

Cross-border Bank Resolution and Private International Law

The following information have kindly been provided by Prof. Dr. Matthias Lehmann, University of Bonn.

Bank resolution is key to avoiding a repetition of the global financial crisis in which failing financial institutions had to be bailed out with taxpayers' money. It permits recapitalizing banks or alternatively winding them down in an orderly fashion without creating systemic risk. Resolution measures, however, suffer from a structural weakness. They are taken by nation-states with territorially limited powers, yet they target entities or groups with global activities and assets in many countries. Under traditional rules of private international law, these activities and assets are governed by the law of other states which is beyond the remit of the state undertaking the resolution.

Matthias Lehmann (University of Bonn) addresses this problem in a recent paper titled "Bail-in and Private International Law: How to Make Bank Resolution Measures Effective Across Borders". He illustrates the conflict between resolution and private international law by using the example of the European Union, where the limitations of cross-border issues are most acutely felt. He explains the techniques and mechanisms provided in the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism (SRM) Regulation to make resolution measures effective in intra-Eurozone cases, in intra-EU conflicts with non-Euro Member States and in relation to conflicts with third countries. Besides this, he also throws light on the divergences and flaws in the BRRD's transposition into national law. In this context, he discusses two recent cases, *Goldman Sachs International v Novo Banco SA* [2015] EWHC 2371 (Comm), and *BayernLB v Hypo Alpe Adria (HETA case)* Regional Court, Munich I, judgment of 8 May 2015, that have dealt with the recognition of foreign resolution acts. A brief overview of third-country regimes furthermore highlights the problems in obtaining recognition of EU resolution measures abroad.

