An Analysis on Whether EU Banking Regulations have Accomplished a Single Banking Objective*

Cihan DOGAN

I. Introduction

The aim of this paper is to provide an assessment of the issue of whether EU banking regulations have accomplished a Single Banking objective alongside protection and inclusion of customers.

After this introduction, the second section of this paper will make a definition of Single European Banking Market and summarize the key steps towards it.

The third section will analyse the aims of Single European Banking Market and whether it is fully established. A comprehensive analysis of the issue will be made under this section.

In the fourth section, customer protection and inclusion in financial sector will be analysed. The current deposit guarantee scheme directive and the proposal for amendment will also be mentioned under this section. Peter Paul case, moral hazard and too big to fail issues will also be analysed.

The final section of this paper will provide an assessment of the process and will summarize the key results of the paper and evaluate the steps made towards Single European Banking Market.

II. Single European Banking Market

1. Definition of Single European Banking Market

The European Union has been implementing banking directives for many years with the aim of achieving a Single Banking Market which is the forefront of the single market

* This paper was prepared by the Author for the EU Banking Law course as part of the LLM International Commercial Law program at City University London during 2011-2012 academic year.

programme for services. Under the Single Banking Market programme it would be possible for any banking service provider in the EU to establish or to acquire another bank across the EU and it would also be possible for any EU customer to benefit from the services of any legally established banking institution across the EU.[1] It simply means that a customer can purchase financial services from any part of the EU and a financial service provider can supply financial services to any part of the European Union.

2. Steps Towards to the Single European Banking Market

There has been a lot of step made towards to Single European Banking Market. In 1977, the First Banking Directive is implemented. Then the European Commission published a White Paper on ‘the completion of the Internal Market’. After that the Second Banking Directive is implemented. In 1992, European Monetary Union is established by Maastricht Treaty. In 1999 the European Commission issued a ‘Financial Services Action Plan’. Then the Capital Requirements Directive is implemented. Since The Basle committee on banking supervision and Lamfalussy process have significant impact on the process of creating Single Banking Market, they will be shortly mentioned in this section as well.

The First Banking Directive was one of the foundation blocks of the Single Banking Market which were especially aiming to open up national markets and to allow free competition in banking. The introduction of the principle that credit institutions has to ask for authorization prior to starting their activities and the duty of competent authorities to inform the Commission of the list of the authorized credit institutions were considered to be fundamental steps towards the formalization of national regulatory regimes through European legislation.[2]

The European Commission published a White Paper on ‘The Completion of the Internal Market’ so that the free movement of capital, goods and services could be achieved in the EU. This White paper was quite groundbreaking since it introduced the concept of mutual recognition, minimum harmonization and the single European passport. This paper was not binding but just suggestive to the Member States. Undoubtedly, the stance of the European

[1] K Matthews and S Norton, ‘The EU Single Banking Market Programme: Fit for Purpose?’ (2007) Global Vision <http://www.global-vision.net/files/downloads/download295.pdf> accessed 30 March 2012

[2] L. Dragomir, European Prudential Banking Regulation and Supervision, The legal dimension (Routledge, 2010) p.68.

Court of Justice in the cases of *Cassis de Dijon*[3] and *Coditel*[4] played an important role in these suggestions.

The Second banking directive is the key legislative act in creating a Single Banking Market with unrestricted access of credit institutions to the territory of all Member States.[5] It contained the three main principles of the Single Banking objective which are the mutual recognition, minimum harmonization and Single European Passport which were recommended by aforementioned white paper. The mutual recognition principle is defined as the obligation of the host state not to obstruct or prohibit any action of a foreign bank that is authorized in the bank's home state.[6] It means that the host country acknowledges the superiority of the "home-country control"[7]. Minimum harmonization is a vital legislation that the Member States have to obey, in order that the internal banking market is created. The intention is to encourage foreign banks to operate in other Member States with the minimum supervision in the European Union.[8] And the last principle contained by Second Banking Directive is the Single European Passport which lets to these credit institutions to launch branches in other Member States or provide services within the EU without the need of additional approval.[9]

The Economic and Monetary Union, introduced by Maastricht treaty, is really important for Single Banking Market. Since the Member States would no longer have their own currency, it would no longer be possible for them to change the exchange rate to achieve some national objectives.[10] And most importantly single currency eliminates the transaction costs. The aim with single currency is the price stability and coping with currency risk and

---

[3] The principles of home country regulation and mutual recognition have been inspired by famous 1987 case Cassis de Dijon (*EC commission vs. Germany*. 205/84, ECR 3755). In this case, the European Court of Justice found that Germany could not prohibit the import of liquor that was lawfully produced and sold in France solely because the alcoholic content was too low for it to be deemed liquor under German law (European Banking Integration: Don't put the cart before the Horse, Jean Dermine [2005])

[4] Case 262/81 *Coditel SA v Cine Vog Films* [1982] ECR 3381

[5] L. Dragomir, as note 2 above p.76.

[6] Ortino, Matteo, 'The role and functioning of mutual recognition in the European market of financial services'[2007] 56(2) International & Comparative Law Quarterly 309-338

[7] Neil B. Murphy, 'European Union Financial Developments: The Single Market, The Single Currency, and banking' (2000) 13 FDIC Banking Review.

[8] R. Dixon, Banking in Europe, The Single Market (Routledge, 1991) p.51-52.

[9] R. M. Lasstra, 'Central Banking and Banking Regulation' (Financial Markets Group, London School of Economics) [1996] p.225

[10] Neil B. Murphy, as note 7 above

European Central Bank is responsible to serve this purpose. EMU will also make market practices more uniform, pricing more transparent, and increase competitive pressure.[11]

The European Commission issued a 'Financial Services Action Plan' in 1999 which listed 42 measures that needed to be adopted in order to complete the single market by 2005.[12] Another formation which affected the creation of Single European Banking Market is the Basle Committee on Banking Supervision, comprising the banking regulators of the major financial centres, was established in 1975 by the central bank governors of the G-10 countries in response to the increased interdependence or 'globalization' of banking activity. Its primary aim is to reduce the risk posed to the global financial system by banking crash, through encouraging dialogue and co-operation between regulators and through agreeing capital adequacy standards. It has neither formal legal status nor authority, but its recommendations which are not binding and also called 'soft law' are very significant and are followed by banking regulators throughout the world.[13] Another issue has to be raised is the Lamfalussy reform which is based on the recommendations formulated by the Committee of Wise Men on the Regulation of European Securities Markets set up by the Council of the EU in July 2000. The Committee was asked to evaluate the regulation of the securities markets in the European Union and the current conditions for its implementation.[14] Due to lack of space, those issues will not be further mentioned below.

3. Capital Requirements Directive

The Capital Requirements Directive (CRD) is the key piece of EU legislation that regulates the capital adequacy of European Financial institutions. The CRD extends many of the rules which have previously applied only to international banks to all banks with an institution in the Europe regardless of their size or where they operate. It also applies to all investment firms established in Europe, setting out capital adequacy requirements for

[11] Vives, Xavier, 'Lessons from European Banking Liberalization and Integration' (August 2009) <http://blog.iese.edu/xvives/files/2011/09/Vives-Lessons-on-EB.pdf> accessed 10 April 2012.
[12] Ed, Progress on the financial services action plan, EU focus,2004
[13] Ellinger, Lomnicka, Hare, Ellinger's Modern Banking Law, fifth edition, [2011] (OUP) p.77
[14] Ortino, Matteo, as note 6 above

investment firms that are otherwise subject to the market entry, organisational and market conduct rules of the Markets in Financial Instruments Directive.[15]

The present European system is contained in two directives: Directive 2006/48/EC on the “taking up and pursuit of the business of credit institutions” and Directive 2006/49/EC on the “capital adequacy of investment firms and credit institutions”. However, the European Commission adopted an additional legislative proposal to strengthen the regulation of the banking sector in July 2011. This proposal replaces the present Capital Requirements Directives with a Directive[16] and a Regulation[17].

While Member States will have to transpose the directive into national law since directives are not directly applicable and needs to be implemented[18], 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.[19] This removes the major sources of national divergences such as different interpretations. It also leads to a quicker regulatory process and makes it easier to react to changed market conditions. It enhances transparency, as one rule as written in the regulation will apply across the single market.[20]

III. Aims of Single European Banking Market

[15] Bart P.M. Joosen ‘Further changes to the Capital Requirements Directive: CRD IV – major overhaul of the current European CRD legislation to adopt the Basel III Accord: (Part 1)’ Journal of International Banking Law and Regulation, (2012)

[16] DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0453:FIN:EN:PDF>

[17] REGULATION (EU) No 1093/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0012:0047:EN:PDF>

[18] Consolidated Version of Treaty on the treaty on the Functioning of the European Union [2008] OJ C115/49 Article 288, ‘A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.’

[19] Consolidated Version of Treaty on the treaty on the Functioning of the European Union [2008] OJ C115/49 Article 288 ‘A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.’

[20] From CRD IV, *Frequently Asked Questions*, July 20, 2011, Memo/11/527 p.7

It is clear that the rationale behind creating an EU-wide Single Banking Market was fostering competition and having greater efficiency in banking via lower costs for service providers and lower prices in financial services. Undoubtedly, Single Banking Programme improves efficiency through greater consolidations and mergers across Europe which would eventually lead to great economies of scale.

The Single Banking Market is primarily designed to increase competition for retail banking services across the large EC market.[21] And it was anticipated that the main effect of banking integration will be to change the focus from collusion and regulatory capture to competition.[22] Even though as it is analysed below, Single European Banking Market is not fully established, the competition is fostered. From my point of view, the competition level does not reach the same level as it was aimed in the first place because of several reasons such as captive customers and people's willingness to use domestic financial service providers. However, it can be supported that the competition is increasing by time.

Another expectation in terms of Single Banking Market was the lower prices in financial services. According to commission's report to the results of Price Waterhouse study[23] it is estimated an EC-wide reduction of 21 percent in banking prices following adoption of the single market.[24] Since it was anticipated that the banking integration will lower costs for financial service providers via economies of scale as a result of possible mergers, it accordingly indicates that there will be lower rates for borrowers as well.

Banking integration was expected to reduce cost differentials between domestic and foreign banks operating within EC market, although it would not necessarily eliminate them.[25] This is an important factor that affects the competition. It is clear that when the cost differentials between domestic and foreign banks are reduced there will be more competitors in the market and eventually the competition will be fostered.

---

[21] Zimmerman, Gary Implementing the Single Banking Market in Europe (1995) Economic Review < http://www.frbsf.org/econrsrch/econrev/95-3/econrev.-19.pdf > accessed 8 April 2012

[22] Vives, Xavier. 1991. "Banking Competition and European Integration" in Alberto Giovannini and Colin Mayer (eds.) *European Financial Integration.* Cambridge: Cambridge University Press, pp. 9–31.

[23] Commission of the European Communities (1988b) reports the results of the Price Waterhouse study.

[24] Zimmerman, Gary Implementing the single Banking Market in Europe (1995) Economic Review < http://www.frbsf.org/econrsrch/econrev/95-3/econrev.-19.pdf > accessed 8 April 2012

[25] Ibid,

The critical analyse of the outcomes of the steps towards to Single Banking Market objective

In this chapter, it will be analyzed that whether the single European banking market is fully established. So as to analyse that issue it has to be assessed whether a stable and efficient Single Banking system has been established and most importantly, whether national banking institutions are part of it and they function in terms of integration and collaboration.[26] . Even though within the past 30 years there has been a great progress made towards it with a lot of regulations serving this purpose, obviously the Single European Banking market is not yet fully established and still under development because of several reasons such as supervisory problem, Member States tendency to follow their own regulations, different market segments and fear of economic crises.

Before starting to analyse the issue whether the Single European Banking Market is established, it is better to mention following information. In principle there are three different ways to create a Single Banking Market. The first way is the removal of barriers to entry and acquisition with a single EU-wide regulatory framework. This can generate a level playing field however not essentially an efficient and competitive banking market. The second way is treating the foreign providers same as domestic providers. This leads each country to keep different regulations and there is no prejudice among providers on the ground of country of origin.[27] The third way is to remove entry and acquisition barriers and most importantly allow banks to be regulated by home nation regulations rather than host nation regulations. This process leads regulatory competition to determine the optimal level of regulation and generate the conditions for an efficient and competitive banking market.[28]

From my point of view, it is not easy to support that one of those aforementioned ways were precisely has been chosen by EU on the way to EU Single Banking Market. However, there are some principles which are internalized by EU legislators. These principles which have leaded the way of achieving single European banking market were limited harmonization, national treatment and mutual recognition. But it is recognized that full

---

[26] L. Dragomir, European Prudential Banking Regulation and Supervision, The legal dimension (Routledge,2010) p.33

[27] Gual, Jordi, ‘The integration of EU banking markets’ (2004) In: Gual Jordi (ed) Building a Dynamic Europe: the key policy debates, Cambridge University Press, Cambridge, UK.

[28] K Matthews and S Norton, ‘The EU Single Banking Market Programme: Fit for Purpose?’ (2007) Global Vision <http://www.global-vision.net/files/downloads/download295.pdf> accessed 30 March 2012

harmonization of the regulatory framework is not feasible because the regulation of financial markets is closely related to local commercial and contract law which will vary from country to country. The principle of national treatment allows for some market access and a degree of free trade, and the mutual recognition principle would in theory open up the likelihood of regulatory competition. But in fact harmonization is hampered by the acceptance of the 'general good' principle that allows for opt-outs from specific directives.[29]

Mario Monti[30] in his report emphasizes the issue of Member State's willingness to follow their own rules by stating that in the financial sector, Member States showed the tendency to follow their own regulation and supervision of the banking services and this led to delays regarding the adoption of a Single Banking policy. He also pointed out that financial crisis of 2008 revealed the gaps in the process for the implementation of a Single Banking Market.[31] When it is thought in Member States point of view, they have an important point which is not all the Member States economies rely on the banking system at the same level. Some Member States need to be more cautious than other Member States since their economies are tend to be affected more in case of a small action regarding banking sector. From my point of view, EU legislation should regard those facts when making regulations.

Another point that has to be raised when analysing whether single European banking market is established is banks not having branches but subsidiaries across the EU. Most of the European banks are unable to provide all the available products across the union and even they do the prices are usually extremely high. Most significantly, the subsidiaries of banks in other Member States do not offer the same benefits as the domestic banks and holding an account in a bank in a Member State does not allow access to the banking services of another branch in other Member States.[32] From my point of view, what is meant by Single Banking Market is not that an EU bank having a subsidiary in other Member State. What in my opinion meant is an EU bank opening branches in other Member States, offering same variety of products with the same prices. However, when it is looked at the current situation, there are banks providing services across the EU with subsidiaries but not with branches. However,

[29] Ibid,
[30] European competition commissioner.
[31] Mario Monti, 'a new strategy for the Single Market, at the service of Europe's Economy and Society' [2010]
[32] D. Shirreff, 'European retail banking: will there ever be a single market?' (2007) Centre for European reform policy brief.

there is a certain reason why banks operating in other Member States using subsidiaries rather than opening their own branches. The reason is that foreign branches operating within EU entails some specific risks which are less present in subsidiaries. There are four challenges are present in cross-border branch structures. Firstly, host supervisors have less supervisory control over branches than they have over subsidiaries. Secondly, there is a divergence in national supervisory standards, which may have an impact on the supervision of branches. Thirdly, bank account holders of branches are covered by the home country guarantee scheme. Consumers' trust might be affected as differences appear between the various national protection schemes. And lastly, difficulties arise relating to crisis preclusion and management and especially when taxpayers' money is invested in rescue programmes, as burden sharing appears to be more difficult in the case of branches.[33]

Another issue that has to be emphasized is that the banking sector consists of a variety of market segments, in which the nature of competition is diverse and in which we would expect to observe different degrees of market integration. For each market segment, it can be assessed the extent of integration as it is usually done in trade theory. It can be focused on the evolution of price convergence, or we can look at a quantity indicator, such as cross-border flows or, in the case of direct investment, the market share of foreign entities.[34]

Undoubtedly, As a result of the EU single market policy and the adoption of the single currency (EURO) the degree of integration of banking markets has increased. However, the single currency policy is failed to eliminate the segmentation in the banking sector and it allowed financial institutions to transport to another Member States any financial difficulties or instabilities.[35] According to Jordi Gual[36] the integration is far from complete in retail markets for several reasons. Firstly, since in retail markets there are important natural and strategic barriers to entry which tend to keep market segmented in spite of the introduction of market opening strategies. Natural barriers such as language and distance imply that retail markets may carry on following national borders for a while. Strategic barriers can also obstruct market integration. Competition in retail banking is based on the deployment of assets such as branch network, brand and reputation and incumbent credit

[33] Almudena de la Mata Muñoz, The Future of Cross-Border Banking after the Crisis: Facing the Challenges through Regulation and Supervision
[34] Gual, Jordi, 'The integration of EU banking markets' (2004) In: Gual Jordi (ed) Building a Dynamic Europe: the key policy debates, Cambridge University Press, Cambridge, UK.
[35] L. Dragomir page 37
[36] Professor of Economics, IESE

institutions may try to deploy these strategic assets in an attempt to gain competitive advantage in the process of market integration. Despite its limited impact on the degree of competition, the new competitive environment prompted by deregulation and integration has forced banks to diversify, increase their lines of business and engage in financial innovation, with an overall increase in business risk and the instability of profits. These trends may have prudential implications, although it seems that those can be tackled with the harmonized solvency standards. It is uncertain, however, whether this process of increased instability has impacted upon banks operating at the EU level, where potential solvency problems may have an impact extending beyond the country that controls the bank in terms of prudential regulations. Second reason why the integration process is not complete in retail banking is related to the exceptions launched in the integration process by allowing host country control in certain areas. These exceptions, which allow the imposition of local regulations when the general interest is at risk, should, in principle, ensure that domestic preferences are properly taken into consideration in the integration process. It is clear, however, that the protection of the general good can be used as a legal instrument with protectionist objectives. The superiority of local rules should be accepted only when it can be shown that no comparable home country regulation serves the same objective, and that the local rule cannot be used discriminatorily against foreign providers.[37] And the author further states that a competition policy which can be forcefully implemented by EU to protect the general interest of EU should be used if local regulators use the general interest argument as a protectionist device. In light of the information above, it is plain that the single European banking market is not established in retail market segments. Because of the segmentation of banking sector, the fully established Single Banking Market is far from complete.

And the last issue that has to be emphasised is the supervision dilemma. It can be understood that countries are reluctant to grant part of their sovereignty to a European body to monitor credit institutions since not all the Members of the EU economies relies the same level on the financial system. Therefore, some countries need more strict rules on banking system while other would stick to a system which is not that strict.

IV. Customer protection and inclusion

[37] Gual, Jordi, 'The integration of EU banking markets' (2004) In: Gual Jordi (ed) Building a Dynamic Europe: the key policy debates, Cambridge University Press, Cambridge, UK.

Customer protection should be one of the primary objectives of the single European banking market and the steps made toward to the single European banking market reveals, indeed, it is primary objective but the measures are not enough since there still are huge numbers of people are unwilling to involve in cross-border transactions due to lack of confidence, sufficient protection and discrepancies of national laws. Beyond any doubt, market integration is also vulnerable to be delayed by lack of customer awareness what is available elsewhere. The limited interest in shopping across the border is another reason for banking market integration is to be delayed. To illustrate, retail market for mortgages is being affected badly by consumers' lack of confidence. This is because most of the consumers are unwilling to change their mortgage contract or have some hesitations about high switching costs and most importantly, customers are not willing to engage in contracts for cross-border financial services and they are loyal to their local providers rather than the Foreign Service providers. However, it is not fair to blame those people just because they do not rely on foreign credit institutions. This issue can be explained by the numerous deficiencies in European Legislation and the divergences in national civil, commercial, procedural and consumer protection laws. And it is also be noted that, retail banking has been always a relationship-based business and it may take long time to establish new relationship or it might be quite expensive to close an account and open a new one in elsewhere. Consumers' lack of confidence is being aggravated by lack of protection in the event of the failure of financial institutions. The last financial crisis reveals the fact that how bad consumers can incur substantial losses due to the lack or divergence of protection schemes in their country.[38]

When the issue examined from credit institutions point of view, it is clear that last crises showed the fact that it does not matter how big are the credit institutions in terms of failure. Since the credit institutions are interdependent the collapse of a bank can affect the financial system as a whole. The significance of a credit institution for the financial system puts them in a special place.

Too Big to Fail

[38] RYM AYADI, 'Integrating Financial Markets in Europe: Between Uncertainties & Challenges' (2011) Centre for European policy studies <*http://aei.pitt.edu/32653/1/76._Integrating_Retail_Financial_Markets_in_Europe.pdf*> accessed 1 April 2012

Some credit institutions are so big and so interdependent that if they fail, it will be a disaster for the financial system and therefore, the governments have responsibilities to support them when they are in a bad situation. This responsibility of governments brings another issue on the subject which is called moral hazard.

Moral Hazard

Since some large credit institutions are too big to fail or guaranteed by some legislative act, they are willing to take undue risk. To illustrate, they are investing in a more risky project in order just to have more profit or loaning a business which is quite risky compared to other options which would bring less interest rates.

Deposit Guarantee Scheme

Depositors generally do not know whether their deposit is protected. If they think their bank is likely to fail, they will withdraw all their deposits and none of the banks can survive if their depositors withdraw all their money simultaneously. As it is stated above, due to the interdependence of credit institutions, the failure of one bank may represent a real threat to the financial system as a whole. Therefore, in order to mitigate this risk, strong prudential supervision of financial institutions and effective deposit protection scheme had to be implemented.

In order to mitigate this risk, EC adopted a Deposit guarantee Scheme directive in 1994. This directive requires Member States to compensate the depositors when the bank that the depositors deposited their money fails and depositors lose their money. This directive follows the home country control principle on the basis that the home state regulator principally responsible for regulation and supervision is in a better place to assess the risks and thus should also be responsible for devising the scheme for compensating depositors. This Directive requires Member States to establish a minimum standards deposit guarantee scheme covering at least 90% of any claim up to 20.000 euro. Since the directive is minimum standards, some inconsistency between schemes in different Member States arose. The directive makes provisions to solve these issues.[39] Firstly, according to article 4(1) of Deposit guarantee scheme directive if the host states scheme is less generous than the home state's scheme, then the host state's scheme is the maximum a depositor entitled to. So, the host state can, in effect, determine the maximum cover its domestic depositors are entitled to. Secondly, according to article 4(2) of Deposit guarantee scheme directive if the host state's scheme is more generous than the home state's scheme, the host state must ensure that non-host state regulated firms are given the opportunity to top up their home state cover.[40]

The directive mainly based on two principles. First, all authorized credit institutions must be members of a deposit guarantee scheme, in which regard the minimum requirements are given in the directive. Secondly, the branch depositors should be covered by the guarantee scheme of a credit institution's home country.[41]

Peter Paul case[42] is a significant case in terms of customer protection. Peter Paul deposited DEM 300.000 (about EUR 150.000) to the BVH bank. When the bank failed, Peter Paul and others brought a law suit against Germany and asked to be compensated. They had two claims. Their first claim which is accepted by the court was that the German government is liable since they fail to implement the EU deposit guarantee directive and second claim which were dismissed by court was claimants had suffered damages as a consequence of negligence in exercising prudential supervision. In the Preliminary ruling to the ECJ, German court asked two questions. First question was that can depositors claim more than EUR 20.000 specified in Deposit Guarantee Scheme. And the second question was that must Competent Authorities incur liability for any misconduct? The first question is answered as they can only claim up to EUR 20.000. And the second question was answered negatively. According to ECJ the directives cannot be regarded as conferring on individuals, in the event that their deposits are unavailable as a result of defective supervision on the part of the

[39] Germany with its generous scheme for customers of its universal banks voted against and then (unsuccessfully) challenged the DGS directive in the ECJ on the basis that these provisions were inconsistent with the home country control principle. Case C-233/94 *Germany v. European Parliament and Council* (1995) ECR 1-1141

[40] Ellinger, Lomnicka, Hare, Ellinger's Modern Banking Law, fifth edition, (OUP) [2011] p.75-76

[41] Misita, Nevenko 'Depositor Protection: An EC law perspective' (2003) Journal of International Banking Regulation Vol. 4, No. 3, pp. 254–274.

[42] *Paul v Bundesrepublik Deutschland* (C-222/02) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0222:EN:NOT

competent national authorities, rights capable of giving rise to liability on the part of the State on the basis of Community law.[43]

It should be noted that deposit guarantee schemes may increase bank stability by reducing self-fulfilling or information-driven depositor runs, it may also decrease bank stability by encouraging risk taking. In consumers point of view, when consumer knows that they will not bear the loss of a deposit resulting from the bank failure, depositors will be less likely to take care in ensuring that their choice of a bank is made with the risk it presents in their mind.[44]

The Commission adopted a legislative proposal for a careful revision of the Deposit Guarantee Schemes directive. According to proposal Member States has to increase the minimum coverage level, by stages, to at least 100.000 euro by December 2010, should reduce the time to 1 week to pay out claims and abolish the requirement that the deposit protection only extend to 90% of the amount. Another significant change is that all banks throughout the EU would provide a uniform level of protection to depositors regardless of citizens or small businesses. Another change in the directive according to proposal is that all schemes would have to build up a fund over time to repay depositors when needed. If necessary, banks would also have to make ad hoc contributions. According to proposal depositors would be informed about how their deposits are protected when they sign a contract with a bank. In my opinion, all of those changes will in benefit of depositors. This is because, with those changes they will be aware of that their deposits are better protected. They will also have chance to choose any country within the EU to deposit without worrying about differences in protection. And banks will be able to offer more competitive products within the EU since there will not be any national differences in deposit protection.[45] And most importantly, the banking crises stemming from lack of enough cash in banks as a result of depositors' withdrawal of the deposits will be more unlikely. This is because, depositors will be aware of that their deposits are secured even if the banks fail, they will be compensated. However, as my point of view, the aforementioned moral hazard issue could be a problem in this case. It is clear that even the depositors have to exercise a certain degree of

---

[43] Recital 51 of Peter paul Case

[44] Misita, Nevenko 'Depositor Protection: An EC law perspective' (2003) Journal of International Banking Regulation Vol. 4, No. 3, pp. 254–274.

[45] Proposal summary for citizens <http://ec.europa.eu/internal_market/bank/docs/guarantee/20100712_citizens_summary_en.pdf>

prudence when they are depositing their money. However, since their deposits are well secured and even if the banks that they deposited their money fails, they will be compensated in a very short time, they may act reckless and may not exercise any degree of prudence and may deposit a huge number of money to any bank without doing any search just to have good interest rate.

Commission recommendation on access to a basic payment account

According to commission's recommendation, Member States should ensure that any consumer legally resident in the union has the right to open and use a basic payment account with a payment service provider operating in their territory.

In my opinion, commission's recommendation is a bad start towards to a good goal. As it is clear, this recommendation is not binding and just has some political effect which is not enough and some binding measures must be taken towards it. In recital 3 of the recommendation, it is stated that it is important to ensure that principles on access to basic payment accounts are applied consistently throughout the union. And recommendation further states that however, in order to be more effective, those principles would need to be implemented taking into account the variety of banking habits within the Union. So, recommendation asks banking habits to be taken into account while implementing those principles. The problem about the wording of the recital is that the term banking habit is not clear and any act can be considered as banking habit or same act can be considered as a banking habit in somewhere and it may not be considered elsewhere.

V. Conclusion

This paper has attempted to discuss the extent to which EU banking regulation has accomplished the Single Banking objective alongside the protection and inclusion of customers. It can be supported that within the past 30 years an important number of developments have tried to establish a single European Banking Market. What is meant by Single European Banking Market is basically that a customer can purchase financial services from any part of the EU and a financial service provider can supply financial services to any part of the EU. As it is stated above, there has been a lot of step made serving this purpose including First and Second Banking Directives, Financial Services Action Plan, European Monetary Union and most importantly Capital Requirements Directive. The aim was fostering competition and lowering the prices of financial services. In spite of the progress made, it can easily be observed that the Single European Banking Market is not fully established and is still under development.

It is clear that as a result of the EU single market policy and the adoption of EURO supported the Single European banking Market objective but there are some deficiencies that has to be solved. First issue is the Member states' willingness to follow their own regulation and supervision of the banking services and this led to postponement regarding the adoption of a Single Banking policy. Another point that has to be raised is banks not having branches but subsidiaries across the EU. As it is stated above, the aim of the Single European Banking Market is to create a market that the European banks having not subsidiaries but branches in other Member States to provide the same services with the same price across the EU. However, Banks' intention is having subsidiaries in other Member States since foreign branches operating within EU entails some specific risks which are less present in subsidiaries. Another point that has to be raised is that the banking sector consists of a variety of market segments and in the retail market segments the integration does not complete due to the natural barriers such as language and distance and the exceptions launched in the integration process by allowing host country control in certain areas which can be used as protectionist objectives. The superiority of local rules should be accepted only when it can be shown that no comparable home country regulation serves the same objective, and that the local rule cannot be used discriminatorily against foreign providers.

Customer protection issue has been affected badly by customers' lack of confidence and the limited interest in shopping across the borders. Customers are not well informed about the opportunities and the advantages of cross border transactions and the lack of enough protection in the event of failure is the primary reason why customers are unwilling to switch their domestic financial service providers. In order to protect the depositors' deposits, EC adopted a Deposit guarantee Scheme Directive in 1994. This directive requires Member States to compensate the depositors when the bank that the depositors deposited their money fails and depositors lose their money. This Directive requires Member States to establish a minimum standards deposit guarantee scheme covering at least 90% of any claim up to 20.000 Euro. Since the directive is minimum standards, some inconsistency between schemes in different Member States arose. In Peter Paul case, the ECJ stated that depositors can claim up to EUR 20.000 as it is prescribed in Deposit Guarantee Scheme Directive and the directives cannot be regarded as conferring on individuals, in the event that their deposits are unavailable as a result of defective supervision on the part of the competent national authorities, rights capable of giving rise to liability on the part of the State on the basis of Community law**.** In July 2010, the Commission adopted a legislative proposal for revision of the Deposit Guarantee Schemes directive which increases the minimum coverage level to at least 100.000 EUR and reduce the time to 1 week to pay out claims and abolish the requirement that the deposit protection only extend to 90% of the amount.

Commission published recommendation on access to a basic payment account stating that Member States should ensure that any consumer legally resident in the union has the right to open and use a basic payment account with a payment service provider operating in their territory. This recommendation aims to prevent financial exclusion but in my opinion it is not enough since it is not binding and just has a political effect on Member States. It is clear how important the customer protection and inclusion issues for achieving the Single European Banking Market, from my point of view financial education and online access information also has to be provided in order to ensure customer protection.

VI. BIBLIOGRAPHY

1. Almudena de la Mata Munoz, The Future of Cross-Border Banking after the Crisis: Facing the Challenges through Regulation and Supervision [2010] Cambridge University Press volume 11 issue 4

2. Bart P.M. Joosen 'Further changes to the Capital Requirements Directive: CRD IV – major overhaul of the current European CRD legislation to adopt the Basel III Accord: (Part 1) Journal of International Banking Law and Regulation, (2012)

3. Case C-233/94 *Germany v. European Parliament and Council* [1995] ECR 1-1141

4. Case 262/81 *Coditel SA v Cine Vog Films* [1982] ECR 3381

5. Case C-222/02 Paul and others v bundesrepublik Deutschland <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0222:EN:NOT>

6. Case 120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein [1979] OJ C 256 03/10/1980 known as Cassis de Dijon case

7. Commission of the European Communities (1988b) reports the results of the Price Waterhouse study.

8. Consolidated Version of Treaty on the treaty on the Functioning of the European Union [2008] OJ C115/49

9. CRD IV, *Frequently Asked Questions*, July 20, 2011, Memo/11/527

10. DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0453:FIN:EN:PDF>

11. D. Shirreff, 'European retail banking: will there ever be a single market?' (2007) Centre for European reform policy brief.

12. Dragomir L., European Prudential Banking Regulation and Supervision, The legal dimension (Routledge,2010)

13. Ed, Progress on the financial services action plan, EU focus,2004

14. Ellinger, Lomnicka, Hare, Ellinger's Modern Banking Law, fifth edition, [2011] (OUP)

15. Gual, Jordi, 'The integration of EU banking markets' (2004) In: Gual Jordi (ed) Building a Dynamic Europe: the key policy debates, Cambridge University Press, Cambridge, UK.

16. Jean Dermine, European Banking Integration: Don't put the cart before the Horse [2005] INSEAD, Fontainebleau

17. K Matthews and S Norton, 'The EU Single Banking Market Programme: Fit for Purpose?' (2007) Global Vision <http://www.global-vision.net/files/downloads/download295.pdf> accessed 30 March 2012

18. Mario Monti, 'a new strategy for the Single Market, at the service of Europe's Economy and Society' [2010]

19. Misita, Nevenko 'Depositor Protection: An EC law perspective' [2003] Journal of International Banking Regulation Vol. 4, No. 3

20. Neil B. Murphy, 'European Union Financial Developments: The Single Market, the Single Currency, and Banking'(2000) 13 FDIC Banking review

21. Ortino, Matteo, 'The role and functioning of mutual recognition in the European market of financial services'[2007] 56(2) International & Comparative Law Quarterly

22. REGULATION (EU) No 1093/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0012:0047:EN:PDF> accessed 2 April 2012

23. RYM AYADI, 'Integrating Financial Markets in Europe: Between Uncertainties & Challenges' (2011) Centre for European policy studies <*http://aei.pitt.edu/32653/1/76._Integrating_Retail_Financial_Markets_in_Europe.pdf*> accessed 1 April 2012

24. R. Dixon, Banking in Europe, The Single Market (Routledge,1991)

25. R.M. Lasstra, 'Central Banking and Banking Regulation'(Financial Markets Group, London School of Economics,1996)

26. Vives, Xavier 'Banking Competition and European Integration' in Alberto Giovannini and Colin Mayer (eds.) *European Financial Integration.* Cambridge: Cambridge University Press [1991]

27. Vives, Xavier, 'Lessons from European Banking Liberalization and Integration' (August 2009) <http://blog.iese.edu/xvives/files/2011/09/Vives-Lessons-on-EB.pdf> accessed 10 April 2012.

28. Zimmerman, Gary Implementing the Single Banking Market in Europe (1995) Economic Review < http://www.frbsf.org/econrsrch/econrev/95-3/econrev.-19.pdf > accessed 8 April 2012