



Bank resolution and human rights – EU perspective

Charles Canonne, Financial Stability Unit



EU involvement in bank resolution

Ensure treaty compliance of national resolution action

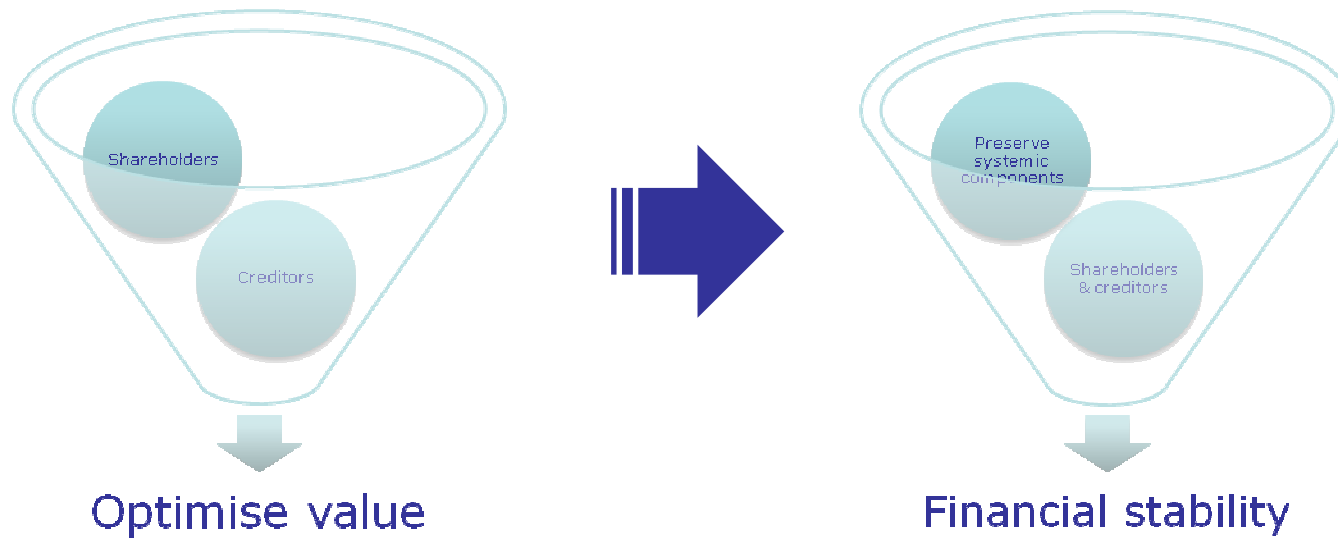
- **Non discrimination**
- **Internal market**
- **State aid**

Secondary legislation

- **Winding up directive**
- **Bank recovery and resolution directive (BRRD)**

Towards integrated resolution in the Banking Union (SRM)

Individual rights vs public intervention - From liquidation to resolution





Fundamental Rights in EU legal order

Treaty fundamental freedoms

- **Non discrimination and IM freedoms**

6TEU: ECHR and constitutional traditions common to the MS = GPL

Charter

- **Legally binding force (decla 1)**
- **Adressed to EU + MS in implementing EU law (Charter 51)**
- **“Confirms” rights guaranteed by ECHR (decla 1)**
- **Charter rights which correspond to ECHR rights have same meaning and scope (Charter 52)**



Limitations to rights

52 Charter

- **Provided by law**
- **Respect essence of right**
- **Proportionality to objective of general interest recognised by the EU**



Limitations to rights in BRRD

Right to property (17 Charter)

- **Bail-in, restriction to termination/enforcement/close-out/acceleration rights**

Freedom to conduct a business (16 Charter / 52 Charter)

- **Power to remove impediments / impose structural changes**

Right to effective remedy (47 Charter) / due process

- **Review limited to compensation damages**



Financial stability as general interest objective

Precedents

- **Protect banking and financial systems**
- **Maintain good reputation of national financial sector**
- **Short selling regulation**



Property right

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Scope

17 Charter, 1 P1 ECHR.

*right to own, use, dispose of and bequeath his or her
lawfully acquired possessions.*

Broad scope.

Shares: ECHR Bramelid and Malmström vs Sweden 1982



Limitations to property right – admissibility

Serves legitimate public interest

Interference proportionate

Provided by law

Fair compensation

Legal certainty



Limitations to property right - resolution

BRRD - Special manager and right to take control

- **Debate on intrusiveness and role of governing bodies**

BRRD - Transfer

BRRD - Bail-in

- **Write down of shares**
- **Write down and conversion of claims**

National expropriation – SNS Reaal case



Proportionality

Intensity of the action

- **1st Valuation: assets and liabilities**
- **Independent, fair, prudent, realistic**
- **Inform**
 - Whether conditions for resolution are met
 - Whether action is appropriate
 - Extent of cancellation/dilution of shares, write-down and conversion

Intensity of the burden sharing

- **Pari passu and non creditor worse off principles**
- **2nd valuation: compare with liquidation treatment**
shareholders and creditors would have received if the
institution had entered liquidation immediately before
the transfer, write down or conversion was effected

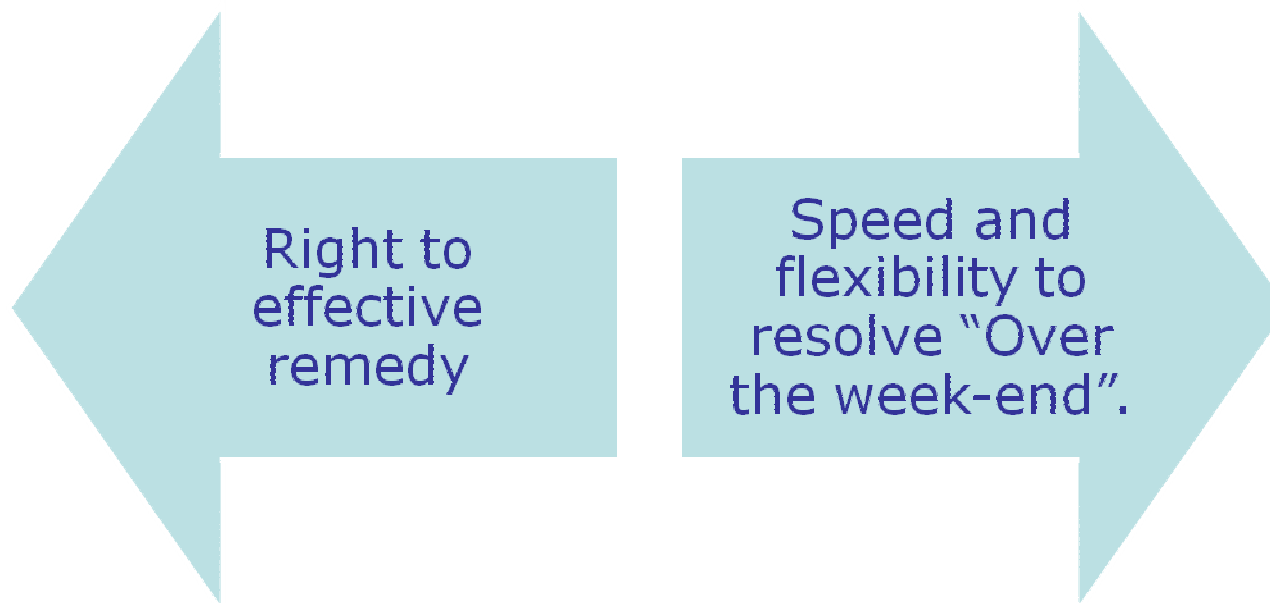


Judicial review

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An inherent tension





The Commission proposal

No ex ante judicial approval

Right to apply for review, subject to limitations:

- **No automatic suspension**
- **No suspension order (immediately enforceable)**
- **Limited grounds of review**
 - Legality of decision
 - Legality of implementation
 - Adequacy of compensation
- **Restrictions of effects of annulment where necessary to protect third parties**

Restrictions on normal insolvency proceedings



Council General Approach (amendments)

Ex ante judicial approval (option)

Right to appeal crisis prevention measures

Right to review resolution actions:

- **No limitation of grounds**
- **"Rebuttable presumption" that suspension would be against public interest**

Limited liability of authorities and staff (option)



THANK YOU

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