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Banking Union

"Money, money, money" – Resolution Funds under the BRRD and SRM-Regulation

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Agenda

I. Background

II. Legal Framework for Resolution Measures and Funds

III. Resolution Funds – Overview

IV. Resolution Funds under the BRRD

V. The Single Resolution Fund under the SRM Regulation

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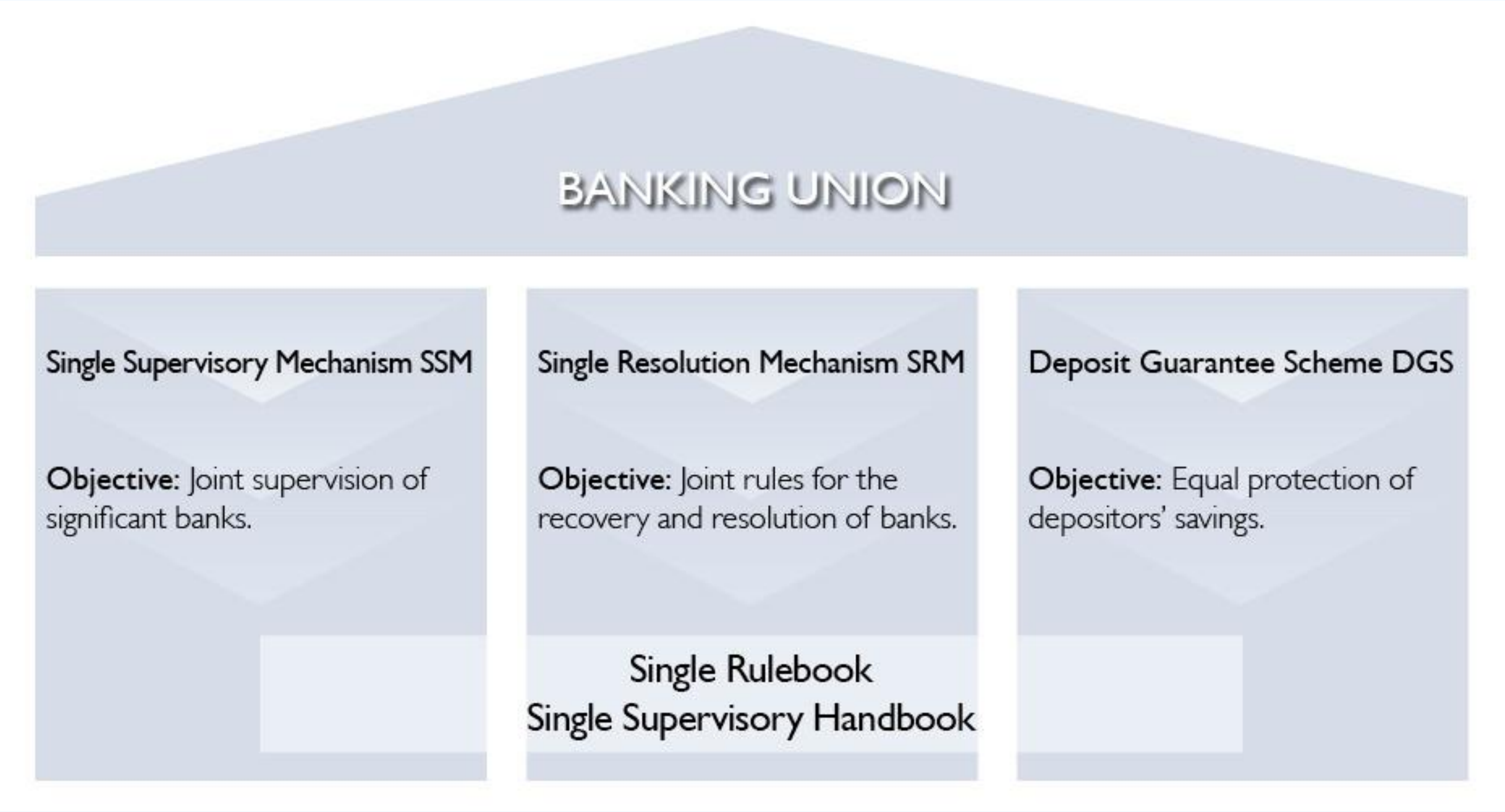
I. Background

Global Financial Crisis and Banking Union



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II. Legal Framework for Resolution Measures and Funds

Overview of the most relevant legal acts

SRM Regulation

- Applicable in participating MS (namely euro area)
- Builds on BRRD, but
- Centralisation of
  - Resolution authority
  - Resolution procedure
  - Resolution fund

Delegated Regulation

Methodolgy of Deleg. Reg. also applicable to SRF

Calculation of contributions to resolution funds

Intergov. Agreement

Transfer and mutualisation of SRF-contributions

Implementing Regulation

Calculation of SRF - contributions

Similar concepts

Bank Recovery and Resolution Directive

- Applicable within all EU Member States
- Common rules on
  - Recovery and resolution planning
  - Resolution tools
  - Resolution funds

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III. Resolution Funds - Overview

Resolution Funds

Past: National Level

GER: Restructuring Fund

AUT: Fund for Stabilisation Measures

FRA: Stabilisation Fund

Participating MS = SSM-scope =
(i) Euro-zone member states, and
(ii) states with close cooperation to ECB

Since 2015: EU Level

BRRD

National funds for institutions in *all* EU-MS as of 2015

SRM / IGA

Single Resolution Fund for institutions in *participating MS* as of 2016

IV. Resolution Funds under the BRRD

General provisions

- Obligation for every EU Member State
  - to establish its own “resolution financing arrangements” (in general through a fund) by 1st Jan. 2015,
  - to ensure that, by 31 Dec 2014, the fund reaches at least 1 % of the of covered deposits of all institutions authorised in their territory, and
  - to raise ex-ante contributions at least annually from the institutions authorised in their territory including Union branches

- Use of the national funds in resolution procedure, *inter alia*
  - to guarantee assets or liabilities
  - to make loans
  - to purchase assets
  - etc.

Ex-Ante and Ex-Post: 2 Types of Contributions

Two types of contributions

Ex-ante contributions

- Target: at least 1% of covered deposits of all institutions authorised in MS's territories by 31st Dec 2024
- "At least annually"
- Up to 30% of the total amount of payments may be raised in form of irrevocable and secured payment commitments
- Refill in case of disbursements

Extraordinary ex-post contributions

- MS shall raise ex-post contributions where available financial means are not sufficient to cover losses, costs or other expenses incurred by use of financing arrangements
- Max. 3 times the annual amount of ex-ante contributions
- Deferral possible if threat for liquidity or solvency

Ex-ante contribution: basics

- Article 103(2) BRRD: ex-ante contribution consists of two elements: (1) basic contribution, (2) adjusted by risk factor

- Basic contr A = $\dfrac{\text{Liabilities – Own Funds – Covered Deposits of specific institution}}{\text{Liabilities – Own Funds – Covered Deposits of all the institutions authorised in this MS}}$

  - A = Target level per year (e.g. in Germany: €1.9 billion)
  - Basic contribution reflects the size of the institution
  - Risk factor reflects the risk profile of the institution

- Adjusted by risk factor: what does that mean?
  - How is the risk factor to be determined? Size? Risk exposure? Complexity?
  - What does adjustment mean? Multiplication with A? With a figure below or above 1?
- BRRD has left open various questions
- Most have been answered by BRRD Delegated Regulation (EU) 2015/63 on ex-ante contributions

Ex-ante contribution: details (1)

- Calculation on individual entity level or group level? Rule: basic annual contribution is calculated for each institution at individual entity level
- The total liabilities referred to in the basic annual contribution shall *not* include in particular
  - intragroup liabilities (subject to several further conditions),
  - liabilities between institutions which are members of the same institutional protection scheme (IPS),
  - In case of CCPs liabilities related to clearing activities
- The risk factor adjustment is a multiplier between 0.8-1.5

Ex-ante contribution: details (2)

Risk pillars and indicators relevant for risk adjustment

- **Risk exposure (50%)**
  - Own funds, eligible liabilities (25%)
  - Leverage Ratio (25%)
  - Common Equity Tier 1 Capital Ratio (25%)
  - Total risk exporsure divided by total assets (25%)
- **Stability and variety of sources of funding (20%)**
  - Net stable funding ratio (50%)
  - LCR (50%)
- **Importance of institution to stability of financial system or economy (10%)**
  - Share of interbank loans and deposits in the EU
- **Additional risk factors to be determined by resolution authority (20%)**
  - Trading activities and off-balance sheet exposures, derivatives, complexity and resolvability (45%)
  - Member-ship in an IPS (45%)
  - Extent of previous extraordi-nary public support (10%)

Ex-ante contribution: details (3)

- If you now want to calculate the individual risk adjusting multiplier, it is very easy…

N is the number of institutions in the sample;

$$g_{ij} = \frac{\frac{1}{N}\sum_{n=1}^{N}(x_{ij,n} - \bar{x})^3}{\left[\frac{1}{N-1}\sum_{n=1}^{N}\left(x_{ij,n} - \bar{x}\right)^2\right]^{3/2}};$$

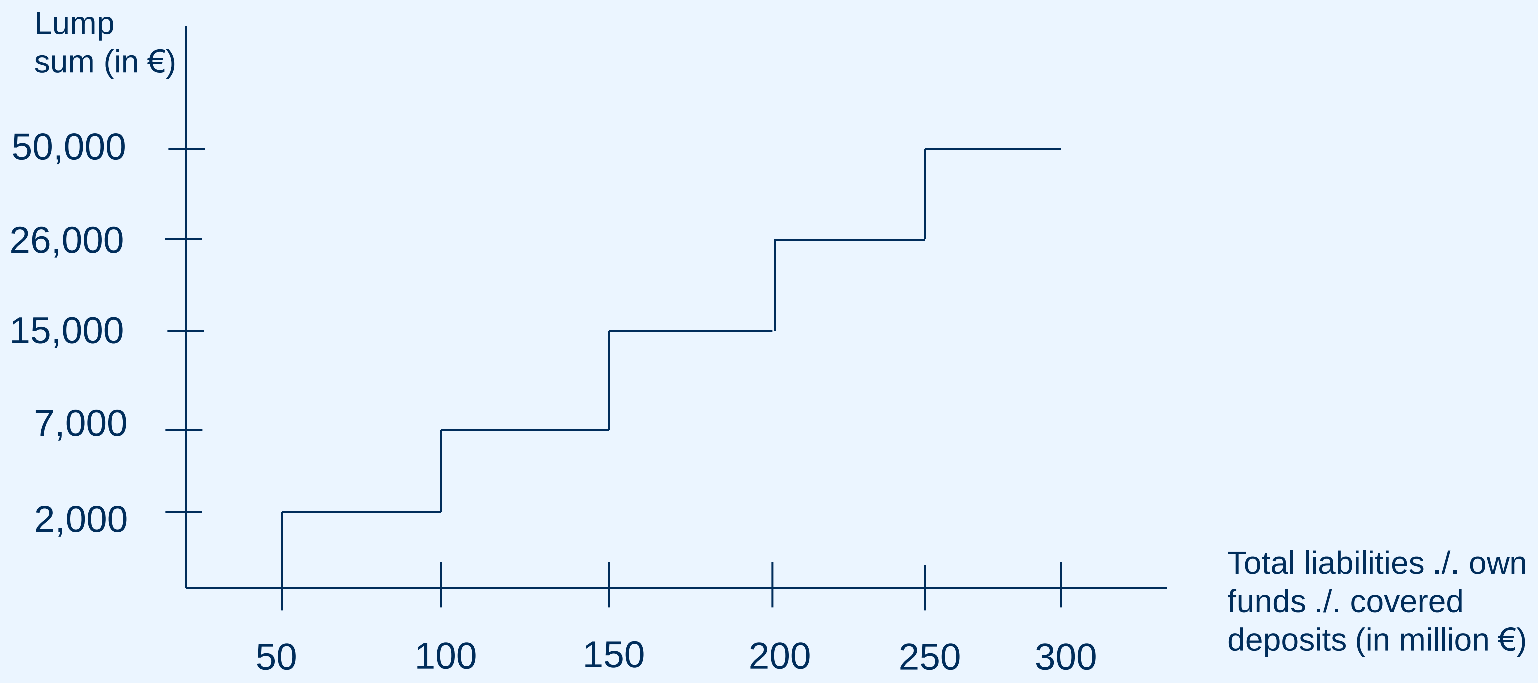
$$\bar{x} = \frac{\sum_{n=1}^{N} x_{ij,n}}{N};$$

$$\sigma_g = \sqrt{\frac{6(N-2)}{(N+1)(N+3)}}.$$

- Nonetheless: It is legal stuff. Watch out and check the calculation.

Ex-ante contribution: details (4)

- Small institutions only pay lump sum
- Small institution =
  - Total assets less than 1 billion € and
  - Total liabilities, less own funds and covered deposits equal to or than 300 million € (but escape clause in Art. 20 (5)



Ex-ante contribution: details (5)

- What happens to a branch or subsidiary in another Member State? Can double charging of bank levies be avoided?
- Bank A in Germany has a branch in London
  - German resolution authority calculates ex ante contribution for A including its branch in London (ie including the branch`s liabilities)
  - In UK the branch is subject to Schedule 19 Finance Act 2011 and has to pay a levy
  - Branch, therefore, pays twice
- Bank B in UK has a subsidiary B1 in Germany
  - German resolution authority calculates ex ante contribution on individual level, ie for subsidiary B1
  - According to Schedule 19 Finance Act 2011 subsidiary B1 is also subject to UK bank levy
  - B1, therefore, pays twice

Ex-ante contribution: the procedure

- Each institution to provide National Resolution Authority with latest approved annual financial statements by the 31^{st} of January in respect of the year ended on 31^{st} Dec of the preceding year (or before that if not otherwise)
- Resolution Authority notifies (electronically or by registered mail) each institution of its decision determining the annual contribution at latest by 1^{st} of May each year
- Institution has to pay in a single instalment by 1^{st} June
- In event of non or partial payment or other non-compliance with the decision it shall incur a daily penalty on outstanding amount
- Special provisions for 2015: information to be provided to the NRA by 1 September 2015; contribution to be paid by 31 December 2015

V. The Single Resolution Fund under the SRM Regulation

Legal Basis for SRF

Single Resolution Fund

SRM Regulation

- Establishment of SRF
- Calculation of contribution
- Obligation of participating MS to raise contributions
- Administration, ownership
- Use of SRF

Intergovernmental agreement (IGA)

- Conditions for transfer of contributions to SRF
- Allocation to national compartments and waterfall
- Conditions for use of SRF

Relation to BRRD, objective and scope

- BRRD funds: From 1st Jan. 2016 SRF replaces national BRRD funds in participating Member States
- Objective: financial aid, such as guarantees, to ensure viability of restructured bank (same as BRRD)
- Scope: Not only systemic institutions, but:
  - All credit institutions established in participating MS
  - Parent undertakings established in one of the participating MS, including financial holding companies when subject to consolidated supervision by the ECB
  - Investment firms and financial institutions established in participating MS when covered by the consolidated supervision of the parent undertaking carried out by the ECB

Ex-Ante and Ex-Post: Types of Contributions

Two types of contributions

Ex-ante

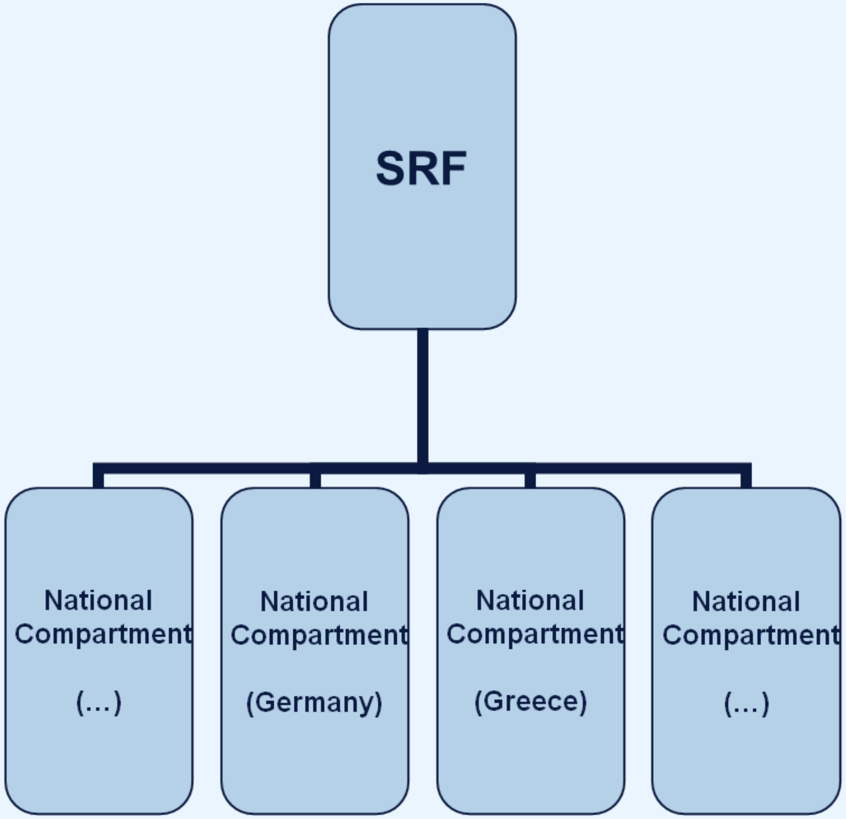
- Target: 1% of covered deposits of all credit institutions in all participating MS (2011: €55bn)
- By end of 2023 (8 years)
- Refill in case of disbursements
- Calculated by Board (!) but raised by national authorities
- BRRD funds raised in 2015 to be transferred to SRF in 2016 (in fact, 9 years SRF)
- Calculation in principle similar to BRRD-contributions

Ex-post

- Where means in SRF are not sufficient to cover losses, costs or other expenses incurred by SRF in resolution actions
- Max. 3 times annual ex-ante contributions
- Calculation like ex-ante
- Board may temporarily exempt institutions in specific cases

Use of SRF: National Compartments

- SRF is owned by the Board
- But: initially compartments corresponding to each participating MS
  - Size equal to totality of contributions payable
- Compartments will be gradually merged over 8 years (transitional phase)
- Bridge financing
  - Temporary transfer between national compartments
  - Borrowing



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Thank you for your attention !

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Practice
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About

A regulatory law specialist and co-head of our worldwide regulatory practice, Benedikt's practice covers all areas of European and German regulatory law with a focus on the financial and energy sector.

Skills and experience

Benedikt advises financial institutions, insurance companies and governments on regulatory driven transactions, restructurings, stabilisation measures, disputes and legislative processes. He advised the German Government on the Financial Market Stabilization Act and die German Financial Market Stabilization Agency on the establishment of Bad Banks in Germany. His recent experience includes advising institutions on the Intergovernmental Agreement between the Eurozone Member States on the Single Resolution Fund, on the BRRD Delegated Regulation and on ex ante contributions for resolution financing arrangements.