State Aid rules for banks in difficulty

High-level position paper – Executive summary

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The European Savings and Retail Banking Group (ESBG) welcomes the initiative of the European Commission to launch a targeted consultation aiming at reviewing the State Aid rules for banks in difficulty. The potential revision will assess the fitness of the current rules regarding burden-sharing, market discipline, financial stability, and the protection of taxpayers among other things. The modernised framework should ensure that the State Aid rules are applied proportionally, are adapted to the crisis management and deposit insurance (CMDI) legislation and are specifically targeted at different kinds of bank crises.

Improving the interaction with CMDI framework in order to strengthen burden sharing and to tackle moral hazard issues.

Inconsistencies between the **State Aid regime** and the Bank Recovery and Resolution Directive and the Single Resolution Mechanism Regulation (**BRRD/SRMR) regime** for resolution measures lead to **legal uncertainty** and can also foster inefficient and **ineffective measures**. The scope of **burden-sharing** that bank creditors should bear under State Aid rules does not fully coincide with the scope adopted for resolution procedures. **The Banking Communication from 2013** requires an appropriate **loss of 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**. Furthermore, practice also shows that the **European Commission** and the **Single Resolution Board (SRB)** interpret the terms financial stability and public interest differently.

State Aid rules for banks in difficulty should therefore be clarified, streamlined, simplified, and adapted to legislative developments. There is a significant need to improve both the scope of application and the interaction of the regulations. In principle, **priority** should be given to the **CMDI rules**. Regarding **burden-sharing**, for example, this field is already regulated in detail in the provisions on creditor participation in the BRRD and SRMR.

Clarifying the application scope of State Aid rules and the interpretation of DGS measures.

Deposit Guarantee Schemes (DGSs) may rescue and restructure failing 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 carries out case by case assessments to evaluate whether measures by a DGS do or do not constitute 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,** an Italian savings banks based in Teramo. In 2015, the Commission found that the intervention from an Italian DGS for the benefit of Banca Tercas constituted unlawful State Aid.

ESBG argues that all **DGS measures** available under the **CMDI framework** applied in accordance with the rules established by the **DGSD and the BRRD/SRMR**, regardless of national specificities in the design, the governance, and the functioning of DGSs, **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. 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.
Furthermore, and until such improvements are effectively achieved, ESBG finds it important to avoid **any increase in contributions** to the **national DGS** and to the **Single Resolution Fund (SRF).**

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