EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Bank, insurance and financial crime

Resolution and deposit insurance

TARGETED CONSULTATION DOCUMENT

REVIEW OF THE CRISIS MANAGEMENT AND DEPOSIT INSURANCE FRAMEWORK

Disclaimer
This document is a working document of the Commission services for consultation.

The statements reflected in this consultation paper do not prejudge a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

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You are invited to reply **by 20 April 2021** at the latest to the **online questionnaire** available on the following webpage: https://ec.europa.eu/info/publications/finance-consultations-2021-crisis-managementdeposit-insurance-review-targeted_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses**.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://ec.europa.eu/info/publications/finance-consultations-2021-crisis-managementdeposit-insurance-review-targeted_en

INTRODUCTION AND GENERAL CONTEXT

Background of this targeted consultation

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

In this context, the EU **bank crisis management and deposit insurance framework** lays out the rules for handling bank failures while protecting depositors. It consists of three EU legislative texts acting together with relevant national legislation: the Bank Recovery and Resolution Directive (BRRD – Directive 2014/59/EU), the Single Resolution Mechanism Regulation (SRMR – Regulation (EU) 806/2014), and the Deposit Guarantee Schemes Directive, DGSD – Directive 2014/49/EU)[1]. For the purpose of this consultation, reference will be made also to insolvency proceedings applicable under national laws.[2] For clarity, the consultation only concerns insolvency proceedings **applying to banks**. Other insolvency proceedings, notably those applying to other types of companies, are not the subject of this consultation.

Experience with the application of the current crisis management and deposit insurance framework[3] until now seems to indicate that adjustments may be warranted. In particular:

- One of the cornerstones of the current framework is the objective of shielding public money from the effects of bank failures. Nevertheless, this has only been partially achieved. This has to do with the fact that the current framework creates incentives for national authorities to deal with failing or likely to fail (FOLF) banks through solutions that do not necessarily ensure an optimal outcome in terms of consistency and minimisation in the use of public funds. These incentives are partly generated by the misalignment between the conditions for accessing the

[1] Provisions complementing the crisis management framework are also present in the Capital Requirements Regulation (CRR – Regulation (EU) 575/2013) and the Capital Requirements Directive (CRD – Directive 2013/36/EU). The winding up Directive (Directive 2001/24/EC) is also relevant to the framework.

[2] It should be noted that insolvency laws are not harmonised in the EU and they may be very different from country to country, both in terms of type of procedure (judicial or administrative) and available measures.

[3] European Commission (30 April 2019), Commission Report (2019) on the application and review of Directive 2014/59/EU (BRRD) and Regulation 806/2014 (SRMR).

resolution fund and certain (less stringent) conditions for accessing other forms of financial support under existing EU State aid rules, as well as the availability of tools in certain national insolvency proceedings (NIP), which are in practice similar to those available in resolution. Moreover, a reported difficulty for some small and medium-sized banks to issue certain financial instruments, that are relevant for the purpose of meeting their minimum requirement for own funds and eligible liabilities (MREL), may contribute to this misalignment of incentives.

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

- The predictability of the current framework is impacted by various elements, such as divergence in the application of the Public Interest Assessment (PIA)[4] by the Single Resolution Board (SRB) compared to National Resolution Authorities (NRA) outside the banking union. In addition, the existing differences among national insolvency frameworks (which have a bearing on the outcome of the PIA) and the fact that some of these national insolvency procedures are similar to those available in resolution, as well as the differences in the hierarchy of liabilities in insolvency across Member States, complicate the handling of banking crises in a cross-border context.

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

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

- Discrepancies in depositor protection across Member States in terms of scope of protection, such as specific categories of depositors,[5] and payout processes result in inconsistencies in access to financial safety nets for EU depositors.[6]

[4] As also explained in detail later, the PIA is carried out by a resolution authority to decide whether a failing bank should be managed under resolution or insolvency according to national law.

[5] While the protection of standard banking deposits by DGSs has been harmonised, exceptions excluding certain deposits (for instance those of public authorities) or extending the protection above the EUR 100 000-threshold are defined on a national basis.

[6] Study financed under the European Parliament Pilot Project 'Creating a true banking union' on the Options and national discretions under the Deposit Guarantee Scheme Directive and their treatment in the context of a European Deposit Insurance Scheme and EBA opinions of 8 August 2019, 30 October 2019, 23 January 2020 and 28 December 2020 issued under Article 19(6) DGSD in the context of the DGSD review.

The possible revision of the resolution framework as well as a possible further harmonisation of insolvency law are also foreseen in the respective review clauses of the three legislative texts.[7] By reviewing the framework, the Commission aims to increase its efficiency, proportionality and overall coherence to manage bank crises in the EU, as well as to enhance the level of depositor protection, including through the creation of a common depositor protection mechanism in the banking union. Crisis management and deposit insurance, including a common funding scheme for the banking union, are strongly interlinked and inter-dependent, and present the potential for synergies if developed jointly. Additionally, in the context of the crisis management and deposit insurance framework review, the State aid framework for banks will also be reviewed with a view to ensuring consistency between the two frameworks, adequate burdensharing of shareholders and creditors to protect taxpayers and preservation of financial stability.

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

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

A general public consultation will be launched in parallel[8]. It covers only general questions on the bank crisis management and deposit insurance framework and will be available in 23 official EU languages. Some general questions are asked in both questionnaires. This is indicated whenever this is the case. Please note that replies to either questionnaire will be equally considered.

Views are welcome from all stakeholders.

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

[7] It is relevant in this respect to notice the European Commission's Report (2019) on the application and review of Directive 2014/59/EU (BRRD) and Regulation 806/2014 (SRMR).
[8] https://ec.europa.eu/info/publications/finance-consultations-2021-crisis-management-deposit-insurance-review_en

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

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

The consultation will be open for 12 weeks.

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

CONSULTATION

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

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

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

When a bank is considered FOLF and there is a public interest in resolving it,[9] the resolution authorities will intervene in the bank by using the specific powers granted by the BRRD[10] in absence of a private solution. In the banking union, the resolution of systemic banks is carried out by the Single Resolution Board (SRB). In the absence of a public interest for resolution, the bank failure should be handled through orderly winding-up proceedings available at national level.

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

Deposits[11] are protected up to EUR 100 000. This applies regardless of whether the bank is put into resolution or insolvency. In insolvency, the primary function of a DGS is to pay out depositors[12] within 7 days of a determination of unavailability of their deposits. In line with the DGSD, DGSs may also have functions other than the pay-out of depositors. As pay-out may not always be suitable in a crisis scenario due to the risk of disrupting overall

[9] Resolution is considered in the public interest when normal insolvency proceedings would not sufficiently achieve the resolution objectives. See Article 32 BRRD.

[10] In the following, reference to the BRRD should be understood as including also corresponding provisions in the Single Resolution Mechanism Regulation (SRMR).

[11] If not excluded under Article 5 DGSD.

[12] Article 11(1) DGSD.

depositor confidence[13], some Member States allow the DGS funds to be used to prevent the failure of a bank (DGS preventive measures) or finance a transfer of assets and liabilities to a buyer in insolvency to preserve the access to covered depositors (DGS alternative measures).[14] The DGSD provides a limit as regards the costs of such preventive and alternative measures. Moreover, DGSs can contribute financially to a bank's resolution, under certain circumstances.

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

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

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

PART 1 – GENERAL OBJECTIVES AND REVIEW FOCUS[15]

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	Do not know / No opinion

[13] The main challenges are related to (i) the short-term interruption of depositors' access to their deposits for pay-outs, (ii) the cost to the DGS and to the economy, and, (iii) the inherent risk of destruction of value in insolvency.

[14] Article 11(6) DGSD.

[15] Questions 1-6 of the general part of this targeted consultation correspond to questions 1-6 of the general public consultation.

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				

If possible, please explain:

In general, we believe that the current framework is very effective from a Danish perspective and the answers above are based on the application of the framework in Denmark and when cooperating with authorities in other Member States in resolution colleges.

As a Member State outside the Banking Union, within the BRRD/DGSD framework, we have to some extent a different approach to failing banks than most of the EU, as resolution is the preferred strategy for almost all Danish banks, including smaller banks. This approach ensures predictability and credibility for banks, investors and customers alike, and it ensures that customers can continue their banking activities without interruption if their bank fails. We believe the BRRD contains the right tools to conduct resolution of banks of all sizes, while protecting financial stability and public money.

If we look at the framework from an overall EU perspective, our concern is that there seems to be some discrepancy between the resolution tools available in the BRRD and the will to apply these tools consistently across all Member States. In this regard we believe that a better functioning CMDI framework that achieves our common objectives of financial stability and protecting taxpayer's money from banking crisis could be ensured by a targeted evolution of the framework in light of experience. To this end we may better fulfill these objectives by including a broader spectrum of banks in the resolution mechanism, increasing the use of bail-in in resolution cases and by ensuring sufficient build up of MREL and subordinated MREL in particular.

In this light, Denmark is generally open for amendments leading to further consistency and effectiveness. However, any amendment should leave appropriate flexibility in order to ensure that banking customers can access their banking accounts and continue their banking business without interruption, while still pursuing the aims embedded in the current framework of protecting public money and breaking the bank sovereign nexus. Further, amendments should not harm the key principles in the BRRD, including the use of bail-in.

Of key importance for Denmark in the upcoming review are the themes and main points listed in the paragraphs just below. The points mentioned are further elaborated throughout the questionnaire.

Regarding the application of the public interest assessment (PIA) we support a more consistent application of the PIA and a broadening of the notion of public interest in the rest of EU. It is in this regard important that further clarification on the discretion for resolution authorities with respect to the PIA still leaves appropriate flexibility to ensure, that well-functioning and tested resolution frameworks as in Denmark is not prevented.

One of the areas where further consistency is needed concerns the use of state aid for failing banks. As a starting point, the Commission's Banking Communication on State Aid should be changed and aligned with the BRRD, safeguarding the principles of bail-in. Second, it should be ensured that precautionary recapitalization is used strictly for solvent banks and as an exemption to resolution as the general rule and only if necessary for preserving stability in the financial system and the overall economy.

Another key issue is the calibration of MREL. In Denmark, all banks – including very small banks – have an MREL requirement, and we have good experience with winding up even smaller banks through BRRD resolution. At the EU level, it should be considered to also set individual targets for MREL at the individual bank, large as well as small banks, in a similar manner. Having sufficient eligible liabilities is the key to credible resolution plans that work in practice. In this regard subordinated MREL is strongly preferred to non-subordinated MREL as it creates legal certainty for investors and also enhances the likelihood that simple creditors can be protected. Fully subordinated MREL would also expectedly entail that the will to do bail-in is there when needed.

Regarding the issue on whether to establish an orderly liquidation tool with funding from the national deposit guarantee schemes that can also be used in cases where there is no public interest in putting the bank in resolution,we are open to exploring the creation of such a tool. However, as we use the already existing tools in BRRD for the same purpose, it is crucial that effectiveness of the existing tools do not deteriorate, including the bail-in tool.

Finally, regarding EDIS, Denmark generally supports establishing a depositor insurance scheme in the Banking Union and could see merit in a hybrid model as part of a balanced road map to move forward on the Banking Union work streams, which is highly relevant to all Member States. We encourage that Member States that may decide to participate in the Banking Union enter EDIS on an equal footing with existing members of the Banking Union.

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?

We refer to our answer to the question above.

Beyond that, we do consider that the framework gives the necessary flexibility for all types of banks, but in many member states the framework still needs to apply fully in practice. In light of experiences seen in relation to member states somewhat diverging application of certain parts of the current framework, we are open for further harmonizing amendments leading to further consistency and effectiveness. However, any amendment should leave appropriate flexibility in order to ensure that different needs are met while still pursuing the aims of protecting tax payer money and breaking the bank sovereign nexus embedded in the CMDI framework.

A concern for us would be that further harmonization of the CMDI framework in regards to dealing with small and medium-sized banks would end up damaging the present sound approach in Denmark.

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	Do not know / No opinion
Early intervention measures[17]				X								
Precautionary measures[18]		X										
DGS preventive measures												X

Resolution[19]										X		

[16] The main policy objectives of the CDMI framework are to:

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

[17] BRRD Articles 27 and following

[18] BRRD Article 32(4)(d) (i) to (iii)

[19] We refer in this respect to the use of the tools available in resolution, i.e. bail-in, sale of business, bridge institution and asset management vehicle as well as the use made so far of the available sources of funding in resolution (resolution fund and DGS particularly).

National insolvency proceedings, including DGS alternative measures where available[16]											X

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

"DGS preventive measures" and "National insolvency proceedings, including DGS alternative measures " have not been used in Denmark since the implementation of the present DGSD, and therefore they are marked as "No opinion".

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.

We believe that the current framework is very effective and useful in practice in Denmark. Amendments should ensure that flexible tools continue to be available to cater for the different kind of situations. If harmonized tools outside of resolution should be introduced it would be of great importance, that the set of tools are not limited in order to ensure a broad spectrum of available tools both inside and outside of resolution.

In this regard, by way of example, we note that in our experience it will not always be possible to carry out a sale or transfer to a private buyer, especially not within a few days. Thus, it is important to ensure that a broad and wide range of tools such as bail-in, replacement of management, forming subsidiaries to assume ownership of the bank etc. are available.

[16] We refer here to the functioning of available insolvency proceedings at national level as well as the use of DGS resources for alternative measures in insolvency, where these are available in national law.

At the EU level, we believe there is room for expanding the definition of public interest and the use of resolution tools so they can be applied to most banks, as in Denmark.

Question 4

Do you see merit in revising the conditions to access different sources of funding in resolution and in insolvency (i.e. resolution funds and DGS)?[17] 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? Please explain and provide arguments for your view.

- Yes
- No X
- No opinion

Please elaborate

In general, we consider that handling a failing institution through bankruptcy and basic DGS payout is not desirable. If the failing institution does not meet the resolution conditions, then it would be possible to reach a better result for winding down the institution through alternative measures.

As already mentioned, we are very satisfied with the current Danish approach.

Question 5

Bearing in mind the underlying principle of protection of taxpayers, should the future framework maintain the measures currently available when the conditions for resolution and insolvency are not met (i.e. precautionary measures, early intervention measures and DGS preventive measures)? Should these measures be amended? If so, why and how?

- Yes
- No X
- No opinion

Please elaborate

Today, the difference between a regular supervirsoy tool and an early intervention measure is not clear. This should be addressed so it is clear when a measure is a supervisory measure and when it is an early intervention measure. The measures that currently exist in both regulations should be aligned in the general supervisory powers. Early intervention measures should include only the most intrusive powers as these powers should reflect the severe situation in which they are meant to be used.

The conditions for precautionary measures (recapitalizations etc.) should be reviewed in order to better ensure that this is the exemption and not the rule.

[17] In short, the resolution fund can be accessed only in resolution and only after a bail-in of at least 8% of the bank's total liabilities and own funds; the DGS can be accessed based on the least cost test in insolvency and under the conditions in Article 109 BRRD in resolution; under applicable State aid rules, liquidation aid can be granted under some competition conditions, which include a burden sharing of shareholders and subordinated creditors.

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	Do not 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[18]).		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)[19] should be harmonised across Member States.	X		

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

As already stated above, we are open to discuss further harmonisation also on this topic while keeping appropriate flexibility and not damage well functioning setups for dealing with small and medium sixed banks as in Denmark.

We are open to discuss alternative measures involving the Danish DGS. In our opinion alternative measures can be very useful in relevant cases.

Preventive measures have not been implemented in Danish legislation, and we generally believe that preventive measures should be limited in order to keep incentives within the institution and the private sector to solve issues without intervention.

[18] If the preventive or alternative measures were eliminated in a future framework, the DGS could use the voluntary schemes to finance such measures.
[19] The least cost methodology requires a comparison between the cost of an alternative intervention and the loss that the DGS would have to bear in case of payout.

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)

EIMs allow supervisors to intervene and tackle the financial deterioration of a bank before it is declared failing or likely to fail (FOLF).[20] These measures can be important to ensure a timely intervention to address issues with the bank, with a view to, where possible, preventing its failure or to at least limiting the impact of the bank's distress on the rest of the financial sector and the economy.

Experience shows, however, that early intervention measures have hardly been used so far. Reasons for such limited use include the overlap between some early intervention measures and the supervisory actions available to supervisors as part of their prudential powers[21], the lack of a directly applicable legal basis at banking union level to activate early intervention measures[22], the conditions for their application and interactions with other Union legislation (Market Abuse Regulation). It might be necessary to assess whether the use of EIMs could be facilitated, while remaining consistent with the need for a proportionate approach.

Question 7

	Yes	No	Do not 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		

[20] Article 32 BRRD lays down when a bank can be declared FOLF.

[21] The European Banking Authority (26 June 2020), Discussion Paper on the Application of early intervention measures in the European Union according to Articles 27-29 of the BRRD (EBA/DP/2020/02).

[22] EIMs provisions are only contained in BRRD and not in the SRMR. Since BRRD needs transposition, and certain aspects of it may vary from Member State to Member State, there may be differences as to how these powers can be activated. This may impact their use, particularly in a cross-border context.

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:

The most crucial improvement would be to eliminate the EIMs that overlap with supervisory measures. Only the most intrusive measures should be included as an EIM. The use of EIMs should still be connected to a rapid or severere deteriorating financial situation of the institution. However there should also still be room for supervisory judgement as to whether EIMs would achieve the intended objective: For example if the institution is in the process of implementing recovery measures the supervisor should not be obligated to apply EIMs. As such supervisors need to maintain a degree of supervisory judgement in applying EIMs. Denmark has a long standing close cooperation between supervisory and resolution authorities. We cannot see how coordination would be improved through legal requirements. The cooperation comes first and foremost from experience and practice.

Precautionary measures

Precautionary measures allow the provision of external financial support from public resources to a solvent bank, as a measure to counteract potential impacts of a serious disturbance in the economy of a Member State and to preserve financial stability.[23] The available measures comprise capital injections (precautionary recapitalisation) as well as liquidity support.

The provision of such support (which constitutes State aid) is an exception to the general principle that the provision of extraordinary public financial support to a bank to maintain its viability, solvency or liquidity should lead to the determination that the bank is FOLF. For this reason, specific requirements must be met in order to allow such measures under the BRRD as well as under the 2013 Banking Communication.[24]

Past cases show that this tool is a useful element of the crisis management framework, provided that the conditions for its application are met. Past work has also highlighted the possible use of precautionary recapitalisation as a means to provide relief measures through the transfer of impaired assets[25], and similar considerations have been extended to asset protection schemes[26].

Question 8

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

[23] These measures are provided in Article 32(4)(d) BRRD.

[24] In particular, BRRD and SRMR require that the measure is limited to solvent banks and it does not cover incurred and likely losses. Also, the amount is limited to the shortfall identified in an asset quality review, stress test or equivalent exercise.

[25] The necessary conditions to allow the use of precautionary recapitalisation to support an impaired asset relief measure are outlined in detail in the Commission Asset Management Companies blueprint, page 36, see European Commission staff working document (March 2018), AMC Blueprint.

[26] European Commission (16 December 2020), Communication from the Commission to the European Parliament, the Council and the European Central Bank: Tackling non-performing loans in the aftermath of the COVID-19 pandemic (COM(2020) 822 final, p. 16).

- Yes X
- No
- No opinion

Please specify your reply

Precautionary recapitalization is in our view only to be used in a systemic crisis and for solvent banks, experiencing temporary difficulties, where the use of precautionary recapitalization would lower the net draw on public finance and avoid serious macroeconomic consequences. We see a need for review to achieve that. It could be beneficial with a more specific definition in the legislation of what defines solvent in the context of precautionary recapitalization. It would be relevant to consider a specification as to who is entitled to determine when an institution is solvent.

Also further clarification on of the use of AQR could be considered, e.g. specific data requirements and to what extent there are specific data requirements for the analysis that identify losses that are likely to be or have already been incurred - e.g. how old must the data be and what are the requirements for the sample size?

The conditions for precautionary recapitalizations should generally be reviewed in order to better ensure that this measure is the exemption and does not become the rule.

DGS preventive measures (Article 11(3) DGSD)
DGSs can intervene to prevent the failure of a bank. This feature of DGSs is currently an option under the DGS Directive and has not been implemented in all Member States.

Such a use of DGS resources can be an important feature to allow a swift intervention to address the deteriorating financial conditions of a bank and potentially avoid the wider impact of the bank's failure on the financial market. The DGSs' intervention is currently limited to the cost of fulfilling its statutory or contractual mandate.[27]

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

Question 9
In view of past experience with these types of measures, should the conditions for the application of DGS preventive measures be clarified in the future framework? What are, in your view, the main potential clarifications?

- Yes
- No
- No opinion X

Please specify your reply

In our opinion, and as already mentioned above, the overall best solution for a bank approaching difficulties should be to find a private solution where a sound bank takes over

[27] In particular, the DGS can act in a preventive capacity only if the cost of that intervention does not exceed the cost of fulfilling its statutory or contractual mandate.

the FOLF institution. Setting up schemes with use of DGS funds (or other public funds) should not make the private solutions less attractive.

Thus, it is important for us to ensure that preventive measures do not lead to less incentives for the institution to solve the issues without intervention. If preventive measures were to be used it should thus only be at a very late stage before failure and would require valuations and assessments similar to "least cost test" and NCWO-test.

(ii) Measures available to manage the failure of banks

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

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

As already indicated in the Commission Report (2019), practical experience in the application of the framework showed that, in the banking union[28], resolution has been used only in a very limited number of cases and that solutions outside the resolution framework, including national insolvency proceedings supported with liquidation aid, remain available (and subject to less-strict requirements).

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

- The decision-making process regarding FOLF;

- The application of the public interest assessment by the resolution authorities, i.e. the assessment which is used to decide whether a bank should be managed under resolution or national insolvency proceedings;

- The tools available in the framework, particularly to assess whether those available in resolution are sufficient and appropriate to manage the failure of potentially any bank or whether there is merit in considering additional tools;

[28] Outside the banking union, resolution seems to have been the preferred way for dealing with failing banks.

- The sources of funding available in the framework, in particular to determine whether they can be used effectively and quickly and whether they can be accessed under proportionate requirements.

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

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

Resolution authorities can only apply resolution action to a failing institution when they consider that such action is necessary in the public interest. According to Article 32(5) BRRD, the public interest criterion is met when resolution action is necessary for the achievement of one or more of the resolution objectives and the winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent. The resolution objectives[29] are considered to be of equal importance and must be balanced as appropriate to the nature and circumstances of each case.

Additionally, the BRRD[30] provides that, due to the potentially systemic nature of all institutions, it is crucial that authorities have the possibility to resolve any institution, in order to maintain financial stability.

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

Question 10

What are your views on the public interest assessment?

	Agree	Disagree	Do not 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	

[29] Continuity of critical functions, avoidance of significant adverse effect on the financial system, protection of public funds, protection of covered deposits and investors covered by investor compensation schemes, protection of client funds and client assets – see Article 31 BRRD.

[30] See recital 29 BRRD.

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

Increased consistency and broader application of the PIA across member states could further the avoidance of national solutions inconsistent with the overall objectives of the CMDI-framework. However we believe that some flexibility is required in order to meet different needs.

A concern for us would be that further harmonization or further framing of the discretion for resolution authorities in regards to the public interest assessment would end up damaging the present approach in Denmark, which ensures banking customers a crucial access to their banking accounts and makes it possible for them to continue their banking business without interruption. In Denmark the PIA is an individual assessment, and all Danish banks are as a starting point considered to have critical functions, if the bank is the primary bank for consumers and enterprises. The number of customers is not of importance in this regard.

In Denmark payment cards (Dankort), electronic payments, mobile payments and payments through internet banks are widely used (even more after Covid-19). And as a consequence hereof most people will not be in a position to live their everyday life without access to their accounts and payment cards. Therefore, even smaller banks are as a starting point expected to be wound up through BRRD resolution, which ensures that customers still have access to their accounts and can use their payments cards despite the fact that the institution in question is under resolution.

Therefore, it is important that any amendment of the PIA should allow even smaller banks to be wound up through BRRD resolution in order to ensure that the above described approach would be applicable.

Accordingly, we believe that the following factors should be taken into account when amending the PIA i) the possibility of incorporating specific nation factors (e.g. the possibility to consider means of payments most commonly used), ii) possibility of incorporating qualitive measures (the PIA should be based on a case-by-case assessment) and iii) considerations of practicality, i.e. making the assessment least complicated under the given circumstances.

FOLF triggers, Article 32b BRRD, triggers for resolution and insolvency (withdrawal of authorisation, alignment of triggers for resolution and insolvency)
When an institution is FOLF and there are no alternative measures that would prevent that failure in a timely manner, resolution authorities are required to compare resolution action with the winding up of the institution under normal insolvency proceedings (NIP), under the PIA. The same elements of comparison (resolution and NIP) are used when assessing compliance with the 'no creditor worse off' principle (NCWO), which ensures that creditors in resolution are not treated worse than they would have been in insolvency.[31]

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

Question 11
Do you consider that the existing legal provisions should be further amended to ensure better alignment between the conditions required to declare a bank FOLF and the triggers to initiate insolvency proceedings? How can further alignment be pursued while preserving the necessary features of the insolvency proceedings available at national level?

- Yes
- No
- No opinion X

Please explain

We do not see this as a current issue in Denmark, but if needed in other member states we are open to amendments in this regard.

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?

[31] Under points (47) and (54) of Article 2(1) BRRD, respectively, normal insolvency proceedings are defined as 'collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an administrator normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal person', and winding up is defined as 'the realisation of assets of an institution'.

- Yes
- No
- No opinion X

Please explain

We do not see this as a current issue in Denmark, but if needed in other member states we are open to amendments in this regard. However, we believe that if an institution is FOLF and not subject to resolution it must exit the banking market immediately.

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

When the supervisor withdraws the license of a credit institution, that credit institution is forced to unwind its business. This can either happen through resolution, liquidation or bankruptcy.

Considering that a credit institution needs a license to be part of a clearing system there is however a high risk that the credit institution will face a liquidity crisis immediately after the license is withdrawn. This would probably also force the credit institution into bankruptcy.

The withdrawal of a credit institution's authorization also enables the credit institution to use national emergency "powers" – In Denmark the board of directors have the possibility to agree to a merger, without approval from the general assembly, if the credit institution is insolvent. As stated above the credit institution will likely be insolvent immediately after the withdrawal of the credit institution's authorization.

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
- No opinion X

Please elaborate on your reply

For a resolution process to be as effective as possible it is important that the FOLF is triggered on time. "On time" should be the point of non-viability of the failing institution. In our experience, *the conditions for application of FOLF are sufficiently broad to enable the process to start at on time, however, assessing when the right time is for each failing institution is not an easy task. It is important that all other options (EIM, local supervisory crisis management powers and private solutions) that could be possible within a reasonable timeframe have been exhausted before the application of FOLF. As such the intention of FOLF as a last resort when all other options are exhausted has been achieved. This ensures that institutions are not put into resolution if there is still a chance to recover within an acceptable timeframe. However, recent resolution cases in very small banks in Denmark has shown higher losses than expected in the resolution plan, resulting in bail-in of uncovered deposits. If the goal is to ensure that losses will not be higher than planned for in the resolution plan, the resolution process could have been initiated earlier in the process.This should however be weighed against the risk of imposing loses on shareholders and non-preferred creditors by initiating a resolutions process on a bank that might be viable.*

However, we should keep in mind that MREL requirements have not been fully phased in for small and medium institutions (which in the case of Denmark all have an MREL requirement). As such resolution has incurred further losses than intended with FOLF. A full consideration of the timing for FOLF cannot be made before the full phase in of MREL requirements for small and medium sized institutions.

It is our impression, however, that there are examples in the EU where the decision to trigger FOLF has not been taken when the time was right, at least not in the spirit of the BRRD. This has lead to higher risk of losses for both depositors and sovereigns.

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? Please elaborate in the text box below.

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

- Yes X
- No
- No opinion

Please elaborate on your reply

The application of FOLF in Denmark has been widely used. It is common procedure that a credit institution is considered FOLF upon breach of the Pillar 2 requirements (P2R). However the supervisor only assessed that there is no private or other measure to prevent failure once this has been explored further (BRRD article 32(1)(b)). As such a credit institution may remain in going concern for a period of time during which other measures are attempted. If these other measures are successful the credit institution is no longer considered FOLF.

Application of FOLF upon breach of P2R has not had a negative impact on the private/other measures attempted by the credit institution. In several cases of application of FOLF the credit institution has been able to recover. FOLF can also be declared if a credit institution fails to meet MREL.

Adequacy of available tools in resolution and insolvency

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

Question 16

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

- Yes X
- No
- No opinion

Please elaborate on your reply

In our view, the existing regulatory bases are sufficient to deal with the potential failure of all banks.

In this respect, it is important for us not to remove parts of the existing set of tools - especially in the BRRD - as this will lead to inadequacies in being able to cater for the potential failure of all banks.

Question 17

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

	Agree	Disagree	Do not 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.

In our opinion, no additional tools are needed as effective tools already exist in the BRRD, but we are always open to discussing improvement of the measures. If new tools are introduced, it is crucial that the existing tools can continue to apply, even if it may be in a different legislation than the existing one, and that we ensure consistency and effectiveness with regard to loss-absorbtion (bail-in) and protecting sovereigns from banking crisis.

As earlier stated, the problem is not the framework, but the application of the framework.

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

In Denmark with the current framework, we do not have a need for the introduction of an orderly liquidation tool with funding from the DGS under Article 11 (6) DGSD. In Denmark, we use the already existing tools in BRRD, and it is therefore crucial to us that the existing tools do not deteriorate, including the possibility of full use of the bail-in tool if the tools are moved out of the BRRD.

In Denmark, we have good experience with winding up even smaller banks through BRRD resolution, and on that basis we support introducing an orderly liquidation tool that can also be used in cases where there is no public interest in putting the bank in resolution.

As a result of the above, we emphasize that differences amongst the member states and the individual situations when an institution fails should be considered if an orderly liquidation tool is introduced. In our experience it will not always be possible to carry out a sale or transfer to a private buyer, especially not within a few days. Thus, there also needs to be the necessary powers in place for the authorities to keep the institution open for a longer period of time until the activities can be transferred or wound down. An orderly liquidation tool must have appropriate flexibility across member states. We do not believe that an orderly liquidation tool should be limited to only certain preferred liabilities. All liabilities should be included in order to ensure the best possible and flexible use of an orderly liquidation tool.

On that basis, it is in our opinion not necessary to establish a new regime for a certain category of banks since the framework already exist, but we can support introducing an orderly liquidation tool if the existing tools in the BRRD continues to apply with the existing flexibility to handle the differences amongst the member states and the individual situations.

However, great care should be taken in not misusing DGS funds.

If the reply to the above is Yes:

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

	Agree	Disagree	Do not know / No opinion
There would be benefits in introducing such a tool in all the insolvency laws of EU Member States		X	
There are legal challenges for the introduction of such a tool in insolvency	X		
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	X		
Such a liquidation tool should be managed centrally (i.e. at supranational level) in the banking union and at Member State level in the rest of the EU	X		

Please explain your answers further

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)?

As mentioned above, it is our opinion that no new or additional tools are needed as the necessary tools already exist in the BRRD. Therefore, if new tools are introduced, it is crucial that the existing tools can continue to apply.

If so, please explain how such a risk could be addressed [text box]

Resolution strategy
As part of resolution planning, resolution authorities are defining the preferred and variant resolution strategy and preparing the application of the relevant tools to ensure its execution. For large and complex institutions, open-bank bail-in is, in general, expected to be the preferred resolution tool. This comes hand in hand with the need for those institutions to hold sufficient loss absorbing and recapitalisation capacity (MREL).
However, depending on the circumstances, it may be useful to consider the case of smaller and medium-sized institutions with predominantly equity and deposit-based funding, which may have a positive public interest to be resolved, but whose business model may

not sustain an MREL calibration necessary to fully recapitalise the bank. For such cases, other resolution strategies are available in the framework such as the sale of business or bridge bank which, depending on the circumstances, may allow lower MREL targets and may be financed from sources of financing other than the resolution fund (for example, DGS).

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

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

- ☐ Yes X
- ☐ No
- ☐ No opinion

Please explain

The current legal provisions in BRRD provide a sufficient source of financing for resolution authorities to effectively implement a transfer strategy if the bail-in tool is used in full in the creditor hierarchy. In Denmark it remains a priority also in small and medium-sized banks that shareholders and creditors should bear losses and that taxpayers' money should be protected.

In Denmark the PIA is an individual assessment, and all Danish banks are as a starting point considered to have critical functions, if the bank is the primary bank for consumers and enterprises. In Denmark payment cards (Dankort), electronic payments, mobile payments and payments through internet banks are widely used (even more after Covid-19). And as a consequence hereof most people will not be in a position to live their everyday life without access to their accounts and payment cards. Therefore, even smaller banks are as a starting point expected to be wound up through BRRD resolution, which ensures that customers still have access to their accounts and can use their payments cards despite the fact that the institution in question is under resolution.

The Danish approach is thus that the failure of a small institution at the wrong time or the failure of more small institutions at the same time could have a negative impact on the financial stability. Thus, even smaller banks are expected to be wound up through BRRD resolution. The number of customers involved, and even if all the costumers are located within a smaller region are not of significance as to the Danish assessment.

As a result even smaller banks are required to have MREL in excess of capital requirements. However, requirements are calibrated in order for the banks to be resolved through the better parts being sold and only the more difficult parts remaining thereby lessening the requirements for MREL.

The phasing in of MREL requirements has been set in order for the smaller banks to be capable of accumulating substantial parts of MREL through retained earnings, if they are very frugal on distributions of their earnings to shareholders.

Funding sources in resolution

In order to carry out a resolution action, the resolution authority may decide to access the SRF/RF if certain conditions are met, in particular the need to first bail-in shareholders and creditors for no less than 8% of total liabilities, including own funds (TLOF)[32]. Article 109 BRRD also provides the possibility of using the DGS in resolution, however only for an amount that would not exceed the amount in losses that the DGS would have borne under an insolvency counterfactual. The availability of sufficient sources of funding and the provision of proportionate conditions to access them are central to ensure that the resolution framework is adequate to cater for potentially any bank's failure.

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

This issue may be exacerbated by the fact that these categories of banks may have more difficulty in accessing debt issuance markets and therefore acquire loss-absorption capacity through, for example, subordinated debt. While some banks rely on more complex issuance strategies, for others (including in some cases sizeable entities) equity and deposits are the main sources of funding. As a result, meeting the requirement to access RFs/SRF for these banks to execute the resolution strategy[33] may entail bailing-in deposits. At the same time, it is arguable that a proportionate approach to managing bank failures should ensure that entities can access funding sources without having to modify their business model. Also, the existence of a variety of business models is an important element to ensure a diversified, dynamic and competitive banking market.

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

Question 20

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

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[32] Article 44(5) BRRD requires a minimum bail-in of 8% TLOF and provides for a maximum RF contribution of 5% TLOF (unless all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full) when a resolution authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, or when the use of the RF indirectly results in part of the losses being passed on to the RF (Article 101(2) BRRD).

[33] For solvency support

	Agree	Disagree	Do not 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

In general, we do not see any need to change the access conditions to the RF/SRF when the RF/SRF are used for loss absorption. The prevailing 8 pct. requirement is crucial and ensures sufficient build-up of MREL-liabilities. Shareholders and creditors should bear the risk of losses.

In addition, we believe that 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 would be relevant to introduce. Use of the RF/SRF to provide liquidity or guaranties should not be subject to other access conditions than that the institution is subject to resolution under BRRD/SRMR.

Furthermore, flexibility should be introduced to allow DGS' to finance the controlled winding up of failing institutions under BRRD in those cases where DGS funds is used in resolution according to the current rules. However, use of DGS to finance the controlled winding up of failing institutions should not remove the main principle that shareholders and creditors should bear the risk of losses.

In our opinion, there should also be flexibility when determining the final sequence of usage of the differrent funding sources as this would allow the DGS to use its funds in the most efficient way and avoid a firesale of its assets at the point of crisis. Ensuring flexibility enables the possibility of designing a more optimal plan for the usage of funding.

Sources of funding available in insolvency
Funding sources are also available for banks that do not meet the public interest test and are put in insolvency according to the applicable national law.
There are, in particular, two sources of potential public external funding:

- DGS funds to finance alternative measures pursuant to Article 11(6) DGSD. In this case, the DGS can provide funding to support a transaction to the extent that this is necessary to preserve access to covered deposits and that it complies with the least cost test (i.e. the loss for the DGS is lower than the loss it would have borne in case of payout in insolvency) and State aid rules, as applicable;

- Financial support from the public budget. Such financial support can be provided by Member States subject to compliance with the requirements enshrined in the State aid framework,[34] which include among other things burden sharing by shareholders and subordinated debt and a requirement that the aid is granted in the amount necessary to facilitate an orderly exit of the bank from the market.

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

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

[34] This includes first and foremost the 2013 Banking Communication.

- Yes X
- No
- No opinion

Please explain

Based on the past European experiences we see merit in an alignment of the burden sharing in the state aid regime (Banking Communication) with the BRRD to secure that shareholders and creditors are subject to the same burden sharing in line with the BRRD whether the institution is resolved under BRRD/SRMR or enters into national insolvency procedures.

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

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

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

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

- Yes
- No
- No opinion X

Please explain

It should be noted, however, that in Denmark, the resolution authority and DGS are in the same organization, which provides an efficient and flexible process both up to and in connection with a winding up of an institute. In addition, it also provides a very efficient use of resources.

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
- ☐ No opinion X

Please explain [TEXT BOX]

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

At the same time, the ability to issue MREL, particularly through subordinated instruments, depends on several features of each bank and its business model. Certain banks (e.g. some banks with traditional funding models relying largely on deposits) may have more difficulties in accessing debt issuance markets than other, more complex, institutions. While significant progress has been achieved by banks in reducing MREL shortfalls over the past years, when it comes to reaching their MREL targets under the applicable resolution strategy (and complying, if needed, with the conditions for accessing the resolution fund), challenges remain for certain banks[35]. They relate to the sustainable build-up of MREL-eligible instruments, especially against the background of fragile profitability and capability to roll-over instruments in the short-term, in particular in times of economic crisis.

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

	Agree	Disagree	Do not 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	

[35] Joint report by the services of the European Commission, the European Central Bank (ECB) and the Single Resolution Board (SRB) (November 2020), Monitoring report on risk reduction indicators, pg 33.

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

All Danish SIFI's but one already comply with the MREL-requirement. The prospect for the remaining SIFI and the smaller and medium sized banks in Denmark is that these banks will comply with the MREL-requirement by 2024.

In Denmark, MREL requirements for smaller and medium sized banks are set at a level between insolvency/capital requirements and the full SIFI level. It is outlined in the Danish setup with national bankers' associations that these institutions should be able to comply with the MREL requirement through retained earnings, and not by issuing new instruments. The institutions have been subject to a phase-in of the MREL requirements since 2019 in order to stock enough MREL-eligible instruments by 2024.

In our view, subordinated MREL is strongly preferred to non-subordinated MREL. Subordination creates legal certainty for investors and also enhances the likelihood that simple creditors can be protected. Therefore, we make full use of the regulatory framework when setting the subordination requirements for Danish institutions and would strongly prefer MREL to be fully subordinated.

If subordinated MREL cannot be raised, authorities should set individual plans for setting aside earnings and not distributing earnings for each institution under their remit. This would also be a true test of the institutions capacity to raise subordinated MREL.

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	Do not 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

In the Danish setup, it is assessed that it is in the public interest to apply resolution tools for small and medium-sized banks, because the main prioritization is to allow for consumers to have access to their banking accounts and can make transactions Monday morning after a resolution weekend. Since even small and medium-sized banks are the primary bank for these consumers, this is a key concern.

The resolution strategy for small and medium-sized banks is not the same as for SIFI banks, since the bail-in is supplemented with e.g. the sale for business tool. Also MREL requirements reflect the resolution strategy and are therefore relatively lower than for SIFI institutions.

It remains a priority for both SIFI institutions and small and medium-sized banks that shareholders and creditors should bear losses and that tax payers' money should be protected. This is both underlined by setting what we assess as adequate MREL requirements and subordination requirements.

The new framework could benefit from continuing to allow appropriate flexibility for member states to tailor resolution strategies and MREL models to national specificities of the individual banks and the banking sector as a whole. The principles described above are part of the current framework and give the possibility to also tailor resolution tools and MREL requirements to small and medium-sized banks. However, there has to be consistency between resolution strategy and MREL levels. The presumption must be that public funds are not used for bail out.

Treatment of retail clients under the bail-in tool

The bail-in tool can be applied to all the unsecured liabilities of the institution, except where they are statutorily excluded from its scope[36]. Resolution authorities have the discretionary power to exclude certain liabilities from bail-in, but this can only take place under a limited set of circumstances and, where it leads to the use of the resolution financing arrangement, it requires authorisation from the Commission and the Council.

If a significant part of an institution's bail-inable liabilities, particularly MREL instruments, is held by retail investors, resolution authorities might be reticent to impose losses on those liabilities for a number of reasons[37]. First, the bail-in of debt instruments held by retail clients risks affecting the overall confidence in the financial markets and might trigger severe reactions by those clients, which could translate in contagion effects and financial instability. Second, bailing-in retail debt holders, especially in case of selfplacement (where the institution places the financial instruments issued by themselves or other group entities with their own client base), could hinder the successful implementation of the resolution strategy. Indeed, the imposition of losses to the customer

[36] Which includes covered deposits and a few other types of liabilities to ensure the continuity of critical functions and reduce risk of systemic contagion.

[37] In this respect, please see the statement of the EBA and ESMA on the treatment of retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive.

base of the institution under resolution could lead to reputational damage, which in turn could impede the business viability and the franchise value of the institution post-resolution.

In order to ensure that retail investors do not hold excessive amounts of certain MREL instruments, BRRD II[38] introduced a requirement to ensure a minimum denomination amount for such instruments or that the investment in such instruments does not represent an excessive share of the investor's portfolio.[39] MiFID II[40], which has been applicable since January 2018, also included a number of new provisions aimed at strengthening investor protection in respect of disclosure, distribution and assessment of suitability, among others. Nevertheless, the question has arisen whether the protection of retail clients should be reinforced, either by further empowering resolution authorities to pursue that objective or through directly applicable protection in the context of resolution. These considerations are independent of the possible measures that may be implemented to address the specific case of mis-selling of financial instruments to retail clients.

Question 26

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

	Agree	Disagree	Do not 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	

[38] Directive (EU) 2019/879.

[39] See Article 44a BRRD.

[40] Directive 2014/65/EU.

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

We believe that the current protection for retail clients is sufficient in the resolution framework. However, if there should be any changes in art. 44 a we believe that the changes should ensure the better protection of the retail clients at the point of distribution, not in resolution. If authorities believe that they cannot bail in MREL instruments, they should not be sold to these clients. It does not make sense to offer excess returns to clients that bear no risk. Present practices of not bailing in MREL holders also creates the risk that misselling by credit institutions are not pursued.

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

- Yes
- No
- No opinion X

Please explain

We believe that the protection of retail clients are important. Any changes in art. 44 a should ensure the better protection of the retail clients at the point of distribution, not in resolution.

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 [text box]

We believe that the protection of retail clients are important. We are thus in favor of extension of the protection at the point of distribution, not in resolution.

B. Level of harmonisation of creditor hierarchy in the EU and impact on NCWO
Liabilities absorb losses and contribute to the recapitalisation of an institution in resolution in an order that is largely determined by the hierarchy of claims in insolvency. EU law

already provides for a number of rules on the bank insolvency ranking of certain types of liabilities[41]. For the remaining classes of liabilities, there is little harmonisation at EU level. Notably, some Member States have granted a legal preference in insolvency to other categories of deposits currently not mentioned in Article 108(1) BRRD[42]. In this context, the question is whether there should be a generalised granting of a legal preference to all deposits at EU level.[43] The arguments in favour would be that this would ensure a level playing field in depositor treatment across the EU, contribute to minimizing the risks of breach of the NCWO principle and properly reflect the key role played by deposits in the real economy and in banking. Additionally, if the three-tiered ranking of deposits[44] and DGS claims currently put in place by Article 108(1) BRRD were to be replaced with a single ranking, whereby all those claims would rank *pari passu*, the use of the DGS in resolution and in insolvency would be facilitated.

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

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

Question 29

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

- Yes
- No X
- No opinion

Please explain

In general, we do not believe that the bank creditor hierarchy should be changed.

We are concerned that an adjustment would entail a greater use of the DGS funds. We have good experience with it being the creditors and depositors of the failing institution that carries the losses. This should be the general principle. We have not seen any analysis showing that a larger use of public funds (incl. RF or DGS) should give a sounder resolution framework.

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[41] Namely, own funds items, senior non-preferred debt instruments, covered deposits and claims of DGSs subrogating to covered deposits, and the part of eligible deposits from natural persons and micro, small and medium-sized enterprises (SMEs) exceeding the coverage level provided by the DGSD – see Articles 48(7) and 108 BRRD.

[42] More specifically, eligible deposits of large corporates, in the part exceeding the coverage level of the DGS, and to deposits excluded from repayment by the DGS pursuant to Article 5(1) DGSD.

[43] It should be mentioned that in the United States all depositors benefit from the same ranking.

[44] Meaning, the relative ranking of deposits laid down in Article 108(1) BRRD, whereby covered deposits rank above eligible deposits of natural persons and SMEs, which in turn rank above the remaining deposits.

Furthermore, we are concerned that such amendments would be a step in the wrong direction, and undermining the work and progress achieved over time and also contradicts previous discussions and the general aim of the BRRD. Therefore, as already stated, we prefer to keep the status quo.

Finally, differences in insolvency rules across the EU is not the real problem. Insolvency regulation is deeply rooted in national legislation on property rights and has fundamental effects on distribution. It is therefore very difficult to harmonize.

The above is also relevant to our answers to question 30 below.

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	Do not know / No opinion
Granting of statutory preference to deposits currently not covered by Article 108(1) BRRD	X										
Introduction of a single-tiered ranking for all deposits	X										
Requiring preferred deposits to rank below all other preferred claims	X										
Granting of statutory preference in insolvency for liabilities excluded from bail-in under Article 44(2) BRRD	X										

C. Depositor insurance
Enhancing depositor protection in the EU[45]

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

[45] Questions 31-33 of the technical part of this targeted consultation correspond to questions 7-9 of the general public consultation.

Certain deposits benefit from a higher protection because of their impact on a depositor's life. For example, a sale of a private residential property or payment of insurance benefits typically creates a temporary high balance on a depositor's bank account above the standard coverage of EUR 100 000. The protection of such temporary high balances currently varies from EUR 100 000 up to EUR 2 million depending on the Member State. In the current framework, public authorities are and some local authorities may be excluded from the deposit protection. In this view, deposits by entities such as schools, publicly owned hospitals or swimming pools can lose protection because they are considered public authorities.

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

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 X
- No
- No opinion

Please elaborate

In our opinion it requires clarification as to whether recital 29 of the DGSD only relates to the relationship between the electronic money institution and its users or whether recital 29 also relates to the relationship between the electronic money institution and the credit institutions. The ambiguity may thus mean different implementation from member state to member state.

It is also of great relevance to have clarified whether it is or should be a condition for coverage that applicable safeguarding requirements are met. It is as such a question of how, if at all, the depositor guarantee regulation should apply to funds received from clients by an investment firm/payment institution/e-money institution in the time period from when the funds are received in the institution's (non-segregated) bank account and until the time when the funds are transferred in accordance with the applicable safeguarding requirements to a segregated account. When considering whether or not compliance with applicable safeguarding requirements is a requirement for client coverage, it is also relevant to consider if it is possible for coverage to be provided in situations where the funds are not properly segregated, but the beneficial entitlement of the funds is documented in another way. Beneficial entitlement could for example be documented by an auditor's report.

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

	Agree	Disagree	Do not 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:

We agree that there should be as few differences in the level of protection between member states as possible. However, it is very important that national conditions can continue to be taken into account - e.g. in relation to pension funds. In our opinion, the target level of 0.8% of the amount of the covered deposits should thus be maintained, but with the possibility for member states to include and collect contributions on the basis of all deposits covered by the member state. Thus, if a member state covers a depositor's pension funds, the additional funds covered should also be recognized at the target level of 0.8%, so that the contribution collection reflects which funds are covered. In these situations, the covered funds can be calculated quarterly, after which the contribution can be charged as an average.

With regard to the protection of public and local authorities we can, due to the operational aspect, support that these deposits also should be protected by the DGS. A harmonization on the coverage would reduce the administrative burden of the DGS and only have marginal charge on the DGS fund. The coverage level should be the same as for other depositors.

Keeping depositors informed

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

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

	Agree	Disagree	Do not 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.[46]	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:

As to whether it will be more useful to simply inform depositors when part of or all of their deposits are not covered, one must be aware of the balance between the administrative burdens for companies compared to the utility value for the depositors, and in that context it will in our opinion be necessary to have an impact assessment. In connection with depositors receiving information regarding their deposits, it is, however, necessary to introduce flexibility in relation to when and how depositors are to receive the information. The rules should be clear, but flexibility on the format etc. is preferable.

[46] This may be the case in situations where part of the deposits exceed the coverage level or where depositors are not eligible for depositor protection.

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

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

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

Since 2015, discussions are ongoing on completing the third pillar of the banking union (i. e. a common deposit guarantee scheme) in the Council's Ad Hoc Working Party, High Level Working Group set up by the Eurogroup and in the European Parliament. Most recently, the set-up and features of a possible compromise on a first stage common deposit insurance scheme focusing on liquidity provision were discussed at political level.[47] In a nutshell, on the basis of these discussions, a common scheme could rely on the existing national DGSs and be complemented by a central fund to reinsure national systems.[48] This first stage of EDIS based on liquidity support could be followed by steps towards a fully-fledged EDIS with loss-sharing, which would ensure an alignment between control (supervision and resolution) and liability (deposit protection), and further reduce the nexus between banks and sovereigns.

Question 34

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

	Agree	Disagree	Do not know / No opinion
The current depositor framework achieves the objective of ensuring financial stability and depositor confidence.	X		
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.	X		

[47] Letter by the High-Level Working Group on a European Deposit Insurance Scheme (EDIS) Chair to the President of the Eurogroup, 3 December 2019.

[48] Various designs and parameters could be envisaged, pertaining to – among other things – (i) the allocation of the funds between the central fund and the national DGSs, as well as a cap on the central fund or on mandatory lending, (ii) the build-up phase of the fund and the mandatory lending component, (iii) interest rates, maturities and repayment of the loans, or (iv) the overall scope of the scheme.

A target level in a Member State could be adapted to the level of risk of its banking system.	X		

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: [text box]

Question 35

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

	Yes	No	Do not know / No opinion
Financing of the DGS[49]		X	
The DGS's strategy for investing their financial means [50]	X		
The sequence of use of the different funding sources of a DGS (available financial means, extraordinary contributions, alternative funding arrangements)[51]	X		
The transfer of contributions in case a bank changes its affiliation to a DGS[52]	X		

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:

In our opninon, it should be clarified that placing funds at a central bank is considered as a safe investment which is not subject to any diversification requirement in the DGSD.

We also see merit in clarifying the flexibility in determining the sequence of usage of the different funding sources.

In regards to a potential amendment of the transfer of contributions in case a bank changes its affiliation to a DGS more clarity is needed. The Danish DGS reached the target level some years ago and have since had experiences with institutions changing affiliation; experiences include institutions leaving with no transfer of contributions and institutions joining the DGS in combination of a transfer of contribution despite the DGS having reached the target level.

[49] Article 10 DGSD

[50] Article 10 DGSD

[51] Article 11 DGSD

[52] Article 11 DGSD

Question 36[53][54]
Which of the following statements regarding EDIS do you support?

	Agree	Disagree	Do not 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[58].		X	
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.		X	
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[55] are exploited.			X
From the perspective of the EU Single Market, EDIS could exceptionally be used in the nonbanking union Member States as an extraordinary lending facility in circumstances such as systemic crises and if justified for financial stability reasons.	X		

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: [text box]

If prompt corrective action and the principles in the BRRD were applied, the risks to deposit insurance systems would be very limited.

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

	Agree	Disagree	Do not know / No opinion

[53] Question 36 of the technical part of this targeted consultation partly corresponds to question 10 of the general public consultation.

[54] The obstacles to cross-border activity may arise because, under Article 8(5)(e) and 14(2) DGSD, cross-border deposits located in branches are protected in the country of registration of the bank and, in the event of payout, may be subject to reimbursement longer than 7 working days.

[55] At face value, a common scheme with a target level lower than 0.8% of covered deposits in the euro area can ensure the same level of protection as the current network of national DGSs. The assessment of the so-called pooling effect could allow to lower the bank contributions to the national DGSs.

As a first step, a common scheme provides only liquidity support subject to the agreed limits to increase a mutual trust among Member States.	X		
At least a part of the funds available in national DGSs is progressively transferred to a central fund.			X
If the central fund is depleted, all banks within the banking union contribute to its replenishment over a certain period.			X
Loss coverage is an essential part of a common scheme, at least in the long term.	X		

Please elaborate on any of the above statements, including any supporting documentation, or add suggestions concerning a possible design, including benefits and disadvantages as well as potential costs thereof: [text box]

The above answers reflect that we support a deposit insuance scheme in the Banking Union and could see merit in a hybrid model as part of a balanced road map for the Banking Union work streams, relevant to all Member States. The above answers regarding the specifics in the design of EDIS indicates what we see as sound features in EDIS, but we are open to further discussions. In addition, we encourage that all Member States may enter EDIS on equal footing with members of the Banking Union . We acknowledge that decisions regarding EDIS is primarily a matter for members of the Banking Union.

Question 38

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

	Agree	Disagree	Do not know / No opinion
Setting a limit (cap) on the liquidity support from the central fund is appropriate to prevent the first mover advantage.[56]	X		
Any bank that is currently a member of a national DGS is also part of the common scheme.		X	
The central fund should be allocated 50% or more and the national DGS 50% or less of the total resources.			X

[56] In this context, the first-mover advantage means that one DGS depletes all funds as an initial beneficiary and, consequently, is better off than other DGSs.

Appropriate governance rules and interest rates provide the right incentive for the repayment of the liquidity support, while taking into account their procyclical impact.	X		
The central fund also covers the options and national discretions currently applicable in the Member States.			X
A common scheme provides for a transitional period from liquidity support towards the loss coverage with a view to breaking the sovereign-bank nexus.	X		

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

In general, in relation to EDIS, we would like to plead that any introduction of the system from an administrative point of view does not become too burdensome and that no rules are introduced that make the member states that are not part of the banking union worse off. In addition, we believe that entry and exit of EDIS should be on fair terms.

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[57] 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	Do not know / No opinion
The Single Resolution Fund and EDIS should be separate.			X
The Single Resolution Fund should support EDIS when the latter is depleted.			X
Synergies between the two funds should be exploited.	X		
Synergies between the two funds should be used to reduce the costs of the crisis management framework for the banking sector.			X
Synergies between the two funds should be used to strengthen the firepower of the crisis management framework.			X

[57] Such synergies could take the form of bilateral loan commitments, guarantees, or possibly a merger of the two funds.

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

Great care should be taken not to misuse funds, in particular deposit insurance funds, with the aim to avoid bail in.

Additional information

Should you wish to provide additional information (for example a position paper) explaining your position or raise specific points not covered by the questionnaire, you can upload your additional document here. Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this targeted consultation.