The EU Special Resolution Mechanism – a necessary fix?*

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Introduction

In April 2014, at the final sitting of the last European Parliament, two pieces of legislation were adopted as part of the European Union's ("EU") move to create a "sounder and more effective financial sector".[1] The legislation was part of a series of initiatives that have been rolled out across the EU with the aim of promoting financial stability within Europe and developing mechanisms to reduce the likelihood that governments (and thus taxpayers) have to fund bank failure.[2] Bearing in mind that the cost to the public purse of the recent financial crisis has been calculated to be €591.9 billion across the EU between October 2008 and 31 December 2012 alone, there was a political imperative for action to be taken.[3]

The new legislation, which consists of the Banking Resolution and Recovery Directive ("BRRD")[4] and the Single Resolution Mechanism Regulation ("SRM"),[5] sets out new rules for dealing with failing banks. Broadly, the BRRD requires Member States to put in place standardised restructuring arrangements for banks and financial institutions[6] at a national level, whilst the SRM establishes a centralised resolution power across the Eurozone.[7] The SRM resolution power

[1] See "A comprehensive EU response to the financial crisis: substantial progress towards a strong financial framework for Europe and a banking union for the Eurozone" European Commission – Memo/14/244 dated 28 March 2014, at 1 "A robust financial framework for the single market".
[2] Ibid. There is no generally agreed definition of the word "bank", but for the purposes of this article it is intended to mean deposit-taking institutions which lend to businesses and individuals. See, for example, the definition of "credit institution" in EU Regulation 575/2013 (on prudential requirements for credit institutions and investment firms) which is "to take deposits or other repayable funds from the public and grant credits for its own account".
[3] Supra No.1 at 1.2.3.
[4] Directive 2014/59/EU.
[5] Regulation EU/806/2014.
[6] The BRRD specifically refers to "credit institutions" (see definition supra No. 2) and "financial institutions" which are both defined by reference to EU Regulation 575/2013. The definition of financial institutions includes financial holding companies, mixed financial holding companies, payment institutions and asset management companies (Art 4(26).
[7] "Eurozone" means those EU Member States which have adopted the Euro. It excludes, for example, the UK as the UK has retained Sterling as its currency.

extends only to those banks and financial institutions which are regulated under the Single Supervisory Mechanism ("SSM") [8] and it is intended to be entirely consistent with the provisions of the BRRD. In the event that a bank within the SSM fails, it will be subject to specific supranational protocols under the SRM to ensure that there is no "misalignment" between the approach taken in respect of that bank at a central (that is, EU level) and the approach that would be taken with regard to its resolution proceedings at a national level.[9]

So why was this EU legislation considered to be necessary and is it likely to achieve its goals of improving financial stability and protecting the taxpayer from future bank failures? This paper will consider what is meant by the term financial stability and then explore the development and scope of the new legislation and attempt to consider the extent to which it may succeed in its intentions.

Financial stability

It appears to be a truth universally acknowledged that achieving financial stability is a good thing, but what exactly is it? According to the European Central Bank ("ECB"), financial stability can be defined as:

> "a condition in which the financial system – comprising of financial intermediaries, markets and market infrastructures – is capable of withstanding shocks, thereby reducing the likelihood of disruptions in the financial intermediation process which are severe enough to significantly impair the allocation of savings to profitable investment opportunities".[10]

The ECB definition provides a useful starting point for understanding the goal to be achieved, although for practical purposes others have found the concept of financial stability harder to define. [11] Mark Carney has suggested that while the concept may seem "illusive and difficult to define", its antonym of "financial instability" is clearly understood. It has also been described as "a fuzzy concept with many

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[8] EU Regulation 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

[9] Supra No. 4, Recital No.8.

[10] See: https://www.ecb.europa.eu/pub/fsr/html/index.en.html (accessed 4 August 2014).

[11] See (i) Carney, M. "Stability of the Financial System- An Introduction" in "Stability of the Financial System Illusion or Feasible Concept?" Eds. Dombret, A. & Lucius, O. (2013) Edward Elgar Publishing, Inc.iat p1; (ii) Jeanneau, S. notes that one of the three problems that exist when trying to set financial stability objectives is defining what is meant by the term. See "Financial stability objectives and arrangements – what's new?" BIS Paper 76 (February 2014) at p1, available at http://www.bis.org/publ/bppdf/bispap76e_rh.pdf (accessed 4 August 2014).

dimensions that are hard to encompass in a single indicator".[12] What is clear is that financial stability is about the protection of the financial system as a whole (in other words, globally). The financial system has become increasingly complex: a large financial company may have subsidiaries which are based in a number of different jurisdictions and which may be deposit taking banks or which may provide different financial services, such as investment banking or insurance. Nor is the financial system limited to banks and financial services companies. It also includes interbank payment systems that enable transfers to be made between banks and other financial institutions both at a national and international level, as well as including trading platforms and clearing houses. The financial soundness of each institution within the system can potentially affect the financial soundness of others and, as Andreas Dombret and Otto Lucius have observed, "financial stability encompasses more than the sum of the individual risks that exist in a financial system".[13]

The importance of preserving financial stability was demonstrated by the financial crisis that began in 2007. The crisis was of systemic proportions in that it affected the global financial system; the interconnectedness[14] between banks and other financial institutions meant that the failure of one precipitated the failure of others (so-called "contagion") and, crucially, that these failures were not contained within national boundaries.[15] As discussed above, one of the consequences of the financial crisis was its great cost to governments and taxpayers as financial institutions were "bailed out" to ensure that essential bank functions were maintained. There was a sense that the banks and financial institutions involved in these failures had been taking excessive risks with depositors' funds, safe in the knowledge that they would be propped up by governments as they were "too-big-to-fail".[16]

Much work has been undertaken by the Basel Committee on Banking Supervision ("BCBS"), the World Bank, the International Monetary Fund ("IMF") and the

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[12] Vergara, R. "Macroeconomic and financial stability – challenges for monetary policy" November 2012 available at http://www.bis.org/review/r121120d.pdf (accessed 4 August 2014).
[13] Supra No.11 (i) in the "Preface" at p*xvii.*
[14] For a discussion of interconnectedness, see Campbell, A. & Moffatt, P. "Protecting interbank payments in the United Kingdom: an examination of the legal framework", Law and Financial Markets Review Vol 7 No 1 (2013) p22.
[15] Examples being the Fortis Group, which spanned Belgium, the Netherlands and Luxembourg; the Icelandic bank, Kaupthing, which was active in thirteen jurisdictions; and Lehman Brothers group which was active in fifty countries (as outlined in the Report and Recommendations of the Cross-border Bank Resolution Group of the Basel Committee on Banking Supervision published by the Bank for International Settlements in March 2010).
[16] Tucker, P. "Competition, the Pressure for Returns and Stability" in "Stability of the Financial System Illusion or Feasible Concept?" Eds Dombret, A. & Lucius, O. (2013) Edward Elgar Publishing, Inc. at p204.

Financial Stability Board ("FSB") since the commencement of the financial crisis on developing new global standards and regulations to achieve financial stability.[17] Initiatives have included the development of mechanisms designed to end "too-big-to-fail" (including measures to ensure that debt-holders are not simply "bailed out" but bear losses themselves through "bail in") as well as mechanisms to strengthen the individual components of the financial system through improved capital and liquidity rules and the improved regulation and supervision of banks and other financial institutions (much of which is beyond the scope of this article).[18]

The financial crisis also led to a recognition that it is essential to plan in advance for the possibility that a global, systemically important bank or financial institution ("G-SIB" or "G-SIFI") may become insolvent and fail. Ultimately, banking is a human activity: people need money to live and so money needs to be available to people. If individuals or enterprises cannot access their funds when they need to, then real problems can quickly arise, as happened in the UK when the computer systems at Royal Bank of Scotland, NatWest and Ulster Bank failed in the summer of 2012.[19] This was a relatively benign example of the failure of part of the financial system: there was not a capital or liquidity crisis, it did not affect the entire banking system and it was fixed relatively quickly with compensation being offered by the banks where appropriate. It is not beyond the bounds of possibility to consider, however, that a systemic failure for a prolonged period could lead to real human suffering or civil unrest.

It is now considered that it is not enough simply to strengthen the various components of the financial system in order to achieve financial stability, as this may be insufficient to prevent bank failure and its potentially serious consequences. It is necessary, as an additional matter, to arrange for the affairs of a failing or insolvent G-SIB to be managed in an orderly way in order "to safeguard the stability of the financial system" through bank insolvency proceedings.[20] This purpose of bank insolvency proceedings was identified in a report of the IMF and World Bank

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[17] Supra 13 (i). Carney considers that one positive outcome of the financial crisis was the fact that the G20 took on a leadership role in respect of global policy and gave the FSB a remit to develop and implement consistent standards to enhance financial stability.

[18] Including: BCBS "Basel III: A global regulatory framework for more resilient banks and banking systems" (December 2010/revised June 2011) available at http://www.bis.org/publ/bcbs189.pdf (accessed 4 August 2014); FSB "Key Attributes of Effective Resolution Regimes for Financial Institutions" (October 2011) available at: http://www.financialstabilityboard.org/publications/r_111104cc.pdf (accessed 4 August 2014).

[19] There were anecdotal reports of people unable to pay for petrol at garages and unable to meet rental and other important payments. The amount of money involved in inter-bank payments on a daily basis is very high: according to the Financial Times of 25 June 2012, RBS "handled more than 6.5bn inter-bank payments (£70tn worth) in 2010".

[20] International Monetary Fund ("IMF") and The World Bank "An Overview of the Legal, Institutional and Regulatory Framework for Bank Insolvency" (April 2009).

in 2009 (the "Report"). The Report provides what is possibly the most useful "rule of thumb" in terms of understanding what financial stability means, by identifying three of its most important aspects :

- "the smooth functioning of payment and settlement systems;
- the protection of the depositing public; and
- the preservation of the credit intermediation function."[21]

One point that is worthy of note and which will be discussed further later in this article, is that there is a recognition that the pursuit of financial stability may require intervention to take place where a bank is in the process of failing and has not yet failed. A failing bank would generally be understood to be in a pre-insolvent state in a world where insolvency is understood in terms of "cash flow" insolvency (inability to pay debts as they fall due) or "balance sheet" insolvency (where liabilities exceed assets).[22] In the quest for financial stability, however, it is now recognised that there is a third insolvency test for banks, that of regulatory insolvency, triggered where a bank has failed to meet a regulatory requirement. Bank insolvency proceedings are therefore encompassed within wider, bank resolution proceedings.[23]

The rationale for the legislation

Whilst a range of measures has been introduced to achieve financial stability, the focus of this article is on the BRRD and the SRM, the resolution tools that they have introduced and their scope. In order to understand why the BRRD and SRM have been thought necessary, it is useful to reflect upon the ways in which bank failure was addressed before the 2007 financial crisis and what problems have been found with existing systems, both within the UK and internationally.

The UK regime

Before 2007, the failure of a UK bank had been dealt with as a matter of corporate insolvency law. Banks were either put into administration or liquidation under the Insolvency Act 1986 (examples respectively being Barings Bank ("Barings") in 1995 and the Bank of Credit and Commerce International ("BCCI") in 1991). There was

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[21] Ibid, p16.
[22] In the UK this is set out in section 123 Insolvency Act 1986.
[23] Evidenced by the "triggers" used to initiate bank resolution proceedings in the new EU legislation as well as in the UK's Banking Act 2009.

no separate regime for failing banks. This changed when the UK bank, Northern Rock, got into financial difficulties and ultimately failed. Northern Rock had relied heavily on interbank borrowing to fund its mortgage lending. When the interbank markets significantly reduced their lending in the summer of 2007 as a result of the problems caused by US sub-prime lending, it found itself with a shortage of liquid assets. When this news became public, depositors started to withdraw their savings causing a run on the bank. The run only stopped when the UK Government confirmed that it would guarantee all deposits up to £35,000.[24]

When no private sector purchaser could be found to take on the bank's business, the UK Government enacted emergency legislation to enable Northern Rock to be taken into "temporary public ownership".[25] It also proposed a new initiative for dealing with failing banks under "a special resolution regime" ("SRR") the purpose of which was "to enable [the] smooth administration of such a bank to be combined with arrangements to ensure that insured deposits are safe and accessible".[26]

So what changed in 2007? First, there was a political driver for the new regime. There was a recognition that it should be made explicit that banks should be allowed to fail and that no bank would be "too-big-to-fail". This would prevent the moral hazard associated with banks taking on high risk activities on the assumption that the government (and therefore the tax payer) would bail them out. This was part of an increasing awareness that banks were "special" and provided essential functions enabling people to "live their lives" and that these functions had to be protected.[27] Second, it was also the case that neither the failure of BCCI or Barings had caused any systemic problems to the global financial system[28] whereas the failure of Northern Rock was considered to have posed a systemic risk with a real possibility of contagion to other banks.[29]

A third reason given for the necessity of the SRR came from Mervyn King, then Governor of the Bank of England. He pointed out that, at that time, the UK was the only member of the G7 to rely on its corporate insolvency regime to deal with failing banks and considered that the UK's regime was inadequate for this purpose. In an administration, depositors would have to wait a long time before their

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[24] For the background on the failure of Northern Rock see, for example, the House of Commons Treasury Committee Report "The Run on the Rock" fifth report of session 2007-08.
[25] The Banking (Special Provisions) Act 2008.
[26] Supra, No.23 at p3.
[27] Ibid, at p73.
[28] Ibid, at p9.
[29] Ibid, at p74.

deposits would be returned with the result that it would be in the interests of depositors to join a bank run. He advocated the introduction of a US Federal Deposit Insurance Corporation ("FDIC") style regime whereby prompt action could be taken to reorganise a distressed bank whilst it was still in a pre-insolvency state.[30]

The US regime

It is worth noting at this juncture that the US approach to bank failure has not originated from its corporate insolvency regime: commercial banks in the US are excluded from the scope of the US Bankruptcy Code.[31] The FDIC came into being in 1933 after the Wall Street Crash had eliminated confidence in the US banking system and bank runs were frequent. The FDIC (importantly it was a federal and not a local, state run system) was created to insure investors' deposits in the event of a bank failure so that investors would have the confidence to make deposits again. It was successful and confidence in the US banking system was restored.[32] Under the US FDIC system, the FDIC is not only an insurer of deposits, but can also act as the receiver of a failing bank and wind up its affairs. The FDIC can intervene at an early stage of bank failure and also has the power to set up a new entity or a bridge bank in order to transfer the functions of a failing bank to a solvent entity.[33]

The UK SRR

Political consensus having been achieved, in 2009 the UK Banking Act (the "2009 Act") was enacted, creating an SRR for failing deposit taking banks.[34] Under the 2009 Act, there were three "stabilisation" options for a bank in difficulties. It could be sold to a private sector purchaser; transferred in whole or part to a bridge bank (being a company wholly owned by the Bank of England); or taken into temporary public ownership (effectively nationalisation, with the banks' shares being transferred to a nominee of the Treasury or a company owned by the Treasury).[35]

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[30] Ibid, at p82.
[31] Note that the collapse of the US Lehmans Group was subject to the US Bankruptcy Code and went into Chapter 11 proceedings as it was not a commercial bank for the purposes of the US Federal Deposit Insurance Act.
[32] See Pesek, F.K. "The First Fifty Years – A History of the FDIC 1933-1983" (1984) Federal Deposit Insurance Corporation, Washington DC. For an overview of the current position on deposit insurance (which is beyond the scope of this article) see Campbell A. and Moffatt, P. "Protecting Bank Depositors after Cyprus" (2013) NIBLeJ 4.
[33] 12 U.S.C. 1821(c).
[34] "Bank" was defined in section 2 of the 2009 Act as a "UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits".
[35] Banking Act 2009, sections 11, 12 and 13.

The stabilisation options were supplemented by bank liquidation,[36] to enable the bank to be wound up if necessary and bank administration,[37] to enable the administrator to support a private sector purchaser or bridge bank. Notably, these options are not dissimilar to the options available to the FDIC in its capacity as receiver.

The stabilisation options are exercisable by the prudential regulator for banks (the Prudential Regulation Authority ("PRA")) in the event that certain conditions are met. These are either that "the bank is failing, or likely to fail, to satisfy the threshold conditions"[38] or that in the absence of the stabilisation provisions "it is not reasonably likely that action will be taken by, or in respect of the bank that will enable it to satisfy the threshold conditions".[39] The threshold conditions are, broadly, that the PRA is satisfied that the bank is being prudently managed, properly regulated and that those running the bank are properly skilled to do so and act with probity.[40] Prudent management includes ensuring that the bank has appropriate financial resources (assessed on a cash flow and balance sheet basis).[41]

Although the 2009 Act did not initially apply to investment banks, a special administration procedure for such banks was introduced by statutory instrument in 2011.[42] This was introduced with the intention of improving the speed with which client assets were returned to clients, as this had been a problem in the ordinary (that is, corporate insolvency law) administration of Lehman Brothers International Europe which had begun in 2008.

The 2009 Act has been used once for a small, Scottish building society ("Dunfermline"). The special administration regime for investment banks has been used in five cases, the most notable being that of MF Global, the UK subsidiary of a US investment bank. Neither case was particularly complex or systemically significant. In the Dunfermline case, a partial transfer of deposits and mortgage assets was made to a solvent building society, with other assets been transferred to a bridge bank (a wholly owned subsidiary of the Bank of England) which was

[36] Banking Act 2009, Part 2.
[37] Banking Act 2009, Part 3.
[38] Banking Act 2009, section 7 as amended by the Financial Services Act 2012 ("FSA 2012"). The "threshold conditions" are determined under section 55B of the Financial Services and Markets Act 2000 ("FSMA") as amended by FSA 2012 and set out in Schedule 6 to FSMA.
[39] Ibid.
[40] FSMA 2000 (Threshold Conditions) Order SI 2013/555
[41] Ibid, Article 5D(3).
[42] The Investment Bank Special Administration Regulations 2011 SI 2011/45.

subsequently sold to the same solvent building society. The remainder was put into bank administration.[43]

The BCBS, IMF and FSB perspectives

Having considered the UK developments in the resolution of failing banks (which can be seen to have been a direct consequence of market failure), it is now worth examining the developments in this area that were taking place at an international level.

In 2010, the Cross-border Bank Resolution Group ("CBRG") of the BCBS made a series of recommendations for the resolution of cross-border financial crises. The CBRG had noted the following:

> "The scope, scale and complexity of international financial transactions expanded at an unprecedented pace in the years preceding the crisis while the tools and techniques for handling cross-border bank crisis resolution have not evolved at the same pace. Some of the events during the crisis revealed gaps in intervention techniques and the absence in many countries of an appropriate set of resolution tools. Actions taken to resolve cross-border institutions during the crisis tended to be ad hoc, severely limited by time constraints and to involve a significant amount of public support."[44]

The UK was not alone in having been unprepared to deal with the particular needs of failing banks that operated across borders. Particular problems identified in the CBRG report were the tensions between a universal approach and a territorial approach when dealing with a failing bank or financial institution. An example cited was that of the systemically significant Belgian/Dutch financial conglomerate Fortis Group ("Fortis"). Fortis had subsidiaries in three EU countries: Belgium, the Netherlands and Luxembourg. When Fortis got into financial difficulties in September 2008, the focus of the solution to its problems was along national, rather than cross-border, lines. It was also clear that the Dutch and Belgian supervisory authorities had taken different views both in assessing the situation and as to its urgency. The CBRG report recognised that there was a limit to how

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[43] See Bank of England "News Release – Dunfermline Building Society" 30 March 2009, available at : http://www.bankofengland.co.uk/archive/Pages/digitalcontent/historicpubs/news/2009/030.aspx (accessed 4 August 2014).
[44] Report and Recommendations of the Cross-border Bank Resolution Group of the Basel Committee on Banking Supervision published by the Bank for International Settlements in March 2010, p3.

useful supervisory crisis management tools could be where there was a need for prompt action to stabilise the situation and ensure that business functions could be maintained in more than one jurisdiction.[45]

It was also significant that the EC Directive on the Reorganisation and Winding up of Credit Institutions (the "Winding up Directive")[46] did not play a bigger part in restructuring banks during the financial crisis. The Winding up Directive enabled[47] EU and EEA incorporated credit institutions to implement reorganisations under the law of the home jurisdiction which would then be recognised within the EU and EEA (so taking a universalist approach), but in practice, national authorities had pursued other resolution initiatives to deal with the resolution of cross-border banks. Some national authorities took what the CBRG described as a "cooperative territorial approach" whereby they provided funding locally to branches of overseas banks, so allowing cross-border institutions time to put restructuring arrangements in place.[48]

The issue of territoriality versus universalism is most notable in the US, where the US regulator will always seek to establish jurisdiction. If a foreign bank has a branch in the US, then a territorial approach will be taken; equally, where a US bank has a branch in an overseas jurisdiction, the approach will be universalist.[49] The aim is for assets to be realised to repay US creditors before any surplus is made available to creditors in overseas jurisdictions.[50]

The CBRG identified the particular issue that arose where financial groups were made up of multiple legal entities: the question of universality or territoriality in resolution proceedings in a particular jurisdiction would be irrelevant, as the resolution of subsidiaries of foreign institutions would not be affected by it. This was an issue that the IMF had also identified, defining the problem as follows:

> "Since many systemically important financial groups operate globally, an uncoordinated application of resolution systems by national authorities will make it much more difficult to both secure the continuity of essential

[45] Ibid, p11.
[46] Directive 2001/24/EC.
[47] This Directive has now been amended by the BRRD.
[48] Supra, No.39, p17.
[49] See Bliss, R.R. & Kaufman, G.G. (who describe the US approach as "schizophrenic") "US Corporate and Bank Insolvency Regimes: An Economic Comparison and Evaluation" WP 2006-01 at p23.
[50] Supra, No.39, p28.

functions (thereby limiting contagion), and ensure that shareholders and creditors bear the financial burden of the resolution process.[51]

If national authorities take separate and potentially inconsistent approaches to bank failure, it could result in an increase in the overall costs of resolution. Further, if different jurisdiction take different approaches when it comes financing of failing banks, the prospect of regulatory arbitrage emerges: a bank may choose to conduct its business in country A if it thinks it can find better protection there than in country B.[52]

The CBRG put forward ten recommendations. The first four can be broadly summarised as ensuring that national authorities have effective resolution powers that include stabilisation options such as those of the UK SRR; that frameworks should be put in place to ensure the coordinated resolution of financial groups; that national authorities should seek to ensure that their resolution measures converge with those of other national authorities; and that there should be improved coordination among national authorities in cross-border resolutions. Recommendations five to seven address issues of advance planning for the orderly resolution of G-SIFIs and information sharing. The IMF, whilst recommending an international treaty, recognised that this would not be feasible in the short term, as it would require a significant loss of national sovereignty. As an alternative, it recommended a "pragmatic framework for enhanced coordination".[53] With this approach, countries would aim to align their resolution frameworks as far as possible and amend their laws to require national resolution authorities to coordinate their response to a crisis with that of other relevant jurisdictions. It recognised that temporary public funding may be necessary as part of a resolution process and that this would require principles to be agreed. Finally, this approach would require subscribing countries to agree that urgent resolution processes could be implemented quickly and with cross-border effect.[54]

In 2011, the FSB published a document setting out "Key Attributes for Effective Resolution Regimes for Financial Institutions" (the "Key Attributes") which

[51] IMF "Resolution of Cross-Border Banks – a Proposed Framework for Enhanced Coordination" June 2010 available at https://www.imf.org/external/np/pp/eng/2010/061110.pdf (accessed 4 August 2014).
[52] This possibility was recognised by the Insolvency Law Committee of the City of London Law Society when commenting on the proposed Banking Act 2009.
See:http://www.citysolicitors.org.uk/attachments/article/119/financial-stability-and-depositor-protection.pdf.
[53] Ibid, p3.
[54] Ibid.

incorporated many of the recommendations and objectives discussed above, so setting out international "best practice". Not only does it recommend that resolution regimes should apply to all G-SIFIs, but also that resolution regimes should be put in place for financial market infrastructures (or "FMIs", which are, essentially payment and settlement systems, central securities depositories and central counterparties). It suggested that Crisis Management Groups should be set up for G-SIFIs in both the home and the main host jurisdictions to ensure effective and early resolution intervention in the event of a cross-border crisis.[55]

The Key Attributes advocate a wide range of resolution powers for the resolution authorities, including those contained in the UK's SRR. In addition to these are the possibility of removing and replacing the senior managers and directors of a failing bank and carrying out "bail in".[56] Bail in may be understood as the corollary of "bail out" in the sense that many banks were described as having been "bailed out" by the taxpayer during the financial crisis. The aim of bail in is to ensure that losses are absorbed by shareholders and certain unsecured creditors before calls are made upon government funding and the taxpayer is affected. Claims that are covered by deposit insurance or deposit guarantee schemes are carved out, so that individuals and certain small enterprises will remain protected up to a certain level in the event of a serious bank failure. Other unsecured claims that are not excluded, can be written down to zero or converted into equity.[57]

The BRRD and the SRM

The discussion above suggests that there is a clear consensus that increased global financial activity means that effective national special resolution regimes that can be managed on a cross-border basis are essential if financial stability is to be achieved. So how far do the BRRD and the SRM go in implementing the Key Attributes and establishing these regimes and what, if any, are the negative consequences of this legislation?

[55] FSB "Key Attributes of Effective Resolution Regimes for Financial Institutions" (2011).
[56] Ibid, p8.
[57] Within the EU, this means claims that are covered by the European Deposit Guarantee Scheme (Directive 94/19/EC as amended by Directive 2009/14/EC and now recast as 2014/49/EU), currently limited to €100,000 (£85,000).

The BRRD

It should be noted that the BRRD is an EU *directive*, which is significant insofar as an EU directive sets legislative goals for each Member State to achieve (and which can be achieved by each Member State in its own way and to a minimal level) whilst an EU regulation is a legislative act which binds all Member States. This means that national legislative approaches adopted under the BRRD will be standardised, but not necessarily harmonised (as they would be under a regulation). Nonetheless, the BRRD can be seen to be the first step in both establishing effective resolution regimes for all Member States and ensuring that they converge. Under the BRRD, a broadly consistent approach to resolution will now be taken across all Member States, whether or not they are in the Eurozone.

The BRRD, which applies to banks and institutions established within the EU as well as branches of institutions established outside the EU, gives effect to all the recommendations relating to advance planning for recovery and resolution, both for individual banks and for financial groups.[58] Each Member State must appoint a resolution authority to exercise the resolution tools and powers which may be a central bank, a ministry or other public administrative authority.[59] The resolution authority will be closely involved in the planning and application of resolution decisions. Consistent with the objective of reducing the cost to taxpayers, it is specified that an institution's resolution and recovery plans cannot assume any extraordinary financial support or central bank emergency liquidity assistance.[60]

It is intended that the resolution tools should be used by reference to the resolution objectives set out in the BRRD, so that the tools used are appropriate to the particular case. The resolution objectives are intended to promote financial stability (by ensuring the continuity of critical functions and the avoidance of systemic risk through contagion) and to protect the taxpayer (through the protection of public funds, depositors whose deposits are guaranteed and client funds and client assets).[61]

The BRRD is broadly similar to the UK's SRR with regard to the "trigger" and the resolution tools but has some additional features. The "trigger" for resolution action arises when the competent authority (essentially the bank regulator) and the

[58] Supra No. 4, Articles 5-14.
[59] Ibid, Article 3.
[60] Ibid, Articles 5 and 10.
[61] Ibid, Article 31.

resolution authority agree that the institution is "failing or likely to fail" and that there "is no reasonable prospect that any alternative private sector measures… would prevent the failure of he institution within a reasonable timeframe". Resolution action may also be taken in the public interest where it is necessary to achieve one of the resolution objectives and winding up an institution under ordinary insolvency procedures would not achieve that effect.[62] The bank's failure is assessed against the possibility that it may lose its status as an authorised institution as well as against its cash flow and balance sheet position and whether it is likely to require extraordinary public financial support.[63]

Four resolution tools are available: the bank's business may be sold to a third party purchaser; the bank's assets or shares may be transferred to a bridge institution created and owned by the resolution authority; assets of the bank may be transferred to a specific asset management vehicle owned by the resolution authority with a view to maximising their value through a sale or orderly wind down; and bail in may be applied in order to recapitalise an institution or to convert debt to equity in order to reduce the principal amount of debt to be transferred to a bridge institution or under the sale of business tool or the asset separation tool.[64]

The SRM

The purpose of the SRM becomes clearer when it is recognised that the BRRD can only achieve a minimal degree of harmonisation across the EU. As recital 10 to the SRM states:

> "[The BRRD] essentially provides for common resolution tools and resolution powers available for the national authorities of every Member State, but leaves discretion to national authorities in the application of the tools and in the use of national financing arrangements in support of resolution procedures."[65]

So whilst national approaches are broadly aligned, there are still issues as to how they will be implemented where a bank operates on a cross-border basis and more

[62] Ibid, Article 32(1), 32(5).
[63] Ibid, Article 32(4).
[64] Ibid, Articles 37– 43..
[65] Supra No.5, Recital 10.

than one national authority is involved (as happened with Fortis) and the possibility of regulatory arbitrage remains.[66]

The point of the SRM is therefore, to provide a centralised power of resolution in respect of all the Member States who fall within the Single Supervisory Mechanism (the "SSM").[67] The SSM applies to all Member States whose currency is the euro and any non-euro Member States that wish to join it. It is described as the first "pillar" of Banking Union in view of the enhanced regulatory and supervisory framework it established. Under the SSM, a single rulebook exists for banks operating within the Eurozone and new supervision powers have been given to the European Central Bank ("ECB"). Specifically, the ECB has taken on the direct supervision of G-SIBs, being banks with assets with more than €30 billion or which constitute at least 20% of their home country's GDP,[68] the monitoring of the supervision by national supervisors of smaller banks and responsibility for ensuring that the single rulebook is consistently applied within the Eurozone. The SRM provides a second pillar through the centralisation of the resolution process.

The SRM establishes a Single Resolution Board (the "Board") which is made up of a Chair, four permanent members, a national representative of the resolution authority of each Member State and two permanent observers, one from the ECB and one from the Commission.[69] When exercising its functions under the SRM, the Board is required to act independently and in the general interest, as are the national authorities.[70]

The Board has responsibility for drawing up resolution plans for ECB supervised banks and cross-border financial groups (essentially the G-SIBs and systemically important groups) whilst national authorities have responsibility for smaller entities. There are detailed requirements set out for what should be included in each entity's resolution plan. The Board will undertake an information gathering exercise with national authorities to assist it in drawing up plans prior to the SRM coming fully into effect in January 2016.[71]

[66] Described in supra No.5, Recital 19 as "the distortion of competition… due to divergent national practices."
[67] Established by Regulation EU/1024/2013.
[68] Ibid, Article 6.
[69] Supra No.5, Article 43.
[70] Ibid, Article 47.
[71] Ibid, Article 8.

The SRM is consistent with the BRRD and adapts and applies its rules as necessary. If, under the SRM, the Board performs a task or exercises a power that would have been undertaken by a national resolution authority under the BRRD, then the Board shall be considered to be the relevant national resolution authority (or to the extent that group intervention is required) the relevant group level resolution authority.[72] The resolution objectives, the tools available for resolution and the threshold for resolution are almost identical to those in the BRRD.[73]

The resolution process is triggered when the ECB decides, in consultation with the Board, that the bank is failing or likely to fail. It is also possible for the Board to initiate the process if it informs the ECB and the ECB takes no action for three days. In the absence of the availability of private sector interventions, the Board or the national resolution authorities could make the decision following discussions with the ECB.

If a decision is reached to implement a bank resolution scheme, the Board must notify the Commission and send it a copy of the scheme. This must be endorsed by the Commission within 24 hours. If the Commission objects to it, they must do so within 12 hours of receiving it and must notify the Council of its objection. The Commission must also notify the Council if it wishes the Council to approve a modification as to the amount of funding available for the proposal by a significant amount.

The funding for the proposal will come from the single bank resolution fund (the "Fund") which is being set up under the SRM and which will be managed by the Board. This requires each Member State to contribute to the Fund so that there is a pooled resource available to all Member States. The aim of the Fund is to eliminate the inconsistencies in approach to the financing of bank resolutions across Member States, so that a uniform approach is taken and the risk of regulatory arbitrage is eliminated.

The negative consequences of the legislation

The BRRD and the SRM reflect the Key Attributes outlined by the FSB. A harmonised system is now available across the Eurozone to deal with bank failure. There is a danger, however, that in pursuing the all-consuming outcome of financial

[72] Ibid, Article 5.
[73] Ibid, Article 18.

stability, there will be negative consequences from this legislation. Some have been anticipated in the legislation and will now be discussed, but there may yet be other, unintended consequences.

Distortion of the market

Whilst one of the intended outcomes of a standardised regime (as identified by the CBRG and discussed above) is to reduce the overall costs of bank failure, achieving this will carry a cost in terms of increased regulation. To the extent that these costs are borne by banks, their underlying costs of doing business will be affected. If the same, or broadly equivalent, regulatory costs do not apply in all jurisdictions, then banks may choose not to carry on business in jurisdictions where higher costs of regulation apply. The fact that regulation is standardised across the EU means that this problem is resolved within the Eurozone,[74] but it potentially remains an issue where banks in third countries are involved: why choose to operate in the EU if the business is cheaper to run elsewhere?

Realistically, most major banks from third countries will recognise that they need to do business within the EU. With the introduction of the BRRD and the SRM, it is much less likely that banks from third countries will find significant cost savings in choosing to undertake their business in one Member State above another.

Contracts with third parties

A second issue arises in relation to contracts that banks enter into with third parties. The pursuit of financial stability gives wide powers to resolution authorities in order to enable the reorganisation of banks very quickly to ensure the continuation of essential financial services. Although this objective is admirable in many ways, it does have consequences for third parties which enter into contracts with banks: how will their rights and their property be dealt with in the event that the bank with which they have contracted enters into a bank resolution process and what does this mean for legal certainty?

The particular problems that could arise were discussed in the UK during the consultation phase for the 2009 Act and have been further considered in drafting the Key Attributes.[75] A partial property transfer could, potentially, allow an asset

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[74] Supra, No.66.
[75] They were raised by the Insolvency Law Committee of the City of London Law Society, supra, No52.

that secured an obligation to become detached from that obligation leaving it unsecured and it could also cause disruption to set-off and netting arrangements.

In the UK, these difficulties were, largely, resolved by the introduction of secondary legislation which identified such security, set off and netting arrangements as "protected arrangements" in the event of a partial property transfer so that the rights were upheld. To the extent that a non-bank counterparty was found to have been disadvantaged by a partial property transfer, the approach taken was to compensate counterparties after the event. In this way, the objective of achieving financial stability still superseded the immediate interests of creditors, but their interests were not entirely overlooked.[76] The same approach is reflected in the BRRD: there is no requirement to obtain the consent of the creditors when exercising the resolution powers[77] but there are safeguards to ensure that no creditor is worse off than they would have been had a normal winding up taken place.[78]

The UK discussions also recognised that the mere fact of a bank entering into resolution proceedings may, of itself, trigger an event of default under a financial or derivatives contract, enabling the non-bank counterparty to close out and terminate it. This has subsequently been recognised as having the potential to affect financial stability where a bank has multiple counterparties, as they could decide to close out simultaneously. The CBRG recommended that resolution authorities should be given the legal right to delay the operation of termination clauses to enable such financial contracts to be transferred to another entity or, in cases where transfer is not possible, to enable the markets to continue to function.[79] This recommendation is reflected in Key Attribute 4 which first suggests that entering into a resolution process should not trigger termination provided that payment obligations are being met and collateral is being provided as required. If termination rights are otherwise triggered in the context of resolution, the delay should be limited (it is suggested that two business days is appropriate) whilst all the contracts of a particular counterparty transferred to a sound third party or bridge institution. After the termination of the stay, termination rights can be

[76] The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009, amended by the Banking Act 2009 (Restriction of partial Property Transfers) (Amendment) Order 2009 and the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009.
[77] Supra No [? 4] BRRD art 63(2).
[78] Ibid, Arts 34 and 73-75.
[79] Supra [CBRG doc Recommendation 9, page 2]

exercised in respect of other contracts not transferred to the third party or bridge bank.[80] The BRRD includes a stay on broadly these terms.[81]

Initiating resolution proceedings

Unlike ordinary corporate insolvency proceedings, which are generally initiated by a creditor or the company's directors, bank resolution proceedings are started by the resolution authority. But what if the resolution authority exercises its power in such a way that it interferes with the business of the bank unnecessarily early and precipitates bank failure?

It seems unlikely that this will be a serious problem under new EU regime, if only because of the enhanced arrangements for G-SIB resolution planning which should ensure regular, close communication between the ECB and the Board.[82] Other, non-significant banks will have to work with their competent authority (their regulator) to draw up their own recovery plans and each resolution authority has to work with the relevant competent authorities to produce resolution plans.[83] The existence of the planning and annual review process should mean that the relationship between banks and their regulators going forward is a cooperative one which leads to limited opportunity for misunderstandings. Certainly the UK's PRA has actively sought to establish a culture of openness and support for banks in difficulties and the reality is that under the 2009 Act, no action can be taken lightly as discussion with the Bank of England and the Treasury is required.[84]

What may be more likely in the EU context is that delays will occur, despite the stated intention that decisions must be reached quickly to enable swift action to be taken at bank level. Delays may result from the process for the approval of bank resolution proceedings under the SRM. Although the process is intended to be centralised, it will still involve national institutions, the Commission and the Council. Time scales are set for responses to be provided, but it is not clear what would happen if they were not adhered to. When Northern Rock failed, poor communication between the central bank, the prudential regulator and the Treasury meant that it took several days to reach consensus as to what should be

[80] Key Attributes Annex IV.
[81] BRRD Art 71.
[82] SRM Art 8
[83] BRRD Arts 5 and 10.
[84] The Prudential Regulation Authority's approach to banking supervision, April 2013. Available at: http://www.bankofengland.co.uk/publications/Documents/praapproach/bankingappr1304.pdf.

done, even though cooperation agreements existed between the parties. There is also a possibility that there could be political interference in any decision through the non-voting members of the Board (being the representatives from the ECB and the Commission).

The gaps in the legislation

If there are gaps in the legislation, they stem from the fact that the legislation is only locally applicable and only applicable to particular kinds of institutions. Whilst the EU undoubtedly represents a large chunk of the international market place, it does not represent the global market place. Bearing in mind that the quest for financial stability is, essentially, a quest for global financial stability, until all non-EU jurisdictions adopt the same kind of resolution regimes as the Member States, issues of territorialism, regulatory arbitrage and the possibility of financial shocks from other jurisdictions will remain. Similarly, until all entities involved in credit intermediation are subject to the same kinds of resolution proceedings, the gaps will remain.

Property located outside the jurisdiction

The new EU regime overcomes any conflicts of private international law that may arise between Member States with regard to the recognition and enforcement of contractual and proprietary interests which may be affected by a cross-border bank resolution process. This is achieved by giving each Member State the power to enforce crisis management measures or crisis prevention measures taken by other Member States and ensuring that they give each other "all reasonable assistance". [85] Matters become more tricky where third countries (that is, countries which are not Member States) are involved. Where property is located in a third country, no national or central resolution authority would have jurisdiction to manage that property as part of an EU resolution process. Under the BRRD, the best that can be achieved is that national resolution authorities can require administrators to "take all necessary steps" to ensure that transfers become effective although there is a recognition that this may never be achievable.[86] The BRRD envisages that agreements could be entered into with third countries with a view to agreeing resolution and recovery plans and also allows resolution authorities (whether through a resolution college, or individually) to determine whether it is appropriate

[85] BRRD Art 66.
[86] Ibid, Art 67.

or not to recognise and enforce resolution proceedings initiated in a third country, although this will not necessarily be reciprocated.[87]

The lack of jurisdiction beyond the EU can have an impact for EU creditors in terms of recoveries. The EU regime (except where expressly stated not to be) is consistent with principles of general insolvency law, in that creditors bear losses in accordance with the order of priority of their claims under normal insolvency proceedings and that all creditors of the same class, wherever they are located, are treated equitably.[88] There is a risk with third countries that assets of a failing bank or branch located outside the EU may be applied to repay local creditors first rather than to pay all creditors of the same class wherever they are located.[89]

Risks from sovereign debt crises

The new EU regime can do little to address issues such as those arising from the US Supreme Court decision in *Republic of Argentina v NML Capital Ltd.*[90] The respondent held bonds issued by the Republic of Argentina as part of its 2001 sovereign debt restructuring. When a further restructuring took place in 2005 and 2010, bondholders were offered new securities in exchange for those it had defaulted on. The majority of bondholders accepted new bonds, but the respondent did not and sought to enforce its debt through extraterritorial asset discovery. Argentina claimed that this offended its sovereign immunity, with the US Supreme Court deciding otherwise. The effect of the decision was to derail the long term debt restructuring arrangements that the Argentinian government had hoped to put in place and raise the possibility that Argentina would default again.[91] A sovereign debt crisis has the potential to affect the wider financial system as was seen within the EU when the Republic of Cyprus (an EU Member State) got into financial difficulties which had an impact on the stability of the Greek banking system and the Eurozone beyond. Restoration of stability ultimately required financial support from the IMF and the ECB.[92]

Risks from shadow banking

[87] Ibid, Arts 93 and 94.
[88] BRRD Art 34.
[89] See supra, CBRG para 54
[90] 573 U.S._(2014).
[91] "Supreme Court sides with Holdout Creditors in Argentina Debt Case", Wall Street Journal, 16 June 2014. http://online.wsj.com/articles/u-s-supreme-court-rejects-argentina-appeal-in-sovereign-debt-case-1402926119. (Accessed 18 August 2014).
[92] See "Eurogroup Statement on Cyprus" 25 March 2013 available at: http://eurozone.europa.eu/newsroom/news/2013/03/eg-statement-cyprus-25-03-13. (Accessed 18 August 2014).

The focus of the EU regime is on the protection of banks as well as other entities under the consolidated supervision of the ECB including parent undertakings, financial holding companies, investment firms and financial institutions.[93] Within the oversight of groups of companies, there will be some "mixed" holding companies which have one or more subsidiaries (including insurance companies) that are regulated.[94] Clearly, these are the main entities that will be involved in credit intermediation and they are subject to defined regulatory requirements and are supervised. They are not, however, the only entities that are involved in credit or financial intermediation: there are other, non-bank financial intermediaries that operate outside the "regular" banking system and form the "shadow" banking system.

These entities may fall outside the scope of formal regulation and supervision. As has already been discussed, it is important for people and institutions to be able to access their cash and, if funding is to difficult to obtain through formal routes, people will often try and find alternatives.[95] The FSB recognises the advantages that shadow banking can bring to the real economy, but notes that:

> "such channels can also become a source of systemic risk, especially where they are structured to perform bank-like functions (e.g. maturity transformation and leverage) and where their interconnectedness with the regular banking system is strong."[96]

Since 2011, the FSB has sought to monitor the global shadow banking system with a view to improving its oversight and regulation and the FSB's work in this area is ongoing. In 2012, the financial assets of "other financial intermediaries" (which definition excludes banks, insurance companies and pension funds) were valued at \$71.2 trillion.[97] The US the assets were \$26 trillion, in the Eurozone £22 trillion and the UK \$9 trillion.[98]

Although some aspects of shadow banking may be regulated, if for example, an individual involved is a regulated individual, or the entity is part of a financial group and so subject to local financial regulation, not all entities will fall within the scope

[93] Supra No.5 [SRM] Art 2.
[94]Ultimately defined in Article 2(15) 2002/87/EC.
[95] The recent emergence of "crowd" funding is an example of this. It is defined in the online Oxford English Dictionary as "the practice of funding a project or venture by raising many small amounts of money from a large number of people, typically via the Internet". See: http://www.oxforddictionaries.com/us/definition/american_english/crowdfunding (Accessed 18 August 2014).
[96] FSB "Global Shadow Banking Monitoring Report" 14 November 2013, p1.
[97] Ibid, p8.
[98] Ibid p9-10.

of a resolution framework such as that of the EU. It therefore remains a possibility that a foreign shadow bank entity could fail and cause disruption to the financial system whilst falling outside a resolution mechanism.

Will the legislation achieve its objectives?

The objectives of the legislation were to improve financial stability and to reduce losses to tax payers in the event of bank failure. So, how likely is it that these objectives will be met?

It seems likely that the new, harmonised regime will be an improvement on the previous system under which individual Member States had different tools available to manage bank failure. The evidence suggests that these tools were not sufficiently integrated to enable cross-border banking failures to be managed effectively during 2008 – 2009. The fact that banks, regulators and resolution authorities need to work together to plan for crises and undertake annual reviews would suggest that the new regime brings with it new opportunities for cooperation and communication.

There is a caveat with this: although the BRRD applies to all Member States, the SRM applies only to participating Member States, being those within the Eurozone. There is no indication that the UK, which is arguably the EU's largest financial centre, will ever join the SSM or the Eurozone and although its resolution framework is aligned to those of the participating Member States, the extent of its cooperation in a cross-border bank insolvency is not clear. Nonetheless, if cooperation and communication is improved within participating Member States at the point of implementing the plans, this would only be a good thing. Good communication between regulators and national authorities in times of crisis will not necessarily happen, however, just because someone has legislated for it.

It is clear that much effort has been put into considering what "best practice" in the matter of bank resolution should be through the research that has been undertaken by the IMF, the World Bank, the CBRG and ultimately the FSB in producing the Key Attributes. Whilst the EU regime focuses on banks, so potentially leaving some SIFIs and shadow banking entities out of the resolution loop, the Key Attributes recognise that FMI's also need to have their own resolution processes and doubtless more work will be done on producing these. There is also an increased awareness of the risks to financial stability posed by shadow banking and the fact that these risks are being monitored by the FSB would suggest that appropriate regulation and oversight will emerge over time.

The limitations of the scope of the legislation (it does not extend beyond the EU unless specific agreements are put in place) may not necessarily be as great a problem as it may first appear. The Key Attributes have been endorsed by the G20 leaders and so have largely been incorporated into domestic legislation in Switzerland and the US, as well as in the EU through the BRRD and SRM. As Paul Tucker has observed, the resolution framework now:

> "accounts for the home countries of 24 of the 28 globally systemic banks listed by the FSB and the Basel Supervisors Committee [in 2012]…. Indeed, it is not an exaggeration to say that the EU's Directive is the keystone to breaking the back of the TBTF problem."[99]

All this would suggest that, as the too big to fail problem is seen to be a key factor in causing financial instability, if it is largely cured by the EU regime, then there should be a direct improvement in financial stability. Tucker suggests that that the Key Attributes are likely to be taken up in a number of jurisdictions across Asia and Latin America, so whilst the coverage of the resolution framework is not yet global, a significant part of the world is covered by it.

Concerns have been raised as to whether an approach to bank resolution that was first adopted by the FDIC to manage the failure of "high street" or commercial banks would work for large, complex, cross-border institutions.[100] This concern seems well founded. The problem identified by Tucker is that it would be extremely difficult to split such a bank into a "good bank/bad bank" quickly and, even if it were possible, a bigger problem would arise in trying to wind down a trading book.[101] For such banks, Tucker sees the newly established bail in resolution tool as the solution: if managed properly, it should enable swift recapitalisation of the bank so that the impact on financial stability is minimised.[102]

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[99] Tucker, P. "Resolution and future of finance". Speech given by Paul Tucker, Deputy Governor Financial Stability, Member of the Monetary Policy Committee, Member of the Financial Policy Committee and Member of Prudential Regulation Authority Board at the INSOL International World Congress, The Hague, Monday 20 May 2013.

[100] Ibid, see also the Insolvency Law Committee of the City of London Law Society [supra No.] at paragraph 17; Bliss, R. & Kaufman, G. "US Corporate and Bank Insolvency Regimes: an Economic Comparison and Evaluation" 10 January 2006, WP 2006-01.

[101] Supra, No.99.

[102] It is beyond the scope of this article to discuss this in detail, but it can either be achieved by bail in at a single point of entry via the top company (with all the losses transferred to the top co) or via multiple points with the group being broken up with bail in happening at a regional level. Supra No.5 recital 84 and supra No.99.

The existence of bail in as a resolution tool should help to achieve the objective of limiting the cost to tax payers of a bank failure. This, coupled with the creation of the €55 million (approximately) Fund to manage the costs of bank resolution, would also suggest that tax payers will not be the first port of call. There is a note of caution with this: although *ex ante* funding is being made available for the Fund it is being collected from each Member State over a period of eight years, starting in 2016, so will not be completely mutualised until 2024.

The EU regime has undoubtedly improved things within the Eurozone and will go some way to improving financial stability and reducing the costs to tax payers that have previously been associated with bank failure. Whether the necessary cross-border cooperation that will be required to address a cross-border banking crisis beyond the EU exists, particularly in the US, which has tended to take a protectionist approach to bank insolvency, remains to be seen. Bail in is, as yet, untested and whilst it looks as though it will provide a good way of protecting tax payers from losses, this cannot be assured until it can be established that it carries no unforeseen or unintended consequences.

Ultimately, despite the new regime, the EU remains susceptible to financial shocks that emanate from the failure of systemic financial institutions and sovereigns beyond its borders. Over time, however, the work of the FSB in risk reduction and in standardising resolution processes globally, may go some way to limiting their effects.

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