



The Role of Regulatory Cooperation in the Face of Fragmentation

Panel intervention by Frédéric Visnovsky, Deputy Secretary General,
Executive Director for Resolution, ACPR¹

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Following the 2007 financial crisis, international regulation and supervision have been increased to enhance the ability of banking groups to better face difficulties in the future without State support, as it has been the case just after the crisis.

However, due to uncertainties regarding the amount of capital and liquidity needed at the local level if a crisis hits, supervisors and resolution authorities tend to implement different ring-fencing measures². The implementation of a cross-border resolution would face new challenges. Increased cooperation is certainly the right response to foster trust between host and home countries.

Ring-fencing practices by national supervisors generally have the same root causes in different jurisdictions and economic areas. A host supervisor anticipates that the parent company of a banking group headquartered in a third country might decide to repatriate liquidity and capital located in the host jurisdiction if the group faces some difficulty. If the host supervisor is not confident enough that the local subsidiary will not suffer a liquidity shortage and retains enough loss-absorbing capacities, it will set ex ante requirements to ensure that a minimum level of capital and liquidity is readily available at the national level if a crisis occurs.

¹ Contribution prepared with Marion ZOSI, resolution expert at ACPR

² See “Present practices are preventing the emergence of cross-border banking groups”, by Edouard Fernandez-Bollo, ACPR, in Banking Perspectives, Third Quarter 2018 (<https://www.bankingperspectives>)

From a practical perspective, fragmentation is not the only issue to deal with regarding cross-border groups. Indeed, implementing the bail-in is also a challenge, in particular concerning issues on **contractual bail-in recognition**.

We should also consider operational challenges such as **execution risk**: a cross border context will involve more actors than a purely domestic one, located in different time zones, questioning the effectiveness and timing of the whole process, with possible different approaches to both valuation and bail-in. The involvement of different private actors in many different countries may also be an issue for the execution of the bail-in.

Increased cooperation is a prerequisite to fostering trust between host and home countries.

If we consider the current situation as sub optimal for cross-border banking groups, hindering economic efficiency and financial stability, all pragmatic solutions must be worked out.

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. For resolution, the establishment of the **Single Resolution Mechanism** (SRM) by 19 Member States (but open to all EU states) is a clear progress, even if we should take care that the Single Resolution Board (SRB) clearly avoid participating in the increased fragmentation with not justified internal MREL on some subsidiaries.

In this respect, progress still need to be made includes the introduction of cross-border capital waivers in the same way it exists (and should be applied on a national basis) but of course, it should take into account the legitimate concerns of host supervisors.

For cross-border groups, the situation might be different depending on the choice between two competing strategies: single point of entry (SPE) and multiple points of entry (MPE). In the cases of cross-border group resolution, the conflict of SPE

and MPE resembles the conflict of universalism and territorialism. Application of SPE only requires the resolution action of the home authority, while under MPE strategy, the home and host authorities can both exercise resolution powers

One of the key issues is to develop **credible guarantees** provided by EU parent banks to their subsidiaries, based on EU law, and enforced by EU supervisors. This will allow increasing the level of confidence of host supervision and resolution supervisors. These guarantees should include ex ante arrangements to upstream losses. They have to be robust and enforceable by EU supervisors. Resolution and supervisory supervisors in the different countries should work in cooperation to design the adequate guarantee mechanisms for each specific banking group. These guarantees should address the question of group support for subsidiaries during going-concern and not only during resolution. They could be adjusted regularly depending on the evolution of the risk profile of the banking group.

Another critical step could be taken in order to improve the situation for cross-border banking groups. A **more significant involvement of the host countries in the ex-ante management of cross-border banking groups' recovery and resolution plans** would allow for an increased level of trust between supervisors. This dialogue should happen before the next banking or financial crisis arrives, in particular covering early intervention phases and recovery planning in order to build up confidence between jurisdictions before a crisis erupts.

In this respect, Crisis Management Group (CMG) and Resolution Colleges (prescribed in the BRRD) have a major role to play.

The FSB Key Attributes relating to cross-border cooperation have been effectively implemented and put in to practice. The Key Attribute 7, which sets out the legal framework conditions for cross-border cooperation, has identified 7 key elements. All of them have been implemented in Europe through the transposition of BRRD and the creation of the Single Resolution Mechanism for the banking union. For instance, the issuances of the senior non-preferred debt, the implementation of the clauses related to the contractual recognition of bail-in (article 55) and the

transposition of the stay power (article 71) enable to make more effective and transparent the implementation of the resolution strategy.

However, cross border cooperation but beyond home and host cooperation should continue to be improved in order to address key practical challenges and strengthening the credibility and effectiveness of resolution strategies:

- Legal certainty on the effectiveness of bail-in powers and the division of tasks between home and host authority. There, BRRD2 introduces a possibility to waive the article 55 requirement in case it is not “practicable” to include the contractual term. Now this exception will need to be framed in level 2. How to find the right balance between the need to catch as many potentially bailinable liabilities as possible and the need not to impose unrealistic burdens on institutions?
- Adequate preparedness and thorough knowledge by each authority of the procedures and methods used in the jurisdictions it will have to interact with
- Trust, cooperation and good working relationships between authorities
- Clear and comprehensive « memoranda of understanding » in the case of countries outside the EU, and in any case many discussions and interactions among authorities and between authorities and the industry (banks, but above all FMI) : research, bilateral contacts between authorities, workshops, conferences, industry dialogues

CMGs and colleges are, first and foremost, fora for this cooperation and **exchanges of information**. Therefore, we must make sure that information is exchanged effectively, efficiently, meaning without undue delay, and that it covers all needs of both the home and host authorities. This means there is a need for detailed and exhaustive memoranda of understanding and cooperation arrangements between authorities. The respective laws and confidentiality provisions of each jurisdiction must be respected, of course, but apart from those safeguards there should be no barrier to information exchange and it is better to be too ambitious than not ambitious enough.

However, information exchange does not alone ensure effective cooperation on a day-to-day basis. For such a cooperative relationship between authorities to be created, there is a need for a clear framework and in depth analysis: **meetings need to have concrete follow-up and discussions need to have a concrete basis.** In this spirit, **work programmes for CMGs should be further designed.** The **focus on resolvability** should be clearly outlined in those work programmes and the **Resolvability Assessment Templates provided by the FSB are a concrete and useful tool for building them.**

Resolution colleges, established by the BRRD and soon also by the regulation establishing a framework for the recovery and resolution of CCPs, are a slightly different matter than CMGs. Unlike CMGs, they **already have concrete work programmes driven by joint decision takings** on resolution plans, MREL targets and impediments to resolvability procedure. Therefore, **in the case of colleges, the focus should rather be on timely exchange of information and on effective and constructive discussion and dialogue** in order to facilitate decision-making. Attention should also be paid to **limiting the divergences in practice** among different colleges, since those might ultimately have consequences on the way resolvability is built and assessed.

In Europe, the European Banking Authority (EBA) plays an important role to promote the **effective and consistent functioning of colleges** across the EU.³ The last report underlined significant improvements achieved but also noted that resolution is a complex task, which requires continued effort to increase preparedness of college members. This needs to cover all aspects of the resolution strategy for them to become operational. In particular, (i) resolution plans need further improvement in some key operational aspects such as bail-in execution, funding in resolution or access to financial market infrastructures (payment systems, CCPs), (ii) progress from banks in removing impediments to resolvability remains limited and uneven.

³ See “EBA report on the functioning of resolution colleges in 2017”, July 2018 (<https://eba.europa.eu>)