

EU BANKING LEGISLATION: COMPARISON OF NON-EUROZONE AND EUROZONE COUNTRIES

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Abstract

After the 2008 financial crisis, the European Union (EU) has gradually constructed a robust legislative framework to regulate banks operating within its borders. However, not all regulations apply to banks in the EU member states equally. Which EU legislation applies exclusively to countries within the eurozone, and which also affects banks in non-eurozone countries?

This paper utilizes three interconnected methodologies. Firstly, Document Analysis outlines the lineage of EU banking regulations, discovering key milestones that have shaped the financial landscape. Secondly, it develops an Institutional Analysis describing the roles of the EU institutions in shaping these regulations and their supervision. Finally, the paper conducts a Comparative Analysis, examining the various effects of banking legislation on institutions within and beyond the eurozone.

By understanding the evolution and effects of EU banking legislation, policymakers, regulators, and financial institutions gain fundamental insights that will challenge them to develop further or adjust this regulatory framework.

Key words: Banking, European Union, Legislation, Banking Union

JEL Code: K20, E58, G21

Introduction

When a bank gets into trouble, the media usually pays significant attention. If bank problems continue and become regular, it could shake citizens' trust in the banking sector. As a result, the whole financial system could be endangered. The increasing significance of banking regulation and harmonization has been proven by problems that several banks have faced in recent history. Since the financial crisis 2008, the EU has aimed to create a secure system to prevent the banking crisis and solve banks' problems with potential difficulties. The EU has

passed several legislative acts to create a harmonized approach towards financial stabilization, with the banking sector being one of the most essential elements. For instance, it has passed amended versions of the Capital Requirements Directive (CRD) on access to the activity and supervision of banks and amended versions of the Capital Requirements Regulations (CRR) on prudential requirements of banks.

Furthermore, the EU entrusted the ECB with supervising the financial institutions. With the creation of the European System of Financial Supervision (ESFS), a new authority contributing to financial stability in the banking sector was established, the European Banking Authority (EBA). However, upon whom are these new legislations set? Which of this legislation applies solely to credit institutions within the eurozone, and which also to credit institutions outside of the eurozone? Or could it also apply to institutions in other countries?

To answer this question, a theoretical evolutionary background of the critical components of the EU banking legislation is presented. Afterward, a description of the legislative acts is presented, followed by comparisons of their reviews. The conclusion summarizes the key parameters of the legislation.

1 Literature review and theory

Before the crisis in 2008, European financial regulations did not provide a consistent framework, as the political situation was not in favor of a consistent drive to achieve harmonization. The situation changed after the financial crisis when the European authorities decided on a more centralized regulatory basis. Based on the De Larosie`re's Report, the European Commission intended to introduce an institutional reform for a more centralized system (Posner & Véron, 2010). The De Larosie`re's Report identified the causes of the financial crises and suggested creating a unified set of rules to increase the financial system's stability in the EU. The overall aim of his Report was to create a new supervision mechanism at the EU level and to establish authorities responsible for financial stability in the EU (De Larosiere et al., 2009).

These changes in the following years significantly weakened national control over banking institutions. Market fragmentation was partly considered to be responsible for the deepening of the 2008 financial crisis. The market fragmentation caused a reduction of liquidity, and disruption of monetary policy transmission occurred. In the years following the 2008 crisis, the need for a supranational solution to avoid this situation in the future shifted

the balance of power towards a more coordinative and centralized banking authority (Epstein & Rhodes 2016). Further, domestic regulators frequently tend to conduct policies that prefer domestic-owned banks over foreign-owned banks in times of crisis. This preference for domestic-owned banks decreases the cooperation among national supervisors during financial crises in the short term after the breakout of the crisis (Kudrna & Gabor, 2013).

The shift towards a supranational entity was sealed by the introduction of the Single Supervisory Mechanism (SSM), which represents the first pillar of the creation of the Banking Union. The other pillars of the Banking Union are the Single Resolution Mechanism and the Common System of Deposit Protection. Within the SSM, the ECB takes the role of a decisive player in the financial system of the European Union. The ECB supervises significantly important banks directly, and national authorities secure supervision over less important ones (Panek, 2013).

2 Data

Data from various sources has been collected to answer the central question. Which main legislative acts apply to banks in the eurozone, and which extend beyond the borders of the eurozone?

Firstly, background data on the development of crucial banking regulations are available from academic literature. The background data can be accessed from respectable academic databases, such as Scopus or Web of Science (WoS). The data were collected based on Spendzharova (2013). Having collected the data, the methods of systematic interpretation and document analysis are employed.

Afterward, the legislative datasets needed for comparable and institutional analysis can be accessed on the leading platforms for the EU law - eur-lex.europa.eu/, as well as on the websites of relevant Institutions. Additional data for the relevant legislation can be found in reputable academic literature, such as WoS. Contrary to the background data, an evolutionary interpretation and contextual analysis of the critical legislation acts regarding banking regulation is employed. Afterward, a comparative analysis of the primary legislation on the credit institutions within and outside the eurozone is completed. This approach enables us to answer the question.

3 Legislation

3.1 Current legislation

Spendzharova (2013) determines three areas of European banking supervision with the most sizable progress toward coordination at the European level.

- (1) Granting binding power to regulate banking institutions to a supranational authority, European Supervisory Authorities, the EBA being responsible for credit institutions and presenting the Single Rulebook.
- (2) Introducing a regulation that implements Basel III rules.
- (3) Distributing supervisory power with competencies among the host supervisory organizations and national supervisory institutions.

The current main legal framework of these three areas consists of the following legislative acts. The Directive (EU) 2013/36 on access to the activity of credit institutions and the prudential supervision of credit institutions (CRD IV), Directive (EU) 2019/878 amending the CRD IV (CRD V) and Regulation (EU) No 575/2013 on prudential requirements for credit institutions (CRR I), Regulation (EU) 2019/876 amending CRR I (CRR II). These acts apply the final steps of Basel III standards in the EU legislation. The regulations are inevitably binding for the EU member states on their date of application. On the other hand, directions must be implemented in national legislation. The transposition of CRD V in Czech law occurred in 2021. Further amendments known as CRD V and CRR III are being discussed on the EU level.

With amended Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (EBA), a new authority in the EU has been established. The Authority is a part of a European System of Financial Supervisions system.

Amended Regulation (EU) No 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions. With this Regulation, supervisory tasks have been conferred on the ECB.

3.1 The European Supervisory Authority and the Single Rulebook

The EBA was founded in 2010 as one of the European Supervisory Authorities, along with the European Insurance and Occupational Pensions Authority and European Securities and Markets Authority. On the same date, the European Systemic Risk Board (ESRB) was

established. Each of these Authorities is responsible for micro-prudential supervision of the institutions in their area of expertise.

The ESRB is responsible for supervising macro-prudential levels. The European Commission, the European Parliament, and the Council consult EBA on specific topics. Generally, the EBA contributes to the stability and effectiveness of the banking system. (Gortsos, 2011). Article 8 of Amended Regulation (EU) No 1093/2010 contains an exhaustive list of tasks and powers of EBA. Article 8, paragraph 1 (aa) states that EBA has a task “*to develop and maintain an up-to-date Union supervisory handbook on the supervision of financial institutions in the Union which is to set out supervisory best practices and high-quality methodologies and processes and takes into account, inter alia, changing business practices and business models and the size of financial institutions and of markets.*” A summary of the amended Regulation (EU) No 1093/2010 is shown in Figure 1.

Figure 1: Amended Regulation (EU) No 1093/2010

	Amended Regulation (EU) No 1093/2010
Purpose (what is regulated)	Regulation aims to ensure adequate supervision and consistent prudential Regulation across the European banking sector. It can also investigate the alleged incorrect application of a national EU banking and financial legislation supervisor.
Type of legislation (legislative process)	Regulation of the European Parliament and the Council
Area of application (sector affected)	European banking sector
Authority in charge (who is responsible for enforcing)	EBA
Applicability (where is applicable)	All countries in the European Union. Adapted version applicable for Lichtenstein, Norway, and Iceland (European Free Trade Area – EFTA)

Source: EBA Regulation and EFTA (2024)

All members of the European Union must comply with the Regulation. Based on the Decision of the EEA Joint Committee No 199/2016. Lichtenstein, Iceland, and Norway also participate in the EBA. The EFTA Surveillance Authority carries out the role of Authority in their case in cooperation with EBA.

The EBA created a unified regulatory framework called the Single Rulebook to harmonize all prudential rules that EU institutions are obligated to respect. Previously, EU banking regulation was based on Directives. This meant that national authorities had space to

adjust the legislation according to their needs. The Single Rulebook unified regulatory aggregates and enabled the use of the same methodology for calculation for all entities in the EU. CRD and CRR acts are part of the Single Rulebook (EBA, 2024a and EBA, 2024b). For EFTA countries, the CRD IV, V as well as CRR I and CRR II have been incorporated into the EEA Agreement (EFTA, 2014).

3.2 The Basel III Implementation

In 2010, the Basel Committee on Banking Supervision published two regulations called Basel III. The Basel III rules cover areas such as capital requirements, additional requirements for specific risk positions of the banks, maximum debt ratio requirements, or new standards on liquidity. The EU agreed on the implementation of Basel III in 2013. The quantitative regulations on liquidity and equity were implemented as part of the CRR Regulation. The Regulation became effective for member states immediately. On the other hand, qualitative requirements were implemented into CRD Directive (Hartmann-Wendels, 2013).

The logic why the CRD IV and CRR I are separate acts is also explained by the European Commission (2013) *“while Member States will have to transpose the Directive into national law, the Regulation is directly applicable, which means that it creates law that takes immediate effect in all Member States in the same way as a national instrument, without any further action on the part of the national authorities. This removes the major sources of national divergences (different interpretations, gold-plating). It also makes the regulatory process faster and makes it easier to react to changed market conditions. It increases transparency, as one rule as written in the Regulation will apply across the single market. A regulation is subject to the same political decision making process as a directive at European level, ensuring full democratic control.”*

To implement the rest of the Basel III reforms, the EU agreed on legislation Directive (EU) 2019/878 (CRD V) and Regulation (EU) 2019/876 (CRR II). These legislative acts amended CRD IV and CRR (BoE, 2021). The CRD IV and the CRR are considered to be a baseline for applying Basel III, and their summaries are shown in Figure 2.

Figure 2: CRD IV and CRR

	CRD IV Directive (EU) 2013/36	CRR Regulation (EU) 575/2013
Purpose	The Directive sets the prudential supervision of credit institutions and investment companies and the	The Regulation aims to strengthen the prudential requirements of credit institutions in the EU. The

	access to the activity of credit institutions. It contains many areas - authorization, capital, liquidity, risk management, remuneration, recovery, or resolution.	strengthening is achieved by requiring banks “ <i>to keep sufficient capital, loss-absorbing liabilities, and liquid assets</i> ” to ensure their financial strength. Additionally, the CRR Regulation “ <i>requires banks to disclose to the public how they comply with the prudential requirements.</i> ”
Type of legislation	Directive of the European Parliament and the Council.	Regulation of the European Parliament and the Council
Area of application	Credit and Investment companies	Credit and Investment companies
Authority in charge	The competent Authority of the state	The competent Authority of the state
Applicability	All countries in the EU, as well as Iceland, Lichtenstein, and Norway (EFTA)	All countries in the EU, as well as Iceland, Lichtenstein, and Norway (EFTA)

Source: CRD IV, CRR, EFTA (2024) and Hartmann-Wendels (2013)

The CRD and the CRR are applicable to all countries in the EU. Both acts have also been incorporated into the EEA Agreement and are currently in force (EFTA, 2024).

3.3. The Single Supervisory Mechanism (SSM)

The Single Supervisory Mechanism represents the first step toward the European Banking Union. The European Banking Union is a project that aims to strengthen banking supervision, avoid banking bailouts, and, in total, enforce capital rules. To achieve this task, the ECB conducts stress testing and evaluates the resilience of credit institutions (Gutiérrez-López & Abad-González, 2020).

In the SSM system, responsibility and decisive Authority over supervisory tasks of the eurozone banks is entrusted to the ECB. Initially, there was also support for extending the power of EBA or creating an entirely new body that would be responsible for the supervision of credit institutions. However, the attempts were unsuccessful, as the political will did not favor these solutions (Ferran & Babis, 2013). Figure 3 shows the summary of amended Regulation (EU) No 1024/2013, which sets the SSM.

Figure 3: Amended Regulation (EU) No 1024/2013

	Amended Regulation (EU) No 1024/2013
Purpose	Regulation entrusts specialized tasks on the ECB related to the prudential supervision of credit institutions. These tasks cover areas such as the right of establishment, supervision of bodies not covered by the definition of a credit institution under EU law but supervised as credit institutions under national law, supervision of credit institutions from third countries which has established a branch or providing cross-border services in the EU, supervision of payment services or verifications of credit institutions and day-to-day supervisory tasks.
Type of legislation	Regulation of the Council of the European Union
Area of application	Credit institutions
Authority in charge	ECB
Applicability	Applicability is possible to all EU countries; however, eurozone countries are automatically members. Others can opt into the SSM.

Source: Amended Regulation (EU) No 1024/2013

Article 11 of the amended Regulation (EU) No 1024/2013 states that “*A banking union should therefore be set up in the Union, underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole and composed of a single supervisory mechanism and new frameworks for deposit insurance and resolution. In view of the close links and interactions between Member States whose currency is the euro, the banking union should apply at least to all euro area Member States. With a view to maintaining and deepening the internal market, and to the extent that this is institutionally possible, the banking union should also be open to the participation of other Member States.*”. The European Banking Union is therefore targeted primarily at the eurozone. Other states of the EU can participate in the Banking Union voluntarily.

Conclusion

Over the past two decades, the EU has worked to enhance its banking regulations, foster alignment across member states, and standardize their supervisory practices. This article outlines key legislative acts in area of significant progress toward closer harmonisation that

have been integrated into European law. These acts are then described and further compared. Results show that not all of these acts are relevant to all EU countries in the same way. The CRD Directives mostly address prudential supervision, while the CRR Regulations focus on prudential requirements, both in EU member states and EFTA countries. The EBA Regulation applies collectively to all EU member states. The member states of the EFTA decided to join the Regulation, but the role of the Authority is represented by the EFTA Surveillance Authority, which closely cooperates with the EBA. In contrast, the Regulation governing the SSM is obligatory only for eurozone member states; other countries may voluntarily participate in the SSM.

Looking ahead, the volume of banking regulation in Europe will continue to grow. Consequently, ongoing surveillance, evaluation, and adaptive adjustments to regulations are important to keep pace with the evolving financial landscape.

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