The EU bank crisis management and deposit insurance framework

Initially announced in the Commission work programme for 2021, the European Commission postponed its proposals for the review of the bank crisis management and deposit insurance framework to 2023. As a central element of banking union, this framework consists of the Bank Recovery and Resolution Directive (BRRD), the Deposit Guarantee Schemes Directive (DGSD) and the Single Resolution Mechanism Regulation (SRMR).

The BRRD lays down rules and procedures for the recovery and resolution of banks at national level and cooperation arrangements to tackle cross-border banking failures. It aims to avoid bailouts, i.e. the use of taxpayers' money in the event of the resolution of a failing bank. The SRMR sets uniform rules and procedures for the resolution of banks and certain investment firms in the framework of a single resolution mechanism and a single resolution fund. The DGSD aims to protect depositors of all banks and the stability of the EU banking system.

The Commission's review process involved public and targeted consultations and a high-level conference. During this review, the Commission planned to carry out an evaluation and impact assessment, the results of which are expected to be published together with the forthcoming proposed legislative changes.

The Commission announced in 2020 that the review would address existing problems in (i) the framework's incentives to use tools outside the resolution framework, (ii) the varying availability and use of tools in national insolvency proceedings, (iii) the legal certainty and predictability of the framework in a cross-border context, (iv) market integration within banking union, and (v) discrepancies in depositor protection across Member States.
Crisis management and deposit insurance (CMDI) framework

In the years following the 2008-2009 financial crisis and the euro-area debt crisis, the European Union accelerated financial integration, notably through the creation of banking union as one of the institutional responses to the crisis. The banking union project sets the framework for the supervision, resolution and funding of banks in participating Member States and sets out the rules that banks in all EU Member States must follow. As explained below, the revision of the bank crisis management and deposit insurance framework must be seen in the context of the completion of banking union.

Regulatory background of the CMDI framework

Following the agreement of June 2012 between the EU Heads of State or Government to preserve the unity and integrity of the single market in financial services, the European Commission made a number of legislative proposals aimed at improving the regulation, supervision and governance of the financial sector. This new regulatory framework, with common rules for banks in all EU Member States and setting out a single rulebook, is the basis of banking union (see Figure 1). The first two pillars of banking union were established in the years following the 2012 agreement. The first pillar, the single supervisory mechanism (SSM), has been operational since 4 November 2014. One of its main tasks is to check that banks in the euro area (and in participating non-euro-area Member States) comply with the EU banking rules and to look at the way banks borrow, lend and invest money in order to detect (and correct) weaknesses early on. Within the SSM, the European Central Bank (ECB) and national supervisory authorities work together on the supervision of banks. In addition, the European Banking Authority (EBA) is in charge of ensuring the effective and consistent implementation of the single rulebook in the banking sector.

Figure 1 – Structure of the banking union

![Figure 1 – Structure of the banking union](source:
European Commission)
The EU bank crisis management and deposit insurance framework

The second pillar of banking union, the single resolution mechanism (SRM) and the single resolution fund (SRF), were created to ensure the orderly resolution of failing banks and banking groups, while guaranteeing a minimum impact on taxpayers and public finances in the participating Member States. The main actors at European level in the event of a bank failing or likely to fail, are the Single Resolution Board (SRB), which acts upon notification by the ECB. In the case of a bank resolution, the SRF can be used to resolve the failing banks, once other options, such as the bail-in tool, have been exhausted.³

On the third pillar, the European Commission made a proposal for a regulation creating a European deposit insurance scheme (EDIS) and a related deposit insurance fund (DIF) in 2015. The idea behind this proposal is (i) to enhance financial stability, (ii) to ensure that citizens' deposits do not depend on their geographical location, and (iii) that sound banks are not penalised by their place of establishment. According to the Commission’s proposal, the EDIS would replace national deposit guarantee schemes (DGS) stepwise and replace them entirely as of 2024. Despite the fact that the three EU institutions (Commission, Parliament and Council) have repeatedly expressed in joint declarations the need to find a swift agreement on deposit insurance, the file is still pending.

Two of the three elements of the ongoing CMDI review – the Bank Recovery and Resolution Directive (BRRD) and the Deposit Guarantee Schemes Directive (DGSD) – are part of this single rulebook. The third element of the review concerns the Single Resolution Mechanism Regulation (SRMR), which is reflected in the second pillar of banking union.

Main aspects of the current CMDI framework

According to the roadmap for the review of the bank crisis management and deposit insurance framework, the CMDI framework consists of the three legislative texts mentioned above.

BRRD – Bank Recovery and Resolution Directive

The BRRD lays down rules and procedures for the recovery and resolution of banks at national level and cooperation arrangements to tackle cross-border banking failures. Given the experience of the 2008-2009 financial crisis, the directive aims to avoid bailouts. Instead, the BRRD aims to ensure that shareholders and creditors of a failing bank have to bear an appropriate share of the losses of the failing institution. The BRRD therefore introduced a dedicated bail-in tool, which aims to incentivise shareholders and creditors of institutions to monitor the health of an institution. The provisions of the BRRD focus on the following three areas:

- **prevention**, through the drawing up and maintaining of (i) recovery plans (by banks themselves) with measures to be taken following the significant deterioration of the financial situation of the bank and (ii) resolution plans (by national resolution authorities) with measures to be taken in the event of a bank resolution;
- **early intervention**, by granting the national competent authority the power to intervene in the event of a difficult situation for a bank, e.g. through the appointment of a temporary administrator to the bank;
- **restructuring (resolution) of failing banks**, giving national resolution authorities (NRAs) a number of powers, e.g. through the use of the bail-in tool, the sale of the institution undergoing restructuring or its merger with another institution. Member States also have to establish their national resolution financing arrangements, financed through mandatory contributions from banks.

Since its entry into force in 2014, the BRRD has been amended several times. The first amendment was made in 2017 to harmonise the priority ranking of unsecured debt instruments under national insolvency proceedings. In 2019, two amendments were made, in May 2019 to implement the total loss-absorbing capacity (TLAC) standard, published by the Financial Stability Board and endorsed by the G20 in November 2015. This standard requires banks to hold sufficient amounts of readily bail-in-able liabilities in case of a bank resolution. It aims to ‘ensure that global systemically important banks, referred to as global systemically important institutions (‘G-SIIs’) in the Union.
framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that in, and immediately following, a resolution, those institutions can continue to perform critical functions without putting taxpayers’ funds, that is public funds or financial stability at risk. In addition, in November 2019, BRRD was amended with respect to covered bonds and covered bond public supervision. The latest amendment to the BRRD was adopted in October 2022 to do more to ensure that loss absorption and recapitalisation of financially unviable banks in resolution occurs through private means.

SRMR – Single Resolution Mechanism Regulation

The SRMR sets uniform rules and procedures for the resolution of banks and certain investment firms in the framework of an SRM and an SRF. Overall, the most important elements of the SRMR are:

- the establishment of the SRB, a Union agency, which is the central resolution authority within the banking union project. Together with the NRAs of participating Member States (and funding available under the SRF), the SRB forms the single resolution mechanism;
- the various formats and responsibilities of the SRB Board:
  - executive sessions composed of the chair, four independent permanent members, two permanent observers appointed by the European Commission and the ECB and, in specific cases, representatives of NRAs of participating countries (currently all euro-area countries and Bulgaria) or other observers; and
  - plenary sessions: the full board, as above, and representatives of all NRAs of participating countries;
- rules and procedures to follow in the event of a bank crisis, i.e. when the SRB may present a resolution scheme and pass it on to the Commission for formal approval. If the Commission has no objections, the scheme should be adopted within 24 hours. Resolution schemes of less than €5 billion from the SRF are decided by the Board in its executive session meetings. When the scheme involves more than €5 billion, the decision needs to be taken by the plenary composition of the Board;
- the establishment of the SRF, to be built up over 8 years (2016-2023) to reach the target level of at least 1% of covered deposits of all banks authorised in the participating Member States. The SRB administers the SRF and is responsible for the calculation of the contributions. NRAs and Member States are responsible for the collection and transfer of contributions from the institutions located in their territories to the SRF. According to an intergovernmental agreement signed between participating EU Member States, the contributions that are initially allocated to different national compartments corresponding to each participating Member State during the transitional period, will progressively be merged and cease to exist at the end of this transitional period;
- the identification of the banks under the SRB’s remit, i.e. the entities and groups directly supervised by the European Central Bank and other cross-border groups. As of 1 January 2023, the SRB covered 117 banks. NRAs are responsible for all other banks, but in some situations, the SRB can exercise all its powers directly with regard to other banks, e.g. when a resolution action requires the use of the SRF.

In the same way as the BRRD amendment of May 2019, the SRMR was also amended in 2019 to implement the TLAC standard as described above.

DGSD – Deposit Guarantee Schemes Directive

The aim of the DGSD is to protect depositors of all banks and the stability of the EU banking system. To achieve this objective, EU Member States are required to introduce legislation setting up at least one deposit guarantee scheme (DGS) that all banks must join, thereby guaranteeing a harmonised level of depositor protection. The DGSD replaced a previous directive, under which the protection of deposits in EU Member States had been increased progressively to a uniform level of €100,000 by the end of 2010. The main elements of the DGSD are:
The ongoing CMDI framework review process

Initially announced in the Commission's work programme for 2021, the review of the CMDI framework was postponed several times, firstly to the end of 2022 and later to 2023. Preparatory work on the review of the CMDI framework started in 2019, with the publication of the Commission report on the application and review of the BRRD and the SRMR. The Commission's consultation strategy for the review also highlighted that the review would consider the work of the high-level working group established under the auspices of the Eurogroup and policy developments in the area of depositor insurance. Finally, the forthcoming review of the DGSD would also benefit from three opinions on the implementation of the DGSD published by EBA in 2019 and 2020.6

The Commission launched the review process for the CMDI framework officially in 2020, with the publication of an inception impact assessment that covered all three legislative initiatives (BRRD, SRMR and DGSD). According to the inception impact assessment, the purpose of the review is 'to increase the efficiency, proportionality and overall coherence of the crisis management and deposit insurance framework'. It also announced that the Commission would perform the evaluation of the framework back-to-back with an impact assessment, based on the five evaluation criteria (effectiveness, efficiency, coherence, relevance, and EU added value). In total, the review is supposed to address problems in five areas:7

- the framework's incentives to use tools outside the resolution framework, mainly normal insolvency proceedings, because of the compulsory public interest assessment;
- differences in the availability and use of tools in national insolvency proceedings;
- problems with the legal certainty and predictability of the framework in a cross-border context;
- the need to foster market integration through better alignment of liability and supervisory control for cross-border banking groups or improving the functioning of national DGS;
- discrepancies in depositor protection across Member States.
The policy options for legislative changes in the CMDI framework focused on these five areas, supplemented by non-legislative tools concerning the interpretation and guidance on the application of the framework.

After a first round for feedback on the inception impact assessment from 10 November to 8 December 2020, which received 14 replies, mainly from business actors in the financial sector (business associations and companies), the Commission carried out a targeted consultation between 26 January and 20 April 2021 and a public consultation between 25 February and 20 May 2021. The summary report of these consultations, for which the Commission received in total 188 replies, shows that, while there was in general agreement that the CMDI has largely reached its policy objectives, stakeholders had divergent opinions on many of the topics raised.

Among the issues for which a majority of stakeholders saw a need for further action feature, e.g. the improvement of conditions for early intervention measures (EIM) that are taken by competent authorities to avert a bank failure when a bank shows signs of distress. Concerning further action on the EDIS, the third pillar of banking union, the majority of respondents were in favour of its introduction and of keeping EDIS funds separate from the SRF. Another area of stakeholder concern were the differences between banks’ creditor hierarchies across Member States, which could lead differing treatment of creditors in the event of a resolution. This seems to be a problem from a single market perspective, as does the need to clarify the rules when a bank changes its DGS affiliation, highlighted by most of the respondents.

The consultation process was complemented by a high-level conference on 18 March 2021, with speakers from EU institutions, Member States, the finance industry and academia. The sessions of the conference dealt with the issues of resolution and insolvency, and deposit insurance.

European Parliament positions

Within the European Parliament, the Banking Union Working Group (BUWG) within the Committee on Economic and Monetary Affairs (ECON) monitors the implementation of the SRMR (and the SSM) and deals with related matters. In 2015, the European Parliament and the Single Resolution Board signed an interinstitutional agreement on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Single Resolution Board within the framework of the SRM. Next to annual reports by the SRB and regular public hearings, the agreement also envisages ad hoc exchanges and special confidential meetings.

Parliamentary resolutions of the current legislative term

Since the beginning of its ninth legislative term in 2019, the European Parliament has addressed the CMDI framework regularly in its annual reports on banking union. In the most recent of these reports, adopted on 5 July 2022, Parliament highlighted that the CMDI framework ‘should ensure a consistent and efficient approach for all banks, regardless of size or business model, as well as contributing to preserving financial stability, minimising the use of taxpayers’ money and ensuring a level playing field across the EU, while duly taking into account the principle of subsidiarity’. According to the report, the reforms carried out since the global financial crisis in the area of banking union have made EU banks more robust, better capitalised and able to play an essential role in ensuring access to finance. The report therefore supports the effort to strengthen and complete the banking union project.

Regarding the different elements of the CMDI, Parliament mentioned EDIS as the missing third pillar of banking union, despite the high minimum standards in the area of deposit protection within the DGSs. On the public interest assessment criteria, Parliament is in favour of their review and clarification ‘so that the SRM is applied in a more consistent and predictable manner and relies on objective thresholds’ and ‘calls for a study on the need for the alignment of specific aspects of insolvency law’.
Selected parliamentary questions

**Written question** by Bronis Ropė (Greens/EFA), on deposit guarantee schemes, 31 May 2021

This question concerns the transfer of contributions between DGSs in the event of a change in a bank’s DGS affiliation (Article 14(3) of the DGSD). The Member asked if the original DGS needs to transfer only the contributions actually received during the 12 months before the change in the affiliation, or if the original DGS has to transfer contributions which were paid specifically for the relevant 12 months before the transfer of deposits, even if the actual payment to the DGS happened either earlier or later than the 12 months in question.

**Answer** given by Commissioner Mairead McGuinness on behalf of the European Commission, 20 September 2021

In its answer, the Commission was of the opinion that the period for which the contributions are collected, and not the actual dates of payments of contributions, should be decisive. The Commission also referred to a reasoned opinion that it had adopted in relation to a dispute between Latvia and Sweden. The Commission mentioned that the issue of transfer of contributions between DGSs would be addressed in the upcoming review of the DGSD.

**Written question** by Francesca Donato (ID), Marco Zanni (ID), Antonio Maria Rinaldi (ID), Valentino Grant (ID) on opacity of contributions to the SRF, 24 March 2021

This question referred to a Court ruling against the SRB in three cases concerning banks’ contributions to the SRF, which are calculated based on Delegated Regulation 2015/63 (see also below in the section on the European Court of Justice). The Members asked the Commission what it intends to do in the context of the review of the CMDI to ensure the lawfulness of contributions to the SRF and of the banking system as a whole.

**Answer** given by Commissioner Mairead McGuinness on behalf of the European Commission, 1 June 2021

In its answer, the Commission indicated that in only one of the judgments (Landesbank Baden-Württemberg) did the Court declare specific provisions of the Delegated Regulation 2015/63 to be of illegal nature, without restricting the SRB’s obligation to collect mandatory ex-ante contributions.

**Written question** by Maria Grapini (S&D), 11 November 2020, on EU supervision of State aid to banks needs proper scrutiny

The Member referred to a special report by the Court of Auditors, which recommended that the Commission evaluate whether the State aid rules for the financial sector continue to be appropriate. The Member asked if the Commission was planning to reassess and, if necessary, amend its State aid rules.

**Answer** given by Executive Vice-President Margarethe Vestager on behalf of the European Commission, 8 February 2021

In its answer, the Commission indicated its plan to review the CMDI and the State aid rules for the financial sector by 2023 to allow their simultaneous entry into force.

**Written question** by Engin Eroglu (Renew) on automatic increases in contributions to the Single Resolution Fund (SRF), 2 September 2020

The Member asked if, given the challenges posed by the coronavirus crisis, the Commission could consider a temporary reduction of banks’ contributions or a suspension of the increase in contributions to the SRF. The Member also wanted to know if the Commission considered that such a reduction or suspension of increases in contributions could have a positive effect on the economy by making an additional credit volume available.
**Answer** given by Commissioner Mairead McGuinness on behalf of the European Commission, 21 December 2020

In its answer, the Commission indicated that the SRB could consider reducing contributions, based on the evidence available of the impact of the COVID-19 pandemic. However, such a temporary reduction, which could potentially provide banks with further capital relief, would need to be compensated by higher contributions in the remaining years of the initial period over which the SRF is gradually built up (until 2024).

**Written question** by Hélène Laporte (ID) on the European deposit insurance scheme, 21 July 2020

With respect to EDIS, the Member asked about the added value of a European scheme – compared with existing national DGS – for the banking system’s resilience and the management of bank failures. The Member asked also about possible guarantees by the Commission that countries with strong banks will not be systematically called upon to aid banks in neighbouring countries.

**Answer** given by Executive Vice-President Valdis Dombrovskis on behalf of the European Commission, 7 October 2020

In its answer, the Commission referred to a non-paper presented by the Commission during the follow-up discussion on its EDIS proposal in 2015. According to this non-paper, the Commission concluded that a fully mutualised EDIS was superior in terms of efficiency, risk absorption and mitigation of the sovereign-bank loop compared with the other scenarios presented in the non-paper. On the second part of the question, the Commission indicated a number of measures that had been proposed, e.g. that an EDIS could only provide liquidity (loans) to national systems in need and no loss coverage, the move to the loss-sharing phase could be contingent on a set of conditions, or that banks’ contributions to EDIS could be based on their riskiness compared to other banks.

**Written question** by Antonio Tajani (EPP), Herbert Dorfmann (EPP), Fulvio Martusciello (EPP) on application of State aid rules in the banking sector to protect savers, 19 February 2020

In the context of the Tercas case (see section on Court of Justice), the Members asked the Commission for a reaction to an opinion on this case issued by the EBA and for more clarity on the Commission’s interpretation of State aid rules in the banking sector with regard to intervention by national guarantee funds to assist distressed banks.

**Answer** given by Executive Vice-President Margarethe Vestager on behalf of the European Commission, 19 May 2020

In its answer, the Commission highlighted the fact the EBA had declared its findings as preliminary as the legal proceedings were still ongoing. Apart from that, the Commission did not state any plans on how to clarify its interpretation of State aid rules in the banking sector with regard to intervention by DGS.

**Written question** by João Ferreira (GUE/NGL) on Germany’s proposal to ‘complete the banking union’, 13 November 2019

The Member asked about the Commission assessment of a [op-ed](https://www.ft.com/content/6e035f85-e3b4-11e9-915b-005056ca974e) for the Financial Times by the German Finance Minister in 2019 to establish a European deposit reinsurance based on repayable loans within a broader package of reform proposals and if the Commission considered submitting a proposal based, in whole or in part, on this basis.

**Answer** given by Executive Vice-President Valdis Dombrovskis on behalf of the European Commission, 7 February 2020

In its answer, the Commission recalled the state of play on completion of banking union and welcomed the input to the debate, but did not make any comments on the proposal made by the German Finance Minister.
The role of the Expert Group on Banking, Payments and Insurance (EGBPI) is to assist the Commission in the preparation of legislative proposals and policy initiatives and in the implementation of existing Union legislation, programmes and policies. It allows the Commission to coordinate and exchange views with Member States. In addition to the 27 Member States as members of the Expert Group, nine public entities (EFTA countries, EU agencies and bodies) have an observer status. The Expert Group discusses, inter alia, issues of resolution and deposit insurance (latest meeting on 9 November 2022) and of banking regulation and supervision (latest meeting on 16 February 2023). Minutes of most recent (since 2021) meetings of the EGBPI either do not contain information regarding the upcoming review of the CMDI framework or are not publicly available. It is therefore difficult to evaluate the contribution of the EGBPI to the review of the CMDI framework.

Council of the European Union

On 16 June 2022, the Eurogroup in inclusive format (i.e. finance ministers of all 27 Member States and the President of the Eurogroup) discussed the future of banking union. Finance ministers agreed to focus first on the strengthening of the CMDI framework, before reviewing and completing banking union as such. Concerning further actions within the CMDI framework, the Members of the Eurogroup identified the need to:

- clarify and harmonise public interest assessments;
- **broaden the application of resolution tools in crisis management** at European and national level, including for smaller and medium-sized banks;
- further harmonise the use of national deposit guarantee funds in crisis management, while ensuring appropriate flexibility for facilitating market exit of failing banks in a manner that preserves the value of the bank’s assets. National authorities should carry out harmonised least-cost tests to govern the use of DGS funds outside payout to covered depositors;
- harmonise targeted features of national bank insolvency laws to ensure consistency with the principles of the European CMDI framework.

The Eurogroup in inclusive format stated that it would like to finalise any legislative work during this institutional cycle, by early 2024, once the Commission makes its proposal for the review of the CMDI framework. The Eurogroup’s commitment to continue the work on the CMDI framework is also documented in its latest work programme until July 2023.

European Court of Auditors

In recent years, the European Court of Auditors (ECA) has audited several aspects of banking union in general and the CMDI in particular. Building on an earlier audit on the SRB from 2017, the ECA focused in its special report 1/2021 on the resolution planning in the single resolution mechanism. While most of the audit recommendations were addressed to the SRB, the ECA also identified a few key issues for legislators. These included the funding of resolutions, for which the ECA mentioned a backstop in order to finance a resolution of a bank in the event that the SRF’s funds are exhausted. The backstop will be available after the ratification of the agreed amendment of the Treaty establishing the European Stability Mechanism (ESM) by all euro-area countries. Currently, ratification by Italy is still pending. The second key issue highlighted by the ECA is the need for better alignment between the resolution framework and the various national insolvency frameworks, a point that the Commission intends to tackle in the upcoming review of the CMDI (see above). Finally, the ECA also noted the differences between burden-sharing requirements applicable in the event of an insolvency proceeding and those applicable in the event of resolution.
Given that the financial sector has been a major beneficiary of State aid, in its special report 21/2020 the ECA audited the Commission’s control of State aid to financial institutions in the EU (see also the section on parliamentary questions above).

The ECA special report 2/2018 looked into the operational efficiency of the ECB’s crisis management for banks and made recommendations to the ECB on (i) cooperation and coordination with regard to crisis management, (ii) recovery planning, (iii) crisis identification, and (iv) crisis response.

In 2020, the Contact Committee of the Supreme Audit Institutions of the European Union published the results of a parallel audit by seven national supreme audit institutions on the NRAs’ preparedness to carry out the resolution task regarding medium-sized and small banks. The audit concluded, inter alia, that the process and content of resolution planning for less significant institutions (LSIs) differs between countries and that the NRAs and the SRB should develop resolution planning guidance for LSIs in the euro area.

European Court of Justice

The list of legal proceedings before the European Court of Justice (ECJ) that relate to components of the CMDI framework is fairly long. Numerous cases concern the validity of the current SRF methodology used by the SRB for the calculation of ex-ante contributions by banks. The methodology determining the SRF contributions is specified in Commission Delegated Regulation (EU) 2015/63, which is contested by a large number of contributing banks. In the three most prominent cases (Landesbank Baden-Württemberg case T-411/17, Portigon AG case T-420/17 and Hypo Vorarlberg Bank AG case T-414/17), the ECJ first annulled the decision of the SRB on the calculation of the 2017 ex-ante contributions to the SRF of these three banks. However, in July 2021 the ECJ restored the legality of Commission Delegated Regulation 2015/63 after an appeal to the ECJ and set aside the judgment of the General Court of the European Union of 23 September 2020. Nevertheless, the ECJ maintained the effects of the decision to annul the 2017 SRF ex-ante contributions as the SRB’s reasoning was still considered inadequate and contradictory.

Another important case concerning the upcoming CMDI review concerns the demarcation between State aid and deposit insurance. In the Tercas case (C-425/19 P), the Commission was of the opinion that the intervention of the Italian DGS (to cover the negative equity of Tercas and to grant it certain guarantees) for the benefit of Banca Tercas constituted unlawful State aid. The General Court annulled the Commission decision as it did not consider the intervention of the DGS to represent State aid. In fact, the DGS is financed by the contribution of (private) banks and not by the Italian state. The General Court’s judgment was confirmed by the ECJ following an appeal by the Commission in 2021.

European Economic and Social Committee (EESC)

In December 2022, the Bureau of the EESC decided to work on an opinion (Rapporteur: Giuseppe Guerini, Diversity Europe Group,-Italy) on the review of the CMDI framework. The adoption of this opinion is scheduled for adoption in the EESC plenary session in July 2023.

Academic/think-tank literature

The implementation of and possible need for changes to the CMDI framework have also received some attention from academia and think tanks (for publications by the European Parliament services, see ‘Further Reading’ section at the end of this paper). Some of this literature looks at the ‘big picture’, other articles provide thoughts on specific points of the CMDI. The articles referred to in this section are a non-exhaustive selection of the literature and to be considered as starting point for further research on the topic.

The completion of banking union – and with that changes to the CMDI framework – is at the centre of a policy paper by Beck et al. in 2022. The authors identified three major shortcomings of banking union as it currently stands, namely that (i) significant crisis-management competences
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remain at national level, (ii) there are still incentives in the resolution area to avoid applying EU-level option and (iii) the bank-sovereign loop has not been addressed. The authors then present three reform options (incremental, real and cosmic) the second of which they consider the most achievable. This option would consist of the full consolidation of crisis management decision-making at EU level under the SRB (similar to the US Federal Deposit Insurance Corporation), a common financial backstop for the new institution, and a mandatory European deposit guarantee scheme.

The creation of a European deposit insurance system (EDIS) and the further harmonisation of bank insolvency laws within the EU are discussed in a recent working paper by the European Banking Institute. On EDIS, the paper describes the resistance by northern Member States to the mutualisation of deposit guarantee schemes and the discussion around whether Article 114 TFEU would provide a sufficient legal basis for the adoption of the EDIS regulation. Despite the progress made in the field of the SRM, the author expects neither the integration of DGS arrangements nor the further harmonisation of bank insolvency procedures for all banks operating within the Eurozone to happen in the near future. Also on EDIS, Carmassi et al. expect EDIS to 'offer substantial benefits in terms of depositor protection while posing limited risks in terms of fund capacity, cross-subsidization and moral hazard'.

In an effort to simplify the complex methodology used to calculate contributions to the SRF and to help avoid the numerous legal challenges described earlier, the Centre for European Policy Studies (CEPS) made a proposal for an alternative methodology in 2021. According to the authors, this methodology would have the ‘advantage of incentivising the contributing institutions to reduce their probability of failure and build up more loss-absorption capacity’.

FURTHER READING

How the EU took account of lessons learned from the 2008-2012 financial and sovereign debt crises, Review 05/2020, European Court of Auditors, September 2020.
Revision of the bank crisis management and deposit insurance framework, Legislative Train Schedule, European Parliament.

ENDNOTES

1 For further information on the EU response to the financial crisis, see the European Court of Auditors review 05/2020.
2 This briefing paper uses the term ‘banks’ for all financial institutions and entities within the scope of the CMDI framework.
3 The common backstop is a credit line provided by the European Stability Mechanism (ESM) in order to finance a resolution of a bank in the event that the SRF’s funds are exhausted. The backstop will be available after the
ratification the agreed amendment of the Treaty establishing the European Stability Mechanism (ESM) by all euro area countries. Currently, ratification by Italy is still pending.

4 See recital (1) to Directive (EU) 2019/879 of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

5 According to the intergovernmental agreement, the transitional period elapses ‘at the date when the Fund reaches the target level fixed in Article 68 of the SRM Regulation but not later than 8 years after the date of application of this Agreement’.

6 Since the publication of the three earlier opinions on the DGSD, the EBA has also published an opinion on the interplay between the Anti-Money Laundering Directive and the DGSD and an opinion on the treatment of client funds under the DGSD.

7 For a detailed description of the five areas, see also C. Dias et al.

8 See also the two previous annual reports on banking union, adopted during the ninth parliamentary term, in 2020 and 2021.


10 The Contact Committee is the platform for cooperation between the supreme audit institutions (SAIs) of the European Union and the European Court of Auditors (ECA).

11 For an overview of recent cases, see the website of the European Banking Institute.


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