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COVER NOTE

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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the Proposals for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action REGULATION OF THE EUROPEAN PARLIAMENT AND COUNCIL amending Regulation (EU) 806/2014 as regards early intervention measures, conditions for resolution and financing of resolution action DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency

Delegations will find attached document SWD(2023) 226 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the

Proposals for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action

REGULATION OF THE EUROPEAN PARLIAMENT AND COUNCIL amending Regulation (EU) 806/2014 as regards early intervention measures, conditions for resolution and financing of resolution action

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency

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Executive Summary Sheet

Impact assessment on the review of the bank crisis management and deposit insurance (CMDI) framework (Bank Recovery and Resolution Directive (BRRD), Single Resolution Mechanism Regulation (SRMR), Deposit Guarantee Scheme Directive (DGSD))

A. Need for action

Why? What is the problem being addressed?

The crisis management and deposit insurance (CMDI) framework was designed to avert and manage the failure of credit institutions of any size or business model. Its objectives are to maintain financial stability, protect depositors, minimise the use of public support, limit moral hazard and ensure a level playing field in the single market, while avoiding value destruction. Overall, the evaluation concluded that the CMDI framework is functioning effectively for some objectives (protecting financial stability), but underperforming for other objectives (protecting taxpayers' money and depositors, and ensuring a level playing field in the single market). Therefore, improvements are needed, in particular to the following issues:

- Legal certainty and predictability in managing bank failures remain wanting. For example, public authorities' decision on whether to resort to resolution or insolvency tools can differ considerably across EU Member States.
- Industry financed safety nets remain ineffective and divergent access conditions to funding in resolution and outside resolution persist, impacting incentives and creating arbitrage opportunities when deciding on the crisis management tool to use in order to better protect deposits.
- Depositor protection remains uneven and inconsistent across EU Member States and Deposit Guarantee Scheme (DGS) funding may prove to be insufficiently robust, in particular in the absence of a European Deposit Insurance Scheme (EDIS).

What is this initiative expected to achieve?

Taking into account these issues, the CMDI review aims to better meet all the fundamental objectives of the framework by:

- preserving financial stability and the continuity of banks' critical functions for society;
- protecting depositors and ensuring consumer confidence;
- safeguarding the functioning of the single market and ensuring a level playing field across the EU;
- minimising recourse to taxpayers' money and ensuring market discipline.

What is the value added of action at the EU level?

The review will amend EU legislation (the BRRD, the SRMR and the DGSD). The proposed amendments are justified at EU level because of the strong links between national financial sectors and the risk of contagion and spillovers; the cross-border nature of many financial institutions' business; and the systemic impact that the failure of any bank may have on financial stability (even small and medium-sized banks). Only EU action can provide national and European resolution authorities with the appropriate tools and powers to manage failing banks of all sizes and business models in an orderly manner. EU action can be taken through the harmonised resolution framework when national insolvency proceedings are deemed inappropriate to protect depositors, taxpayers' money and financial stability. EU action can also ensure a level playing field, an improved single market for banking services and equal treatment for all depositors and banks across the EU. At the same time, EU action does not impose a certain strategy to be chosen for failing banks, rather it provides national and European authorities with a consistent framework to make the appropriate and proportionate decisions on case-by-case basis.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Given the strong links between the crisis management toolbox and its funding, the impact assessment considered packages of policy options. These packages of policy options bundle together the CMDI framework's relevant design features to ensure a comprehensive and consistent approach. Some changes proposed on early intervention measures, the triggers to determine a bank failing or likely to fail, and the harmonisation of certain features of the DGSD, are common features across the option packages that were considered.

The different packages of policy options are mainly focused on analysing the possibilities to broaden credibly and effectively the scope of resolution, in function of the level of ambition in making the funding in resolution more accessible. In particular, the policy options consider easing the use of DGS funds in resolution, including to serve as a 'bridge' under the least cost test safeguard, to improve the proportionality in accessing the national resolution funds / Single Resolution Fund (RF/SRF) for banks, in particular smaller and medium-sized banks that are being subject to transfer strategies with market exit. They also explore the possibility of using DGS funds more effectively and efficiently under a harmonised least cost test for measures other than the payout of covered deposits in insolvency. This approach seeks to improve the compatibility of incentives for resolution authorities when selecting the most appropriate tool to manage a crisis. Unlocking DGS funds for measures other than the payout of covered deposits depends on the DGS ranking in the hierarchy of claims. Therefore, the policy options also explore different scenarios for the harmonisation of depositor preference in the hierarchy of claims.

The policy options deliver outcomes ranging from slightly improved resolution funding, and a commensurate resolution scope (Option 2) to more ambitious improvements in the funding equation, opening the possibility for a more substantial broadening of the resolution scope to include more smaller and medium-sized banks (Option 3) relative to Options 1 (baseline) and 2. Option 4 consists of an ambitious reform of the CMDI framework, including EDIS (an intermediate, hybrid EDIS model, different from the 2015 Commission proposal). While the Eurogroup have yet to reach a consensus on the way forward on EDIS, most EU Member States and the European Parliament acknowledge the work carried out at technical level and the importance of establishing EDIS for the robustness of the framework and the completion of the Banking Union. It is therefore included in this option for technical completeness and consistency of the policy design, although it has been assessed as politically unfeasible at this stage.

The ambitious yet realistic improvements to the CMDI framework under Option 3, in particular, its funding equation coupled with a commensurate resolution scope and aligned incentives for deciding on the best crisis tool for smaller and medium-sized banks, make this the preferred option (in the absence of political agreement on EDIS).

Who supports which option?

Most EU Member States support the principle of broadening the resolution scope to certain smaller and medium-sized banks when resolution would best achieve the objectives of the framework, by clarifying the public interest assessment, provided credible access to funding in resolution for these types of banks is ensured. They favour integrating more proportionality in the rules to access funding with the help of the DGS under a harmonised least cost test and preserving the minimum bail-in access condition to resolution funding.

Overall, depositors and consumers support a framework placing more banks in resolution and benefiting from industry-funded safety nets, which would reduce the risk of losses being imposed on deposits, while mitigating the recourse to taxpayers' money.

Banks, in general, see merit in clarifying the CMDI framework; however they also expressed concerns. On one hand, some smaller banks are concerned about potential costs that an expanded resolution scope, coupled with possible (proportionate) MREL requirements and a broader use of industry-funded safety nets may entail. On the other hand, larger banks support a broader application of resolution and underline the need to build MREL buffers. However, they are critical of the prospect of using the safety nets, especially for resolving smaller and medium-sized banks.

Most EU Member States are in favour of EDIS and regret the missed opportunity to exploit the synergies with the CMDI framework in this review. Overall, the industry also favours an EDIS, in particular for the potential cost efficiencies that could lead to lower contributions to safety nets.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

Each of the three packages of policy options aims to create an incentive-based framework by encouraging the application of resolution tools in a more consistent manner, increasing legal certainty and predictability, levelling the playing field, facilitating access to common safety nets, while maintaining some alternatives outside resolution under national insolvency procedures. However, by design, the packages of options achieve these objectives to a different extent and their political feasibility differs.

What are the costs of the preferred option (if any, otherwise main ones)?
The different elements of the three policy options would result in different levels of costs and distribution of costs. Banks earmarked for resolution would continue to comply with the requirement to ensure adequate levels of internal loss absorbing capacity and become more resolvable. Whether the expansion of the resolution scope would translate into higher costs for banks that would transition from being considered for liquidation to being earmarked for resolution is a case-by-case assessment. A mitigating factor for the public and society as a whole would be the preservation of asset value (due to the facilitation of transfer strategies with orderly market exit), reduced recourse to taxpayer money and avoiding the bail-in of depositors by a more extensive use of DGS under the least cost-test safeguard. However, using the DGS funds and the RF/SRF may also trigger replenishment needs through *ex post* contributions from the industry, which, in the absence of EDIS, would not be compensated by any discounts in banks' contributions to the safety nets. For consumers and depositors (including small and medium-sized enterprises (SMEs)) the costs should be limited and clearly outweighed by the benefits. In particular, through increased depositor protection, financial stability, better preservation of value through safeguarding banking critical functions and reduced use of taxpayers' money.
How will businesses, SMEs and micro-enterprises be affected?
Given banks' central role in providing funding and financial services to consumers and SMEs, improved stability of the banking sector through the CMDI reform should benefit these groups, both as regards their access to financing as well as their protection as depositors.
Will there be significant impacts on national budgets and administrations?
An objective of the CMDI reform is to further reduce recourse to taxpayers' money when handling the failure of banks. On one hand, the administrative burden might increase somewhat for administrations (resolution authorities i.e., preparation of more resolution plans and issuing of more administrative decisions). On the other hand, administrations would benefit from more legal certainty and predictability of outcomes when carrying out resolution actions or in the application of the appropriate crisis management tools outside resolution.
Will there be other significant impacts?
No.
D. Follow up
When will the policy be reviewed?
The legislation will undergo a full evaluation five years after its implementation deadline to assess how effective and efficient it has been in terms of achieving the objectives presented in this report, and to decide if new measures or amendments are needed.