Beggar Your Neighbour or Nurture Your Neighbour?

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The financial crisis has put the solidarity of the European Union (EU) Member States to an ultimate stress test. First, several national banks had to be rescued. As the takeover of Fortis by BNP Paribas and the Dutch State showed, this did not always lead to warm feelings between Member States. One can imagine that many Greeks did not have warm feelings either toward the Netherlands when Wilders symbolically offered their embassy a billboard with an enlarged Drachme note on it.

The same crisis led to a flood of (proposed) legislation not only on the level of the EU Member States but also on EU level. Jan Wouters and Sven van Kerckhoven, in their contribution to this special issue of *European Company Law*, describe the most important regulatory actions of the EU. They conclude that the EU has not only engaged in short-term lifeline measures but has also made more structural long-term changes. They conclude that the EU has changed its financial regulation dramatically. This was done by establishing a new supervisory architecture in order to mend deficiencies in the European supervisory framework and other measures to prevent a future financial crisis.

Jan Wouters and Sven Van Kerckhoven prefer the EU approach above an approach on the level of the EU Member States 'as these became obsessed in rescuing their national champions rather than providing a coordinated answer'.

The article of Koen Geens deals with the post-financial regulation in Belgium. He criticizes the special law of 2 June 2010 according to which (i) the Government can force the shareholders of system relevant financial institutions to divest at a reasonable price and (ii) the board of directors of system-relevant financial institutions receive exceptional powers in exceptional circumstances without the need to obtain the prior approval of the shareholders' meeting. He questions whether the attribution of such exceptional competencies to the government will not work as a self-fulfilling prophecy and provoke, if not concerted, then nonetheless coincident aggressive action of short run shareholders and prudent deposit holders, at least when the financial institution in danger is at the same time system relevant and listed. He concludes that the Belgian solutions will not work if they are not part of a more global plan.

Denise Kromwijk and Wilco Oostwouder criticize the intention of the Dutch Minister of Finance to create new legislation, which contains a full ban on variable remuneration as long as the financial institutions receive state aid. This intention is a reaction to the announcement of ING Group NV that the executive board members were to receive variable remuneration of 80% to 92% of their base salary. Kromwijk and Oostwouder argue that while such a ban seems appealing (from a political point of view) a number of legal issues are present. This ban is disputable from a legal perspective, while compensation can be addressed either through contractual or corporate law mechanisms; some considerations must be given to existing rules of possession.

The bottom line to all this is that governments of Member States tend to react rather emotional to crisis-related issues such as possible bankruptcies of their national financial institutions and bonuses of board members of financial institutions, which received state aid. Their reactions are sometimes based on the public outcry and come down to 'beggar your neighbour'. The reactions of the EU to crisis-related issues is often more balanced and come down to 'nurture your neighbour'. Because all EU Member States are part of one financial market and system, this results in a 'nurture each other' approach, which does enhance warm feelings between the Member States.

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