Proportionality in resolution
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Proportionality and resolution

• Overarching principle of EU legal framework: Article 5 of the EU Treaty and the 2nd Protocol

• The three dimensions of proportionality:
  - suitability
  - necessity
  - proportionality *stricto sensu*

• Proportionality as a tool

• How to assess it in the resolution framework?
  - The resolution objectives (Article 14 SRMR): idiosyncratic elements and systemic aspects
  - The possible impact on the “business judgment area” and the “property rights”
  - The similarities with banking supervision, and the distinction
  - The importance of *due process* to assess proportionality
Proportionality and resolution

• Maximum harmonization and proportionality: no conflict between the two

• The distinction between:
  - proportionality in the definition of rules and requirements, and
  - proportionality in the calibration of decisions and requirements to specific cases

• The experience of the Single Rulebook

• The Commission recent call for evidence in the financial sector
Resolution plans’ content

Simplified resolution plans shall apply:

• If "the failure of the institution or group is not likely to have significant adverse consequences for the financial system or be a threat to financial stability" (Article 11(3) SRMR)

• For this purpose the resolution authority shall take into account:
  a) nature of the business; shareholding structure; its legal form; risk profile; size and legal status; interconnectedness to other institutions or to the financial system in general; scope and the complexity of its activities;
  b) membership of an IPS or other cooperative mutual solidarity systems;
  c) exercise of investment services or activities;
  d) and whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy.

• Simplicity determined by idiosyncratic elements and systemic features which make insolvency feasible and credible

• The impact on the MREL level
The decision to trigger resolution: the “public interest assessment”

- A resolution action shall be treated as in the public interest if:

  (i) it is necessary for the achievement of, and
  (ii) is proportionate to one or more of the resolution objectives; and
  (iii) winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent. (Article 18(5) SRMR).

- The link with the decision to opt for a simplified resolution plan

- The choice of a proportionate resolution tool
The decision to exempt certain liabilities from bail-in

- Art. 27 (5) SRMR. “In exceptional circumstances...certain liabilities may be excluded...where

b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines...

c) the exclusion is strictly necessary and is proportionate to avoid giving rise to widespread contagion…”

- The link with the decisions made on the resolution strategy and the MREL during the resolution planning stage: the need for consistency between the two decisions
Measures to overcome impediments to resolvability

- Article 10(10)(2) SRMR:
  “In identifying alternative measures, the Board shall demonstrate how the measures proposed by the institution would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. ..The Board shall also take into account the need to avoid any impact on the institution or the group concerned which would go beyond what is necessary to remove the impediment to resolvability or would be disproportionate”

- The US experience shows that this is an articulated process, which can have significant impact in terms of restrictions on business as usual
Calibration of the MREL

- MREL as a case by case decision within a predefined framework

- The recent proposal by the Commission

- Calibration of MREL: the various dimensions of the MREL
For completeness: Article 55 and the contributions to the Fund

- The on-going revision of Article 55 of the BRRD

- The modulation of the contributions to the Single Resolution Fund

- Reporting for resolution purposes
Conclusion

Proportionality is enshrined in the key provisions of the BRRD

Building the new resolution regime is a journey

Time will tell how proportionality has been reflected in the concrete experience of resolution planning and decision