POSITION PAPER

ESBG response to the EC public consultation on the review of the bank crisis management and deposit insurance framework (BRRD/SRMR/DGSD review)

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ESBG

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PART 1 – GENERAL OBJECTIVES AND REVIEW FOCUS

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't Know/ No opinion
The framework achieved the objective of limiting the risk for financial stability stemming from bank failures							x				
The framework achieved the objective of minimising recourse to public financing and taxpayers' money						x					
The framework achieved the objective of protecting depositors							x				
The framework achieved the objective of breaking the bank/sovereign loop				x							
The framework achieved the objective of fostering the level playing field among banks from different Member States					x						
The framework ensured legal certainty and predictability					x						
The framework achieved the objective of adequately addressing cross-border bank failures					x						
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											x

Question 1.1: If possible, please explain:

General comments

The proposed regulations for the restructuring and resolution of banks have proven their worth. Yet we would like to propose certain amendments to the current framework. We would be in favour of a holistic and no "silo-thinking" approach. The ECB and the SRB must keep an eye on interactions of the respective regulation in their specific pillar. In practice, banks are too often referred from one authority to the other. Cooperation and coordination are essential, otherwise there is a risk of duplication, double reporting, unclear requirements, additional administrative burdens and so on. There is a lot of potential for regulatory cost reduction and simplification.

A clear distinction between resolution and liquidation should be made on Level 1 text

At present, it does not seem clear which banks fall under which regime. Both the resolution and deposit insurance regimes are currently building up funds. It should become clear in which cases which funds may be used. There should be a level-playing field and "gold plating" should be prevented.

More level playing field is needed in the context of the application of the EU resolution framework

The goal of a level playing field was only partially achieved. It should be noted that not all member states seem to be willing to consistently implement the rules for the resolution of banks agreed at European level in practice. Instead, the impression arises that (unchanged) national special solutions are being sought.

A solution for liquidity in resolution would help to ensure that banks meant to be resolved are resolved smoothly

The crisis management framework foresees a bail-in of shareholders and creditors and has led to the build-up of loss absorption buffers. For a crisis at individual bank level, this should minimize the recourse to public financial and taxpayer's money. Nevertheless, a public backstop to liquidity for banks in resolution and for banks coming out of resolution .is still necessary also to ensure market confidence and to bring a bank resolution to a successful conclusion.

The State Aid regime (2013 Banking Communication) and the resolution framework need to be aligned

It must also be ensured that not only idiosyncratic crises can be effectively handled. Considering that, in a systemic crisis, recourse to state aid may still be necessary, it should be ensured that the EU state aid rules (2013 Banking Communication) for the banking sector are brought in line with the crisis management framework. The 2013 Banking Communication and the crisis management framework are based on different rationales and the experience shows inconsistencies in the interpretation of financial stability and public interest by the EU Commission and by the SRB. Misalignments between the state aid regime and the BRRD/SRMR on public intervention have increased legal uncertainty and can lead to inefficient and ineffective solutions.

A targeted harmonisation of national bank insolvency law could help

The coexistence of the EU resolution framework with a plurality of national regimes could generate dysfunctionalities and may give rise to inefficient, costly and heterogeneous outcomes. A change in the legal framework is therefore needed. This could lead to a targeted harmonisation focused on bank insolvency law.

Simplified requirements are appropriate in the scope of the bank crisis management framework

It should be noted that the resolution requirements apply already to all institutions. However, simplified requirements are relevant for certain institutions. Even if simplified requirements are applied, the power of the SRB/NRAs to take resolution measures is not affected, see Art. 11 (5) SRMR. The gradation expressed in the simplified requirements is also objectively justified and legally required in terms of the different risks faced by institutions and their systemic relevance.

Cross-border capital waivers and liquidity waivers would improve resolution for cross-border groups

In order to improve the resolution of cross-border groups, we need to foster a Capital Markets Union as well as a Single Banking Market by further harmonising banking rules and by removing barriers to cross border business, e.g. introduce cross-border capital waivers and easy accessible liquidity waivers. Otherwise splitting up along national lines might occur.

Character count: 4340 / 5000

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?

The CMDI framework should go for an evolution, not a revolution. An EU orderly liquidation tool for medium-sized banks does not seem appropriate

No need for a fundamental reorientation of the CMDI is seen. We also see no need for new instruments such as the unspecified - Orderly Liquidation Tool for small and medium-sized banks. Before the introduction of new instruments, the existing framework should be applied fully and coherently. New instruments may only be introduced if the objectives pursued with them cannot be achieved by optimizing the CMDI and the national insolvency rules, given the small number of institutes that would fall under the tool.

Recovery planning needs to be improved and small banks should not be obliged to submit recovery plans

Besides, in reviewing the CMDI framework, it should not be overlooked that the "first line of defence" is recovery planning. It is a little bit surprising that this issue is not the subject of the consultation. However, there is also a need for improvement in this area. Small banks should not be obliged to submit recovery plans. There is little added value for both banks and supervisors. Instead, the supervisory authority should be given the possibility to oblige small banks to carry out recovery plans in individual cases.

The principles of subsidiarity and proportionality must be highlighted in the scope of the CMDI review

In a revision of the CMDI, the limits of the internal market harmonization competence of Art. 114 (1) TFEU must be observed and the principle of subsidiarity and proportionality must be taken into account.

The PIA should be better framed and applied consistently across the EU

This would limit national crisis management cases that effectively involve public intervention to circumvent the founding principle of the resolution, (the bail in) maintaining alive zombie banks crippling the potential for economic growth and jeopardizing financial stability.

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Character count: 1942 / 5000

Question 2: Do you consider that the measures and procedures available in the current legislative framework have fulfilled the intended policy objectives16 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	Don't Know/ No opinion
Early intervention measures					x						
Precautionary measures						x					
DGS preventive measures								x			
Resolution						x					
National insolvency proceedings, including DGS alternative measures where available					x						

Question 2.1: If possible, please explain your reply, and in particular elaborate on which elements of the framework could in your view be improved.

Early intervention measures should be simplified, proportionate and merged with supervisory powers for enhanced efficiency

The measures provided for in Art. 27 to Art. 30 BRRD appear reasonable from a theoretical perspective. However, the experience of the last few years has shown that there is practically no need for this. The competent authorities were able to adequately deal with possible difficulties with the means at their disposal. In addition, the relationship between supervisory powers and powers of the SRB/NRAs could be regulated more clearly.

Preventive measures are essential to the CMDI framework

Preventive measures, in particular through institutional protection schemes, are cost-efficient and successful private instruments (see detailed answer to Question 9).

Precautionary measures can only play an important role in exceptional cases

We strongly argue in favour of upholding the current scope of the resolution framework (i.e. applicable in cases of idiosyncratic crisis as opposed to systemic crisis). Precautionary measures in form of public support under the state aid rules and as set out per BRRD Art 32 (4) (d) can play an important role in exceptional cases.

The crisis management framework is rather complete… but liquidity in resolution remains an important goal to achieve

The resolution framework has achieved the intended goals, there is no need for further instruments or a changed application requirement. However, this only applies to the topics addressed in the framework such as the resolution of individual banks. On the other hand, the Banking Union still has no credible liquidity backstop to ensure liquidity for freshly resolved banks until market confidence has been restored. Such a backstop would be key to ensure market confidence and fairly-priced funding for a freshly resolved bank and avoids contagion to other parts of the financial system. Other jurisdictions like the UK and the US have long put these in place. Not only in view of the amount of funds needed, a liquidity facility of this kind can only be operated by a public-sector entity. A facility operated by a public-sector entity of this kind would send out a strong signal that would strengthen general confidence/market confidence in the effectiveness of the resolution regime and in banking union.

A certain degree of national insolvency proceedings should be encouraged

For the vast majority of banks in the EU – in the event of a crisis – the normal scenario is liquidation under national insolvency or national liquidation regimes due to a negative public interest's assessment. The national bank insolvency or national bank liquidation regimes vary across jurisdictions. The coexistence of the common resolution framework with a plurality of national regimes might cause problems, if the existing instruments and regulations are not applied uniformly. A change in the legal framework is therefore appropriate. This could lead to a targeted harmonisation focused on bank insolvency law. Solving potential inconsistencies and creating a harmonised insolvency regime not only for banks under the direct remit of the SRB appears essential for both the banking union and the capital markets union. In this respect, a step-by-step approach is needed that will identify the areas where further alignment is urgently necessary.

Harmonisation of insolvency proceedings at EU level should not damage well-functioning national insolvency proceedings

Should insolvency proceedings for banks show weaknesses in individual countries, this can hardly justify the damage to functioning insolvency proceedings in other countries through uniform requirements. Differences in consumer protection and rights to appeal of insolvency administrators can have an impact on DGSs and payments to DGSs in insolvency proceedings. It should be considered how to address these differences for bank insolvency procedures.

Character count: 3901 / 5000

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.

The current dual approach where some banks are resolved and some are liquidated needs to remain

In principle, there is no need to expand the resolution tools. The basic concept remains appropriate: banks that fail or threaten to fail and meet the requirements of the PIA must be processed in accordance with the SRMR / BRRD. Banks that do not meet the requirements of the PIA must be liquidated in accordance with the national bankruptcy rules for banks. We believe that the current framework is sufficient and provides for variety of resolution strategies and scenarios. On the other hand, an improvement in application of these tools might advance the acceptance among the industry.

The solution to access to funding is not to increase the size of resolution funds (including DGSs), but to allocate resources more efficiently

Recent experiences seem to signal a need for appropriate funding in case of liquidation. Most banks that have failed the PIA assessment received public funds in their liquidation procedures. It is important to note that contributions from institutions to DGSs and SRF are already very substantial. Any attempt to improve access to funding in case of a banking crisis should come from a more efficient allocations of resources and not from increasing contributions from banks. This should be a clear red line in the review process or the CMDI.

Further harmonization of national insolvency proceedings (NIPs) is important and would bring coherence to the whole CMDI framework

We see merits on further harmonizing liquidation and this could include single harmonised tools outside of resolution. Whilst resolution and liquidation have to coexist for different type of institutions, the major source of inefficiency of the CMDI is that both resolution and liquidation have followed independent approaches in their development without a considering common point of view. Irrespective of the appropriate strategy in each particular case, both solutions share the objective of managing the crisis of a banking institution whilst preserving financial stability and minimizing the use of public resources. As such, any attempt to improve the efficiency of the framework should take a holistic approach for solving idiosyncratic banking crisis whilst at the same time having enough flexibility to manage a systemic crisis.

The extension of tools and powers in the BRRD2 to insolvency regime is not needed

We do not support the extension of the tools and powers in the BRRD II also to the insolvency regime. What concerns the current set-up of available resolution tools, we believe that the current framework is sufficient and provides for variety of resolution strategies and scenarios. On the other hand, an improvement in application of these tools might advance the acceptance among the industry. Mainly, the current resolution practice is focusing solely on the bail-in tool and does not considering all other resolution tools and powers when defining the resolution strategy. In addition, the communication and alignment of procedures between supervisory and resolution authorities needs to improve in order for them to fully benefit and be able to apply the already available tools.

The PIA is necessary to ensure an efficient solution for FOLF banks and needs to respect the principle of proportionality

The Public Interest Assessment (PIA) is the basis test which decides the road to be taken in regards to a failing or likely to fail bank. The essential criterion here is whether resolution in the context of regular insolvency proceedings can achieve the resolution objectives to the same extent respectively better than liquidation. If no public interest is identified, it is not necessary to maintain critical functions and - even taking into account direct and indirect contagion effects - there is no endangerment of financial stability if the bank is liquidated.

This PIA system should be retained. An extension of its scope of application to institutions whose resolution strategy is regular bankruptcy due to the unexpected fulfilment of the PIA, contradicts the fundamental approach of differentiated and risk-oriented banking supervision and resolution planning. We also believe that this contradicts the overall aim of the consultation to increase the proportionality in dealing with banking crises in the EU by reviewing

the framework. In this context, it is also noteworthy that the principle of proportionality was a key consideration in the initial legislative process for the BRRD.
In this context, Recital 14 of Directive 2014/59 / EU (BRRD1) should be highlighted.

An EU orderly liquidation tool for medium-sized banks does not seem appropriate

There is also no need to introduce an additional tool, for example in the form of an orderly liquidation tool, that would be added to settlement rules and insolvency rules. Instead, on the one hand, the national insolvency rules for banks should be optimized.

Character count: 3355 / 5000

Question 4.1: 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)?

	Yes
	No
x	No opinion

Question 4.2: Would an alignment of those conditions be justified? If so, 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?

	Yes
	No
x	No opinion

Question 4.3: Please explain and provide arguments for your view.

Character count: 0 / 5000

Question 5.1: 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)? Should these measures be amended? If so, why and how?

x	Yes
	No
	No opinion

Question 5.2: Should these measures be amended? If so, why and how?

	Yes
x	No
	No opinion

Question 5.3: If you think these measures should be amended, please explain why and how?

See answer to question 2.

Precautionary measures should be kept but their use should be strictly limited to exceptional cases
An amendment or abolishment of DGS preventive measures could or even would result in more insolvency cases, less depositor confidence and the destruction of successful and self-caring business models in regional areas. The basis of such a banking network, i.e. the IPS, would loose its operational foundation. Measures pursuant to Art. 11(3) DGSD are to be strictly distinguished from this. They serve financial stability. In this respect, there is no need for amendments.

The state aid regime (Banking Communication of 2013) and the resolution framework of 2015 should be further aligned
The two regimes are based on different rationales and the experience shows inconsistencies in the interpretation of financial stability and public interest by the EU Commission and by the SRB. A more coherent approach could foster legal certainty. It is important in our view that DGSs act in a consistent and consequent way across the different countries. The relationship between preventive action by DGSs and the European State aid framework remains uncertain and should be clarified. It is essential that the level playing field is not degraded between Member States where the DGS' actions is imputable to the State and other Member States where this is not the case.

Character count: 1381 / 5000

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
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).		x	
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.	x		
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.	x		
The conditions for preventive and alternative measures (particularly the least cost methodology) should be harmonised across Member States.			x

Question 6.1: If none of the statements above reflects your views or you have additional considerations, please provide further details here:

Preventive and alternative measures have proven to be successful and target-oriented

Preventive and alternative measures have been integrated in the deposit protection framework for good reason. They have proven to be successful and target-oriented. Member States should be encouraged to implement this extended set of tools for DGSs instead of narrowing DGS mandates for the sake of easier harmonisation. Moreover, it should be highlighted that in some countries, financing of alternative measures is already provided by a dedicated IPS. Thus, this status should at least remain unchanged for DGS recognised as IPS. Alternative and preventive measures should not be basic tasks for the DGS, but these should only be allowed to be used under the existing conditions listed in the DGSD.

Character count: 784 / 5000

PART 2 – EXPERIENCE WITH THE FRAMEWORK AND LESSONS LEARNED FOR THE FUTURE FRAMEWORK – DETAILED SECTION PER TOPIC

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

i. Measures available before a bank's failure

Early intervention measures (EIMs)

Question 7

	Yes	No	Don't know / No opinion
Can the conditions for EIMs or other features of the existing framework, including interactions with other Union legislation, be improved to facilitate their use?			x
Should the overlap between EIMs and supervisory measures be removed?			x
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?			x
Is there a need to improve the coordination between supervisors and resolution authorities in the context of EIMs (in particular in the banking union)?	x		

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

There are overlap between EIMs and other supervisory powers, as well as overlap in conditions for applying them
In our opinion, there is no need for the instruments of early intervention measures, since the ongoing supervision has sufficient options for action and inventions regardless of this. This is also shown by the fact that the instruments of early intervention measures are almost not used by the authorities. There is therefore no requirement for thresholds and indicators upstream of the renovation threshold values that justify the use of early intervention measures. In addition, existing overlaps can be eliminated by deleting them, which jeopardized the appropriate use of the tools.

EIMs should be removed and replaced by supervisory measures and proportionality should be applied
In the event of an intended harmonization of the existing regulations, we would therefore advocate deleting the early intervention regime. The ongoing supervisory powers could, if necessary, be supplemented at individual points. The selection of the specific measure in each individual case should then be based on aspects of proportionality and not on fixed quantitative criteria. Qualitative aspects or measures by private third parties should also be taken into account in accordance with Article 32 (1) (a) of the BRRD before supervisory measures are taken.

Quantitative triggers in the scope of EIMs must absolutely be avoided
In the event that the early intervention regime is to be continued, we speak out clearly against quantitative triggers. As part of restructuring planning, institutions are already obliged to derive and monitor quantitative triggers for various categories (including the categories capital and liquidity). When these triggers are reached, the institutes must decide whether to take countermeasures. These triggers in the recovery plans, which also include early warning levels, must be calibrated in such a way that they correspond in time to the effect of options for action. If quantitative triggers were now set in all of these areas, the triggers used by the institutes in the context of restructuring planning would have to strike much earlier than the triggers for the early intervention regime. This would lead to healthy institutions dealing with countermeasures for no reason and having to justify the failure to take such countermeasures to the supervisory authority.

Character count: 2401 / 5000

Precautionary measures

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

x	Yes
	No
	No opinion

Please specify your reply

Precautionary measures should be kept but their use should be strictly limited to exceptional cases
Precautionary measures in form of public support under the state aid rules and as set out per BRRD Art 32 (4) (d) can play an important role in exceptional cases. However, it should be ensured that such measures remain an exception - member states should not be given the option of "artificially keeping failed banks alive". Measures pursuant to Art. 11(3) DGSD are to be strictly distinguished from this. They serve financial stability. In this respect, there is no need for amendments.

Character count: 585 / 5000

DGS preventive measures

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? What are, in your view, the main potential clarifications?

	Yes
	No
x	No opinion

Please specify your reply

The consideration between State Aid and the use of DGS funds needs to be reviewed
Another aspect to be fixed is the consideration as State Aid of the use of DGS funds in some Member States. This generates un unlevel playing field for institutions depending on their country of origin and is not justified given that DGSs are funded by banks.

For IPS recognized as DGS and for measures according to Article 11(3) DGSD, no further clarification is needed
From the perspective of an Institutional Protection Scheme (IPS) successfully executing for decades preventive measures as defined in Art. 11(3) DGSD, there is no need of any clarification of these measures. If questions are raised about the assessment of the cost of such kind of DGS intervention, this is neither caused by IPSs nor should the current conditions be amended for IPSs.

This, at least, applies to DGSs that are recognized as IPS in accordance with Article 113(7) CRR. As stated in Article 113(7) lit. b) CRR a requirement for the recognition is that the IPS has in place the arrangements to ensure that the institutional protection scheme is able to grant support necessary under its commitment from funds readily available to it. To be able to grant support, the use of funds must follow economical reasoning. Therefore, the reference to the mandate of the IPS in Article 11(5) of the DGSD is accurate and sufficient for 113(7)-IPSs.
It should also be made clear that when DGS funds are used for support measures, state aid rules should not be applicable and no special approvals from authorities be required. Increasing the target volumes of the funds is not necessary, due to the ex-post contributions and alternative financing possibilities and would only burden the system unnecessarily. The participation of central banks, as liquidity providers, could be considered.

Character count: 1832 / 5000

ii. Measures available to manage the failure of banks

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

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

	Agree	Disagree	Don't know/ No opinion
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		x	
The relevant legal provisions result in a consistent application of the public interest assessment across the EU		x	
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)			x
The relevant legal provisions allow for an assessment that sufficiently takes into account the possible systemic nature of a crisis			x

Please explain:

Criteria linked to the PIA should be more transparent and predictable
The framework for public interest assessment should be amended (specified directly in Level 1 text) in order to to provide clarity, reduce discretionality of the process and enhance its transparency and certainty. The experience shows that the current regime is defined too broadly (criteria set in Art 32(5)), which leads to untransparent and untraceable decisions and uncertain outcomes. Furthermore, the communication from resolution authorities should be improved and legal framework enhanced to include institutions in the public interest assessment (in both stages).

Limbo situation for banks with a negative PIA and where insolvency is not triggered should be avoided
Moreover, the interaction of the different national insolvency regimes with the PIA could lead to limbo situations particularly for medium sized banks when the PIA is negative. This could also be the consequence of a too narrow interpretation of the PIA in some cases.

An EU orderly liquidation tool for medium-sized banks must not be introduced
We would like to remind the Commission that the resolution framework already provides harmonized and comprehensive tools such as the sale of business or asset separation tool which can be used to carve out a "good bank" and wind down a "bad bank". If the need arises, it also provides external funding to support a resolution with harmonized and clear conditions to access the SRF/national resolution funds.

The current definition of critical function is good and should not be changed
An extension of the resolution regime by changing the PIA requirements or their interpretation cannot however be an end in itself. When defining the critical functions, the legislature rightly and sensibly has considered the size, the market share, the external and internal interdependencies, the complexity or the cross-border activities of an institution or group and the possible interruption of essential services for the real economy or a disruption of financial stability. There is only little value in considering critical functions also on the level of each small regional market. The activities, services, etc. could then normally be substituted by competitors without great effort, so that the previous status quo would largely be maintained.

Character count: 2326 / 5000

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

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
	No opinion

Please explain:

Clarification is needed about the FOLF scope (consolidated level vs. individual bank)
We believe that the criteria for FOLF are in general fit for purpose. However, it should be clarified on which level the FOLF can be determined. Uncertainty remains if it is possible to declare FOLF only on the consolidated level of the resolution group/solo level or also at the level of the consolidated banking group (prudential scope of consolidation).

There is a need to harmonise in a targeted manner banking insolvency laws for insolvency triggers following FOLF
Also, the triggers for national insolvency procedures for banks should – as far as possible - be aligned with FOLF triggers in order to avoid "limbo situations" where banks with a negative PIA are declared FOLF but do not meet the insolvency criteria under national insolvency framework. This would ensure a level-playing field and to avoid cross-border NCWO issues. Here, it should be kept in mind that FOLT includes the situation in which the bank is only "likely to fail", but not necessarily insolvent. It must be clarified whether such a constellation can justify the conduct of insolvency proceedings. This, as well as the further harmonisation of other aspects of national insolvency law for banks, requires intensive technical discussion, also with regard to possible constitutional requirements.

New rules on insolvency proceedings in respect of institutions and entities that are not subject to resolution action (Art. 32b BRRD): more time is needed before making a change
However, the implementation of the new provision in Art. 32b BRRD and its suitability in practice should be awaited before a rule change is sought. Otherwise the legislator will damage its credibility. If an evaluation at a later point in time reveals deficiencies in the application of the standard, further alignment of the triggers should be sought.

Character count: 1884 / 5000

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
	No opinion

Please explain:

The implementation of the new provision in Art. 32b BRRD and its suitability in practice should be awaited before a rule change is sought.
Otherwise the legislator will damage its credibility. If an evaluation at a later point in time reveals deficiencies in the application of the standard, further clarification should be sought so that the concept of "winding up" should ensure that failing banks would exit the market. Limbo situations should absolutely be avoided.

Character count: 471 / 5000

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
x	No
	No opinion

Please explain:

The supervisor should not be given the power to withdraw the licence of a FOLF bank automatically but rather on a case-by-case basis

In principle, it should be possible for a bank that meets the requirements of the FOLF to withdraw its banking license. However, this should not be an automatic mechanism, but a decision on a case-by-case basis. Otherwise, in individual cases, the withdrawal of the banking license could endanger the stability of the financial market and hinder the liquidation and / or sale of the bank in question.

Character count: 531 / 5000

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
x	No opinion

Please elaborate on your reply:

Premature FOLF decisions could be detrimental for financial stability

Sometimes the findings on the FOLF appear questionable in terms of time. Recent experiences in Europe shows mixed results. However, an earlier FOLF-decision does not seem appropriate, since still restructurable institutions would be brought arbitrarily closer to FOLF. In principle FOLF is the last phase to manage a banking crisis, since there are a lot of previous tools to timely addressing banking difficulties. It should be provided enough time for the complete process. Early signalling of an institution difficulties could accelerate and make irreversible a process of resolution/liquidation that could have been avoided. However, there could be conflicts of interest within the supervisory authorities that has to take the FOLF decision, which are due to the fact that the institutions in question were ultimately supervised by the same supervisory authority, which could make their own supervisory activities questionable by the FOLF determination.

Character count: 1025 / 5000

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? If not, what possible amendments/additions can be provided in the legislation to improve this?

There could be conflicts of interest within the supervisory authorities that has to take the FOLF decision

Such conflicts are due to the fact that the institutions in question were ultimately supervised by the same supervisory authority, which could make their own supervisory activities questionable by the FOLF determination. The framework should ensure that the objectives of supervisors are correctly balanced and aligned.

Limbo situation for banks with a negative PIA and where insolvency is not triggered should be avoided

Regarding fitting for purpose of the legal framework to do so, it is important to signal that in some cases a FOLF decision with a negative PIA cannot be followed by a launching of the national insolvency procedure. They are not aligned in all MS. This problem can be exacerbated in cross border groups. However, when examining the need for harmonisation of bank insolvency law, these special features should also be examined. In any case, the implementation of the new provision in Art. 32b BRRD and its suitability in practice should be awaited before a rule change is sought. Otherwise the legislator will damage its credibility. If an evaluation at a later point in time reveals deficiencies in the application of the standard, further alignment of the triggers should be sought.

Character count: 1309 / 5000

The correct incentives for responsible authorities to trigger FOLF are in place:

	Yes
	No
x	No opinion

Please elaborate on your reply:

Character count: 0/ 5000

Adequacy of available tools in resolution and 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?

x	Yes
	No
	No opinion

Please elaborate on your reply:

The existing instruments for liquidation or national standard bankruptcy are generally sufficient. As evidenced by the Study on the differences between bank insolvency laws and on their potential harmonisation (https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191106-study-bank-insolvency_en.pdf), the difficulties lie more in the interaction between the two systems, which has yet to be established. The common objective of properly addressing banking crisis should conduct a holistic approach from both frameworks. If necessary, a partial harmonization of individual regulations of national insolvency law could be considered, see question 17.

Character count: 692/ 5000

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
No additional tools are needed but the existing tools in the resolution framework should be improved			x
Additional tools should be introduced in the EU resolution framework		x	
Additional harmonised tools should be introduced in the insolvency frameworks of all Member States	x		
Additional tools should be introduced in both resolution and insolvency frameworks of all Member States		x	

Please specify what type of tool you would envisage and describe briefly its characteristics.

An harmonization of bank insolvency frameworks is essential but should not undermined well-functioning existing frameworks

We support a targeted harmonization of some aspects, after identifying best practices of MS insolvency frameworks, which should guide the harmonization. It is important to underline that harmonization should not imply that well-functioning frameworks would be changed. The important principle guiding the harmonization should be to obtain an efficient framework where losses in case of a negative PIA are minimized in the liquidation procedure and recourse to public funding is avoided.

The resolution toolbox for banks with a positive PIA is very comprehensive

In the case of small/mid-size banks that would go into resolution, creating a "good bank" and carving out a "bad bank" from the failing institution is already possible under the resolution framework. What is important and needs to be intensified is the legally secure and consistent enforcement of its application by resolution authorities.

A liquidity backstop to ensure liquidity in resolution is needed

The Banking Union still has no publicly backed and credible liquidity backstop to ensure liquidity for freshly resolved banks until market confidence has been restored. Such a backstop would be key to ensure market confidence and sufficient and fairly-priced funding for a freshly resolved bank and avoids contagion risk to other parts of the financial system. A facility operated by a public-sector entity of this kind would send out a strong signal that would strengthen general confidence / market confidence in the effectiveness of the resolution regime and in banking union.

Regarding bail-in, the difference between external and internal bail-in should be clarified in the level 1 text.

The **bail-in-able liabilities of subsidiaries** within a resolution group are **not considered for** the (external) **bail-in capacity** at the level **of the resolution entity**. While the SRB foresees that an **external bail-in** (application as resolution tools) can **happen only** at the **level of the resolution entity** (as the Point-of-Entry) it is expected that clients of subsidiaries are informed about bail-in risk even at subsidiary level. This discrepancy should be addressed in a sense that **no external bail-in shall be possible at the level of a non-resolution entity with iMREL requirement**.

The current framework for contractual recognition of bail-in/resolution stay powers has to be further improved

The framework for liabilities governed under third-country law should be reviewed in order to consider the business/market practice. Furthermore, there should be a clear guidance for the resolution authorities when it comes to application and monitoring of these requirements. Currently, we observe that the SRB requests also resolution-proofing of contracts under the EU law. We believe that this does not enhance the quality of the contracts in resolution and contradicts the rudimental legal principles.

<u>Resolvable banks should have no/lower buffer requirements</u>
Banks where **no impediments to resolvability** have been identified by the resolution authorities shall have **lower systemic and O-SII buffer requirements**. The purpose of the identification of possible impediments to resolvability is to ensure smooth and effective resolution within the resolution planning process, which is concluded by drafting/updating of the resolution plans.
In cases where the resolution authority does not identify any material impediments, the resolution strategy can be successfully implemented. As a result, the institution's viability is ensured and thus the risks addressed by Systemic Risk as well as O-SII Buffer **can not materialize in a way** that has been **considered before** the **implementation and compliance with the resolution regime**. Therefore, a corresponding relief is necessary and justified.

Character count: 3857 / 5000

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
x	No
	No opinion

Please explain:

The reasons for a negative PIA must first be carefully evaluated

Before answering this question we should ask whether a negative PIA has taken into account all the relevant factors if despite its conclusion it requires the application of some tools reserved for resolution. Probably the problem is in the PIA carried out.

An EU orderly liquidation tool for medium-sized banks does not seem appropriate

We do not see any merit in introducing an additional orderly liquidation tool. Provided that no public interest is identified and a liquidation of a credit institution in the context of a regular insolvency is deemed credible and feasible, the application of resolution tools is not necessary. With such a classification, credit institutions do not perform critical functions whose maintenance requires the institution or parts thereof to continue as a going concern. Furthermore, the insolvency of the credit institution - even taking into account direct and indirect contagion effects - does not pose a threat to financial stability. Accordingly, liquidation is possible taking into account existing protection systems and does not require separate liquidation instruments.

Instead of creating an orderly liquidation tool, existing instruments should be used

Also in view of the arguably limited scope of application, instead of introducing a new tool, the existing instruments should be used and optimized where necessary. It remains unclear what benefits would be associated with a resolution tool inspired by the FDIC. For example, the FDIC's power to transfer certain assets and liabilities of a failing bank to another bank, possibly coupled with grants, already exists under the SRMR. In addition to the bail-in tool, the SRB also has at its disposal, among others, the tools of corporate divestment and the bridge institution. When these are used, SRF resources may be used, if necessary, for the effective application of resolution tools (Art. 76 SRMR). There is therefore no need for the recourse to DGS funds that has been raised for discussion. The question of the applicability of these SRMR instruments depends on how the SRB interprets or applies the PIA.

Differences in national bank insolvency rules do not justify the need for an additional tool. Instead and in order to solve potential inconsistencies, a harmonised insolvency regime for banks appears essential for both the banking union and the capital markets union. However, it has to be taken into account, that insolvency law cannot be considered in isolation. It has many overlaps/cross-links with other areas of law (e.g. company law, labour law, tax law and contract law). The existing differences in national laws are based on fundamental legal, economic and social policy decisions of the respective national governments. An intensive technical discussion is needed to identify the areas in which there is an urgent need for approximation.

Character count: 2918 / 5000

Question 18.1: How would you see the implementation of such a tool?

	Agree	Disagree	Don't know/ No opinion
There would be benefits in introducing such a tool in all the insolvency laws of EU Member States			
There are legal challenges for the introduction of such a tool in insolvency			
Such a liquidation tool (and its dedicated source of financing) could be introduced in the resolution framework and be at the disposal of the resolution authority, while still applying to non-public interest banks			
Such a liquidation tool should be managed centrally (i.e. at supra-national level) in the banking union and at Member State level in the rest of the EU			

Please explain your answers further

Character count: 0 / 5000

Question 18.2: In what way, if any, should that tool be different from the sale of business in resolution? Do you consider that there is a risk of duplication with the sale of business tool in resolution (and that there would be incentives for DGSs to use such a tool and their funds as opposed to resolution authorities)?

If so, please explain how such a risk could be addressed

Character count: 0 / 5000

Resolution strategy

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
	No opinion

Please explain:

The present legal framework already provides the opportunity for an appropriate and unambiguous treatment of small / medium-sized banks with a traditional (deposit-based) business model and a positive PIA assessment.

Character count: 216 / 5000

Funding sources in resolution

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

	Agree	Disagree	Don't know/ No opinion
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	x		
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		x	
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	x		
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		x	
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		x	
Additional sources of funding should be enabled.			x

Please explain your responses :

The transitional period for reaching the targeted amount of 1% of covered deposits should be extended by 3 more years (until YE 2027)

Lastly, the upcoming review of the CMDI framework should consider providing the possibility for the SRF to extend the transitional period for reaching the targeted amount of 1% of covered deposits by 3 more years (e.g. until YE 2027).

Competition aspects should be prioritised for providing a differentiated access conditions to resolution funds to different types

With regard to the easing of access conditions to funding in resolution for certain banks (smaller/medium sized, with certain business models characterised by prevalence of deposit funding) competition aspects should be prioritized. Providing different conditions to access funds built on the contribution from banks under the same rules will seriously affect the level playing field among competitors on the same market and providing the same services.

Character count: 949 / 5000

Sources of funding available in insolvency

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?

	Yes
	No
x	No opinion

Please explain:

Character count: 0 / 5000

Governance and funding

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
x	No
	No opinion

Please explain:

The governance arrangements in place already reflect a balance of different perspectives and interests. Opening this in the next BRRD review may likely result in further complexity, whilst benefits remain unclear.

The governance arrangements in place already reflect a delicate balance of different perspectives and interests. Opening this in the next BRRD review may likely result in further complexity, whilst benefits remain unclear.

Character count: 436 / 5000

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
x	No opinion

Please explain:

If it needs external funding, the resolution of a bank should mainly rely on the existing resolution fund as long as the 8% TLOF bail-in condition is met. Though foreseen in the BRRD, using the DGS to fund a resolution would upend the existing delicate balance between national & EU authorities.

Character count: 295 / 5000

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

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
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		

Please explain:

We strictly reject any extension of MREL requirements beyond their own funds components to all banks that are considered suitable for national liquidation. This is especially true for institutions that even have additional firewalls, for example through institutional protection schemes. Such considerations can hardly be compatible with the basic approach of the MREL components, which consist of a loss absorption amount and a recapitalization amount. Banks that are liquidated outside of the resolution rules do not need any recapitalization amount.

Level playing fields must be ensured among banks in different member states - differences in banks' business models play a significant role in the **banks' ability to fulfil the MREL target and to issue MREL instruments.** Traditional deposit-based banking models rely primarily on client deposits. Therefore, costs of such banks to comply with MREL regulation are much higher than for market-funded banks because their balance sheets do not consist of eligible instruments (such as Senior preferred or Senior non-preferred debt) and thus such banks need to issue new eligible instruments only to comply with MREL regulation, not for funding purposes. The ability in such a case to exchange deposits for MREL eligible instruments is usually low, putting high-cost pressure on the banks. Also, deposit-funded banks will find it more difficult to access markets. Therefore, traditional deposit-based **banks would have to be resolved by applying different resolution tools than bail-in – e.g. bridge bank or sale of business, and their MREL requirements should fully take into account this preferred strategy, properly calibrating MREL needs, which might not be the same than for bail-in open bank strategy**.

Also, the current regime foresees under CRR2 Art. 72e (4) a deduction regime for MPE resolution groups of G-SIIs applicable to Eligible Liabilities items. The current practice is that the SRB would effectively apply the same deduction regime not only to MPE resolution groups of G-SII parent institutions, but also to all other MPE resolution groups under its remit (e.g. see SRB's 2020 MREL Policy). Hence, CRR must be enhanced to **specify explicitly that the deduction regime under CRR2 Art. 72(e) 4 shall be applied only to G-SIIs and that resolution authorities are NOT permitted to increase the MREL requirement for MPE resolution groups of non G-SIIs irrespective of the form in which the abovementioned provision is applied – e.g. whether it is in form of deductions or add-ons.**

Under the BRRD2/SRMR2, the **CBR** must be **fulfilled independently of the MREL requirement**. The SRB calculates the de-facto MREL requirement for MPE banks using "**clean" TREA**, which follow the scope of the resolution group and **exclude exposures to other resolution groups within the banking group for which an MPE Add-on is calculated.** The application of "clean" TREA leads to lower CBR.

Using the reported "full" TREA would lead to **double allocation of risks, as the exposures to other resolution groups would not only be considered in the higher CBR, but also in the MPE Add-ons**, which increase the overall MREL target. It has to be **clarified how the issue of dynamic CBR, which**

changes in time (i.e. due to fluctuations in CCyB) has to be resolved. The preferred solution would be to abolish the MPE-add-ons for banks, which are not G-SIIs.

No systemic and O-SII buffer for banks with iMREL: The iMREL target must be considered as a tool to lower the systemic risks the failure of the institution might pose for the national/international financial systems. Both, supervisory and resolution authorities need to better reflect the principles and purpose of the other Pillar of the Banking Union and include it in their consideration when determining additional capital measures.
Banks with iMREL requirements where an upstreaming of losses is foreseen within the resolution groups shall have neither an O-SII nor Systemic Risk buffer requirement, since the failure of the institution is protected by the iMREL.

The quantitative **threshold for internal MREL** is not defined in the Level 1 text but is rather subject to discretion of the Resolution Authority. Originally, the threshold has been set at 5% of TREA/LRE/operating income. Nevertheless, it has sunk to 3%, resulting in increase of entities considered by RA for iMREL. In order to maintain the nature of iMREL and limit the scope of subsidiaries in line with the intention of the EU lawmaker, the threshold should be fixed at the original level of 5% in the level 1 text – the current lack of regulation allows for a huge discretion of the resolution authorities (which is not balanced by a corresponding accountability).

Lastly, **MREL-Setting for Non-Credit Institutions** should be clarified. Considering the special nature of non-CIs (e.g. capital requirements, applicability of the prudential framework), it has to be clarified how the MREL calibration and MREL compliance should be achieved.

Character count: 4989 / 5000

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
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

Please explain:

If the resolution strategy does not actually include a bail-in, an adjustment of the MREL rate can be discussed under certain circumstances.
However, it must then be ensured that this assessment is so reliable that there is no bail-in in the actual resolution case. On the other hand, it would be inconceivable to exempt from bail in and loss sharing the creditors and shareholders for any given subset of the sector. This especially means that accessing the SRF still requires a 8% TLOF bail-in.

Character count: 495 / 5000

Treatment of retail clients under the bail-in tool

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

	Agree	Disagree	Dont know/ No opinion
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.	x		
Additional powers should be explicitly given to resolution authorities allowing them to safeguard retail clients from bearing losses in resolution.		x	
Additional protection to retail clients should be introduced directly in the law (e.g., statutory exclusion from bail-in).		x	
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.			x

Please explain:

The rules for the protection of retail investors already provided for in MiFiD II and BRRD II are considered sufficient.
Any national deficits in the implementation or application of MiFiD II rules need to be addressed elsewhere and not countered by additional new requirements. In addition, an expansion of the rules would make it more difficult for credit institutions to raise capital, also with regard to companies in the real economy that are not subject to such restrictions on raising capital. What matters is the information provided to these clients that we consider again sufficient given the current framework. No Additional protection to retail clients should be introduced. In particular, we oppose any measure that would qualify retail holdings as non-bail-inable instruments.

Character count: 789 / 5000

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?

x	Yes
	No
	No opinion

Please explain:

We believe that Article 44a BRRD could be simplified.
Currently, retail clients are sufficiently protected on the basis of investment advice (regarding volatility and liquidity analysis) and concentration risk management.

Harmonization can only take place in the form of a minimum investment amount. A suitability test, which may then also have to be carried out across borders, cannot be implemented.

Character count: 400 / 5000

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
x	No
	No opinion

Please explain:

The scope of the rule on the minimum denomination amount to other subordinated instruments than subordinated eligible liabilities and/or other MREL eligible liabilities should not be extended

A minimum denomination for subordinated papers that goes beyond the specific formulation of Art. 44a BRRD would not be expedient. While the design of eligible liabilities in the banking industry is a specific feature, classic subordinated instruments are a product class that is comparable to subordinated instruments from companies in the real economy. The necessary protection for retail investors has already been achieved through appropriate documentation. These obligations apply to subordinated instruments of all issuers, regardless of the sector they belong to. It is therefore neither necessary nor appropriate to put credit institutions at a disadvantage in terms of raising capital in contrast to other market sectors by expanding the scope of application.

Character count: 960 / 5000

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

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?

	Yes
	No
x	No opinion

Please explain:

Character count: 0 / 5000

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

	1	2	3	4	5	6	7	8	9	10	Don't Know/ No opin-ion
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

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
x	No opinion

Please elaborate:

Character count: 0 / 5000

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
The standard protection of EUR 100 000 per depositor, per bank across the EU is sufficient.	x		
The identified differences in the level of protection between Member States should be reduced, while taking into account national specificities.	x		
Deposits of public and local authorities should also be protected by the DGS.		x	
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.		x	

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

The standard protection of EUR 100.000 is sufficient.
This is also acknowledged by EBA opinions on the DGSD review. EBA in its opinions made proposals for the review of the DGSD which we consider to be sufficient for possible improvements of a generally well-functioning system.

Adding additional groups of covered deposits is unnecessary as it would inflate the SRF and DGSs
We believe that there is no need for adding additional groups of covered deposits. It would increase the cost for credit institutions since both the target levels of national DGS and SRF would be significantly increased, without substantial benefits in financial stability. In addition, the increase in credit institutions' contributions would minimise their capacity for carried out investments in resilience and innovation.
Extending the protection by DGS to deposits of public and local authorities, would complicate the demarcation of exception and put into question their capacity to make informed decisions.

Client funds at e-money and payments institutions and investment firms should not be included into the DGS scope
We consider that the protection of final consumer for this kind of institutions shall be provided by adequate mechanisms included in the regulation of e-money and payment institutions and investment firms. The regulation of those institutions to protect their consumers should not represent a burden for banks. If their regulation mandates them to hold the money of their clients in trust accounts in a supervised financial institution (banks), the same regulation should foresee mechanisms to protect this money in case of a crisis of the banking institution. In this regard the consideration of including these funds in the DGSs raises several challenges and will imply a deviation from DGSs objectives. It is key to understand that for the bank the trust account of this kind of institutions is the deposit of a financial institution, as such excluded from the DGS scope. An identification of the money of the final client taking part of the trust account is not possible. As such the protection would be given to a financial institution, not to final users, which raises serious moral hazard concerns which could end up with a free-ride from the e-money/payment institution or investment firm.

Character count: 2294 / 5000

Keeping depositors informed

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
It is useful for depositors to receive information about the conditions of the protection of their deposits every year.		x	
It would be even more useful to regularly inform depositors when part of or all of their deposits are not covered		x	
The current rules on depositor information are sufficient for depositors to make informed decisions about their deposits.	x		
It is costly to mail such information, when electronic means of communication are available.	x		
Digital communication could improve the information available to depositors and help them understand the risks related to their deposits.	x		

Please elaborate on any of the above statements, 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:

The depositor information sheet does not fulfil its purpose.
Therefore such an information should be made passively available at any time (website, paper form in branch) but should not be sent every year. Many customers understand such an actively sent sheet either as a hint to financial difficulties of their bank, as undesirable spam or unnecessary under environmental aspects (paper). Therefore it is sufficient to inform customers actively only when starting the business relationship with the respective bank.

Character count: 514 / 5000

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

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
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.			

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

Question 35: Should any of the following provisions of the current framework be amended, and if so how?

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

Please elaborate on the above, including any supporting documentation (where available), or add other suggestions concerning the above or other elements of the future framework:

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

	Agree	Disagree	Don't know/ No opinion
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.			

Please elaborate on any of the above statements, 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:

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

	Agree	Disagree	Don't know/ No opinion
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.			

Please elaborate on any of the above statements, including any supporting documentation, or add suggestions concerning possible features of such a common scheme:

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
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.			

Please elaborate on the above, including any supporting documentation regarding the benefits and disadvantages of the above options as well as potential costs thereof:

About ESBG (European Savings and Retail Banking Group)

The European Savings and Retail Banking Group (ESBG) represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans, including to SMEs, and serve 150 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking. Learn more at www.wsbi-esbg.org .

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