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From:	European and Economic Social Committee (EESC)
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

Subject:	<p>CMDI Review package</p> <p>Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on the review of the crisis management and deposit insurance framework contributing to completing the Banking Union [COM(2023) 225 final]</p> <p>Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards early intervention measures, conditions for resolution and funding of resolution action [COM(2023) 226 final - 2023/0111 (COD)]</p> <p>Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action [COM(2023) 227 final - 2023/0112 (COD)]</p> <p>Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities [COM(2023) 229 final - 2023/0113 (COD)]</p> <p>- Opinion of the European Economic and Social Committee (EESC)</p>
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Delegations will find attached the document mentioned above.

All language versions are available from the EESC's website:

<https://dmsearch.eesc.europa.eu/search/opinion>

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OPINION

European Economic and Social Committee

Review of the Bank crisis management and deposit insurance framework

Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on the review of the crisis management and deposit insurance framework contributing to completing the Banking Union

[COM(2023) 225 final]

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards early intervention measures, conditions for resolution and funding of resolution action

[COM(2023) 226 final - 2023/0111 (COD)]

Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action

[COM(2023) 227 final - 2023/0112 (COD)]

Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities

[COM(2023) 229 final - 2023/0113 (COD)]

ECO/608

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Referrals	<p>08/12/2022, letter from the Spanish Ministry of Foreign Affairs, European Union and Cooperation</p> <p>Council of the European Union, 23/06/2023 (COM(2023) 229 final), 11/07/2023 (COM(2023) 226 final), 11/07/2023 (COM(2023) 227 final)</p> <p>European Parliament, 12/06/2023 (COM(2023) 229 final)</p> <p>European Commission, 02/06/2023 (COM(2023) 225 final)</p>
Legal basis	Articles 114, and 304 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27/06/2023
Adopted at plenary	13/07/2023
Plenary session No	580
Outcome of vote (for/against/abstentions)	175/0/2

1. Conclusions and recommendations

- 1.1 The EESC appreciates the Commission's comprehensive initiative to complete the bank crisis management and deposit insurance (CMDI) legislation, as advancing the Banking Union is a key step towards strengthening the European single market in the interests of depositors and taxpayers.
- 1.2 The EESC believes that the recent banking crises in the United States of America (USA) highlight the importance of speed in containing the risk of contagion and the loss of confidence of investors and depositors, as well as the need for flexibility in responding to bank crises. The recent experience also shows the importance of organising the transfer of a troubled bank to another bank properly in a very short space of time.
- 1.3 The EESC appreciates that the Commission proposal extended the Deposits and Guarantee Scheme (DGS) protection to the deposits of public authorities, as well as the fact that the Commission is working towards enhanced harmonisation of deposit protection tools across the EU. Since adequately funded and organised Deposit Insurance Funds (DIFs) play a fundamental role, the enhanced harmonisation proposed by the Commission will be certainly beneficial.
- 1.4 The EESC notes that one of the main objectives of the Commission proposal is to broaden the scope of application for banking resolution. The EESC fully understands the Commission's approach, the context, its regulatory rationale and the long-term objectives.
- 1.5 Looking at recent banking crises, the EESC points to the need for a pragmatic and flexible approach based on the peculiarities of the different cases at hand in terms of: i) regulatory approach; ii) choice of the most effective available tools; iii) practical implications of the actions undertaken; iv) necessary cooperation between stakeholders; v) speed of execution; and vi) nature of the financial resources to be used in implementing the chosen solutions for crisis management.
- 1.6 The EESC believes that resolution might not always be the most convenient solution for fully protecting the economic ecosystems in which a troubled bank operates. When resolution might actually prove to be more expensive than liquidation, then those banks should go into insolvency.
- 1.7 The EESC agrees with the Commission that the public interest assessment could be refined, adopting a more transparent and harmonised approach across the EU. While acknowledging that achieving a balance between flexibility and predictability is a very difficult task for regulators, the EESC encourages the co-legislators to find solutions that reduce legal uncertainty as much as possible.
- 1.8 The EESC deems it necessary to strike an appropriate balance between an enhanced formulation of the "public interest assessment" (PIA) and the proportionality of its application with respect to small, medium-sized and local banks. Expanding the PIA to include banks that play an important role regionally still leaves some room for uncertainty in the current framework.

- 1.9 The EESC reiterates the importance of respecting the proportionality principle in order to achieve a regulation fit to achieve its objectives without excessively harming the interest of small, medium-sized and local banks. The proportionality principle should also be considered in the application of the PIA, especially when it comes to local banks, which do not present a risk to financial stability.
- 1.10 While acknowledging the different competences between banking regulation and State aid regulation, the EESC believes that the entire CMDI package should be properly coordinated with the expected revision of the 2013 Communication on State Aid¹ in the banking sector. Otherwise, there is a risk of implementing proposals that are potentially inconsistent with State aid legislation, leading to unpredictability and legal uncertainty.
- 1.11 The Commission has concentrated on enhancing the transfer strategy tool with the use of the DGS with the possibility to reach the Single Resolution Fund, subject to adequate safeguards. This could be a step towards a European Deposit Insurance Scheme, but inefficiencies will continue to exist until the Banking Union is complete, as the market will still be fragmented.

2. Context and referral to the EESC from Spain

- 2.1 The Spanish government requested an exploratory opinion from the European Economic and Social Committee on the Banking Union proposal, focusing its attention on the need to promote broader application of the PIA applied to include banks, especially medium-sized and small banks, in the harmonised resolution procedure in the event of a crisis.
- 2.2 On 18 April 2023, the Commission issued four different legislative proposals to strengthen the EU's existing CMDI framework, focusing on medium-sized and smaller banks².
- 2.3 According to the Commission, "experience has shown that many failing medium-sized and smaller banks have been managed with solutions outside the resolution framework"³, sometimes involving the utilisation of "taxpayers' money instead of the bank's required internal resources or private, industry-funded safety nets (DGSs and resolution funds)"⁴, creating a strong negative impact on the economy and on the perception of society.
- 2.4 Hence, the new proposed rules allow authorities to make use of resolution as a key component of the crisis management toolbox, emphasising that resolution could be less disruptive than liquidation for clients as they keep access to their accounts and the bank's critical functions are preserved.
- 2.5 The Commission proposals also facilitate the use of DGSs in crisis situations in order to shield depositors from bearing losses, where this is necessary to avoid contagion to other banks and

1 [OJ C 216, 30.7.2013, p. 1.](#)

2 [COM\(2023\) 226 final](#), [COM\(2023\) 227 final](#), [COM\(2023\) 228 final](#) and [COM\(2023\) 229 final](#).

3 [Press release](#), 18 April 2023, European Commission.

4 [Press release](#), 18 April 2023, European Commission.

more widespread harm to communities and the economy. By relying on industry-funded safety nets (such as DGSs and resolution funds), the proposal also tries to preserve taxpayers' money in the event of banking crises.

- 2.6 The level of coverage of EUR 100 000 per depositor and bank, as set out in the DGS Directive, is confirmed for all eligible EU depositors and will be extended to public entities such as hospitals, schools and municipalities, as well as to client money deposited in certain types of client funds (i.e. by investment companies, payment institutions, and e-money institutions). The Commission proposal also attempts to harmonise the standards of depositor protection across the EU.

3. **General comments**

- 3.1 The EESC shares the objectives of the legislative proposals issued by the Commission in order to improve the management of banking crises and to ensure an adequate protection of banks' deposits in case of crisis.
- 3.2 The EESC appreciates the Commission's comprehensive initiative to complete the CMDI legislation, since improving and advancing the Banking Union is a crucial step towards strengthening the European single market in the interests of depositors and taxpayers. Moreover, completing the Banking Union is key to achieving a genuine Economic and Monetary Union that is able to ensure financial stability and sound crisis management in case of need.
- 3.3 As stated in previous opinions⁵, the EESC believes that strengthening the existing CMDI framework is crucial. That has been clearly demonstrated by the recent cases of bank crises in the USA and by the Credit Suisse case, with widespread adverse implications for the stability of the banking system in the United States and Switzerland, as well as on international financial markets in general and the banking sector in particular. In the EU, we are still lacking a liquidity backstop in a resolution process.
- 3.4 The EESC believes that the abovementioned cases of banking crises highlight, once again, the importance of speed in containing the damage, and especially the risk of contagion, as well as the need for flexibility in responding to banking crises. The decisive role of a liquidity backstop covering immediate liquidity needs and providing time to develop a viable resolution strategy has been also demonstrated.
- 3.5 The EESC believes that the recent experience also underlines the importance of organising the transfer of a troubled bank to another bank properly in a very short space of time. It is therefore important to ensure that the regulatory framework provides the right conditions for such transfers, since they need to happen without the usual due diligence procedures and the implications of the transaction are huge and uncertain. Additionally, experience gained so far has shown that there is a need for a general special regime when a bank going through resolution is acquired, that facilitates the integration of the bank into the new group in the most efficient way.

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[OJ C 152, 6.4.2022, p. 111](#), and [OJ C 237, 6.7.2018, p. 46](#).

- 3.6 The integration and management of a resolved bank is a complex process, and the regulatory steps and requirements need to be streamlined. The different authorities involved should be able to duly coordinate their respective roles within the regulatory processes or in the accelerated approval procedures of crisis management measures. Moreover, it is key to ensure that such transfers can also occur across borders in the EU whenever it is necessary.
- 3.7 The EESC appreciates that the Commission has extended DGS protection to the deposits of public authorities, as well as the fact that it is pursuing enhanced harmonisation of deposit protection tools across the EU. By protecting both private and public savers and retail depositors in the event of a bank failure, deposit insurance minimises the risk of deposit evasion and mitigates the risk of contagion. The EESC considers that this deposit insurance should be adjusted in certain cases in order to take into consideration depositors in a fragile economic situation, such as disabled persons or people with long-term illnesses. Since properly funded and organised DIFs are key, the enhanced harmonisation proposed by the Commission will certainly be beneficial.
- 3.8 The EESC notes that one of the main objectives of the Commission proposal is to enlarge the scope of application of resolution, should this solution be considered in line with "the public interest". Liquidation can only take place if: (i) it can satisfy – more effectively than resolution – the objectives that the Bank Recovery and Resolution Directive sets out for the resolution itself; and (ii) there is no need to use public funds.
- 3.9 The EESC fully understands the Commission's approach, its regulatory rationale and the long-term objectives. At the same time, the EESC points to the need for a pragmatic approach – as the recent US bank crises have demonstrated – regarding the regulatory approach, the use of the most effective available tools, the practical implications of the actions undertaken, the necessary cooperation between stakeholders, the speed of execution and, lastly, the financial resources to be used in implementing the chosen crisis management tools.
- 3.10 The EESC believes that resolution might not always be the most convenient solution for fully protecting the economic ecosystems in which a troubled bank, especially a small or medium-sized bank, operates. It is worth noting that, when it comes to small and medium-sized banks, resolution might actually prove to be more expensive than other forms of intervention, especially at the – often limited – local level where the bank works. In this respect, the EESC suggests that the market share of medium-sized, small and local banks without any cross-border activity could be evaluated with reference to the overall national market share and not on a regional basis within Member States.
- 3.11 The EESC believes that the entire CMDI package should be duly coordinated with the expected revision of the 2013 Communication on State Aid⁶ in the banking sector, which has played a role in triggering the current unpredictability as to whether resolution should be activated or not. Adopting the CMDI regulatory proposals without knowledge of the State aid rules could mean implementing proposals that are potentially inconsistent with State aid legislation.

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[OJ C 216, 30.7.2013, p. 1.](#)

- 3.12 As a general comment, the EESC reiterates the importance of respecting the proportionality principle in order to achieve a regulation fit to fulfil its objectives without excessively harming the interests of small, medium-sized and local banks. The proportionality principle should also be considered in performing the PIA, especially when it comes to local banks, which do not present a risk to financial stability.

4. **Specific comments**

- 4.1 The EESC agrees with the Commission that the PIA could be refined, with a more transparent and harmonised approach across the EU. While acknowledging that achieving a balance between flexibility and predictability is indeed a very difficult task for regulators, the EESC notes that the legislative proposals at hand do not seem to fully eliminate the considerable amount of discretion previously granted to the authorities involved, leaving some legal uncertainty.
- 4.2 The EESC considers it necessary to strike an appropriate balance between an enhanced formulation of the "public interest criterion" and the proportionality of its application with respect to small and local banks. Expanding the scope of the PIA to include banks that play an important role regionally still leaves some uncertainty in the current framework.
- 4.3 Since the scope of the PIA seems wider than that of the previous rules in order to include a broader range of cases than in the past, the EESC consider it crucial that the least cost test (LCT) (i.e. lower burden in preventive/alternative DGS interventions with respect to pay-out) operates efficiently to ensure enough room for manoeuvre where the conditions are in place to prevent/deescalate the crisis using alternative resolution tools.
- 4.4 The EESC highlights the uncertainty raised by the legislative proposals with regard to the allocation of competences, especially with regard to how powers and responsibilities will be distributed among the national and European authorities potentially involved in the complex decision-making process regarding the management of banking crises. In such a context speed of execution is crucial, as recently demonstrated by several cases in both the EU and US.
- 4.5 The EESC observes that Minimum requirement for own funds and eligible liabilities (MREL) requirements should be set out and applied on the basis of the size and specific risk profile of the banks concerned, with the dual aim of ensuring a level playing field among significant banks with comparable operativity, on the one hand, and protection of the specific business model embraced by small and local banks as well as by banks operating in specific and dedicated sectors/industries, on the other hand.
- 4.6 With regard to the MREL, the alleged proportionality in the definition of the requirement embraced by the European Commission remains unclear. The MREL would always consist of, as in the case of banks that have already adopted the requirement, an additional capital reserve necessary to cover any losses, to which is added an amount for recapitalisation. The EESC considers it important to adapt the MREL requirements to the various bank sizes and business models.

- 4.7 The EESC notes that the role of banks in the EU as well as their different characteristics and business models, which ensure a stronger and diversified European banking system, should be reinforced and preserved across the EU. Banking rules should duly consider the need of real economic growth and its long-term impact on economic growth in Europe, as well its social impact on employment. In this respect, the EESC believes that it is far better to create conditions and tools to prevent and avert the crisis than to intervene with rescue operations afterwards, whenever such options are possible and available.
- 4.8 Early interventions might often prove to be effective and less costly than resolution. Procedures for preventive and alternative measures are set out in the DGS Directive and managed by national DGSs according to harmonised rules and existing safeguards in several EU Member States. A review of the creditor hierarchy shall be implemented, in order to allow a well-functioning LCT and, as a consequence, the implementation of early intervention measures. It is also important to achieve European harmonisation or at least the development of guidelines for calculations under the "least cost principle".
- 4.9 National DGSs and guarantee schemes are a key component of the safety net provided by the EU framework to safeguard financial stability and boost market confidence. For this reason, DGSs should have a greater role, regardless of their private or public legal nature or the voluntary or mandatory nature of the contributions that make up their resources. What matters is their public function and the strict market approach they follow to make choices under the supervision of the competent authorities.
- 4.10 The role of DGSs has proven to be particularly important for small and medium-sized banks (least significant institutions), which have limited market access capacity to issue MREL-eligible instruments. It is worth noting that several banks, including small and local ones, have shown the ability to effectively implement preventive measures that can address crises properly.
- 4.11 As previously mentioned in a number of opinions⁷, the EESC reiterates that the European financial and banking "ecosystem" should be diversified, sustainable and able to recognise the crucial role played by small and medium-sized banks at local level, their overall relevance at national level and the added value such banks create for local communities, as well as the positive effect for the society as a whole of increased competence in the banking sector. The role of Cooperative Credit Banks⁸, "ethical banks" and the local or sectorial level, as in the case of cooperative banks and ethical banks for social economy entities, is decisive in this respect and in line with the social market economy principle enshrined in the EU Treaties.
- 4.12 On the other hand, the role of larger cross-border banking groups should also be recognised as, when organised as subsidiaries, they provide better diversification, are less dependent on parent institutions and allow for easier separation of subsidiaries from the group, thereby reducing the risk of contagion and increasing stability. International European banks are of critical importance in contributing to the internationalisation of European firms.

⁷ [OJ C 75, 28.02.2023, p. 43](#) and [OJ C 177, 18.5.2016, p. 21](#).

⁸ [OJ C 364, 28.10.2020, p. 14](#).

4.13 The EESC calls for appropriate coordination between the Banking Union rules on crisis management and the deposit insurance framework, on the one hand, and the application of the state aid rules set out in Article 107 TFEU⁹ on the other hand. This coordination should avoid legal uncertainty and differing legal treatment between banks located across the EU. The principle established by the Court of Justice of the EU that schemes financed by private funds do not fall within the scope of Article 107 TFEU (*Tercas*) should be duly considered in this respect¹⁰.

Brussels, 13 July 2023

Oliver RÖPKE

The President of the European Economic and Social Committee

⁹ [OJ C 115, 9.5.2008, p. 91.](#)

¹⁰ [Judgment in Case C-425/19 P.](#)