



The EU proposal for a Directive on the recovery and resolution of financial institutions

The Resolution Framework. A special insolvency regime for financial institutions

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** The views expressed are the personal views of the author*



The rationale for a special insolvency regime for banks

- Non-viable banks must be allowed to fail
...but this should not occur at the expenses of:
 - financial stability;
 - taxpayers
- Need for a special insolvency regime for banks, as an alternative to ordinary insolvency laws
- Balance between public and private interest



The main components of a good resolution framework

- Clearly defined conditions for activation
- Respect of the priority of claims
- RA empowered to take prompt decisions about the distressed bank
- A set of resolution tools to ensure continuation of vital functions
- Coordination rules for cross-border groups
- Financing mechanisms that limit moral hazard



Conditions for resolution

- Objectives: resolution measures must be justified by public interest
Financial stability, depositors protection; continuity of critical functions.... All have equal significance
- Point of entry: not too early, not too late
The institution is failing or likely to fail, plus a combination of additional factors: no reasonable prospect of redress/public interest
- Groups: conditions to be met by each subsidiary and their parent companies (exception)



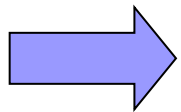
Key principles for Resolution

- Shareholders and creditors should bear appropriate losses without altering the hierarchy of claims
- Equal treatment of creditors
- Replacement of managers
- No creditor worse-off

The **valuation** issue (market value)

The relevant players

- RA have a leading role (national authorities designated by each MS)

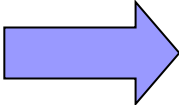


Empowered to take ***prompt*** and ***stable*** decisions
(shareholders' rights overridden; limits to judicial review)

- Resolution Colleges and group level RA have a role in group crises
- EBA to enhance harmonization (BTS; GL)
to resolve conflicts
- The Commission (delegated acts)

The resolution tools

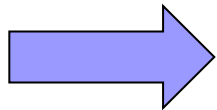
- The sale of business
- The bridge bank
- The asset separation
- The bail-in

All but bail-in  full/partial transfer of business
(safeguards)

Minimum set: possibility for additional national tools

The bail-in tool

- Purpose: recapitalize an institution or provide capital for a bridge bank



losses on investors; no taxpayers' money

- Contractual vs. Statutory bail-in
- All debts are bail-inable, unless they are expressly excluded (article 38)
- Minimum requirement
- Open bank: administrator/reorganization plan



Group resolution

- Need to strike a balance btw: i) addressing urgency; ii) allowing for efficient solutions for the group as a whole; iii) protecting financial stability in all the relevant MS
- Resolution Colleges: information sharing and consultation
- Group resolution scheme
- In case of disagreement, binding mediation of EBA



Resolution financing

- Burden sharing among creditors and shareholders not always sufficient
- European System of RF:
 - national arrangements (ex ante/ex post contributions);
 - Reciprocal borrowing among NRF;
 - Mutualization of RF in group resolution;
- The role of DGS (cash for continuous access to deposits; financing of resolution)



Conclusions

- Resolution framework and Banking Union (parallel)
- The EC proposal for a SSM still leaves a role for national RA, ...but, a single RA and a single RF will be the next steps
- Minimum harmonization no longer acceptable in a B.U.
- A single resolution regime necessary to ensure that “*banks in the EU are save to fail*” (Hardy-Nieto)