

# **AEDBF**

**Association Européenne pour le Droit Bancaire et Financier  
European Society for Banking & Financial Law**



## **25<sup>th</sup> ANNIVERSARY**

**25 years of Banking and Financial Law –  
General trends**

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**25 years of Banking and Financial Law –  
General trends**

**Opening remarks:  
European Banking and Financial law  
in Times of Change**

**Dr. Dimitris Tsibanoulis  
AEDBF Chairman**

## ➤ **Internal market “completion”**

- Council Directive 88/361/EEC for the implementation of Article 67 of the Treaty: full liberalization of capital movements between Member States with effect from 1 July 1990
- Second Council Directive 89/646/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions
- Council Directive 89/299/EEC on the own funds of credit institutions,
- Council Directive 89/647/EEC on a solvency ratio for credit institutions,
- Council Directive 92/30/EEC on the supervision of credit institutions on a consolidated basis
- Council Directive 92/121/EEC on the monitoring and control of large exposures of credit institutions

- Investment Services Directive 93/22/EEC – **Universal Banking System**
- 1992: **Internal Market** Programme:
  - establishing sound monetary and fiscal policies
  - leading to economic convergence and macro-economic stability
- **Financial Services Action Plan (FSAP)** – 1999 strategic objectives:
  - a) a single EU wholesale market
  - b) the opening and security of retail markets and
  - c) the realization of state-of-the-art prudential rules and supervision, in order to eliminate remaining financial market fragmentation.

➤ **The big euphoria period**

- Launch of the Euro – European Monetary Union
- The Lamfalussy process – Commitology – Enhancing the cohesion of the internal market
- Better regulation
- Universal banks operating across Europe and in the whole world
- A global economy for global banks
- Internalisation of the EU economy

## ➤ **Financial Crisis Prelude**

- Globalization's vulnerability
- Excess (ample) liquidity, low interest rates and rapid credit expansion
- Plentiful liquidity and low returns
- Banks and investors actively sought higher yields and went searching for opportunities whether through an increase in leverage or investment in financial products of high(-er) risk
- Issuance and distribution of new hybrid products and complex instruments
- Financial innovation amplified and accelerated the consequences of new banking and financial techniques, growing imbalances in global financial and commodity markets

➤ **Causes of the financial crisis**

- Regulatory, supervisory and crisis management defaults
- Failures in risk assessment and risk management
- Fundamental failures in the assessment of risk by financial firms, regulators and supervisors
- Corporate governance failures
- Bank Capital reforms
- Banking Structural reforms

➤ **The Euro Crisis**

- The EU Treaty establishing the common currency did not envisage a remedy for possible euro pathology

➤ **Policy and regulatory repair**

- EU supervisory repair
- Micro-prudential supervision: a European System of Financial Supervision
- Macro-prudential supervision: a European Systemic Risk Council

➤ **Major institutional reforms**

- The 1<sup>st</sup> of January 2011 marks a turning point for the European Financial Sector

**Setting up the new supervisory authorities**



- EU-level **macro prudential oversight** of the financial system
- Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB)
- New tasks of the ECB
- Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board

➤ **New Supervisory Authorities**

- Regulation (EU) No 1093/2010 of the European Parliament and of the Council establishing a European Banking Authority (EBA)
- Regulation (EU) No 1094/2010 of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority (EIOPA)
- Regulation (EU) No 1095/2010 of the European Parliament and of the Council establishing a European Securities and Markets Authority (ESMA)

- **Omnibus Directive 2010/78/EU** of the European Parliament and of the Council of 24 November 2010 amending 11 directives on banks, insurance and capital markets

[Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)]

- **Creating a banking union to strengthen the euro**
- **Creation of the Single Supervisory Mechanism (SSM) for the eurozone**
  - Following the EP Plenary vote on the legislative resolution for the EBA Regulation and the Council agreement on single supervisory mechanism, both legal texts were published in the Official Journal on 29 October 2013
  - Responsibility for banking supervision moves from the national to the European level through a Single Supervisory Mechanism, under the European Central Bank. The structure ensures strict and objective supervision across participating Member States and allow for efficient supervision of cross-border banking activities. The single supervisor is therefore key to breaking the link between sovereign and banking risks.

- Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions
- Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013

- **How to cope with the problems in banking as brought up by the crisis ?**
  - The problems as identified in the Liikanen Report:
    - Excessive risk taking,
    - Too high leverage,
    - Too big complexity,
    - Inadequate capital,
    - Extensive interconnectedness,
    - Very limited possibilities to resolve failed banks.

## **Banking structural reform**

- **Changes' proposals in the EU banking sector as reaction to the crisis, in order to address the identified problems (the High-level Expert Group / the Liikanen Report)**
  - Structural reforms aiming at establishing a sound and efficient banking system, augmenting and complementing the set of regulatory reforms already enacted or proposed by the EU, the Basel Committee and national governments
  - Recommendation of five measures to cope with the problems in banking as brought up by the crisis

- 1) *Establishing a ring fencing mechanism: Mandatory separation of proprietary trading/investment activities and other significant trading activities from retail banking.***
  - Proprietary trading and other high risk trading activities should be assigned to a separate legal entity and carried out on a stand-alone basis ring fenced from the deposit bank
  - The separated activities can remain in the same banking group: The universal banking model in Europe would be partially preserved
- 2) *Additional separation of activities conditional on the recovery and resolution plan***
- 3) *Possible amendments to the use of bail-in instruments as a resolution tool***



*4) A review of capital requirements on trading assets and real estate related loans*

*5) Strengthening the governance and control of banks*

- **Regulatory reform proposals:**

- a) capital adequacy and liquidity requirements (Basel III)
- b) recovery and resolution (EU Directive's proposal).

- Proposal for a Directive of the European Parliament and of the Council establishing a framework for the **recovery and resolution of credit institutions** and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010

- **The financial crisis enhanced European market fragmentation**
  - Institutional disequilibria led to the fragmentation of the European Market in the aftermath of the financial crisis as well as to the Eurozone crisis
  - Impediments to the growth and recovery of weak States
  - Urgent need to address and restore the disequilibria created due to the imbalances inherent to the Eurozone framework as a prerequisite for the Eurozone recovery

- **Epimetron:**

**Banking legislation shuttling between restrictive-interventional measures after crisis and prudential rules as part of de-regulatory / re-regulatory proceedings in booming eras**

To face the possible lack of comprehension of new products and practices in the international financial markets and to timely foresee and respond to the requirements and challenges of the international markets

# Dimitris Tsibanoulis

## Dr. Dimitris Tsibanoulis

- Senior managing partner of Tsibanoulis & Partners Law Firm ([www.tsibanoulis.gr](http://www.tsibanoulis.gr)) and Chairman of AEDBF Europe ([www.aedbf.eu](http://www.aedbf.eu)).
- He studied in Athens (1980 LLB) and in Frankfurt am Main (1986 PhD, summa cum laude). His main practice areas are banking, capital markets, corporate and European law.
- Legal counsel to the Bank of Greece since 1989 and since 2012 adviser to the Board.
- He has been the legal advisor to the Republic of Cyprus on the implementation of the European capital markets legislation (2000–2004) and of the Albanian FSA for capital markets issues through the EBRD (2006-2010).
- Among other, he is a member of the Board of Directors of the Hellenic European Law Association (FIDE-Greece, since 2002), of the European Society for Banking and Financial Law (AEDBF, since 2003, and from 1.1.2012 Chairman of the BoD) and of the Hellenic Deposit & Investment Guarantee Fund (since 2009).
- He is an active member of many European financial law associations and working groups such as the European Financial Markets Lawyers Group ECB (1999-currently); he also participated in several legal groups in the ECB and the European Commission advising on matters pertaining to the regulation of Banking and Financial Markets such as the EU Clearing and Settlement Legal Certainty Group (European Commission, 2005-2009), the Insolvency Law Experts Group (European Commission, 2010-2013) etc.
- Author of three books and many articles published in Greek and foreign legal magazines and collective works on company, banking and finance law.