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Targeted consultation on the review of the crisis management and deposit insurance framework

Fields marked with * are mandatory.

Introduction and general context

Please note that the questionnaire provides for additional information through hyperlinks (light blue text) and pop-up info boxes (green text).

Background of this targeted consultation

In response to the global financial crisis, the EU took decisive action to create a safer financial sector for the EU single market. These initiatives triggered comprehensive changes to European financial legislation and to the financial supervisory architecture. The single rulebook for all financial actors in the EU was enhanced, comprising stronger prudential requirements for banks, improved protection for depositors and rules to manage failing banks. Moreover, the first two pillars of the banking union – the single supervisory mechanism (SSM) as well as the single resolution mechanism (SRM) – were created. The third pillar of the banking union, a common deposit insurance, is still missing. The discussions of the co-legislators on the Commission's proposal to establish a European Deposit Insurance Scheme (EDIS), adopted on 24 November 2015, are still pending.

In this context, the EU **bank crisis management and deposit insurance framework** lays out the rules for handling bank failures while protecting depositors. It consists of three EU legislative texts acting together with relevant national legislation: the Bank Recovery and Resolution Directive (BRRD – Directive 2014/59/EU), the Single Resolution Mechanism Regulation (SRMR – Regulation (EU) 806/2014), and the Deposit Guarantee Schemes Directive (DGSD – Directive 2014/49/EU). Provisions complementing the crisis management framework are also present in the Capital Requirements Regulation (CRR – Regulation (EU) 575/2013) and the Capital Requirements Directive (CRD – Directive 2013/36/EU). The winding up Directive (Directive 2001/24/EC) is also relevant to the framework. For the purpose of this consultation, reference will be made also to insolvency proceedings applicable under national laws. For clarity, the consultation only concerns insolvency proceedings **applying to banks.** Other insolvency proceedings, notably those applying to other types of companies, are not the subject of this consultation.

Experience with the application of the current crisis management and deposit insurance framework until now seems to indicate that adjustments may be warranted. In particular:

- One of the cornerstones of the current framework is the objective of shielding public money from the effects of bank failures. Nevertheless, this has only been partially achieved. This has to do with the fact that the current framework creates incentives for national authorities to deal with failing or likely to fail (FOLF) banks through solutions that do not necessarily ensure an optimal outcome in terms of consistency and minimisation in the use of public funds. These incentives are partly generated by the misalignment between the conditions for accessing the resolution fund and certain (less stringent) conditions for accessing other forms of financial support under existing EU State aid rules, as well as the availability of tools in certain national insolvency proceedings (NIP), which are in practice similar to those available in resolution. Moreover, a reported difficulty for some small and medium-sized banks to issue certain financial instruments, that are relevant for the purpose of meeting their minimum requirement for own funds and eligible liabilities (MREL), may contribute to this misalignment of incentives.

- The procedures available in insolvency also differ widely across Member States, ranging from pure judicial procedures to administrative ones, which may entail tools and powers akin to those provided in BRRD/SRMR. These differences become relevant when solutions to manage failing banks are sought in insolvency, as they cannot ensure an overall consistent approach across Member States.

- The predictability of the current framework is impacted by various elements, such as divergence in the application of the Public Interest Assessment (PIA) by the Single Resolution Board (SRB) compared to National Resolution Authorities (NRA) outside the banking union. In addition, the existing differences among national insolvency frameworks (which have a bearing on the outcome of the PIA) and the fact that some of these national insolvency procedures are similar to those available in resolution, as well as the differences in the hierarchy of liabilities in insolvency across Member States, complicate the handling of banking crises in a cross-border context.

- Additional complexity comes from the fact that similar sources of funding may qualify as State aid or not and that this largely depends on the circumstances of the case. As a result, it may not be straightforward to predict *ex ante* if certain financial support is going to trigger a FOLF determination or not.

- The rules and decision-making processes for supervision and resolution, as well as the funding from the resolution fund, have been centralised in the banking union for a number of years, while deposit guarantee schemes are still national and depositors enjoy different levels and types of guarantees depending on their location. Similarly, differences in the functioning of national deposit guarantee schemes (DGSs) and their ability to handle adverse situations, as well as some practical difficulties (e.g., when a bank transfers its activities to another Member State and/or changes the affiliation to a DGS) are observed.

- Discrepancies in depositor protection across Member States in terms of scope of protection, such as specific categories of depositors, and payout processes result in inconsistencies in access to financial safety nets for EU depositors (Study financed under the European Parliament pilot project 'creating a true banking union' on the options and national discretions under the Deposit Guarantee Scheme Directive and their treatment in the context of a European deposit insurance scheme and EBA opinion of 8 August 2019, EBA opinion of 30 October 2019, EBA opinion of 23 January 2020 and EBA opinion of 28 December 2020 issued under Article 19(6) DGSD in the context of DGSD review).

The possible revision of the resolution framework as well as a possible further harmonisation of insolvency law are also foreseen in the respective review clauses of the three legislative texts. (It is relevant in this respect to notice the European Commission's report (2019) on the application and review of Directive 2014/59/EU (BRRD) and Regulation 806/2014 (SRMR). By reviewing the framework, the Commission aims to increase its efficiency, proportionality and overall coherence to manage bank crises in the EU, as well as to enhance the level of depositor protection, including through the creation of a common depositor protection mechanism in the banking union. Crisis management and deposit insurance, including a common funding scheme for the banking union, are strongly interlinked and inter-dependent, and present the potential for synergies if developed jointly. Additionally, in the context of the crisis management and deposit insurance framework review, the State aid framework for banks will also be reviewed with a view to ensuring consistency between the two frameworks, adequate burden-sharing of shareholders and creditors to protect taxpayers and preservation of financial stability.

Structure of this consultation and responding to this consultation

In line with the better regulation principles, the Commission is launching this targeted consultation to gather evidence in the form of relevant stakeholders' views and experience with the current crisis management and deposit insurance framework, as well as on its possible evolution in the forthcoming reviews. Please note that this consultation covers the reviews of the BRRD, SRMR and DGSD.

The targeted consultation is available in English only. It is split into two main sections: a section covering the general objectives and the review focus, and a section seeking specific more technical feedback on stakeholders' experience with the current framework and the need for changes in the future framework:

- Part 1 – General objectives and review focus (questions 1 to 6)
- Part 2 – Experience with the framework and lessons learned for the future framework
    A. Resolution, liquidation and other available measures to handle banking crises (questions 7 to 28)
    B. Level of harmonisation of creditor hierarchy in the EU and impact on 'no creditor worse off' principle (NCWO) (questions 29 to 30)
    C. Depositor insurance (questions 31 to 39)

A general public consultation will be launched in parallel. It covers only general questions on the bank crisis management and deposit insurance framework and will be available in 23 official EU languages. Some general questions are asked in both questionnaires. This is indicated whenever this is the case. Please note that replies to either questionnaire will be equally considered.

Views are welcome from all stakeholders.

You are invited to provide feedback on the questions raised in this online questionnaire. We invite you to add any documents and/or data that you would deem useful to accompany your replies at the end of this questionnaire, and **only through the questionnaire**.

Please explain your responses and, as far as possible, illustrate them with concrete examples and substantiate them numerically with supporting data and empirical evidence. Where appropriate, provide specific operational suggestions to questions raised. This will allow further analytical elaboration.

You are requested to read the privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

The consultation will be open for 12 weeks.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-cmdi-consultation@ec.europa.eu.

More information on

- this consultation
- the consultation document
- the consultation strategy

- the acronyms used in this consultation
- the public consultation launched in parallel
- banking union
- the protection of personal data regime for this consultation

About you

*Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- (selected) English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- ◯ Academic/research institution
- ◯ Business association
- ◯ Company/business organisation
- ◯ Consumer organisation
- ◯ EU citizen
- ◯ Environmental organisation
- ◯ Non-EU citizen
- ◯ Non-governmental organisation (NGO)
- ◉ Public authority
- ◯ Trade union
- ◯ Other

* First name

* Surname

* Email (this won't be published)

* Scope

- ◯ International
- ◯ Local
- ◉ National
- ◯ Regional

* Level of governance

- ◯ Parliament
- ◉ Authority
- ◯ Agency

* Organisation name

255 character(s) maximum

Ministry of Finance

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone

Armenia	Falkland Islands	Marshall Islands	Singapore
Aruba	Faroe Islands	Martinique	Sint Maarten
Australia	Fiji	Mauritania	Slovakia
Austria	Finland	Mauritius	Slovenia
Azerbaijan	France	Mayotte	Solomon Islands
Bahamas	French Guiana	Mexico	Somalia
Bahrain	French Polynesia	Micronesia	South Africa
Bangladesh	French Southern and Antarctic Lands	Moldova	South Georgia and the South Sandwich Islands
Barbados	Gabon	Monaco	South Korea
Belarus	Georgia	Mongolia	South Sudan
Belgium	Germany	Montenegro	Spain
Belize	Ghana	Montserrat	Sri Lanka
Benin	Gibraltar	Morocco	Sudan
Bermuda	Greece	Mozambique	Suriname
Bhutan	Greenland	Myanmar /Burma	Svalbard and Jan Mayen
Bolivia	Grenada	Namibia	Sweden
Bonaire Saint Eustatius and Saba	Guadeloupe	Nauru	Switzerland
Bosnia and Herzegovina	Guam	Nepal	Syria
Botswana	Guatemala	Netherlands	Taiwan
Bouvet Island	Guernsey	New Caledonia	Tajikistan
Brazil	Guinea	New Zealand	Tanzania
British Indian Ocean Territory	Guinea-Bissau	Nicaragua	Thailand
British Virgin Islands	Guyana	Niger	The Gambia

- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam

Cuba	Kyrgyzstan	Russia	Wallis and Futuna
Curaçao	Laos	Rwanda	Western Sahara
Cyprus	Latvia	Saint Barthélemy	Yemen
Czechia	Lebanon	Saint Helena Ascension and Tristan da Cunha	Zambia
Democratic Republic of the Congo	Lesotho	Saint Kitts and Nevis	Zimbabwe
Denmark	Liberia	Saint Lucia	

*Field of activity or sector (if applicable):

- [ ] Credit institution
- [ ] Payment and electronic money institution
- [ ] Financial infrastructure provider
- [ ] Investment firm
- [ ] Deposit guarantee scheme
- [ ] Non-financial company (incl. SME)
- [ ] Bank association
- [ ] Consumer association
- [ ] Supra-national authority
- [ ] Competent / resolution authorities
- [x] Finance ministry
- [ ] Other national public authority.
- [ ] International organisation
- [ ] Retail investor
- [ ] Professional investor
- [ ] Consumer / user of financial services / (Private) depositor
- [ ] Independent research provider
- [ ] Other
- [ ] Not applicable

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **Fo r the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- (x) **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ( ) **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

[x] I agree with the personal data protection provisions

What is the CMDI framework?

The crisis management and deposit insurance (CMDI) framework was introduced as a legislative response to the global financial crisis, to provide tools to address bank failures while preserving financial stability, protecting depositors and avoiding the risk of excessive use of public financial resources.

The CMDI was in particular designed with the aim of handling the failure of credit institutions of any size, as well as to protect depositors from any failure.

The CMDI framework also provides for a set of instruments that can be used before a bank is considered failing or likely to fail (FOLF). These allow a timely intervention to address a financial deterioration (early intervention measures) or to prevent a bank's failure (preventive measures by the DGS).

When a bank is considered FOLF and there is a public interest in resolving it, the resolution authorities will intervene in the bank by using the specific powers granted by the BRRD in absence of a private solution. In the banking union, the resolution of systemic banks is carried out by the Single Resolution Board (SRB). In the absence of a public interest for resolution, the bank failure should be handled through orderly winding-up proceedings available at national level.

The CMDI framework provides for a wide array of tools and powers in the hands of resolution authorities as well as rules on the funding of resolution actions. These include powers to sell the bank or parts of it, to transfer critical functions to a bridge institution and to transfer non-performing assets to an asset management vehicle. Moreover, it includes the power to bail-in creditors by reducing their claims or converting them into equity, to provide the bank with loss absorption or recapitalisation resources. When it comes to funding, the overarching principle is that the bank should first cover losses with private resources (through the reduction of shareholders' equity and the bail-in of creditors' claims) and that external public financial support can be provided only after certain requirements are met. Also, the primary sources of external financing of resolution actions (should the bank's private resources be insufficient) are provided by a resolution fund and the DGS, funded by the banking industry, rather than taxpayers' money. In the context of the banking union, these rules were further integrated by providing for the SRB as the single resolution authority and building a Single Resolution Fund (SRF) composed of contributions from credit institutions and certain investment firms in the participating Member States of the banking union.

Deposits (if not excluded under Article 5 DGSD) are protected up to EUR 100 000. This applies regardless of whether the bank is put into resolution or insolvency. In insolvency, the primary function of a DGS is to pay out depositors (Article 11(1) DGSD) within 7 days of a determination of unavailability of their deposits. In line with the DGSD, DGSs may also have functions other than the pay-out of depositors. As pay-out may not always be suitable in a crisis scenario due to the risk of disrupting overall depositor confidence, some Member States allow the DGS funds to be used to prevent the failure of a bank (DGS preventive measures) or finance a transfer of assets and liabilities to a buyer in insolvency to preserve the access to covered depositors (DGS alternative measures). The DGSD provides a limit as regards the costs of such preventive and alternative measures. Moreover, DGSs can contribute financially to a bank's resolution, under certain circumstances.

The functioning of the DGSs and the use of their funds cannot be seen in isolation from the broader debate on the European deposit insurance scheme (EDIS). A possible broader use of DGSs funds could represent a sort of a renationalisation of the crisis management and expose national taxpayers unless encompassed by a robust safety net (EDIS). A first phase of liquidity support could be seen as a transitional step towards a fully-fledged EDIS, in view of a steady-state banking union architecture as the final objective for completing the post-crisis regulatory landscape. In the consultation document the references to national DGSs, as concerns the banking union Member States, should be understood to also encompass EDIS, bearing in mind the design applicable in the point in time on the path towards the steady-state.

Finally, the CMDI framework also includes measures that could be used in exceptional circumstances of serious disturbance to the economy. In these circumstances, it allows external financial support for precautionary purposes (precautionary measures) to be granted.

The main policy objectives of the CMDI framework are to:

- limit potential risks for financial stability caused by the failure of a bank
- minimise recourse to public financing / taxpayers' money
- protect depositors
- facilitate the handling of cross-border crises and
- break the bank/sovereign loop and foster the level playing field among banks from different Member States, particularly in the banking union

PART 1 – General objectives and review focus

Please note that **questions 1 to 6** of this targeted consultation **correspond to questions 1 to 6** of the public consultation.

Question 1. In your view, has the current CMDI framework achieved the following objectives?

On a scale from 1 to 10 (1 being “achievement is very low” and 10 being “achievement is very high”), please rate each of the following objectives:

	1	2	3	4	5	6	7	8	9	10	Don know No opini
The framework achieved the objective of limiting the risk for financial stability stemming from bank failures	○	○	○	○	○	○	○	○	○	○	●
The framework achieved the objective of minimising recourse to public financing and taxpayers’ money	○	○	○	○	○	○	○	○	○	○	●
The framework achieved the											

objective of protecting depositors	○	○	○	○	○	○	○	○	○	○	◉
The framework achieved the objective of breaking the bank /sovereign loop	○	○	○	○	○	○	○	○	○	○	◉
The framework achieved the objective of fostering the level playing field among banks from different Member States	○	○	○	○	○	○	○	○	○	○	◉
The framework ensured legal certainty and predictability	○	○	○	○	○	○	○	○	○	○	◉
The framework achieved the objective of adequately addressing cross-border bank failures	○	○	○	○	○	○	○	○	○	○	◉
The scope of application											

of the framework beyond banks (which includes some investment firms but not, for example, payment service providers and e-money providers) is appropriate	○	○	○	○	○	○	○	○	○	○	◉

Question 1.1 Please explain your answers to question 1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Generally, important steps have been set to address financial stability risks from bank failures. Resolution plans are being set up ex-ante, banks issue bail-inable MREL, and there is intense cooperation between national and European supervisors and resolution authorities. This has reduced the risk of unorderly failure, and risks for taxpayer's money.

Still, many failures have taken place outside of the resolution framework, e.g. with recourse to state resources. While this can never be prevented, incentives seem currently in place that favor handling of bank failures outside of the resolution framework. Reducing such arbitrage opportunities in the state aid framework can help to improve the functioning of the crisis management framework.

Besides there are also more technical issues that need to be addressed, such as divergences between MS on the treatment of banks in insolvency. This could be addressed to ensure a more level-playing field, and increase legal predictability, notably with regard to feasible of bail-in in the context of NCWO.

Finally, the bank-sovereign nexus should be addressed at its root. Namely through a more prudent treatment of sovereign assets, preferably through a combination of risk-weights and concentration charges. We encourage the Commission to finally set steps in that regard.

Question 1.2 Which additional objectives should the reform of the CMDI framework ensure?

Do you consider that the BRRD resolution toolbox already caters for all types of banks, depending on their resolution strategy?

In particular, are changes necessary to ensure that the measures available in the framework (including tools to manage the bank's crisis and external sources of funding) are used in a more proportionate manner, depending on the specificities of different banks, including the banks' different business models?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is good to take note that the BRRD was only agreed to in 2016, and has since then only been used in one single case. We therefore propose to keep the revision as targeted as possible. In principle the goal of the revision should be to make existing tools work better, rather than create all kinds of new tools in the toolbox that may be duplicative, create additional vagueness or would lead to more arbitrage opportunities. We should also avoid duplicating tools in the different elements of the crisis framework with different funding conditions.

In principle the current framework, notably the resolution framework, is able to cater all types of banks. Banks with public interest can enter resolution. Funding can be accessed after bail-in (of 8% for capital support). We are yet unconvinced of the extent of the problems that have been raised in the Council. To what extent are the resolution requirements really a constraint to orderly handle failing banks? In other words, what would be the implications of executing an 8% bail-in on banks with less than 8% MREL? How many banks should be considered in the small and medium sized subset? And to what extent would specific kind of creditors (e.g. uncovered depositors) share in losses? Why would the sale-of-business tool, with a bail-in of at least up to junior creditors, not be successful for this type of banks? The Danish model may prove as an example, where they are uniformly applying the resolution tools for more banks. Could the Danish model be applied to a broader set of banks in the Banking Union?

On the tools in the current DGSD that are similar to the sale-of-business tool in resolution. What is the merit of such models above resolution? What are the additional risks to the DGS-funds? The question also arises why possible loss-taking by senior creditors and possibly depositors in atomistic liquidation is acceptable, while this would not be the case in a sale-of-business type operation through the DGS (where sometimes all depositors and some senior creditors have been moved). Where does resolution stop, and where do DGS-interventions start? Would the ordinary pay-out tool be used at all? Such questions need careful consideration, before any systemic overhaul is considered. Furthermore, what is the role of the DGS in resolution, which is a tool that is already harmonized? Could it be explored how the role of the DGS in resolution could be further clarified? The upside there is also that we already have a harmonized resolution framework, whereas any ordinary liquidation tool in insolvency would have to be build up from the ground.

The principal aim of the revision should be to revise the state aid framework, and ensure that it is further aligned with the BRRD. In Q8 we do several proposals for such targeted improvements. Currently, a number of cases have taken place outside the resolution framework, and reducing such arbitrage opportunities in the state aid framework can help to improve the functioning of the crisis management framework.

In any case, we would encourage the Commission to do a thorough impact assessment analyzing the extent to which current tools are incompatible with the current framework, and whether new tools would really be a solution.

Question 2. Do you consider that the measures and procedures available in the current legislative framework have fulfilled the intended policy objectives and contributed effectively to the management of banks' crises?

On a scale from 1 to 10 (1 being "have not fulfilled the intended policy objectives/have not contributed effectively to the management of banks' crises" and 10 being "have entirely fulfilled the intended policy objectives /have contributed effectively to the management of banks' crises"), please rate each of the following measures:

	1	2	3	4	5	6	7	8	9	10	Do kn N op
Early intervention measures											
Precautionary measures											
DGS preventive measures											
Resolution											
National insolvency proceedings, including DGS alternative measures where available											

Question 2.1 If possible, please explain your replies to question 2, and in particular elaborate on which elements of the framework could in your view be improved:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Generally there is need for more clarity and consistency between different elements of the CMDI.

Early intervention measures could be more readily applied. First this could be attained by having more clarity

on legal texts, reducing overlap, and improving consistency between implementation in MS. In addition, further discussion could take place on how to trigger the application of EIMs.
Would they benefit from more semi-automaticity, while also leaving discretion at the hands of the supervisor?

We already mentioned the bias towards state aid as well as the need for further clarity on the benefits of DGS preventive/alternative interventions over resolution.

Further looking at how to align national insolvency proceedings of banks to ensure that for instance resolution can be more readily applied is something we would support. One can think of triggers for insolvency, and technical issues in the creditor hierarchy related to the No creditor worse off principle. Here we would also like to highlight possible issues with regard to the hierarchy of claims and interest. In the Netherlands, a legislative change is in preparation to revise the hierarchy of claims and interest. This proposal aims to increase the effectiveness of the instrument of bail-in, in light of the NCWO principle. We encourage the Commission to look at such more technical issues as well to make existing frameworks work better.

Question 3. Should the use of the tools and powers in the BRRD be exclusively made available in resolution or should similar tools and powers be also available for those banks for which it is considered that there is no public interest in resolution?

In this respect, would you see merit in extending the use of resolution, to apply it to a larger population of banks than it currently has been applied to? Or, conversely, would you see merit in introducing harmonised tools outside of resolution (i.e. integrated in national insolvency proceedings or in addition to those) and using them when the public interest test is not met? If such a tool is introduced, should it be handled centrally at the European (banking union) level or by national authorities?

Please explain and provide arguments for your view:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In line with previous answers (see q 2 and q 3), priority should be first given to making resolution a more viable option. This should be done by ensuring that public interest is more rigidly applied (as is already possible under legislation), and a broader set of banks is included in resolution. Second, state aid rules should be further strengthened to ensure that resolution becomes a more preferred option. Looking at facilitating additional tools outside of resolution would require much more reflection. What is the extent to which, after abovementioned options, banks will still fall out of the scope of the resolution framework? How do we prevent duplication of tools, with less burden-sharing, which will increase the number of arbitrage opportunities?

Question 4. Do you see merit in revising the conditions to access different sources of funding in resolution and in insolvency (i.e. resolution funds and DGS)?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 4.1 Would an alignment of those conditions be justified?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

If you think an alignment of those conditions would be justified, how should this be achieved and what would the impact of such a revision be on the incentives to use one procedure or the other?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is need to align the conditions for funding in state aid (only up to junior) with those in resolution (up to 8%). Furthermore access to DGS should also benefit from clearer burden-sharing requirements, especially in the context of preventive measures. The Commission should also explore how a level-playing field can be ensured in the context of private/public DGS and state aid rules given the Tercas ruling.

Question 4.2 Please explain and provide arguments for your views expresses in questions 4 and 4.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5. Bearing in mind the underlying principle of protection of taxpayers, should the future framework maintain the measures currently available when the conditions for resolution and insolvency are not met (i.e. precautionary measures, early intervention measures and DGS preventive measures)?

- ( ) Yes
- ( )

No

Don't know / no opinion / not relevant

Question 5.1 Should these measures be amended?

Yes

No

Don't know / no opinion / not relevant

Question 5.2 Please elaborate on your answers to questions 5 and 5.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6. Do you agree or disagree with the following statements regarding a potential reform of the use of DGS funds in the future framework?

	Agree	Disagree	Don't know / no opinion / not relevant
The DGSs should only be allowed to pay out depositors, when deposits are unavailable, or contribute to resolution (i.e. DGS preventive or alternative measures should be eliminated).			●
The possibility for DGSs to use their funds to prevent the failure of a bank, within pre-established safeguards (i.e. DGS preventive measures), should be preserved.			●
The possibility for a DGS to finance measures other than a payout, such as a sale of the bank or part of it to a buyer, in the context of insolvency proceedings (i.e. DGS alternative measures), if it is not more costly than payout, should be preserved.			●
The conditions for preventive and alternative measures (particularly the least cost methodology) should be harmonised across Member States.	●		

Question 6.1 If none of the statements listed in Question 6 does reflect your views or you have additional considerations, please provide further details:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In general, the use of DGS and accompanying burden-sharing requirements in a preventive context need further clarity and consistency. We think that higher costs for the DGS should be avoided. Our view is that currently alternative and preventive measures would most likely lead to higher costs compared to pay out given the position of the DGS in the creditor hierarchy. Artificially raising costs through changing the creditor hierarchy is something we are very skeptical of. A further clarification of the least cost test is necessary to compare the costs of other measures to the costs of a payout.

PART 2 – Experience with the framework and lessons learned for the future framework – detailed section per topic

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PART 2 of this questionnaire is divided into the following sections:

A. Resolution, liquidation and other available measures to handle banking crises (Questions 7 to 28)
B. Level of harmonisation of creditor hierarchy in the EU and impact on 'no creditor worse off' principle (NCWO) (Questions 29 to 30)
C. Depositor insurance (Questions 31 to 39)

A. Resolution, liquidation and other available measures to handle banking crises

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I. Measures available before a bank's failure

Early intervention measures (EIMs)

EIMs allow supervisors to intervene and tackle the financial deterioration of a bank before it is declared failing or likely to fail (FOLF). These measures can be important to ensure a timely intervention to address issues with the bank, with a view to, where possible, preventing its failure or to at least limiting the impact of the bank's distress on the rest of the financial sector and the economy.

Experience shows, however, that early intervention measures have hardly been used so far. Reasons for such limited use include the overlap between some early intervention measures and the supervisory actions available to supervisors as part of their prudential powers (EBA Discussion Paper on the Application of early intervention measures in the European Union according to Articles 27-29 of the BRRD (EBA/DP/2020/02)), the lack of a directly applicable legal basis at banking union level to activate early intervention measures, the conditions for their application and interactions with other Union legislation (Market Abuse Regulation) (see also EBA Discussion Paper on the Application of early intervention measures in the European Union according to Articles 27-29 of the BRRD (EBA/DP/2020/02)). It might be necessary to assess whether the use of EIMs could be facilitated, while remaining consistent with the need for a proportionate approach.

Question 7. Please respond to the following questions by yes or no:

	Yes	No	Don't know / no opinion / not relevant
Can the conditions for EIMs or other features of the existing framework, including interactions with other Union legislation, be improved to facilitate their use?	◉	○	○
Should the overlap between EIMs and supervisory measures be removed?	◉	○	○
Do you see merit in providing clearer triggers to activate EIMs or at least distinct requirements from the general principles that apply to supervisory measures?	◉	○	○
Is there a need to improve the coordination between supervisors and resolution authorities in the context of EIMs (in particular in the banking union)?	◉	○	○

Question 7.1 Please elaborate on what in your view the main potential improvements would be:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Precautionary measures

Precautionary measures allow the provision of external financial support from public resources to a solvent bank, as a measure to counteract potential impacts of a serious disturbance in the economy of a Member State and to preserve financial stability. The available measures comprise capital injections (precautionary recapitalisation) as well as liquidity support.

The provision of such support (which constitutes State aid) is an exception to the general principle that the provision of extraordinary public financial support to a bank to maintain its viability, solvency or liquidity should lead to the determination that the bank is FOLF. For this reason, specific requirements must be met in order to allow such measures under the BRRD as well as under the 2013 Banking Communication.

Past cases show that this tool is a useful element of the crisis management framework, provided that the conditions for its application are met. Past work has also highlighted the possible use of precautionary recapitalisation as a means to provide relief measures through the transfer of impaired assets (see European Commission staff working document

(March 2018), AMC Blueprint). Similar considerations have been extended to asset protection schemes (European Commission, 16 December 2020, Communication from the Commission: Tackling non-performing loans in the aftermath of the COVID-19 pandemic (COM(2020)822 final), p.16).

Question 8. Should the legislative provisions on precautionary measures be amended? What are, in your view, the main potential amendments?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 8.1 Please explain your answer to question 8:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is need for more clarity on the use of precautionary measures. While this could be done through amending the legal texts, COMM could also simply do this by updating the 2013 banking communication (that is severely outdated given that it still refers to provisions from 2013 legal texts), and applying a stricter interpretation there. In many ways this can simply be accomplished by revising non-legislative texts, namely the crisis communications from the commission, and notably the banking communication.
In our view, such amendments should include:

- Clarifying burden-sharing provisions and further aligning them with bail-in provisions under the BRRD. Should senior creditors always be protected when state aid is used?

- Precautionary capital aid should only be provided to institutions proved solvent by in-depth AQR and forward-looking stress tests, and should not be used to cover losses of a troubled bank or become an obstacle to further restructuring action. To ensure that precautionary recapitalisations are not used for existing or likely losses, an asset quality review, or any exercise that is demonstrably equivalent to an AQR, should always be done prior to such intervention.

- Create further consistency between the option of liquidation aid, and resolution. How do the concepts of a serious disturbance to a MS economy tie in to the concept of public interest?

- To ensure level playing field, likewise, it should be clarified that the requirements of intervention pursuant to article 11(3) DGSD are more aligned with those in resolution, for example by ensuring adequate burden sharing, or by ensuring a market exit.

- Clarifying the procedures and the role of different actors involved. For instance, the Commission is both involved in the state aid procedure as well as in resolution planning. Clearer separation of tasks could be helpful. Also, could the SRB play a role in state aid as well, given its experience with planning and restructuring? And to align state aid and resolution practice more?

- In its communication the Commission could also link state aid to the resolution framework. What could be implications of liquidity guarantees on senior debt for the applicability of resolution?

DGS preventive measures (Article 11(3) DGSD)

DGSs can intervene to prevent the failure of a bank. This feature of DGSs is currently an option under the DGS Directive and has not been implemented in all Member States.

Such a use of DGS resources can be an important feature to allow a swift intervention to address the deteriorating financial conditions of a bank and potentially avoid the wider impact of the bank's failure on the financial market. The DGSs' intervention is currently limited to the cost of fulfilling its statutory or contractual mandate.

Recent experience with this type of DGS measures gave rise to questions about the assessment of the cost of the DGS intervention, and about the interaction between Article 11(3) DGSD and Article 32 BRRD, with respect to triggering a failing or likely to fail assessment.

Question 9. In view of past experience with these types of measures, should the conditions for the application of DGS preventive measures be clarified in the future framework?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 9.1 Please explain your answer to question 9 specifying what are, in your view, the main potential clarifications:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

> To ensure level playing field, likewise, it should be clarified that the requirements of intervention pursuant to article 11(3) DGSD are more aligned with those in resolution, for example by ensuring adequate burden sharing, or by ensuring a market exit.
>
> Also, DGS preventive measures should preferably be applied only when the expectation is that other less far-reaching (early) supervisory powers, such as early intervention measures, are no longer considered effective.

II. Measures available to manage the failure of banks

The BRRD provides for a comprehensive and flexible set of tools, ranging from the power to sell the bank's business entirely or partially, to the transfer of critical functions to a bridge institution or the transfer of non-performing assets to an asset management vehicle (AMV) and the bail-in of liabilities to absorb the losses and recapitalise the bank. The framework also provides for different sources of funding for such tools, including external funding, mainly through the resolution fund and the DGSs.

Outside resolution, the extent of the available measures to manage a bank's failure depends on the characteristics of the applicable national insolvency law. These procedures are not harmonised and can vary substantially, from judicial proceedings very similar to those available for non-bank businesses (which entail generally the piecemeal sale of the bank's assets to maximise the asset value for creditors), to administrative proceedings which allow actions similar to those available in resolution (e.g. sale of the bank's business to ensure that its activity continues). These tools can be funded through DGS alternative measures, which allow the DGS to provide financial support in case of the sale of the bank's business or parts of it to an acquirer. Moreover, financial support from the public budget can be used to finance such measures in insolvency, provided that the relevant requirements under the applicable State aid rules (Banking Communication), including burden sharing, are complied with.

As already indicated in the Commission Report (2019), practical experience in the application of the framework showed that, in the banking union, resolution has been used only in a very limited number of cases and that solutions outside the resolution framework, including national insolvency proceedings supported with liquidation aid, remain available (and subject to less-strict requirements).

This raises a series of important questions with respect to the current legislative framework and its ability to cater for effective and proportionate solutions to manage the failure of any bank. In order to address these questions, it is appropriate to look at the following elements of the framework:

- The decision-making process regarding FOLF
- The application of the public interest assessment by the resolution authorities, i.e., the assessment which is used to decide whether a bank should be managed under resolution or national insolvency proceedings
- The tools available in the framework, particularly to assess whether those available in resolution are sufficient and appropriate to manage the failure of potentially any bank or whether there is merit in considering additional tools
- The sources of funding available in the framework, in particular to determine whether they can be used effectively and quickly and whether they can be accessed under proportionate requirements.

In the context of this assessment, it seems also appropriate to keep in mind the strong links between the CMDI and the State aid rules and to explore their interaction, where relevant.

Scope of banks and PIA, strategy: resolution vs liquidation and applicability per types of banks

Resolution authorities can only apply resolution action to a failing institution when they consider that such action is necessary in the public interest. According to Article 32(5) BRRD, the public interest criterion is met when resolution action is necessary for the achievement of one or more of the resolution objectives and the winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent. The resolution objectives are considered to be of equal importance and must be balanced as appropriate to the nature and circumstances of each case.

Additionally, the BRRD provides that, due to the potentially systemic nature of all institutions, it is crucial that authorities have the possibility to resolve any institution, in order to maintain financial stability.

However, as described above, experience in the banking union, has shown that, once a bank has been declared as failing or likely to fail, resolution was applied in a minority of cases. Outside the banking union, resolution has been used more extensively.

Question 10. What are your views on the public interest assessment?

Please specify if you agree of disagree with the following statements:

	Agree	Disagree	Don't know / no opinion / not relevant
The current wording of Article 32(5) BRRD is appropriate and allows the application of resolution to a wide range of institutions, regardless of size or business model	○	○	◉

The relevant legal provisions result in a consistent application of the public interest assessment across the EU	○	◉	○
The relevant legal provisions allow for a positive public interest assessment on the basis of a sufficiently broad range of potential impacts of the failure of an institution (e.g. regional impact)	◉	○	○
The relevant legal provisions allow for an assessment that sufficiently takes into account the possible systemic nature of a crisis	○	○	◉

Question 10.1 Please explain your answer to question 10:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our answers in the table above should be considered in light of many of the points also made recently by the European Court of Auditors on this matter. We think that there is a real need to further clarify the criteria of the public interest assessment, in order to create a PIA that is more consistent among NRAs and displays a more predictable outcome where it regards the PIA of the SRB for institutions under its direct remit. However this does not necessarily require a legislative change. The SRB already has the opportunity to make a broader interpretation of the PIA within the current text. A revision is not necessarily needed.

FOLF triggers, Article 32b BRRD, triggers for resolution and insolvency (withdrawal of authorisation, alignment of triggers for resolution and insolvency)

When an institution is FOLF and there are no alternative measures that would prevent that failure in a timely manner, resolution authorities are required to compare resolution action with the winding up of the institution under normal insolvency proceedings (NIP), under the PIA. The same elements of comparison (resolution and NIP) are used when assessing compliance with the 'no creditor worse off' principle (NCWO), which ensures that creditors in resolution are not treated worse than they would have been in insolvency.

If resolution action is not necessary in the public interest, Article 32b BRRD requires Member States to ensure that the institution is wound up in an orderly manner in accordance with the applicable national law. This provision was introduced with the aim of ensuring that standstill situations, where a failing bank cannot be resolved, but at the same time a national insolvency proceeding or another proceeding which would allow the exit of the bank from the banking market cannot be started, could no longer occur. However, it is still unclear whether the implementation of this Article in the national legal framework would address any residual risk of standstill situations, in particular in those cases where the bank has been declared FOLF for "likely" situations (for example "likely infringement of prudential requirements" or "likely illiquidity") and a national insolvency proceeding cannot be started as the relevant conditions are not met. Moreover, due to the variety of proceedings at national level included in the concept of "normal insolvency proceedings", different proceedings may apply when a bank is not put in resolution. Additionally, due to the different ways Article 18 Capital Requirements Directive has been transposed by Member States, the withdrawal of the authorisation of a failing institution is not always justified or possible. Moreover, it is important to assess whether the FOLF determination was taken sufficiently early in the process in past cases.

Question 11. Do you consider that the existing legal provisions should be further amended to ensure better alignment between the conditions required to declare a bank FOLF and the triggers to initiate insolvency proceedings?

How can further alignment be pursued while preserving the necessary features of the insolvency proceedings available at national level?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 11.1 Please explain your answer to question 11:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While we recognize that further alignment is difficult since member states have different, historically and culturally imbedded national insolvency systems, we encourage the Commission to explore options that try to address inconsistencies, at least to alleviate the issue of limbo situations. It is important to take account in that regard that having full automatism is impossible, to comply with the principle of the rule of law. A semi-automatic trigger could however be an option when that would include a role for the judiciary. In the Netherlands the law leaves only the option open for the supervisor to request insolvency at a court once a bank is determined FOLTF but not in the public interest. This could serve as an example to EU legislative changes.

Question 12. Do you think that the definition of winding-up should be further clarified in order to ensure that banks that have been declared FOLF and were not subject to resolution exit the banking market in a reasonable timeframe?

- ( ) Yes
- (x) No
- ( ) Don't know / no opinion / not relevant

Question 12.1 Please explain your answer to question 12:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We wonder how further clarifying that definition would help, as the current definition of winding up in article 2 directive 2001/24 seems sufficiently clear. In the Netherlands, any winding up – whether with respect to banks or not – should take place in a reasonable timeframe. The insolvency practitioner is supervised by the Court. One may expect that the Court will appoint only highly qualified insolvency practitioners, since a bank is not just an ordinary debtor. Such an insolvency practitioner will be aware of the need of a swift winding up. If a rule would be laid down that the winding up should be done in a reasonable timeframe, questions arise like "what is reasonable" and "what are the consequences of a breach of that rule"?
Please note that in the definition of "reorganization measures" in article 2 of directive 2001/24 still other measures than resolution measures as meant in the BRRD, are mentioned. One may wonder whether there should still be room for those other reorganization measures, and if so, which other measures could be taken. One may say that, when the FOLTF-condition is met in a particular case, it is either resolution by the resolution authority or winding up in a Court proceeding.

Question 13. Do you agree that the supervisor should be given the power to withdraw the licence in all FOLF cases?

Please explain whether this can improve the possibility of a bank effectively exiting the market within a short time frame, and whether further certainty is needed on the discretionary power of the competent authority to withdraw the authorisation of an institution in those conditions.

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 13.1 Please explain your answer to question 13:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the Netherlands, a bank that is determined FOLTF and where resolution is not in the public interest, the only option for the RA is to request insolvency at the court. Generally we think further clarity as to what happens when FOLTF is not declared would be helpful in a European context to avoid diverging practices and limbo situations.

Question 14. Do you consider that, based on past cases of application, FOLF has been triggered on time, too early or too late?

- ( ) On time
- ( ) Too early
- (•) Too late
- ( ) Don't know / no opinion / not relevant

Question 14.1 Please elaborate on your answer to question 14:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our sense is that the framework could benefit from more timely FOLTF declaration. This would allow RAs to intervene at a more earlier onset, which increases the opportunities for the RA to find a solution that makes the make solvent again. It would also prevent large liquidity outflows. In addition, this could also prevent that liquidity dries up, and the bank cannot access regular monetary operations by the ECB. Finally, the current application of the framework creates confusion as to the relation between FOLTF and the solvency requirements in the state aid provisions. How does the solvency assessment in the state aid regime relate to the determination of FOLTF and vice versa?

Question 15. Do you consider that the current provisions ensure that the competent authorities can trigger FOLF sufficiently early in the process and have sufficient incentives to do so?

In other words, are the correct incentives for responsible authorities to trigger FOLF in place?

- Yes
- No
- (selected) Don't know / no opinion / not relevant

Question 15.1 Please explain your answer to question 15:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Adequacy of available tools in resolution and insolvency

As mentioned above, a comprehensive set of tools is available in resolution (sale of business, bridge institution, asset management vehicle, bail-in). In particular, the resolution authority can transfer part of the assets and/or liabilities of a bank to a third party (or a bridge institution). Under some national laws, such a possibility also exists in insolvency.

Question 16. Do you consider the set of tools available in resolution and insolvency (in your Member State) sufficient to cater for the potential failure of all banks?

- (selected) Yes
- No
- Don't know / no opinion / not relevant

Question 16.1 Please explain your answer to question 16:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer Q1.

Question 17. What further measures could be taken regarding the availability, effectiveness and fitness of tools in the framework?

	Agree	Disagree	Don't know / no opinion / not relevant
No additional tools are needed but the existing tools in the resolution framework should be improved	●	○	○
Additional tools should be introduced in the EU resolution framework	○	●	○
Additional harmonised tools should be introduced in the insolvency frameworks of all Member States	○	●	○
Additional tools should be introduced in both resolution and insolvency frameworks of all Member States	○	●	○

Question 17.1 Please explain your answer to question 17, specify what type of tool you would envisage and describe briefly its characteristics:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not envisage additional tools at this moment, rather we would clarify and improve the current available tools. See earlier answers.

Question 18. Would you see merit in introducing an orderly liquidation tool, i. e. the power to sell the business of a bank or parts of it, possibly with funding from the DGS under Article 11(6) DGSD, also in cases where there is no public interest in putting the bank in resolution?

- ○ Yes
- ● No
- ○ Don't know / no opinion / not relevant

Question 18.1 Please explain your answer to question 18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Since the tools in DGSD are available, it could merit to at least ensure further clarity and consistency in application among MS and between public and private DGS. As mentioned we are unconvinced of having an OLT tool in insolvency that would merely copy the way that the resolution authority and the resolution fund would intervene in resolution.
It is precisely our concern with this tool that there will be overlap between the two, and that in all cases authorities will pick the tool with least resistance (logically).
It is also unclear what this would mean for NCWO in resolution. As a liquidation tool is created/facilitated with less strict burden-sharing, creditors that are subject to a deeper bail-in in resolution could always then argue that there position would have been better under insolvency in the OLT.
The interaction of creating such a tool with the resolution framework should be very carefully reflected on.

Resolution strategy

As part of resolution planning, resolution authorities are defining the preferred and variant resolution strategy and preparing the application of the relevant tools to ensure its execution. For large and complex institutions, open-bank bail-in is, in general, expected to be the preferred resolution tool. This comes hand in hand with the need for those institutions to hold sufficient loss absorbing and recapitalisation capacity (MREL).

However, depending on the circumstances, it may be useful to consider the case of smaller and medium-sized institutions with predominantly equity and deposit-based funding, which may have a positive public interest to be resolved, but whose business model may not sustain an MREL calibration necessary to fully recapitalise the bank. For such cases, other resolution strategies are available in the framework such as the sale of business or bridge bank which, depending on the circumstances, may allow lower MREL targets and may be financed from sources of financing other than the resolution fund (for example, DGS).

The potential benefits of these tools depend on the characteristics of the banks and their financial situation and on how the specific sale of business transaction is structured. However, depending on the valuation of assets as assessed by the buyer, and the perimeter of a transfer, there may still be a need to access the resolution fund (complying with the access conditions) in order to complete the transfer transaction.

Question 19. Do the current legislative provisions provide an adequate framework and an adequate source of financing for resolution authorities to effectively implement a transfer strategy (i.e. sale of business or bridge bank) in resolution to small/medium sized banks with predominantly deposit-based funding that have a positive public interest assessment (PIA) implying that they should undergo resolution?

- (x) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Question 19.1 Please explain your answer to question 19:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See earlier answers as well. It remains difficult to reflect as the resolution framework has been used to a very limited extend.

A number of suggestions has been highlighted earlier, such as could the Danish approach serve as example to the broader banking union? To what extend would fund capacity really be needed in a transfer, and moreover, to what extend would loss-sharing be need in the case of a transfer? Could the option of providing a loan to the bridge-institution be sufficient? What role could national DGS play in resolution of small and medium-sized banks?

Funding sources in resolution

In order to carry out a resolution action, the resolution authority may decide to access the SRF/RF if certain conditions are met, in particular the need to first bail-in shareholders and creditors for no less than 8% of total liabilities, including own funds (TLOF). Article 109 BRRD also provides the possibility of using the DGS in resolution, however only for an amount that would not exceed the amount in losses that the DGS would have borne under an insolvency counterfactual. The availability of sufficient sources of funding and the provision of proportionate conditions to access them are central to ensure that the resolution framework is adequate to cater for potentially any bank's failure.

As explained above, in the banking union, those cases where resolution has not been chosen have usually benefited from State aid under national insolvency proceedings (including DGS alternative measures under Article 11(6) DGSD and State aid from the public budget) or from preventive DGS measures under Article 11(3) DGSD. Both the use of aid in NIPs and Article 11(3) DGSD are subject to different (and arguably less-stringent) conditions than those for the use of the resolution funds under the SRMR and BRRD. This divergence may be seen as creating a disincentive to use resolution. This can particularly be the case for small and medium sized banks as they may rely more than other banks on certain types of creditors (such as depositors or retail investors) on which it has proved to be difficult to impose losses.

This issue may be exacerbated by the fact that these categories of banks may have more difficulty in accessing debt issuance markets and therefore acquire loss-absorption capacity through, for example, subordinated debt. While some banks rely on more complex issuance strategies, for others (including in some cases sizeable entities) equity and deposits are the main sources of funding. As a result, meeting the requirement to access RFs/SRF for these banks to execute the resolution strategy (for solvency support) may entail bailing-in deposits. At the same time, it is arguable that a proportionate approach to managing bank failures should ensure that entities can access funding sources without having to modify their business model. Also, the existence of a variety of business models is an important element to ensure a diversified, dynamic and competitive banking market.

However, any potential amendment in this direction should limit risks to the level playing field among banks. This would require that the criteria used for a potential differentiation in these access conditions to funding, as well as the calibration of such conditions, are carefully targeted to avoid unwarranted differences of treatment.

Question 20. What are your views on the access conditions to funding sources in resolution?

	Agree	Disagree	Don't know / no opinion / not relevant
The access conditions in BRRD/SRMR to allow for the use of the RF/SRF are adequate and proportionate to ensure that resolution can apply to potentially any bank, while taking into account the resolution strategy applied	◉	○	○

There is merit in providing a clear distinction in the law between access conditions to the RF/SRF depending on whether its intervention is meant to absorb losses or to provide liquidity	●	○	○
The access conditions provided for in BRRD/SRMR to allow the authorities to use the DGS funds in resolution are adequate and proportionate to ensure that resolution can apply to potentially any bank, while taking into account the resolution strategy applied	○	○	●
The access conditions to funding in resolution should be modified for certain banks (smaller/medium sized, with certain business models characterised by prevalence of deposit funding) for more proportionality	○	●	○
The DGS/EDIS funds should be available to be used in resolution independently from the use of the RF/SRF and under different conditions than those required to access RF/SRF. In particular, it should be clarified that the use of DGS does not require a minimum bail-in of 8% of total liabilities including own funds	○	○	●
Additional sources of funding should be enabled.	○	●	○

Question 20.1 Please explain your answer to question 20:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The access conditions to access RF/SRF funding are adequate and proportionate. The 8% threshold has been agreed by all member states and ensures that the burden is adequately shared by the private sector. There is an argument to be made that small/medium sized institutions face a competitive disadvantage compared to larger banks with more capacity and expertise to issue MREL instruments. Yet, modifying the access conditions to funding in resolution for certain banks (smaller/medium sized, with certain business models characterized by prevalence of deposit funding) would however undermine the important principles laid down in the framework, and would create arbitrage opportunities, and further unclarity. Furthermore access conditions have been enshrined in the backstop agreement.

Our understanding is that it is already clear from the text in art. 101 that for the use of the resolution financing arrangements an 8% bail-in is only necessary for loss absorption, yet we understand that for some RAs this requires further clarity, which we could agree to.

On DGS in resolution, this tool has until now (like many of the resolution tools) has not been used. This makes it difficult to argue for fundamental changes. The advantage of making this tool more readily available would be that it already exists within the current framework and would not lead to a major overhaul.

Sources of funding available in insolvency

Funding sources are also available for banks that do not meet the public interest test and are put in insolvency according to the applicable national law.

There are, in particular, two sources of potential public external funding:

- DGS funds to finance alternative measures pursuant to Article 11(6) DGSD. In this case, the DGS can provide funding to support a transaction to the extent that this is necessary to preserve access to covered deposits and that it complies with the least cost test (i.e. the loss for the DGS is lower than the loss it would have borne in case of payout in insolvency) and State aid rules, as applicable
- Financial support from the public budget. Such financial support can be provided by Member States subject to compliance with the requirements enshrined in the State aid framework (this includes first and foremost the [2013 banking Communication]), which include among other things burden sharing by shareholders and subordinated debt and a requirement that the aid is granted in the amount necessary to facilitate an orderly exit of the bank from the market

It is important to examine the consistency and proportionality in the conditions for accessing external financial support across different procedures, and their related potential incentives.

Question 21. In view of past experience, do you consider that the future framework should promote further alignment in the conditions for accessing external funding in insolvency and in resolution?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 21.1 Please explain your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is important to promote further alignment in the conditions for accessing external funding in insolvency and in resolution. In particular, the rules described in the Banking Communication are more flexible and ought to be aligned in order to prevent arbitrage, as well as to have the right incentives in place. This is notably the case as regards burden-sharing.
To ensure level playing field, likewise, it should be clarified that the requirements of intervention pursuant to article 11(3) DGSD are more aligned with those in resolution, for example by ensuring burden sharing, or by ensuring a market exit.
As such, it is crucial to review the Banking Communication in parallel with the crisis management framework (BRRD/DGSD), in line with the Eurogroup statement on the backstop, to ensure an effective and efficient holistic approach.

Governance and funding

The current governance setup of the resolution and deposit insurance framework relies on both national and European authorities. Outside the banking union, the management of bank crises is in principle assigned to national authorities (i.e. national resolution authorities, DGS authorities and authorities responsible for insolvency proceedings), while the banking union governance structure is articulated on a national and European level (managed by the SRB).

The framework aims to align the governance structure and the source of funding. In particular this implies that funding held at national level is managed by national authorities, while the SRB manages the Single Resolution Fund, although there are exceptions (e.g. if a national DGS is used to contribute to the resolution of a bank in the SRB remit, the SRB has a role in deciding on its use under the existing BRRD framework).

This element may be particularly relevant in the context of a reflection on potential adjustments to the framework. In particular, a question may arise whether a more prominent role should be reserved for national DGSs/EDIS for financing crisis measures, how it would relate to the NRAs role (within the SRB governance), or even whether the management of such measures should also be assigned exclusively to national authorities or whether some coordination or oversight at European level could be beneficial to ensure a level playing field. Conversely, a reflection seems warranted on the role of the SRB in the management of EDIS.

Question 22. Do you consider that governance arrangements should be revised to allow further alignment with the nature of the funding source (national/supra-national)?

- ○ Yes
- ○ No
- ● Don't know / no opinion / not relevant

Question 22.1 Please explain your answer to question 22:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Having alignment between funding source and governance arrangements is logical in principle.
This is why we would support:

- Having stringent transparent stress tests for all SRB banks.
- Doing an AQR before any risk-sharing through a future EDIS.

We observe as well that the Commission plays a role both in state aid and in resolution. The SRB on the other hand only plays a role in resolution, but not in state aid.
There could be merit in looking at the role of the Commission in resolution. Is this really necessary? After all, the Commission also doesn't have a role in supervision of banks.

Question 23. Is there room to improve the articulation between the roles of SRB and national authorities when the DGS is used to finance the resolution of a bank in the SRB remit?

- ○ Yes
- ○ No
- ● Don't know / no opinion / not relevant

Question 23.1 Please explain your answer to question 23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As this option has not been used, it is very difficult to say something about the governance arrangement surrounding such tools.

It seems logical that provisions would clarify at least a process toward using such tools outlining the responsibilities of parties concerned.

Ability to issue MREL and impact on the feasibility of the resolution strategy

MREL rules are an essential part of the framework, as they aim to ensure that banks can count on sufficient amounts of easily bail-inable liabilities to increase their resilience, ensure resolvability according to the resolution strategy identified and preserve the stability of the financial system in the eventual implementation of the resolution strategy. The bank-specific MREL calibration by the resolution authority reflects the chosen resolution strategy. In addition, the MREL capacity is key to ensure a sufficient burden sharing by the existing shareholders and creditors in case of failure.

At the same time, the ability to issue MREL, particularly through subordinated instruments, depends on several features of each bank and its business model. Certain banks (e.g. some banks with traditional funding models relying largely on deposits) may have more difficulties in accessing debt issuance markets than other, more complex, institutions. While significant progress has been achieved by banks in reducing MREL shortfalls over the past years, when it comes to reaching their MREL targets under the applicable resolution strategy (and complying, if needed, with the conditions for accessing the resolution fund), challenges remain for certain banks (joint report by the services of the European Commission, the European Central Bank (ECB) and the Single Resolution Board (SRB) (November 2020), Monitoring report on risk reduction indicators, pg 33.). They relate to the sustainable build-up of MREL-eligible instruments, especially against the background of fragile profitability and capability to roll-over instruments in the short-term, in particular in times of economic crisis.

Question 24. What are your views on the prospect of MREL compliance by all banks, including in the particular case of smaller/medium sized banks with traditional business models?

	Agree	Disagree	Don't know / no opinion / not relevant
While issuing MREL-eligible instruments remains a priority, certain banks may not be capable of closing the shortfall sustainably for lack of market access.			X
Possible adverse market and economic circumstances can also affect the issuance capacity of certain banks.	X		
Transitional periods could be a tool to deal with MREL shortfalls, resolution authorities could consider prolonging these under the current framework.		X	

Question 24.1 Please explain your answer to question 24:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It would be good to better understand the scope of the issues:
To what extend are banks that need to unable to issue debt? If a transfer strategy is chosen for such banks

when a DGS transfer would be possible, why would then MREL be really of an issue? Has the Commission assessed recent cases outside of the resolution framework and assessed how such cases would have evolved under resolution? Could the Danish example once more be an option?

Question 25. In case of failure of banks, which may lack sufficient amounts of subordinate debt (see question above) and/or would not meet the PIA criteria, what are your views on possible adjustments to the MREL requirements?

	Agree	Disagree	Don't know / no opinion / not relevant
MREL adjustments for resolution strategies other than bail-in can help in this context			X
Rules defining how the MREL is set for banks likely not to meet the PIA criteria should be clarified			X
In any case, for all banks, an adequate burden sharing by existing shareholders and creditors should be ensured	X		

Question 25.1 Please explain your answer to question 25:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The text on MREL was created after very lengthy and careful discussions on the Council. We would encourage restraint in re-opening these texts.

Treatment of retail clients under the bail-in tool

The bail-in tool can be applied to all the unsecured liabilities of the institution, except where they are statutorily excluded from its scope. Resolution authorities have the discretionary power to exclude certain liabilities from bail-in, but this can only take place under a limited set of circumstances and, where it leads to the use of the resolution financing arrangement, it requires authorisation from the Commission and the Council.

If a significant part of an institution's bail-inable liabilities, particularly MREL instruments, is held by retail investors, resolution authorities might be reticent to impose losses on those liabilities for a number of reasons (in this respect, please see the statement of the EBA and ESMA on the treatment of retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive). First, the bail-in of debt instruments held by retail clients risks affecting the overall confidence in the financial markets and might trigger severe reactions by those clients, which could translate in contagion effects and financial instability. Second, bailing-in retail debt holders, especially in case of self-placement (where the institution places the financial instruments issued by themselves or other group entities with their own client base), could hinder the successful implementation of the resolution strategy. Indeed, the imposition of losses to the customer base of the institution under resolution could lead to reputational damage, which in turn could impede the business viability and the franchise value of the institution post- resolution.

In order to ensure that retail investors do not hold excessive amounts of certain MREL instruments, BRRD II (Directive (EU) 2019/879) introduced a requirement to ensure a minimum denomination amount for such instruments or that the investment in such instruments does not represent an excessive share of the investor's portfolio (see Article 44a BRRD). MiFID II (Directive 2014/65/EU), which has been applicable since January 2018, also included a number of new provisions aimed at strengthening investor protection in respect of disclosure, distribution and assessment of suitability, among others.

Nevertheless, the question has arisen whether the protection of retail clients should be reinforced, either by further empowering resolution authorities to pursue that objective or through directly applicable protection in the context of resolution. These considerations are independent of the possible measures that may be implemented to address the specific case of mis-selling of financial instruments to retail clients.

Question 26. What are your views on the policy regarding retail clients' protection?

	Agree	Disagree	Don't know / no opinion / not relevant
The current protection for retail clients (MiFID II and BRRD II) is sufficient in the resolution framework, both at the stage of resolution planning and during the implementation of resolution action.	○	○	●
Additional powers should be explicitly given to resolution authorities allowing them to safeguard retail clients from bearing losses in resolution.	○	○	●
Additional protection to retail clients should be introduced directly in the law (e.g., statutory exclusion from bail-in).	○	●	○
Introducing additional measures limiting the sale of bail-inable instruments to retail clients or protecting them from bearing losses in resolution may have a substantial impact on the funding capacity of certain banks.	○	○	●

Question 26.1 Please explain your answer to question 26:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view important provisions have been introduced with BRRD2 to protect retail investors. In our view the main point is that substantial holdings of a particular bank's MREL by retail could be an impediment to resolvability. Therefore a more explicit requirement (aside from the recital in BRRD) could be helpful in providing sufficient mandate to RAs to address such issues.
In addition it would be good to introduce additional provisions in the BRRD to prevent cross-holdings of

MREL eligible debt by other banks, as this could be a source of contagion, and thereby an impediment to resolvability as well. The TLAC term sheet provides guidance on that issue.

Question 27. Do you consider that Article 44a BRRD should be amended and simplified so as to provide only for one single rule on the minimum denomination amount, to facilitate its implementation on a cross-border basis?

- ○ Yes
- ○ No
- ● Don't know / no opinion / not relevant

Question 27.1 Please explain your answer to question 27:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 28. Do you agree that the scope of the rule on the minimum denomination amount to other subordinated instruments than subordinated eligible liabilities (e.g. own funds instruments) and/or other MREL eligible liabilities (senior eligible liabilities) should be extended?

- ○ Yes
- ○ No
- ● Don't know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

B. Level of harmonisation of creditor hierarchy in the EU and impact on NCWO

Liabilities absorb losses and contribute to the recapitalisation of an institution in resolution in an order that is largely determined by the hierarchy of claims in insolvency. EU law already provides for a number of rules on the bank insolvency ranking of certain types of liabilities. For the remaining classes of liabilities, there is little harmonisation at EU level.

Notably, some Member States have granted a legal preference in insolvency to other categories of deposits currently not mentioned in Article 108(1) BRRD. In this context, the question is whether there should be a generalised granting of a legal preference to all deposits at EU level (It should be mentioned that in the United States all depositors benefit from the same ranking). The arguments in favour would be that this would ensure a level playing field in depositor treatment across the EU, contribute to minimizing the risks of breach of the NCWO principle and properly reflect the key role played by deposits in the real economy and in banking. Additionally, if the three-tiered ranking of deposits and DGS claims currently put in place by Article 108(1) BRRD were to be replaced with a single ranking, whereby all those claims would rank *pari passu*, the use of the DGS in resolution and in insolvency would be facilitated.

Moreover, there is still the possibility that the order of loss absorption in resolution deviates from the creditor hierarchy in insolvency, which has the potential to lead to breaches of the NCWO principle'. The lack of harmonisation in the ordinary unsecured and preferred layer of liabilities in insolvency can also create difficulties when carrying out a NCWO assessment in case of resolution of cross-border groups, particularly within the banking union where the SRB is currently required to deal with 19 different insolvency rankings.

On the other hand, arguments against providing such preference would be that it would treat financial instruments held by the same type of creditors differently and could affect the costs of funding of institutions. Changes to the relative ranking of deposits could also lead to an increased risk of losses in insolvency for the DGS in case of pay-out.

Question 29. Do you consider that the differences in the bank creditor hierarchy across the EU complicate the application of resolution action, particularly on a cross-border basis?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 29.1 Please explain your answer to question 29:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

> Further looking at how to align national insolvency proceedings of banks to ensure that for instance resolution can be more readily applied is something we would support. We'd like to repeat our earlier comments on technical issues in the creditor hierarchy related to NCWO. In the Netherlands we have encountered possible issues with regard to the hierarchy of claims and interest. In the Netherlands, a legislative change is in preparation to revise the hierarchy of claims and interest. This proposal aims to increase the effectiveness of the instrument of bail-in, in the light of the NCWO principle. We encourage the Commission to look at such more technical issues as well to make existing frameworks work better.

Question 30. Please rate, from 1 (lowest) to 10 (highest), the importance of the following actions:

											Don know

	1	2	3	4	5	6	7	8	9	10	No opini
Granting of statutory preference to deposits currently not covered by Article 108 (1) BRRD	○	○	○	○	○	○	○	○	○	○	●
Introduction of a single-tiered ranking for all deposits	○	○	○	○	○	○	○	○	○	○	●
Requiring preferred deposits to rank below all other preferred claims	○	○	○	○	○	○	○	○	○	○	●
Granting of statutory preference in insolvency for liabilities excluded from bail-in under Article 44 (2) BRRD	○	○	○	○	○	○	○	○	○	○	●

C. Depositor insurance

Enhancing depositor protection in the EU

As a rule, deposits on current and savings accounts are protected up to EUR 100 000 per depositor, per bank in all EU Member States. However, based on the experience with the application of the framework, differences between Member States persist in relation to several types of deposits.

Certain deposits benefit from a higher protection because of their impact on a depositor’s life. For example, a sale of a private residential property or payment of insurance benefits typically creates a temporary high balance on a depositor’s bank account above the standard coverage of EUR 100 000. The protection of such temporary high balances currently varies from EUR 100 000 up to EUR 2 million depending on the Member State.

In the current framework, public authorities are and some local authorities may be excluded from the deposit protection. In this view, deposits by entities such as schools, publicly owned hospitals or swimming pools can lose protection because they are considered public authorities.

Financial institutions, such as payment institutions and e-money institutions, and investment firms may deposit client funds in their separate account in a credit institution for safeguarding purposes. Currently, the lack of protection against the banks' inability to repay in some Member States could be critical for the clients as well as for the business continuity of the firms, if bank failures occur.

Please note that **questions 31 to 32** of this targeted consultation **correspond to questions 7 to 8** of the public consultation.

Question 31. Do you consider that there are any major issues relating to the depositor protection that would require clarification of the current rules and /or policy response?

- ( ) Yes
- (•) No
- ( ) Don't know / no opinion / not relevant

Question 31.1 Please elaborate on your answer to question 31:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 32. Which of the following statements regarding the scope of depositor protection in the future framework would you support?

	Agree	Disagree	Don't know / no opinion / not relevant
The standard protection of EUR 100 000 per depositor, per bank across the EU is sufficient.	(•)	( )	( )

The identified differences in the level of protection between Member States should be reduced, while taking into account national specificities.	◉	○	○
Deposits of public and local authorities should also be protected by the DGS.	◉	○	○
Client funds of e-money institutions, payment institutions and investment firms deposited in credit institutions should be protected by a DGS in all Member States to preserve clients' confidence and contribute to the developments in innovative financial services.	○	○	◉

Question 32.1 Please elaborate on any of the statements in question 32, including any supporting documentation (where available), or add other suggestions concerning the depositor protection in the future framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current coverage level of EUR 100,000 is adequate and therefore no changes to the DGSD are necessary.

NL supports last year's EBA analysis and recommendation on deposits of public and local authorities. From an operational perspective, we can support the protection of the deposits of public authorities by a DGS, irrespective of their budget. The harmonized coverage level will protect DGS against large claims and will automatically make a separation between the level of protection for smaller public authorities compared to larger ones. Currently the Dutch DGS covers large corporations that are fully state-owned but does not cover local schools and hospitals.

Keeping depositors informed

Depositor confidence can only be maintained when depositors have access to information about the protection of deposits and understand it well. Under the current rules, credit institutions shall inform actual and intending depositors about the protection of their deposits at the start of the contractual relationship, e.g. upon opening of the bank account, and onwards every year. To this end, credit institutions communicate a so-called depositor information sheet, which includes information about the DGS in charge of protecting their deposits and the standard coverage of their deposits. Depositors receive such communication in writing, either on paper, if they so request, or by electronic means (via internet banking, e-mails, etc.).

Please note that **question 33** of this targeted consultation **correspond to questions 9** of the public consultation.

Question 33. Which of the following statements regarding the regular information about the protection of deposits do you consider appropriate?

	Agree	Disagree	Don't know / no opinion / not relevant
It is useful for depositors to receive information about the conditions of the protection of their deposits every year.	◉	○	○
It would be even more useful to regularly inform depositors when part of or all of their deposits are not covered.	○	○	◉
The current rules on depositor information are sufficient for depositors to make informed decisions about their deposits.	○	◉	○
It is costly to mail such information, when electronic means of communication are available.	◉	○	○
Digital communication could improve the information available to depositors and help them understand the risks related to their deposits.	◉	○	○

Question 33.1 Please elaborate on any of the statements in question 33, including any supporting documentation (where available) or ideas to improve the information disclosure, or add other suggestions concerning the depositor information in the future framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

NL supports the EBA's analysis and recommendation on depositor information. The (annual) depositor information sheet should be kept, as it enhances knowledge of the DGS. The DGSD should be amended as to state clear minimum requirements (in line with EBAs suggested amendments) and could allow for some flexibility to what extent extra information is added.

At least the depositors who will lose coverage for some of their funds because of the merger, conversion of subsidiaries into branches or similar operations should be informed of their right to withdraw their funds without incurring a penalty up to an amount equal to the lost coverage of deposits.

Making depositor protection more robust, including via the creation of a common deposit insurance scheme in the banking union

Currently, national deposit guarantee schemes (DGSs) are responsible for protecting and reimbursing depositors. DGSs are funded primarily by annual contributions of the national banking sectors. By 3 July 2024, the available financial means of each DGS must reach a target level of 0.8% of the amount of the covered deposits of its members.

The 2015 Commission proposal to establish an EDIS for bank deposits in the banking union builds on the system of the national DGS funds and enhances the mutualisation across the private sector in the banking union. It aims to ensure that the level of depositor confidence in a bank would not depend on the bank's location. It also reduces the vulnerability of national DGSs to large local shocks and weakens the link between banks and their national sovereigns.

Since 2015, discussions are ongoing on completing the third pillar of the banking union (i. e. a common deposit guarantee scheme) in the Council's Ad Hoc Working Party, High Level Working Group set up by the Eurogroup and in the European Parliament. Most recently, the set-up and features of a possible compromise on a first stage common deposit insurance scheme focusing on liquidity provision were discussed at political level (Letter by the High-Level Working Group on a European Deposit Insurance Scheme (EDIS) Chair to the President of the Eurogroup, 3 December 2019). In a nutshell, on the basis of these discussions, a common scheme could rely on the existing national DGSs and be complemented by a central fund to reinsure national systems. This first stage of EDIS based on liquidity support could be followed by steps towards a fully-fledged EDIS with loss-sharing, which would ensure an alignment between control (supervision and resolution) and liability (deposit protection), and further reduce the nexus between banks and sovereigns.

Question 34. In terms of financing, does the current depositor protection framework achieve the objective of ensuring financial stability and depositor confidence, and is it appropriate in terms of cost-benefit for the national banking sectors?

	Agree	Disagree	Don't know / no opinion / not relevant
The current depositor framework achieves the objective of ensuring financial stability and depositor confidence.	◉	○	○
The cost of financing of the DGS up to the current target level of 0.8 % of covered deposits is proportionate, taking into account the objective to ensure robust and credible depositor insurance.	◉	○	○
A target level in a Member State could be adapted to the level of risk of its banking system.	◉	○	○

Question 34.1 Please elaborate any of the statements in question 34, including any supporting documentation (where available), or add other suggestions concerning the financing of the DGS in the future framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

NL is open to discuss whether member states should be able to adjust the target level of their national DGS at their discretion. This discretion should be strictly limited however, at least with the conditions that the discretion can only be used to set a higher target level than 0.8% and curbed by an upper boundary to prevent a too wide dispersion amongst national DGSs. That is also important in relation to the discussions on an EDIS.

Question 35. Should any of the following provisions of the current framework be amended?

	Yes	No	Don't know / no opinion / not relevant
Financing of the DGS (Article 10 DGSD)	○	●	○
The DGS's strategy for investing their financial means (Article 10 DGSD)	●	○	○
The sequence of use of the different funding sources of a DGS (available financial means, extraordinary contributions, alternative funding arrangements) (Article 11 DGSD)	●	○	○
The transfer of contributions in case a bank changes its affiliation to a DGS (Article 11 DGSD)	●	○	○

Please explain how this/these provision(s) should be amended:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

NL is of the opinion that the DGSD could provide more flexibility in which sequence DGSs are able/allowed to use the different funding sources. For example, it could be beneficial if a DGS can choose to not use ex-post contributions in times of economic crisis (that puts further stress on the banking sector) but make use of – for example and in certain scenarios – a commercial credit line. NL supports the EBA's analysis and recommendation with regards to the conditions and restrictions under which that flexibility could be used. In any case, all private sources need to always be exhausted first, this should not be flexible

NL supports the EBA's analysis and its opinion asking for more clarity on the transfer of contributions in case a bank changes its affiliation to a DGS. Under the current rules, no contributions are transferred if the target level has already been met. This could lead to an undesired extra burden on the (members of the) DGS that the credit institution is transferring to.

Question 35.1 Please elaborate any of the statements in question 35, including any supporting documentation (where available), or add other suggestions concerning the above or other elements of the future framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please note that **question 36** of this targeted consultation **partly corresponds to question 10** of the publi consultation.

Question 36. Which of the following statements regarding EDIS do you support?

	Agree	Disagree	Don't know / no opinion / not relevant
It is preferable to maintain the national protection of deposits, even if this means that national budgets, and taxpayers, are exposed to financial risks in case of bank failure and may create obstacles to cross-border activity.	○	○	●
From the depositors' perspective, a common scheme, in addition to the national DGSs, is essential for the protection of deposits and financial stability in the euro area.	○	○	●
From the credit institutions' perspective, a common scheme is more cost-effective than the current national DGSs if the pooling effects of the increased firepower are exploited.	○	○	●
From the perspective of the EU single market, EDIS could exceptionally be used in the non-banking union Member States as an extraordinary lending facility in circumstances such as systemic crises and if justified for financial stability reasons.	○	●	○

Question 36.1 Please elaborate on any of the statements in question 36, including any supporting documentation, or add suggestions on how to achieve the objective of financial stability in the European Union and the integrity of the single market:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In discussing the preferred option for the protection of deposits, whether through a national or a common European scheme, it is important to ensure the right balance is struck in terms of proportionality and subsidiarity. In principle, we are mindful of the benefits of an EDIS, which could lead to higher depositor protection in the Union. Yet, it is also good to bear the Commission's 2015 effect analysis in mind that shows that a common scheme, even in its lightest form without loss-sharing, leads to higher depositor protection.

Any political decision-making, for any model, on an EDIS is contingent on steps towards risk-reduction. More specifically, for the Netherlands, steps on EDIS are conditional on a more prudent treatment of sovereign assets. Furthermore, before risk-sharing through EDIS, an AQR should be done to ensure that banks in an EDIS are healthy. This can also ensure that risks for different banks under an EDIS are similar and reduced.

Decisions on a common scheme need careful consideration on what elements are arranged on a national level as compared to the European level, so it can indeed contribute to (the depositor's perception of) financial stability in the euro area. It is also important to consider that some MS have more extensive national options and discretions. Such ONDs may be better tailored having more national flexibility.

In principle we would be not be in favor of using an EDIS for non-banking union members, since it is preferable that beneficiaries to a common scheme are supervised in similar ways.

Question 37. In relation to a possible design of EDIS, which of the following statements do you support?

	Agree	Disagree	Don't know / no opinion / not relevant
As a first step, a common scheme provides only liquidity support subject to the agreed limits to increase a mutual trust among Member States.	○	○	●
At least a part of the funds available in national DGSs is progressively transferred to a central fund.	○	○	●
If the central fund is depleted, all banks within the banking union contribute to its replenishment over a certain period.	○	○	●
Loss coverage is an essential part of a common scheme, at least in the long term.	○	●	○

Question 37.1 Please elaborate on any of the statements in question 37, including any supporting documentation, or add suggestions concerning a possible design, including benefits and disadvantages as well as potential costs thereof:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In line with answer under 36, the Netherlands in principle is supportive of an EDIS, given that it could increase stability in the European banking sector. Yet any political decision-making, for any model, on an EDIS is contingent first on steps towards risk-reduction. More specifically, for the Netherlands, steps on EDIS are conditional on a more prudent treatment of sovereign assets. Furthermore, before risk-sharing through EDIS, an AQR should be done to ensure that banks in an EDIS are healthy. This can also ensure that risks under an EDIS are similar.

As well in line with 36, the Comm effect analysis showed that even models without loss coverage are sufficiently improving depositor coverage under many cases.

Question 38. Which of the following statements regarding the possible features of EDIS do you support?

	Agree	Disagree	Don't know / no opinion / not relevant
Setting a limit (cap) on the liquidity support from the central fund is appropriate to prevent the first mover advantage.	◉	○	○
Any bank that is currently a member of a national DGS is also part of the common scheme.	○	◉	○
The central fund should be allocated 50% or more and the national DGS 50% or less of the total resources.	○	○	◉
Appropriate governance rules and interest rates provide the right incentive for the repayment of the liquidity support, while taking into account their procyclical impact.	◉	○	○
The central fund also covers the options and national discretions currently applicable in the Member States.	○	◉	○
A common scheme provides for a transitional period from liquidity support towards the loss coverage with a view to breaking the sovereign-bank nexus.	○	◉	○

Question 38.1 Please elaborate on any of the statements in question 38, including any supporting documentation, or add suggestions concerning possible features of such a common scheme:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A few comments.
It is important to mitigate the first mover advantage, and therefore to implement some form of limitation on use of the DIF or on mandatory lending. Caps could be an efficient solution. In addition, a fixed timeline could also help to reduce the first-mover advantage, which in our view should be an important element.
Another point to consider regarding repayment, is that interest rates could be set in such a way that they incentivize fast repayment.
Preferably, credit institutions are supervised under the SSM, otherwise supervision may be different for institutions that are under a common DGS. As regards ONDs, we wonder from a technical stance whether it would be possible to separate ONDs from non-ONDs in all cases. That could be an argument in favor of more flexibility at national level and have less pooling under an EDIS.

Question 39. Under the current Commission's proposal on EDIS, a common scheme would co-exist with the Single Resolution Fund.

Against the background of the general macroeconomic and financial environment for banks and subject to the cost benefit analysis, do you think that synergies between the two funds should be explored to further strengthen the firepower of the crisis management framework and to reduce the costs for the banking sector?

In that respect, which of the following statements do you support?

	Agree	Disagree	Don't know / no opinion / not relevant
The Single Resolution Fund and EDIS should be separate.	○	○	◉
The Single Resolution Fund should support EDIS when the latter is depleted.	○	○	◉
Synergies between the two funds should be exploited.	○	○	◉
Synergies between the two funds should be used to reduce the costs of the crisis management framework for the banking sector.	○	○	◉
Synergies between the two funds should be used to strengthen the firepower of the crisis management framework.	○	○	◉

Question 39.1 Please elaborate on any of the statements in question 39, including any supporting documentation regarding the benefits and disadvantages of the above options as well as potential costs thereof:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer under 36.1.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2021-crisis-management-deposit-insurance-review-targeted_en)

Consultation document (https://ec.europa.eu/info/files/2021-crisis-management-deposit-insurance-review-targete consultation-document_en)

Consultation strategy (https://ec.europa.eu/info/files/2021-crisis-management-deposit-insurance-review-consultation-strategy_en)

List of acronyms used in this consultation (https://ec.europa.eu/info/files/2021-crisis-management-deposit-insurance-review-acronyms_en)

Public consultation launched in parallel (https://ec.europa.eu/info/publications/finance-consultations-2021-crisis-management-deposit-insurance-review_en)

More on banking union (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/banking-union_er

Specific privacy statement (https://ec.europa.eu/info/files/2021-crisis-management-deposit-insurance-review-targeted-specific-privacy-statement_en)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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