
Binder, Krimminger, Nieto and Singh
The Paper reviews the current approaches to bank insolvency law in the EU and US.

The paper suggests reforms for the EU to adopt a more consistent and predictable approach to dealing with bank insolvency and liquidation proceedings.

The paper suggests the different national proceedings undermine the proposal for EDIS.
EU and Eurozone Resolution Regime

National Discretion Winding-Up Proceedings

National Discretion Normal Insolvency Proceedings
Multilevel and multifunctional approach to determine the importance of banks for the purpose of financial stability

- The different categorizations: Eurozone: Significant and Less Significant Banks, Other-Systemically Important Institution, Globally-Systemically Important Bank, Critical Functions and the Real Economy linked to Resolution or Normal Insolvency Options.
Systemic Importance Indicators

A bank is systemically important if...?

- interconnected
- complex
- highly...

high level of...

cross border exposures

substitutability

less likelihood of ...

size

large...

International Association of Deposit Insurers
<table>
<thead>
<tr>
<th>Name of bank</th>
<th>ECB significant bank</th>
<th>Other systemically important institution</th>
<th>Resolution—within public interest threshold</th>
<th>Liquidation—outside public interest threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banco Popular Español</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Banca Popolare di Vicenza SpA</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Veneto Banca SpA</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>ABLV BankLatvia (parent)</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>ABLV BankLuxembourg (subsidiary)</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
</tbody>
</table>
SRB: Italy, Banca Popolare di Vicenza and Veneto Banca SCPA vs. National Authority, Croatia, Jadranska Banka d.d. in Šibenik: – Sub-Regional Interests

- Liquidation-Insolvency Option: Veneto Banca 2nd biggest in the Veneta region (total assets of approx. EUR 30 billion and 6000 employees)*

- Resolution Option: Jadranska Banka d.d. in Šibenik (€300m) it held below 1% of total market share in Croatia. However, from a regional perspective it accounted for 34% of total deposits and 50% of finance to the regions business sector and operated over half the ATM machines.
Liquidation Cases with DGS Payouts and Other DGS Interventions – EBA Notifications

*See Table, Liquidation Cases with DGS Payouts and Other DGS Interventions – EBA Notifications, from D Singh, *European Cross-Border Banking and Supervision*, Oxford University Press, 2019 forthcoming
The ECB concluded the subsidiary was likely to fail since it was reliant on the parent entity for financial support and clients.

The SRB decided the bank could be placed into liquidation proceedings.
The insolvency law of Luxembourg refers to two distinct proceedings:

- The judicial liquidation procedure – automatic withdrawal of the license
- The procedure of suspension of payments – restore the financial situation or liquidation
The Court confirmed that it was not bound by the assessment by the authorities.

‘It is therefore necessary to analyse whether the financial situation of ABLV will no longer be able to meet the commitments to all holders of debt and equity rights’

The Court found the application for the ‘procedure of suspension of payment’ well founded and set 6 months +1 month extension, as a deadline to secure a potential acquirer.
Conclusion

- The ‘public interest’ test as defined by Article 32(5) of the BRRD is by no means a clear-cut definition between the scope of BRRD-style resolution on the one hand and ‘winding up’.
Conclusion

- The lack of consensus is not just with regard to the substantive design of bank insolvency procedures:

- A consistent general depositor preference rule with a tiered approach would allow equal protection of insured depositors throughout the Euro area.

- The definition of objectives: to be pursued in restructuring and/or liquidation

- The powers of relevant actors: administrative authorities, courts, liquidators, creditors’ meetings or committees
Conclusion

- the substantive rights allocated to stakeholders: the ranking of claims, recognition or non-recognition of collateral arrangements, set-off rights.
- the availability of legal redress.
- EDIS should be implemented in a way that unambiguously creates equal protection for all insured euro area depositors.
- In the euro area the credibility of the Euro relies on ensuring equal protection of insured depositors throughout the area.
THANK YOU FOR YOUR ATTENTION

Prof. Dalvinder Singh
University of Warwick, School of Law, Coventry, UK
E-mail: dalvinder.singh@warwick.ac.uk