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MASTERTHESIS EUROPEAN STUDIES

Really Blocking a Banking Union?

Germany's Reluctance Towards pan-European Banking Resolution

by Annika Stahlhut (June 2014)

Abstract

In the recent two years the European Banking Union has been a chief project in European financial integration. Apart from European banking supervision and attempts to integrate deposit insurance on EU-level the member states have agreed to also harmonize the resolution of banks: A Single Resolution Mechanism (SRM) seeks to protect taxpayers in Europe from assuming the costs of resolution and to maintain financial stabilty in the internal market when banks are wound up. Although states have therefor charged the Commission to develop a common policy for banking resolution, Germany gains particular attention in European negotiations for objecting to the regulation establishing a single framework. Newspapers report that the German finance minister has announced to block the resolution mechanism (Schäfers, 2014, January 21*)*, for which he is criticized sharply – even by parties on domestic level. It therefore seems as if domestic opinions on European banking resolution depart substantially wherefore the German position appears worth for an in-depth study. To this end European integration of banking resolution is embedded into the theoretical framework of liberal intergovernmentalism that provides for a liberal theory on national preference formation. The paper grasps the demands of German actors on banking resolution in Europe through a content analysis on the basis of newspaper articles, position papers of domestic interest groups and parliamentary debates. The analysis reveals that various actors fear to bailout banks in other states or will have to assume foreign liabilities by way of the mechanism. For that reason they seek for a more intergovernmentaldesign for EU-banking resolution.

Keywords: Single Resolution Mechanism (SRM), Germany, Liberal Intergovernmentalism, domestic preference formation

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List of Abbreviations

BaFin	*Bundesanstalt für Finanzdienstleistungsaufsicht*
BdB	*Bundesverband deutscher Banken/Bankenverband*
BdSt	*Bund der Steuerzahler Deutschland e.V.*
BMF	*Bundesfinanzministerium*
BVR	*Bundesverband der Deutschen Volksbanken und Raiffeisenbanken*
CDU	*Christlich Demokratische Union*
CSU	*Christlich-Soziale Union*
DK	*Die Deutsche Kreditwirtschaft*
DSGV	*Deutscher Sparkassen-und Giroverband*
ECB	European Central Bank
ECOFIN	Economic and Financial Affairs Council
e.g.	*exempli gratia*
EIB	European Investment Bank
ESM	European Stability Mechanism
et al.	*et alii*
etc.	*et cetera*
EU	European Union
EUR	Euro
FAZ/faz	*Frankfurter Allgemeine Zeitung*
FDP	*Freie Demokratische Partei*
H_n	Hypothesis
H_a	alternative hypothesis
Ibid.	*ibidem*

n. d.	no date
p.	page
pp.	*paginae*, lat. “pages”
s.a.	see above
SDZ	*Sueddeutsche Zeitung*
SPD	*Sozialdemokratische Partei Deutschlands*
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TFEU	Treaty on the Functioning of the European Union
WestLB	*Westdeutsche Landesbank*
VZBV	*Verbraucherzentrale Bundesverband*
VÖB	*Bundesverband Öffentlicher Banken Deutschlands*

1 Introduction

"Today is a momentous day for banking union.

A memorable day for Europe's financial sector"

(Michel Barnier, 2013, December 19)[1]

Following the European Economic and Monetary Union the completion of a European Banking Union is certainly a key aim in European (financial) integration. Based upon three pillars - joint banking supervision, common deposit insurance and a unique system for banking resolution – the project targets financial stability within Europe and as part of this, seeks to disconnect national from bank indebtedness (European Commission, 2012a, p. 3). The intergovernmental agreement on European banking resolution, tediously negotiated between finance ministers until December 2013, is certainly a milestone in European integration of financial markets. Whilst taking a tough stance on inter-state bargaining Germany has drawn particular attention in staunchly defending its concerns on supranational banking resolution[2]. Falling short of a true European system now, an intergovernmental treaty will regulate at least parts of the Single Resolution Mechanism (SRM), hereinafter the Mechanism,[2]–proposed by the Commission in July 2013 (Council of the European Union(ECOFIN), 2013, p. 1). This agreement seems to accommodate Germany's interests rather than have the original provisions[2] before (Malhere, 2014, January 10). Germany's opposition to a pan-European deposit guarantee system and the country's stance on the Single Resolution Mechanism (SRM) is therefore a main concern of this paper. In a case study national preference formation in Germany will be tested against theories of European integration and in particular, liberal theories of domestic preference formation.

In the recent crises banks deemed as systemically relevant have put into perspective the need for proper banking resolution to avoid public bailouts in order to keep the financial system working (Van Roosebeke, 2011, p. 30). Banks' high interconnectedness, because as a result of which payment defaults by single institutions might easily deprive other banks of liquidity, thus throwing them into payment difficulties, renders some institutions "too-big-to-fail" (Ibid.). Since states often work as lenders of last resort (Hartmann-Wendels, Pfingsten & Weber, 2007, p. 358) there should be strong public demand for proper resolution systems to prevent bail-outs and the subsequent negative impacts on national economy. Sovereign debt in Ireland, for instance, grew by 28 percent in 2012 due to public bailouts of the national banking sector (European Commission. Eurostat, 2013, p. 6) - a striking example of a disastrous economic downtown caused by an ailing finance industry. It therefore seems

[1] Commissioner Michel Barnier's remarks at the ECOFIN Council press conference: http://europa.eu/rapid/press-release_MEMO-13-1186_en.htm

[2] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council (European Commission, 2012b)

unsurprising that the European Court of Justice has ruled[3] that bail-outs and resolution of cross-border banks such as the Icelandic *Landsbanki,* which has failed to repay depositors in 2008, to potentially impact on the whole Union (Malhere, 2013, October 25).

The link between the banking industry and deeply integrated economies has driven the Commission to assume one of its major responsibilities also through banking resolution: To fight competitive distortions, deemed to derive from differences in national banking resolution. Different regulations in an internal market with high levels of cross-border banking impede market integrity and give path to unfair competition in the banking sector. Unique measures, by contrast, not only enhance financial stability and thus investor confidence in the internal market, but in so doing, give an impetus to European economies (European Commission, 2013a, p. 3). Based on the finance ministers' conclusions[4] in December 2010, that collective crises prevention, management and resolution are required to this end, the Commission is now pushing ahead with pan-European banking resolution. Only a European authority in connection with a pertinent fund is deemed capable of winding up banks whilst maintaining financial stability within the Union (Commission, 2013a, p. 3-4). In July 2013 the Commission therefore proposed a regulation, joining both components in the Single Resolution Mechanism (SRM)[5].

The mechanism as proposed by the European Commission has, however, gone through tough inter-state negotiations since then, facing national opposition - most notably from Germany because of its institutional design. Although it has been the states themselves who charged the Commission with drafting options for the pan-European banking resolution, some of them, e.g. Germany, the United Kingdom and Sweden, doubt its legal formality (Pepe, 2013, September 18). Germany has drawn particular attention for objecting to the mechanism in its original set-up (Ibid.). However, cases like the *Landesbank* in North-Rhine Westphalia (WestLB), for instance, whose resolution has cost taxpayers in the region of EUR 5 Mrd. (Handelsblatt.com, 2012, November 27), suggest that Germany should have a particular interest in a proper banking resolution. Indeed, German finance minister Wolfgang Schäuble (2013, November 22) is actually in favor of a banking union in Europe. Nevertheless, he insists on dealing with resolution nationally (rather than at European level) and has been unwilling to accept more than a network of national resolution systems for a long time. Schäuble (2013, November 22) believes that there will be deficits in legal formality, if the system is only legitimised by Article 114 TEFU, upon which legal and administrative provisions may be harmonized to ensure a proper functioning of the common market. Internal Market Commissioner Barnier, by contrast, recommends the same Article as being the most "useful and workable legal base" (as cited in Pepe, 2013, September 18) and hence urges Germany to overcome its technically motivated concerns believing the state to actually support the essence of this policy (Pepe, 2013, September 18).

3 see Case C-85/12

[4] Council conclusions on crisis prevention management and resolution on the 3054th ECONOMIC and FINANCIAL AFFAIRS Council meeting Brussels, 7 December 2010

[5] 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

Parties in Germany seem to have diverging stances towards the European resolution mechanism. Whilst the conservatives have insisted on an intergovernmental approach to banking resolution via a network of national resolution systems (Schäuble, 2013, November 22), the Green Party has accused the government of blocking an effective system to resolve banks and protect taxpayers in insisting on the legal formality of a European mechanism (*Deutscher Bundestag*, 2013e, p. 249). By contrast, the green and the social democratic party are supportive of a supranational mechanism and a European authority for resolution (*Deutscher Bundestag*, 2012, pp. 3). Only then Europe would be able to cope with systemic risks, which an integrated market for financial services with cross-border banks is exposed to (*Deutscher Bundestag*, 2012, p. 3; Steinbrück, 2013, April 24)[6]. It thus appears that the German position to European banking resolution as presented in ECOFIN (Economic and Financial Affairs Council) summits and trialogue negotiations reflect preferences of various domestic stakeholders, which have coalesced into a common national position. In May 2014, states have finally agreed on the Single Resolution Mechanism (SRM) and partly seized on the objections raised by Germany. In particular, member states do now confer their national funds for banking resolution to the European level on the basis of an intergovernmental agreement instead[7] of the SRM-regulation. The Single Resolution Fund (SRF) will furthermore consist of national compartments that will be merged after eight years, when 1 % of the deposits covered are paid in (European Commission, 2014, p. 3). Both aspects, enshrined in an intergovernmental treaty now, touch upon financial transfers within the European Union. Newspapers thus conclude that the German finance minister is to forestall that banks of other states resort to contributions paid by domestic institutions before the target level is reached, if these provisions would have been laid down by a European regulation (Hulverscheidt, 2014, March 10). Insofar as parts of the Mechanism are governed through intergovernmental rather than supranational means now, the policy has obviously based on German demands, even though it responds to those of domestic actors to different extent, as the analysis will show. National powers of self-assertion in European negotiations however make the questions below worth to study:

How has the German position to the Single Resolution Mechanism (SRM) been formed?

- *Which domestic factors lead Germany to object the Single Resolution Mechanism as proposed by the European Commission in July 2013?*

- *Who are the engines behind the German position to European banking resolution and what are the motives behind?*

[6] with specific reference to verbatim records of the speech by Peer Steinbrück at the *Sparkassentag* on April 24th, 2013 in Dresden

[7] The German green party has launched a legal opinion on the legitimacy of the intergovernmental agreement that has been a much discussed issue, on European level but also among domestic parties in Germany. The document concludes that contrary to the opinion of the finance minister the single market competence in Art. 114 (1) TFEU allows for establishing a European resolution fund. Insofar the fund is financed by banks themselves legal experts consider the same as compatible with the budgetary sovereignty of the states. A European regulation is furthermore seen as being in no way inferior to an intergovernmental agreement in that regard (Herrmann & Rosenfeldt, 2014).

1.1 Relevance of Question – Literature Review

The European Banking Union and its three components gain particular attention in current research on financial stability policies. The following section gives a short overview on research undertaken in fields of banking resolution and prospects to enhance financial stability through this second pillar of the banking union. It further summarizes obstacles to European banking resolution to give some first indication of German motives to thwart the Commission's initial proposal. Reference should first thus be made to Karel Lannoo (2009, pp. 56, 64-65) who finds that states have reacted to the crisis by issuing unilateral rather than common guarantees or measures in general. In September 2008 already they have thus come to bail-out banks in the amount of EUR 1.873billion paid from national tax money (Lannoo, 2009, p. 72). Lannoo (2009, p. 65) ascribes this to the fact that the European Union lacks a treasury, which the Community might use as to bail out banks in the internal market. Yet, some states, most notably Germany, have opposed such initiatives as e.g. those of the French Finance Ministry seeking to establish a European bailout fund (Lannoo, 2009, p. 69, 72). Newspapers further back the notion that there might be some deep reservations to integrate banking resolution on parts of Germany (Pepe, 2013, September 18), or eventually member states in general (Pepe, 2013, September 18).

To prevent an unfair distribution of the financial burden Lannoo (2009, p. 84) proposes a supranational fund under the European Investment Bank (EIB) serving banks with money by loans rather than through pure aid. This approach, however, rests highly on intergovernmental decision-making insofar as finance ministers are to govern the system and assume responsibility for cross-border banks (Lannoo, 2009, p. 86). Credit would be provided along clears rules on the distribution of losses laid down in advance (Lannoo, 2009, p. 83) to prevent moral hazard. Buch, Körner and Weigert (2013, p. 27) consider that appropriate regulations on burden sharing are also highly important. These are relevant especially for the time in which the fund has to be filled up.

Burden-sharing between states might thus be a root for conflict in negotiating the Mechanism (SRM). On using the European Stability Mechanism (ESM), and thus taxpayers' money, as a final backstop Buch et al. (2013, p. 27) further emphasize that use of such decisions must be approved by national parliaments, which may impede prompt decision-making for the purpose of effective crises management (Buch et al., 2013, p. 27).

The SRM intends to avoid burdens to taxpayers and hence limit use of public money as much as possible (European Commission, 2013a). Yet, there might be some need to strengthen the Mechanism with a "fiscal backstop" at the EU-level as banks may be reluctant to provide the amount of money that is usually required in systemic crises on their own (Gual, 2013, p. 18). Like Buch et al. (2013) Gual (2013) concedes that transferring fiscal powers to the EU-level by way of a common backstop of public money is a sensitive issue.

Policies on banking resolution do indeed impact on national sovereignty since states usually act as lenders of last resort (Hartmann-Wendels, Pfingsten & Weber, 2010, p. 358). Governments should therefore be careful to transfer fiscal powers upon EU authorities (Quaglia, 2013, p. 27) and so the Council of Ministers appears reluctant to equip European banking resolution with some "safety net of public funds", as urged by the European Parliament (Malhere, 2014, January 10).

Considerations should be also be given to Quaglia (2010, p. 30) who points at the political costs of regulation on, for instance, protecting creditors or taxpayers, that proves ineffective. This is certainly well evidenced in the case of Northern Rock, where responsibilities for depositor compensation have been unclear for cross-border banks and led the British state to finally reimburse national customers of the Icelandic *Landsbanki*.

Positions on European financial regulation might also hinge on more general objectives that states pursue through banking regulation: So might countries either seek competitive advantages for their domestic economy or intend to protect consumers instead (Quaglia, 2010, p. 31). Goals to ensure stable markets for financial services on the one hand, and grant fair conditions for competition on the other might thus be in conflict (Allen & Gale, 2004). There might also be technical rather than political factors behind national reluctance to European banking resolution. Domestic institutions could be incompatible with those proposed by the Commission. In Germany, for instance, there are technical obstacles to merging deposit insurance systems across the Union (Stahlhut, 2012) that are rooted in the three-pillar banking system of the state. Institutional factors thus impede integrating national policies on market confidence and as a result, financial stability. Similar factors could also impact on Germany's position to the SRM (SRM) that aims at the proper functioning of financial markets.

Previous research on European crises management and policies on financial stability hence suggest various starting points to analyzing Germany's reluctance to the original proposal. Since July 2013, however, parties in conflict have made progress to approach each other in negotiations, both on European as well as on domestic level so that the European Community has finally agreed on the institutional design of the Mechanism in March 2014.

1.2 Bargaining on EU-Banking Resolution – Where did we leave off?

In response to banks such as the German *WestLB* or *Fortis* and *Dexia*, which had to be bailed out through huge amounts of public money, a European mechanism to wind-up banks and protect creditors beyond deposits up to EUR 100.000[8] has become a sub-goal of the banking union[9]. A credible approach to resolve banks while keeping the burden low for taxpayers and reducing moral hazard has gained particular attention here. States believe that, only through EU-wide cooperation can international banks be liquidated properly whilst keeping financial markets in Europe stable. Common banking resolution alongside a Single Supervisory Mechanism (SSM) seeks legal certainty among creditors and taxpayers on how the liquidation of banks affects their assets. A common system is furthermore considered as contributing to fair competition in the internal financial market (European Commission, 2012b, p. 2-3).

Against the background of EU-banking resolution finally agreed on in March 2014 and that of finance ministers in December 2013, the German position to the SRM (SRM) deserves further consideration. Indeed, Germany has been able to assert against other states on main aspects of the policy in negotiations (Malhere, 2014, January 10; Mussler, 2014, January 21). It has enforced that decisions on the resolution of banks are prepared by a specific board of national supervisors, but the final may be taken by the Council of Ministers instead of the Commission in the end (Council of the European Union, 2014, p. 2). The latter enjoys a veto right, but the final say in controversial decision remains with the ministers and thus, on intergovernmental level[10], especially for aspects impacting on national budgets (Bohne, 2013, December 11;

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[8] In 2009, the European Union has increased levels of deposit protection to EUR 100.000 at least (see Directive 2009/14/EC

[9] European Commission. (2012a). *Communication from the Commission to the European Parliament and the Council. A Roadmap towards a Banking Union*

[10] In March 2014 the Council slightly conceded some of its final decision-making powers compared to the decisions in December 2013. It may now refuse a plan on resolution established by the Commission by simple majority, if it does not agree with the plan (Council of the European Union, 2014, p, 2). In the December declaration the Council allocated more autonomy to the national governments/authorities than does the agreement reached in March 2014. The descriptions above mainly refer to the agreement reached in December 2013. So does the December declaration put particular emphasize on the fiscal sovereignty of national

Council of the European Union, 2013). It is hence no pure supranational authority that might decide on national budgets, as urged by the German Finance Minister demanding national sovereignty on fiscal decisions (Bohne, 2013, December 11). Plans to merge national funds from the start have failed insofar as the Single Resolution Fund (SRF) is separated into “national compartments” now and will be fully consolidated not before 8 years (European Commission, 2014). The system thus seems to be less “European” than planned by the Commission and suggests that Germany proved able to assert its position on decisive aspects of the proposal against a majority of states, the Commission and the European Parliament. Yet, in the course of trialogue negotiations following the interstate-agreement in December 2013, Germany had to make concessions, though, and thus deviated from its original position in 2013[11]. Still the state has enforced some key demands, though. Focus in the analysis of the German position will therefore be given to the main points of contention: decision-making in banking resolution and the institutional design of a European fund. The section below summarizes the main provisions of the original draft regulation.

1.3 The SRM-Regulation – Institutional Design and its Objectives

The SRM (SRM) as originally proposed consists of two major components: First, a common scheme regulating the process through which banks are liquidated. Secondly, it avails of funds to prevent negative effects on financial stability in the course of this process. The Single Resolution Fund (SRF) is not intended to supply money to failed institutions or to assume their losses in the first instance (European Commission, 2013a, p. 13). Yet, it may provide financial support or balance losses if these exceed means of the banks’ creditors who take precedence in the chain of liable actors (European Commission, 2013a, p. 13). Only if financial stability is still at risk after the bail-in system is fully exhausted, does the fund serve last resort to rescue private assets, too (European Commission, 2013a, p. 13). The description of the SRM-provisions below is limited to the main aspects referred to on pages 8 to 16 in the SRM-regulation and focuses on those aspects under public discussion (European Commission, 2013a, pp. 8-16). In case of specific objections raised in Germany, the empirical analysis below makes special reference to the particular aspect.

The mechanism transfers powers of decision-making in banking resolution to European institutions, most notably the Commission. Beyond its executive director and its deputy, the main power rests with members of the Commission, the European Central Bank and those dispatched by national authorities that taken together make up the resolution board. The board’s main task is to assess whether banks in difficulties should be liquidated to avoid adverse effects on other institutions, prevent use of tax money, and maintain financial stability when systemically important banks are winded-up (European Commission, 2013a, p. 12). Thereupon it issues recommendations to the Commission on how to deal with banks in payment difficulties. The Commission then is to take the final decision and lays down timeframes for resolution, whilst the board sets the details of this process (instruments, use of the fund etc.). Banks are however resolved by national authorities to most extent, who are monitored by the board. If national authorities fail to meet the board’s specifications it may intervene into the process and issue orders directly to the bank concerned (European Commission, 2013a, pp. 8-16).

governments as regards resolution decisions with substantive implications on national budgets (Council, 2013, p. 3)

[11] compare Council declarations of December 2013 and March 2014 on the SRM

The Mechanism (SRM) entails a fund for banking resolution, too. Unlike bail-out funds this trust is not intended to rescue banks or balance their losses in the first instance (European Commission, 2013a, p. 13). Rather it seeks to maintain stable markets for capital and financial services within the European Union (Ibid.). The fund will be filled by banks and is to provide for capital of 1% of the deposits covered, what amounts to EUR. 55 Mrd.. The target level shall be achieved within a period of ten years through annual payments of about EUR 5,5 EUR (European Commission, 2013a, p. 15). In accordance with the directive on recovery and resolution of credit institutions (COM/2012/0280 final)[12] banks contribute to the fund in line with their individual risk profiles, their liabilities and the deposits covered. They have to pay into the resolution fund next to their contributions to deposit insurance. Payments may be temporarily enhanced through ex-post contributions. In case of extraordinary demands for capital the mechanism allows taking out loans with third parties and hereby also avail of deposit insurance systems. The European Stability Mechanism (ESM) that is intended to supply states of the Euro-Area with capital for them to recapitalize and hereby help to sustain stability in times of financial distress (ESM, 2014a) shall work as a lender also. In EU-negotiations this fund has been considered as some “backstop” for EU banking resolution (Malhere, 2013, October 14). The Single Resolution fund is to supersede national funds for banking resolution, which shall be merged in the European fund. Its objectives below are summarized on the basis of the SRM-regulation and the roadmap towards a banking union.

Apart from EU-supervision and EU-deposit insurance a European resolution mechanism is to contribute to the major objectives of the banking union: First, financial stability, which is to enhance market confidence, the European economy and thus lead to a prospering single market, especially in the euro-area. To these ends the resolution mechanism adds to more advantageous conditions of funding, sunders states and credit institutions and fosters cross-border banking. Unique processes and a single authority for resolution as well as a common fund are to speed up decision-making, to bring together specialists and experience across Europe and to make banks instead of taxpayers bear the costs of resolution (European Commission, 2013a). In thus keeping markets stable, averting unnecessary costs and delay in resolution that follow from different national approaches the SRM and hence the banking union renders the finance sector more sustainable and aids to economic recovery in states under the Single Supervisory Mechanism (European Commission, 2013a). For that reason all - states, taxpayers and banks in Europe - are considered to gain from a European mechanism (European Commission, 2013a) compared to pure international cooperation. However, the SRM raises concerns in Europe and several factors recommend the German position for analysis in particular.

[12] 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

1.4 Germany – A Particular Case

Germany seems to be a major opponent of the SRM (SRM) and has successfully asserted against other member states in pushing through an intergovernmental agreement for parts of the policy (European Commission, 2014; Pepe, 2013, September 18). Furthermore should EU banking regulation be of particular interest to Germany because of its high share of banks (~24,1%) which is actually the highest in the Euro area (ECB, 2014, p. 1). Its special banking system makes the state an interesting case for study, too: Banks in Germany differ in their legal form, and this has an impact on their focus in business and their approach to insure deposits of customers against payment defaults of single institutions (Wurm, Wolff & Ettmann, 2004). In 2012 Germany has thus come to attention for opposing a pan-European deposit guarantee scheme – another pillar of the banking union –and has ever been defending its three-pillar system of banks against any European measure that might potentially erode it[13]. Pan-European deposit insurance has indeed been perceived as doing so and evoked domestic opposition to merging national systems in Europe for that reason. This is partly due to the German systems (Wurm, Wolff & Ettmann, 2004) which are incompatible with deposit guarantee schemes in some cases. Insofar the Commission (2013a, pp. 32, 28-29) now intends to link deposit insurance to banking resolution through means for mutual lending between the systems Germany's position to the SRM (SRM) might be rooted in technical grounds alike.

Apart from deposit insurance EU-banking resolution draws on the European Stability Mechanism (ESM) to bridge shortages in capital and thus maintain markets in Europe stable when banks of systemic importance are winded up. This fund has however been established to stabilize states (and not banks) in the euro-area and get them through the Eurozone crises. For that reason there have been heavy discussions on whether to recapitalize banks through the European Stability Mechanism (ESM) and thus on whether to use it as a final backstop in banking resolution, furthermore (Malhere, 2013, October 14). Since Germany contributes the highest share (27%) to the Stability fund (ESM, 2014) there should be some clear national preference on how these assets are used. In addition to aspects being peculiar to Germany, theories on European integration may reveal more general grounds on which member states either support or block European initiatives to deeper integration instead. These will be unpacked with a view to the German stance on the SRM (SRM).

[13] see for instance negotiations between German savings banks and the European Commission on state guarantees for savings and regional banks in Germany in 2002 (*"Gewähträgerhaftung*"). These have been considered as infringing with European law on state aid wherefore the Commission has sought to abolish these guarantees. (The German *"Gewährträgerhaftung*" has expired in 2002) (Europa.eu., 2001).)

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2 Integrating Banking Resolution in Europe – Explanations of Theory

Integration theory seeks to explain specific occurrences within European financial integration. In this paper it serves to expound how national positions to a European policy come about. Two theories accompany the process of European integration since its first days: Neofunctionalism on the one hand, and Liberal Intergovernmentalism, which may be denoted an "opposite pole[14]"(Bieling, 2006, p. 91) to the former, on the other. The question that arises now is: Which of both approaches is more suitable to develop a preliminary explanation on Germany's position to the draft regulation establishing the Mechanism (SRM). Proponents of neofunctionalist explanations perceive European integration as a "spillover process, not requiring a pro-European attitude on the part of all governments" (Corbey, 2009, p. 235). Spill-over-effects denote some "automated process" (Rosamond, 2000, p. 6)[15] of integration in that common action in one field of policies provokes need for cooperation on adjacent issues as to accomplish objectives of the former (Lindberg, 1963, p. 10).

> *"'Spill-over' refers to a situation in which a given action, related to a specific goal creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and need for more action, and so forth" (Lindberg, 1963, p. 10)*

Rather than seeing national governments as prime movers of integration (Moravcsik, 1998) Neofunctionlism centers upon societal actors who in taking influence on the policy process direct attention to a new platform for politics that lies outside the nation state (Haas, 1958, p. 16)[16], and to this set up transnational institutions for decision-making (Lindberg, 1963, p. 6; Wolf, 2006, p. 71). National governments, on the other hand, rather follow and respond to demands of societal actors for or against more integration. These are further encouraged by European institutions and interest groups that mobilize beyond nation-states to accomplish shared goals (Wolf, 2006, p. 68). Neofunctionalism considers the dominant position of nation-states in shaping international politics as diminishing in the course of the integration process (Wolf, 2006, p. 68) and expects them to somehow lose influence in favor of new supranational institutions that "escape the control of their creators" (Niemann & Schmitter, 2009, p. 48). These in turn may even affect or change preferences of governments in terms of depth and scope of common action on EU-level (Niemann & Schmitter, 2009, p. 48). Therefore, states and so national governments, are somehow drawn into the process of integration which finds expression in some institution on EU-level in most cases.

Liberal intergovernmentalism, on the other hand, perceives "national leaders" (Moravcsik, 1998, pp. 3, 18, 78) – so member state governments – to drive European integration, insofar they decide about the extent of cooperation and thus, whether states mutualize national policies or not. Societal interests also play a role in shaping European integration here, albeit

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[14] own translation: Hans-Jürgen Bieling (2006, p. 91) labels the liberal intergovernrnemntalist approach to explain European integration as „*zentraler Gegenpol zum neo-funktionlistischen Pradigma"*

[15] Rosamond (2008, p. 63) clarifies that some atomicity may be found with the early explanations by Ernst Haas and Leon N. Lindberg rather than with the concepts of spill-over developed later on by e.g. Philippe Schmitter

[16] Haas (1958, p. 16) describes the final stage as follows: „The end result of a process of political integration is a new political community superimposed over the pre-existing ones".

through different channels: They give direction to the process via a national position that grows out of domestic struggles among societal interests who urge such policies that most likely satisfy their demands (Kohler-Koch, Conzelmann & Knodt, 2004, p. 84; Moravcsik, 1992, p. 7). A national preference therefore arises from domestic bargaining, in which different groups of interests vie with each other for their favored policy (Moravcsik, 1993, p. 481). In Liberal Intergovernmentalism societal actors hence influence bargains on EU-level, too, but do so via their national government, which synthesizes domestic preferences and thereupon uploads a common position to supranational level. Governments therefore work as "gatekeepers" (Steinhilber, 2006, p. 181)[17] who filter demands on policies brought forward by domestic individuals and interest groups. This is where European integration becomes a two-level process (Moravcsik, 1993, p. 482) in which "interstate bargaining" follows on "national preference formation" (Moravcsik, 1993, p.482). If governments then come to agreement, they fix cooperation in some European policy and thus make an "institutional choice" (Schimmelpfennig, 2007, p. 80).

Overall liberal intergovernmentalism appears to be more suitable to grasp the German position to EU-banking resolution. This is because national governments have had a definite say in the institutional framework for EU-banking resolution that have been decided in both, the Council (2013) in December 2013 and trialogue-negotiations in early 2014: it has been laid down now that national resolution funds are merged only if all states agree by common consent[19]. The European Parliament has been partly barred from co-deciding on banking resolution in Europe, moreover. On this, Eurogroup ministers have finally agreed and thus removed some provisions from the scope of the regulation and thus, joint decision-making (Council of the European Union, 2013; Malhere, 2014, January 10), the consequence being that the European Parliament has less means to influence certain aspects of the fund now (Malhere, 2014, January 10). This has caused sharp debates between the Council and the European Parliament in early 2014, with the Parliament not accepting being excluded from decisions on issues relating to the fund (Gammelin, 2014, January 17). Despite these disputes national governments have however safeguarded their powers to decide on transfers of capital from national to the European Union (European Commission, 2014), even though the fund is placed under the regulation now. Therefore, liberal intergovernmentalism that gives importance to states rather than supranational institutions or transnational interest mobilization[18] appears more suitable to grasp the German position to the Mechanism (SRM).

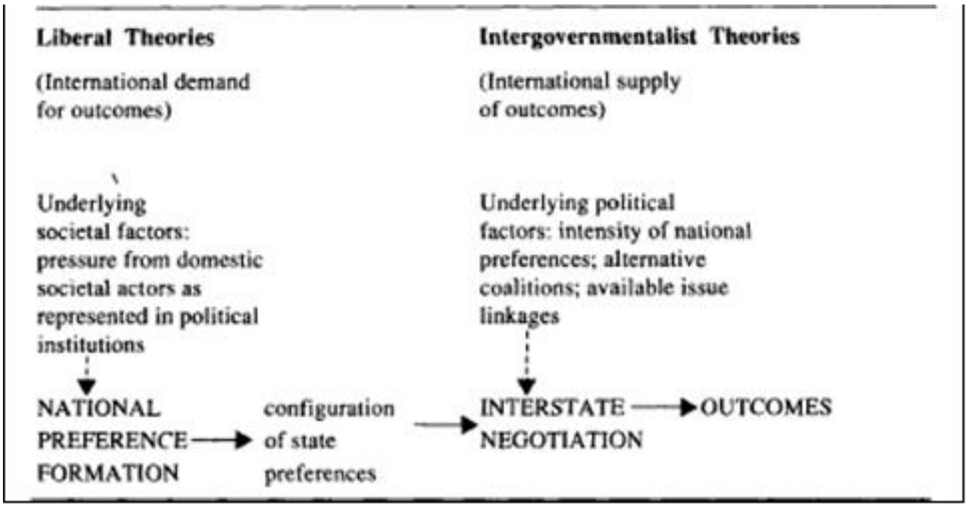
It appears furthermore that progress in European banking resolution seems to tie in with more general trends of European financial politics found by Quaglia (2007, pp. 282-284). She ascertains that states rather than supranational institutions or transnational actors have been pivotal in institutionalizing European financial regulation as governments make the final choice on the technical framework for cooperation. Policy outcomes, so institutions for cooperation, have thus been determined by important states rather than followed on preferences of the Commission or the Parliament (Quaglia, 2007, p. 274). This also seems to apply to the case of the SRM (SRM) and in particular, the Single Resolution Fund (SRF) of which specific provisions are recorded by an intergovernmental agreement[19] instead of a

[17] Moravcsik (1998, p. 22) considers the nation-state as a "unitary and rational actor", that defends a common national position in the name of "its constituents"; so domestic individuals and interests groups, that have a stake in the policy under discussion and transpose their demands to the European legislator via national government officials. For that reason the government is named "a gate-keeper, bridging domestic with international bargaining (Steinhilber, 2006, p. 181).

[18] a typical feature of Neofunctionalism

[19] *Agreement on the transfer and mutualization of contributions to the Single Resolution Fund*

European regulation now. In here states tie in with common approaches to regulate the provision of financial services on the internal market: The principles of “mutual recognition” and “home country” control (Vardi, 2011, pp. 134-135). Forms of collective regulation the like suggest national rather than transnational patterns of governance (at least when it comes to settling conflicts), too, and therefore recommend liberal intergovernmentalism rather than neofunctionalism to explaining the case on hand. Finally, the two-level approach of Liberal Intergovernmentalism to trace progress in European integration seems congenial to explain European politics in banking resolution from the perspective of a single member state: For this paper it thus allows to start out from the intergovernmental agreement on banking resolution reached at EU-level and thereupon, grasp the dynamics of national preference formation in Germany.



<u>Figure 1:</u> The Liberal Intergovernmentalist Framework of Analysis (Moravcsik, 1993, p. 482)

2.1 Intergovernmental Bargaing

In line with Moravcsik’s (1993, p. 474) assumption, that the European Community[20] represents an “intergovernmental regime” to “manage economic interdependence through negotiated policy co-ordination”, governments set the tone in European integration (Schimmelpfenning, 2007, p. 80) and should so in banking resolution, too. Governments have generally been reluctant to transfer authority from national to EU institutions and rather tried to retain their powers in financial regulation (Quaglia, 2007, p. 283). This also applies to decisions on winding up banks[21]. Their basic intention to “protect” and to this delimit any “transfer of sovereignty” (Moravcsik, 1991, p. 26-27; Moravcsik, 1993, p. 511) in making decisions with one voice rather than by majority vote (Ibid.) also fits with recent developments in banking resolution (s. a.) insofar states tend to

[20] So now the European Union as renamed by the Treaty of Maastricht in 1992.

[21] See for instance Lanoo (2009) on reluctance to charge the ECB with supervisory powers or establish a fund for bank recapitalization with the EIB. There has obviously been opposition before as regards transfers of powers on supervision to the ECB, as that touches upon budgetary powers.

> *"avoid granting open-ended authority to central institutions that might infringe on their sovereignty, preferring instead to work through intergovernmental institutions…[…]…rather than through supranational bodies.."* (Moravcsik, 1991, p. 26/27)

A European mechanism for banking resolution should thus correspond to a "lowest-common denominator" (Moravcsik, 1991, p. 25; Moravcsik, 1993, pp. 487) on which member states who generally sidestep transferring powers to EU-level agree (Moravcsik, 1993, pp. 500-501). Nation-states should therefore favor intergovernmental over supranational forms of governance in a European mechanism insofar measures on banking resolution may have implications for national budgets[22]. Policies in that area go to the heart of national sovereignty, therefore. Governments should therefore be highly reluctant to confer according powers upon European institutions. Although they might be aware of some need for common action because of national benefits or in order to avoid disadvantages of being not part of the group (Moravcsik, 1993, p. 507; Moravcsik, 1991, p. 26), they will most likely refuse to transfer authority to the European Commission and favor intergovernmental forms of governance (Moravcsik, 1991, p. 27). Germany are therefore likely to refuse making the European Commission a European authority for banking resolution except it enables them to enforce measures on domestic level that

In view of growing financial integration and progress made in the banking union[23] there must however be some incentives for states to delegate powers on banking regulation to EU-institutions. In accordance with the functionalist explanation of conferring powers upon European bodies,, which Moravcsik[25](1993, p. 508) partly draws on to explain the delegation of powers to EU-institutions states should approve or disapprove the SRM (SRM) because of its "intended effect" (Keohane, 1984, p. 80). In the pursuit of financial stability and protecting taxpayers from paying for the resolution of banks in Europe the Commission (2013a, p. 4) points at several benefits that it seeks to accomplish with the help of the Mechanism (SRM): First, it believes that joint decision-making by European committee saves time, avoids destabilizing effects therefore and protects taxpayers in Europe more effectively than can unilateral policies (Ibid.). Thus serving to "enhance [the] efficiency of bargaining" (Moravcsik, 1993, p. 512) on banking resolution member states should have an incentive to approve the system. A single authority enables rapid decisions on the basis of common rules (Commission, 2013a, p. 4) and thereby avoids lengthy negotiations (Moravcsik, 1993, p. 512) among states and the like problems of collective action that may be redressed by clear rules for common decision-making and settling conflicts (Moravcsik, 1993, pp. 497, 507)[24]. It may furthermore limit transaction costs of common governance (Moravcsik, 1993, p. 508) as states should according to theory create a European mechanism for banking resolution in view of that objective[25].

[22] see Hartmann-Wendels et al.(2007, p. 358) and Van Roosebeke (2011) on the problem of financial institutions considered as "too-big-too-fail" and the implications these have for states and governments that might have to step in for bank rescue. State intervention usually involves that costs from winding-up banks must be absorbed by the treasury (Hartmann-Wendels et al., 2007, p. 358), so tax money in the end.

[23] In November 2014 the European Central Bank starts working as the Single Supervisory for banks in Europe (see Regulation COUNCIL REGULATION (EU) No 1024/2013 of 15 October 2013).

[24] For Moravcsik (1993, p. 507) international institutions serve as "deliberate instruments to improve the efficiency of bargaining between states".

[25] Moravcsik (1993, p. 508) applies a functional approach to justify the establishment of international or European institutions by states insofar they represent a platform at EU-level where actors might strike the

Secondly, the Commission (2013a, p. 4, 7) expects synergetic effects from a European authority insofar supranational committees join experience and technical know-how from all over the Union. Since national officials from all SRM-states make up the resolution board at EU-level decision-makers should consider national distinctions of banking systems, though. Governments might therefore approve the Mechanism (SRM) to "monitor, interpret and enforce compliance" and "credible commitments" of the participating countries to common rules (Moravcsik, 1993, p. 512). According to Liberal Intergovernmentalism (Moravcsik, 1993, p. 512)[26] member states should have an incentive to join the Mechanism (SRM) in order to make states meet their responsibilities when it comes to winding-up banks in their territory. National officials on the other hand easily fail to assess effects of own policies on other states correctly (externalities) or be tempted to only act on their own account when undertaking the tasks to resolve cross-border banks on their own (European Commission, 2013a, p. 5). In line with delegation theory states might therefore concede decision-making authority to some European committee in order to manage "information asymmetries in technical areas of governance" (Thatcher & Stone Sweet, 2002, p. 4). Opportunities to limit negative effects of unilateral and uninformed policy-making therefore encourage governments to build up international systems and in so doing to tackle common problems together (Moravcsik, 1993, p. 485-486). To maintain financial stability in the internal market when banks of systemic importance come to fail represents a policy objective of this sort (European Commission, 2013a, p. 7) and may incline states to adopt common policies on crises management and hence a European mechanism for banking resolution when unilateral action may not cope with the challenges of international financial markets.

Finally, the Single Resolution Fund (SRF) attempts to better safeguard taxpayers against paying for the resolution of banks in that it provides for a larger capital base than do domestic funds (European Commission, 2013a, p. 4). A European fund overcomes barriers to effective resolution that consist if national policies are only coordinated but not replaced by unique rules. Furthermore, it helps that credit ratings of banks do not depend on those of states (European Commission, 2013a, p. 4). A European authority for banking resolution, a common fund and unique procedures enable governments to establish rules of burden-sharing and on the distribution of costs in advance. This helps to overcome "problems of incomplete contracting" (Moravcsik, 1993, p. 509) among states, which may hardly predict the consequence of their actions or events[27]. Their lacking capacity to anticipate future outcomes does however not automatically lead states to confer powers upon supranational institutions (Moravcsik, 1993, p. 509). Liberal Intergovernmentalism suggests (Moravcsik, 1993, p. 512) states have an incentive to prefer a European mechanism over a network of national systems to ensure that governments fulfill their mutual obligations in banking resolution on a common properly. Theory on delegation therefore suggests one major incentive for governments to adopt the Single Resolution Mechanism (SRM) and to thus give up (fiscal) sovereignty to EU-institutions: They should do so in order "to reduce transaction costs" (Moravcsik, 1993, p. 514), which may be due to pure coordination of national policies.

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conditions of their cooperation. Institutions and so should a European Mechanism (SRM) for banking resolution help to "reduce transaction costs" (Ibid.)

[26] Moravcsik (1993, p. 512) expects states to enshrine their cooperation in European institutions in order to „overcome the almost inevitable interstate prisoner's dilemma of enforcement, whereby individual governments seek to evade inconvenient responsibilities, thereby undermining the integrity of the entire system".

[27] see for instance the case of *Northern Rock* where the responsibilities to compensate British depositors of the Icelandic *Landsbanki* have been unclear and made the British state finally absorb the losses (Reuters n.d.)

For that reason governments must weigh benefits of EU banking resolution higher than devolving authority to the European Union (Moravcsik, 1991, p. 26). The German government should thus ponder drawbacks of losing political influence against incentives for a European mechanism. States however vest authority in European instead of national institutions only if ”decentralized” regulation fails to meet their objectives in being weakened by negative effects of the actions by other states (Moravcsik, 1998, p. 9; Moravcsik, 1993, p. 486). Due to integrated markets might regulation of foreign governments impact on the effectiveness of domestic policies in providing public goods that governments has to account for (Moravcsik, 1993, p. 486). In connection with banking resolution national policies may fail to ensure stable markets or protect taxpayers from absorbing losses of banks. If national governments are unable to ensure financial stability without using public money on its own, unilateral action becomes less effective and therefore drives governments to cooperate with other states in the case of a common market (Moravcsik, 1993, p. 486) as e.g. in form of a European mechanism for banking resolution. On the other hand, they should see less need to join a system if they profit from measures of foreign states or cause negative effects to others themselves rather than being subject to them (Moravcsik, 1993, p. 486). Following on more general theories on regulation international cooperation and therefore European integration of national policies seems to pursue typical goals of regulation, albeit on an integrated market: to overcome “market failures”, as for instance negative externalities or different forms of moral hazard (Baldwin, Cave & Lodge, 2012, p. 15). In line with Moravcsik (1993, p. 486) and these general theories of regulation states should have an incentive to join the SRM if they expect it to avoid moral hazard and the like negative effects on third parties while opposing it otherwise.

To approve the SRM-regulation the German government needs to expect that with the aid of the European mechanism authorities do not fall back on public money for maintaining systemic stability whilst resolving banks, since that is the core objective of the draft regulation and the banking union (European Commission, 2013a). Insofar a single market requires states to set the legal framework for “more efficient bargaining” between them (Moravcsik, 1993, p. 507), states should have a reason to clearly organize common action on banking resolution. In particular in view of sharing the burden when cross-border banks need to be wound up member states should have an incentive to clarify how to distribute costs from cooperation in advance and to this set up common institutions. These help to avoid disputes on burden-sharing in the aftermath and hence render “bargaining between states more efficient” (Moravcsik, 1993, p. 507)[28]. The Commission (2013a) itself points at chances to eliminate negative externalities by way of a European system for banking resolution and protect third parties from assuming costs of resolving failed banks. Hereby governments balance losses in decision-making authority to EU-institutions against potential advantages they expect from European governance (Moravcsik, 1991, p. 26; 1998, p. 9) and hence a European mechanism for banking resolution. According to theory (Moravcsik, 1993, p. 485), they should thus opt for the Single Resolution Mechanism (SRM), if that facilitates common action and renders own measures on financial stability and for the purpose of a sustainable banks in the internal market more effective, where the government will rather oppose a European system or be indifferent when it profits from policies of other states. A European resolution scheme should be considered as limiting chances rather than does a network of national systems. For the German position on the SRM-Regulation this implies:

[28] Moravcsik (1993, p. 507) argues that international institutions are deliberate instruments to improve the efficiency of bargaining between states“.

H_1: If the German government believes that gains from the Single Resolution Mechanism (SRM) outweigh losing powers to the European Union, it supports the regulation and disapproves the mechanism otherwise.

Beyond its assumption that national leaders are engines of European integration, liberal intergovernmentalism offers a second useful approach to explain occurrences in European (financial) integration: The theory breaks down the process into three sections of negotiation and attempts to explain each of these steps through different theories. Moravcsik (1993, p. 21; 1998, p. 20) suggests the following levels of negotiation in harmonizing policies on EU-level. The final (policy) output, so for instance a (pan-)European system on banking resolution, is the last stage in this chain – the *institutional choice* (Moravcsik, 1998, p. 2). It refers to the framework of rules within which European states cooperate to solve common problems of liquidating (cross-border) banks properly, so without using public money or destabilizing the financial system. In line with Schotter (1986, p. 117) the final stage of European integration therefore denotes the moment that governments settle on a common "set of rules that constrain individual behavior and define social outcomes that result from individual action". In the last phase they hence enshrine common policies in the pursuit of some shared objective[29] (s.a.) through a European system (Moravcsik, 1998, p. 2). This is where European integration manifests *de facto*. In the Single Resolution Mechanism (SRM) institutional choice involves the political agreement on a supranational (*resolution mechanism*) and an intergovernmental component (*mutualizing resolution funds*).

In order to settle on a framework for banking resolution states have to agree on the scope and the depth of cooperation and on the precise content of their policy *(interstate bargaining)* (Moravcsik, 1998, p. 2-3). This stage of intergovernmental negotiations however posits that states favor a certain state of financial stability and particular conditions of competition on *(national preference).* By national preferences Moravcsik (1997, p. 519) understands "a set of fundamental interests" or "set of values placed on future substantive outcomes" (Moravcsik, 1998, p. 24). Preferences in this connection denote policy outcomes rather than outputs (Ibid.), insofar as Moravcsik (1997, p. 543) differentiates domestic preferences from "strategies" and "tactics" (Ibid.), that denote policies instead of some condition that is to be achieved by the same.. Even though states bargain on common policies for resolving collective problems, their conceptions of what final condition[30] of financial stability and hereto, proper methods of resolution need to coincide (Moravcsik, 1998, p. 3). States hence bargain on the basis of national preferences (values) (Moravsik, 1998, p. 24) of what e.g. banking resolution should perform. These values exist regardless of (international) regulations in place (Moravcsik, 1993, 26; 1998, p. 20). National preferences thus correspond to ideal conceptions of the policy environment rather than means to that end (political strategies) (Moravcsik, 1997, pp. 517, 519): In that connection preferences refers to the level of financial stability, conditions of fair competition on the internal market as well as whether and eventually how European banking resolution might add to a stable banking sector in the long-term that benefits real economy (European Commission, 2012a). Moravcsik (1993, p. 481) proceeds on the assumption that governments who act on behalf of the state in intergovernmental bargaining are "minimal rational" insofar they either seek to minimize own costs or maximize national benefits from European policies (Moravcsik, 1998, p. 23; Schimmelpfennig, 2007, p. 77).

[29] so shared preferences in the sense of Moravcsik (1998, p. 20), who furthermore defines preferences as a "set of underlying national objectives independent of any international negotiation". (Preferences of different states may nevertheless overlap and therefore arouse interest for inter-state cooperation; on a precise definition of national preferences see also (Moravcsik (1997, p. 519).)

[30] again: national preferences defined as „value" rather than alternative for action

Governments thus seek to push through strategies they believe to offer the best chances that they accomplish their own objectives *(preference)* (Moravcsik, 1998, p. 24). Another major preference of governments is a true self-interest: Officials seek to retain in post (Moravcsik, 1993, p. 483) and therefore strive for re-election, to which they need domestic support (Moravcsik, 1993, p. 483). In other words, stakeholders in the policy need to back the strategies, so policies, of their government (Moravcsik, 1993, p. 483). This explains a fundamental objective that national leaders pursue by means of foreign economic policies: They seek to reduce public spending (Moravcsik, 1998, p. 37) as to demonstrate husbanding with national budgets and hence, tax-money. In view of the main objective underlying the Mechanism (SRM) - to avoid public bailouts – and conditions that work for governments in general – decreasing public expenditure – governments should support European bankingresolution, if they expect that the mechanism reduces public spending in order to esolve or in the last instance, stabilize banks[31]. Liberal intergovernmentalism therefore suggests:

> *H_2: If the government believes that the regulation helps to lower public spending on rescuing or resolving ailing banks, it supports the regulation and does not so otherwise.*

Apart from their goal to reduce public spending governments bargain on the “distribution” of “gains and losses” of cooperation (Moravcsik, 1993, p. 497), insofar they seek to avoid carrying the main burden of common policies, but to maximize national gains instead. This derives from the fact, that gains and losses from collective action are deemed to be spread unequally among states that cooperate (Moravcsik, 1993, pp. 487, 497). In intergovernmental negotiations states therefore seek policy arrangements, which ensure, that resources, they supply to achieve shared aims, are not exploited by others. Rather they attempt to profit as much as possible themselves (Moravcik, 1993, p. 498). To this, states aspire for common institutions that determine the distribution of returns in advance (Kassim & Menon, 2003, p. 123). Hereby they avoid making concessions to other states.

Moravcsik (1993, p. 498) considers “democratic governments …[…]…risk-averse” in principle, what further backs his assumption that institutional agreements reflect the “lowest common denominator” (Moravcsik, 1993, p. 487) of shared preference. In that regard, European action on banking resolution touches on two fundamental questions of international cooperation that have to do with the institutional framework of the common policy: The extent to which states transfer competences to European institutions (*delegation*), and the terms of governance - so majority in contrast to unanimous decision-making (*pooling*) (Moravcsik, 1998, p. 67). These questions are relevant for banking resolution insofar they imply transfers of capital to either rescue or liquidate institutions without intolerable impacts on creditors or taxpayers (Krimminger, 2008, p. 377). The internal market for capital and financial services makes it however possible that payment difficulties of one bank spill-over to others or even infect national economies. When taking collective action states have to therefore balance chances to raise effectiveness of cross-border banking resolution, for which some form of cooperation is needed, against “risk(s) of being outvoted or overruled” (Kassim & Menon, 2003, p. 126; Moravcsik, 1998, p. 9). They have to decide on the amount of powers

[31] Note that the fund is not intended to rescue banks, but may as a last resort to insure private assets (European Commission, 2013a, p. 13)

they give up to EU-institutions on the basis of this weighing of interests (Moravcsik, 1993, p. 497). In regards of European banking resolution member states need to determine those tasks, which they assign to the board (*delegation*) and the decision-making powers (*pooling*). Distributional conflicts (Moravcsik, 1993) may thus play a role in European negotiations insofar as liberal intergovernmentalism expects states to take common action only (Moravcsik, 1993, p. 487), if they do not feel being used by other states and should refuse a common system otherwise.

In vindicating their demands states seize on claims of domestic groups. These tend to block adverse policies and support such that work to their advantage (Moravcsik, 1993, p. 494). Even though governments generally strive for limiting transfers of powers to EU-level (Moravcsik, 1991, pp. 26-27), Moravcsik (2001, p. 11) concedes that they seek to retain “political sovereignty…[…]..not as an end in itself”, but rather for the purpose of achieving preferences of domestic groups. He therefore points at shifts of capital to the detriment of societal actors on domestic level that derive from transfers of decision-making powers to EU-institutions through charging them with decision-making or opt for majority instead of unanimous decisions (Moravcsik, 1993, p. 511). Given that according to Liberal Intergovernmentalism governments respond to economic self-interests of influential domestic actors[32] they balance loss in national sovereignty moreover against implications for economic interests on domestic level. The following motive might be behind Germany’s position on EU-banking resolution and its reluctance to transfer powers upon European institutions:

> *H_3: If the Mechanism disadvantages powerful domestic interests, the government will oppose to transfer powers on banking resolution to EU-level and opt for a European system if it benefits these societal groups.*

2.2 National preference formation

Domestic expectations on transfers of income implied by a European banking resolution touch on the lowest level of European integration: the process of national preference formation (s.a.). Moravcsik (1998) assumes that states develop foreign policies in the pursuit of some national interest, which however “emerge(s) through domestic political conflict as societal groups compete for political influence” (*national preference formation*) (Moravcsik, 1993, p. 481). A national position to European intervention is thus some “aggregation” (Moravcsik, 1993, p. 483) of interests which these groups bring forward. Liberal theory on domestic preference formation therefore seeks to identify actors who play a pivotal role in this field of policy. It seeks to ascertain motives of German actors to either support or oppose the Mechanism (SRM). Preferences of domestic actors may have different sources. In line with Downs (1957) and Moravcsik (1993, pp. 486-488) they will most likely stem from concerns of how European policies effect on incomes and wealth.

[32] Moravcsik (1993, pp. 510-511) expects governments to balance „the level of political risks for…[…]…for interest groups with intense preferences” against the benefits of establishing common systems to accomplish shared objectives.

Liberal intergovernmentalism therefore gives a first indication of those actors which are relevant in domestic bargaining on EU-banking regulation: These should generally be those groups, that “stand to gain and lose a great deal per capita” (Moravcsik, 1993, p. 483); so those on whose assets European policies impact substantially. Any national position on European (financial market) regulation is thus subject to pressure of powerful domestic stakeholders (Moravcsik, 1997, p. 518). The higher the opportunities for these economic groups to generate profits through cross-border activities the stronger will be their enticement to make the government smooth the progress of international transfers of goods, services and capital (Moravcsik, 2001, p. 14). “Producers” (Moravcsik, 1998, p. 36) which in terms of banking resolution refers to the finance industry are considered the important pressure groups here. They balance costs of adapting their systems to international requirements against opportunities to increase returns from transnational business activity (Moravcsik, 2001, p. 14). Moravcsik (1997, p. 517) points to some general reluctance of domestic actors to make additional investments in order to generate the like profits, but rather adhere to their systems in force. According to Moravcsik (1998, p. 36) the German finance industry should therefore press the government to consider its demands (Moravcsik, 1998, p. 36) for or against the Single Resolution Mechanism (SRM) depending on how they expect it to impact on their assets or profits. Overall the finance industry would tend to spare further expenses that might drive from policy implementation.

Unlike consumers or taxpayers whose means to take common action are more difficult to pool (Moravcsik, 1998, p. 36) the banking sector should mobilize on policies for resolution most effectively (Moravcsik, 1998, p. 36). Interests of producers usually predominate and have the most vigorous impact on the government position. This is due to the strong capacity of producer groups to concentrate and organize resources in order to achieve their political goals. Industrial groups are hence able to influence the government more effectively than consumers who are rather dispersed and lack means to take collective action (Downs, 1957, p. 149; Moravcsik, 1993, p. 483, 488; Schimmelpfennig, 2007, p. 179). The government position may therefore be skewed in favor of producer groups (Moravcsik, 1998) since Liberal Intergovernmentalism expects “states [to only] represent some subset of domestic society” (Moravcsik, 1997, p. 516). Note that the Commission (2013a) seeks to shift the costs of resolution from taxpayers to banks. Preferences of domestic banks on the one hand and those of taxpayers and consumers on the other might therefore be in conflict. This is mainly because the less either of both camps pays on banking resolution the higher will be the burden for the other party. That is in line with liberal intergovernmentalism which suggests that societal actors have to choose strategies “under...[…]…material scarcity” (Moravcsik, 1997, p. 516). The theory moreover denies that domestic interests are agreed in general, but rather that there is some constant struggle on the use of scarce resources (Moravcsik, 1997, p. 517). The position of domestic actors may hence derive from economic motives, so be driven by “material welfare” (Moravcsik, 1997, p. 517; Moravcsik, 1998). Transfers of money could be the main bone of contention in the case of the Single Resolution Mechanism (SRM).

2.2.1 Compatibility with Domestic Policies

A first point to note is that issues of capital transfers concern the Single Resolution Fund (SRF). Besides the institutional design and rules to employ the assets of the fund the regulation entails provisions to bridge temporary shortages of capital with the aid of third parties. The fund may take out loans with the European Stability Mechanism (ESM) or deposit insurance systems (Art. 68) (European Commission, 2013a). As to deposit guarantee schemes and policy initiatives to merge these systems in the European Union national opposition in Germany deserves a mention here. Various banks in Germany opposed to join a European deposit guarantee scheme or to merge their respective systems on EU-level. Instead, Germany has been adamant that systems on deposit insurance remained in national hands and that specific systems on institution guarantee are recognized as means to insure deposits with banks. It seems thus that states have “institutional in addition to policy preferences” (Schimmelpfennig, 2007, p. 82)[33]when it comes to banking regulation. States are said to have very specific positions on international economic cooperation in general and these might be hard to reconcile (Katzenstein, 1978, p. 4). Domestic schemes on banking resolution might therefore discourage governments from setting up a pan-European system, whilst procedures that fit those of most other states encourage cooperation instead (Moravcsik, 1998, p. 486). Moravcsik (1997, p. 517; 1998, p. 486) assumes that states with “outlying” preferences are relatively more reluctant to transfer responsibilities upon EU-authorities. For that reason states chose foreign policies that make their domestic approaches suitable to international demands (Katzenstein, 1978, pp. 3-4), so for instance EU-standards on banking resolution. If the Mechanism (SRM) undermines German systems on banking resolution or deposit insurance in leading to transfers of capital between them, domestic actors will probably oppose the regulation. According to Liberal Intergovernmentalism such interests should be reflected in the government position and could explain Germany’s position in European negotiations.

Though liberal intergovernmentalism suggests some cleavage of interests between producer and consumer groups (Moravcsik, 1998, pl. 36), this does not have to apply to all policy areas. Empirics might therefore show in how far preferences of different actors converge or diverge in the case of the Mechanism (SRM). Thereupon, it might be possible to identify the influence of certain groups on the government position to the SRM-regulation. On the other hand, the government may also defend diverging interests in a balanced way when different groups agree on certain aspects so that Germany might bargain as a true “unitary actor” (Moravcsik, 1993, p. 22) in European negotiations.

[33] Even though Schimmelpfennig (2007, p. 82) refers to the stage of institutional choice on EU-level here, this aspect may be interpreted in line with the definition of preferences of Moravcsik (1998, p. 24): so a general idea of how a financial system needs to be structured to function properly and be conducive to economic activity. Institutional preferences should according to Moravcsik (1998, p. 24) also refer to “future substantive outcomes” that might require certain types of institutions.

3 Methodology: A Single Case Study on the German Position

This research analyzes Germany's motivation to prefer a network of national banking resolution over a pan-European scheme – so to oppose the original SRM-regulation. On the basis of the empirical data it attempts to provide an outlook on chances that Germany joins a pan-European system with majority voting and supranational budgetary powers rather than an inter-state network of national funds and unanimous decision-making on banking resolution. By way of a single qualitative case study (Lim, 2010, pp. 54-56) on domestic interests the research examines motives of Germany to approve or oppose provisions of the Mechanism. The empirical data is gathered through a content analysis of records that indicate positions of relevant actors in Germany, so those that have a stake in European financial regulation. These actors are identified on the basis of previous research on European financial regulation by Gottwald (2011, pp. 62-63).

Positions of relevant domestic actors and their impact on the national stance on the Single resolution Mechanism (SRM) derive from a content analysis of position papers, press releases, newspaper articles, interviews and protocols of parliamentary debates. In particular newspapers provide facts and statements of actors and inform about issues of contention in intergovernmental and domestic bargaining in the first instance. These sources have been selected in line with relevant actors in financial regulation. Their positions are analyzed with a view to those factors that might eventually explain Germany's position to the Mechanism according to Liberal Intergovernmentalism. These factors which serve as the independent variables in the analysis involve expectations of domestic actors on the potential transfers of capital in favor or at the expense of them. Secondly, they refer to their expectations on changes in national sovereignty. The analysis edits data of domestic actors with a view to both of these factors in order to prove to which extent they have played a role in the national position of Germany (*dependent variable*). In comparing the position of the government in negotiations with domestic interests the analysis allows to identify more and less influential actors in domestic preference formation.

This research is hence a thorough investigation of reasons for why Germany approves or rejects certain provisions of the Single Resolution Mechanism (SRM). It is highly idiographic because it seeks to fully comprehend the specific grounds why one of 28 states insists on intergovernmental instead of a European approach to banking resolution (Babbie, 2007, p. 19). Its findings might add or even falsify some general pattern of Germany‘s stance on EU-banking regulation and show up a more general position to e.g. the banking union.
The external validity of (single) case studies is however contested insofar as insights from research methods the like where general causal inferences are drawn from single observations may not necessarily apply when the subject of study changes (Babbie, 2007, p. 300; Shadish, Cook & Campbell, 2002, p. 83).). Findings in the case of Germany may hence not explain the position of other states in intergovernmental bargaining or that of Germany to different EU-policies. According to Lim (2010, p. 54) these limitations therefore challenge the scientific value of single case studies because they may not provide general "thruths" or theories. However, they may according to Peters (1998, p. 64) add valuable insights if they explain extraordinary cases. In view of the Commission's intention to stabilize financial markets through a European system for banking resolution it appears worth to study some relevant state – that one with the highest share of banks for which it should certainly have a stake in the Mechanism (SRM) such policies. In that regard Germany might be an outlying case or the "hardest" (Peters, 1998, p. 55) one even.

4 Data & Analysis

4.1 Stakeholders in Germany: Who mobilizes for EU-Banking Resolution?

Financial markets differ from others on markets for e.g. manufactured goods or other services and effect on the environment in which banking policies are made (Gottwald, 2011, p. 48). Pricing is subject to strong fluctuations here (Gottwald, 2011, p. 48) insofar as stock- or interest rates respond to global political and economic developments right away and therefore to stronger extent. Since financial markets grow together through increasing capital transfers and rising cross-border banking, prudential regulation becomes more and more important in protecting markets against systemic risks. Measures to ensure that institutions remain solvent *(prudential regulation)* (Frach, 2008, 22) add to a solid financial system that supplies sufficient capital to the real economy. They should thus have implications for a large group of actors. For the purpose of this research this section spots relevant stakeholders in Germany – so actors, "for whom"…[…]…policies on banking resolution … [...]…are "designed to provide benefits, and on whom it[they] impose[s] constraints" (Altmann & Petkus, 1994, p. 37)[34]. These will probably articulate their demands on the Mechanism (SRM) that according to theory should flow into the national position.

Domestic preferences manifest in parliamentary debates where parties discuss policies on behalf of their constituents. This analysis considers the positions of parties in parliament after government elections in September 2013 since the main decisions have been taken afterwards. Domestic preferences on EU-banking resolution will thus be drawn from the following party groups: *Sozialdemokratische Partei Deutschland, Christlich Demokratische Union/Christlich-Soziale Union*, *Bündnis 90/DieGrünen*, *DieLinke* (*Deutscher Bundestag*, n.d.). Liberal Intergovernmentalism that as providing for the theoretical framework of this analysis determines relevant actors in European integration indicates that national governments respond to domestic economic interests rather than to other political parties (Moravcsik, 1993, p. 483). However, parties in opposition will most likely play a part in "contention among domestic political groups" (Moravcsik, 1998, p. 22) that determine the national preference of Germany. Issues raised by the Left and the Green Party which belong to the political position allow to reflect more critically on the cost-benefit analysis of the government in view of the Mechanism (SRM). The government might weigh incentives for or against a European system differently than these parties what seems worth to reflect on. For that reason the analysis will make marginal reference to the positions of these parties.

This however presupposes that the interests on the policy issue negotiated differ. Moravcsik (1997, p. 518) assumes that "representative institutions" in a state work as "transmission belts[s]" to turn domestic interests into policies, although governments should respond to "powerful domestic groups" (Moravcsik, 1997, p. 519; Moravcsik, 1993, p. 481). Moravcsik (1993, p. 483) moreover points at the need for "support of a coalition of domestic voters, parties, interest groups and bureaucracies" who articulate their demands through various channels. Against that background arguments for or against the Mechanism expressed by

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[34] Altman & Petkus (1994, p. 37) divide actors in fields of environmental policy into governmental policy-makers and non-governmental stakeholders, on which measures might directly impact, wherefore these groups are considered to have a personal interest in the concrete design of (environmental) policy-making. Though applied to a different field of policy, this broad definition of stakeholders in policy-making appears useful to identify relevant actors in banking resolution policies in Germany.

parties that are not part of the government should be considered to see differences in the cost-benefit analysis of the government.

On domestic level the finance ministry (*Bundesfinanzministerium (BMF))* is the main political actor in financial politics (BMF, 2012), though policy implementation mostly resides with the *Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)*, that further watches over solvency of banks. It also monitors financial institutions for their compliance with financial regulation, where it works alongside the national central bank (*BaFin*, 2014; Frach, 2008, p. 105). Furthermore it compiles domestic demands, which the finance minister then negotiates in e.g. European bodies (e.g. Eurogroup-meetings, ECOFIN-Council) and assists the minister in managing Germany's financial affairs (*BMF*, 2012). It hence administers the legal framework that regulates market activity of different commercial and non-commercial actors and hereby co-operates with additional ministries (Gottwald, 2011, p. 80).

The banking sector appears to be the most important private commercial actor with a stake in EU-politics on banking resolution. In Germany, banks and head associations of different institutes seem to co-decide in financial regulation as they are usually consulted at an early stage of rule-making (Frach, 2010, p. 56; Gottald, 2011, p. 82-83, 86). This "corporatist" (Gottwald, 2011, p. 79; Frach, 2010, p. 56; Frach, 2008) system of financial regulation supposes that the German finance industry takes influence on domestic banking regulation and should hence impinge on the national position to the European banking union. This is also due to the mere fact that the finance industry has regulated business conduct mostly by itself (Gottwald, 2011, p. 79; Frach, 2010, p. 56; Frach, 2008). Even though recent changes in domestic and international financial regulation have lowered their involvement in politics (Frach, 2010; Gottwald, 2011, pp. 82-84), banks still seem to play an important part here (Gottwald, 2011, pp. 83-84). In response to international financial integration of markets government intervention has however become more intense (Gottwald, 2011, p. 84). Though state regulators have thus partly cut out the finance industry of its dominant position, the same has retains a crucial role. Even the financial crisis has not changed this pattern to substantive extent (Gottwald, 2011, p. 85). The fact that the German finance industry builds the largest fraction of stakeholders in European financial policies (Frach, 2010, p. 117) further suggests that it might play a relevant role in forming the national position to EU-policies. Overall German banking regulation has only gradually been adapted to European requirements at all times, as is found by Gottwald (2011, p. 86). He concludes that substantive EU-reforms might face huge obstacles when being implemented in Germany (Ibid.). Domestic actors should hence try to influence and maintain their systems (Frach, 2008, p. 19) on e.g. financial stability and hence, banking resolution[35]. Indeed, fair competition and stable markets are traditional core objectives of financial regulation in Germany (Gottwald, 2011, p. 82) so that in line with Frach (2008, p. 19) institutional factors might indeed play a pivotal role in the position of domestic banks.

Other economic branches might have a stake in banking resolution beyond the finance industry. This is due to the most common form of corporate finance in Germany: In particular small-and medium-sized firms procure capital by means of bank loans rather than from capital markets (Frach, 2010, pp. 53-54; Gottwald, 2011, p. 85). Banking regulation is therefore more important for real economy in Germany than states where corporate finance does not build on banks to that extent.

Even though the table below does not refer to taxpayers, they should have a strong interest in how banks are wound-up: Insofar as the Mechanism (SRM) intends to minimize burdens on

[35] Frach (2008, p. 19) expects member states of the European Union or respectively nation-states in international cooperation to co-determine common regulation, but hereby seeking to maintain their specific national systems.

taxpayers these are definitely stakeholders in the policy. This is also due to a major issue of contention: The role of the European Stability Mechanism (ESM) as a final backstop in banking resolution.

Figure 2: Actors relevant in financial market regulation (on the basis of Gottwald, 2011, pp. 62-63)

Types of Actors	**Example**
state-actors	
Governments & Government Representatives	Federal Ministry of Finance (BMF), Treasury; ECOFIN
Parlaments & Committees	German *Bundestag*; European Parliament; financial committee of the Bundestag; ECON
Parliamentary Groups & Parties	CDU, SPD, FDP, DieLinke, Bündnis90/DieGrünen
Supervisory Authority	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), Deutsche Bundesbank
Courts & Departments of Public Prosecution	
private actors	
small & large-scale investors, investment banks, investment companies	Dresdner Kleinwort Wasserstein Lazard's; DWS; Deka; Quantum Funds
pension funds	
stockbroking/listed companies	Allianz; Deutsche Bank AG
banks, financial groups	Citigroup; Deutsche Bank AG
auditors, rating agencies, law firms	PricewaterhouseCoopers; Standard&Poor's; Moody's; Fitch
information services, index providors	Standard & Poor's; Deutsche Börse AG (Dax!)
clearing and settlement	Clearstream
civil-society organizations; associations	Association of German Banks (BdB), German Savings Banks Association (DSGV), Cooperative Banking Group (BVR)

4. 2 Financial Transfers?

According to Liberal Intergovernmentalism, „costs and benefits of the necessary adjustments" which European policies involve "generally vary across countries" (Moravcsik, 1993, p. 479). In the case of measures to wind-up failed banks this comes down to distributing the financial burden in resolving banks. The main purpose of the regulation is to shift payments from taxpayers to the financial sector (European Commission, 2013a). Transfers of capital involve such within the European Union, but also between actors on the national level. In the end preferences on how to design a European resolution system will come down to transfers of money. This seems most evident in the institutional agreements on the Mechanism (SRM) reached at EU-level in December 2013 and March 2014: Rules and procedures on how to deal with affected banks have been fully integrated through a European regulation, while decisions on the transfer of capital remain with the member states. This is given by the fact that both, the shift of national bank levies to the Single Resolution Fund (SRF) and the gradual integration of national compartments are laid down by an intergovernmental agreement instead of the regulation. This institutional design effectively guards states against adverse redistributions of income as long as there are some states that do not provide for resolution funds yet (Hulverscheidt & Gammelin, 2013, September 21st). Although states commit to merging their compartments in the pursuit of a pan-European one, they may not be overruled in decisions on capital transfers to their detriment now.

It seems as if national concerns to rescue banks abroad unite various actors in Germany. In particular with a view to the major purpose of the regulation and the assumptions on national preference formation as regards the Single Resolution Mechanism (SRM) arguments for or against the policy brought forward by domestic actors in Germany center on the issue of transfers of money. Actors have different institutional preferences to ensure that European policies on banking resolution make sure that the costs are distributed in a fair manner.

4.1.1 State-Actors

Although internal market commissioner Michel Barnier believes that Germany struggles with formal issues of cooperation rather than objecting to a European fund in principle (Malhere, 2013, September 18), the finance minister however seems to be moreover concerned about transfers of capital to foreign banks, as newspapers report, so that he also refuses a pan-European fund for that reason (Mussler, 2014, January 10; Sievers, 2013, November 12; Handelsblatt, 2013, December 18). In doing so the minister ties in with the general position of the Christian Democratic Party to deposit insurance at EU-level: The party refuses to merge national deposit guarantee schemes in the European Union in order to avoid that depositors of domestic institutions are made liable for the debts of foreign banks (CDU/CSU, 2013, p. 9). Schäuble hence insists on an inter-state treaty, which must be passed unanimously instead of a European regulation that can be approved by a majority of states only (Malhere, 2013, December 9). European law, in contrast, does not allow to establish a common bank levy and thus to mutualize national liabilities in a single fund. For that reason national governments shall continue to be responsible to ensure that domestic banks pay their dues (Fechtner, 2013, December 10). To that end the government demands intergovernmental rather than supranational decisions for banking resolution (BMF, 2014, p. 2) and hence a “network of funds” (Malhere, 2013, November 11; Mussler, 2013, 2014, February 19). In that way the government seeks to avoid that banks and taxpayers in Germany have to pay for bankrupt institutions abroad (Friedrich, 2013; Gammelin, 2013, January 17; Robinson & Kissler, 2013; Sievers, 2013, November 12). National compartments indeed help that domestic money is only used to resolve banks in the respective state, especially during the time the fund must be filled . The CDU, to which the Chancellor and the finance minister in Germany belong, want the member states rather than the European Community to assume the liabilities of their banks (Sievers, 2013, November 12). For that reason they demand national compartments to keep funds of states separate (Malhere, 2013, December 10). For the Christian Conservative Party the advantages of a common fund do hence not outweigh the drawbacks of being “outvoted or overruled” (Kassim & Menon, 2003, p. 126) in decisions on the use of money. Instead it strives to keep control over domestic capital by all means.

The SRF seeks to ensure financial stability and sufficient capital in the internal market whilst institutions of systemic importance are wound-up (European Commission, 2013a, p. 13). With an enlarged capital base that stems from contributions from all over the Euro-area the Commission (2013a) expects that a common fund is a better protection against losses that tend to spread unevenly across the Union. Together with the European Parliament the Commission (2013a, p. 14) therefore presses for a single fund (Handelsblatt, 2013, December 18) arguing that this is the only protection against asymmetric shocks and therefore required to “mak[e]ing the financial institutions and markets more stable, more competitive and more resilient” (European Commission, 2012b, p. 3). Uneven distributions of losses in the euro-area that result from systemic crises in a common currency area make up costs of policy co-ordination and thus correspond to inherent risks of collective action (European Commission, 2013a, p. 14). Although, the German government might benefit from a European system on financial stability itself, it gives more importance to the protection of national assets and hence seeks to separate domestic capital from a pan-European fund.

The German government is not sufficiently convinced by the benefits of the Mechanism (SRM) that through the SRF seeks to “break the link between sovereign debt and bank debt“(European Commission, 2012a, p. 3). Fears to pay for the resolution of foreign banks itself weigh stronger than potential benefits of some large capital base in Europe that could absorb the burden from banking resolution instead of states. The government thus demands that nation-states in contrast to the European Community shall bear the costs of failed banks in their territory (Reuters, 2013, November 27). Fears to assume most of losses in other states are hence the major concern of the German government and carry more weight than do potential benefits that result from the Mechanism (SRM). The primary objective is to avoid that national funds and liabilities are mutualized at EU-level (Kafsack, 2013, November 16). To that end Germany seeks to limit European banking resolution to those banks which are supervised by the European Central Bank.

In addition, the government has also objections regarding the effectiveness of a European bank levy that the Commission may not raise on the basis of EU-law (Malhere, 2014, January 22; Schäuble, 2013, November 22). If a levy may be annulled in the aftermath, European banking resolution makes little contribution to financial stability (Schäuble, 2013, November 22).

Other parties in German parliament do not share the arguments of the CDU against a European fund. Although the theory of liberal intergovernmentalism does not expect the government to respond to parties in opposition, it maintains that "representative institutions and practices constitute the critical transmission belt, by which preferences and social power of individuals and groups are translated into state policy" (Moravcsik, 1997, p. 518). In that regard parties other than those in government should also be considered here, in particular because of the change in government at that time. Parties in political opposition may ponder costs and benefits of the Mechanism (SRM) differently.

The SPD and the Green Party, in contrast to the conservative one, advocate a European instead of national bank levies (*Deutscher Bundestag*, 2013c; pp. 1-2; *Deutscher Bundestag*, 2013h; Gammelin & Hulverscheidt, 2013, November 15). The Green Party even goes further blaming the finance minister to block a European fund that is financed by the banking sector (*Deutscher Bundestag*, 2013b, p. 176). While carrying out asset quality reviews the European Central Bank (ECB) might reveal capital shortages and therefore determine the need for capital injections by third parties to balance the deficits (Ibid.). That is why the Green Party favours a European fund to avoid that banks fall back on tax-money then (Ibid.; *Deutscher Bundestag*, 2013c). Insofar as the party considers a European bank levy the only appropriate way to protect taxpayers effectively (*Deutscher Bundestag*, 2013c; *Deutscher Bundestag*, 2013b, p. 176) and to thus decouple bank from state debt (*Deutscher Bundestag*, 2013b, p. 176) the parties in opposition to the government seem to balance incentives for the common fund and eventual drawbacks to Germany differently than does the CDU. In line with the theory of Liberal Intergovernmentalism it is therefore willing to transfer powers from the domestic level to the European Union, in contrast to the German government.

For the Green and the Social Democratic Party the advantages of a common fund prevail, since they consider a European fund the main tool to overcome the Eurozone debt crisis (*Deutscher Bundestag*, 2013f, p. 2). They regard the SRM as the crucial instrument to avoid that taxpayers in Europe or even the European Central Bank may have to absorb debts of the financial sector (*Deutscher Bundestag*, 2013f, p. 2). Before the Social Democratic Party became part of the government in September 2013 it has therefore called for a European fund financed by the banking sector to ensure that taxpayers do not have to assume the losses (*Deutscher Bundestag*, 2013h, p. 2). Their motive to opt for a European resolution fund is actually in line with the explanation derived from theory for why states chose to delegate tasks to EU-institutions: they might intend to "solve[ing] problems of 'incomplete contracting' "(Pollack, 2003, p. 6; Moravcsik, 1993, p. 509), insofar as a common mechanism forces states to ensure that taxpayers do not have to assume the costs when there are no means or procedures for crises management available (*Deutscher Bundestag*, 2013, p. 2). Obviously the Social Democratic Party expects that a European fund "commits the member states credibly" (Moravcsik, 1993, p. 512) to European rules on banking resolution with the intent to shift the burden on banks rather than the taxpayers. For them the SRM is necessary in order to ensure a stable banking sector and the reliable supply of credit in the internal market (*Deutscher Bundestag*, 2013h, pp. 1-2).

The Left Party although not part of the government strongly rejects the banking union in its current design (*Deutscher Bundestag*, 2013e, pp. 181-182) rather than objecting to the project in general (*Deutscher Bundestag*, 2014). This is due to how the party expects the provisions to impact on financial stability or the protection of taxpayers (*Deutscher Bundestag*, 2013d, p. 1). Insofar as the bail-in system obliges creditors of banks to absorb not more than 8% of the losses the party does not expect the system to be a true protection of taxpayers (*Deutscher Bundestag*, 2013d, p. 2). Instead, they urge reducing the balance sheets of banks in the first instance and call for appropriate banking regulation (*Deutscher Bundestag*. 2013e, pp. 181-182; *Deutscher Bundestag*, 2013e, p. 245). Rather than strengthening policies on crises management the party appears to bank on such for crises prevention in that it calls for reorganizing and downsizing the finance sector and thereby eliminating banks of systemic importance (*Deutscher Bundestag*, 2013e, p. 245; *Deutscher Bundestag*, 2013d, p. 245). In the opinion of the Left Party the actual design of the banking union will hardly be able to ensure that banks are wound up without the aid of tax-money. This is because it considers payment obligations for the finance sector as being too low (*Deutscher Bundestag*, 2013d, p. 2). They hence raise objections to the effectiveness of the mechanism in protecting taxpayers, albeit in a different way than does the government. The government however challenges the effectiveness of a European bank levy also: it questions whether a European authority may charge and moreover enforce a European bank levy at all. The finance minister thus refuses a European fund also in line with Liberal Intergovernmentalism (Moravcsik's, 1998, p. 9): European cooperation on banking resolution must help to improve the effectiveness of common policies in the internal market. In the case of banking resolution this means that European measures have to ensure that neither banks nor taxpayers absorb the costs of banking resolution in other member states. In view of that end, the German government decides on the amount of influence it gives up to the European Union.

4.1.1.1 The European Stability Mechanism– A final backstop for EU-banking resolution

Another hot issue of contention refers to the public backstop in the SRM for which the Commission and some of the member states have sought to employ the European Stability Mechanism (ESM) (2013, Malhere, October 14). Apart from inter-parliamentary discussions on how to design a European fund for banking resolution – so with national compartments in contrast to a truly single fund in which domestic assets are merged – the ESM has also become part of the discussion. In November 2013 the Christian and Social Democratic parties both rejected to employ the system to stabilize states in the Eurozone as last resort for banking resolution (faz.net, 2013, November 9; Hildebrand, 2013, November 14). Spokesman of the Social Democratic Party, Carsten Schneider, argues that the ESM is not suitable to recapitalize banks (Euractiv, 2013, October 9) in general and thus strengthens the party's general position that a system to recapitalize and support states may not be turned into a bailout fund for banks (Wiemken, 2014). The ESM shall therefore not be used to recapitalize banks directly (*Deutscher Bundestag*, 2013f, p. 3), at least not in the long-term as the Social Democratic Party demands (*Deutscher Bundestag*, 2012, p. 5). Although chancellor Merkel has agreed to only recapitalize, but not resolve banks through the ESM (Sievers, 2013, November 12) and thereby to incorporate German tax-money into a European system for banking resolution, both governing parties object to making German taxpayers absorb the losses of the finance sector (*Deutscher Bundestag*, 2013b, p. 178; Schäuble, 2013, November 22). The commitment of Chancellor Merkel made in 2012 rather seems misleading insofar as the finance minister (Schäuble, 2013, November 22; Pichler, 2013, November 15), but also the coalition partner have always said to protect tax-money and hence, the ESM from being used as last resort for banking resolution (Pichler, 2013, November 15). Instead, the ESM is to stick to its original task – to supply capital to Eurozone but not credit institutions states (Sievers, 2013, November 12). Here it needs to be added that in summer 2012 the government admitted that financial assistance may be provided through the ESM in form of loans rather than in granting pure aid (Pichler, 2013, November 15; Sievers, 2013, November 12). Nevertheless, this paves the way for using tax-money in banking resolution. It is not surprising that the involvement of the ESM into a European system for banking resolution faces opposition on parts of taxpayers in Germany.

4.1.2 Non-Commercial Actors

The ESM in which states of the euro area participate is financed by German taxpayers in the amount of EUR 190 billion (BdSt, 2012g). Insofar as the system has been established to support states and not banks, the association of German taxpayers has mobilized against providing financial support to Spanish banks via the ESM (BdSt, 2012b). However, aid to Spain was finally agreed, and led to capital injections in the amount of EUR 100 billion with further liabilities for German taxpayers of EUR 29 billion. (BdSt, 2012b). Strongly objecting to recapitalize banks in Spain and Cyprus German taxpayers have objected capital transfers to the finance sector in 2012 and 2013 and pressured the German parliament to vote against financial support to both states (BdSt, 2012b). Although the positions of parties in Germany suggests that all of them agree to protect taxpayers from absorbing costs of the banking sector (s.a.) there has been cross-party support to provide aid to Cyprus which ran into financial distress due to domestic banks: 80% of the members in German parliament finally approved the rescue package to Cyprus in early 2013 (faz.net, 2013, April 18). To justify these transfers of capital to Cyprus German finance minister Schäuble argues that protecting the state from going bankrupt benefits the whole Eurozone (faz.net, 2013, April 18).
Taxpayers find support on parts of the banking sector that also objects to using the ESM for banking resolution (DSGV, 2012b). Savings banks furthermore urge that ESM-support for Spain shall be used for restructuring the banking sector and thus avoiding that Spanish banks might destabilize the state again (DSGV, 2012a).

4.1.3 Commercial Interests

German banks are divided on the integration of national banks systems for banking resolution. Whereas commercial banks press for a European fund that applies to all banks (BdB, 2013a) in line with the European Parliament (Bankenverband (BdB), 2013a, Malhere, 2014, January 10), corporate and savings banks want the mechanism to apply to those of systemic importance only (Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V. (BVR), 2013a; Deutscher Sparkassen-und Giroverband (DSGV), 2013a, p. 6). Although the latter group of banks supports European rules in principle, it prefers a network of national schemes and does not want to merge their resources for stabilizing their member institutes with those of other states (BVR, 2013a; DSGV, 2013b, p. 7). To prevent that banks that do high-risk business take advantage on solid institutions providing funds they reject a pan-European trust (BVR, DSGV, VÖB, 2013, pp. 4-5) which they consider as some way of subsidizing unsound banks (BVR e al., 2013, p. 4). This indeed shows that transfers of capital and thus “a re-distribution” of assets drives banks in Germany to seek for separate funds for resolution in Europe.

Commercial banks raise issues of capital transfers, too: They consider a common fund on banking resolution as the main tool for crises management in a banking union (BdB, 2013a, p. 6). However, they advise against a two-fold burden arising from contributions to both, a European and a national fund. In contrast to German regional banks they prefer a European one (BdB, 2013a, p. 1) and hence appear to support or to be at least open to capital transfers within Europe. However, in order to avoid that banks thereby shift their outstanding commitments to the EU-level and mutualize their liabilities with those banks of other states they urge thorough asset quality reviews before a pan-European fund is established (BdB, 2013a, p. 6; BdB, 2013d). Whereas all banks in Germany refuse to absorb debts of banks in other member states, commercial banks differ from regional banks in being supportive of a pan-European system, though. Regional banks, by contrast, refuse a common system strictly fearing that foreign institutions might free-ride on their assets (BVR, 2013a; BVR, 2013c; DSGV, 2013b). This is due to the institution protection schemes which corporate and savings banks in Germany maintain. These systems protect their members from going bankrupt through measures of early intervention so that they do not fall back on public money in order to liquidate their institutions or cause the state to supply money to make the banking system function properly. However, banks in Germany are in agreement about further aspects in connection with the redistribution of capital: they reject any merger of systems for banking resolution with such for deposit insurance (BdB, 2013a, p. 8; BVR, DSGV & VÖB, 2013, p. 13; Freiberger, 2013, January 27, DK, 2013a). In particular corporate and savings banks criticize mutual lending in between both types of systems that follow from Art. 73(4). This enables the fund to raise capital with deposit insurance systems and thus leads to transfers of capital in between them (BdB, 2013a, p. 8; BVR et al., 2013, p. 13; Freiberger, 2013, November 27). Finally it should be pointed out that the target level of the European fund increases the burden for banks in Germany compared to payments currently made into the national fund (Fechtner, 2013, December 10). For that reason German banks have even more incentive to put a break on pan-European banking resolution and thus mutualizing national funds that somehow “expropriates” them, as declared by the finance ministry (Handelsblatt.com, 2013, December 29). The data shows that German banks disapprove pan-European banking resolution because of its financial impact. Institutional factors are of secondary importance here, but explain why regional banks in particular oppose those provisions that somehow integrate deposit insurance with banking resolution. The government, that intents to protect the three-pillar structure of the German banking system (BVR, 2013b; CDU/CSU, 2013) is therefore highly supportive to excluding German regional banks from the SRM (BVR, 2013b; Malhere, 2013, December 9).

4.1.3.1 Interim Conclusion

The data shows that every group of societal actors seeks to avoid bearing the costs of resolution and the government responds to both, taxpayers and the finance industry. In the course of coalition negotiations next to European bargaining parties in government somehow retreated from their original position to exclude the ESM from banking resolution completely (Reuters, 2013, November 27). News reports underline the impression that they had to make concessions in response to foreign pressures (Malhere, 2013, October 14; Malhere, November 18). These however go against the interests of German taxpayers to the most extent. Yet it matches assumptions of Liberal Intergovernmentalism as regards government behavior: Although the German Parliament would have to approve that the ESM may be employed for banking resolution (Reuters, 2013, November 27), the government appears willing to concede influence on German tax-money to the EU-level. It has therefore chosen to trade benefits of a final backstop in order to strengthen European banking resolution against risks for German taxpayers to most extent.

In line with the demands of German credit institutions the government has been able to enforce that they will not fall under the scope of the SRM. Although, German commercial banks will partly be subject to EU-banking resolution on grounds of their systemic importance they at least profit from the fact that the government has enforced national compartments, albeit for a limited period only. Still, it has to be said, that the European Parliament has sought to subject German regional banks to the SRM in order to ensure equal conditions for all banks in Europe (Malhere, 2014 January 10). Insofar as the SRM applies to those institutions under ECB-supervision only the government has actually enforced the primary objectives of the finance industry. Overall it appears as if the government has responded to the interests of the banking sector, so powerful domestic groups in the sense of Moravcsik, to stronger extent than to those of taxpayers in making the ESM part of EU-banking resolution. Yet, the use of the ESM in banking resolution has been also objected by various banks (DSGV, 2012a, 2012b). Institutional factors to object the SRM seem to be of less importance here compared to discussions on deposit insurance. Even though institution protection schemes of corporate and savings banks are not compatible with a European banking resolution scheme, they seek to avoid that other banks may free-ride on their assets to most extent. The data is hence in line with Moravcsik's (1993) argument that negative externalities may incline states and hence, domestic actors to favor cooperation insofar as those parties that are likely to suffer from negative effects due to policy change an incentive to oppose according measures.

4.3 Shifts in (fiscal) power?

The most popular issue raised in connection with the establishment of a European system for banking resolution has been whether powers in decision-making may be transferred to EU-institutions on the basis of Article 114 TEFU. In line with this provision national policies may be harmonized through European law in order to strengthen the common market:

> *Article 114 (TEFU): "Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26*[36]*. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market."*

The European Banking Union indeed seeks to strengthen the internal market in that it contributes to financial stability and thereby fosters public confidence into the finance sector. This is to render the banking sector more sustainable and thereby help economic growth in the monetary union (European Commission, 2013a). As one component of the banking union the Single Resolution Mechanism (SRM) may thus be considered as adding to the proper functioning of the common market insofar it ensures a level playing field between banks under European supervision and those monitored by domestic authorities (European

[36] This article establishes the proper functioning of the internal market as a core objective of the European Union, to which the same may issue policies as to eliminate various barriers to that end.

Commission, 2013a, p 6). In that it eliminates competitive advantages for non-SSM states[37], the mechanism improves the internal financial market and has thus been predicated on the single market competence (Art. 114 TEFU) (European Commission, 2013a, p. 6).

4.1.4 State-Actors

Newspapers however report that rather than being concerned by formal requirements, the German government disapproves specifications of the EU that prescribe national authorities how to deal with banks in payment difficulties (Tueck, 2013, November 11). That suggests that transfers of capital actually explain why the government urges a network of national funds instead of a pan-European one. Germany thus objects to transfer powers to decide on whether banks should are closed or recapitalized on the European Union, and in particular, on the Commission, news report (Handelsblatt.com, 2013, November 27; Landmesser, 2013, November 15). The government demands that national parliaments need to decide on banking resolution (Ibid.) insofar as that might impact on national money and cuts thus their budgetary powers indirectly (Gammelin, 2013, October 24). Insofar the state refuses to fund the resolution of foreign banks (Tueck, 2013, November 11, Kafsack, 2013, November 16) it should have no interest in losing its autonomy in according decisions. It is hence unsurprising that in September 2013 German finance minister Schäuble argued that banking resolution is a national task in the first instance (Pepe, 2013, September 18), suggesting some general opposition to transfer (fiscal) powers to EU-level. In his response to the SRM-regulation he thus ties in with his former position that the Lisbon-Treaty does not support the establishment of a European authority for banking resolution because of its potential impact on national budgets (Berschens, 2013, May 14).

Public discussions thus center upon the question of whom to charge with making decisions on the liquidation of European and whom to thereby give “the final say”[38] here (Schäfers, 2013, December 7). Positions between German Christian Democrats and the European Parliament differ widely, with Germany urging a more national or intergovernmental form of governance and the European Parliament demanding a transfer of powers upon the European Union (Mussler, 2014, January 10). Consvervatives in line with national authority for banking supervision (BaFin) reject the Commission’s (2013a) argument that a pan-European system for banking resolution is equal to harmonize administration to make the internal market work properly. For that reason Art. 114 TEFU does not serve as a sufficient legal base to set up a Single Resolution Mechanism (SRM) as proposed by the European Commission, as the *Frankfurter Allgemeine Zeitung* Reports a.o. (Schäuble, 2013, November 22, *BaFin*, 2013, August 1; Plickert, 2013, November 15). In particular finance minister Schäuble (2013, November 22) argues that the single market competence does not make for European banking resolution as proposed by the Commission (Pepe, 2013, September 18). To liquidate banks effectively a European mechanism needs funds for resolution, he argues (Schäuble, 2013, November 22), and must thus own power to raise contributions autonomously. The minister however wants states to pass a European levy unanimously so that he demands inter-state

[37] States that fall outside the scope of the Single Supervisory Mechanism (SSM), so states of the Euro-area and beyond that, those states that opt for membership on voluntary basis (European Central Bank, n.d.). http://www.ecb.europa.eu/ssm/html/index.en.html

[38] own translation: *„…der Konflikt dreht sich unter anderem um die Frage, wer bei Abwicklungsentscheidungen das letzte Wort haben soll….*“ (Schäfers, 2013, December 7)

cooperation instead of truly European governance. For majority decisions states would have to amend the current treaties first, which takes too much time as to complete the banking union soon, though (Schäuble, 2013, November 22). Decisions to resolve banks on the basis of the single market competence, so by qualified majority (Art. 114 TEFU) might be reversed through complaints before constitutional court, the minister argues according to newspapers (Mussler, 2013, January 21; Schäuble, 2013; Pichler, 2013, November 15). In that case, a European system to liquidate banks may not add much to financial stability (Schäuble, 2013), wherefore the minister prefers the ECOFIN-Council rather than the Commission or some other European authority to decide (Pichler, 2013, November 15). In here, the government challenges effectiveness of European banking resolution beyond fears to give up powers: If decisions to resolve banks lack legal certainty this may obstruct quick resolution and eventually destabilize markets even more. The system could thus become incredible and be therefore less effective than national approaches (Schäuble, 2013, November 22).

The European Union, and hence, a European institution as e.g. the Commission lacks means to enforce a bank levy, the minister argues (Schäuble, 2013; Schäuble, 2014). For that reason it is up to the governments to ensure that banks pay their dues and that these are mutualized at EU-level later on (Schäfers, 2013, January 31; Schäuble, 2014, March 10). Yet, the minister supports European banking resolution in principle, but rejects the institutional design proposed by the Commission: member states may either pass a European levy unanimously or have to adjust the treaties. Until these formal requirements are met, he adheres to a network of funds, though (Schäuble, 2013, November 22). Neither the Commission nor the European Stability Mechanism would however be suitable to assume tasks on banking resolution (Sievers, 2013, November 12) insofar the ESM may not recapitalize banks directly under current domestic law (Kafsack, 2013, November 16). Newspapers thus report that the German government has long sought to prevent the European Stability Mechanism from becoming part of the bail-in system in banking resolution (Mussler, 2013, December 18) and thus forestalls powers to decide about German tax money or capital of domestic banks (Riesbeck, 2013, December 11). Member of parliament Michelbach (CDU/CSU) states that the conservatives *do* encourage a European authority, but also emphasize the need for legally certain decisions. This would not be given by Article 114 TEFU (*Deutscher Bundestag*, 2013b, p. 182). On behalf of its party he counters objections raised by the political opposition that the government curbs the resolution mechanism (*Deutscher Bundestag*, 2014).

In contrast to the Christian democrats, other parties consider Article 114 TFEU as some suitable basis and hereby join legal services of European authorities (*Deutscher Bundestag*, 2013c, Malhere, 2014, January 22). The Green Party urges central decisions on banking resolution to ensure equal treatment of insolvent banks and thus of taxpayers in Europe, that is referred to if the bail-in system is depleted (*Deutscher Bundestag*, 2013c, p. 2). They call for a European authority for banking resolution instead. This institution shall be legally entitled to initiate the resolution of banks in order to avoid that tax money is used for bank rescue and hereby seek to avoid rising government debts (*Deutscher Bundestag, 2013b*, p. 176). Unlike the finance minister the political opposition does not question the single market competence as a proper legal ground to set up a European mechanism for banking resolution. Rather, it seeks to transfer substantive powers upon the European Union and rejects an intergovernmental approach to governance (*Deutscher Bundestag*, 2013b). In contrast to the government whom the Green Party accuses to block the banking union (*Deutscher Bundestag*, 2013b, p. 175; *Deutscher Bundestag*, 2013c), the political opposition argues that the conditions[39] a European system on the basis of Article 114 TEFU are fulfilled: There are differences in the national administration of banking resolution which would be harmonized by the policy. Secondly, the Mechanism (SRM) improves the internal market in that it eliminates competitive distortions. Finally the Green Party adduces the other European authorities that have been established upon current law also (*Deutscher Bundestag*, 2013c, pp. 3-4). On the basis of the Single Market Competence (Article 114 TEFU) the Commission might assume administrative tasks on e.g. banking resolution or delegate them upon other EU-institutions (*Deutscher Bundestag*, 2013c, p. 3). In any case states might pass the decision to set up a common system for banking resolution upon Art. 352 TEFU[40] unanimously (*Deutscher Bundestag*, 2013c, p. 4), so that a European resolution authority is considered as even working with German constitutional law: The highly integrated banking sector in the EU requires a common resolution fund, so the Green Party argues, and this is in particular the case in view of banks with systemic importance (*Deutscher Bundestag*, 2013c, p. 4). Pure coordination of domestic resolution systems, by contrast, may permit decisions being biased in favor of particular state interests, the green object (*Deutscher Bundestag*, 2013g, p. 2).

Social Democrats do not share concerns of the Christian democrats either (*Deutscher Bundestag*, 2013b, p. 180), though they *do* urge some sustainable and legally certain ground for a common system (*Deutscher Bundestag*, 2013b). Instead, the party demands both, a European entity in charge of banking resolution and a common fund (*Deutscher Bundestag*, 2012, p. 3). In favor of a more pro-European approach (*Deutscher Bundestag*, 2013b, p. 180; *Deutscher Bundestag*, 2013h, p. 4; *Deutscher Bundestag*, 2012, pp. 3-4; Sievers, 2013, November 12), the party opposes a network of national funds, as suggested by Schäuble (Dams & Eder, 2013, December 11; Riesbeck, 2013, December 11), which it does not expect to protect savers and taxpayers sufficiently (Sievers, 2013, November 12). In line with the Green Party Social Democrats expect that under national decision-making, states might be tempted to act in favor of the finance industry rather than for the benefit of taxpayers in winding-up banks (*Deutscher Bundestag*, 2013, p. 3), wherefore they call for European authority for resolution (*Deutscher Bundestag*, 2013f, pp. 2-3) and thus seize on their overall demand for transferring powers of European governance upon EU-institutions (e.g. the European Parliament) rather than leaving it with national governments and thus with an intergovernmental form of decision-making (SPD, 2013, p. 105).

Christian democrats, by contrast, compare a European bank levy to some form of European taxing, which the Union is not entitled to raise[41], in fact (Malhere, 2014, January 22). Their objections to common decision-making on banking resolution and thus to transferring powers to EU-level fit with a more general stance of the conservative party, that rejects too centralized governance within the European Union in principle (CDU/CSU, 2013, p. 10).

In line with the government the president of the German authority for banking supervision, Dr. Elke König, has expressed her concerns on powers to decide on banking resolution upon the European Commission (BaFin, 2013, August 1). In August 2013, she follows on the government position that before European treaties are changed correspondingly banks should

[39] In case C-217/04) the European Court of Justice has established conditions to harmonize national policies in order to improve the functioning of the internal market. Here, the greens refer to the establishment of the European Banking Authority in 2010, which is grounded in that provision likewise (*Deutscher Bundestag*, 2013c, p. 3).

[40] Article 352 of the Treaty on the Functioning of the European Union (TFEU) is a flexibility clause that enlarges the competences of the European Union in order to achieve the objectives is objectives where the Treaty does not entitle the Union to do so (Europa, n.d.).

[41] on basis of Art. 114 TEFU the European Union is not allowed to raise taxes, Christian Democrats argue

be winded up within a network of domestic systems rather than a pan-European one (BaFin, 2013).

4.1.5 Commercial Interests

Apart from parties in German parliament and additional state actors, i.e. the German central bank or the national authority for banking supervision, domestic banks pronounce on legal issues in connection with European banking resolution, too. Commercial banks thus question whether the Single Resolution Mechanism (SRM) may actually be based upon the single market competence of Article 114 TEFU (BdB, 2013d). In July 2013, they demand that national authorities in charge of banking resolution cooperate in terms of a network rather than that decision-making is conferred upon EU-institutions (BdB, 2013d).To this, they point at the original intention of Article Art. 114 TEFU, which is to harmonize domestic law across the Union for equal rules (BdB, 2013a, p. 2) and thus a functioning internal market. The Single Resolution Mechanism, by contrast, rather makes for an immense transfer of power to decide upon the liquidation of banks, by which EU-institutions would *de facto* be entitled to trench upon property rights of bank customers, creditors or other partners in business to substantive extent (BdB, 2013a, p. 2). In September 2013, commercial banks have even challenged whether a European bank levy might be legitimized by this treaty provision at all (BdB, 2013a, p. 2), though they as favor a European responsibility for banking resolution in principle, which is to be achieves in the near future (BdB, 2013c). To ensure credible procedures and a trustworthy fund for resolution the association (BdB, 2013a, p. 2) demands that the system is to have a solid legal basis. Insofar treaties cannot be modified on short notice national systems for banking resolution (authorities and funds) should rather cooperate on basis of some network, though, until EU-law backs a truly pan-European system (BdB, 2013a, p. 2; BdB, 2013b).

German savings banks point at the Commission's limited powers to decide on resolving banks and to hereby trench upon fundamental rights of those owning them (DSGV, 2013g). Savings banks therefore demand that decision-making competences reside with national authorities as decisions might effect on domestic budgets (DSGV, 2013g; DSGV, 2013c; DSGV, 2013f). Insofar the European Union is no federal state, banking resolution in Europe shall be regulated through a network of national authorities, they (DSGV, 2013g; DSGV, 2013d) urge, so that decisions to liquidate banks and such on the use of public money can be traced to democratically elected entities – so national parliaments (DSGV, 2013g; DSGV, 2013h; DSGV, 2013b). It must be ensured that decision-makers in banking resolution are somehow accountable towards national parliaments (DSGV, 2013b). Since the liquidation of banks may have an impact on national budgets[42], though (DSGV, 2013c; Hartmann-Wendels et al., 2007, p. 358), savings banks in line with the government do not accept the European Commission to make the relevant decisions (DSGV, 2013c). National responsibility on banking resolution is according to them, rather in line with more decentralized economic governance in the euro-area (DSGV, 2013c; DSGV, 2013h) and not compatible with the powers of the Commission (BVR et al, 2013, pp. 1, 9). Here, they line up with concerns raised by the German

[42] Hartmann-Wendels et al. (2007, p. 358) note that states are usually lenders of last resort, wherefore decisions on the liquidation of banks may have some substantive impact on national budgets.

government and in particular, finance minister Schäuble. Regional banks therefore point at the importance that decisions on banking resolution are unambiguous in legal terms to avoid disputes about the resolution of banks even (DSGV, 2013h, p. 7). Together with corporate and public banks they criticizes that too much power is assigned to the European Commission in relation to that of other authorities involved in the resolution process (BVR, DSGV, VÖB, 2013). In their common position they refer to powers on the final decision-making Art. 16(2), where the Commission may decide a bank's resolution more or less on its own (BVR, DSGV, VÖB, 2013). Though the European Central Bank (ECB) or a national authority may open up the liquidation of banks, the resolution board is to assess whether the bank needs to be resolved and then passes its opinion to the Commission taking the final decision then. Yet, the Commission is not obliged to follow recommendations or assessments of the ECB or the resolution board, wherefore German public banks see a substantive increase in power here BVR et al., 2013).

4.1.6 Non-commercial Actors

Non-commercial actors in Germany as the association of domestic taxpayers strongly urge that national parliaments retain decision-making powers over how to proceed with public money. They hence reject a fiscal union firmly (BdSt, 2012e), and should therefore oppose European intervention into banking resolution, that might impact on national budgets[42]. Accordingly, the association has already mobilized against the European Stability Mechanism (ESM) in 2012, claiming that both, the ESM and the European Fiscal Compact infringe with fundamental principles of democracy (BdSt, 2012f).

4.1.6.1 Interim Conclusion

Domestic concerns on infringements of national sovereignty in terms of budgetary powers are strong, especially among the ruling party, the Christian Democrats, the finance industry and taxpayers who see their tax-base at risk. In particular, the finance industry points at the need to change treaties first before establishing a truly European system for banking resolution, and urge for a network of systems. Yet, it may be questioned whether these objections might also serve as a means to avoid that national funds are mutualized on EU-level. In view of the position maintained by the political opposition, that does not have scruples to transfer these powers upon EU-institutions, legal possibilities to merge banking resolution in Europe appear to be ambiguous and leave scope for interpretation in favor of individual demands for national vs. supranational decision-making. These may however be shaped by more fundamental preferences or ideal conceptions of how Europe is to be governed. Actors that favor centralized policy-making in principle may thus weigh a loss in national powers differently than those that prefer more decentralized governance in Europe. In addition, the question of losing sovereignty in the case of banking resolution touches upon transfers of money and powers to decide on domestic capital. Since commercial actors as well as taxpayers and consumers seek to avoid financing the resolution of foreign banks, they strive for keeping control over the use of their assets. They should hence welcome if European law does not allow establishing a pan-European for banking resolution.

5 Discussion and Reflection

On the basis of Liberal Intergovernmentalism this paper explains how the German position on the draft regulation establishing the Single Resolution Mechanism (SRM) has emerged. In line with a liberal theory of national preference formation it has analyzed the development of Germany's position to European banking resolution. The theory suggests that Germany's position derives from a process of domestic bargaining among actors that should have a stake in European policies on banking resolution. Liberal Intergovernmentalism expects the government to respond to the interest of influential societal groups on domestic level and thereupon builds its position on a European policy. This position corresponds to the "aggregated" (Schimmelpfennig, 2007) preferences of relevant societal actors which are considered as being of material kind to most extent.

In responding to fears of relevant groups on domestic level the German government balances losing powers to EU-level against the benefits of participating in collective action on financial stability in the internal market. Indeed, Germany has the largest share of banks in the euro-area and provides for a relative high level in cross-border banking in Europe. It is therefore rated as "well integrated" in the common financial market (Allen, Beck, Carletti, Lane, Scheinmaker & Wagner, 2011, p. 69) and should strongly benefit from financial stability in the common market. This explains the demand for political parties in Germany to regulate banking resolution on EU-level, even though the government appears to block common policies on banking resolution at first glance. In line with Liberal Intergovernmentalism it however weighs up the benefits of common crises management in Europe and hence "collective decision-making" against drawbacks of losing influence domestic money, so against the "the risk of being outvoted or overruled" (Kassim & Menon, 2003, p. 126). In so doing the government moreover considers the "political risk for …[…]..interest groups with intense preferences" (Moravcsik, 1993, pp. 510-511).

Indeed, the empirics suggest that transfer of capital at the expense of Germany and hence to the detriment of domestic actors make the German government oppose the SRM as proposed by the European Commission. Although EU-banking resolution seems partly incompatible with domestic institutions on crises management and crises prevention that exist in the domestic banking sector, Germany's position is grounded in concerns about shifts of money. The section below reflects on the hypothesis derived from Liberal Intergovernmentalism and in how far theoretical expectations are met by the theory. The first hypothesis that has been tested against the case of the Single Resolution Mechanism (SRM) is as follows:

> *H1: If the German government believes that gains from the Single Resolution Mechanism (SRM) outweigh losing powers to the European Union, it supports the regulation and disapproves the mechanism otherwise.*

This assumption touches upon the willingness of the German state to concede sovereignty to European institutions. Transfers of powers follow from institutional frameworks in which European cooperation on banking resolution takes place. In accordance with Moravcsik's

(1993, p. 507) "functional" explanation for the establishment of European institutions the empirics show that Germany's position to the Mechanism (SRM) is based on the following cost-benefit assessment: domestic gains from European banking resolution must outweigh losses in government power and eventual risks that follow for influential actors on domestic level. Germany's position appears to be in line with "the functional theory of regimes" (Moravcsik, 1993, p. 507) that expects states to choose institutional designs with a view to its effects (Keohane, 1984, p. 80). This approach helps to explain the position of a single member state on a European policy – so motives for Germany to support European banking resolution in principle, but reject its institutional design. Although this question appears to be of technical kind it however implies transfers of powers insofar as the government has to agree on first, the competences that a European authority for banking resolution is to receive *(delegation).* Secondly, it has to approve terms of collective decision-making as for instance majority as contrasted to unanimous votes *(pooling).*

The empirics show that the German government has indeed balanced factors suggested by the theory of liberal intergovernmentalism: Although the state agrees that Europe needs a banking union and a common system for banking resolution in general, the government is concerned about negative impacts and (financial) risks for domestic actors – taxpayers and the finance industry to most extend. Merging funds for banking resolution on EU-level implies that other states get access to domestic capital more easily than they might through intergovernmental forms of governance. Except for deposit insurance – the third pillar of the Banking Union which the German government has opposed to sustain the domestic banking system – it has been more open to accept transfers of powers to EU-level for banking supervision (Sattar, 2013, September 7). Although banking supervision might effect on national budgets, too, it does not impact on domestic capital directly. The integration of resolution funds at EU-level, by contrast, has immediate consequences on domestic money. In pooling authority on banking resolution by decision-making other than by unanimity vote the government somehow raises "the level of uncertainty….[….]….for certain domestic "interests groups" (Moravcsik, 1993, pp. 2010-511) as regards potential effects on their money. The institutional design for European banking resolution has thus major financial implications for particular groups on domestic level. The empirics show that the only tool to prevent domestic resources from being used to liquidate banks abroad is the decision-making authority that the German government may either retain or give up some European institution. It thus seems that the question of conceding sovereignty is not the ultimate matter of concern, but rather some ground to avoid re-distributions of income at the expense of domestic actors. This is however not to say that government opposition to placing the SRF under a regulation would not be driven by legal concerns. Instead, the finance minister intends to avoid legal action against decisions on banking resolution and therefore urges an intergovernmental agreement (Schäuble, 2013, November 22). He questions the effectiveness of a European fund furthermore in referring to the limited capacity of a European system to raise bank levies insofar as these may be reversed by legal action. A European fund for banking resolution has to be designed in such a way that protects domestic actors in Germany from paying for the resolution of banks. By way of an intergovernmental agreement for decisions relating to transfers of money the number of actors involved in the decision process is reduced insofar as the European Parliament is effectively banned from co-deciding on the use of (domestic) funds. These are moreover integrated at EU-level not before they have achieved certain levels.

Although this form of governance also indicates an intention of the German government to maintain (budgetary) powers, the empirics seem to prove Moravcsik's (1997, pp. 519-520) assumption that maintaining sovereignty is not a goal in itself, but may be employed if this serves domestic interests. The government's adherence to protect national sovereignty seems to stand in connection with the "social context" (Moravcsik, 1997, p. 520), so the policy debate on hand. National decision-makers respond "particular interpretations…[…]…of sovereignty preferred by powerful domestic groups" (Moravcsik, 1997, p. 519). Indeed, the banking industry refers to the budgetary powers in terms of tax-money that a European authority for banking resolution would constrain. This might either be through decisions on the resolution of single institutions to which states might have to add capital to cover eventual deficits. It can moreover be a consequence of a European authority for banking resolution that decides on the means to wind up banks in Europe.

The first hypothesis seems to be proved by the data: Indeed, the German government rejects the SRM on the basis of a cost-benefit analysis: Potential gains in terms of financial stability and better protection of taxpayers in Europe through a some large pan-European system carry less weigh than (financial) risks of cooperation for domestic actors. The government therefore disapproves the institutional design as proposed by the Commission and strongly rejects to transfer sovereignty to EU-level.

Parties in political opposition, by contrast, may have come to a different assessment in balancing domestic risks of the SRM against benefits for banks and taxpayers in the Eurozone. They could thus have chosen to give up powers to the EU through adopting the regulation establishing the SRM. In particular, the Green Party has constantly pressed for strong integration of powers on banking resolution: They have urged a European authority and a pan-European fund to protect the *European* taxpayer in the internal market. The fact that the Green Party has obtained a legal opinion[43] to prove that the SRM infringes with EU law demonstrates a highly pro-European attitude. Indeed, the party actually seeks for a "European Democracy" (Satter, 2013, September 7) and is considered as "deeply committed to and engaged in shaping EU politics, policy and polity" (Hertner & Sloam, 2012, p. 45). For this party the benefits of a pan-European fund and collective decision-making outweigh losses in national power, wherefore it is likely to have ceded more powers to the EU if it was in government. The SPD, though a little more moderate in its pro-European attitude than the Green Party called for pan-European banking resolution, at least for systemic banks. The government position in December 2013 however suggests that the SPD has lowered its strong support for a European bank levy and even accepted to employ the ESM, so German tax-money, for banking resolution. It has also accepted a more intergovernmental form of governance for EU-banking resolution, although it strongly supports common economic governance in the *Eurozone*, as it has declared in its election campaigns (Satter, 2013, September 7). The slight change to adopting more intergovernmental approach to EU-bankig resolution could be an effect of coalition negations with the CDU. The Christian Democratic Party is generally reluctant to centralized decision-making in Europe (CDU, 2013) and therefore seeks to limit transfers of powers to the European Union.

[43] *Europarechtliche Grundlagen und Grenzen der Errichtung eines einheitlichen Bankenabwicklungsmechanismus (SRM). Gutachten im Auftrag der Bundestagsfraktion Bündnis90/Die Grünen*

5.1 Domestic Interests

The case of the Single Resolution Mechanism (SRM) does not fully support the assumption given by Liberal Intergovernmentalism that the government responds to interests of producer groups to most extent and somehow neglects those of consumers or taxpayers. This is due to the mere fact that both parties have similar interests when it comes to cooperation with other member states on banking resolution. Moravcsik's theory assumes that these parties should stand in sharp conflict due to "material scarcity" (Moravcsik, 1997, p. 516) under which policies are made and wherefore domestic actors seek to influence policy-makers in their favor. As the empirics show the major issue of contention refers to transfers of money insofar as all types of domestic actors seek to avoid assuming liabilities for foreign debt, neither through means to protect depositors and creditors of banks nor with the help of tax-money. On vertical level both camps, the finance sector on the one hand and consumers and taxpayers on the other pressure the government to block transfers of capital to other member states. Those actors, that according to Moravcsik (1993, p. 483) "stand to gain and lose a great deal per capita" – so those parties which may eventually be referred to for funding banking resolution in Europe mobilize for or against the regulation on the Mechanism (SRM). The banking industry has however been divided on the support for the Mechanism. Commercial banks opt for a network of funds as long as the treaty does not permit establishing both, a common authority in charge of banking resolution and a pan-European fund. They urge the government to retain the final say on domestic capital for why they adduce budgetary powers and hence, values of national sovereignty to avoid a pan-European fund that absorbs their assets. Regional banks, by contrast, object to both parts of the mechanism: They deny a European authority to rule on their financial reserves and tax money. Corporate and savings banks in Germany therefore refuse to make money available for banking resolution which is intended to protect own depositors in order to balance deficits of foreign banks. Yet, they do not question the value of European system for banking resolution in principle, but seek to limit its scope to those institutions that are likely to make use of it. Insofar as large commercial banks may not deny their systemic importance in the internal market they will have bad chances to escape from European banking resolution. To ensure equal conditions of competition in Europe they demand that all types of institutes have to be subject to the Mechanism. Corporate and savings banks, by contrast, urge that only those of systemic importance are included to protect their funds and systems on institution guarantee.

Indeed, the German government responds to the interests of all credit institutions in Germany in pressing for national compartments in a European resolution fund. In here, its position differs from that on European banking supervision where the government has treated commercial banks differently from corporate and savings banks. In contrast to government support for subjecting German banks of systemic importance to the SSM (Sattar, 2013, September 9), it seeks to shelter resolution funds of all types of banks from the SRM and thus full integration on EU-level. However, the government being actually in favor of a banking union may hardly dispense banks of systemic relevance from the SRM. On the other hand, their membership in the mechanism does not challenge the three-pillar banking system, that the government seeks to maintain by all means.

In their government declarations both, the SPD and the CDU, emphasize its importance to real economy wherefore one can say that the government takes up producer interests beyond those of the finance industry (SPD, 2013;CDU/CSU, 2013). In thus urging to exclude corporate and savings banks from the mechanism and limit its scope to banks of systemic importance only, the government responds to interests of regional banks. To avoid that the systems of institution guarantee dilute in pan-European banking resolution the government strives for national compartments that separates capital provided form different member states. Furthermore, both governing parties urge a pan-European system for systemic relevant institutions only. In doing so they differentiate between commercial banks on the one hand and corporate and savings banks on the other, but overall defend the three-pillar banking system in Germany.

The government also accounts for the interest of taxpayers in Germany in seeking to avoid the inclusion of the ESM into EU-banking resolution for a long time. Yet, it has not been able to assert its position to exclude the ESM from the Mechanism against other states, the European Parliament and the Commission in international bargaining. Insofar as it has thus failed to give effect to the major demand of taxpayers one can fairly conclude that it has responded to taxpayers and consumer groups to lesser extent than to the financial industry, albeit due to foreign pressure. The second and third hypothesis may therefore be regarded as confirmed by the data also:

> *H_2: If the government believes that the regulation helps to lower public spending on rescuing or resolving ailing banks, it supports the regulation and does not so otherwise.*

> *H_3: If the Mechanism disadvantages powerful domestic interests, the government will oppose to transfer powers on banking resolution to EU-level and opt for a European system if it benefits these societal groups.*

Overall it seems that Liberal Intergovernmentalism and its theory on national preference formation reflects on Germany’s position to the Single Resolution Mechanism (SRM) quite adequately. First, the German government has indeed responded to powerful economic groups rather than to taxpayers or consumers. Secondly, the case of the SRM supports the impression that governments “aggregates” the interests on domestic level and then acts as some kind of “transmission belt” for national demands (Schimmelpfennig, 2007).

6 Conclusion

In form of a single case study this paper has investigated on the German position to European banking resolution. It has sought to identify motives behind national reluctance to adopt the regulation establishing the SRM as proposed by the European Commission. In accordance with the theory of Liberal Intergovernmentalism the development of Germany's position in European negotiations has been analyzed with a view to underlying domestic interests: Moravcsik's theory assumes that the government responds to powerful groups that either seek for more integration in particular fields of policy or object to stronger cooperation at EU-level. Interests are considered as being rooted in chances for industrial groups to generate profits, so in material interests. The government is deemed to act on the proposal in response to these particular interests and their capacity to mobilize for their preferences on European integration. On the basis of a liberal theory on national preference formation the analysis has established three hypotheses to explain the position of Germany. Empirical findings prove that the major root for national reluctance to join the system lies in concerns about transfers of capital at the expense of various domestic actors. The government responds to these interests in striving for an institutional design that guards against foreign access to national money.

To identify major driving forces for domestic actors to support or reject the SRM their demands on European banking resolution and positions to the Mechanism have been analyzed through a content analysis of documents illustrating domestic attitudes. These encompass newspaper articles, position papers and protocols of parliamentary debates with regard to the European Banking Union. The analysis reveals that the German government seeks to protect banks and taxpayers in Germany from absorbing the losses in banking resolution. To that end, it strives for sheltering some banks from being subject to the SRM. In addition, the government seeks for national compartments in the SRF to prevent foreign access to domestic capital and hence other states from free-riding on national money. Overall it must be noted that Germany proved able to enforce some institutional design that protects these interests against other states, although it had to make concessions to the detriment of both, domestic banks and taxpayers: Whereas national compartments in the SRF will now be merged before the full target level is achieved, the ESM has become part of EU-banking resolution in form of a final backstop.

Overall, the European Resolution Mechanism is less European than intended by the European Commission and provides for more intergovernmental features than would a truly pan-European system probably do. Although various actors in Germany indicate to favor a European Banking Union in principle, the analysis has shown that concerns of burden-sharing are stronger and keep them from opting for full integration. For that reason the state hesitates to join a truly European system for banking resolution. Empirics therefore suggest that chances for Germany to push ahead with a system for banking resolution on supranational instead of intergovernmental level are low as long as the member states and banks in Europe are not on the same level in terms of crises management, financial means to stabilize their banking system, and their liabilities and debts. It may however be that the aftermath of the financial and *Eurozone*-crisis rather than some general reluctance to parts of the European Banking Union is the only cloud in the sky so that Germany might urge a pan-European system soon.

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