

Recovery and resolution: supervision and resolution authorities point of views



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SEMINAR

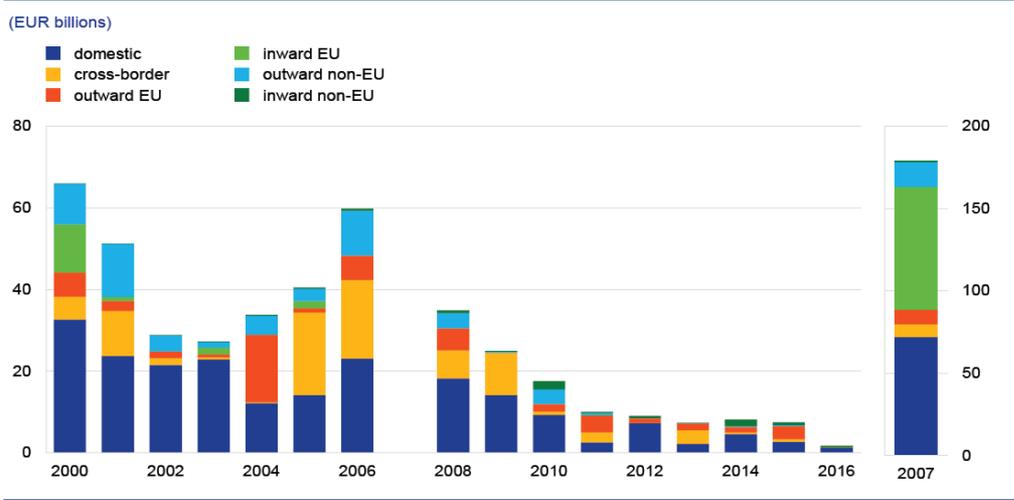
LEGAL EXPERTS AND FINANCIAL CRISES :
PREVENTION, MANAGEMENT, RESOLUTION

1. The banking system in Europe is still fragmented

The introduction of the euro in 1999 and the development of the single market have made a contribution to increasing bank MNA activity

➤ Ever since the financial crisis in 2008, these transactions have slumped

Bank M&As involving euro area banks – value of transactions



Sources: Dealogic and ECB calculations.

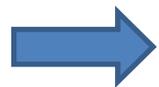
➤ Very diverse concentration of banking systems

Market share for the 5 lead banks	
USA	40 %
Europe	20 %

2.

The advantages of mitigating fragmentation

- Furthering financial integration
- Offering more opportunities to invest and afford access to new sources of financing
- Optimizing risk sharing which will bolster stability and efficiency of the European economy
- Fostering geographical diversification
- Allowing economies of scale and being more efficient
- Helping to reduce excess capacity
- Improving the position of European banks with international competition



Reducing obstacles to cross border consolidation in terms of :

- 1 Management
- 2 Regulations
- 3 Supervision and resolution

Obstacles related to regulations (1/2)

- Applying prudential rules to individual banks and consolidated groups is also a potential obstacle as there are **no cross border waivers for capital requirements**.
- Concerning liquidity, it can be hard to meet the conditions required for granting waivers on capital requirements for individual banks whereas **centralized liquidity management** tends to be safer from a prudential standpoint as it affords better access to financial markets and fosters quicker allocation of funds to groups that need them.
- **Maintaining options and discretionary** powers when implementing banking regulations with a tendency to reduce consistency across Europe.
- The regime for qualifying holdings has been harmonized to a large extent in the SSM, but **national standards for mergers** tend to be far more varied.

- **Buffers for systemic groups** (G-SIBs) (i.e. an additional capital buffer imposed on G-SIBs) tend to weigh heavily on the cost of acquisitions of other entities by G-SIBs, given the more stringent capital requirements for assets (and also the fact that the **EU is not recognized** as a single jurisdiction).
- Certain **differences in national tax legislation** have a significant impact on banks – which is especially true of the treatment of deferred tax assets.
- Part of the **legislative framework** (laws regarding insolvency and legal takeover bid protection measures) and **regulations** on consumer protection, remain country specific

- Capital allocation flexibility, in the context of a crossborder acquisition, is restricted by the **Pillar 2 capital requirement calculation** (additional capital requirements required by the supervisory authority) in respect of subsidiaries.
- Crossborder consolidation **generates a lot of decisions** by the supervisory authority – approval of a merger and/or qualified holdings, decisions on own funds, liquidity, leverage, use of internal models.
- Crossborder transactions can **involve several European and national authorities**, which can have an effect on operation timelines.
- Crossborder consolidation generates **restructuring risks** and transaction costs. Supervisors tend to consider that they temporarily impair the risk profile of the banks, which has an impact on Pillar 2 requirements and the assessment of internal models or operational risk.
- After a crossborder transaction, **recovery and resolution plans** become more complex and have to be updated.

The Single Resolution Mechanism (SRM) is still incomplete.

The common backstop to the Single Resolution Fund is the key.

- The euro area agreement on the backstop reached on the 29th of June is a crucial first step.
- Two key issues remain:
 - how to fund the backstop at a sufficiently high level to be credible,
 - how to create a swift decision-making process to deal with emergencies
- The euro area also needs a system for providing liquidity to financially sound banks after resolution

We need to ensure a closer relation between supervision and resolution

A TEAM

Continuity and consistency



1 – Better link between recovery plans and resolution plans

2 – MREL targets to take into account banks specificities (Pillar 2 approach)

To ensure an effective resolution regime in Europe, one should consider possible solutions to tackle the lack of trust between home and host authorities:

- The banking Union has strengthened the European cooperation for supervision and resolution. This framework should now fully deliver confidence that there will be no national/home bias, thanks to a centralized power
- Joint decisions on the adoption of resolution plans and of MREL requirements: these are binding obligations which force to find a common approach
- **Confidence of host Member states can be ensured by more robust ex-ante arrangements: intra-group arrangements could be requested to reinforce the protection given by the parent banks to their subsidiaries**

Need a framework in case of liquidation

- The treatment of banks failures outside the resolution scope could be further harmonized:
 - The directive 2001/24/EC on the reorganization and winding up of credit institutions is a beneficial legal basis for further progress
 - How can the SRB assess the no-creditor-worse-off principle with different insolvency regime
 - It does not consider the situation of banking groups
 - Improvements could be put in place, for instance through a reinforced regime for the enforcement of intragroup support in case of liquidation