** otherwise the system **does not work**. This explains why the courts are cautious to class measures as **criminal**. The courts have further decided to apply **full reviews** to decisions involving **sanctions** as they carry special significance. Since the courts generally do not classify enforcement measures as criminal, specifically in **market abuse cases**, they also do not accord safeguards such as, the right to silence, the presumption of innocence or the ne bis in idem principle (cannot be judged twice for the same infraction).

The authors conclude with three aspects where they believe there is **room for improvement**:

- First, there is room for more legislative **harmonisation of BU law**;
- Second, the **standard of review** in decisions under conditions of uncertainty may benefit from legislative **clarifications** in line with current court practice;
- Third, reforms should be implemented to streamline administrative boards of appeal and vest them with more formal independence.

Full paper available on the EP homepage: **10 years of Banking Union's case-law: How did European courts shape supervision and resolution practice in the Banking Union?**

10 years of Banking Union case law: How did CJEU judgements shape supervision and resolution practice in the Banking Union?

by Christy Ann PETIT and Thorsten BECK

In this paper, Christy Ann Petit and Thorsten Beck **review how EU case law developed over the last 10 years concerning decisions made by the ECB within the SSM and SRM.** The paper addresses issues related to **ECB supervisory decisions, the application of national law, and the setting of administrative penalties**.

Authors in the first part of the paper **outline the origins of the BU, which was established in the aftermath of the global financial crisis and sovereign debt crisis in the euro area**. They highlight that the main goals of BU were to establish **the link between bank and sovereign fragility, reintroduce private liability, and reduce taxpayer-funded bailouts**. In that regard, mechanisms such as **SSM and SRM have played a key role**. In addition, EU Single Rulebook, the Capital Requirements Directive (CRD IV), and other regulations were introduced to harmonise and strengthen banking regulation across the euro area. Later, they focus on legal aspects and argue that the case law surrounding the BU shows its substantial contribution to deepening integration within the EU's legal frameworks, promoting economic integration, and strengthening the overall European project. BU was established within a particular constitutional and institutional EU context, which has been supported and solidified by the CJEU.

One of many contributions of this paper, which offers an exhaustive and detailed analysis, is its review of numerous court cases that have either upheld or contested ECB and SRB decisions on both procedural and substantive grounds. Some cases address critical issues within the EU's prudential and resolution frameworks. By focusing on ten Member States - Austria, Estonia, France, Germany, Italy, Latvia, Luxembourg, Malta, Portugal, and Spain - authors emphasize significant developments as well as ongoing unresolved issues surrounding these decisions.

The paper also **includes ex-ante contributions to the Single Resolution Fund (SRF),** resolution decision-making, and accountability of decision-makers. **The litigation surrounding the SRF ex-ante contributions has seen banks successfully challenge the SRB's decisions**, particularly those made in the following years 2017, 2021, and 2022, mainly on procedural grounds. The June 2024 judgment in Commission v SRB revives the Meroni doctrine, clarifying that the Commission, not the SRB, endorses resolution schemes. While judicial dialogue between national courts and the CJEU is promising, the German Federal Constitutional Court remains cautious. Overall, BU case law underscores the ongoing integration of EU legal frameworks and economic structures.

Finally, **authors discuss the interaction between the legal frameworks of the BU and other legal systems**, in the context of the dialogue and tensions between European and national courts, the overlap between supervisory rules and the Anti-Money Laundering (AML) framework, and other legal uncertainties following bank license withdrawals, which exposed weaknesses in national liquidation regimes.

In light of the analysed topics, the authors present main takeaways that can be summarized as follows:

- **The CJEU has supported EU integration in banking supervision and resolution by reinforcing the roles of the ECB and SRB**. The ECB is responsible for the SSM and the SRB for the SRM, even when national authorities are involved in decision-making and implementation. The important distinction in case law is the difference between the ECB, an EU institution, and the SRB, an EU agency.

- The application of national law is significant in the area of resolution (under the BRRD) and has primarily been examined by EU Courts in supervision; this unprecedented administrative use of national law by EU institutions shapes the interaction between EU and national legal orders.
- **The annulment of SRF ex-ante contributions decisions has sparked significant litigation** since the SRM's inception, with several banks challenging the SRB's decisions from 2016 onward.
- The case law presents the complexities of resolution decision-making within the SRM, particularly following the SRB's resolution of Banco Popular Español.
- **The first decade of the BU reflects an initial but developing judicial dialogue**, particularly between Italian and French courts and the CJEU, while the German Federal Constitutional Court has shown more reluctance. There has been an increase in preliminary references from various national courts, suggesting a growing use of this mechanism.
- **As regulatory frameworks evolve and become more complex**, national courts are expected to make the use of preliminary rulings more frequently in the coming years.
- **Despite made progress in harmonising BU frameworks**, recent directives like CRD VI and the forthcoming BRRD3 **may result in incomplete harmonisation across the EU** due to the necessity of timely and accurate national transpositions. Authors call for the implementation of reforms to address the gaps in insolvency and liquidation processes following bank license withdrawals.

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10 years of Banking Union's case law: how did CJEU judgements shape supervision and resolution practice in the Banking Union?

by Christos V. GORTSOS

This study by Gortsos discusses and analyses the evolution and key aspects of the case-law of the Court of Justice of the European Union (CJEU) in relation to the **two key pillars of the Banking Union** in force, namely, the **Single Supervisory** and the **Single Resolution Mechanisms**. The cases analysed specifically relate to decisions taken by the **ECB** as the banking supervisory authority and by the **SRB** as the resolution authority.

The **main case** analysed which concerns the **SSM** is the **L-Bank case** where the general court came to the conclusion that there is **no distribution of competences between the ECB and NCAs**, expanding the ECB's competence to "less significant institutions". Furthermore, in its rulings in actions brought before them on the classification of credit institutions (in accordance with Article 6(4) SSMR) and on the withdrawal of banking licenses (by virtue of Article 4(1)), the General Court did not challenge the Decisions taken by the ECB. However, in relations to cases where the **ECB has to implement national legislation**, this outcome has varied. By some of its judgments the General Court has dismissed the actions for annulment; however, by its most recent (19 September 2024) judgement, the Court set aside the General Court's judgment in one of these cases and annulled the related ECB Decision. n. In other judgments, the interpretation of national law by the ECB has been directly challenged by the General Court. A key common significant feature of all these judgments is that, by applying national law pursuant to Article 4(3) SSMR, the ECB must assure its conformity and compliance with the general principles of EU law, as well as with the legislative acts which constitute the sources of these legislative acts.

The author also highlights that a **key common significant feature** of all these judgments is **the conformity and compliance of the ECB with** the general principle of EU law (as well as with the legislative acts which constitute their source) while applying national law under Article 4(3).The discussion and analysis of the "SRMR-related" case-law in this article reveals that the General Court has, in principle, **not challenged the Decisions taken by the SRB** within the SRM. This is in accordance with the SRM Regulation of the European Parliament and the Council (SRMR) in the resolution case for Banco Popular Español, the "no-resolution" cases for ABLV Bank, ABLV Bank Luxembourg and AS PNB Banka, and the "mixed" case for Sberbank. **The judicial review is confined to examining whether**, in exercising its discretionary powers, **the SRB has committed any manifest error** of assessment, misuse of powers, or even **manifestly exceeded** the limits of its discretion. Through this, Gortsos, argues that the outcome of any proportionality review is mostly **marginal**. Unless a manifest error of assessment is proven, these cases **rarely leads to the annulment** of EU measures.

Authors also finds that another important aspect in this context is the interpretation by the General Court of key provisions of the SRMR on a variety of aspects, such as:

- **the nature of the "supervisory" assessments made by the ECB that a credit institution is failing or likely to fail (FOLTF)**, which it considers not to be binding on the SRB;
- **the "public interest assessment" (PIA) made by the SRB**;
- **the resolution scheme adopted by the SRB**, which in order to enter into force, must be endorsed by the Commission or the Council with regard to its discretionary aspects;
- **the role of the national resolution authorities (NRAs)** to which SRB Decisions are addressed; and

- **the ex-post definitive valuation conducted for the purposes of resolution and the limitations on the compensation** (provided in Article 20(12)) by application of the "no creditor worse off principle" (NCWO).

Full paper available on the EP homepage: **10 years of Banking Union case-law: How did CJEU judgements shape supervision and resolution practice in the Banking Union?**

10 years of Banking Union's case law: how did CJEU judgements shape supervision and resolution practice in the Banking Union?

by Bart JOOSEN, Juana PULGAR EZQUERRA and Tobias H. TRÖGER

This study by Bart Joosen, Juana Pulgar Ezquerra and Tobias H. Tröger **examines the important role that the CJEU has had in shaping supervisory and resolution practices in the BU**. The authors consider that the courts have taken a **pro-centralisation stance** and thus contributed to a **functioning supervisory framework at the European level**. The CJEU supports the effective supervision and accepts financial stability as a priority. However, it is also found that this insistence on the uniform and centralised application of the SSM and SRM regulations **could limit the flexibility and adaptability of the Banking Union**. This is especially important as the authors consider that **the CJEU sometimes overreaches and neglects opposing public interests**, e.g. in institutional accountability.

The paper therefore focuses on the areas of CJEU jurisprudence: proportionality, the power of the ECB to apply national law, interpretation of Capital Requirements Regulation rules on Leverage Ratio, the ECB's approach on irrevocable payment commitments, its mandate under SSM regulation and the authorities' competencies under the Crisis Management and Deposit Insurance framework and judicial protection.

Regarding proportionality, some authors like Joosen et al. observe that both the ECB and CJEU adopt a legalistic approach, applying the banking law framework uniformly without considering the specific facts of individual cases. Thus, the authors argue that the CJEU indirectly safeguards the principle of proportionality through the judicial review of ECB decisions while checking if these decisions comply with the procedural and substantive guarantees provided by the SSM Regulation, the SSM Framework Regulation, and most importantly, the Single Rule Book.

When it comes to the power of the ECB to apply national law, the ECB has to respect euro area member states' transposition choices in applying national law, as long as the national law does not contradict or undermine EU law or the objectives of the SSM Regulation. Generally, the **CJEU upholds ECB decisions**. However, **in a recent case**, the General Court **rejected the ECB's decision** to apply the procedures set out in the Bank Recovery and Resolution Directive, **rather than strictly applying the national laws** implementing the relevant provisions of this directive. The authors argue this prioritizes subsidiarity (local decision-making) over effectiveness in bank supervision and crisis management, which weakens the ability of supranational authorities to act decisively during a banking crisis. However, this also challenges the concern that affected parties might not receive adequate legal protection when the ECB has to use national laws.

The authors find that regarding interpretation of Capital Requirements Regulation rules on leverage ratio, **the CJEU applies the criteria for judicial review of discretionary decisions** of European institutions also **to supervisory decisions**. **ECB decisions, are therefore, subject to judicial scrutiny**. However, the CJEU is very vigilant in imposing judicial restraint, only policing the outer bounds of the margin of discretion the ECB enjoys under applicable prudential rules. This study considers that cases of IPC illustrate, the **General Court's deference to the ECB's supervisory decisions** and its endorsement of the ECB's interpretation of the CRR. There, CJEU has confirmed the ECB's authority, and discretion, to impose additional capital requirements under the applicable prudential rules.

The ECB directly supervises 'significant' banks within the meaning of the SSM Regulation. To this end, the ECB exclusively and directly performs the full range of prudential supervisory tasks vis-à-vis significant banks**, while LSIs are in principle supervised by the NCAs**. However, in the L-Bank litigation, the CJEU

commented *obiter dictum* [said in passing] on the nature of the competences conferred on the ECB by the SSM Regulation in a manner that goes far beyond the case before the court. Joosen et al. stipulate that this confirmed the opinion of the General Court that the ECB has been given exclusive competence, in all areas of microprudential supervision of all credit institutions mentioned SSM Regulation. In this view, the **NCAs do not have any original competence** within the scope of application of SSM Regulation, rather, they derive their competences from the ECB. Against this background, in the L-Bank litigation, the CJEU strengthened the position of the ECB by **relegating NCAs to de facto branch offices** of the supranational prudential supervisor.

Overall, the authors consider that **the jurisprudence of the CJEU has clarified**, among other things, how the j**oint decision-making of various European authorities** involved in the resolution process is coordinated in its different phases. In the landmark case PNB Banka (AS), the EGC has clarified the competencies of authorities vis-à-vis each other. **The General Court clarified the relationship** and interplay of powers between, on the one hand, the **ECB**, which must **carry out an initial FOLTF assessment** (deciding independently whether the institution is non-viable) and, on the other hand, the **SRB which assesses the ECB's determination** and **has the exclusive power to decide on the implementation of resolution tools** as well as the possible judicial review of its decision.

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