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Attorney general says big banks' size may inhibit prosecution

By: Danielle Douglas - March 6, 2013

U.S. Attorney General Eric H. Holder Jr. told lawmakers that some financial institutions have become “so large” that it makes it “difficult for us to prosecute them.”

Holder’s admission bolsters criticisms that federal prosecutors are deeming some banks “too big to jail,” a charge that lawmakers and consumer advocates have routinely made in the wake of recent bank settlements. Although the government has issued record multimillion-dollar fines in these cases, critics say without criminal charges, the agreements amount to a slap on the wrist.

“Stunning” is how Sen. Charles E. Grassley (R-Iowa) described Holder’s remarks before the Senate Judiciary Committee on Wednesday. “After hearing today’s testimony, big bankers know that if they commit financial crimes, they can expect a passive response from the Justice Department.”

Holder’s remarks came during an exchange with Grassley, who questioned why Justice failed to bring criminal charges against HSBC and its employees for allegedly laundering money for Mexican drug cartels.

The British bank agreed to pay \$1.9 billion in December to settle charges raised in a report from the Senate’s Permanent Subcommittee on Investigations.

The 340-page report catalogued years of woefully inadequate monitoring practices at HSBC’s affiliate in Mexico, even instances of affiliates circumventing government safeguards meant to block funding for terrorists.

The mounting evidence led some lawmakers to assume criminal charges would be filed, but none were.

Although Holder declined to comment specifically on the HSBC case, he said the implications of prosecuting megabanks have given Justice pause.

“It does become difficult for us to prosecute when we are hit with indications that if we do . . . bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy,” he said. “It has an inhibiting influence, impact on our ability to bring resolutions that I think would be more appropriate.”

Holder added that the geo political implications are a function of the fact that some institutions have become too large. He challenged Congress to do more to address the unwieldy size of financial institutions.

That challenge takes direct aim at whether Congress did enough to prevent future bailouts of megabanks that run into trouble, said Mark Calabria, director of financial-regulation studies at the Cato Institute.

“How can that not be an admission by DOJ that they believe Dodd-Frank doesn’t end ‘too big to fail?’” he said. Still, “it isn’t clear to me why ‘too big to jail’ would stop DOJ from going after individual wrongdoers.”

To be sure, Holder defended the financial cases brought by his agency. Justice did bring criminal charges against two UBS traders for rigging benchmark interest rates, and got guilty pleas from subsidiaries of the Swiss bank as well as the Royal Bank of Scotland.

“These are not always easy cases to make,” Holder said. “When you look at these cases, you see that things were done ‘wrong’; then the question is whether or not they were illegal. In some instances that has not been a satisfying answer to people, but we have been as aggressive as we could have been.”

It’s not enough, say lawmakers.

“You expect trouble bringing a criminal to justice when he flees to a hostile foreign country, but it’s shocking that the Justice Department cannot pursue criminal activity when somebody simply walks through the doors of a Wall Street megabank,” said Sen. Sherrod Brown (D-Ohio).