EUROPEAN COMMISSION

137965/EU XXVII.GP
Eingelangt am 19/04/23

17.1.2023

SEC(2023) 230

REGULATORY SCRUTINY BOARD OPINION

Crisis management and depositor insurance

{COM(2023) 226-228}

{SWD(2023) 225-226}

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Crisis management and depositor insurance

Overall 2nd opinion: POSITIVE

(A) Policy context

The EU bank crisis management and deposit insurance (CMDI) framework lays down the rules for handling bank failures and protection of depositors following the 2008 financial crisis. It is designed to ensure that bank failures can be managed in an orderly manner. The framework came into force in 2015 and in the same year, the Commission proposed the European Deposit Insurance Scheme (EDIS), which would mutualise national deposit guarantee funds at the European level. This constitutes the third pillar of the Banking Union (in addition to the Single Supervisory Mechanism and the Single Resolution Mechanism). However, the EDIS proposal remains un-adopted. In June 2022, the Eurogroup invited the Commission to table a legislative proposal to strengthen the CMDI framework. The current report presents an impact assessment including an evaluation of the CMDI to support its revision.

(B) Summary of findings

The Board notes the significant changes and clarifications made to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspect:

(1) The report does not clearly address the One In: One Out requirements.

(C) What to improve

(1) The report should address the One In: One Out requirements. If quantitative estimates cannot be produced, or if these are negligible, or the proposal is considered to have no One In: One Out implications, this should be explained.

(2) While the report presents general views of large and small banks on the policy options, Annex 2 still does not provide a general overview of differentiated stakeholder views. Annex 2 should consider responses by type of stakeholder.

This opinion concerns a draft impact assessment which may differ from the final version.

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The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables. *Some more technical comments have been sent directly to the author DG.*

(D) Conclusion **The DG must take these recommendations into account before launching the interservice consultation.**	
Full title	Crisis management and depositor insturance
Reference number	PLAN/2020/8120-8122
Submitted to RSB on	9 December 2022
Date of RSB meeting	Written procedure

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ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Retained Options		
Description	***Amount***	***Comments***
Direct benefits		
Enhanced legal certainty, harmonisation and simplification of certain rules leading to convergence and level playing field.	No available amount *ex ante*. Strengthening the single rulebook and harmonising crisis management rules will unify the regulatory environment and increase the level playing field, possibly fostering more integration in the single market, which could be monitored in the future. By harmonising the application of the PIA, the depositor preference in the hierarchy of claims, the least cost test to access DGS funding for various interventions, the retained option would enhance legal clarity and achieve a significant simplification of rules.	Resolution authorities would be the main recipients of these benefits, especially when working on cross-border banking groups, mainly due to increased standardisation, simplification and streamlining of rules. Additional legal clarity would reduce the risk of legal challenge for authorities related to the planning, formulation of requirements to banks and execution of the preferred strategy. Market participants would also benefit from standardisation, as they would be in a better position to assess risks related to banks. Depositors would also be the recipients of these benefits, as the harmonisation of depositor preference in the hierarchy of claims would ensure their fair their treatment across Member States.
Reduced recourse to taxpayer money.	No amount available *ex ante*. Taxpayer money would be more protected when handling failing banks by using resolution or alternative measures more consistently, mainly because shareholders, creditors and, if needed, the resolution fund/ DGS would bear losses and support executing the resolution strategy. Estimating the amount of taxpayer funds savings that would be enabled by these reform would be bank-specific. As an indication based	Taxpayers would be the main recipients of this benefit. A more efficient use of DGS funds would reduce the risk of DGS liquidity shortfall and the need of public intervention as a backstop to the DGS.

	on the past, when considering the examples of failing banks between 2015 and 2022, taxpayer exposures to such contingent liabilities reached EUR 58.2 bn (out of which EUR 28.1 bn were used for liquidity support). However, future uses of taxpayer money cannot be gauged on past cases.	
Strengthened depositor confidence through continued access to accounts, greater protection of eligible deposits (also non-covered) and avoidance of bank runs.	No amount available *ex ante*. Alternative use of DGS for paying out covered deposits under insolvency would limit the disruption caused by blocked deposit accounts. It would be confidence enhancing and less prone to contagion/bank run. Moreover, non-covered deposits (above EUR 100 000) in the EU (amounts not reported to EBA) would also be more protected from bail-in under transfer strategies as per the retained option, while they are not protected under a payout scenario (only covered deposits are protected in that case). This prospect would potentially deter depositors from running on the bank. In a payout event, where depositors must be reimbursed within seven days, interrupted access to accounts, social benefits and credit facilities for even a short period in prevalently cashless societies, using or operating with credit and debit cards and electronic systems, could impact the overall economy. The failure of smaller and medium-sized banks can also create substitutability issues because of challenges for a high number of depositors and banks to simultaneously open new accounts to receive their reimbursement.	Covered and non-covered eligible depositors are the main recipients of these benefits because their deposits would be less likely to be bailed-in. More generally, depositor confidence in the banking sector would be strengthened by limiting DGS payout events and facilitating the use of DGS funds for measures preserving their continued access to their accounts (e.g. resolution or alternative measures in insolvency).
More efficient use of DGS funds in managing banks in crises.	No amount available *ex ante*. The cost of a DGS intervention measure either in resolution or under alternative measures in insolvency would be cheaper than the cost of paying out covered depositors under a piecemeal liquidation. A payout of covered depositors is usually cash consuming as the DGS would be required to reimburse the amount of covered deposits to all eligible covered depositors before recovering (part of) this amount during the insolvency proceedings. Moreover, the least cost test ensures that the DGS contributions under resolution or alternative measures in insolvency are always lower than those in a payout event. Therefore, facilitating other measures than payout would better preserve the financial means of the DGS, reducing the amounts of losses that may arise through the DGS intervention.	Banks contributing to the DGS funds and DGS authorities are the main recipients of this benefit. By preserving DGS available financial means, banks would be called on to contribute less to replenish the spent funds. Additionally, DGS authorities would benefit from a more efficient usage of DGS available financial means.

	However, it is very challenging to provide an amount corresponding to the cost reduction for the DGS as this would be bank-specific.	
More credible and proportionate access to RF/SRF for smaller and medium-sized banks.	No amount available *ex ante*. A more credible and proportionate access to RF/SRF for smaller and medium-sized banks would lead to a wider application of resolution tools (transfer of deposit book), preserving more value, in particular when compared to a piecemeal liquidation or a procedure under non harmonised national insolvency rules. The use of the industry-funded safety net would replace in many cases the bail-in of non-covered depositors. However, estimating the amount of the RF/SRF that would be required is not possible *ex ante* because it would depend on a case by case analysis and the specific circumstances of each bank at the moment of failure (e.g. level of losses at the point of failure, the financial fundamentals of the bank, the composition of its liabilities, all of which feed into the results of the valuation exercise).	Non-covered depositors would be the main recipients of this benefit. They would not see their deposits wiped out in case their bank would be failing and resolved under a transfer strategy. Rather, the DGS and the RF/SRF which are industry-funded safety nets would step in to facilitate the resolution of that respective bank.
Franchise value of a failing bank preserved when facilitating transfer strategies.	No amount available *ex ante*. The transfer of the (whole or partial) business would preserve the franchise value to a greater extent than under a piecemeal liquidation approach. It would avoid the destruction of the business brand, preserving the commercial relationships with the clients and consequently better maintaining the profitability of, and the return on the assets. Transfer strategies could be applied in resolution. Where resolution is discarded (negative PIA), alternative measures in insolvency maintain an incentive to maximise the franchise value, thereby minimising the cost for the DGS. However, an amount reflecting the preservation of value cannot be estimated. Doing so would be fully case-dependant and specific to the circumstances of each bank at the moment of failure.	Stakeholders in a failing bank, the other banks contributing to safety nets, as well as taxpayers are the main recipients of this benefit.

Indirect benefits		
Better aligned incentives to apply resolution tools and benefit from funding solutions to execute the strategy.	No amount available. Improving the incentives to apply an improved and more standardised framework would lead to less circumvention in application and more level playing field at EU level. However, this cannot be quantified, as it would be the sum of the benefits stemming from the protection of taxpayers and depositors, more efficient use of DGS funds and more legal certainty in using tools for the banks, resolution authorities and markets.	Taxpayers, depositors, resolution authorities, banks and markets would all be recipients of this benefit.
Preservation of Europe's diversity in banking business models.	No amount available. Fixing the tools and the funding to deal with smaller/medium-sized banks which are predominantly deposit taking would preserve such traditional business models across the EU, on the condition that they remain viable.	The society at large is the recipient of this benefit.
Administrative cost savings related to the 'one in, one out' approach*		
n/a	n/a	n/a

*(1) Estimates are gross values relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;(3) For reductions in regulatory costs, please describe details as to how the saving arises (e.g. reductions in adjustment costs, administrative costs, regulatory charges, enforcement costs, etc.); (4) Cost savings related to the 'one in, one out' approach are detailed in Tool #58 and #59 of the 'better regulation' toolbox. * if relevant.*

Table 5: Overview of costs

II. Overview of costs – Retained options							
		Citizens/Consumers /Businesses		Banks		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Expanding the scope of resolution through clarified PIA	Direct adjustment costs	n/a	n/a	More banks coming into the scope of resolution would require investing in projects enhancing their resolvability (e.g. IT systems, timely data reporting, legal structure, review contracts in view of implementing resolution stays, valuation capabilities, liquidity monitoring, etc.). As resolution authorities continue to retain discretion in their decision to place banks in resolution vs insolvency, the number of banks that would	Raise MREL eligible instruments in case of shortfalls against the set targets. This cost cannot be estimated upfront because it depends on the features of the bank[1], its potential bank-specific MREL target, the outstanding stock of eligible instruments already held and market conditions.	Applying resolution tools presumably more often, due to the expansion of the resolution scope, depending on the occurrence of failure events. This cost cannot be estimated upfront, as resolution authorities continue to retain discretion in their decision to apply resolution vs insolvency.	Preparing more resolution plans, conducting more resolvability assessments and setting MREL requirements for more banks as part of yearly resolution planning cycles. The number of banks which would enter the resolution scope and therefore this cost cannot be estimated upfront, as resolution authorities continue to retain discretion in their decision to apply resolution vs insolvency.

[1] E.g. rating, creditworthiness, financial fundamentals (such as quality of assets, capitalisation, etc.).

II. Overview of costs – Retained options							
		Citizens/Consumers /Businesses		Banks		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
				enter the scope of resolution cannot be estimated. Moreover, the additional costs that each bank may incur to become more resolvable depends on the specific situation of each bank (efficacy of managemen t information systems, valuation capabilities, etc.)			
	Direct administrativ e costs	n/a	n/a	n/a	n/a	n/a	n/a
	Direct regulatory fees and charges	n/a	n/a	n/a	n/a	n/a	n/a
	Direct enforcement costs	n/a	n/a	n/a	n/a	n/a	n/a
	Indirect costs		Additional costs for banks may be passed on to clients. However, such costs should be limited.				

II. Overview of costs – Retained options							
		Citizens/Consumers /Businesses		Banks		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Facilitating the use of funds in resolution and alternative insolvency measures	Direct adjustment costs				Facilitating the use of DGS funds may increase the costs for the banking sector due to additional contributions to replenish the DGS upon depletion. No quantification available, as an estimate would strongly depend on the amount of funds the DGS would use which reflects the losses in case of a failure. However, this cost would be compensated through more efficient use of DGS in resolution compared to payout in insolvency.		More complex processes and additional tasks for resolution authorities when DGS can contribute towards the minimum 8% TLOF bail-in condition to access the RF/SRF.
	Direct administrative costs	n/a	n/a	n/a	n/a	n/a	n/a
	Direct	n/a	n/a	n/a	n/a	n/a	n/a

II. Overview of costs – Retained options							
		Citizens/Consumers /Businesses		Banks		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
	regulatory fees and charges						
	Direct enforcement costs	n/a	n/a	n/a	n/a	n/a	n/a
	Indirect costs			Costs by small/medium-sized banks which have already raised MREL instruments and can access RF/SRF without DGS contribution.			
Costs related to the 'one in, one out' approach							
	Direct adjustment costs	n/a	n/a	n/a	n/a		
	Indirect adjustment costs	n/a	n/a	n/a	n/a		
	Administrative costs (for offsetting)	n/a	n/a	n/a	n/a		

(1) Estimates (gross values) to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (adjustment costs, administrative costs, regulatory charges, enforcement costs, indirect costs;); (4) Administrative costs for offsetting as explained in Tool #58 and #59 of the 'better regulation' toolbox. The total adjustment costs should equal the sum of the adjustment costs presented in the upper part of the table (whenever they are quantifiable and/or can be monetised). Measures taken with a view to compensate adjustment costs to the greatest extent possible are presented in the section of the impact assessment report presenting the preferred option.

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Crisis Management and Deposit Insurance

Overall opinion: NEGATIVE

(A) Policy context

The EU bank crisis management and deposit insurance (CMDI) framework lays down the rules for handling bank failures and protection of depositors following the 2008 financial crisis. It is designed to ensure that bank failures can be managed in an orderly manner through cross-border resolution and to mitigate moral hazard. The framework came into force in 2015 and in the same year, the Commission proposed the European Deposit Insurance Scheme (EDIS), which would mutualise national deposit guarantee funds at the European level. This constitutes the third pillar of the Banking Union (in addition to the Single Supervisory Mechanism and the Single Resolution Mechanism). However, the EDIS proposal remains un-adopted. In June 2022, the Eurogroup invited the Commission to table a legislative proposal to strengthen the CMDI framework. The current report presents an impact assessment including an evaluation of the CMDI to support its revision.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) The report does not clearly demonstrate the existence of a problem that the current legal framework is insufficient to tackle. It does not explain why Member States overwhelmingly prefer national solutions to bank failures rather than the EU framework and why this is a problem.

(2) The report does not clearly demonstrate the need to facilitate the use of the EU resolution framework for small and medium-sized national banks rather than only banks with cross-border operations. It does not sufficiently explain how the initiative respects the principle of subsidiarity.

(3) The report does not clearly demonstrate its coherence with the EDIS proposal.

(4) The report is not sufficiently stand alone or accessible to the non-expert reader. It does not clearly present the different views of all stakeholder groups.

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(C) What to improve

(1) The report needs to better identify and explain the substantive problem and shortcomings in the current framework it seeks to address and substantiate it with robust evidence. In doing this, it should draw on the conclusions of the evaluation that the EU resolution framework is sparsely used. It should examine exactly why this is a problem and what the drivers behind it are by clearly setting out the disincentives for Member States (and banks) to practical bank resolution using the EU framework. It should explain why the current arrangements and incentives have failed and why Member States have shown a strong preference for resolution outside of the EU framework. It should demonstrate why this poses a risk to the wider financial stability of the EU. It should show why the current arrangements would not be fit for purpose in a large scale financial crisis scenario. Finally, it should better explain the international experience in handling bank failures and the lessons that can be drawn from these.

(2) While the resolution framework is designed to cover all banks in the EU, in practice its use has been limited. The report should recall and better explain that all banks are covered by the existing framework and demonstrate, with evidence, the need to facilitate the practical use of the EU resolution framework for smaller and mid-sized banks. It should demonstrate how this is consistent with the principle of subsidiarity. This should include evidence to demonstrate the clear cross-border nature of the problem including by providing evidence on the composition of the banking sector in different Member States and the differing scale and geographical spread of the potential recipients. It should provide evidence of the risk of EU-wide contagion in the internal market and for public finances if the current arrangements persist. Finally, it should better set out the division of roles between the EU state aid framework (and its upcoming revision) and the resolution framework and how coherence will be ensured between the two.

(3) The report should better explain the links between the EBA advice and the options set out in the report. It should clarify the envisaged bridging facility, its scope and limitations, and its envisaged impacts. It should explain that EDIS under the most comprehensive option 4 is different from the 2015 EDIS proposal. It should better articulate how the analytical and policy coherence between option 3 (which does not include EDIS and for which a further legislative proposal is envisaged) and the pending 2015 EDIS proposal will be ensured. In view of this specific context and the results of the presented analysis the report should reflect whether analytically it is not more useful to leave the choice of the preferred option open.

(4) The report should be revised to make it self-standing and accessible to the non-specialist reader. While technical language is necessary in certain parts for experts practitioners, and in particular in annexes, it is important that the main narrative remains clear for political decision makers.

(5) The report should better integrate the views of all stakeholders in the main report, by better distinguishing between the views of different groups on all key aspects.

Some more technical comments have been sent directly to the author DG.

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(D) Conclusion **The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.**	
Full title	Crisis Management and Deposit Insurance
Reference number	PLAN/2020/8120-8122
Submitted to RSB on	28 September 2022
Date of RSB meeting	26 October 2022

Electronically signed on 17/01/2023 14:43 (UTC+01) in accordance with Article 11 of Commission Decision (EU) 2021/2121

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