

Legal basis for the Single Resolution Mechanism

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Commission Communication 30.11.2012. A blueprint for a deep and genuine economic and monetary union.

Following the adoption of the Single Supervisory Mechanism, the Commission will make a proposal for a Single Resolution Mechanism, which will be in charge of the restructuring and resolution of banks within the Member States participating in the Banking Union. This mechanism will be articulated around a separate European Resolution Authority, which will govern the resolution of banks and coordinate in particular the application of resolution tools. This mechanism will be more efficient than a network of national resolution authorities, in particular as regards cross-border banking groups /.../.

Principles

Any intervention by the SRM will be based on:

- The need for resolution should be reduced to the minimum, thanks to strict common prudential rules and SSM;*
- Where intervention is necessary, shareholders and creditors should bear the costs of resolution before any external funding accordance with BRRD;*
- Any additional resources needed to finance the restructuring process should be provided by mechanisms funded by the banking sector, instead of using taxpayers' money.*

The Commission considers that, just as the establishment of an effective Single Supervisory Mechanism, the creation of a Single Resolution Mechanism can be realised by secondary law without require (sic) any amendment of the current Treaties.

The Commission will submit in the course of 2013 a proposal for a SRM for Member States participating in the SSM, to be examined by the co-legislators as a matter of priority with the intention of adopting it during the current parliamentary cycle.

It should safeguard financial stability and ensure an effective framework for resolving financial institutions while protecting taxpayers in the context of banking crises. The single resolution mechanism should be based on contributions by the financial sector itself and include appropriate and effective backstop arrangements. This backstop should be fiscally neutral over the medium term, by ensuring that public assistance is recouped by means of ex post levies on the financial industry.

Art. 114(1) TFEU. Functioning internal market.

- QMV. Ordinary legislative procedure;
- Legal basis for BRRD and for ESAs and ESRB.
- ERA is *stronger* than ESAs and ESRB, it does more than “contributing to the implementation of a process of harmonisation”(Case C-66/04);
- *Meroni* (C-9/56): limit to discretion / to economic policy execution; (?)
- Taxation nature of the levies for SSM financing?

Commission confirming main ERA resolutions may be the solution.

Two options on applicability:

regulation applies to all Member States and takes effect only in respect of SMM Member States or enhanced cooperation is used. In this latter case:

- Art. 114(I) is a suitable legal basis for enhanced cooperation (Art. 326-333 TFEU);
- Use of EU institutions allowed by Art. 20 TEU.