



Course title	EU banking and capital markets law
Course Code	Law411.2
Category (core/elective)	Elective
Level	LLM in EU Law
Duration (semesters)	1
Semester when taught (autumn/spring)	Spring
ECTS:	7,5
Access requirements	None
Responsible	Professor Christos Gortsos
Course objectives	
The objective of this course is to introduce students to the legal framework pertaining to the EU banking and capital markets law	
Course Description	
<p>The course starts with an analysis of the case for regulating the banking and the capital markets sectors of the financial system (objectives and instruments), which forms the basis of EU banking and capital markets law. The focus shifts, then, to the definition and the evolution (especially in view of the recent (2007-2009) international financial crisis and the current eurozone fiscal crisis) of these two branches of EU financial law. This is followed by a presentation of the specific law-making processes with regard to these two branches and the main provisions of the legal acts which constitute the sources of EU banking and capital markets law in force, including (but not confined to):</p> <ul style="list-style-type: none">➤ the Capital Requirements Regulation (CRR),➤ the Capital Requirements Directive IV (CRD IV),	

- the Reorganisation and Winding-Up Directive,
- the Directive on the Recovery and Resolution of credit institutions (BRRD),
- the Directive on deposit guarantee schemes,
- the Markets in Financial Instruments Directive (MiFID II),
- the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive, and
- the Alternative Investment Fund Managers Directive (AIFMD).

Specific reference will also be made on the role of the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA), two agencies of outmost importance for the making of EU banking and capital markets law. The aspects with regard to the creation of a Single Supervisory Mechanism, a Single Resolution Mechanism and a Single Resolution Fund will also be discussed, alongside with the course on EMU Law.

Course Outline

PART ONE: THE GENERAL FRAMEWORK – INSTITUTIONAL ASPECTS

CHAPTER ONE: THE FINANCIAL SYSTEM AND ITS REGULATION

Section 1: The functions of the financial system

The case for regulating banking and capital markets – objectives and instruments

Section 3: Financial inclusion – exclusion and financial literacy

CHAPTER TWO: DEFINITION AND HISTORICAL EVOLUTION OF EU BANKING AND CAPITAL MARKETS LAW

Section 1: EU banking and capital markets law as branches of EU financial law

Section 2: Historical evolution

Section 3: The impact of international financial law

CHAPTER THREE: LAW-MAKING PROCESSES AND SOURCES OF EU BANKING AND CAPITAL MARKETS LAW

Section 1: The general “three-level” law-making process

Section 2: In particular: law-making by the ECB

Section 3: The sources of EBL and ECML

CHAPTER FOUR: INSTITUTIONAL ASPECTS

Section 1: The European System of Financial Supervision

A. The European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA)

B. The European Systemic Risk Board (ESRB)

Section 2: The Single Supervisory Mechanism (SSM)

Section 3: The Single Resolution Mechanism (SRM)

PART TWO: SUBSTANTIVE ASPECTS

TITLE ONE: ASPECTS COMMON TO CREDIT INSTITUTIONS AND TO FIRMS OPERATING IN CAPITAL MARKETS

CHAPTER FIVE: AUTHORISATION CONDITIONS – FREEDOMS IN THE BANKING AND THE CAPITAL MARKETS SECTOR

Section 1: Authorisation

Section 2: Freedom of establishment

Section 3: Freedom to provide services

CHAPTER SIX: PRUDENTIAL MEASURES

Section 1: Micro- and macro-prudential regulation

Section 2: Micro-prudential supervision

CHAPTER SEVEN: CRISIS PREVENTION AND MANAGEMENT MEASURES

Section 1: Recovery and resolution planning

Section 2: Early intervention - temporary administrator

Section 3: Resolution

TITLE TWO: SEPARATE ASPECTS

CHAPTER EIGHT: SPECIFIC CRISIS MANAGEMENT MEASURES FOR CREDIT INSTITUTIONS

Section 1: Winding-up

Section 2: Deposit guarantee schemes

Section 3: Last resort lending (the ELA mechanism)

CHAPTER NINE: SELECTED (OTHER) ELEMENTS OF EU CAPITAL MARKETS LAW

Section 1: The markets in financial instruments Directive (MiFID II)

Section 2: Regulation of investment funds and their managers

Section 3: Market abuse

Section 4: Credit rating agencies

Section 5: Market infrastructures – short selling – key information documents for packaged retail and insurance-based investment products (PRIIPs)

Educational Outcomes

Students should be able to have a solid understanding of the legal framework pertaining to EU banking and capital markets law

Basic Textbook(s)

Andenas, M. and G. Deipenbrock (2016, editors): *Regulating and Supervising European Financial Markets – More Risks than Achievements*, Springer International Publishing, Switzerland

Binder, J.-H. and Ch.V. Gortsos (2016): *Banking Union. A Compendium*, C.H. Beck, München – Hart, Oxford – Nomos, Baden-Baden

Goodhart, C.A.E. (2009): *The Regulatory Response to the Financial Crisis*, Edward Elgar, Cheltenham, UK – Northampton, MA, USA

Gortsos, Ch.V. (2017): *The Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF). A comprehensive review of the second main pillar of the European Banking Union*, e-book, 3rd edition, available at: <https://ssrn.com/abstract=2668653>

Gortsos, Ch.V. (2015a): *The Single Supervisory Mechanism (SSM): Legal aspects of the first pillar of the European Banking Union*, Nomiki Bibliothiki - European Public Law Organisation (EPLO), Athens

Gortsos, Ch.V. (2015b): Last-resort lending to solvent credit institutions in the euro area: a detailed presentation of the Emergency Liquidity Assistance (ELA) mechanism, in: *ECB Legal Conference 2015 – From Monetary Union to Banking Union, on the way to Capital Markets Union: New opportunities for European integration*, European Central Bank, December, pp. 53-76 (also available at:

	<p>https://ssrn.com/abstract= 2688953)</p> <p>Gortsos, Ch.V. (2014): <i>The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union</i>, Nomiki Bibliothiki, Athens</p> <p>Grünewald, S.N. (2014): <i>The Resolution of Cross-Border Banking Crises in the European Union – A Legal Study from the Perspective of Burden Sharing</i>, International Banking and Finance Law Series, Volume 23, Wolters Kluwer Law & Business, Kluwer Law International, The Netherlands</p> <p>Hadjjemmanuil, Ch. (2014): Special Resolution Regimes for Banking Institutions: Objectives and Limitations, in Ringe, W.G. and P.M. Huber (2014, editors): <i>Legal Challenges in the Global Financial Crisis – Bail-outs, the Euro and Regulation</i>, Chapter 13, Hart Publishing, Oxford and Portland, Oregon</p> <p>Hadjjemmanuil, Ch. (2013): <i>Special Resolution Regimes for Banking Institutions: Objectives and Limitations</i>, LSE Law, Society and Economy Working Papers, 21/2013, available at: https://ssrn.com/abstract =2336872</p> <p>Tirole, J. (2010): Lessons from the Crisis, in: Dewatripont, M., Rochet, J-Ch. and J. Tirole (2012): <i>Balancing the Banks: Global Lessons from the Financial Crisis</i>, Princeton University Press, Princeton and Oxford, Chapter 2, pp. 10-77</p> <p>Wymeersch, Ed. (2014): <i>The single supervisory mechanism or “SSM”, part one of the Banking Union</i>, Working Paper Research No 255, National Bank of Belgium, Brussels</p> <p>Wymeersch, Ed. (2015): <i>Banking Union: Aspects of the Single Supervisory Mechanism and the Single Resolution Mechanism Compared</i>, ECGI Working Paper Series in Law, Working Paper 290</p> <p>Wymeersch, Ed. (2012): The European Financial Supervisory Authorities or ESAs, in Wymeersch, Ed., Hopt, K.J. and G. Ferrarini (2012, editors): <i>Financial Regulation and Supervision – A Post-Crisis Analysis</i>, Oxford University Press, Oxford, Chapter 9, pp. 232-317</p>
<p>Basic Bibliography</p>	<p>Avgouleas, E. and Ch. Goodhart (2015): Critical Reflections on Bank Bail-ins, <i>Journal of Financial Regulation</i>, 1, available at: https://jfr.oxfordjournals.org/content/early/2015/02/03/jfr.fju009</p> <p>Binder, J.-H. (2016a): Resolution: Concepts, Requirements and Tools, in Singh, D. and J.-H. Binder (2016, editors): <i>Bank Resolution: The European Regime</i>, Chapter 2, Oxford University Press, Oxford - New York, available at:</p>

<https://ssrn.com/abstract=2499613>

Binder, J.-H. (2016b): The European Banking Union – Rationale and Key Policy Issues, in Binder, J.-H. and Ch.V. Gortsos (2016): *Banking Union. A Compendium*, C.H. Beck, München - Hart, Oxford - Nomos, Baden-Baden

Borio, C. (2008): *The Financial Turmoil of 2007-?: A Preliminary Assessment and Some Policy Considerations*, BIS Working Papers, No 251, Bank for International Settlements, Basel, March

Borio, C. (2003): *Towards a Macro-Prudential Framework for Financial Supervision and Regulation?*, BIS Working Papers, No 128, Bank for International Settlements, Basel, February

Craig, P. and G. de Búrca (2015): *EU Law: Texts, Cases, and Materials*, Sixth edition, Oxford University Press, Oxford – New York

Ferran, E. (2012): Understanding the New Institutional Architecture of EU Financial Market Supervision, in Wymeersch, Ed., Hopt, K.J. and G. Ferrarini (2012, editors): *Financial Regulation and Supervision – A Post-Crisis Analysis*, Oxford University Press, Oxford, Chapter 5, pp. 111-158

Ferran, E. and V. Babis (2013): *The European Single Supervisory Mechanism*, Legal Studies Research Paper Series, University of Cambridge, Faculty of Law, Paper No. 10/2013, March, available at: <https://www.law.cam.ac.uk/ssrn>

Financial Stability Board (2011): *Shadow Banking: Scoping the Issues*, available at: https://www.financialstabilityboard.org/list/fsb_publications/tid_150/index.htm

Financial Stability Board, International Monetary Fund and Bank for International Settlements (2011): *Macroprudential policy tools and frameworks*, February 14, available at: https://www.financialstabilityboard.org/publications/r_1103.pdf

Goodhard, C.A.E. (2000, editor): *Which lender of last resort for Europe?*, Central Banking Publications, London

Gortsos, Ch.V. (2016): The two main pillars of the European Banking Union: the legal framework in a 'nutshell', in Binder, J.-H., and Ch.V. Gortsos (2016): *Banking Union. A Compendium*, C.H. Beck, München – Hart, Oxford – Nomos, Baden-Baden, pp. 17-68

Gortsos, Ch.V. (2012): *Fundamentals of Public International*

Financial Law: International Banking Law within the System of Public International Financial Law, Schriften des Europa-Instituts der Universität des Saarlandes - Rechtswissenschaft, Nomos Verlag, Baden-Baden

Grundmann, S. (2015): The Banking Union Translated into (Private Law) Duties: Infrastructure and Duties, in Grundmann, S. and J.-H. Binder (2015, editors): *The Banking Union and the Creation of Duties*, *European Business Organisation Law Review*, Springer – Asser Press, pp. 357-382

Haentjens, M. (2017): Selected Commentary on the Bank Recovery and Resolution Directive, in Moss, G., Wessels, B. and M. Haentjens (2017, editors): *EU Banking and Insurance Insolvency*, Chapter IV, Second edition, Oxford University Press, Oxford, pp. 177-318

Lastra, R.M. (2015): *International Financial and Monetary Law*, second edition, Oxford University Press, United Kingdom

Lastra, R.M. (2011, editor): *Cross-Border Bank Insolvency*, Oxford University Press, Oxford – New York

Moloney, N. (2014): European Banking Union: assessing its risks and resilience, *Common Market Law Review*, Volume 51, Issue 6, pp. 1609-1670, available at: <https://eprints.lse.ac.uk/60572>

Moloney, N. (2012): Supervision in the Wake of the Financial Crisis: Achieving Effective ‘Law in Action’ - A Challenge for the EU, in Wymeersch, Ed., Hopt, K.J. and G. Ferrarini (2012, editors): *Financial Regulation and Supervision – A Post-Crisis Analysis*, Oxford University Press, Oxford, Chapter 4, pp. 71-110

Moloney, N. (2008): *EC Securities Regulation*, Oxford EC Law Library, Second edition, Oxford University Press, Oxford – New York

Moloney, N., Ferran, E. and J. Payne (2015, editors): *The Oxford Handbook of Financial Regulation*, Oxford University Press, United Kingdom

Moss, G., Wessels, B. and M. Haentjens (2017, editors): *EU Banking and Insurance Insolvency*, Second edition, Oxford University Press, Oxford

Shambaugh, J.C. (2012): The Euro’s Three Crises, *Brookings Papers on Economic Activity*, Spring, The Brookings Institution, pp. 157-231, available at: https://www.brookings.edu/~media/Projects/BPEA/Spring%202012/2012_a_Shambaugh.pdf

	<p>Schoenmaker, D. (2012): Banking union: Where we're going wrong, in Beck, T. (2012a, editor): <i>Banking Union for Europe. Risks and Challenges</i>, Centre for Economic Policy Research (CEPR), London, UK, pp. 97-103</p> <p>Schoenmaker, D. (2011): The Financial Trilemma, <i>Economics Letters</i>, No 111, Issue 1, pp. 57-59, also available at: https://www.sciencedirect.com/science/article/pii/S0165176511000115</p> <p>Single Resolution Board (2016): <i>The Single Resolution Mechanism – Introduction to Resolution Planning</i>, Publications Office of the European Union, Luxembourg, available at: https://srb.europa.eu/en/content/introduction-resolution-planning</p> <p>Sjöberg, G. (2014): Banking Special Resolution Regimes as a Governance Tool, in Ringe, W.G. and P.M. Huber (2014, editors): <i>Legal Challenges in the Global Financial Crisis – Bail-outs, the Euro and Regulation</i>, Chapter 12, Hart Publishing, Oxford and Portland, Oregon</p> <p>Smits, R. (1997): <i>The European Central Bank – Institutional Aspects</i>, Kluwer Law International, The Hague</p> <p>Wymeersch, Ed. (2006): <i>The Structure of Financial Supervision in Europe. About Single, Twin Peaks and Multiple Financial Supervisors</i>, Working Paper, available at: https://ssrn.com/abstract=946695</p>
<p>Additional Bibliography</p>	<p>Allen, F., Carletti, E. and J. Gray (2015, editors): <i>The New Financial Architecture in the Eurozone</i>, European University Institute, Florence School of Banking & Finance, Imperial College London Business School, Brevan Howard Centre for Financial Analysis</p> <p>Allen, F., Carletti, E. and J. Gray (2014, editors): <i>Bearing the losses from bank and sovereign default in the Eurozone</i>, FIC Press, Wharton Financial Institutions Center, Philadelphia, USA available at: https://hdl.handle.net/1814/34437</p> <p>Allen, F., Carletti, E. and J. Gray (2013, editors): <i>Political, Fiscal and Banking Union in the Eurozone?</i>, FIC Press, Wharton Financial Institutions Center, Philadelphia, USA, available at: https://hdl.handle.net/1814/28478</p> <p>Allen, F., Carletti, E. and A. Gimber (2012): The financial implications of a banking union, in Beck, T. (2012a, editor): <i>Banking Union for Europe. Risks and Challenges</i>, Centre for Economic Policy Research (CEPR), London, UK, pp. 115-120</p>

Allen, F., Carletti, E. and S. Simonelli (2012, editors): *Governance for the Eurozone. Integration or disintegration?*, FIC Press, Wharton Financial Institutions Center, Philadelphia, USA available at: <https://hdl.handle.net/1814/23335>

Allen, F. and R.J. Herring (2001): *Banking Regulation versus Securities Market Regulation*, Financial Institutions Center, Wharton, Working Paper Series, 01-29

Allen, F. and A.M. Santomero (1999): *What Do Financial Intermediaries Do?*, Financial Institutions Center, Wharton, Working Paper Series, 99-30-B

Antenbrink, F. (1999): *The Democratic Accountability of Central Banks - A Comparative Study of the European Central Bank*, Hart Publishing

Avgouleas, E., Goodhart, C.A.E. and D. Schoemaker (2009): *Living Wills as a Catalyst for Action*, DSF Policy Papers No. 4, Duisenberg School of Finance, Amsterdam

Binder, J.-H. (2015): Resolution Planning and Structural Bank Reform within the Banking Union, in Castaneda, J., Karamichailidou, G., Mayes, D. and G. Wood (2015, editors): *European Banking Union. Prospects and challenges*, Routledge, available at: <https://ssrn.com/abstract=2540038>

Borio, C. (2010): *Implementing a Macroprudential Framework: Blending Boldness and Realism*, keynote address for the BIS-HKMA research conference on Financial Stability: Towards a Macroprudential approach, Honk Kong SAR, July, at: <https://www.bis.org/repofficepubl/hkimr201007.12c.pdf>

Borio, C. (2009): *Ten Propositions about Liquidity Crises*, BIS Working Papers, No 293, Bank for International Settlements, Basel, November

Brunnenmeier, M., Crockett, A., Goodhart, Ch., Persaud, A.D. and H. Shin (2009): *The Fundamental Principles of Financial Regulation*, Geneva Reports on the World Economy, no. 11, International Center for Monetary and Banking Studies (ICMB) – Centre for Economic Policy Research (CEPR)

European Central Bank (2016): *ECB Legal Conference 2016 – In memory of Ron Luberti, General Counsel of De Nederlandsche Bank and member of the Legal Committee of the ESCB*, available at: https://www.ecb.europa.eu/pub/pdf/other/escblegalconference2016_201702.en.pdf

European Central Bank (2015): *ECB Legal Conference 2015 – From Monetary Union to Banking Union, on the way to Capital Markets Union: New opportunities for European integration*, European Central Bank, December, available at: <https://www.ecb.europa.eu/pub/pdf/other/frommonetaryuniontobankingunion201512.en.pdf>

European Court of Auditors (2016): *Single Supervisory Mechanism – Good start but further improvements needed*, No. 29, Publications Office of the EU, Luxembourg

Ferran, E. (2014): *European Banking Union: Imperfect, But It Can Work*, University of Cambridge, Legal Studies Research Paper Series No 30, August

Goodhart, Ch. (2013): *The Optimal Financial Structure*, LSE Financial Markets Group Paper Series, Special Paper 220, March 2013, London

Grundmann, S. and J.-H. Binder (2015, editors): *The Banking Union and the Creation of Duties*, *European Business Organisation Law Review*, Springer – Asser Press

Guttentag, J. and R. Herring (1987): Emergency liquidity assistance for international banks, in Portes, R. and A.K. Swoboda (1987, editors): *Threats to international financial stability*, Cambridge University Press, Cambridge, pp. 150-186

House of Lords (2012): *European Banking Union: Key Issues and Challenges*, European Union Committee, 7th Report of Session 2012-13, HL Paper 88, London, 12 December

Huertas, T.F. and R.M. Lastra (2011): The perimeter issue: to what extent should *lex specialis* be extended to systemically significant financial institutions? An exit strategy from too big to fail, in Lastra, R.M. (2011, editor): *Cross-Border Bank Insolvency*, Oxford University Press, Oxford – New York, pp. 250-280

Hüpkes, E. (2011): Allocating Costs of Failure Resolution - Shaping Incentives and Reducing Moral Hazard, in Lastra, R.M. (2011, editor): *Cross-Border Bank Insolvency*, Oxford University Press, Oxford – New York, Chapter 5, pp. 104-127

Padoa-Schioppa, T. (2000): EMU and Banking Supervision, in Goodhart, C.A.E. (2000, editor): *Which lender of last resort for Europe?*, Chapter 1, Central Banking Publications, London, pp. 15-29

Portes, R. and A. Swoboda (1987, editors): *Threats to*

International Financial Stability, Cambridge University Press, Cambridge

Rajan, R.G. (2010): *Fault Lines: How Hidden Fractures Still Threaten the World Economy*, Princeton University Press, Princeton

The Financial Crisis Inquiry Commission (2011): *The Financial Crisis Inquiry Report*, Official Government Edition, U.S. Government Printing Office, Washington D.C.

The Joint Forum (2010): *Review of the Differentiated Nature and Scope of Financial Regulation: Key Issues and Recommendations*, Bank for International Settlements, January

Tröger, H. T. (2013): *The Single Supervisory Mechanism – Panacea or Quack Banking Regulation?*, SAFE Working Paper Series No. 27, 19.10.2013, available at: https://www.wipol.uni-bonn.de/lehrveranstaltungen-1/lawecon-workshop/archive/dateien/troeger2013/at_download/file

Van Rompuy, H. (2012): *Towards a Genuine Economic and Monetary Union*, Report of the President of the European Council in close collaboration with Jose Manuel Barroso, President of the European Commission, Jean-Claude Juncker, President of the Eurogroup, and Mario Draghi, President of the European Central Bank, 5 December, available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134069.pdf

Walker, G.A. (2007): *European Banking Law – Policy and Programme Construction*, Sir Joseph Gold Memorial Series, International Financial & Economic Law, Vol. 6, The British Institute of International and Comparative Law, London

Wessels, B. (2017): Commentary on Directive 2001/24/EC on the Reorganisation and Winding-up of Credit Institutions, in Moss, G., Wessels, B. and M. Haentjens (2017, editors): *EU Banking and Insurance Insolvency*, Chapter II, Second edition, Oxford University Press, Oxford, pp. 61-117

Williamson, O.E. (2000): The New Institutional Economics: Taking Stock, Looking Ahead, *Journal of Economic Literature*, 38, pp. 595-613

Wymeersch, Ed., Hopt, K.J. and G. Ferrarini (2012, editors): *Financial Regulation and Supervision – A Post-Crisis Analysis*, Oxford University Press, Oxford

Wyplosz, Ch. (2012): Banking Union as a crisis-management tool, in Beck, T. (2012a, editor): *Banking Union*

	<p><i>for Europe. Risks and Challenges</i>, Centre for Economic Policy Research (CEPR), London, UK, pp. 19-23</p>
--	---

Wyplosz, Ch. (2010, editor): *The New International Monetary System – Essays in honor of Alexander Swoboda*, Routledge International Studies in Money and Banking, Rutledge, USA – Canada

Teaching Methodology	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 5px;">Lectures</td> <td style="padding: 5px; text-align: center;">12 x 2 = 24 h</td> </tr> <tr> <td style="padding: 5px;">Tutorials</td> <td style="padding: 5px; text-align: center;">6 x 2 = 12 h</td> </tr> <tr> <td></td> <td style="padding: 5px; text-align: center;">Total = 36 h</td> </tr> </table>	Lectures	12 x 2 = 24 h	Tutorials	6 x 2 = 12 h		Total = 36 h		
Lectures	12 x 2 = 24 h								
Tutorials	6 x 2 = 12 h								
	Total = 36 h								
Evaluation	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 5px;">Final Exam</td> <td style="padding: 5px; text-align: center;">50%</td> </tr> <tr> <td style="padding: 5px;">Course Participation</td> <td style="padding: 5px; text-align: center;">30%</td> </tr> <tr> <td style="padding: 5px;">Paper(s)</td> <td style="padding: 5px; text-align: center;">20%</td> </tr> <tr> <td></td> <td style="padding: 5px; text-align: center;">100%</td> </tr> </table>	Final Exam	50%	Course Participation	30%	Paper(s)	20%		100%
Final Exam	50%								
Course Participation	30%								
Paper(s)	20%								
	100%								
Language	English								
Traineeship	Yes								
Location	Athens								