

# POSITION PAPER



## **ESBG response to the European Commission's targeted consultation on the evaluation of State aid rules for banks in difficulty**

ESBG (European Savings and Retail Banking Group)

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**Final deadline : FRIDAY 15 JULY 2022**

**Section I : effectiveness of State aid rules for banks in difficulty**

**Question 1.** To which extent have the State aid rules for banks in difficulty been successful in achieving the following objectives? Please also provide a short explanation why you gave a particular score (including by referring to specific circumstances of State aid granted to a bank that you may have in mind, and when these occurred).

	1 Not Successful	2 Rather Not Successful	3 Neutral	4 Rather Successful	5 Very Successful	Dont Know/ No opinion
a) Contributing to the preservation of financial stability by ensuring the continued smooth functioning of individual banks and the banking sector at large			X			
b) Minimising competition distortions between aided and non-aided banks		X				
c) Limiting the amounts of aid given to banks in difficulty to the minimum necessary				X		

Please explain the reasoning behind your answers to question 1 (also specifying 1a to 1c). *4000 character(s) maximum:*

ESBG members support the comprehensive evaluation of the state aid rules for banks in difficulty. There is likely to be room for improvement in many places.

However, an evaluation of the current state aid rules for banks in difficulty is only possible to a limited extent, as they are largely overlaid by the CMDI framework. For example, the Banking Communication from 2013 requires an appropriate loss participation of shareholders, hybrid capital providers and subordinated creditors, which is not specified in detail. The BRRD and SRMR, on the other hand, contain detailed requirements for a write-down or conversion of capital instruments as well as for the resolution tool of bail-in. Practice also shows that the EU Commission and the SRB interpret the terms financial stability and public interest differently. Inconsistencies between the state aid regime and the BRRD/SRMR regime for

resolution measures lead to legal uncertainty and can also promote inefficient and ineffective measures.

State aid rules for banks in difficulty should therefore be clarified, streamlined, simplified and adapted to legislative developments. It should be clarified that all instruments that the legislator has made available in the BRRD, SRMR or DGSD to remedy distressed situations (e.g. Art. 11 (3) and (6) DGSD) are not subject to state aid law. Otherwise, the use of these effective instruments would be thwarted, made more difficult and, in the worst case, prevented, which cannot be in the sense of effective crisis management.

Furthermore, the goal of a level playing field pursued with the state aid rules could only be partially achieved. Not all member states seem to be willing to implement the rules on bank resolution agreed at European level consistently in practice. Instead, the impression arises that (unchanged) national special solutions are being sought, including state aid law. Member states should not be given the opportunity to artificially keep "failed" banks alive.

It is also equally relevant to consider the effects from exogenous shocks, as the Covid-19, with asymmetric effects and impacts across member states. Both the design of the State Aid rules and the CMDI tools should also be mindful of such situations and continue advancing to improve and complete the existing frameworks. Consequently, and until such improvements are effectively achieved, we find important to avoid any increase in contributions to the national deposit insurance schemes and the Single Resolution Fund.

**Question 2.** To which extent have the State aid rules for banks in difficulty been successful in achieving the following results? Please also provide a short explanation why you gave a particular score (including by referring to specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not Successful	2 Rather Not Successful	3 Neutral	4 Rather Successful	5 Very Successful	Dont Know/ No opinion
a) Addressing the temporary funding problems of banks (which received liquidity aid)			X			
b) Restoring the long-term viability of banks (which received restructuring aid)			X			
c) Ensuring the orderly market exit of unviable banks			X			

(which received liquidation aid)						
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Please explain the reasoning behind your answers to question 2 (also specifying 2a to 2c). *4000 character(s) maximum:*

**Question 3.** To which extent have the State aid rules for banks in difficulty been successful in contributing to the following long-term impacts? Please also provide a short explanation why you gave a particular score (including by referring to specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not Successful	2 Rather Not Successful	3 Neutral	4 Rather Successful	5 Very Successful	Dont Know/ No opinion
a) Ensuring that creditworthy SMEs (i.e. mainly national) were able to get the bank loans or other forms of credit they needed			X			
b) Ensuring that creditworthy large enterprises (i.e. mainly national) were able to get bank loans or other forms of credit they needed			X			
c) Ensuring that creditworthy large enterprises (i.e. mainly multinational)			X			

were able to get bank loans or other forms of credit they needed						
d) Ensuring that creditworthy households were able to get bank loans or other forms of credit they needed			X			
e) Fostering the cross-border integration of banks in the EU		X				
f) Making banks in the EU more competitive, so that they could offer to their customers better and more innovative financial products and services at lower prices		X				
g) Restoring trust in banks in the EU			X			

Please explain the reasoning behind your answers to question 3 (also specifying 3a to 3g). *4000 character(s) maximum:*

In addition to the comments on question 1, it should be noted that the impression must be countered that the indisputably existing deficits, for example in the cross-border integration of banks or in increasing the competitiveness of banks, can be solved by means of state aid regulations. State aid rules are not a "miracle cure". Rather, a holistic approach is needed, especially with regard to the CMDI framework and also to take into account the asymmetric effects from exogenous shocks

**Question 4.** To which extent have the following measures – applied to reinforce market discipline and tackle moral hazard on behalf of bank management, shareholders and investors – been effective? Please also provide a short explanation

why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not effective	<b>2</b> Rather not effective	<b>3</b> Neutral	<b>4</b> Rather effective	<b>5</b> Very effective	I don't know / No opinion
a) Management remuneration cap						
b) Management replacement						
c) Obligation to divest certain subsidiaries or activities						
d) Burden-sharing by bank shareholders (dilution)						
e) Burden-sharing by hybrid capital holders						
f) Burden-sharing by junior bondholders						
g) Ban on paying out dividends						
h) Ban on paying out discretionary coupons						
i) Other (please specify below)						

If you selected 'Other', please specify:

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 4 (also specifying 4a to 4h). *4000 character(s) maximum*

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**Question 5.** Are you aware of other effective measures to reinforce market discipline and tackle moral hazard issues present on the side of bank management, shareholders and investors?

X	Yes
	No
	I don't know/No opinion

<p>We are aware of the measures foreseen in the CMDI framework in particular. It will be crucial to better align the state aid rules with the CMDI framework (see in particular our answer to question 1).</p>
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**Question 6.** To which extent have the burden-sharing requirements in the State aid rules for banks in difficulty been successful in achieving the following results? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred):

**Question 6.1.** Ensuring that an aided bank's shareholders contribute to cover the losses (e.g. through the write-down of shares, dilution, etc.)

	1 Not Successful	2 Rather Not Successful	3 Neutral	4 Rather Successful	5 Very Successful	Dont Know/No opinion
a) Before the introduction of the 2013 Banking Communication						
b) After the introduction of the 2013 Banking Communication						

Please explain the reasoning behind your answers to question 6.1. (also specifying 6.1.a to 6.1.b). *4000 character(s) maximum*

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**Question 6.2.** Ensuring that an aided bank's junior bondholders contribute to cover the losses (e.g. through the conversion and or write-down of bonds, the cancellation of discretionary coupon payments, etc.)

	1 Not Successful	2 Rather Not Successful	3 Neutral	4 Rather Successful	5 Very Successful	Don't Know/ No opinion
a) Before the introduction of the 2013 Banking Communication						
b) After the introduction of the 2013 Banking Communication						

Please explain the reasoning behind your answers to question 6.2. (also specifying 6.2.a to 6.2.b). *4000 character(s) maximum*

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**Question 7.** To which extent have the following measures - applied to mitigate the competition distortions stemming from aid to banks in difficulty - been effective? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not effective	2 Rather not effective	3 Neutral	4 Rather effective	5 Very effective	I don't know / No opinion



a) Obligation to divest certain subsidiaries						
b) Obligation to carve out and divest certain activities						
c) Obligation to reduce the balance sheet total						
d) Ban on aggressive commercial practices						
e) Constraints on the competitive pricing of banking products (e.g. loans, deposits)						
f) Acquisition ban						
g) Obligation to exit the market (in case of liquidation aid)						
h) Other (please specify below)						

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 7 (also specifying 7a to 7g). *4000 character(s) maximum*

**Question 8.** Are you aware of other effective measures to mitigate the competition distortions stemming from the granting of aid to banks in difficulty?

	Yes
	No

	I don't know/No opinion
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**Question 9.** Are the contents of the model restructuring plan – as set out in the Annex of the [2009 Restructuring Communication](#) – appropriate for an adequate assessment of a bank’s long-term viability (e.g. data requested, scenarios to be simulated, time horizon to be considered, etc.)?

	Yes
	No
	I don't know/No opinion

**Question 10.** Is the appointment of an independent monitoring trustee to verify the compliance of the Member State and aid beneficiary with the relevant State aid commitments (i.e. conditions which reflect the applicable compatibility criteria) an effective way to ensure the enforcement of the State aid rules for banks in difficulty?

	Yes
	No
	I don't know/No opinion

**Question 11.** To which extent have the following measures applied to restore the long-term viability of banks been effective? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not effective	<b>2</b> Rather not effective	<b>3</b> Neutral	<b>4</b> Rather effective	<b>5</b> Very effective	I don't know / No opinion
a) Measures and/or quantitative targets to improve revenue-generating potential						
b) Measures and/or quantitative targets to reduce operating costs						
c) The reform of internal risk management policy and corporate governance						
d) Measures to reduce complexity (e.g. reduction or termination of non-core activities)						

e) Divestment or termination of less profitable or loss-making activities						
f) Measures to de-risk the balance sheet (e.g. disposal of non-performing assets, risk protection, etc.)						
g) Investments (e.g. in IT infrastructure) to improve operational performance						
h) Other (please specify below)						

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 11 (also specifying 11a to 11g). *4000 character(s) maximum*

**Question 12.** Are you aware of other effective measures to restore the long-term viability of banks?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	I don't know/No opinion

**Question 13.** To which extent have the State aid rules for banks in difficulty been successful in ensuring that the market exit of unviable banks (which was supported with liquidation aid) ...

	1 Not Successful	2 Rather Not Successful	3 Neutral	4 Rather Successful	5 Very Successful	Dont Know/
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						No opinion
a) ... did not take longer than the period strictly necessary for the orderly liquidation thereby limiting competition distortions?						
*b) ... occurred with the minimum amount of aid necessary to keep the bank afloat during the liquidation?						
*c) ... minimised moral hazard by ensuring that the claims of shareholders and subordinated debt holders of the unviable bank cannot be transferred to any continuing economic activity?						
*d) ... did not result to aid to the buyer in case the market exit is achieved via a sale of the unviable bank during the orderly liquidation procedure?						

Please explain the reasoning behind your answers to question 13 (also specifying 13a to 13d). *4000 character(s) maximum*

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**Question 14.** Has the application of the State aid rules for banks in difficulty had any unexpected or unintended consequences – either positive or negative – which were not covered in the questions above?

	Yes
	No
	I don't know/No opinion

**Question 15.** To which extent has the entry into force of the EU bank crisis management and deposit insurance (CMDI) framework in 2015 influenced – positively or negatively – whether the following objectives of the State aid rules for banks in difficulty have been achieved? In other words, to which extent could the achievement (or non-achievement) of the following general objectives of the State aid rules for banks in difficulty be attributed to the entry into force of the CMDI framework in 2015? Please also provide a short reasoning why you gave a particular score (including specific circumstances of State aid given to a bank which you may have in mind, and when these occurred).

	1 Not Successful	2 Rather Not Successful	3 Neutral	4 Rather Successful	5 Very Successful	Dont Know/ No opinion
a) Preserving financial stability						
b) Preserving the level playing field in the EU by coordinating Member States' response to the financial crisis						
c) Limiting the amounts of aid given to banks in difficulty to the minimum necessary						
d) Reinforcing market discipline and						

tackling moral hazard issues on the side of bank management, shareholders and investors						
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Please explain the reasoning behind your answers to question 15 (also specifying 15a to 15d). *4000 character(s) maximum*

Overall, the existing CMDI framework, especially the rules on the resolution of institutions, has certainly supported the four objectives of the state aid rules mentioned above.

However, the goal of a level playing field could only be partially achieved. Not all member states seem to have the will to consistently implement the bank resolution rules agreed at the European level in practice. Instead, the impression is created that (unchanged) national special solutions are being sought, including state aid law.

In the same line, we reiterate the importance of completing and improving the CMDI framework in order to avoid undue fragmentation across countries. This should also work as an additional booster for member states to effectively implement and use the CMDI framework.

**Question 16.** To which extent have other important drivers (e.g. market trends, economic developments, policies other than the EU bank crisis management and deposit insurance (CMDI) framework) influenced - positively or negatively - whether the following objectives of the State aid rules for banks in difficulty have been achieved? In other words, to which extent could the achievement (or non-achievement) of the following general objectives of the State aid rules for banks in difficulty be attributed to drivers other than the State aid rules for banks in difficulty? Please also provide a short reasoning why you gave a particular score (including specific circumstances of State aid given to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) Preserving financial stability						
b) Preserving the level playing field in the EU by coordinating Member States' response to the financial crisis						

c) Minimising competition distortions between aided and non-aided banks						
d) Limiting the amounts of aid given to banks in difficulty to the minimum necessary						
e) Reinforcing market discipline and tackling moral hazard issues on the side of bank management, shareholders and investors						

Please explain the reasoning behind your answers to question 16 (also specifying 16a to 16e). *4000 character(s) maximum*

**Question 17.** Have the State aid rules for banks in difficulty ensured an appropriate trade-off between the following policy objectives? If no, please also provide a short reasoning for your answer (including specific circumstances of State aid given to a bank which you may have in mind, and when these occurred).

**Question 17.1.** Preserving financial stability vs mitigating competition distortions:

	Yes
	No, more weight should have been given to the objective of preserving financial stability, even if this would have implied the granting of more State aid or the granting of State aid under less stringent conditions and could thus have been at the expense of achieving the objective of mitigating competition distortions
	No, more weight should have been given to the objective of mitigating competition distortions, even if this would have implied the granting of less State aid or granting of State aid under more stringent conditions

Please elaborate:

**Question 17.2.**

Preserving financial stability vs. protecting taxpayers (by minimising aid):

	Yes
	No, more weight should have been given to the objective of preserving financial stability, even if this would have implied the granting of more State aid
	No, more weight should have been given to the objective of minimising aid

Please elaborate:

**Question 17.3.**

Preserving financial stability vs. tackling moral hazard:

	Yes
	No, more weight should have been given to the objective of preserving financial stability, even if this would have implied the granting of more State aid (without additional burden-sharing)
	No, more weight should have been given to the objective of tackling moral hazard

**Section II : efficiency of State aid rules for banks in difficulty**

**Question 18.** To which extent do you agree with the following general statements?

Please also provide a short explanation why you gave a particular score (including - where relevant - specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Strongly disagree	<b>2</b> Disagree	<b>3</b> Neutral	<b>4</b> Agree	<b>5</b> Strongly Agree	I don't know / No opinion
a) The Commission communications containing the State aid rules for banks in difficulty are easy to find			<b>X</b>			
b) The Commission communications containing the State aid rules for banks in difficulty are			<b>X</b>			



easy to understand						
c) The State aid rules for banks in difficulty are formulated in a way which is likely to lead to a predictable Commission assessment of State aid to banks in difficulty in practice			X			
d) The State aid rules for banks in difficulty have been set out by them in different (interlinked) Commission communications instead of in one single communication. This way of presentation is helpful to understand which rules apply in practice			X			
e) The Commission releases information in relation to State aid rules for banks in difficulty - for example, the non-confidential version of the State aid decisions, the associated press releases, and the Commission's Directorate-General for Competition's annual reports and publications. This publicly			X			

available information is adequate to ensure a good understanding by all stakeholders of the Commission's policy in this field						
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Please explain the reasoning behind your answers to question 18 (also specifying 18a to 18e). *4000 character(s) maximum*

**Question 19.** To which extent have the following aspects of the control of State aid rules for banks in difficulty been easy to understand? Please also provide a short explanation why you gave a particular score (including - where relevant - specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) The determination whether a measure constitutes State aid (including the criteria for public support to be considered market-conform)			X			
b) The compatibility criteria for liquidity aid			X			
c) The compatibility criteria for restructuring aid			X			
d) The compatibility criteria for liquidation aid			X			
e) The requirements concerning burden-sharing			X			
f) The requirements concerning measures			X			

to mitigate competition distortions						
g) The requirements concerning restructuring plans to restore the long-term viability of aided banks			X			
h) The requirements concerning impaired asset measures			X			

Please explain the reasoning behind your answers to question 19 (also specifying 19a to 19h). *4000 character(s) maximum*

**Question 20.** Has the interaction between, on the one hand, the State aid rules for banks in difficulty and, on the other hand, the crisis management and deposit insurance (CMDI) framework (since its entry into force in 2015) been easy to understand?

	Yes
x	No
	I don't know/No opinion

In our view, there is significant need to improve both the scope of application and the interaction of the regulations. Above all, it should be made explicitly clear that all instruments that the legislator has made available in the BRRD, SRMR or DGSD to remedy imbalances (e.g. Art. 11 (3) and (6) DGSD) are not subject to state aid law. Otherwise, the use of these effective instruments would be thwarted, made more difficult and, in the worst case, prevented, which cannot be in the interest of effective crisis management. In addition, the content of the regulations diverges anyway, e.g. with regard to the requirements for creditor participation. With the CMDI regulations, for example, the legislator has adopted detailed and effective regulations for dealing with bank failures even in the wake of the Banking Communication text. There is therefore a need for alignment here, whereby priority should be given to the relevant regulations in the CMDI.

**Question 21.** Are there certain aspects or concepts related to the State aid rules for banks in difficulty that could have been further clarified or that could have been defined more precisely?

X	Yes
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	No
	I don't know/No opinion

**Question 22 .**

	1 Strongly disagree	2 Disagree	3 Neutral	4 Agree	5 Strongly agree	I don't know / No opinion
To which extent do you agree that State aid rules for banks in difficulty have ensured that Member States <u>used State expenditure efficiently</u> when providing aid to banks in difficulty?						

Please explain your answer to question 22. *4000 character(s) maximum*

**Question 23.** Has the application of the State aid rules for banks in difficulty created any disproportionate administrative burden?

	Yes
	No
	I don't know/No opinion

**Question 24.** To which extent have aid schemes contributed to administrative simplification and reduced the administrative burden? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid channelled through a scheme or granted to a bank which you may have in mind, and when these occurred).

	1 Not At All	2 Rather Not	3 Neutral	4 To a Certain Extent	5 A Lot	Dont Know/ No opinion
a) Liquidity aid schemes						
b) Recapitalisation and restructuring schemes						
c) Liquidation aid schemes						

Please explain your answer to question 24 (also specifying 22a to 22c). 4000 character(s) maximum

**Question 25.** Generally speaking, to which extent do you consider that the achieved benefits (advantages) of the control of State aid to banks in difficulty outweigh the incurred costs (disadvantages)? Please also provide a short explanation for your answer (including the specific benefits (advantages) and costs (disadvantages) and the specific stakeholder group(s) you may have in mind).

	The benefits (advantages) always outweigh the costs (disadvantages)
	In most cases, the benefits (advantages) outweigh the costs (disadvantages)
	In most cases, the costs (disadvantages) outweigh the benefits (advantages)
	The costs (disadvantages) always outweigh the benefits (advantages)
	I don't know / no opinion

**Question 26.** To which extent do you consider that the costs (disadvantages) incurred by the following stakeholder groups have been proportional, taking into account the distribution of the benefits (advantages) achieved by the control of State aid to banks in difficulty? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion

a) Aided banks (including their shareholders and investors)						
b) Non-aided banks						
c) Aid-granting public authorities						
d) Taxpayers						
e) Bank clients (both retail and corporate clients)						
f) Other						

If selected 'Other', please specify:

Please explain your answer to question 26 (also specifying 26a to 26e). 4000 character(s) maximum

**Question 27.** To which extent have the following applied measures to reinforce market discipline and tackle moral hazard on the side of bank management, shareholders and investors been proportionate to the operational and administrative cost and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) Management remuneration cap						
b) Obligation to divest certain subsidiaries or activities						

c) Burden-sharing by bank shareholders (dilution)						
d) Burden-sharing by hybrid capital holders						
e) Burden-sharing by junior bondholders						
f) Ban on paying out dividends						
g) Ban on paying out discretionary coupons						
h) Other (please specify)						

If selected 'Other', please specify:

Please explain your answer to question 27 (also specifying 27a to 27g). 4000 character(s) maximum

**Question 28.** To which extent have the following applied measures to mitigate the competition distortions stemming from the granting of aid to banks in difficulty been proportionate to the operational and administrative cost and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) <u>Obligation to divest certain subsidiaries</u>						
b) <u>Obligation to divest certain activities</u>						
c) <u>Obligation to reduce the balance sheet total</u>						

d) Ban on <u>aggressive commercial practices</u>						
e) Constraints on the <u>competitive pricing</u> of banking products (e.g. loans, deposits)						
f) <u>Acquisition</u> ban						
g) <u>Obligation to exit the market (in case of liquidation aid)</u>						
h) Other (please specify)						

If selected 'Other', please specify:

Please explain your answer to question 28 (also specifying 28a to 28g). *4000 character(s) maximum*

**Question 29.** To which extent have the following applied measures to restore the long-term viability of banks been proportionate to the operational and administrative cost and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) Measure and/or quantitative targets to improve <u>revenue-generating potential</u>						
b) Measures and/or quantitative targets to reduce <u>operating costs</u>						



c) The reform of internal <u>risk management policy and corporate governance</u>						
d) Measures to reduce <u>complexity</u> (e.g. reduction or termination of non-core activities)						
e) Divestment or termination of <u>less profitable or loss-making activities</u>						
f) Measure to <u>de-risk the balance sheet</u> (e.g. disposal of non-performing assets, risk protection, etc.)						
g) Investments (e.g. in IT infrastructure) to <u>improve operational performance</u>						
h) Other (please specify)						

If selected 'Other', please specify:

Please explain your answer to question 29 (also specifying 29a to 29g). *4000 character(s) maximum*

**Question 30.** To which extent has the application of the following requirements to restore the long-term viability of banks been proportionate to the operational and administrative costs and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
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a) The drafting, negotiation and implementation of a <u>restructuring plan</u> to demonstrate an aided bank's long-term viability						
b) The appointment of and interaction with an <u>independent monitoring trustee</u> to verify the compliance of the Member State and aid beneficiary with relevant State aid conditions (which reflect the applicable compatibility criteria)						

Please explain your answer to question 30 (also specifying 30a to 30b). 4000 character(s) maximum

**Question 31.** To which extent are the following conditions for recapitalisation and restructuring schemes for small institutions in the 2013 Banking Communication proportionate to mitigate competition distortions and limit the administrative burden? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank under such schemes, which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) The <u>balance sheet</u> total of an eligible bank may not exceed EUR 100 million						
b) The <u>sum of the balance sheets of the banks</u> that receive aid under a recapitalisation and restructuring may not exceed 1,5 % of the total assets held by banks in the domestic						

market of the Member State concerned						
c) The authorization of recapitalization and restructuring schemes is <u>limited to a period of six months</u>						
d) A Member State implementing a recapitalisation and restructuring scheme must <u>report to the Commission</u> on the use of the scheme on a six-monthly basis						
e) Other						

If selected 'Other', please specify:

Please explain your answer to question 31 (also specifying 31a to 31d). *4000 character(s) maximum*

**Question 32.** To which extent are the following conditions for orderly liquidation schemes for small institutions in the 2013 Banking Communication proportionate to mitigate competition distortions and limit the administrative burden? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank under such schemes, which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) The <u>balance sheet total</u> of an eligible bank may not exceed EUR 3 billion						

b) A Member State implementing an orderly liquidation scheme must <u>report to the Commission</u> on the use of the scheme on a six-monthly basis						
c) Other (please specify)						

If selected 'Other', please specify:

Please explain your answer to question 32 (also specifying 32a to 32b). *4000 character(s) maximum*

### **Section III : relevance of State aid rules for banks in difficulty**

**Question 33.** To which extent has the evolution of the State aid rules for banks in difficulty over time - as reflected in the successive Commission communications between 2008 and 2013 - taken into account the following factors? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) <u>Changes in the overall macroeconomic and financial stability context between 2008 and 2013 (including in relation to the</u>						

<u>government debt crisis in some Member States)</u>						
b) <u>Other factors</u> (please specify which factors you have in mind in the box below)						

If selected 'Other', please specify:

Please explain your answer to question 33 (also specifying 33a). *4000 character(s) maximum*

**Question 34.** To what extent have the following factors affected the relevance and appropriateness of the State aid rules for banks in difficulty over time? Please also provide a short explanation why you gave a particular score (including the objectives envisaged by the control of State aid to banks in difficulty – namely to ensure financial stability while minimising the amount of aid and competition distortions – which you may have in mind).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) Changes in the overall <u>macroeconomic and financial stability context</u>						
b) Changes in <u>banking sector regulation</u> (other than the introduction of the EU bank crisis management and deposit insurance (CMDI) framework in 2015)						
c) <u>Other factors</u> (please specify)						

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If selected 'Other', please specify:

Please explain your answer to question 34 (also specifying 34a to 34b). *4000 character(s) maximum*

**Question 35.** To which extent are the following compatibility pillars underlying the State aid rules for banks in difficulty still relevant and appropriate since the entry into force of the crisis management and deposit insurance (CMDI) framework in 2015?

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) The <u>minimisation of distortions of competition</u> following the granting of aid to preserve fair competition to a maximum extent						
b) The absorption of losses by a bank, its shareholders and creditors (the so-called " <u>burden-sharing</u> ") to limit the amount of State aid needed, thereby protecting the interest of taxpayers, and to reduce moral hazard						
c) Restoring a bank's <u>long-term viability</u> to minimise the risk that the aided bank						

would require aid again in the future, or when this is not possible, ensuring its orderly market exit						
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Please explain your answer to question 35 (also specifying 35a to 35c). 4000 character(s) maximum

In principle, priority should be given to the CMDI rules. Point b) on burden-sharing, for example, is already regulated in detail in the provisions on creditor participation in the BRRD and SRMR. If, on the other hand, aid is granted outside the instruments possible under the CMDI framework, which in our view are always not subject to state aid law (see answer to question 20), the minimisation of distortions of competition and restoration of long-term viability continue to be justified.

**Question 36.** To which extent has it been necessary to have State aid rules tailored to the specificities and sensitivities of the banking sector, compared to other economic sectors? To which extent could State aid to banks in difficulty have been controlled based on more generic State aid rules?

X	add an answer
	I don't know / no opinion

Please elaborate:

The impact of state aid on competition in the banking system is more complicated and ambiguous to evaluate than it is for most other sectors of the economy. This makes it necessary to have state aid rules tailored to the specificities and sensitivities of the banking sector, especially because of but not limited to network effects within the industry and credit and liquidity provision to the general economy.

The financial sector is characterised by very strong inter-institutional trading, integrated payment systems and other links and interactions between the actors in the industry. A consequence of the network effects in the financial sector, in contrast to other economy sectors, is that one company's failure would not benefit its competitors (in any conventional model of competition, one firm's collapse creates a benefit for its competitors as the competitive pressure is reduced). Therefore, the financial stability considerations as the overarching objective entail the need to prevent negative spillover effects that could cause the failure of a single credit institution for the rest of the banking system. The collapse of Lehman Brothers in September 2008 highlighted this phenomenon.

Due to the complexity and potential pitfalls in the general state aid legislation, several questions should be addressed in the special state aid framework for financial sector. In the temporary State aid framework for financial crisis, the European Commission has successfully stated the specific objectives to be achieved by these rules.

We would like to emphasize that support for the financial system cannot be evaluated by a standard scale of factors. Strong network effects and the fact that the financial

system performs functions that are essential for the rest of economy require a different assessment framework for the financial sector. Financial stability has played so far, a leading role as an overarching objective, while also trying to ensure that distortions of competition between banks and across member states were minimised. From our point of view this was a right and successful attitude.

In addition, the asymmetric effects of shocks and the need to continue strengthening the CMDI framework should be taken into account.

Hence in our opinion more generic state aid rules would not have been appropriate to control state aid to banks.

**Question 37.** To which extent is it still necessary to have State aid rules tailored to the specificities of the banking sector?

X	add an answer
	I don't know / no opinion

Modernised state aid control for financial sector should achieve that the state aid treatment is well designed, consistent with the CMDI framework and specifically targeted at different kinds of bank crises. Thus, the simultaneous application of CMDI framework (BRRD/SRMR and DGSD) and state aid control rules prevents efficient use of tools foreseen under BRRD/SRMR and DGSD.

A special set of rules for rescuing and restructuring financial institutions beneath the CMDI framework must continue to exist. State aid control would better contribute to the financial stability and economy growth if it had a separate set of rules. These rules however must be consistent with the CMDI framework by not preventing or hampering application of available tools under the BRRD/SRMR and DGSD. Therefore, measures available under the CMDI framework must be exempted from the scrutiny of the regular state aid evaluation procedure.

Notwithstanding the above, it is also crucial to ensure that contributions to the national deposit insurance schemes and to the Single Resolution Fund are not increased in order to avoid unintended consequences.

**Question 38.** Have the State aid rules for banks in difficulty been adequate to also be applied *mutatis mutandis* to non-bank financial institutions (for instance insurance companies)? Please also provide a short explanation why you gave a particular



answer (including specific circumstances of State aid granted to a non-bank financial institution which you may have in mind, and when these occurred).

	Yes
	No
	I don't know/No opinion

**Question 39.** Do you think that since 2008 the likelihood that difficulties at one or several banks lead to a serious disturbance in the economy of a Member State - thereby potentially warranting the granting of State aid to such bank(s) - has changed?

	Yes
	No
	I don't know/No opinion

**Section IV : coherence of State aid rules for banks in difficulty**

**Question 40.**

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
To which extent are State aid rules for banks in difficulty internally coherent?						

Please explain the reasoning behind your answer to question 40. *4000 character(s) maximum*

**Question 41.** Measures to mitigate competition distortions may entail constraints (e.g. limiting the growth of certain activities) that make some strategies of aided banks to restore long-term viability (e.g. trying to increase revenues) more difficult to implement.

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion

To which extent have the State aid rules for banks in difficulty ensured an <u>appropriate trade-off</u> between restoring the long-term viability of banks and mitigating competition distortions stemming from the aid granted to those banks?						
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Please explain the reasoning behind your answer to question 41. *4000 character(s) maximum*

**Question 42.** To which extent are the State aid rules for banks in difficulty coherent with the following other EU policies and legislation? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
a) <u>Bank resolution rules</u> (BRRD/SRMR) (since their entry into force in 2015)			X			
b) <u>Rules applicable to deposit guarantee schemes</u> (DGSD)			X			
c) <u>EU merger control rules</u>			X			
d) <u>Temporary framework</u> for State aid measures to support the economy in the current COVID-19 outbreak since its introduction in 2020			X			
e) Other (please specify below)			X			

If selected 'Other', please specify the EU policies or legislation which you have in mind:

Please explain the reasoning behind your answers to question 42 (also specifying 42a to 42d). *4000 character(s) maximum*

a) Bank resolution rules (BRRD/SRMR) (since their entry into force in 2015)

From 1 January 2016, the Single Resolution Board (SRB) has taken over its responsibility for bank resolution within the Banking Union. Yet, the SRB must still collaborate with the Commission in resolution cases. The Commission's deliberations on the granting of public aid will, however, often be based on the resolution scheme prepared by the SRB.

Under the BRRD the granting of any state aid support has been restricted to exceptional and extraordinary circumstances, as it would imply that an institution is deemed to be failing or likely to fail, therefore triggering its resolution, except for specific circumstances and conditions. Three exceptions to this general resolution rule have been included in the BRRD: State guarantees to emergency liquidity assistance from central banks, state guarantees of newly issued liabilities and precautionary recapitalisations.

State aid measure or resolution scheme that calls for the use of the resolution fund need prior approval from the Commission under state aid rules before it can be effectively granted or the scheme adopted (Article 19 SRMR establishes that the Commission will assess whether the use of means of the Single Resolution Fund is in line with state aid rules by issuing decisions).

The preconditions and the scope of burden-sharing that bank creditors should bear under state aid rules do not fully coincide with the ones adopted for resolution procedures. Since the transposition of the BRRD, government support had to comply with the BRRD stricter bail-in requirements, in addition to being compatible with EU state aid rules.

The 2013 Banking Communication emphasises that derogation from Article 107(3)(b) TFEU remains possible only as long as a systemic crisis situation persists. Moreover, it emphasises the need to ensure a smooth passage to the future BRRD regime and a smooth interaction of all institutions involved (Points 13 and 14 of the 2013 Banking Communication). State aid rules do not include specific provisions for the state aid assessment of government interventions that are compatible with the BRRD. The state aid rules were not reviewed following the transposition of the BRRD.

Furthermore, the differences in objectives of the EU state aid regime and the resolution framework led to inconsistencies, for instance the Commission and the SRB interpret differently financial stability and public interest.

The BRRD was adopted with the aim of restructuring systemically important banks in an orderly manner, by allowing public authorities to share losses among banks' shareholders and creditors (bail-in), rather than using taxpayers' money (bailouts). Series of cases of bank rescues approved after the introduction of the Directive show that public interventions are still necessary. This is justified based on the preservation of the possibility for Member States to grant support measures in times of crisis according to the exemption laid down in the Article 107(3)(b) TFEU. Thus, there is a need to provide that the two sets of rules are appropriately coordinated.

State aid control will remain an important element of the Banking Union, as state aid rules for banks continue to be applicable for the systemic crises. State aid control would, however, better contribute to the financial stability and economy growth if it had a set of rules applicable, on one hand, in the event of a spread systemic market failure and, on the other hand, in "normal times" where bank support is needed. This set of rules would complement/extend the CMDI framework but would not be applicable on the measures under the CMDI framework.

On the other side, it must be clarified that the use of tools under the CMDI framework does not qualify as state aid under the regular state aid control provisions.

Thus, the further development would mean exemption of the tools under the CMDI framework from the application of the regular state aid control rules. This could be achieved for instance by means of changes in the bank communications, Council Enabling Regulation/General Block Exemption Regulation or in other way. So, in case of use of the measures foreseen under the CMDI framework, we argue in favour of a legal system that focusses on the application of rules inherent to the CMDI framework. It is a responsibility of the respective resolution authority/DGS to ascertain that tools used in crises management procedures do not unduly distort competition in the market.

Exempting the application of the state aid rules to actions under the CMDI framework will allow the effective and undisturbed use of measures foreseen under BRRD/SRMR and DGSD.

b) Rules applicable to deposit guarantee schemes (DGSD);

We argue that generally all DGS measures available under the CMDI framework and as such applied pursuant to its policies and according to the rules laid down in the DGSD and BRRD/SRMR as well as irrespective of national specificities in the design and functioning of DGSs and their governance model should be exempted from the application of the regular state aid control rules. It should be made clear that when DGS funds are used for support measures, state aid rules should not be applicable and no notification to the Commission be required.

Deposit Guarantee Schemes (DGSs) may also rescue and restructure ailing banks (Art. 11 (3) and (6) DGSD). Depositor compensation under the DGSD does not cause any state aid issue. However, when the same funds from the same DGS are used to bail out a bank, according to point 63 of the 2013 Banking Communication EU, state aid control rules do apply.

For the time being, the Commission will carry out case by case assessments to evaluate whether measures by a DGS are imputable to the state or not and therefore constitute or not the state aid. The uncertainty in this regard is evident due to the Commission's interpretations from the case law on state aid concerning preventive measures, for instance the case Banca Tercas.

Exempting the application of the state aid rules on actions under the CMDI framework will allow the effective and undisturbed use of measures foreseen under DGSD BRRD/SRMR (see also our answer to Question 42 a).

**Section V : EU added value of State aid rules for banks in difficulty**

**Question 43.** Have the State aid rules for banks in difficulty provided an added value in comparison to a situation without such guidelines, in which case each individual measure would have to be dealt with separately, directly applying the TFEU?

	add an answer
	I don't know / no opinion

**Question 44.**

	<b>1</b> Not at all	<b>2</b> Rather not	<b>3</b> Neutral	<b>4</b> To a certain extent	<b>5</b> A lot	I don't know / No opinion
To which extent have the State aid rules for banks in difficulty ensured a <u>coordinated approach</u> to the financial support given by Member States (with different budgetary capacities) to their respective banking sectors?						

Please explain the reasoning behind your answer to question 44. *4000 character(s) maximum*

**Question 45.** Do you want to raise any other points which may be relevant for the evaluation of the State aid rules for banks in difficulty?

	Yes
	No

**Question 46.** If you want to share any documents (e.g. data, research paper, position paper, etc.) which may be relevant for the evaluation of the State aid rules for banks in difficulty, please upload it here. Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.



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