BRIEFING

European Parliament

Review of the bank crisis management and deposit insurance frameworks

Banking Union Working Group

This briefing summarises key elements of the intended initiative, based on the information that the Commission provided on 10 November 2020 in its related public consultation and additional public sources. The briefing also briefly focuses on other related issues, namely, misalignments between state-aid and resolution and some European Court of Justice decisions with impact on the crisis management framework, and a box focusing on relevant aspects of the Commission's recently released NPL Action Plan (an Annex lists most recent EGOV briefings and external papers relevant for these matters). The briefing has been prepared in view of a discussion of the Banking Union Working Group of the European Parliament on the Commission's revision of the bank crisis management framework.

The Commission review of the bank crisis management and deposit insurance frameworks aims to i) make such frameworks more efficient, flexible and coherent for handling the resolution or insolvency of EU bank failures, ii) ensure depositors receive equal treatment, and iii) give depositors more protection, including by possibly creating a common depositor protection mechanism. The review is part of the Commission work programme for 2021.

The so-called banks' crisis management framework consists of three existing EU legislative texts (the Bank Recovery and Resolution Directive, BRRD, the Single Resolution Mechanism Regulation, SRMR, and the Deposit Guarantee Schemes Directive, DGSD) that all contain review clauses. In April 2019, the Commission published a report on the application of the BRRD and the SRMR that identifies some room for improvement and points to areas where the experience made with the application of the framework was limited. As regards the DGSD, the Commission's review is informed by three opinions on issues identified by the European Banking Authority (EBA), namely EBA's opinion on eligibility of deposits, coverage level and cooperation between DGSs, published in August 2019, EBA's opinion on DGS payouts, published in October 2019, and EBA's opinion on DGS funding and uses of DGS funds.

The Commission's public consultation on the review of bank crisis management and deposit insurance framework highlights five key problems, namely:

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- incentives to use tools outside of resolution, driven by a restrictive approach to the so-called "public interest assessment",
- differences across Member States regarding the availability of tools in insolvency proceedings,
- predictability of the current framework particularly in cross-border cases,
- misalignment between supervisory control and liability (i.e. who bears the costs of bank failures), which may result in ring-fencing,
- discrepancies in depositor protection across Member States in terms of the scope of protection and payout processes.

These and other issues related to the crisis management framework are part of the wider agenda on deepening the Banking Union. These are being discussed at various *fora*, notably the Council Ad Hoc Working Party on the Strenghtening of the Banking Union (set up in 2016[1]), the Eurogroup High Level Working Group on EDIS[2] and the Commission Expert Group on Banking, Payments and Insurance (EGBPI)[3].

1. The public interest assessement as the gateway to resolution

The Commission acknowledges that *"the framework currently appears to contain incentives towards using tools outside of resolution"*, which it chiefly attributes to, firstly, a restrictive reading of the public interest assessment and, secondly, to different conditions to access funding within and outside of resolution.

The EU crisis management framework foresees resolution as an exception rather than the norm[4]. As stated by Single Resolution Board (SRB) Chair Elke Konig, "*Resolution is for the few, not the many: insolvency remains the primary route for failing banks, even for those that are under SSM and SRB remit*". The decision to trigger resolution rests on a number of conditions, one of which is the public interest assessment (PIA). As stated in the SRB's approach to the PIA, the SRB needs to (i) consider whether winding up the bank in question under normal insolvency procedures would achieve the same objectives (notably the continuity of critical functions, prevention of contagion, minimal use of public financial support, and protection of depositors, investors, and client funds), and (ii) compare the expected effects of the chosen resolution strategy with the expected effects under normal insolvency proceedings.[5]

The SRB therefore needs to, inter alia, consider whether resolution and its bail-in tools would more effectively ensure the continuity of critical functions, and avoid a significant adverse effect on the financial system. However, as noted by the IMF in its 2018 FSAP report, the geographic scope of the PIA when making such evaluations is not clearly spelled out in the BRRD or SRMR, although the SRB is seen as taking a narrower, national and Banking Union approach as opposed to a regional or local perspective. This may have consenquences for which banks are therefore seen as ''resolvable''.

Complicating matters, the European Commission's 2013 Banking Communication, which governs the use of public funds outside of resolution (in the form of liquidation aid) states that *"it is for Member States to*

[1] The latest available public report is that of the German Presidency dated 23 November 2020 (available here).

[2] Latest discussions held at the Eurogroup meeting of 30 November 2020 (debriefing letter by Eurogroup President dated 4 December 2020). Paschal Donahue also provided imput to the December Euro Summit. The Eurogroup President informed Euro Area Leaders work would be developing around the foillowing issues: (i) ensure and enhance a coherent toolbox to deal with troubled banks of all sizes and business models, (ii) remaining barriers to crossborder integration (home-host issues), (iii) EDIS (where working on an hybrid model, relying on national schemes plus a central re-insurance mechanism guaranteeing national systems, (iv) regulatory measures to deal with the sovereign-bank nexus. A report is expected by mid-2021.

[3] EGBPI documents and discussions are not public; the Commission discloses the agendas and minutes of meetings after consultation with participants. Parliament staff members attend the meetings as observer.

[4] Note that the crisis management framework also foresees the possibility of recapitalising solvent banks under certain conditions under State aid rules to remedy a serious disturbance in the economy of a Member State and preserve financial stability. See previous EGOV briefing for more details.

[5] See Article 32(1)(c) BRRD, ''*resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in Article 31 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent."*

decide whether they consider a bank exit to have a serious impact on the regional economy, e.g. on the financing of small and medium enterprises in the regional economy, and whether they wish to use national funds to mitigate these effects". Subsequently, as pointed out by Merler (November 2017) in an ECON-commissioned paper, the current framework may lead to a situation in which the view of national authorities may contradict that of the SRB, pointing to the liquidation of Veneto Banca S.p.a. and Banca Popolare di Vicenza S.p.a. in 2017 (see previous EGOV briefing) as examples of such divergent assessments. The SRB deemed no public interest in resolution but the Italian state nonetheless saw public interest to mitigate the effects with public funds.

The 2019 Commission report on the application of the BRRD and the SRMR coincidently states that "*More clarity could be needed on the procedures available at national level for the liquidation or wind up of banks which are declared failing or likely to fail but for which there is no public interest in taking resolution action. The BRRD/SRMR is not specific about how insolvency procedures for these banks should unfold, as these elements are not harmonised and are left to the national legislator to determine.*"

Other incentives to use tools outside of resolution are linked to the debate as to whether the bail-in tool itself constrains the pool of "resolvable" banks. Aldisio et al. (August 2019), argue that liquidation under the national regime is the baseline for most small and medium-sized banks,[6] given that *"most medium-sized banks (not to say smaller ones) are not equipped to tap capital markets to issue MREL-eligible instruments. Around 70% of significant banks under the direct supervision of the SSM are not listed, 60% have never issued convertible instruments, and 25% have not even issued subordinated debt."* In response to the Commission's consultation, Huertas (November 2020) likewise argues in his feedback and complementary annexes that in view of the economic downturn sparked by the COVID crisis, banks presently do not have the right amount of the right type of liabilities to make bail-in work, making suggestions how to plug that gap.

Lastly, the way in which public funds are considered in the PIA could possibly lead to suboptimal outcomes. As the IMF outlines: *"In comparing resolution and insolvency outcomes, the SRB is not allowed to consider using public funds while making the public interest assessment,[7] while a national government can consider that liquidation under the national insolvency regime requires public funds, which the Commission can—and did—approve under the 2013 Banking Communication. It is more difficult to use the industry-funded SRF under the SRMR than using public funds for precautionary recapitalization under the 2013 Banking Communication"*.

2. Availability of tools in insolvency proceedings

The PIA also requires the SRB to consider what constitutes normal insolvency proceedings. As the SRB points out, bank insolvency regimes differ accross Member States, and national specificities must be taken into account when making such a comparison. Therefore, *"the lack of harmonisation of national bank insolvency regimes may lead to diverse outcomes of the PIA across the Banking Union countries"*.

The IMF finds that "*in some countries, the national insolvency regime as applicable to banks provides for a broad toolkit to support continuity of critical functions and a sale-of-business tool, minimizing the destruction of value in liquidation; in others, the application of national laws may lead to potentially less effective solutions such as 'voluntary liquidation' (after a [Failing or Likely to Fail] determination)"*. A 2019 survey commissioned by the Commission on the potential harmonisation of bank insolvency describes in more detail the various measures in place in the various Member States,[8] concluding that *"a few national insolvency laws of Member*

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[6] This is not always the case. As noted in the Commission's stakeholder consultation on potential harmonidation of bank insolvency regimes: *"in some cases there is a tendency to put mid-size and even significant banks under insolvency proceedings instead of resolution, whereas in other Member States, even very small banks are wound up under the resolution procedure (as is almost exclusively the case in Denmark, for example)."*

[7] See Article 20 (18) SRMR: *"The valuation referred to in paragraph 16 shall: (a) assume that an institution under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision on the resolution action was taken; (b) assume that the resolution action or actions had not been effected; (c) disregard any provision of extraordinary public financial support to an institution under resolution"*

[8] The study also recognises the difference in regimes as regards to the administrative and judicial nature of insolvency proceedings, triggers for insolvency, the hierarchy of claims, and objectives of proceedings.

States provide for tools which are comparable, in terms of scope and effectiveness, to those available in resolution". Nevertheless, the stakeholders involved in the report concur with the view of the SRB, finding that *"misalignments between insolvency procedures and resolution may indeed affect the use/choice of regimes"*.

The possible measures available under national insolvency regimes will also have consequences for the outcome of the "no creditor worse off principle" (NCWO) assessment, whereby the SRB must assess whether shareholders and creditors would have received a better treatment under insolvency proceedings than in resolution (though Hellwig (June 2018) makes the point in his ECON-commissioned paper that the NCWO principle needs to be defined more precisely to avoid contradictory assessments). Depending on the options available in insolvency, the starting point for a NCWO principle may result in creditors nearly always being better off in insolvency than in resolution proceedings (see Commission study, EGOV briefing). As pointed out by then-Chair of the EBA Enria, this was indeed the case in the liquidation of Veneto Banca S.p.a. and Banca Popolare di Vicenza S.p.a..

As stated by the Chair of the High Level Working Group on EDIS, *'' Broad agreement exists on the need for a harmonisation of necessary parts of bank insolvency law, including with regard to cross-border groups and the ranking of creditors, while the toolbox for resolution might need to be expanded.''* However, as pointed out in the Commission's study (November 2019), it is important to ask whether the addition of a harmonised set of tools in the insolvency frameworks accross Member States is both desirable and feasable. It goes on to note that *''The challenges of such a legislative change should indeed not be underestimated ... such an addition or modification to the national insolvency regimes would entail some important changes to the national frameworks, particularly in countries where the insolvency proceedings are court-based and do not foresee specific powers to impose measures such as the transfer of the entire business, particularly with respect to liabilities, without any approval from the creditors. The addition, for example, of specific powers to transfer assets and liabilities (or deposits only) may require changes to the legal foundations of the existing law in certain countries.''*

3. Predictability of the current framework in cross-border cases

The legal certainty and predictability of the current framework is, according to the Commission, sub-optimal, particularly in a cross-border context.

Under the BRRD, dedicated resolution colleges coordinate the work of the group-level resolution authority, other relevant resolution authorities, supervisory authorities, competent ministries and authorities responsible for deposit guarantee schemes, to collectively plan for the resolution of cross-border banking groups. The EBA monitors the functioning of resolution colleges, and reports on the progress made.

The "EBA Resolution Colleges Annual Report 2019" for example, published in February 2020, states that the intensity and quality of cooperation and dialogue in those resolution colleges has grown over time but that - as in previous years - none of the resolution colleges has yet made any proposal or taken any joint decision on the removal of impediments to resolvability.

As regards the identification of critical functions, that EBA report also finds that there are differences in the policies developed by individual resolution authorities, potentially leading to disagreements between home and host resolution authorities or between the authorities and banks.

With respect to the chosen resolution strategies and the geographical scope of the resolution plans, that EBA report moreover mentions that "*At this point, the primary focus of plans is on the EU operations of banks. Plans are generally less well developed for the businesses in third countries and in a number of cases, these are yet to be included in the planning process.*"

Resolution of a cross-border group can additionally be complicated by the fact that the majority of Member States has not aligned their insolvency triggers with the conditions for resolution, particularly with the Failing-or-likely-to-Fail (FOLF) assessment, as mentioned in the 2019 study for the Commission on the differences between bank insolvency laws. In 2018, for example, the ECB declared the Latvian bank ABLV to be FOLF, in the wake of money-laudering allegations by US authorities, announcing that the bank and its subsidiary in Luxembourg were to be wound up; however, the Luxembourg Commercial Court, subsequently decided to refuse the request to place the Luxembourgish subsidiary in liquidation, as the respective criteria were not met (see previous EGOV briefing).

4. Misalignment between supervisory control and liability

The Commisssion considers that, as regards cross-border banking groups, the misalignment between liability (i.e. who bears the costs of bank failures) and supervisory control (i.e. who is in charge of preventing and handling of such failures) impairs further market integration.

Banking groups located in the Banking Union are supervised by the ECB as single supervisor and no longer by home and host supervisors of the Member States; however, subsidiaries are still subject to individual requirements (for capital, liquidity and MREL) with remaining national powers over legal entities of a group. The Chair of the SSM, Enria, hence said in 2019: *"There are, however, still obstacles to the integrated management of bank capital and liquidity within cross-border groups operating in the banking union. This is also hindering the prospects for cross-border mergers, which are necessary to reduce the excess capacity we still have in the system."*

Related concerns are rooted in the misalignment between supervisory control and liability, which can result in ring-fencing attempts. In 2018, Enria, at that time Chair of EBA, described the purpose of such attemps as follows: "*In the host Member State perspective, this [ring-fencing] was done to better safeguard the interests of local stakeholders – shareholders, creditors and depositors, as well as deposit insurers and taxpayers – mitigate spillovers and cross-border contagion and support credit supply at the national level. In the absence of legal and institutional frameworks for burden sharing and in light of the uncertainty as to how the resolution of a cross-border group would unfold, supervisors and Member States took measures to defend the national interest*".

The key problem associated with ring-fencing, i.e. the requirement to maintain high levels of capital and liquidity within each entity of a cross-border group, is the accompanying loss of efficiency.

Still, concern about the misalignment between supervisory control and liability might be particularly comprehensible for the situation of smaller countries whose banking systems are mostly headquartered outside their borders. In 2019, the World Bank published a working paper on the effects that the EU bank supervision and resolution framework has on small host countries in central, eastern and south eastern Europe; that working paper highlights that "*The differences in interests are especially striking for small host countries, for whom the subsidiaries of multinational parent banks are often of systemic importance and thus the stability of the bank a high priority, while the host country operation of the bank is not material for the parent bank and thus of lower priority for the home country supervisor.*"

In this context, also see the EGOV briefing "Banking Union: Defusing the "home/host" debate".

5. Discrepancies in depositor protection

Finally, the Commission sees a need to review the current framework and strengthen the level playing field due to discrepancies in depositor protection across Member States in terms of the scope of protection and payout processes.

The 2019 study for the Commission on the differences between bank insolvency laws illustrates that the hierarchy of creditors in insolvency sometimes deviates across Member States, which has a direct impact on the application of BRRD, as the "no creditor worse off" principle links it to national insolvency laws. Shareholders' loans and intra-company loans, for example, receive a different treatment: "*In certain Member States, such as France, there is no preferred treatment / ranking for external debts compared with intragroup debts. External debts rank pari passu with internal debts within a same category (unsecured debt, subordinated debt, secured debt). On the contrary in others, they rank senior to unsecured creditors*."

The German EU Presidency Progress Report on the Strengthening of the Banking Union of November 2020 notes that most Member States agreed that it would be beneficial to adopt a targeted approach to the harmonisation of the creditor hierarchy. However, it also sets out that "*Member States had divergent views, however, as to which specific areas would require harmonisation and what a harmonised approach should look like, notably in terms of the ranking of deposits and liabilities excluded from bail-in*." That report also notes that the discussion on the ranking of liabilities excluded from bail-in (e.g. tax liabilities) was particularly difficult, and that the technical work needs to continue for a couple of issues.

6. Related issues

State aid and resolution

Over time, application of the state aid framework in the event of a failing bank pointed to a number of discrepancies with the resolution framework currently in place. Some of these are highlighted below.

(a) Public interest assessment

Both resolution and state aid require assessing whether it is in the public interest to intervene in the institution. Recent practice has shown that "public interest" is not uniformly assessed in crisis management. The Banca Popolare di Vicenza and Veneto Banca and those of ABLV Bank and ABLV Bank Luxembourg cases document such missalignment (see Lastra and al, "*Stock take of the SRB's activities over the past years: What to improve and focus on?*"). The missalignment also renders liquidation under national law a preferable option, for political or other reasons, to resolution. A possible solution/alternative is to develop a more harmonised liquidation regime for banks (see point 2 above).

(b) Burden sharing

It is also not clear whether the burden sharing requirements under BRRD and the state aid regime lead to similar results. Under the 2013 Banking Communication, state aid "*must not be granted before equity, hybrid capital and subordinated debt have fully contributed to offset any losses*." bearing in mind that no creditor should be worse off than if the institution had been liquidated (points 44 and 46) and financial stability is kept. BRRD requires, on the other hand, writing down of at least 8% of total liabilities before the Resolution Fund can intervene. Discussions around possible revisions of such framework are ongoing. Nevertheless, euro area Member States have inserted in the rules allowing the use of the European Stability Mechanism as a backstop to the Single Resolution Fund (SRF) a clause requiring "permanence" of the resolution legal framework, namely, this 8% liabilities writedown requirement (see for details, here and here). This could be a strong limitation to any review of such requirements.

(c) Restructuring

Both the state aid framework and BRRD require banks undergoing such procedures to restructure. Under the state aid framework, the Member State intervening in a bank must present a restructuring plan. A restructuring plan is also required when the SRF is to be used in a resolution (as this is considered state aid and assessed as such). The resolution framework, on the other hand, rests on various steps to ensure resolution preparedness (by ensuring each bank has a resolution plan and a resolution strategy devised by the SRB) and a resolution scheme. All these “restructuring” measures need to be compatible, even if adopted by different institutions. Ensuring that is the case may, sometimes, be difficult to achieve, and may lead to delays.

(d) State aid overlapping resolution and early intervention measures

Paragraph 32 of the Commission’s 2013 Banking Communication states that “*As soon as a capital shortfall that is likely to result in a request for State aid has been identified, all measures to minimise the cost of remedying that shortfall for the Member State should be implemented.*” Supervisory authorities are required by the CRR/CRD to prevent a bank’s financial position from deteriorating to a point of non-viability, namely by applying early intervention powers. Such overlapping of powers/mandates to ensure an institution remains afloat requires early coordination between the Commission (responsible for state aid assessment) and the responsible prudential/resolution authorities. Ensuring such coordination is not easy, especially in situations that develop quickly or encompass a relevant number of institutions.

Two ECJ decisions with impact on the contours of the EU crisis management framework

The European Court of Justice (ECJ) has taken a number of decisions regarding banking supervision and resolution (for an overview see F. Della Negra and R. Smits) and such decisions may have an impact on the design of the EU crisis management legal framework. Two particular decisions are highlighted below - the decision addressing Landesbank Baden-Württemberg (LBW) that declared the Commission Delegated Regulation (EU) 2015/63) on contributions to the SRF partially illegal, and the so called Tercas case, addressing the role of deposit guarantee schemes in resolution.

(a) The Landesbank Baden-Württemberg decision

Decisions by the SRB on contributions to the SRF have been questioned before the ECJ for some time now (see above referred overview). Each institution’s contribution to the SRF depends, and is based, on its relative risk profile which, in turn, requires handling sensitive and proprietary information the SRB cannot disclose to the banking system overall. On 23 September 2020 the ECJ decided against the SRB in three pending cases (Landesbank Baden-Württemberg (LBW), Portigon and Hypo Vorarlberg Bank[9] [10]). In these cases, the Court decided to annul the 2017 SRB decisions setting out the firms’ contributions to the SRF on the grounds that the institutions (and the Court itself) are unable to assess the SRB decisions due to insufficient reasoning. In addition, the Court argues in the LBW case that *“it follows from the foregoing that the SRB cannot replace the contested decision without again infringing the obligation to state reasons and the applicant’s right to effective judicial protection before the legal framework, in particular Delegated Regulation 2015/63, is amended.”* In its LBW decision, the Court declared that the Delegated Regulation 2015/63 is partially illegal. This may have an impact on financing of the SRF (or future systems based on similar procedures/data).

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[9] The decisions relate to contributions for the 2017 collection period. The Court annuled SRB decision on grounds of lack of reasoning (the SRB not offered “an adequate statement of reasons” to the banks for its calculations) and lack of adequately authentication of an electronic document setting out the amount of contributions. The Court also considered unlawful Articles 4 to 7 and 9 of Delegated Regulation 2015/63 and Annex I for infringing the principle of effective judicial protection (the Court accepts the argument that such provisions create “*a complex system for determining contributions, characterised by a number of opportunities to exercise discretion and complete opacity and on the basis of which the SRB is not in a position to give verifiable and reviewable reasons for the individual burdens imposed on institutions.*”

[10] In the first decision listed, the Court adds that “*SRB’s decision determining the ex ante contributions to the SRF for 2016 was annulled (judgments of 28 November 2019, Banco Cooperativo Español v SRB, T-323/16, EU:T:2019:822; of 28 November 2019, Hypo Vorarlberg Bank v SRB, T-377/16, T-645/16 and T-809/16, EU:T:2019:823; and of 28 November 2019, Portigon v SRB, T-365/16, EU:T:2019:824).*”. It is, therefore, not the first instance where the SRB fails to convince the ECJ of the lawfulness of its decisions. In that same decision, the Court also dwells on whether the Delegated Regulation confers the SRB discretionary powers that would be contrary to the Meroni doctrine, and concludes that “*theoretically*” that is not the case and the Delegated Regulation does not grant SRB discretion.

(b) The Tercas case

On 19 April 2019, the General Court annulled a Commission State aid decision[11] that ordered the Italian state to recover illegal aid granted to Banca Tercas by *Fondo Interbancario di Tutela dei Depositi* ('the FITD'), the Italian deposit guarantee scheme. In 2012 Banco Tercas was put under special administration as a result of irregularities identified by Banca d'Italia. In that context, in 2013, it received an offer by Banca Popolare di Bari ('BPB'), to subscribe Tercas capital. Both Banca d'Italia and FITD approved the operation, which was deemed less costly than reimbursing Terca's deposits.

The General Court considered that the Commission failed to provide sufficient evidence to support its assessment that State aid had been given to Tercas, i.e. it failed to demonstrate that FITD acted under a public mandate or under the control of public authorities or that the funds rendered to Tercas were under public control. The Court argued that FITD acted in the private interest of banks and using money provided by banks to avoid (the most expensive option of) paying out Tercas' deposits (further details can be found in the Court decision, points 62 to 132).

The Commission is said to have appealed the decision on grounds that it "*appears to depart from the standard established by the case law*." (the case law being, broadly speaking, that recourse to a deposit guarantee scheme is considered state aid). No information seems to be available on the appeal (case C-425/19 P).

The ECJ decision leads to questioning whether and to what extent "voluntary" guarantee schemes or additional intervention instruments permitted under a number of guarantee schemes in accordance with the DGS Directive, should qualify as State aid. A qualification as state aid would trigger, according to the 2013 Banking Communication, "burden sharing arrangements", i.e. loss absorption by equity holders and creditors[12]. The decision also pave the way for furthering the discussion on the role of DGSs in resolution; the final outcome of the case could have consequences for the use of the options available for DGS in the DGSD, in particular those under Articles 11(3) (preventive measures) and 11(6) (financing of measures in insolvency proceedings).

[11] Commission Decision (EU) 2016/1208 of 23 December 2015 on State aid granted by Italy to the bank Tercas (Case SA.39451 (2015/C) (ex 2015/NN)) (OJ 2016 L 203, p. 1). The text of the decision can also be found here.

[12] As noted in the 2015 State aid Commission decision "although Banca Tercas' existing shareholders were fully written down at the time, subordinated creditors did not make any contribution to the cost of restructuring, as is required under burden-sharing principles".

Box 1: Commission's Action Plan to tackle non-performing loans (NPLs) in the aftermath of the COVID-19 pandemic

On 15 December, the Commission published its strategy to prevent a future build-up of NPLs in Member States, in the context of the ongoing pandemic and crisis. The Action Plan has four overarching goals: (i) to further develop secondary markets for distressed assets; (ii) to support the establishment and cooperation of national asset management companies at EU level; (iii) to reform the EU's corporate insolvency and debt recovery legislation; and (iv) to implement precautionary public support measures, where needed, to ensure the continued funding of the real economy under the BRRD and State aid frameworks.

The third aim of the Action Plan focuses on general, and not bank-specific, corporate insolvency debt recovery and debt restructuring frameworks. As noted by the Commission in its study on bank insolvency regimes, EU Member States either have ''free-standing'' bank insolvency regimes (in which the legal basis is separate from the general corporate insolvency regime) or ''modified" bank insolvency regimes (whereby general corporate insolvency laws apply to banks but are complemented or amended by more specific provisions). Given this distinction, the Action Plan urges, inter alia, for '' *legislative or non-legislative action on targeted convergence of national non-bank insolvency frameworks under the new [Capital Markets Union] Action Plan*.''

The Action Plan also notes that ''*if there are indications that the effects of the pandemic could cause distress to banks and pose financial stability concerns that exceed the capacity of available market-based solutions, the Union bank crisis management and State aid frameworks allow that, in such extraordinary circumstances, precautionary public support can be provided in order to enable continued lending to the real economy, support the recovery and cushion the social impacts of the crisis*." It further states that it considers the COVID-19 crisis could fall within the exception to Article 32(4)(d)(iii), which would allow for public support measures for a solvent institution without the declaration that it is failing or likely to fail in the event of a system-wide event threatening financial stability. This follows a March 2020 Commission Communication that recognises COVID-19 crisis as a serious disturbance to the economy that could fall within the scope of the 2013 Banking Communication.

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This document is available on the internet at: www.europarl.europa.eu/supporting-analyses

Annex: Recent Banking Union related briefings

Paper	Issues addressed/summary
Banking Union: Update on recent banking developments (December 2020)	The paper gives an overview of 1) the Eurogroup agreement on the backstop to the SRF; 2) the 7th monitoring report by the European Commission, European Central Bank and Single Resolution Board on risk reduction indicators; 3) recent European Central Bank publications, namely the Financial Stability Review and guidance on climate- related and environmental risks; 4) recent Single Resolution Board publications, specifically its 2021 Work Programme and guidance on bank mergers and acquisitions; and 5) the EBA's benchmarking exercise of national insolvency regimes.
Banking Union: ESMA report on Wirecard (December 2020)	The briefing provides a summary of ESMA's Fast-Track Peer-Review (FTPR), published on 3 November 2020.
Update on recent banking developments (November 2020)	The briefing summarises: 1) the main elements of two papers commissioned by ECON on the effectiveness of relaxing capital and liquidity buffers as crisis measures; 2) the most recent ECB Bank Lending Survey; 3) recent EBA publications (on anti-money laundering, sustainability, MREL-TLAC eligible instruments and the prudential treatment of legacy instruments); 4) the recent ESMA Wirecard report and similarities with the case of Commerzialbank Mattersburg; 5) the European Court of Justice's role in shaping the Banking Union; and 6) the European Court of Auditors report on EU agencies.
Update on recent banking developments (September 2020)	The briefing addresses banking statistics, non-performing loans, Wirecard, the equivalence regime in financial services and the state-of-play on the Commission's work programme on some financial services files: Green Finance Strategy, Fintech and digital currencies, the COVID-19 financial services package, Anti-money laundering framework, and the Capital Market Union.
Banking Union: Corona crisis effects (June 2020)	The briefing covers crisis preparedness and past underwriting standards on the basis of an ECB paper, EIB's assessment of corona effects on EU corporates and banks' exposures to Home sovereign bonds, among other issues.
Banking Union: Corona crisis effects (May 2020 - week 22)	The briefing covers the European Banking Authority (EBA) May 2020 preliminary assessment of the impact of COVID-19 on the EU banking sector.
Banking Union: Corona crisis effects (May 2020 - week 20)	The briefing covers initiatives aiming at maintaining or restoring firms' capital positions.
Banking Union: Corona crisis effects (April 2020 - week 17)	The briefing covers a proposal for a euro area bad bank, finance Ministers' position on mitigating actions, the April 2020 EBA Risk Dashboard, and additional papers and information in the public domain.
Banking Union: Corona crisis effects (April 2020 - week 15)	The briefing covers rating agencies' assessments of supervisory measures to deal with COVID-19 crisis, the role of banks in tackling the COVID crisis and further banking developments to watch for (namely on transparency (or lack of) following supervisory measures to tackle the COVID crisis, cyber risks, short selling bans, among others.

Additionally, here please find the EGOV thematic digest of the external papers on the Wirecard case, and here the EGOV thematic digest of the external papers on the relaxation of capital and liquidity buffers introduced as response to the COVID crisis.