



Bank Rescues and Resolution in Europe: On the Brink of Reform?

The Tercas Judgment and Future Reform of the
BRRD and the Banking State Aid Framework

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Cleary Gottlieb – Thursday, June 10th, 2021

*The opinions expressed and conclusions drawn are those of the author and do not reflect the views of
the Bank of Italy.*

An issue from the *Tercas* case

OPINION OF ADVOCATE GENERAL TANCHEV

delivered on 29th October 2020

Case C-425/19 P

Paragraph n. 121:

«I do not concur with the Commission's argument that should the Court consider that the measures at issue are not imputable to the State and that, therefore, they do not constitute State aid, no measure taken by a deposit guarantee scheme would ever constitute State aid, with the result that those schemes could use their available financial means for intervention measures in order to prevent the failure of a credit institution without the latter having been placed under resolution. In the Commission's view, this would jeopardise the premiss on which Directives 2014/49 and 2014/59 are based, that is, that all measures taken by deposit guarantee schemes constitute State aid».



Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes

- Art 11(3) alternative measures (preventive intervention)
- Art 11(6) interventions in the context of national insolvency proceedings
- Whereas n. 16, compliance with State aid rules

National DGS, which role?

- EDIS: when and what?
- DGS: limited scope of intervention in the current EU framework (s.c. «super priority» rule – BRRD, whereas n. 111 and art. n. 108)
- DGS: least cost principle test:
EU Directive 2014/49 artt. 11(3.c)/11(6)

Follows...

- Least cost and banks with a large amount of covered deposits.
- Issue: risks and costs for the system and the financial institutions related to a possible run on deposits.

The no-man's-land in banking crisis

- «Resolution is for the few and not for the many»
- The EU framework, a leading case:
- ECB determined that ABLV was failing or likely to fail
- (EU Court of Justice C-551/19 and C-552/19 May 6th, 2021)
- SRB decision not to adopt a resolution scheme
- National regimes apply

How to leave the no-man's-land

- Harmonisation of orderly liquidation regime for banks, in particular small and medium size banks
- A full harmonisation of insolvency regimes may be extremely difficult due to national policy choices laid down in national frameworks

Follows...

- However, a EU framework for dealing with the crisis of banks outside resolution regime may be designed
- Alternative measures by DGS in liquidation to finance orderly market exit of distressed banks
- Today: by national DGS
- Tomorrow: by the manager of EDIS ?

The background of the slide is a blurred image of the European Union flag, which is a blue field with twelve gold stars arranged in a circle. The flag is shown waving, and the background is out of focus, showing a light blue sky and some indistinct shapes.

Thank you for the kind attention



BANCA D'ITALIA
EUROSISTEMA

The crisis management framework
for banks in the EU.
How can we deal with the crisis
of small and medium-sized banks?

[https://www.bancaditalia.it/pubblicazioni/collana-seminari-convegni/2021-0024/n-24 The crisis management framework for banks in the EU.pdf](https://www.bancaditalia.it/pubblicazioni/collana-seminari-convegni/2021-0024/n-24%20The%20crisis%20management%20framework%20for%20banks%20in%20the%20EU.pdf)