



CMDI review package

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CMDI package - Content

LEGISLATIVE ACTS

MAIN PACKAGE

- Bank Recovery and Resolution Directive (Directive 2014/59/EU)
- Single Resolution Mechanism Regulation (Regulation 806/2014)
- Deposit Guarantee Schemes Directive (Directive 2014/49/EU)

FAST-TRACK

- Daisy Chain proposal (follow up on Regulation 2022/2036)

NON-LEGISLATIVE ACTS

- SSM Review Report
- Impact assessment and Executive summary (SWD)
- Communication from the Commission on CMDI and its contribution to completing the Banking Union

CMDI package - Narrative and objectives

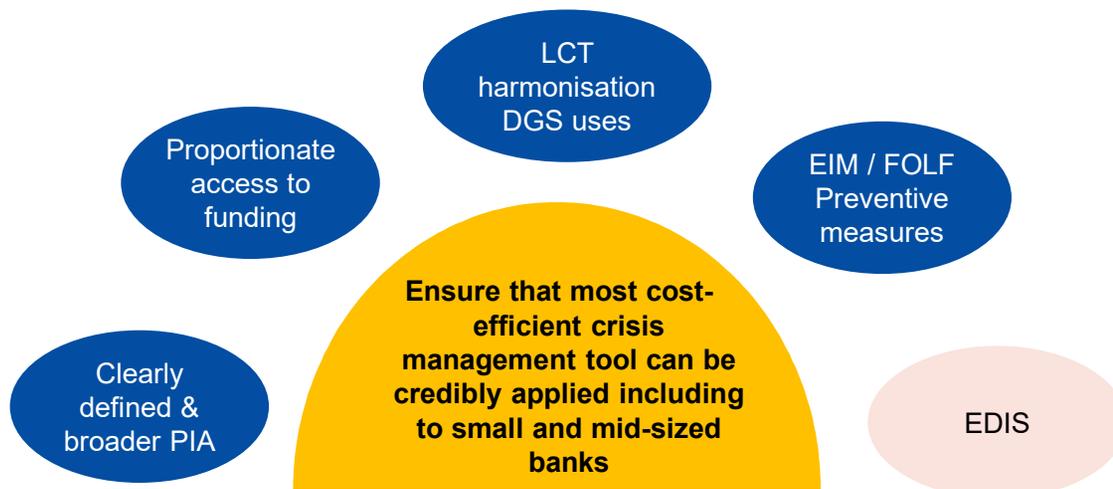
KEY MESSAGES

- Long-standing project – Not related to SVB/ Credit Suisse fallout
- Past experiences of managing failed medium-sized and smaller banks outside resolution framework, with public funds - distorted incentives due to risk of bailing-in depositors in resolution
- Need for a consistent policy response, strong inter-relation between the provisions (no cherry-picking)
- Pave the way for new talks on completing the Banking Union

GOALS

- Preserve financial stability and taxpayers' money (use of DGS in resolution to shield depositors, where needed)
- Improve efficiency for the economy (advantages of resolution, DGS uses other than payout may be more cost-effective)
- Better protection of depositors (no change to the coverage of EUR 100 000, but harmonisation of protection across the EU)

CMDI package - Overview



- **Achieve more resolution**
 - Expansion of resolution scope (PIA)
 - Proportionate approach to funding in resolution: effective use of DGS resources and access to RF/SRF
- **Ensure effective and consistent avenues are available outside resolution**
 - Retain national options for preventive and alternative measures in insolvency, while improving level playing field and strengthening applicable conditions
 - Harmonise LCT safeguard for DGS uses for incentive-compatibility (reduce arbitrage)
 - Proportionate approach to funding: effective, broad and consistent use of DGS resources
- **Improve prospects for timely FOLF triggering**
 - Improve predictability of CMDI outcomes to encourage timely FOLF triggering
 - Clarify early intervention measures
 - Reinforce CA/RA cooperation

BRRD/SRMR: content of the review

Early intervention measures	<ul style="list-style-type: none">• Increase legal certainty and avoid overlaps between early intervention measures and CRD supervisory powers (triggers and available measures), while maintaining an escalation ladder (Articles 27-29 BRRD)• Promote and strengthen coordination between competent authorities (CAs) and resolution authorities (RAs) (Article 30a BRRD / Article 13c SRMR)• Provide directly applicable legal basis to ECB to apply those measures (Articles 13-13b SRMR)
Early warning of failing or likely to fail (FOLF)	<ul style="list-style-type: none">• Provide for an enhanced cooperation and information sharing mechanism between CAs and RAs in the run-up to resolution (Article 30a BRRD / 13c SRMR)• Require the CA to alert the RA sufficiently early in case of material risk of FOLF• RA to define what is a 'reasonable timeframe' for the purposes of looking for alternative solutions able to prevent the failure
Public Interest Assessment (PIA)	<ul style="list-style-type: none">• Definition of critical functions takes into account impact also at regional level (Article 2(1)(35) BRRD)• Adjustments to the resolution objectives related to minimising reliance on public money and depositor protection (Article 31(1) BRRD / Article 14(2) SRMR)• Procedural changes to the comparison between resolution and insolvency (Article 32(5) BRRD / Article 18(5) SRMR)

BRRD/SRMR: content of the review

Adequate funding in resolution

- **Banks' internal loss absorbing resources (MREL)** remain the first line of defence. The requirements to access the resolution fund/SRF are unchanged. Industry-funded safety nets, not taxpayers' money should be the second line of defence.
- The rules to **use DGS in resolution** are adjusted for **transfer strategies leading to market exit** (Article 109 BRRD / Article 79 SRMR):
 - The DGS may be used to cover the **difference** between the assets and the deposits transferred to a recipient and, where necessary, to contribute to the own funds of the recipient (negative price)
 - All **deposits** may be included in the scope of the transfer – however, for non-covered deposits, RA must demonstrate that the reasons for their protection are met (bail-in exclusions)
 - Other liabilities ranking below deposits may be included in the scope of the transfer, but the DGS can only be used to **support the transfer of deposits** (i.e. DGS contribution cannot be attributed to other liabilities)
 - The amount of the DGS contribution is limited by the **least cost test defined in the DGSD**
 - Where non-covered deposits are included in the transfer, the DGS contribution counts towards **compliance with the 8% TLOF requirement** for accessing the RF/SRF ('bridge function'), and is limited to the amount necessary to meet the 8% TLOF, compensating only for losses that would have otherwise been borne by deposits.
 - The use of DGS bridge to access the RF/SRF comes with safeguards: case by case decision of the RA (no automatism), only for transfer strategies with market exit, only for non-liquidation entities, only if the protection of non-covered deposits in a transfer is justified.
 - The DGS is covered by the '**no creditor worse off**' safeguard.

Depositor preference

- General depositor preference in the ranking of claims in national insolvency laws, with a single-tier ranking that removes the super-preference of DGS claims (Article 108(1) BRRD) – see next slide

DGSD: content of the review

Scope of depositor protection

- Protection of public authorities, including public entities, such as schools, municipalities or hospitals
- Further harmonisation of the protection of temporary high balances – minimum level of protection and scope of events
- Clarified and enhanced harmonisation of the protection of client funds' deposits (deposits held by financial institutions because of segregation rules on clients funds: payment institutions, e-money institutions, investment firms)

Uses of DGS funds

- Harmonised rules and safeguards on when and to what extent DGSs can use their funds to finance preventive measures (e.g. LCT, submission of a note with measures the bank commits to undertake to CA)
- Keep the possibility for DGS to finance alternative measures in the context of winding-up procedures, under certain conditions (LCT, marketing arrangements for the assets, rights and liabilities to be transferred)

Least Cost Test

- Harmonised least cost test for all DGS interventions outside payout
- Net approach, time value of money and type of indirect costs in level 1 text
- EBA mandate for LCT detailed methodology

DGSD: content of the review

DGS funding

- Criteria on types of financial assets eligible to target level requirements
- Clarification of rule to rebuild target level in 6 years after depletion to less than two thirds of the target level
- Clarification of sequencing of the use of funds
- Investment strategy for DGS funds

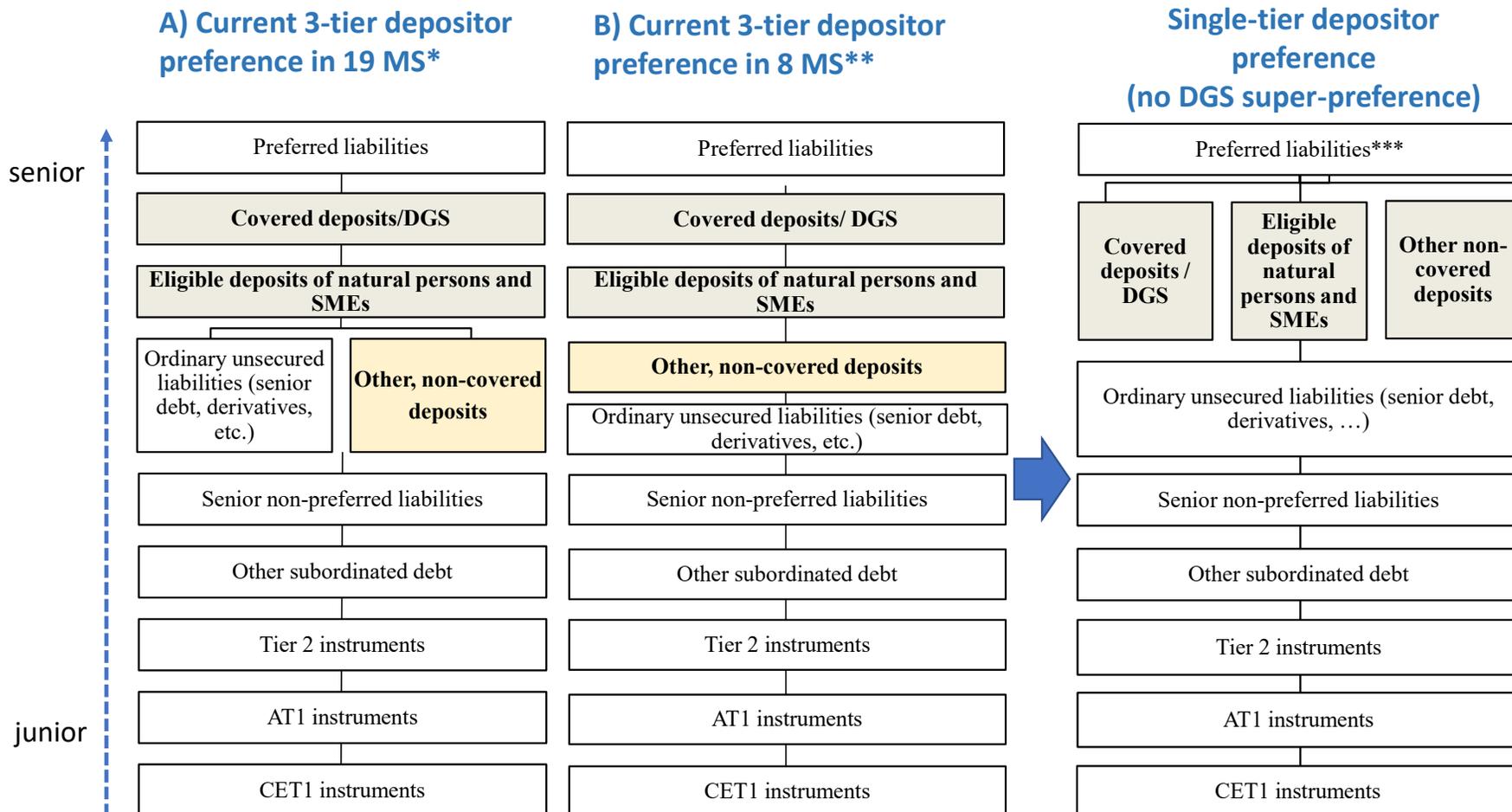
Repayment process

- Harmonisation of the longer repayment period for most complex disbursements
- Burden of proof on depositors' side for beneficiary accounts and THB
- Withholding of the payout to a depositor that gives rise to AML/TF concerns
- Repayment above EUR 10.000 through credit transfer
- Some changes related to dormant accounts (cost threshold for active steps towards repayment, link to active account)
- Maximum period to claim deposits for depositors

International Cooperation

- Possibility for 'home' DGS to pay-out deposits in 'host' member states directly
- Host DGS point of contact under freedom of services
- Clarification on applicable amount to transfer in case of change of DGS affiliation
- Compulsory affiliation for third-country branches to DGS in EU Member State

Additional material



* AT, BE, CZ, DE, DK, EE, ES, FI, FR, IE, LV, LT, LU, MT, NL, PL, RO, SE and SK.

** Other 8 MS have preferred non-covered deposits relative to ordinary unsecured claims (BG, CY, EL, HR, HU, IT, PT and SI).

*** The Single Resolution Fund/ National resolution funds are among preferred liabilities.

Note: this illustration is stylised and simplified. In reality, the hierarchies of claims across MS are only partially harmonised (in particular the subordinated layers), while the senior layers are largely unharmonised and may include additional sub-classes.

BRRD/SRMR: content of the review

EPFS and precautionary recapitalisation

- **List** of the admissible extraordinary public financial support (EPFS) outside resolution (Art 32c BRRD / Art 18a SRMR)
- Clarifications of **precautionary recapitalisation**:
 - Temporary nature, admissible instruments (CET1 as an exception and subject to a cap of 2% TREA of the institution) and exit strategy. Institution to be FOLTF if exit strategy is not followed.
 - Explicit reference to impaired asset measures
 - Assessment of solvency (Article 2(1)(54a) BRRD / Article 3(1)(5a) SRMR) by the competent authority
 - Quantification of losses done with the involvement of the competent authority, possibly on-site inspections

Additional changes

- **MREL calibration** for banks with transfer resolution strategies (Article 45ca BRRD / Article 12da SRMR)
- **Technical improvements of the MREL framework**, identified during the implementation of BRRD II (Articles 16a and 45b BRRD / Articles 10a and 12c SRMR)
- Further specifications on the applicable national procedures leading to **market exit** that should be available in case of **negative PIA** and role of **license withdrawal** (Article 32b BRRD)
- Treatment of **provisions** and **contingent liabilities** under the bail-in tool (Articles 36, 44, 46 and 53 BRRD)
- New **EBA mandates** on monitoring resolvability process, operationalisation of resolution tools and powers and coordination of crisis simulation exercises (Articles 15, 37, 44a and 128a BRRD)
- **Ranking in insolvency** of resolution fund/SRF claims (Article 108 BRRD / Article 76 SRMR)
- **Use of irrevocable payment commitments (IPCs) to contribute to resolution funds**: greater flexibility on their use with higher cap and enhanced role of the RA, clarification of situations where a bank exits the scope of BRRD/SRMR.

SRMR specificities

Governance of the Board	<ul style="list-style-type: none">• Possibility for the Chair, Vice-Chair and permanent Board members to serve a second term in office (Article 56 SRMR)• Granting of voting rights to the Vice-Chair (Articles 43, 53 and 55 SRMR)• Adjustments to the procedural rules on establishment of the budget (Article 61 SRMR)
Task allocation between SRB and NRAs	<ul style="list-style-type: none">• No change to the existing allocation between SRB (SIs and cross-border LSIs) and NRAs (remaining entities)• Clarification on exercise of certain powers in relation to SIs and cross-border LSIs: M-MDA restrictions (Article 10a SRMR), prior permission for eligible liabilities (Article 12 SRMR), records of financial contracts (Article 8 SRMR), pre-resolution moratorium (Article 18 SRMR), intervention in insolvency proceedings (Article 31 SRMR)
Exchange of information and disclosure	<ul style="list-style-type: none">• Access to ECB data collected under its central bank function (Article 30 SRMR)• Reference to ESRB, ESAs, NCBs for cooperation and information exchange (Articles 30 and 34 SRMR)• Possibility for the Board to define the form of the data and the applicable procedure when requesting data directly from institutions and entities (Article 34 SRMR)• Possibility to disclose analyses, assessments and determinations made by the SRB (Article 88)
Procedural changes in case Fund aid or State aid is used in resolution	<ul style="list-style-type: none">• In case the resolution scheme adopted by the SRB involves the use of Fund aid or State aid, the SRB will be able to <i>adopt</i> the scheme also if the assessment of compatibility of such aid with the internal market has not yet been concluded by the Commission (Article 19 SRMR)• However, the <i>entry into force</i> of the scheme will continue being conditional on such assessment (and endorsement of the scheme by the Commission)