EEA LAW

Direction to Banking Union

PRE BANKING UNION

- 1 step: **Lamfalussy process**
- II step: **De Larosièr‘s report**

Lamfaluss‘s process was the first organised way aiming to integrated supervision in the meaning of real collaboration between EU member countries and EU authorities (for regulation and supervision).

It leaded to setting up expert authorities for for integration and supervision.

LAMFALUSSY'S REPORT

Lamfalussy report (2001)

- „committee of wise men“ (2000-2001)
- evaluation of the obstacles to real integration of the European market
- Suggestions to improve of current state
- Concept of „better regulation“
  - use of legislative and non-legislative provisions
  - Evaluation of the impacts
  - Public consultations

THE LAMFALUSSY ARCHITECTURE

- 4 levels of the process
- 1st -the European Parliament and Council of the European Union adopt a piece of legislation
- 2nd, where sector-specific committees and regulators advise on technical details, then bring it to a vote in front of member-state representatives
- 3rd national regulators work on coordinating new regulations with other nations.
- 4th involves compliance and enforcement of the new rules and laws.
- Setting up new committes, later transformed to EU agencies
  - Committes of the „3rd level“ – expert advicing authority of the EC
  - **Committee of European Banking Supervisors (CEBS)/EBA**
  - **The Committee of European Securities Regulators (CESR)/ ESMA**
  - **Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) / EIOPA**

DE LAROSIÈR REPORT

- In October 2008, the European Commission mandated the de Larosière group to provide proposals to strengthen European supervisory arrangements covering all financial sectors, with the objective to establish a more efficient integrated and sustainable European system of supervision.

- In february 2009 published The High-Level Group on Financial Supervision in the EU chaired by Jacques de Larosière: Report). Latter known as **De Larosièr report**

PRODUCTS OF “DLR”

- 31 recommendations for improving European supervisory arrangements.
- The report was set out as follows:
- Chapter 1: Causes of the financial crisis.
- Chapter 2: Policy and regulatory repair.
- Chapter 3: EU supervisory repair.
- Chapter 4: Global repair.

NEW SYSTEM OF FINANCIAL SUPERVISION

- The establishment of a new body called the European Systemic Risk Board (ESRB), to be chaired by the President of the European Central Bank (ECB), to be set up under the auspices and with the logistical support of the ECB. This would look at macro-prudential issues and risk warnings

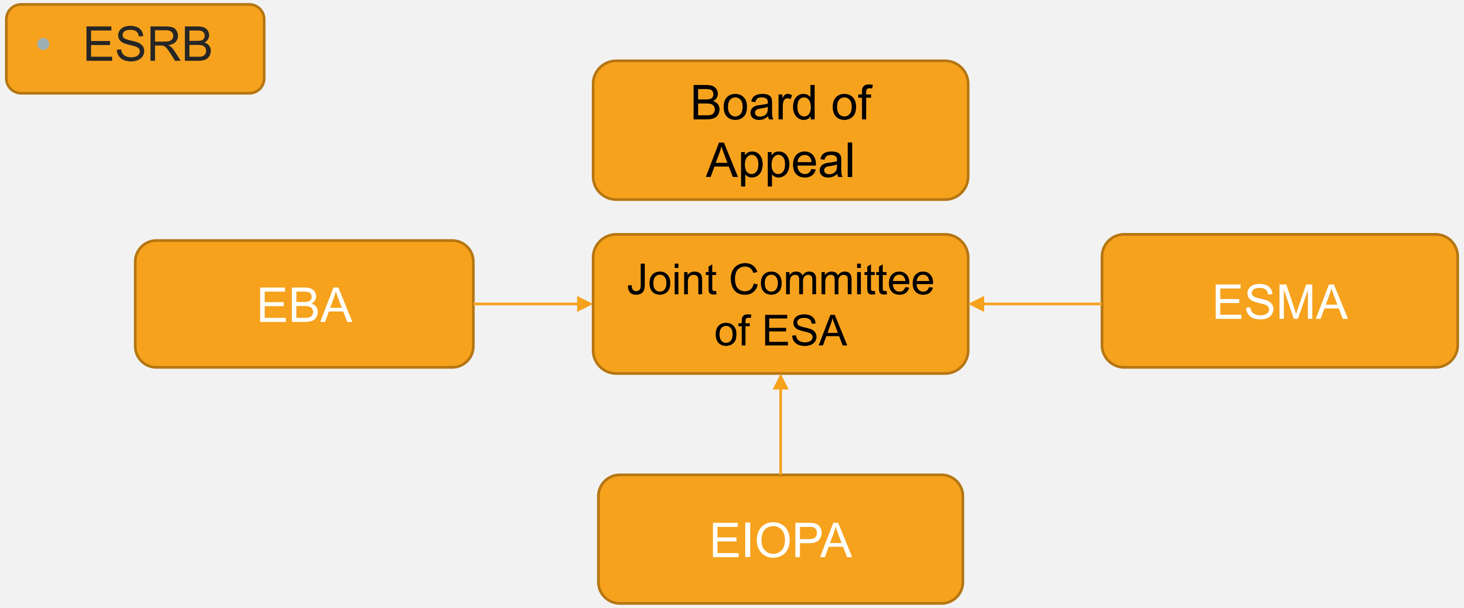
- An effective risk warning system to be put in place under the auspices of the ESRB and of the Economic and Financial Committee.
- The establishment of a European System of Financial Supervisors (ESFS). This would involve a decentralized network comprising of national supervisors (who would carry out day-to-day supervision) and three new European Authorities, replacing CEBS, CEIOPS and CESR with the role to coordinate the application of supervisory standards and guarantee strong cooperation between national supervisors.

EUROPEAN SYSTEMIC RISK BOARD “ESRB”

- responsible for the macroprudential oversight of the EU financial system and the prevention and mitigation of systemic risk.
- In pursuit of its macroprudential mandate, the ESRB monitors and assesses systemic risks and, where appropriate, issues warnings and recommendations.

- issues warnings when significant systemic risks are identified and when necessary to flag such risks.
- issues recommendations for remedial action when significant systemic risks are identified and when action is necessary to address these risks.

THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISION
ESFS



SINGLE RULEBOOK

- The Single Rulebook aims to provide a single set of harmonised prudential rules which institutions throughout the EU must respect. The term Single Rulebook was coined in 2009 by the European Council in order to refer to the aim of a unified regulatory framework for the EU financial sector that would complete the single market in financial services. This will ensure uniform application of Basel III in all Member States. It will close regulatory loopholes and will thus contribute to a more effective functioning of the Single Market.
- Not complete harmonisation for financial institution

TOOLS – QUASI REGULATORY

- **Recommendations and guidelines ensuring the common and consistent application of Union law**
  ESAs can address these to national supervisory authorities as well as to individual financial institutions
- **Preparation of regulatory and implementing technical standards**
- ensure uniform and consistent implementation of Union law without making legislative changes. Regulatory norms supplement or amend legal norms, but only those particularities which are not essential.
- ESAs ‘only’ process norm proposals for the European Commission, which is the institution that decides whether they are accepted or rejected. Likewise, ESAs ‘only’ issue non-binding recommendations and guidelines; hence the label ‘quasi’—in fact, ESA bodies do not have any legislative power

SUPERVISORY POWER

Union law enforcement – binding individual decisions

these decisions do not overturn decisions of national supervisors; they employ the direct impact effect (as is characteristic of Union law) according to the ESA Regulation, they are given priority over all the previous decisions made by relevant bodies in that particular case

when:

recommendations for the national supervisory authorities in case of a breach of Union law

Last-resort decisions addressed to financial institutions;

Legally binding decisions reached during mediating disputes between national supervisory authorities

WHAT ABOUT NATIONAL SUPERVISORY AUTHORITY ?

- we might ask whether the NSA should enforce the decisions it did not make (they were made by ESAs).
- Art. 291 par. 1 of TFEU - says that member countries are obliged to take any internal legal measures necessary to adopt binding Union acts .
- Decisions issued by ESAs are, as a matter of fact, specification of obligations stated in the Union directive on the basis of which it is issued. To breach ESA decision is simultaneously a breach of the directive, the observance of which the NSA checks.
- If individual ESAs' decisions are breached, the NSA is authorised to impose sanctions according to national law'

APPEAL AGAINST ESA DECISIONS

- The right to appeal belongs not only to addressees but to anyone who is directly affected by the decision
- The second way to defend oneself is to lodge a complaint with the Court of Justice of the European Union pursuant art. 263 of the TFEU; or, in case of inaction on the part of ESAs, one can lodge a complaint pursuant art. 265 of the TFEU.
- there is no definition of grounds for appeal to the Board of Appeal, which, means that any relevant reason might be used.

ENFORCEMENT

- if a national supervisory authority infringes Union law (if the directives are not applied properly or are not applied at all), the relevant state is held responsible for it.
- If this infringement is not rectified or set right in line with Union law even after the European Commission has issued a statement, there is no other option for the Commission but to bring the matter before the Court of Justice of the European Union pursuant art. 258 of the TFEU (lawsuit for inaction). Only a member state can be sanctioned.

UNION LAW INFRINGEMENT

- Firstly, they investigate the alleged law infringement and then they suggest measures to be taken by the given national supervisor
- If this fails to bear fruit, the European Commission can issue a formal statement about the matter
- If the supervisor’s measures are still inadequate, ESAs can demand proper reaction from the given financial institution

- only if Union law is, in the given case, directly applicable to financial institutions (especially as far as regulations and technical norms are concerned) and what ESAs demand is necessary for the maintenance of competition in the market or of the financial system stability.

MEDIATION BETWEEN NATIONAL SUPERVISORY AUTHORITIES

- After the initial phase of conciliation, ESAs have the power to take measures that are binding for national supervisors. If these measures are ignored, ESAs can address them to financial institutions directly

- Disputes between national supervisory authorities often occur within supervisory colleges, when host supervisory authorities unsuccessfully attempt to make home supervisory authorities act.

DECISIONS IN EMERGENCY SITUATIONS

- An emergency situation may be declared by the ECOFIN Council
  - Request needed from one of the following institutions: the European Commission, the ESRB, or a national supervisory authority.

- Emergency situation decisions are individual decisions addressed to national supervisory authorities asking for specific response. If the response from the given national supervisory authority is not adequate and if no explanation (demanded by ESAs) is offered, the subsequent procedure is the same as in case of a breach of Union law.
- Binding decisions in the abovementioned cases are only applicable in cases of ensuring compliance with EU law or when an emergency situation has been declared

SUPERVISORY LIMITS

- Every member country can make use of protective measures if it thinks that an ESA decision threatens its fiscal power. This limit to the application of direct decisions is motivated by attempts to maintain and protect the crucial principle saying that member countries have exclusive power in their fiscal policies.

- A member country can then claim that the decision makes an impact on its fiscal responsibility; it must let ESA know that it is not going to obey the decision, thereby suspending the decision.

SUPERVISION LIMITS

- In case of national supervisory authority and the European authority dispute
- ->Council issues a final verdict binding for both parties (verdict is reached through a qualified majority.)
- Of course, the Council is composed of member countries; therefore the power of ESAs might be endangered since the Council's verdict may be based on politics rather than expertise. '
- Many analysts agree that this is a cumbersome procedure, and one in which national interests are likely to prevail against the common good'

THE ASSESSMENT OF THE ESFS REFORM

- The establishment of the ESFS can be considered the initial step towards creating a ‘supervisory architecture’ package in the area of finance.
- It is one of several steps taken in reaction to the financial crisis. Generally speaking, with the ESFS having been created, supervision was directed towards a more dynamic and centralised form in the whole of Europe;
- The first step in creating a new form of supervision saw the introduction of supervisory authorities within the ESFS with only that competence which allows direct intervention in financial market activities as a last-resort instrument only. The reasons behind this were chiefly political and legal.
- Daily financial supervision was left in the hands of national authorities on a decentralised basis in accordance with the principles of subsidiarity and proportionality
- **it was the first curtailment of sovereignty and exclusive powers that supervisory authorities, up until then, had had**

BANKING UNION

- In June 2012 the then President of the European Council Herman Van Rompuy delivered a report called Towards the Genuine Economic and Monetary Union, in which he calls for more attention to be paid to three areas (or visions): the integrated financial framework, the integrated budgetary framework, and the integrated economic policy framework.

WHAT IS BANKING UNION

- The reform of the system is going on, though—the second step is now under way, in which direct supervision across Europe is being constituted: it is called the Banking Union.

- The Banking Union is essentially an integrated financial framework resting on three pillars. The first one is the *Single Supervisory Mechanism* (hereinafter the ‘SSM’), the second is the *Single Resolution Mechanism* (the ‘SRM’), and finally the third one is the *Common Deposit Guarantee Scheme* (the ‘CDGS’). They are based on several European directives and regulations.

SCHEME OF BANKING UNION