Towards Single Resolution and Single Supervision of Systemically Important Financial Institutions in the European Union?

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Mirik van Rijn
Radboud Institute for Financial Law

Radboud University

Financial Stability Board

Key Attributes of Effective Resolution Regimes

- “**Any financial institution** that could be systemically significant or critical if it fails should be subject to a resolution regime that has the attributes set out in the FSB’s Key Attributes”.

- “Supervision of SIFIs must clearly be more intense, more effective, and more reliable” - FSB.

Prospectus ABN AMRO 10 November 2015 – RISK FACTOR No. 8

8. ***The Group operates in markets that are highly competitive. Competitive pressures could result in lower margins or in a loss of market share and may thus have a material adverse effect on the Group's business, financial condition and profitability***

In the Netherlands and the other markets in which the Group operates, there is substantial competition in many of the retail, private and corporate banking products and services that the Group provides. The competition for these products and services consists of traditional large banks, smaller banks, insurance companies, pension funds, niche players, non-financial companies that offer credit and savings products (such as car lease companies) as well as technology firms and other new entrants. Insurance companies and pension funds, for instance, are increasingly active in the mortgage market. Not all of these parties are subject to the same regulatory controls imposed on banks. Technology firms and other new entrants have already entered parts of the banking value chain, for instance, in payment services, peer-to-peer lending, new mobile payment systems, mobile wallets and crowd funding. In particular, developments in the area of payment services could impair the Group's access to clients, which could result in reduced business volumes for the Group and materially and adversely affect the Group's results. In addition, new technologies, such as block chain are gaining increasing interest from incumbent banks and may potentially have a disruptive effect on the financial sector. In other non-domestic markets, the Group faces competition from the leading local and international institutions active in the relevant segment or market.

The intensity of competition is influenced by many factors, some of which are beyond the Group's control. Such factors include the conditions in financial markets, the loss of trust in banks following the financial crises, the economy, consumer demand, reputation, brand recognition, prices and characteristics of products and services, distribution powers, the impact of consolidation, technological changes, emerging non-traditional competitors, economic circumstances, regulatory action, competitive advantages of certain competitors and many other factors. In addition, the Group must comply with regulatory requirements that may not apply to non-banks or certain foreign competitors and which create an unequal playing

Research question

To what extent is a single resolution and supervision scheme for Systemically Important Financial Institutions in Europe desirable and feasible?

SIFI resolution in the U.S.

The U.S. approach under the Dodd-Frank Act

- Authorities can determine that a nonbank financial company could pose a threat to U.S. financial stability. Such companies will be subject to consolidated supervision by the Federal Reserve and enhanced prudential standards.

- Any nonbank financial institution that has been designated as systemically important, has to prepare a resolution plan.

Scope of the Single Resolution Mechanism (SRM)

- Credit institutions.

- Parent undertakings and mixed financial holding companies where they are subject to consolidated supervision carried out by the ECB under the SSM.

- Investment firms and financial institutions, where they are covered by the consolidated supervision of the parent undertaking by the ECB under the SSM.

Scope of the Single Supervisory Mechanism (SSM)

- Prudential supervision of credit institutions.
- ECB supervises ‘significant credit institutions’ directly, national authorities have the lead regarding less significant credit institutions.

Scope of the SRM/SSM limited to credit institutions

- Insurance undertakings are excluded.
- Shadow banking is excluded.
- Fintech
- Future entities..

Towards single resolution and supervision of SIFIs

- Taking cue from the resolution regime in the U.S. → 'systemically important financial institution' extends well beyond traditional banks.
- SIFIs should, as a whole, be brought within the scope of SRM.
- Expansion of SRM resolution tools to properly accommodate the needs of SIFIs.
- Expansion of the SRM should be paralleled by an expansion of the SSM,

Determining SIFIs

- European supervisor (ECB) should be able to designate a group of financial institutions (or an individual financial institution) as systemically important.

- In order to have a future proof resolution scheme the supervisor needs a high degree of discretion in determining a financial institutions as systemically important.

Designation must not be arbitrary

- ‘SIFI’ determination has to adhere to general principles of law, e.g. proportionate and properly motivated.
- Determination to be made on the basis of conditions set by the supervisor.
- For example, in the US the FSOC assesses a firms interconnectedness, substitutability, size, leverage, liquidity risk/maturity mismatch and existing regulatory scrutiny.

Judicial review

- Accompanied with an effective possibility for judicial review
  → Administrative Board of Review + EU Court of Justice

- See MetLife vs. Financial Stability Oversight Council
  → US District Court of Columbia found determination of MetLife as systemically relevant arbitrary and capricious

  - FSOC violated its own stated policy by failing to assess MetLife's vulnerability to material financial distress
  - FSOC did not consider the costs of designating MetLife a nonbank SIFI.