EUROFI VIEWS MAGAZINE - ZAGREB APRIL 2020

Edouard Fernandez-Bollo

Member of the Supervisory Board, European Central Bank (ECB)

Banking Union beyond home and host

Almost six years after the establishment of European banking supervision, we still hear people talking about "home" and "host" jurisdictions and authorities within the banking union. This distinction certainly does not match the reality of shared decision-making and responsibilities within the Single Supervisory Mechanism. It does, however, reflect the continued existence of specific features in national markets, and to some extent also the regulatory framework, which continues to allow for national ring-fencing policies.

The current situation is economically and politically sub-optimal. In economic terms, ring-fencing measures hinder the efficient allocation of capital and liquidity within banking groups. They prevent European banks from fully benefiting from economies of scale and the diversification of risks within the banking union. In political terms, ring-fencing measures reflect insufficient trust between Member States stemming from past experience. Thus, any serious attempt to break the current deadlock has to start by acknowledging the legitimate arguments and concerns on all sides. While closer cross-border banking integration could bring significant benefits, it should not come at the expense of local financial stability.

Achieving the right balance may require some targeted legislative amendments to provide sufficient safeguards that the parent will provide financial support in the event that the financial situation of a subsidiary deteriorates. This may take the form of enhancing the framework for intra-group financial support agreements. However, private sector actors should not wait for public authorities to act on this front, but should make use of all the opportunities available within the current regulatory framework and discuss with supervisors how best to enhance confidence in intra-group support.

Differences in national bank insolvency regimes across the EU represent another potential obstacle to the smooth functioning of the banking union. While it seems unlikely that national insolvency frameworks will be fully harmonised in the medium term, certain targeted improvements may be feasible, for example as regards the treatment of creditors in the insolvency hierarchy.

A key principle of the Bank Recovery and Resolution Directive (BRRD) is that no creditor should incur greater losses in resolution than it would have done under normal insolvency proceedings (known as the "no creditor worse off", or NCWO, principle). However, in the absence of a harmonised regime for creditor hierarchies, the NCWO principle would result in different outcomes across the banking union in the event of a cross-border group being resolved.

Another source of uncertainty relates to the situation that arises when a bank is deemed failing or likely to fail but does not enter resolution. The laws determining what happens in such cases currently differ from country to country, and this divergence needs to be addressed. Concretely, the concept of "orderly winding-up", cited in Article 32(b) of the revised BRRD, could be made more precise in order to ensure that national implementation results in a more harmonised treatment of failing banks across the banking union. There may also be a case for further clarification on the links between a failing or likely to fail decision (in the event of non-resolution), the reimbursement of deposits and the withdrawal of the banking licence. Progress on all of these fronts would allow us to move to a banking union in which a distinction no longer needs to be made between "home" and "host". ●