

Martial Law in Banking and Finance- What Roles for Institutions?

Centre for Ethics and Law (CEL) Blogpost

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The National Bank of Ukraine, the Ukrainian central bank and bank regulator, was forced to take a number of unprecedented steps as Russian tanks rolled across the frontier on 24 January 2022.

Financial systems

and payment services providers to provide business continuity for consumers' card payments so that access to goods and services can be as undisrupted as possible, while suspending all electronic money issuance. The latter measure is again directed at preventing digital runs, which can take place more swiftly and in a more destabilising manner than cash runs, in order to preserve the stability of the Ukrainian banking system. The NBU is carrying on in an unreserved manner the central bank functions of lender of last resort, liquidity provider, bank and payment systems supervisor primarily aimed at preserving financial stability. This is important as part of the defence of sovereignty as a protected banking and financial system can be in a position to support recovery in due course.

For fleeing citizens and those who have become refugees temporarily in a foreign land, the financial stability protections may however not be sufficient to provide micro-level protections in terms of safeguarding financial records and data, access and value. In this post, we argue that international institutions can support the NBU with respect to the first and second. The third is completely uncertain in terms of outlook but it would be predicted that international support for rebuilding the market economy in Ukraine would likely be necessary.

In this digital and electronically-powered age, businesses and consumers manage most of their finances online or via applications, hence financial records and data are largely in intangible and digital form. However, the operational risks of being digital and connected to cyberspace have only been recognised lately such as by the European Banking Authority (2020) and operational standards and risk management to safeguard business continuity and stability are only just underway. It is uncertain to what extent Ukrainian banks and the NBU are prepared for the digital maintenance of business continuity under martial law and as a matter of risk management. It is proposed that in such an unprecedented emergency, there can be a role for relevant international institutions to play a part in supporting the NBU in protecting their banking system ledgers and records of financial data, in relation to all assets and liabilities. As the NBU is a member of the regional consultative committee of Europe of the Financial Stability Board, and the Board has a broad mandate to cooperate and 'promote information cooperation and exchange for the objective of financial stability', we propose that the FSB should in an exceptional manner act as 'peer repository' for the peer-to-peer sharing of the Ukrainian banking system's ledgers and records via secure cryptographic protocols. This should be organised by the NBU and blockchain technology can conceivably be put to good use here. The FSB should be subject to safeguards and governance for acting as 'peer repository' in situations of emergency, but this role is important so that any threat to central points of failure under siege may be mitigated.

Although the FSB's role in terms of lending external support to safeguarding financial records and data does not necessarily translate into non-disruption for Ukrainian citizens, the assurance of a continuing 'sharing' and information maintenance arrangement can help citizens overcome to an extent the need to withdraw all of their financial system commitments entirely. The facilitation of access is a much more dif405.9 2126 Tm0 g0 G{)JTJET7 MCI0 (

that is not covered in the UN Refugee Convention. It is possible however for foreign owned banks with Ukrainian operations (not owned by the aggressor's interests) to facilitate access to resources, perhaps with limitations to prevent runs. Inter-jurisdictional and multi-currency access are already facilitated by some Fintech outfits such as Revolut and Wise, and it can be arguable that foreign banks with Ukrainian liabilities should honour the fixed exchange rate the NBU imposed on 24 January 2022 and allow managed access by refugees outside Ukraine to these resources as long as these foreign banks are also plugged into the banking system in the countries where refuge has been sought. Further, it is also arguable that the NBU can extraordinarily invoke a form of resolution governance by brokering the transfer of a certain extent of liabilities from Ukrainian banks to foreign owned banks that are willing to allow citizens access to their resources in foreign locations of refuge. This needs to be done without putting Ukrainian banks into prudential danger, and appropriate incentives also need to be introduced for the foreign banks that are the subject of such brokering. These coordinating actions between the NBU and foreign banks and their relevant supervisors should also best be carried out under the umbrella of the FSB, whose institution of crisis-management groups or colleges can be deployed for such support.

In other words, there is a role for international institutions in the global financial order to support and help member states. We suggest that in this time of emergency where the financial protection of Ukrainian citizens is at stake and the NBU is struggling with tradeoffs between provisioning and protective objectives, international institutions like the FSB should not be regarded as irrelevant and can play a pertinent role to support the meeting of a more comprehensive suite of financial regulatory objectives by the member state.