



DEVELOPING CASE LAW ON BANKING UNION TEN YEARS AT A GLANCE



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'Banking union': single supervision and resolution of banks

Single Supervisory Mechanism (SSM)

SSM = ECB + NCAs

Based on SSM Regulation (1024/2013)

ECB's role in prudential supervision in Euro Area:

- ❑ direct and full for 114 significant banking groups
- ❑ direct and limited (licensing and authorisation of shareholders) for all banks
- ❑ indirect for all banks
- ❑ *L-Bank*: exclusive ECB competences, NCAs act in auxiliary capacity

Single Resolution Mechanism (SRM)

SRM = Single Resolution Board + NRAs

Based on SRM Regulation (806/2014)

SRB:

- ❑ resolves banks based on uniform rules and procedures, without recourse to public funding
- ❑ organises resolution planning for banks
- ❑ manages Single Resolution Fund (SRF), filled with annual *ex-ante* contributions by banks, now at target level of 1% of the amount of covered deposits of credit institutions (€ 80 bn)

Pillars of the Banking Union



<https://www.srb.europa.eu/en/content/srb-banking-union>

EU law / Member State law

Most of the [Single Rulebook](#) for banks consists of directives (‘framework legislation’ which is not directly applicable but needs to be implemented into national law; directives are nevertheless sometimes extremely detailed in wording)

Article 4(3) [SSM Regulation](#):

‘... with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives’.

- ❑ interpretation of national law by judiciary of the relevant Member State prevailing ...
- ❑ ... but if [Austrian] case law is not in conformity with EU law, “compliance with the principle of the primacy of EU law means that, the General Court must, as must a national court, where necessary, interpret national law so far as possible in the light of the wording and the purpose of the directive transposed in order to achieve the result sought by the directive” ([BAWAG judgment](#), para 60; [Sberbank judgment](#), para 61)
- ❑ thus, **proportionality** (required by [Article 70 of the Capital Requirements Directive 2013/36](#)) is to be applied even when a national supervisory measure is considered ‘automatic’: always take the circumstances of the case into account / exercise discretion – see my annotation [here](#)

Banking union case law tracker

European Banking Institute



<https://ebi-europa.eu/publications/eu-cases-or-jurisprudence/>

THE BANKING UNION AND UNION COURTS

OVERVIEW OF CASES
AS OF 30 APRIL 2025

Who can contest an ECB decision?

MANAGEMENT OF A BANK IN LIQUIDATION?

YES

Trasta [Latvia – NCA-proposed court-appointed liquidator]

“it follows from the existence of [the] links between the FCMC [then Latvian NCA] and the liquidator and from the role played by the FCMC in the adoption of the decision at issue [had proposed to ECB revocation of banking license] that the responsibility for any revocation of the power of attorney issued to *Trasta Komerbanka*’s lawyer for the purpose of bringing an action before the Courts of the European Union against that decision cannot be given to that liquidator without infringing *Trasta Komerbanka*’s right to effective judicial protection within the meaning of Article 47 of the Charter [Right to an effective remedy and to a fair trial]

MANAGEMENT OF A BANK UNDER NCA-APPOINTED ‘COMPETENT PERSON’?

NO

Pilatus [Malta – NCA-appointed competent person]

“the purpose of the action before the General Court was to annul the decision withdrawing authorization” // “certain arguments put forward by the appellant in support of that action (...) concerned the representation of the appellant and sought to demonstrate that the ECB had deprived it of the possibility of effective representation.” // “Such arguments were also liable to cast serious doubt on the lawfulness of the authority of the appellant’s lawyer to act as a representative in the proceedings before the General Court.

The fact that the fees of the appellant’s lawyer could not be paid was such as to indicate that the body that had provided the lawyer with authority to act had no power to make that payment and that it did not have the power to bring legal proceedings and to provide a lawyer with authority to act for that purpose.” // “the appellant’s Board of Directors was no longer entitled to represent the appellant and no longer had the power to provide a lawyer with authority to act for that purpose” // distinguishing *Trasta* on spurious grounds

Infringements of AML/CTF rules

Infringements of AML/CTF rules, although supervision thereof attributed to different authorities than SSM, are a valid ground for revoking a license, and taking other supervisory actions:

Versobank (2021), Anglo Austrian (2024)

The logo for Versobank, featuring the word "verso" in a dark brown sans-serif font, followed by a circular icon containing a stylized "S" shape, and then the word "bank" in a lighter grey sans-serif font.The logo for Anglo Austrian Bank, featuring a circular emblem with the letters "AAB" inside, positioned above the words "ANGLO" and "AUSTRIAN BANK" in a serif font.

the ECB has exclusive competence to withdraw a banking license also when this is based on the grounds set out in [Article 67\(1\)\(d\) and \(o\) CRD IV](#)[★], to which [Article 18 CRD](#)^{★★} refers specifically, and on the findings of the relevant NCA concerning money laundering and governance

★ Penalties and measures can be applied in case of (d): lack of adequate governance, (o): serious breach of the national provisions adopted pursuant to AML directive

★★ *Withdrawal of authorization* possible when one of the breaches of Article 67 have occurred

140 ACTIONS AGAINST BANK LEVIES FOR THE SRF



ex-ante contribution calculation
annulled by GC in ~70 cases of ~140
proceedings, ~60 of which are still
pending



Banco Popular resolution cases

- ❑ resolution of Spanish bank in 2017, write-down of capital, shares sold for € 1 to *Santander*
 - ❑ 116 proceedings, mostly against the SRB (some against the Commission, the ECB) instituted
 - ❑ several pilot cases decided by the General Court, which held the resolution scheme to have binding effect, thus could be appealed all dismissed until....
 - ❑ on appeal, Court of Justice held that actions had to be instituted against **Commission**, not **SRB**: judgment of 18 June 2024 in Case C-551/22 P (*Fundación Tatiana Pérez de Guzmán el Bueno v SRB*)★
 - ❑ in 40 still pending cases, applicants then informed the General Court that they wished to to discontinue proceedings against the SRB, leading the Court to remove them from the register in decisions of January 2025, published in the Official Journal in April 2025
 - ❑ ... underscoring the lack of transparency in ‘banking union’ proceedings which our list pursues
- ★ *Meroni* [1958] case law, as developed in *Romano* [1980] and *ESMA Short-selling* [2014] on delegating discretionary decisions to agencies not foreseen in the Treaty

Arbitration pending

- ❑ ICSID arbitration proceedings pending in case concerning supervision of *PNB Banka*: Latvia/UK BIT 1994
- ❑ arbitration proceedings Mexico/Spain BIT 2006 closed on *Banco Popular* resolution: award of 13 March 2023 under 2103 UNCITRAL rules: rejecting the claims and ordering applicants to pay to Spain costs for legal fees and for the arbitration amounting almost € 8 million:
<https://pca-cpa.org/en/cases/211/>

PPP – climate change

- ❑ proceedings may be under way on periodic penalty payments (PPPs) imposed for failing to take climate and environmental risks ([ECB Guide, 2020](#), CRD/CRR amendments) properly into account
- ❑ ECB [Annual Report on supervisory activities 2024](#) mentions 31 decisions “*on climate-related risks envisaging the accrual of periodic penalty payments for each day of infringement should the banks concerned fail to comply with prudential requirements*” // ‘[small number of outliers](#)’ among banks to which the ECB addressed binding decisions may have seen PPPs imposed by the turn of the year (see: Frank Elderson, [From concept to delivery: accounting for climate and nature in maintaining price stability and keeping banks safe and sound](#) // challenges against decisions imposing PPPs for non-compliance with climate change and nature-related risks not yet in public sphere.
- ❑ interesting context: ECB issued own initiative [Opinion](#) on Omnibus directives ([COM/2025/80](#), [COM/2025/81](#))