

# Abstract of the doctoral thesis

## The Bail-in-tool

– Sovereign loss allocation within the resolution of systemically important banks –

submitted by Roman André Kowolik

The thesis analyses the integration of the Bail-in-tool into the German legal system (1.) and how the tool's structure addresses its specific characteristics (2. and 3.).

1. The Bail-in-tool is part of a special insolvency proceeding for systemically important banks – the so called bank resolution – and was implemented into the German legal system after reforms on the European level. It is supposed to ensure a loss allocation compliant with the principles of a market economy in case of a bank's failure. For this purpose, the Bail-in-tool grants powers to write down or convert into equity the liabilities of a bank to a resolution authority. In order to distinguish the tool from comparable instruments, two characteristics are decisive from a German law's perspective: First, the Bail-in-tool is to be applied by a public authority – it is a sovereign action. Second, the Bail-in-tool is only applicable in the case that the failing bank is systemically important.

2. As part of a special insolvency proceeding for systemically important banks, the Bail-in-tool must serve two conflicting objectives. First, it needs to allocate losses according to the principles of a market economy. Second, it is to avoid systemic shocks. For that reason, there are exclusions from the application of the Bail-in-tool addressing systemic risks and thus preventing that the scope of the bail-in-tool hinders its application. Certain liabilities are always excluded – a decision of the resolution authority is not required. In addition, the resolution authority can exclude other liabilities if this is necessary within a resolution proceeding. These exclusions enable the resolution authority to distribute losses among creditors without jeopardising the stability of the financial system. Simultaneously, they can be exploited in a way that undermines a loss allocation according to the principles of a market economy. The potential of abuse which is combined with those exclusions not requiring a decision by the resolution authority can be reduced by a new regulatory loss absorbing and recapitalisation capacity introduced together with the resolution framework. The potential of abuse linked to the other type of exclusions can't be controlled this way. Therefore, the thesis analyses both, the potential of existing rules to limit the possibility of exploitation through judicial control and how the resolution authority receives information in order to make an informed and differentiated decision. The thesis concludes that even though there are a lot of rules that limit the resolution authority to exploit its power to exclude further liabilities, the authority's considerable degree of discretion reduces checks and balances by means of judicial control. Furthermore, the powers of the resolution authority to gather specific information include a gap that need to be closed.

3. Since the application of the Bail-in-tool does not require consent of the creditors, they have no influence on the write-down and conversion of their liabilities. Hence, the rules governing the Bail-in-tool must safeguard the interests of the creditors not to be victims of an arbitrary application of the tool. The thesis identifies specific safeguards that constrain the resolution authority when it comes to a Bail-in. Those safeguards include the rules that govern the assessment of the capital shortfall and the determination of the conversion rate, further exclusions from the application of the Bail-in-tool, the sequence of write-down and conversion, the principle of equality and the so called no-creditor-worse-off-principle. On the one hand, the analysis of the mechanisms to enforce the safeguards shows that those mechanisms are shaped by the multilevel context in which the Bail-in-tool is applied. On the other hand, it reveals that an infringement of the safeguards results in a compensation rather than a restoration of the claim against the bank.