

Conference Building a Crisis Management Framework for the Internal Market

Date: 19 March 2010
Place: Brussels

Summary of the Panel Discussions

1st Panel: Early Intervention – which new tools for supervisors?

Mr Carosio, Chair of CEBS considered that regulators lacked to a certain extent tools that would allow them to impose drastic correction on financial entities in order to avoid crisis. Even when they had such tools, they were not the same so it was difficult to take concerted action at European level. Europe needed a common toolbox which would ensure a level playing field as well as efficient interventions so as to avoid spillovers in an integrated market. He was against automatic triggers, although he considered that some criteria governing the use of the tools would be necessary, in particular to avoid legal challenges. He also argued that there was a need for common assessment, methodology and language that would facilitate coordinated solutions at European level. In this respect, he saw the role of EBA as a facilitator of this common culture.

Mme Nouy, Secretary General of the French Prudential Supervisory Authority, also considered it necessary to have a set of common tools both for early intervention and resolution. She opposed automatic triggers because realities differed and it was necessary to leave certain discretion to authorities. She expressed some doubts about the usefulness of living wills which would have a big impact on business models and possibly an adverse effect on integration. She considered it necessary to resolve the issue of how to manage the crisis of pan-European groups. In this respect she argued in favour of developing an adequate regime for asset transfers as well as for the need to legally recognise the existence of group interest. She recommended including investment firms into the Winding Up Directive, developing a European system of Deposit Guarantee Schemes and supported Mr Carosio's views with regard to the adoption of a cooperative approach at European level.

Mr Sants, Chief Executive of the UK Financial Services Authority, considered that the best approach to crisis management and supervision was the cooperative one. He did not see the advantages of integrating everything at European level. Supervision and resolution would be more effective if regulators were close to the firms they supervised. It was important to improve supervision and ensure that all supervisors every Member State worked up to the highest standards. In this respect the first tool was making day to day supervision more effective. He agreed with Mr Carosio and Mme Nouy that automatic triggers were not effective in preventing crisis. However, he disagreed with Mme Nouy with respect to living wills. He considered that they would be essential tools for preparing firms and authorities to effectively handle crisis.

Mr Farkas, Chairman of the Hungarian Financial Supervisory Authority, expressed his concerns about the lack of adaptability to crisis situations of the current cooperative model. When a cross border crisis erupted, information flowed less than efficiently (if at all) and decisions were taken at national level – without any account taken of the interests and concerns of other nations that were hosting part of the group. He was very much in favour of establishing a common set of early intervention tools but no automatic triggers. He also considered that the EBA should have enhanced powers for early intervention and that for cross border entities it would be useful to establish a system of early warning signals. He also raised the issue of Systemically Important Financial Institutions (SIFIs) and proposed exploring the possibility of having "enhanced" tools for dealing with them.

Mr. Profumo, Chairman of the European Banking Federation agreed that all national authorities should have the same powers. He also mentioned the advantages of cooperation but, going beyond the ideas of the other panellists, he favoured a strong role for EBA as well as for reinforced cooperation when dealing with cross border entities. In his opinion colleges should become decision bodies. A short debate followed with the audience. The main issues referred to the triggers, where one member of the audience considered that the absence of triggers would lead to forbearance and national solutions, and to asset transfers which, according to another member of the audience, could create problems in subsidiaries if the mother failed.

2nd Panel: Making Bank Resolution effective for cross-border banks

Paul Tucker, Deputy Governor of the Bank of England, argued that the problems in resolving large, complex financial institutions (LCFIs) arose both from complexity and from their cross-border dimension. Even without the cross-border dimension, he argued that a (hypothetical) LCFI operating entirely within a single jurisdiction, with all of its counterparties, clients and contracts domiciled there, could not be resolved simply: a standard resolution regime could not effect an orderly run down of, for example, a massive and complex derivatives portfolio. One option that might be explored is a 'super resolution' regime that permits authorities to 'haircut' uninsured creditors in a LCFI that is not (yet) insolvent. This could materially recapitalise a firm and allow it to remain as a going concern, either indefinitely or for at least as long as is necessary to unwind the derivatives book. A regime of this kind would reinforce market discipline by putting uninsured creditors at risk even in systemic situations, and would not preclude regulatory action against management or winding down parts of the business in more favourable economic conditions. If such a regime was not workable, politicians would need to decide how much risk in the system and complexity in the banking industry they would be prepared to accept.

With respect to the cross-border dimension in resolving internationally active banks, there were two broad approaches: territorial, involving separate resolution for each of the bank's entities in different jurisdictions under the applicable national law, and universal, by which a single procedure was applied to an international bank and its branches abroad. Pure universalism would eliminate ring-fencing and encourage cooperation, but would entail a loss of fiscal independence and overriding of national insolvency laws so may not be politically feasible. A more feasible solution might be a 'modified' universalism whereby host authorities agreed to defer to and cooperate with resolution by the home authority provided the equitable treatment of creditors is guaranteed. This was likely to be easier if there was a broad harmonisation of resolution regimes across jurisdictions.

Eva Hüpkes Adviser on Regulatory Policy and Cooperation at the Financial Stability Board, argued that there was a case for the targeted use of conditions to market access, so that a firm would only be permitted to enter a national market if its operations could be unwound without catastrophic consequences. Cross-border problems might be reduced by using a lead authority to ensure effective restructuring.

Lars Nyberg, Deputy Governor of the Swedish Central Bank, argued that coordination of crisis management would be facilitated by the establishment of cross border stability groups for the 35 largest EU banking groups. These would be based on core supervisory colleges but would also include Ministries of Finance and central banks. Recovery and resolution plans were a good idea that merited further analysis. Burden sharing would always need to take place and agreement was always after the facts. However, preparing and agreeing principles for burden sharing could help.

Jörg Asmussen, State Secretary responsible for financial market policy and European policy at the German Federal Ministry of Finance, argued that the problem of complexity was more difficult to solve than the cross-border dimension. Member States needed tools that enabled the rapid transfer of assets, liabilities and contracts to a third party. Private-sector financing could be provided by a network of national resolution funds constituted by risk-based contributions. Fixed ex-ante burden-sharing arrangements between Member States would probably not be workable, but ex-post agreements could be based on clear criteria agreed in advance.

Elisa Ferreira, MEP and rapporteur for the own initiative report on crisis management, argued that the costs of crisis management should be borne by industry rather than the taxpayer. However, it was important to be aware of the cumulative impact of new regulatory requirements, so charges on banks should be phased in while tackling systemically important institutions as a priority. The new EBA, backed by a stability fund and acting through local supervisors, should be responsible for the resolution of SIFIs.

Hugo Bänziger, Chief Risk Officer at Deutsche Bank, argued that resolution needed to be fast, so as to be effective overnight. If the problem could be tackled at the head of a group, the cross-border issue would be less important, and only become significant when a bank had to be dissolved. When

allocating losses in resolution, authorities should not diverge from the principles of ordinary insolvency (equity, followed by junior then senior debt). The senior debt of Deutsche Bank was sufficient to recapitalise the bank, and would avoid recourse to public funds if authorities had the power to do this. Complexity was partly a response to regulation, but needed to make banks less interconnected.

3rd Panel: Insolvency framework: coordination or integration?

Thomas Wieser, Director General for Economic Policy and Financial Markets in the Austrian Ministry of Finance

Luc Everaert, Assistant-Director of the European Department of the International Monetary Fund

Charles Goodhart, member of the Financial Markets Group at the London School of Economics

Mike Krimminger, Deputy to the Chairman for Policy with the Federal Deposit Insurance Corporation

María Nieto, Associate Director General of Banking Regulation at Banco de España

Antonio García del Riego, Managing Director and Head of Corporate Affairs in the EU of Banco Santander

Panellists concurred that insolvency law – while technical – was at the same time critical from a political perspective. Insolvency law determined how cooperation took place and influenced behaviour during a crisis, and had long been the neglected dimension of the European safety net. A mere territorial approach would mean ring-fencing of assets and "subsidiarisation" along stand-alone subsidiaries. A universal approach for banking groups on the other hand was fraught with political and legal difficulties.

The panel discussion was clear that insolvency law would remain the missing link of the internal market for financial services. Prevention, early intervention, resolution and liquidation should be thought through as a single chain. In that respect, the Insolvency Law Expert Group that the Commission was in the process of establishing was warmly welcomed.

It was emphasised that subsidiaries as separate legal entities should be subject to separate insolvency frameworks, and that a group should not be treated as a single corporate. A group insolvency regime would have significant adverse impacts on the rights of creditors and shareholders of different legal entities. In contrast, treating a legal entity under separate insolvency law may optimise the resolution and liquidation processes.

Panellists agreed that a coordinated framework would be best underpinned by further harmonisation of national insolvency law, including proper coordination between administrative authorities or juridical authorities. It was stressed that crisis management based on national insolvency law and the treatment of individual entities was ill-suited to the commercial reality of the integrated banking sector in the European Union, and that the level of coordination should be considerably improved, including in relation to third countries.

It was stressed that coordination failures may result in negative externalities. Some suggested that banking groups might be subject to a special charter and would be resolved by an EU authority.

As to the governance structure, it was stressed that the EU should not put the institutional cart before the legal horse. Importantly, doubts were voiced over how a European resolution authority could effectively work with 27 different national insolvency laws. In that respect, the priority should be to agree the legal structure first. At the same time, it was emphasised that resolution and insolvency required technical skills and expertise that would be best mutualised in a European Agency. A European Agency was for some the best way to deal with systemically important institutions.

Integration of resolution and liquidation independent of institutional arrangements for supervision was rejected. Further upgrading of banking supervision would be critical to avoid that well supervised institutions would pay for the risks run by other institutions subject to less stringent supervision.