Banking groups and their challenges in crisis management [*]

Gruppi bancari e gestione della crisi

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ABSTRACT: Group-wide capital and liquidity management for banks is an essential component of a functioning Banking Union. This paper addresses the why and the how urgent regulatory action is needed in this domain.

ABSTRACT: Una gestione integrata del capitale e della liquidità a livello di gruppo costituisce un requisito essenziale per il funzionamento (effettivo) dell'Unione Bancaria. Questo articolo illustra le ragioni, e le caratteristiche, di una possibile e necessaria iniziativa legislativa europea in materia.

1. – *Contra spem sperare* (or hoping without much hope yet remaining faithful after all): this, I guess, would be the right translation into Latin of the title of my closing speech today. Although so much water passed under the bridge in the law and practice of the Banking Union after the European Commission's tabled amendments of November 2016 to Articles 7 and 8 CRR to make capital and liquidity waivers for EU banks' subsidiaries available (or more widely available as to liquidity waivers) also on a cross-border level (something that should appear a quite obvious course of action at least in the Euro zone after the establishment and successful deployment of the SSM and SRM) encountered opposition by (some)

[*] Closing speech at the EBI International Conference "Banking and Finance in Stressed Times: Climate, Resilience and Exit" co-organized and co-hosted by the Universidad Carlos III and the Universidad Complutense of Madrid on 11 and 12 May 2023.

ISSN 1972-9243 | EISSN 2421-7166

Member States and were eventually dropped, and although a growing line of cases before the SRB's Appeal Panel and the General Court[1] shows that even domestic waivers are a breeding ground for concerns due to the imperfections of the legislative framework, policy makers seem to consider a reform in this domain a dead letter. No surprise that there is nothing on this in the ongoing legislative train currently in its final way to CRR3 and CRD6. Is this good, and wise, policy? I surmise it is not. Yet I guess that any hope, as little as it may be, to resurrect the topic and revamp a balanced initiative in this domain lies, in the current political and economic circumstances, more in the compelling needs of the practice and in the nudges of the industry and academia than in the good will of the co-legislators, who seem still trapped into the Scylla and Charybdis of vague aspirations towards pan-European banks' consolidation, yet also hard to die emotional concerns over debt mutualization and fearful ring-fencing.

2. – Looking at the unfinished work of the Banking Union from this angle, one gets the unpleasant feeling of being roughly 70 years late if compared to our US counterparts, still at the time of the political debates in the United States which preceded and laid the ground for the 1956 Bank Holding Company Act. Our fearful debates echo American taboos of the time against inter-state bank branching and subsidiarization, motivated, in the first place, by the fear that interstate growth would allow large banks from big cities and major states to compete against state banks in small towns and minor states and against national banks (which originally were only allowed to operate a single branch), and, in the second place, the long-held concern that large banks would concentrate to much financial power. And the discussions around the third pillar of the Banking Union and the ill-fated EDIS proposal, weighed against the ninety years of the US FDIC, add food for thoughts.

3. – Being mindful that political appetite for a reform in this domain was and is at an historical low, despite its importance for the completion of the Banking Union, in the opening speech of our EBI Annual Global Conference of February 2022 in Frankfurt I tried to revamp at least the academic debate both on the merit and the technical details of a wishful future reform which may bring forward a comprehensive and bespoke group-wide asset and liability management regime for banks in the Euro zone. I observed that to that purpose it is not enough to table prudential amendments to capital, liquidity and iMREL waivers as well as to intragroup exposures (Articles 7 and 8 CRR, Article 12 h and 12g SRMR and Articles 113(6),

[1] Compare in particular AP cases 2/2021; 3/2021; 1/2022; 2/2022 accessible at srb.europe.eu and Case T-540/22, France v SRB.

ISSN 1972-9243 | EISSN 2421-7166

400(2), and 493(3)(c) CRR)[2] but it is also necessary to clearly identify and then disentangle 'hidden traps' disguised in the robes of national contract, corporate and insolvency laws. Echoing Andrea Enria and Eduard Fernandez-Bollo's wise calls for more political ambition on this,[3] I noted the obvious, and namely that a striking aspect of the banking industry in Europe remains its highly insufficient inter-state dimension and its fragmentation along national boundaries. With few exceptions (of an handful of EU G-SIIs, whose European regulation poses challenges on its own right for their global competitiveness, the TLAC/MREL add-ons being just one visible example),[4] banking groups remain parochial, and, as Andrea Enria once noted, "do not yet consider the Banking Union as a truly domestic market". This stands in the way of more risk dispersion (geographically) and of better resilience; but also of better profitability, if banks are truly to reap the fruits of the European single market.[5] By comparison with US banks (which consolidated tremendously after the Riegle-Neal Act 1994) but also with Chinese and Japanese banking champions, European banks are simply dwarfed. For sure, in terms of market structure there are differences across Member States. France, Germany, Italy and Spain are home to the biggest European champions, and these 4 countries account together for over 50% of EU banking assets. Due to this uneven distribution (which does not have necessarily a parallel in the ownership structure, which is growingly more international) is clear that many of the newer Member States from Eastern and Southern Europe, and Belgium, which show a majority of foreign banks dominating their national banking markets, consider the risk of a centralized, group-wide asset and liability management acute, unless there are appropriate counterbalances in place. With group-wide national fragmentation, however, assets trapped at the level of foreign intra EU subsidiaries may be in the hundreds of billions and may risk being idle, when with a properly functioning group-wide asset and liability management those moneys would be put to better use via centralization.[6]

4. – We all know the political, cultural, economic factors which have delayed the process of pan-European banks' consolidation so far. We also know, how the EBA and the ECB have been more recently heralding a reconsideration of pruden-

[2] MARAGOPOULOS, *Removing the regulatory barriers to cross-border banking*, August 2020, accessible at *www.srb.europa.eu/system/files/media/document*.

[3] ENRIA-FERNANDEZ-BOLLO, *Fostering the cross-border integration of banking groups in the banking union*, Frankfurt am Main, 9 October 2020 *https://www.bankingsupervision.europa.eu/press/blog/2020/html/ssm.blog201009~bc7ef4e6f8.en.html*.

[4] Compare SRB Appeal Panel, case 1/22.

[5] For more granular data, Bednarski, Polk, *SAFE Bank*, 4(77) 2019, 25-28.

[6] Le Maire, EUROFI Conference, April 2019.

ISSN 1972-9243 | EISSN 2421-7166

tial policies in this domain, in an attempt to lift prudential barriers. Notable examples are the 2020 ECB Guide on the supervisory approach to consolidation in the banking sector and the EBA mapping exercise of prudential obstacles in 2020.[7] However, as already noted, reforms of the prudential rules such as waivers and intra-group large exposures can prove effective only to the extent that also their crucial connections with less visible obstacles embedded into national contract, company and insolvency laws are duly accounted for. In doing so, one should also consider that the harmonization of general company law could not attain in the past and is not going to achieve during the term of the current Commission and most likely for some time in the future, any significant advance on the harmonization of the general law of the groups of companies. Despite the valuable efforts of chapter 15 of the EMCA initiative, how to regulate from a general company law perspective, beyond the special context of banks and other regulated financial intermediaries, intragroup transactions remains vividly debated.[8] Insolvency law is in its way to achieve more harmonization at the European level; yet the EU initiative towards such harmonization do not apply to banks. Contract law on first demand parent guarantees or comfort letter is not harmonized and, despite some commonalities, is dependent on the specificities of national case-law. To conclude on this point, relaxing through a CRR and BRRD/SRMR the prudential waivers and the concentration and large exposures rules to cross-border groups and their intra-group financial transactions would be an important step forward, but one which would not be enough without a parallel action to remove for banking groups the relevant obstacles under national contract, company and insolvency law. Indeed, even assuming more permissive prudential requirements, those national law obstacles would still, quite naturally, morph into conservative supervisory assessments which in the end would most likely make prudential reforms devoid of purposes, and sometimes with different outcomes in the supervisory and resolution context. Since this is true not only for prudential requirements concerning the banking group as a going concern but also for iMREL waivers (which look at the banking group as a potential gone concern, albeit in a remote, yet possible scenario), this has clear implications also for group-wide crisis management and its challenges, i.e. the core of our discourse today.

5. – In the preparatory works of the subgroup 3 of the UNIDROIT project on bank insolvency guided by Irit Mevorach and Anna Gelpern and, building on those

[7] GARDELLA-RIMARCHI-STROPPA, *Potential regulatory obstacles to cross-border mergers and acquisitions in the EU banking sector*, EBA Staff Paper Series, no 7, February 2020.

[8] Compare ENRIQUES-GILOTTA, *The Case Against a Special Regime for Intragroup Transactions*, ECGI Law Working Paper No 641/2022, March 2023.

ISSN 1972-9243 | EISSN 2421-7166

works, more recently in an in-depth briefing paper for the ECON published a few days ago,[9] David Ramos Muñoz, Myrthe Thijssen and myself made an attempt to map some of these hidden traps of corporate, insolvency and contract law which stand in the way of a more efficient group-wide crisis management. We also tried to offer a few ideas for an informed policy debate. It may be useful to take a pause for thought on this. From a crisis management perspective, we see three relevant aspects of a group-wide approach to banks' crisis management: (i) one, on procedural coordination; (ii) two, on the effectiveness of intra-group support, (iii) three, on intra-group claims. A possible regulatory response to those three limbs lays the ground, in our view, for the development in due course of the special provisions to be included in the single rule book which, in our view, should be the building blocks of a bespoke asset and liability management regime for banking groups (with special provisions which to some extent may be inspired by those enshrined in the BRRD for intra-group financial support).[10]

6. – It is quite clear that the complex ramifications of those procedural and substantive issues make it quite ambitious (despite the meritorious work already done in the past in respect to banking groups by the Basel Committee with its Principle 5 of the Guidelines on Corporate Governance for banks of 2015 and by the Joint Forum with its 2012 Report on intra-group support measures) and likely out of reach at this stage, to address comprehensively all of them at the global level in a legislative guide for all jurisdictions. It is therefore more likely that the UNIDROIT legislative guide will in the end mostly focus on the procedural aspects of group-wide coordination in crisis management and on a few selected items of substantive nature, which may gain international consensus. Instead, we surmise that a fully-fledged, comprehensive and balanced regime for group-wide banks' crisis management is not out of reach in the European context, at least within the Eurozone, because it would clearly be an essential component of our unfinished Banking Union. Let's now briefly consider, therefore, these three aspects in a Eurozone perspective.

7. – First, procedural coordination. EU cross-border corporate insolvency rules (the European Insolvency Regulation – EIR) provide, in the context of groups, clear principles of cooperation and communication between insolvency practitioners and courts,[11] complemented by a framework for group coordination proceed-

[9] *https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/741513/IPOL_IDA(2023)741513_EN.pdf*.

[10] Compare Babis, *EU Recovery and Resolution Framework: Financial Assistance Between Banking Group Members*, University of Cambridge, Legal Studies Research Paper Series, No 15/2012.

[11] Articles 56-60 EIR.

ISSN 1972-9243 | EISSN 2421-7166

ings,[12] but they would need some adaptation to acknowledge the special role that regulators play in the field of bank crisis management, in particular the ECB and national competent authorities in the SSM and the colleges of supervisors beyond the Euro zone. Conversely, bank resolution rules provide a solid framework for cooperation both in the relationship between SRB and national resolution authorities and in the form of ‘colleges’, as well as mutual recognition,[13] both of which cover the phenomenon of banking groups, but only for bank resolution, while Directive 2001/24/EC on the winding up of credit institutions (Winding Up Directive) remains entity-centric. It would be desirable to acknowledge also in that domain the reality of banking groups, and the need for procedural coordination in the insolvency context and the potential coordination within resolution, and between resolution and insolvency. In the context of group-wide insolvency the rules should ensure the possibility of a centralization of proceedings, and, if multiple proceedings are necessary or inevitable, the need for coordination. The rules should provide an adequate framework for the appointment of representatives, cooperation and information exchange between representatives and competent authorities, coordination of hearings, and recognition and giving effect of crisis management measures. These provisions should be applied with the aim to (i) facilitate the maintenance of group synergies and operational continuity or (ii) to facilitate the application of group-wide strategies consisting in the application of transfer tools, when this helps maximize the value of the overall insolvency estate and/or to better protect depositors and other creditors or financial stability. Enhanced procedural cooperation, and its implications for a clear role for regulators, including host regulators sitting in the colleges, should also seek to deter from ring-fencing strategies, and give effect to the “hotchpot rule”, which prevents any creditor from obtaining more that he or she would otherwise obtain in one liquidation proceeding, by claiming in more than one liquidation proceedings. In resolution, save for the more “vertical” cases, where the SRB is the resolution authority, and instructs national resolution authorities, horizontal coordination is based on resolution colleges. One relevant question is whether the extremely detailed procedure envisaged in articles 97-107 of Delegated regulation 1075/2016 for the joint decision on a cross-border group resolution scheme is compatible with the swiftness and flexibility required in case of a transfer, where there is a parallel process for organizing a sale process, drafting the documentation, etc. A further reflection may be needed on the merit of piecemeal transfer strategies adopted by the SRB itself in the context of a group resolution, as it happened in the Sberbank case, where the crisis solution was threefold, i.e. German/Austrian, Slovenian and Croatian, something which at the same time showed,

[12] Articles 61-77 EIR.

[13] Articles 87 and ff. BRRD.

ISSN 1972-9243 | EISSN 2421-7166

in the protection of German depositors, the spillover effects associated with cross-border branching, and in the protection of Slovenian and Croatian depositors, an unexpected resurgence of domestic fragmentation driven by the SRB itself. Another relevant question is the coordination between the resolution and the insolvency framework in the context of cross-border groups, when under the resolution plan some components of the group need not to be resolved but liquidated. A related aspect is how to deal with the different entities of a banking group, if these do not all meet the conditions for resolution. It follows from Article 16 SRMR, *inter alia*, that resolution action may be taken in relation to a parent undertaking if: (i) it meets the conditions for resolution; or (ii) one or more of its subsidiaries meets the resolution conditions, provided that these are 'institutions'(banks or investment firms) and that their failure threatens an institution or the group as a whole, and resolution action with regard to that parent is necessary either for the resolution of those subsidiaries or for the resolution of the group as a whole. Similarly, Articles 91 and 92 of the BRRD govern situations in which the failure or likely failure of one or more subsidiaries, or the parent company, may lead to the adoption of a group resolution scheme involving several group entities.

8. – More ambitious, yet not less necessary, is a step forward in the Euro zone on intra-group support, and more in general group-wide asset and liability management for banks. When a bank subsidiary sustains heavy losses, it is normal for its parent entity to financially assist that subsidiary to pay its liabilities and/or to absorb its losses by writing off own funds or converting liabilities. Yet, the prospect of assisting a financially troubled subsidiary raises several concerns: one, the parent company's board will be afraid to face liability under an entity-centric national company and insolvency law; two, the board or management will seek to secure the authorities' blessing, but without incurring disproportionate costs; three, the authorities must ensure the enforceability of intra-group support in the form of parent guarantees or other contractual arrangements, including comfort letters, under national law; fourth, uncertainties about such enforceability may amplify tensions between home and host authorities. As already noted, intra-group waivers for capital requirements under Article 7 CRR, and for iMREL under Article 12g and 12h SRMR can be granted only if the parent and the subsidiary are both domestic and there are no foreseen legal or practical impediments to the prompt transfer of funds or repayment of liabilities. Once a parent guarantee is granted, it is subject to national contract and company law, and this opens the pandora box of enforceability based upon the national legal system and fragmented solutions, with their undesirable burden of legal uncertainty and uneven playing field. The Appeal Panel case-law in cases 2/21, 3/21, 1/22 and 2/22 and the pending case T-540/22, France v SRB, neatly show the practical relevance, and the legal uncertainty, which still

ISSN 1972-9243 | EISSN 2421-7166

characterize this crucial issue. In turn, Articles 19-26 BRRD contemplate intra-group financial support agreements, which can be activated in case of early intervention. Anecdotal evidence seems to suggest, however, that there has been no great use of such arrangements so far. In turn, the link between group support and recovery options is not perfect,[14] and supervisory authorities lack the power to require the parent company (or another group company) to financially assist a subsidiary in financial difficulties as part of early intervention powers, even if this is envisaged in the recovery plan, if the parent (or the other company) is not in a situation of early intervention.[15] These difficulties can be amplified in the context of resolution, where the gone-concern situation may make the assisting company more reluctant, which explains the limitation of iMREL waivers only to domestic groups, and the open-textured wording of "foreseen practical or legal impediments", and its being a source of undesirable uncertainty (see, again, Appeal Panel cases 2/2021, 3/2021, or 2/2022). As mentioned above, even a commitment by a parent company (parent company guarantee or comfort letter) to financially assist its subsidiary can be formulated in different ways, and its enforceability can depend on national contract law and national case-law, which may rely on relatively subtle factors, such as whether the execution of the guarantee is subject to preconditions, or whether it is formulated as an obligation of means, or of result. Entity-centric company law may make it difficult, if not impossible, to state with certainty whether a parent will face no legal or de facto constraints to financially assist its subsidiary should the need arise. As already mentioned, the current *status quo* means that there may be greater reluctance to grant waivers and other prudential allowances, which, in turn, enhances the tendency towards ring-fencing. Our preference here would be to make the regime of intra group support more clear, comprehensive, bespoke only for banking and financial groups subject to consolidated or supplementary supervision and enforceable. This would require four steps. One, to define more precisely the area of the banking and financial group to which the special regime applies. This would likely invite for a reconsideration of the EU notions adopted for prudential purposes of control (Article 4(37) CRR), parent undertaking (article 4(15) CRR) and subsidiary (Article 4(16) CRR) in their current reference to Directive 83/349/ECC, which, on one hand, leaves open avenues to hidden national discrepancies due to the minimum harmonization of the notion of control and, on the other hand, may promote more international convergence with IFRS 10 and 11 and also with the more recent US determination of control of a banking organization under the Federal Reserve System rule of January 30, 2020.[16]

[14] ENRIA-BOLLO, *op. cit*.

[15] *Ibidem*.

[16] 12 CFR Parts 225 and 238 Regulation Y and LL Docket No R-1662 RIN 7100 AF 49.

ISSN 1972-9243 | EISSN 2421-7166

Two, extending with all necessary calibrations the BRRD provisions on intra-group financial support to the domain of crisis management and insolvency. Three, extending through a reform of CRR and BRRD/SRMR the framework of capital and iMREL waivers to cross-border groups and reform intragroup limitations as to concentration and large exposures limits. Three, removing for banks the relevant obstacles under national company and insolvency law to ensure the enforceability of such intra-group support, and promote a smooth and safe group-wide asset and liability management. Such regime, which could revolve around the fundamental idea that it would be a supervised regime, adopted and implemented under the control of regulators, should ensure the upstreaming of losses (e.g., through harmonized rules on the validity requirements for parent guarantees) or down-streaming of funds to cover losses in an insolvent or troubled subsidiary when this is beneficial to the interest of creditors of both the subsidiary bank(s) and of the parent company or in the interest of financial stability. As noted, to be justified, it should be subject to disclosure and *ex ante* approval by supervisory and resolution authorities, based on harmonized conditions, including its use (i) when there is a reasonable prospect to redress the viability of the subsidiary; (ii) with the objective of preserving the viability of the group as a whole, to maximise the value of a transfer, or to implement a Single Point of Entry (SPE) strategy; and (iii) the financial support is provided on fair economic terms and in compliance with the group-level resolution or liquidation plan. The details of the assistance should be contemplated in appropriate intra-group financial arrangements, which would complement the corporate dimension of the group with a contractual one of fundamental importance, which would address and provide solutions for the challenges which remain usually unresolved under the uncomplete rules of corporate law.

9. – Horizontal cooperative banking groups as well as networks of savings banks or other entities affiliated to an institutional protection scheme may present special features in insolvency and would call for targeted adjustments. In the UNIDROIT project, we use as a telling example the need for cooperative banks to retain a certain number of members to preserve the cooperative form, which is in turn instrumental to preserve the credit relationship with the members (and thus the goodwill, if any, of the going concern also in liquidation). This has company and insolvency law implications. In the event that one or more cooperative banks affiliated to a cooperative banking group or to an institutional protection scheme becomes troubled or insolvent, the central body of a cooperative group or the institutional protection scheme may implement a crisis management strategy based upon the upstreaming of losses and the down-streaming of funds to restore the viability of such insolvent or troubled cooperative entities and to manage the losses at group level. The upstreaming of losses requires, however, that all shares of the members

ISSN 1972-9243 | EISSN 2421-7166

of the insolvent cooperative banks are, in the first place, written down (if losses do not equal the entire amount of the bank's common equity tier 1 (**CET1**) elements) or fully cancelled (if losses equal or exceed the entire amount of the bank's CET1 elements). Yet, if the cooperative form is to be retained after the upstreaming of losses as a preferred policy option to protect banking diversity in the relevant market, there is therefore a need, when the capital of the members of the cooperative is cancelled, for this membership to be restored in due course, after the bank is redressed via the down-streaming of the necessary funds from central body or institutional protection scheme. This invites adjustments e.g., to: (i) the rules for the implementation, after the down-streaming of funds by the central body or protection scheme, of a reserved capital increase of the cooperative bank to the benefit of its members, whose shares were cancelled; something that some jurisdictions already provide, granting to the cooperative bank a reasonable grace period to reach again the required number of members and in this way retain its cooperative form; (ii) the rules on the delegated capital increase, if necessary through the issuance of special shares (which qualify as CET1 capital instruments), servicing the funds' down-streaming by the central body or protection scheme to restore the capital requirements of the insolvent or troubled cooperative once the write-down or cancelation of the equity of the members of the cooperative has been performed (with parallel adjustments to the corporate governance entitlements, under the articles of association of the cooperative bank, to the capital instruments subscribed by the central body or protection scheme); (iii) allow the use also in liquidation of mergers, demergers or other adjusted P&A transactions in a way that members' deposits and loans to members may be more easily allocated to another recipient cooperative affiliated to the same cooperative group or protection scheme, which can continue to operate with those clients because they also become its members by way of demerger or P&A transaction, provided that the territoriality requirements under the prudential applicable framework are respected; (iv) the SPE strategy for the central body, its possible change of legal form (if it is a cooperative) preserving, however, to the extent possible, the cooperative nature of the affiliated banks.

10. – A third area where clarity and legal certainty is necessary, yet difficult to achieve because there are very disparate models which vary widely among jurisdictions (suffice to consider the rules on transactions between member banks and their affiliates under Article 23A and 23 B of the Federal Reserve Act and Title 12, Part 223 of Regulation W in the United States) [17] is on the treatment of intra-group (and related party) claims. Such treatment is of fundamental importance for the certaintly of a group-wide asset and liability management because, otherwise, apart from

[17] For the Euro zone, compare SRB Insolvency Ranking (2021).

ISSN 1972-9243 | EISSN 2421-7166

subordination, there is the risk of transaction avoidance. Furthermore, subordination of intra-group claims may have different effects. Intra-group transactions may be necessary to both (i) ensure the upstreaming of losses and/or the downstreaming of funds from the parent company, in which case subordination may be an element to ensure that goal, but also (ii) to facilitate liquidity to the subsidiary, in which case subordination may not be desirable. Thus, the rules applicable to banks' intra-group (and related party) claims should acknowledge, in our view, this reality, and provide exceptions for intra-group support agreements that ensure that the funding arrangements approved by competent authorities (and resolution authorities, in the case of resolution entities) operate as anticipated in the agreements themselves. European case law has already been confronted with related aspects, such as the treatment of instruments issued by a group entity other than the entity under resolution, i.e., whether they may be made subject to write down and conversion powers. This question was at the heart of case T-557/17 [18] on the resolution of BPE. The applicant was the owner of a bond issued by BPE Financiaciones, SA, a wholly owned subsidiary of BPE, which according to the SRB qualified as a Tier 2 instrument of BPE. Pursuant to Article 6(1)(d) of the resolution decision, the relevant bonds were converted into shares, which were subsequently transferred to Banco Santander. The case was declared inadmissible by the General Court, [19] but the judgment clarified some aspects. The Court dismissed the applicant's arguments that BPE Financiaciones was not the subject of a resolution scheme since it did not fall within the scope of the SRMR, and confirmed that the power to write-down and convert instruments does not depend on the entity which issued the bonds, but on the characteristics of those bonds ('Tier 2 instruments' under the CRR). [20] Having due regard to the crucial importance of these corporate and insolvency law risks the UNIDROIT provisional project of Subgroup 3 proposes for banks a targeted exemption from company law and insolvency law provisions on

[18] Case T-557/17 *Liaño Reig v SRB* (decision upheld by the Court of Justice, C-947/19P).

[19] The applicant had requested a partial annulment of the SRB's resolution scheme, to the extent it concerned the conversion of specific Tier 2 instruments into new shares of BPE. The Court considered, in short, that such partial annulment was not possible since the provision on the conversion of those Tier 2 instruments was not severable from the resolution scheme as a whole. The Court indicated that the conversion of all Tier 2 instruments was a prerequisite for applying the sale of business tool and for the sale to Banco Santander (that sale could not have taken place under the same conditions if some of the Tier 2 instruments outstanding as at the date of the resolution decision had not been converted). The provision on the conversion of some Tier 2 instruments was therefore intrinsically linked to the very substance of the resolution decision and could not be annulled separately.

[20] Instruments not directly issued by a bank may qualify as Tier 2 instruments. It was relevant in this respect that the applicant had not disputed that the securities issued by BPE Financiaciones constituted Tier 2 instruments of BPE.

ISSN 1972-9243 | EISSN 2421-7166

transaction avoidance, claw-back of assets, subordination, or consolidation, as well as general anti-fraud and anti-avoidance provisions for certain intra-group transactions consisting in the transfer of assets, assumption or re-arrangement of liabilities when these form part of an intra-group support agreement and/or a group plan that fulfils certain conditions that ensure that: (a) the agreement or plan seeks to restore the viability of one or more of the entities or facilitate a liquidation (including a transfer-based) solution; (b) the solution is preferable in terms of value maximisation in line with the objectives of bank liquidation; and (c) the interests of relevant stakeholders have been duly considered. It is also clarified that on one hand the conditions referred to above should be deemed to be fulfilled when substantive and procedural conditions for the intra-group support agreement or plan of have been respected and, on the other hand, directors should receive an exemption from liability under company law or insolvency law to the extent that they participate in the intra-group support agreement or plan, or its execution.

ISSN 1972-9243 | EISSN 2421-7166