INTEGRATION OF THE SUPERVISION OF THE FINANCIAL MARKET

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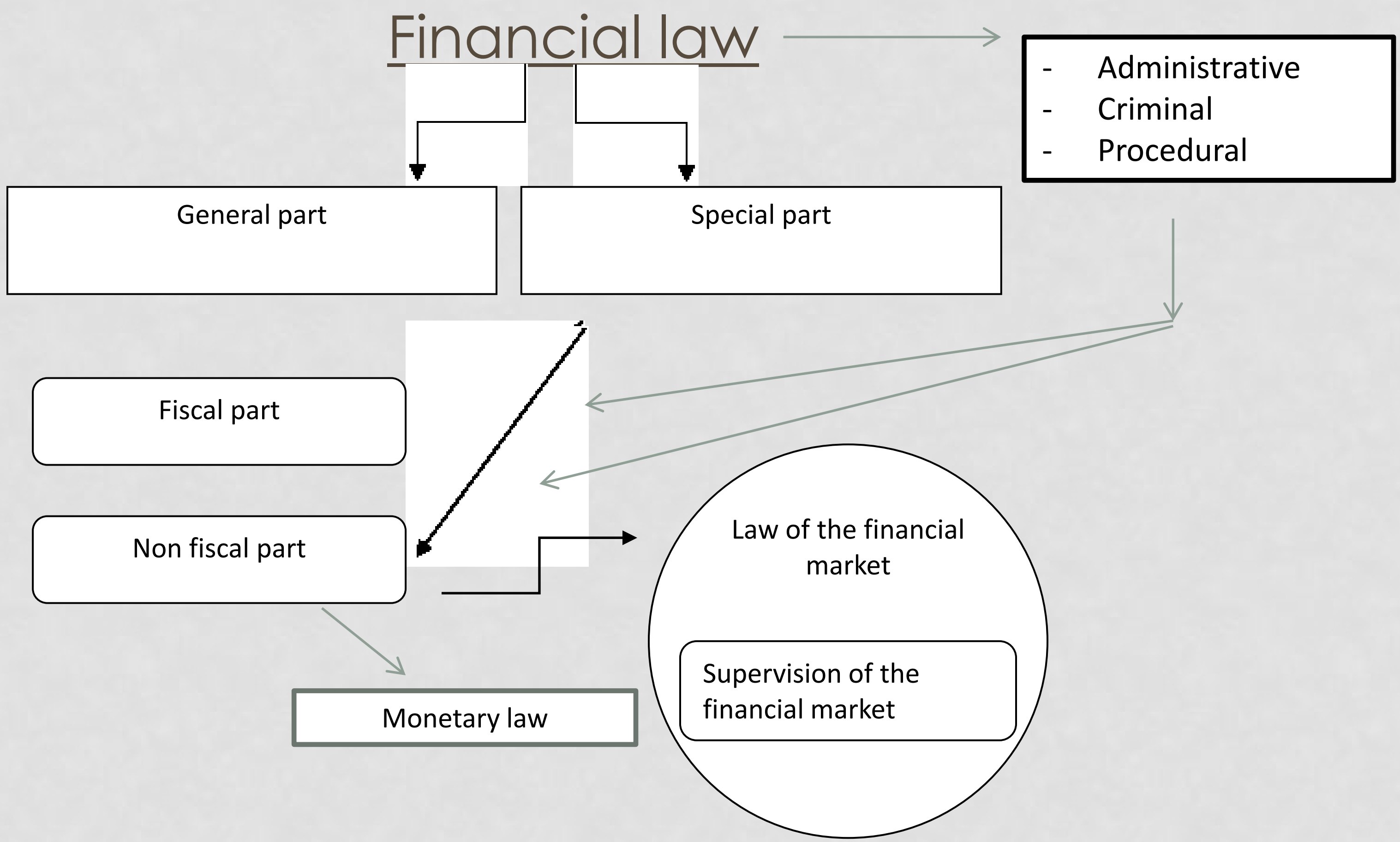
PLACE OF SUPERVISION IN LAW SYSTEM



DIVIDING OF THE FINANCIAL MARKET

most important, but not the only one

- **Money market**
  - markets where the maturity of traded instruments not exceed one year ,
- **Capital market**
  - markets where the maturity of traded instruments is longer than one year. Capital markets could be divided to,
    - **Primary market**, where there are first traded financial instruments on the financial markets. The main function of primary markets is the allocation of financial capital for further investments
    - **Secondary market**, where are traded financial instruments which were already traded on the primary market.

SECTOR CALSSIFICATION OF THE FINANCIAL MARKET

- Money Market
- Credit Market (banks and investment companies)
- Foreign Exchange Market
- Insurance Market,
- Capital Market
- Comodity Market

= Financial market=> Law of the financial market

TRENDS OF THE FINANCIAL MARKET AREA

- Globalization
- Harmonization of rules
  - Regulation of financial services provision
  - Individual regulation and supervision
  - Regulation of Non-legal acting on the financial market
- Coordination and colaboration on the financial market
- Deregulation of financial institution and services
- Consolidation of the financial institutions on the financial market
- improving transparency
- Electronization of the financial market
- Increasing volumes of trading on financial market

REGULATION, CONTROL, SUPERVISION

- **Regulation means process of setting up rules and conditions for** business at the relevant section of regulation. These rules are usually set up in national legal rules, but also european rules or rules of the intenationl law
- **Control** is general term covering Supervision and Oversight
- **Supervision of the financial system means control** of the compliance action, including possible sanctions for not complying of rules - NOT by the state, but by the institutions for which STATES delegated that competence (Supervisory authority (separated and independand)

- **Oversight/ surveillance** – performed by state or state authority (could be Ministry of Finance)

- <u>ON THE FINANCIAL MARKET, we use SUPERVISION.</u>

REASONS FOR FOR THE INCREASED REGULATION

- **SYSTEMIC REGULATION and SUPERVISION – systemic risk and macro economic financial stability**

- **CONSUMER PROTECTION - Market abuse,**

- **PRUDENTIAL REGULATION and SUPERVISION - individual supervision**

- **abuse of dominant position**
- **information asymmetry**

These market failures can be associated with yet another reason: **Criminal risk, especially money laundering**

FINANCIAL SUPERVISION SYSTEMS

- **SECTORAL MODEL,**
  - forming supervisory structure, in which financial regulation and supervision is institutionally organized by main sector of financial intermediation(more or less degree of separation of supervisory institutions for individual market segments, namely banking, insurance, capital market… etc.)
- **FUNCIONAL MODEL**
  - includes solutions where financial regulation and supervision intended to protect the individual functions of the financial systém (this model is based on the typology of individual market failure, therefore separates the protection of investors and consumers focused on fair use of markets, prudential regulation and supervision, the stability of the financial system and the protection of competition – Antimonoly policy).

SUPERVISORY MODELS

	Sectoral model	TWIN PEAKS MODEL	Single supervisory models	
Models	**Sectoral model**	**Funcional model** - **twin-peaks**	**Functional model** without Central Bank participacion	**Functional model** with Central Bank participation
EU countries	Bulgaria, Cypruss, Latvia, Luxemburg, Romania, Slovenia, Spain	Belgium, France, Italy, Netherlands, Portugal, Great Britain, Greece	Denmark, Estonia, Germany, Malta, Poland, Austria Switzerland Latvia Sweeden,Finland, Norway..	Czech Republic, Hungary, Ireland, Slovkia, San Marino…
OUT of EU	South Africa, India	Australia, Canada, USA	Japan, Korea	Singapore

Based on: SHOEMAKER. D.: Financial Supervision in the EU (2011)

MODELS OF SUPERVISION BY REGION

	Africa		Americas		Asia & Pacific		Europe		Middle East		Total	
Sectoral	9	100%	9	52%	7	50%	10	30%	4	66%	39	50%
Integrated - CB	0	0%	1	6%	2	14%	5	15%	1	17%	9	11%
Integrated - SSA	0	0%	1	6%	2	14%	11	33%	0	0%	14	18%
Twin Peaks	0	0%	3	18%	2	14%	3	10%	0	0%	8	10%
Two Agency	0	0%	3	18%	1	8%	4	12%	1	17%	9	11%
Total	9	100%	17	100%	14	100%	33	100%	6	100%	79	100%

- Source: Bank for international Settlements 2018

- EU – Mostly Single supervisory authority (Central bank or Special authority) – **48 %**

TWIN PEAKS EXAMPLE - AUSTRALIA

- Australia – Twin peaks funcional model
  - **Australian Securities and Investments Commission** - Australia's corporate, markets and financial services regulator. Independent Commonwealth Government body.
    - maintain, facilitate and improve the performance of the financial system and entities in it
    - register companies and managed investment schemes
    - grant Australian financial services licences and Australian credit licences register auditors and liquidators
  - **Australian Prudential Regulation Authority -**
    - promotes financial stability by requiring financial institutions to manage risk prudently so as to minimise the likelihood of financial losses to depositors, policy holders and superannuation fund members.
    - Licenced institutions are subject to ongoing supervision to ensure it is managing risks prudently and meeting prudential requirements, and to identify those institutions that are unable or unwilling to do so

LEVELS OF SUPERVISION

- International supervision
- EU Supervision
- National supervision

- **THE MAIN RULE OF FINANCIAL MARKET SUPERVISION IN THE EU - FINANCIAL MARKET LAW IS SUPERVISION BY THE HOME MEMBER STATE.**
- **It is still valid, but there are tendencies to centralise it (Banking Union). Complete centralisation is not ready yet.**

INTERNATIONAL LEVEL OF SUPERVISION

- „Core principles“
  - **Basel Committee on Banking Supervision (BCBS)** and Core principles for effective banking
    - + **Financial Stability Board** - monitors and makes recommendations about the global financial systém. promotes international financial stability.
  - **International Association of Insurance Supervisors (IAIS)** and Core principles in insurance
  - **International Organization of Securities Commissions (IOSCO) and** goals and principles of the Capital Markets and their regulation
  - IN GENERAL
  - **Financially-action committee against money laundering**(FATF) and its own 40 recommendations

BSCS + FSB -> G-SIB

- Global systemically important banks

http://www.financialstabilityboard.org/wp-content/uploads/r_141106b.pdf

- total loss-absorbing capacity (TLAC) – Capital adequancy rule - building higher capital reserves for the purpose of readiness to respond to a crisis situation

? OVERKILL ? for GSIB, which are also EU important banks, because of the new robust MREL obligation (Minimum Requirement for own funds and Eligible Liabilities from 2019). MREL is based on same principle, but calculated differently.

EU SUPERVISION OF THE FINANCIAL MARKET

- harmonization of financial regulation by European law, in particular through the relevant directives,
- mutual recognition of national rules that are not harmonized,
- national competence in the area of supervision and control principle primarily performed by the home regulatory authority for banks operating in several EU countries,
- assumption of close cooperation between national regulators.

EU REGULATION OF THE FINANCIAL SUPERVISION

Generaly about the integration

- Primary sources (TFEU)
- Secondary sources
  - Regulations
  - Directives
- ECJ court jurisprudence

MAIN AREAS OF THE SUPERVISION

- Providing financial services
- Regulation and supervision of the financial market
- Monetary regulation

INTEGRATION OF SUPERVISION

- 2 main ways of understanding process of INTEGRATION

- harmonization - unification (integration) supervisory practice and cooperation at the transnational level for this purpose, as it is understood the process of integration in the international (EU) level (**functional integration**)

- unification of supervision within one or two institutions, as integration is seen in some EU member countries eg. in the Czech Republic, Slovak Republic or Ireland, where the Financial Supervision is unified (integrated) into a single institution (**institutional integration**)

INTEGRATION OF SUPERVISION

- Singapour (1984), Norway(1986), Denmark (1988), Malta (1988), Sweden (1991), United Kingdom (1997/1998), Japan (1998), Iceland (1999), South Korea (1999), Hungary (2000), Estonia (2001), Lithuania 2001 Germany (2002), Austria (2002), Ireland (2003), Belgium (2004), Lichtenštensko (2005), Slovakia (2006), Czech Republic (2006), Poland (2008), Switzerland (2009), Finland (2009).

EU SUPERVISORY AGENCIES

- **European Systemic Risk Board –** macroprudential authority Recommendations and warnings - No binding decisions, but NAMING AND SHAMING rule. Problem of undetected risks or on the other hand false warnings -> reputation declines.

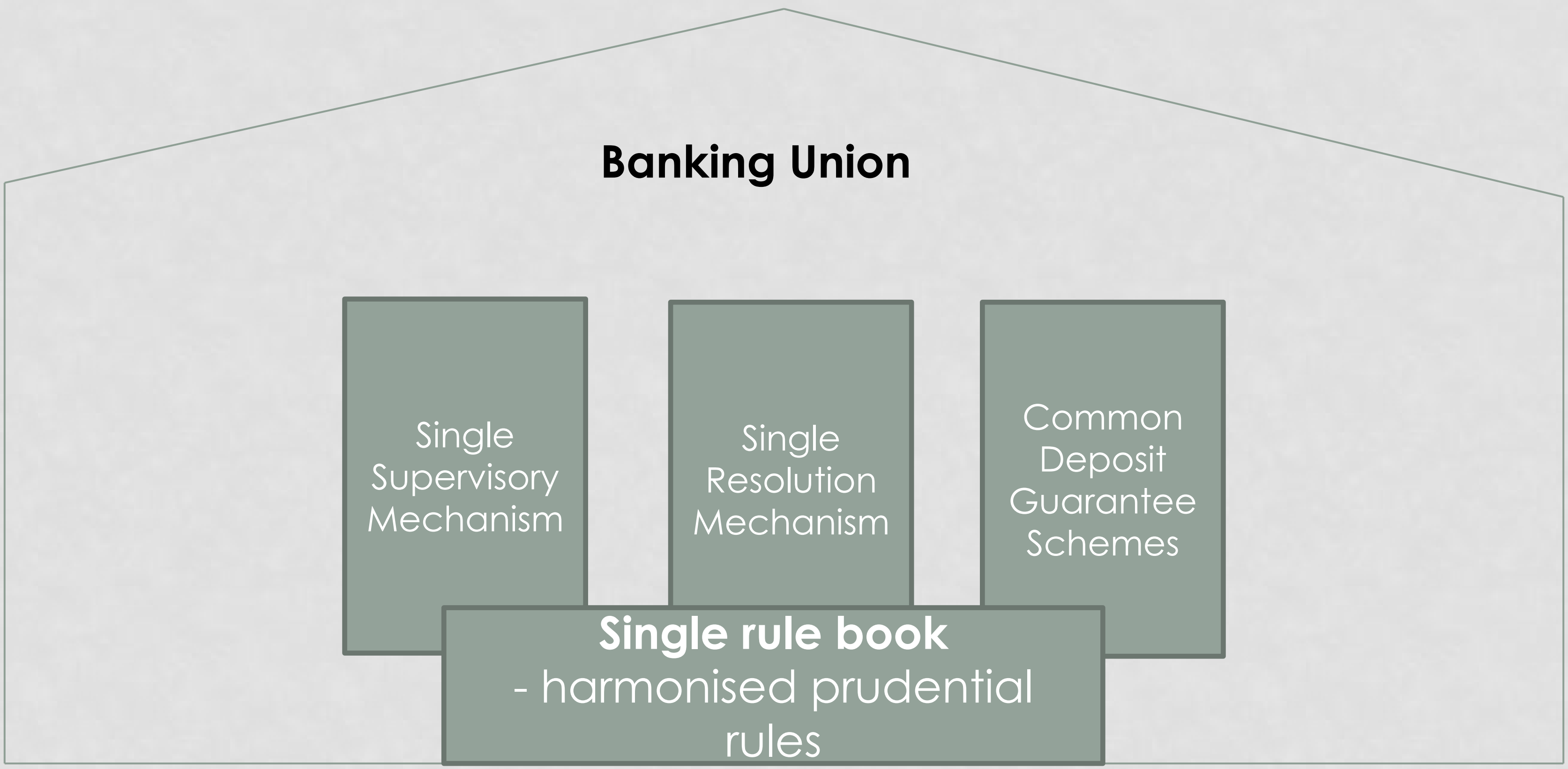
- **European Banking Authority, EBA** (instead of the Committee of European Banking Supervisors)
- **European Securities and Markets Authority, ESMA** (instead of the Committee of European supervisory authorities of the capital market)
- **European insurance and Occupational pensions authority EIOPA instead of** The Committee of European supervisory authorities of the insurance and occupational pension funds.

BANKING UNION

- Second step for real INTEGRATION of SUPERVISION after Larosiér report
- **3 pillars**
- Single supervisory mechanism (Supervisory board in ECB)
- Single resolution mechanism (SRB + NRB; SRF + NRF)
  - *Bank Recovery and Resolution Directive*
  - Regulation of the European Parliament and Council Regulation (EU) no. 806/2014

- Common Deposit Guarantee Schemes

BANKING UNION



SUPERVISION IN EU AND EFTA (NORWAY)

- Goal : Single market. Is it really possible ?

- Financial supervision rules are mostly same, because supervision of the financial market is mostly EEA relevant.
- Problems: Long precedure for implementing EU rules to national legal systems of EFTA countries.
  - EFTA countries supervisory authority representatives become equal members of EU agencies (ESA)

    ->constitutional issues in sensitive cases or when Commission or Council could be involved in decisions of EU agencies

INTEGRATED SUPERVISION

- THE **DOMINANT TYPE (MODEL) OF THE SUPERVISORY STRUCTURE** IN THE EU FINANCIAL SUPERVISORY SYSTEM IS **A SINGLE SUPERVISOR MODEL**
- (see the table above)

CONCLUSIONS

- Within the EU, there are minimal problems, which should be solved, thus the supervision will be well integrated and therefore support financial stability and also one of the aims of the economic policy of EU, which is to build up real single market in Europe. **The problem is that only the government leaders assembled in the European Council are in the position to act, but precisely they are the ones who are unable to act in the interest of a joint European community because their main consideration is their national electorate**. Thus the result is a political trap. The currency union must gain the capacity to act at the supra-national level and the <u>**currency union should expand into a political union**</u>, such that the process of integration will in all ways be complete.

EU FEDERATION ?

- National financial market doesnt exist anymore

- Its international - >rules, supervision colaboration and harmonization must be International.

- Real single market already? We are very close

but

- Only political federation will lead us to real single market (nevertheless EU and EEA rules are aimed to single market anyway and maybe we will manage without federation)