EBF FEEDBACK TO DG FISMA'S TARGETED CONSULTATION: REVIEW OF THE CRISIS MANAGEMENT AND DEPOSIT INSURANCE (CMDI) FRAMEWORK

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PART 1 – GENERAL OBJECTIVES AND REVIEW FOCUS

Question 1. In your view, has the current CMDI framework achieved the following objectives?

On a scale from 1 to 10 (1 being "achievement is very low" and 10 being "achievement is very high"), please rate each of the following objectives.

	1	2	3	4	5	6	7	8	9	10	N/O
The framework achieved the objective of limiting the risk for financial stability stemming from bank failures								X			
The framework achieved the objective of minimising recourse to public financing and taxpayers' money					X						
The framework achieved the objective of protecting depositors							X				
The framework achieved the objective of breaking the bank/sovereign loop						X					
The framework achieved the objective of fostering the level playing field among banks from different Member States				X							
The framework ensured legal certainty and predictability					X						
The framework achieved the objective of adequately addressing cross-border bank failures					X						
The scope of application of the framework beyond banks (which includes some investment firms but not, for example, payment service providers and e-money providers) is appropriate								X			

Question 1.1: Please explain your answers to question 1

Limiting risk for financial stability:

Since the 2008 financial crisis, the situation has much improved. The EU prudential and crisis management framework now goes a long way to control and mitigate risks at individual bank level and to prevent systemic consequences. Under CRD/CRR banks have become more robust even in times of turmoil. In the Banking Union (BU) considerable progress on capital ratios and RWAs increases resilience, making resolution less likely and less costly.

Minimizing recourse to public financing & tax-payers' money:

The crisis management framework foresees a bail-in of shareholders and creditors and has led to the build-up of loss absorption buffers. For a crisis at individual bank level

this significantly reduces the risk of having to resort to public financial and tax payer money. Yet, we are concerned that the resolution framework is not sufficiently enforceable. In the BU only one bank has been resolved as per the BRRD, whereas state aid is still allowed in the context of national insolvency proceedings. Differences in the national use of state aid impact on burden sharing by creditors.

Yet, a public backstop to liquidity for banks undergoing or just having undergone resolution is still necessary to ensure market confidence and to bring a bank resolution to a successful conclusion.

It must also be ensured that not only idiosyncratic crises can be handled. As in a systemic (market-wide) crisis taking recourse to state aid may still be necessary, it should be ensured that the EU state aid rules for our sector are brought in line with the crisis management framework.

Protecting depositors:

Eligible depositors are already well protected via the DGS in place. The national DGS are part of a proven safety net and help maintain depositor confidence. A well-designed third pillar of the BU would further enhance protection and provide a strong signal to depositors.

Breaking bank-sovereign loop:

Progress on the third pillar of the BU can further reduce the likelihood of a bank-sovereign doom-loop. More generally, we are waiting for the Eurogroup HLWG report.

Level playing field across MS:

The EU banking sector is highly diversified, as reflected in the concentration vs. fragmentation of national banking landscapes. National specificities have an impact on the scope for further sector integration. In some markets there is a lack of clarity on which participants, in a FOLF scenario, will be subject to resolution or liquidation.

Markets for subordinate debt instruments may be at different stages of development with an impact on banks' ability to / cost of issuing Mrel instruments. A renewed effort towards a Capital Markets Union should improve market access and facilitate uptake by appropriate investor classes.

Various BRRD ONDs lead to an uneven playing field for institutions in some jurisdictions and notably between banks inside and outside the BU. Eliminating some ONDs would contribute to a harmonized application of the BRRD across the EU allowing for a common European crisis management regime without major national differences. Example: outside the BU, NRAs take very different approaches to setting Mrel and notably the subordination requirement for G-SIIs and top tier banks. This leads to an uneven playing field and negatively affects the functioning of the internal single market.

The application of state aid rules, e.g. in context of DGS preventive measures, lacks clarity as DGSD/BRRD and DG COMP state aid rules are misaligned. In markets with a more flexible state aid framework, loss-absorption by creditors can be lower than in markets with a more rigid approach.

Discrepancies in national creditor hierarchies translate into differences in funding costs.

Legal certainty and predictability:

More ex-ante clarity is needed on the expected outcome of the Public Interest Assessment should a bank become an FOLF case. Moreover, the different rationales of the EU state aid regime and the resolution framework lead to inconsistencies. Notably DG COMP and the SRB interpret differently financial stability and public interest,

resulting in legal uncertainty and inefficient/ineffective solutions. A targeted harmonization of national insolvency regimes for banks can also remedy some concerns.

Addressing cross-border failures:

For the Eurozone, the SRB is – theoretically – able to act via the tools in place. Yet, given the obstacles to cross-border consolidation within the EU, it is more than likely that a resolution will necessitate an acquisition by other banks in the FOLF bank's home country, raising the question how the FOLF bank's cross-border activities will be dealt with. As long as cross-border consolidation is de facto disincentivised, the resolution of cross-border group may well result in a split up along national lines, i.e. the very opposite of sector integration.

Application beyond banks:

These market participants should be subject to an effective recovery and resolution framework.

Question 1.2. Which additional objectives should the reform of the CMDI framework ensure?

Do you consider that the BRRD resolution toolbox already caters for all types of banks, depending on their resolution strategy?

In particular, are changes necessary to ensure that the measures available in the framework (including tools to manage the bank's crisis and external sources of funding) are used in a more proportionate manner, depending on the specificities of different banks, including the banks' different business models?

We would like to recall that the CMDI is designed to apply to all banks in the EU, regardless of their size, complexity, interconnectedness and business activities. It is therefore also suitable for small and medium-sized banks. Within this framework "resolution is for the few, not for the many" – a principle on which the SRB is very clear (e.g. Elke Koenig, 2020), and where past PIA verdicts highlight that the bar for resolution is in fact quite high. On this premise, the question whether the BRRD resolution toolbox caters for ALL types of banks is surprising. We also point out that the resolution tools currently in place have been developed for the resolution of those banks that in high likelihood would qualify for resolution according to the Public Interest Assessment under the current BRRD rules. We believe that from this perspective the tools and external sources of funding are appropriate, provided this is complemented by a public liquidity backstop.

We also highlight that in the Banking Union context specific resolution plans are in any case developed by the SRB for all the banks under its remit. We would assume that these plans foresee a proportionate and balanced application of the available tools that preserves value to the greatest extent possible and reduces disturbances to the rest of the financial system to the minimum.

That said as a possible improvement already under the current PIA approach we believe that greater ex-ante clarity on which banks will enter resolution, should they become a FOLF case, would be beneficial.

Moreover, we would support a widening – within the Level 1 text – of the criteria examined during a PIA, in order to enlarge the potential scope of medium-sized banks to be eligible for resolution. This is important to make the resolution framework more enforceable. Greater clarity on whether and how the Commission would implement this

change to the PIA would also allow for a more targeted discussion on whether the BRRD resolution tools are appropriate for a wider group of banks. That said, we do not see any impediments in using resolution tools, such as the sale of business tool, for medium-sized banks. We also expect that readjusting the PIA approach combined with greater transparency and predictability of PIA outcomes would allow Resolution Authorities to set Mrel in a (more) proportional manner especially for medium-sized institutions. On this basis medium-sized banks with an expected positive PIA outcome should be in a better position to meet Mrel. [See also our response to Q 10]

In all these considerations we would like to highlight that the resolution funds, including the SRF, are already being built up based on the contributions of the banking sector where the contributions by some banks are particularly high. We also recall that, whilst FOLF scenaria are and will remain very rare, in their daily business large and mid-sized banks are direct competitors and that on overall a level playing field has to be preserved. Access to resolution funds should therefore be the same for all banks, according to the principle "same activity, same risk, same rules".

With regard to medium-sized and smaller banks whose PIA is negative, we see benefits in a targeted harmonization of key aspects of national insolvency frameworks for banks.

As a general remark, we would like to recall that in the CMDI framework, the "first line of defence" is recovery planning. Yet, this consultation only addresses this in passing. First it should be ensured that these measures are applied when needed and that the current overlaps between the CRD and the BRRD should be addressed. That said, for proportionality reasons, some members find that small banks should not be obliged to submit recovery plans, as there is little added value for both banks and supervisors. Instead, the supervisory authority should be given the possibility to oblige small banks to carry out targeted and reduced recovery plans in individual cases.

Regarding contributions to the SRF, given that the expected SRF target level by end-2023 will be well above the initially foreseen level [EUR 75 bn vs EUR 55bn] we seek a clarification in the Level 1 text that henceforth the SRF target level will be based on the level of covered deposits as of 2023.

The increased stability of credit institutions reduces the likelihood of resolution and leads to lower potential settlement costs in the event of an institution's default. According to EBA (EBA/Op/2015/11), SRMR Art 69(1) leaves open whether the amount of covered deposits should be determined at the time of the entry into force of the SRMR or at the end of 2023.

Question 2. Do you consider that the measures and procedures available in the current legislative framework have fulfilled the intended policy objectives and contributed effectively to the management of banks' crises?

On a scale from 1 to 10 (1 being "have not fulfilled the intended policy objectives/have not contributed effectively to the management of banks' crises" and 10 being "have entirely fulfilled the intended policy objectives/have contributed effectively to the management of banks' crises"), please rate each of the following measures:

	1	2	3	4	5	6	7	8	9	10
Early intervention measures			X							
Precautionary measures							X			

DGS preventive measures					X					
Resolution							X			
National insolvency proceedings, including DGS alternative measures where available					X					

Question 2.1. If possible, please explain your replies to question 2, and in particular elaborate on which elements of the framework could in your view be improved

EIMs:

The European Banking Authority observes that authorities make less use of Early Intervention Measures than would have been expected. In fact the overlap between EIMs and supervisory measures is problematic and the uncertainty on disclosure obligations and their likely counterproductive impact on market confidence probably disincentive the use of EIMs. Yet, if applied in an appropriate and timely manner, EIMs can remedy ingrained institution specific weaknesses well before FOLF is reached.

Precautionary measures:

We strongly advocate that the resolution framework should remain focused on managing idiosyncratic crises as opposed to systemic crises.

Precautionary measures in form of public support under the state aid rules and as set out per BRRD Art 32 (4) (d) play an important role in exceptional cases. Already in good times they provide confidence to markets that during a 'serious disturbance to the economy of a member state' financial stability will be preserved. The developments during the current Covid 19 crisis underline how important it is that this provision has been put in place. In any case such measures need to remain an exception - Member States should not be given the option of "artificially keeping failed banks alive".

DGS preventive measures:

We believe that the criteria for DGS preventive measures need to be streamlined across the EU. Their use should be well-aligned with the EU crisis management and state aid frameworks.

Resolution:

So far there has been (only) one SRB-led resolution case (Santander's acquisition of Banco Popular). In this case a successful national solution has been found. For the future use of the sale of business tool – and as to not discourage potential acquirers – it should be clarified that the potential purchaser of the resolution bank is not accountable for possible penal responsibility.

Two big questions remain:

Is the framework fit to also allow for a cross-border solution, i.e. a case where a bank from another Member State takes over (part of) a FOLF bank in a given market? This is far from given, because even normal cross-border M&As are de facto discouraged: At EU level in any case, but even within the Banking Union and under the SRB's own remit, considerable hurdles remain for cross-border banking integration. Examples:

- the lack of application of and experience with cross-border liquidity waivers within banking groups,
- a lack of flexibility with respect to large exposure waivers even within banking groups,

- the regulatory treatment of minority interest discouraging cross-border M&A
- the BRRD approach to internal Mrel
- strong preference by and large scope for domestic supervisors to add-on national capital buffer requirements and additional Pillar 2 capital layers which implies the ring-fencing of capital held by subsidiaries in a host country
- the absence of an appropriate EU-level insolvency framework for cross-border groups, which would entail capital waivers for cross-border subsidiaries in a given banking group
- progress on EDIS can also be helpful in this respect.

Unless these hurdles are removed, or at least substantially mitigated, the SRB itself is likely to find itself constrained to national solutions when identifying viable and realistic resolution strategies that involve the sale of business activities. Under these conditions resolution action (even for cross-border banks) is more likely than not to increase national sector consolidation at the expense of EU-wide sector integration.

An even bigger problem is that the successful outcome of a resolution remains in jeopardy as long as the Banking Union's framework falls short by one of the FSB's key recommendations: The Banking Union still has no publicly backed and credible liquidity backstop to ensure liquidity for freshly resolved banks until market confidence has been restored. Such a backstop would be key to ensure market confidence and sufficient and fairly-priced funding for a freshly resolved bank and avoids contagion risk to other parts of the financial system. Other jurisdictions like the UK and the US have long put these in place. The EU / the Banking Union, on the other hand, have put in place an elaborate and powerful resolution framework, but appear stuck on the final meters towards ensuring its successful application. Importantly, this kind of assurance can only be provided by the public sector.

National insolvency proceedings:

In a FOLF situation the vast majority of banks will be liquidated under national insolvency or national liquidation regimes. These regimes differ across Member States. which – together with a non-uniform application of instruments – gives rise to inefficient, costly and heterogeneous outcomes with serious economic and social impact – especially, if the existing regulations are not applied uniformly. We thus strongly encourage the collection of best practice examples and a targeted harmonization of national bank insolvency regimes.

Question 3. Should the use of the tools and powers in the BRRD be exclusively made available in resolution or should similar tools and powers be also available for those banks for which it is considered that there is no public interest in resolution?

In this respect, would you see merit in extending the use of resolution, to apply it to a larger population of banks than it currently has been applied to? Or, conversely, would you see merit in introducing harmonised tools outside of resolution (i.e. integrated in national insolvency proceedings or in addition to those) and using them when the public interest test is not met? If such a tool is introduced, should it be handled centrally at the European (banking union) level or by national authorities? Please explain and provide arguments for your view.

Please explain and provide arguments for your view:

The EU' crisis management framework and with it the second Pillar of the Banking Union are very sophisticated but the last years have demonstrated the need for some re-adjustments.

Some members have voiced concern that especially smaller and medium sized banks fall into a grey area where, in a FOLF scenario, resolution is prevented by a negative Public Impact Assessment but national insolvency / liquidation proceedings fall short of ensuring a smooth market exit.

We appreciate all efforts to identify solutions that would allow to address these shortcomings and ensure that the crisis management framework can be applied in a proportional and efficient manner to all banks. Based on the domestic context and experiences our members tend to have different perceptions on which concerns are most pressing and how they could be best addressed. That said, there is a convergence towards the following assessment:

- A targeted harmonization of national insolvency regimes is necessary to ensure that across Member States insolvency frameworks can be applied equally well to smaller and medium-sized banks. In this case harmonization should not put into question – but should be inspired by – national insolvency and/or liquidation proceedings that have proven fit for purpose. Please also see our response to Question 17.
- The current restrictive approach to the PIA contributes to an uneven application of the resolution vs. liquidation decision and is a main cause behind the "limbo" situation in which medium sized banks can find themselves following a FOLF situation (i.e. the bank is considered too small for resolution, but turns out to be too big / relevant for liquidation).
- Most members' preferred way forward is a Level 1 text readjustment of the PIA approach to also admit to resolution medium-sized banks that are, for example of regional relevance (see our response to Question 10). This solution is perceived as more efficient and more proportional. It could streamline, even promote, the application of the crisis management framework without adding further complexity and creating level playing field and demarcation challenges. Several members highlight these benefits - on the other hand, introducing a harmonized orderly liquidation tool raises concerns: it would add considerable complexity to an already highly complex framework and might disturb the level playing field amongst banks as well as the balance between the different measures and requirements.
- The majority of members oppose pursuing any FDIC-like approach for the Banking Union.

One NBA believes that widening the scope of PIA is not the best way to overcome the uncertainties in crisis management of small and medium-sized banks. Taking stock of the FDIC experience, it sees merit in using national DGS to support the orderly liquidation of those banks which fail the PIA test, in order to avoid a disorderly liquidation scenario that would be costly (politically and in terms of value destruction) and disruptive to the regional economy.

Question 4. Do you see merit in revising the conditions to access different sources of funding in resolution and in insolvency (i.e. resolution funds and DGS)?

Yes	
No	X
Don't know/ no opinion/ not relevant	

Question 4.1. Would an alignment of those conditions be justified?

Yes	
No	
Don't know/ no opinion/ not relevant	X

Question 4.2. Please explain and provide arguments for your views expressed in questions 4 and 4.1

We take the view that the current access conditions to resolution funds and DGS are adequate.

We would like to recall that both resolution funds and DGS are based on the contributions from the banking sector, and that if resolution or DGS funds are depleted they have to be re-filled via additional contributions from banks. On this basis it is important that for each source of funding access conditions remain the same for all banks according to the principle "same activity, same risk, same rules". This view is further underpinned by the need to avoid Moral Hazard that would arise if particular types of bank were to receive a privileged treatment in EU regulation.

Regarding the access to funding in insolvency, we propose that DGS alternative measures should remain in place (according to Member States' discretion). Here the Least Cost Test remains the main condition for access. We call for a further clarification / streamlining of the methodology for the Least Cost Test.

Question 5. Bearing in mind the underlying principle of protection of taxpayers, should the future framework maintain the measures currently available when the conditions for resolution and insolvency are not met (i.e. precautionary measures, early intervention measures and DGS preventive measures)?

Yes	X
No	
Don't know/ no opinion/ not relevant	

Question 5.1. Should these measures be amended? If so, why and how?

Yes	X
No	
Don't know/ no opinion/ not relevant	

IF YES: if you think these measures should be amended, please explain why and how?

EBF believes that all measures referred to in Question 5 should remain part of the framework.

Early Intervention Measures are an important part of the EU crisis management framework. If applied in a timely and correct manner they could effectively address an institution-specific deterioration, especially in cases where problems are stemming from the bank's business model or internal malfunctioning and not from unpredictable external (or internal) shock events. We welcome EBA's in-depth analysis of the aspects that may hold back the application of EIMs and encourage the Commission to address difficulties, such as the overlap with supervisory measures, room for improvement in the coordination between supervisory and resolution authorities, and a lack of clarity as to when EIMs should be activated (that said we would oppose automated triggers).

Precautionary measures in form of public support under the state aid rules and as set out per BRRD Art 32 (4) (d) can play an important role in exceptional cases. Already in good times they provide confidence to markets that during a 'serious disturbance to the economy of a member state' financial stability will be preserved. The economic impact of the Covid 19 pandemic cannot yet be determined. That said, this kind of crisis experience underlines that it is important to keep tools at disposal that can protect the stability of the financial system, especially as the origins of a crisis can well lie elsewhere. We see no reason for major amendments in the BRRD context. That said, in regulatory terms, it should be ensured that such measures remain an exception - Member States should not be given the option to "artificially keep failed banks alive". Moreover, it would be helpful to add further clarification on how the "solvency" of institutions should be assessed. That said, in this context, too, we underline the need to update DG COMP's 2013 Banking Communication in the light of relevant ECJ rulings and to align it with the BRRD framework.

The possibility to use DGS preventive measures should remain available on a voluntary basis. That said, the application of and conditions (e.g. burden sharing, Least Cost Test methodology) for DGS preventive measures should be clarified. Progress in the third Pillar of the Banking Union and level playing field concerns alike indicate that the conditions for using DGS preventive measures should be streamlined across the EU. Please see our response to Question 9 for a list of issues that should be clarified and streamlined.

Question 6. Do you agree or disagree with the following statements regarding a potential reform of the use of DGS funds in the future framework?

Do you agree or disagree with the following statements regarding a potential reform of the use of DGS funds in the future framework? [Agree – Disagree – Do not know/No opinion]

	Agree	Disagree	No opinion/not relevant
The DGSs should only be allowed to pay out depositors, when deposits are unavailable, or contribute to resolution (i.e. DGS preventive or alternative measures should be eliminated).		X	
The possibility for DGSs to use their funds to prevent the failure of a bank, within pre-established safeguards (i.e. DGS preventive measures), should be preserved.	X		
The possibility for a DGS to finance measures other than a payout, such as a sale of the bank or part of it to a buyer, in the context of insolvency proceedings (i.e. DGS alternative measures), if it is not more costly than payout, should be preserved.	X		
The conditions for preventive and alternative measures (particularly the least cost methodology) should be harmonised across Member States.	X		

Question 6.1 If none of the statements listed in Question 6 does reflect your views or you have additional considerations, please provide further details

The EBF believes that Member States should remain free to choose whether national DGS should be available for the use of preventive or alternative measures. Given the current status-quo of non-alignment of the conditions for such measures, we believe it is premature to discuss how such measures should also be covered by a future EDIS.

That said, we agree that the conditions for the use of such measures – and especially of preventive measures – should be clarified and streamlined.

We also agree that a clarification and streamlining is particularly important for the Least Cost Test (however, harmonization in the strictest sense may not be feasible), considering also level playing field concerns across Member States. Here we call the Commission/EBA to also assess a meaningful application and formalization of the Least Cost Test based on the supersenior status of covered deposits in the creditor hierarchy which should be maintained. That said, we are not convinced that strict harmonization of conditions is feasible, considering for example national differences also having an impact on whether a DGS intervention would be considered state aid. For more details regarding our views on preventive measures, please see our response to Question 9.

Better alignment of DG COMPs state aid rules and the EU crisis management framework more generally is of course a priority.

PART 2 – EXPERIENCE WITH THE FRAMEWORK AND LESSONS LEARNED FOR THE FUTURE FRAMEWORK – DETAILED SECTION PER TOPIC

A. Resolution, liquidation and other available measures to handle banking crises

I. Measures available before a bank's failure

Early intervention measures (EIMs)

Question 7: Please respond to the following questions by yes or no

	Agree	Disagree	Don't know / No opinion / not relevant
Can the conditions for EIMs or other features of the existing framework, including interactions with other Union legislation, be improved to facilitate their use?	X		
Should the overlap between EIMs and supervisory measures be removed?.	X		
Do you see merit in providing clearer triggers to activate EIMs or at least distinct requirements from the general principles that apply to supervisory measures?	X		
Is there a need to improve the coordination between supervisors and resolution authorities in the context of EIMs (in particular in the banking union)?	X		

Question 7.1 Please elaborate on what in your view the main potential improvements would be

EBF believes that the Early Intervention Measures foreseen in the BRRD are an important part of the EU crisis management framework. If applied in a timely and correct manner they could effectively address an institution-specific deterioration, especially in cases where problems are stemming from the bank's business model or internal malfunctioning and not from unpredictable external (or internal) shock events. We would also highlight that our members already spend substantial resources on recovery planning.

We welcome that EBA has conducted an in-depth analysis of the factors that may unduly hold back the use of these measures. That said we would highlight that the mere fact

that EIMs are not often applied may also reflect the stability of the banking sector, not last a result of banks' own efforts and of the encompassing regulatory requirements. Considering the importance of the tool, but also its intrusiveness, we would welcome a more detailed stakeholder consultation by the Commission on the specific changes intended for the legislative proposal.

Regarding the Commission's concrete questions, we would highlight the following:

- It would be beneficial to eliminate the existing overlaps in the respective regulatory frameworks which jeopardize the appropriate use of the tools (see in this context EBA/DP/2020/02).
- The best possible coordination between supervisors and resolution authorities should be ensured. It is key that authorities are able to respond in a proportional, flexible and tailored manner to the circumstances of the individual institution.
- We agree that it would be beneficial to have clearer rules for the activation of EIMs. That said, we oppose the introduction of quantitative EIM triggers. Automatism should not override or replace supervisory judgement. Moreover quantitative triggers would have a very strong, and problematic, signalling effect vis-à-vis financial markets.
- In order to ensure a timely application of EIMs, the supervisor should make use of their power to launch an in-depth assessment of a bank's balance sheet so as to obtain a materially correct view that would allow to assess the need of applying EIMs. That said, such assessments should be justified, and carried out without inflicting disproportionate burden on the bank.

We would also point to the risk that once an EIM is taken, disclosure obligations can lead to a stigma effect and undermine the success of the EIM. We would invite the Commission to take this into account in their upcoming proposals.

Precautionary measures

Question 8. Should the legislative provisions on precautionary measures be amended? What are, in your view, the main potential amendments?

Yes	
No	X
Don't know/ no opinion/ not relevant	

Question 8.1. Please explain your answer to question 8

Precautionary measures in form of public support under the state aid rules and as set out per BRRD Art 32 (4) (d) can play an important role in exceptional cases. Already in good times they provide confidence to markets that during a 'serious disturbance to the economy of a member state' financial stability will be preserved. The economic impact of the Covid 19 pandemic cannot yet be determined. That said, this kind of crisis experience underlines that it is important to keep tools at disposal that can protect the stability of the financial system, especially as the origins of a crisis can well lie elsewhere.

We see no reason for major amendments in the BRRD context. That said, in regulatory terms, it should be ensured that such measures remain an exception - Member States should not be given the option to "artificially keep failed banks alive". Moreover, it would

be helpful to add further clarification on how the “solvency” of institutions should be assessed.

In this context, too, it would be important to update and align with the BRRD framework DG COMP’s 2013 Banking Communication.

DGS preventive measures (Article 11(3) DGSD)

Question 9. In view of past experience with these types of measures, should the conditions for the application of DGS preventive measures be clarified in the future framework?

Yes	X
No	
Don’t know/ no opinion/ not relevant	

Question 9.1 Please explain your answer to question 9 specifying what are, in your view, the main potential clarifications:

As a first principle we highlight that the use of preventive measures should remain voluntary. I.e. there should be no mandatory introduction of preventive measures into national frameworks. We would like to point out that in certain cases and situations preventive measures can enable DGS to act in the most cost-efficient manner and a broad mandate is also in line with international best practices.

On this basis, EBF members agree that the application of DGS preventive measures should be clarified. Progress on the third Pillar of the Banking Union and level playing field concerns alike indicate that the conditions for using DGS preventive measures should be streamlined across the EU.

We would highlight that the current DGSD provisions relevant for the preventive use of DGS focus largely on the immediate impact on the DGS, but do not take into account the impact on the level playing field, whether within a given market or in an EU-wide context. This, and the lack of specific rules underpinning the use of DGS leads to uncertainty and a very heterogeneous situation across the EU, not to mention that some Member States have decided not to use DGS for this purpose in the first place.

We also emphasise that whilst the DGSD recast and the original BRRD were negotiated in parallel, with regard to DGS preventive measures they are poorly aligned, probably as the BRRD was a radically new framework whilst the DGSD reflects older traditions. The upcoming legislative initiatives are an opportunity improve coherence.

Looking forward, the following aspects are of particular importance and should be clarified and, if need be, harmonised:

- Which form can DGS preventive measures take (i.e. which tools are available)?
- How do DGS preventive measures fit into the overall crisis management framework? Leaving precautionary measures (i.e. state aid to preserve stability) aside, the spectrum of available measures includes also supervisory measures, central bank emergency liquidity assistance, early intervention measures and once FOLF is triggered, resolution or liquidation. We see a need for clarification and demarcation in the application of crisis management tools by NCAs/NRAs or

SSM/SRB on the one side and preventive measures by DGS on the other to ensure coherence of the framework.

- The overriding objective of any preventive measure must be to ensure an orderly management of the crisis, and either an orderly liquidation or an in-depth restructuring of the bank (including e.g. change of management, divestment of activities etc.) in order to eliminate Moral Hazard, ensure an appropriate burden sharing and avoid an impact on competition. It must be ensured that no funds provided within the framework of such a measure are used to support the owners of the business or an unviable business model.
- DGS preventive measures need to be conditional on the Least Cost Test (LCT) i.e. they would not exceed the costs to the DGS compared with the burden that would be incurred by the intervention of the DGS under the statutory deposit guarantee in the event of the compulsory liquidation of the bank. An effective application of the LCT is instrumental to limiting the exploitation of DGS' resources (i.e. deposit reimbursement could cost more than early/alternative intervention). EBF would invite the Commission (or EBA) to put forward common and well defined metrics for the LCT, which should be tilted neither in favor of the DSG pay-out nor of the DGS preventive intervention.
- Depending on national specificities the use of DGS so far has or has not counted as state aid. In order to preserve a level playing field between banking sectors, a critical re-consideration on the application of state aid rules to DGSs' preventive and alternative measures should apply irrespectively of the governance of the DGS. In the same vein, we refer to the EBA Opinion on the review of the DGSD (11 February 2020), which recommends the need for the Commission to reconsider the use of DGS funds to prevent failure of credit institutions and the ceiling up to which DGS funds can be used for such failure prevention.

Based on the status quo and the current lack of clarity / heterogeneity with respect to the use of DGS preventive measures, safeguards would be needed to ensure that the use of DGS for preventive measures does not have any negative impact on the forthcoming mechanisms as part of the third pillar of the Banking Union. Notably they may not lead to any burden for / trigger obligations by other Member States' DGS's via an EDIS, a hybrid EDIS or a similar structure.

In this context we highlight, however, that, provided conditions for the use of DGS preventive measures are streamlined, greater weight could be given to the Least Cost Test outcome, also as compared to the use of DGS pay-out function.

II. Measures available to manage the failure of banks

Scope of banks and PIA, strategy: resolution vs liquidation and applicability per types of banks

Question 10. What are your views on the public interest assessment?

	Agree	Disagree	Don't know / No opinion / not relevant
The current wording of Article 32(5) BRRD is appropriate and allows the application of resolution to a wide range of institutions, regardless of size or business model		X	
The relevant legal provisions result in a consistent application of the public interest assessment across the EU		X	
The relevant legal provisions allow for a positive public interest assessment on the basis of a sufficiently broad range of potential impacts of the failure of an institution (e.g. regional impact)		X	
The relevant legal provisions allow for an assessment that sufficiently takes into account the possible systemic nature of a crisis		X	

Question 10.1 Please explain your answer to question 10

A first remark: BRRD Art 32(5) is not the origin of the problems members observe. Remedies should be discussed in context of BRRD Art 31(2) (Resolution Objectives).

Art 31(2) sets out the resolution objectives, and thus (via Art 32(5)) the criteria for the Public Interest Assessment in a fairly generalist way. The current wording (especially of Art 31(2)(b) leaves too much room for interpretation and therefore creates uncertainty. We also underline that in any case a plurality of national insolvency regimes may lead to different PIA outcomes especially for medium-sized banks, as also highlighted by the SRB in its publication on its PIA methodology. Additional uncertainty stems from a lack of predictability of PIA outcomes for medium sized banks.

Taken together these factors imply that for medium sized banks the crisis management framework might not be applied as intended - not only when it comes to the resolution vs liquidation decision itself, but also due to its implications for incentives to use DGS preventive measures. This would result in inefficient, costly and heterogeneous outcomes with serious economic and social impact – especially, if the existing instruments and regulations are not applied uniformly.

Following clear directives from the legislator, the CMDI legal framework has been designed to apply to all banks in the EU, regardless of their size, complexity, interconnectedness and business activities. It is therefore also suitable for small and

medium-sized banks. If a NRA comes to the conclusion that the PIA is negative for some medium-sized banks, although they are too large – or from a regional perspective too significant – for liquidation, the fundamental question arises as to whether the resolution authority is taking a too narrow approach in examining the PIA.

Whilst we are still waiting for the Commission’s in-depth analysis (see our response to Question 24) most EBF members consider that recalibrating the BRRD PIA approach would be a pragmatic and proportionate way to provide for a consistent and proportional application of the framework.

The BRRD PIA approach should be modified and become less restrictive. First, when assessing the outcome of a liquidation, a PIA should factor in the impact on regional economic and financial systems. Second, when assessing the cost of a liquidation, it should be clarified that NRAs should not plan in the use of state aid or DGS support for the counterfactual (i.e. liquidation) scenario even if those are available in the national insolvency toolbox. Yet, careful considerations have to be made to avoid unintended consequences, e.g. any amendments should not restrict a government to act in its capacity as a shareholder of public development credit institutions just like a private shareholder would.

In the Banking Union context this would imply that also banks of regional relevance are to be resolved by the SRB, for example using the sale-of-business tool and according to the principle of burden sharing.

We highlight that a wider scope for the PIA has to be accompanied by a) greater transparency and predictability of which banks would be resolved and which would be put into liquidation, and b) a corresponding emphasis on proportionality in terms of Mrel setting for medium-sized banks.

On transparency: the PIA is part of the resolution plan as updated by NRAs / the SRB on a yearly basis. NRAs / the SRB should be obliged to disclose their PIA assessment each year at a pre-determined date as part of their resolution planning cycle. Should as part of this process the PIA change from resolution to liquidation, this should be carefully communicated together with bank and the Mrel requirement should be adapted without delay. Also, the law should explicitly require the SRB/NRA to justify any deviation from their previous PIA assessment in the event of a resolution.

On proportionality for Mrel setting: with regard to banks with a negative anticipated PIA we believe that Mrel should be set according to the loss-absorption amount (see also our response to Question 25). For banks for which the PIA is anticipated to be positive, including due to their relevance in the regional context, Mrel should be set according to the preferred resolution strategy. Here we emphasise that for medium-sized banks the resolution strategy is likely to build on the use of transfer tools (e.g. the sale of business tool), which necessitates lower Mrel recapitalisation amounts than an open-bank-bail-in strategy.

One NBA believes that widening the scope of PIA is not the best way to overcome the uncertainties in crisis management of small and medium-sized banks. Taking stock of the FDIC experience, it sees merit in using national DGS to support the orderly liquidation of those banks which fail the PIA test, in order to avoid a disorderly liquidation scenario that would be costly (politically and in terms of value destruction) and disruptive to the regional economy.

FOLF triggers, Article 32b BRRD, triggers for resolution and insolvency (withdrawal of authorisation, alignment of triggers for resolution and insolvency)

Question 11. Do you consider that the existing legal provisions should be further amended to ensure better alignment between the conditions required to declare a bank FOLF and the triggers to initiate insolvency proceedings?

How can further alignment be pursued while preserving the necessary features of the insolvency proceedings available at national level?

Yes	X
No	
Don't know/ no opinion/ not relevant	

Question 11.1 Please explain your answer to question 11

We believe that the criteria for FOLF are in general fit for purpose. However, the triggers for national insolvency procedures for banks should be aligned with FOLF triggers in order to avoid "limbo situations" where banks with a negative PIA are declared FOLF but do not meet the insolvency criteria under national insolvency framework. Here, it should be kept in mind that FOLF includes the situation in which the bank is only "likely to fail", but not necessarily insolvent. This, as well as the further harmonisation of other aspects of national insolvency law for banks, requires intensive technical discussion, also with regard to possible constitutional requirements.

We also highlight that the articulation between the resolution measures and insolvency proceedings and their respective trigger events is unclear, which undermines legal certainty and predictability. Looking for example at the scenario of a Banking Union cross-border group being considered FOLF, the current lack of articulation could imply that the SRB and national courts do not take the same view on whether the conditions for resolution, and if applicable, national insolvency measures are met.

As a remedy we call for a targeted harmonization of insolvency laws/rules for banks in Europe for insolvency triggers following FOLF, which would need to be clear and unambiguous about the final moment when insolvency proceedings must be launched. This is necessary both to ensure a level-playing field and but also to avoid cross-border NCWO issues.

Question 12. Do you think that the definition of winding-up should be further clarified in order to ensure that banks that have been declared FOLF and were not subject to resolution exit the banking market in a reasonable timeframe?

Yes	X
No	
Don't know/ no opinion/ not relevant	

Question 12.1 Please explain your answer to question 12

Yes. The concept of "winding up" should ensure that failing banks would exit the market.

This is indeed a very important issue, and closely related to the previous question (11) on the alignment of the FOLF triggers (in resolution and insolvency). Both will allow to prevent "limbo" situations, and further enhance the transparency and predictability of the overall framework.

Question 13. Do you agree that the supervisor should be given the power to withdraw the licence in all FOLF cases?

Please explain whether this can improve the possibility of a bank effectively exiting the market within a short time frame, and whether further certainty is needed on the discretionary power of the competent authority to withdraw the authorisation of an institution in those conditions.

Yes	
No	X
Don't know/ no opinion/ not relevant	

Question 13.1 Please explain your answer to question 13

First, if a bank becomes a FOLF case and enters resolution, it would be counterproductive if the supervisor can withdraw its license, although we trust that the supervisor would not do this lightly.

Second, for FOLF banks that do not enter resolution but where national insolvency proceedings are not immediately launched, withdrawing their license would exacerbate the limbo situation and also increase overall uncertainty.

It is therefore important that liquidation should begin (almost) immediately after a FOLF decision and a negative PIA and that this would be followed by the withdrawal of license.

Question 14. Do you consider that, based on past cases of application, FOLF has been triggered on time, too early or too late?

On time	
Too early	
Too late	
Don't know/ no opinion/ not relevant	X

Question 14.1 Please explain your answer to question 14

Our response to question 11 signals already that the triggers for FOLF and for national insolvency proceedings need to be better aligned.

Under the status quo there remains the risk of a mismatch for FOLF considerations with regard to cross banking groups. I.e. the SRB might consider a bank FOLF, but national courts do not consider conditions are met for the launch of insolvency proceedings for parts of the group – or vice-versa.

Question 15. Do you consider that the current provisions ensure that the competent authorities can trigger FOLF sufficiently early in the process and have sufficient incentives to do so?

In other words, are the correct incentives for responsible authorities to trigger FOLF in place?

Yes	
No	
Don't know/ no opinion/ not relevant	X

Question 15.1: IF YES, please explain. IF NO, please elaborate on possible amendments / additions can be provided in the legislation to improved this

Question 11 signals already that the triggers for FOLF and for national insolvency proceedings need to be better aligned. If the conditions for national insolvency proceedings for banks are such that they are unlikely to be triggered by or coincide with a competent authority's FOLF decision, this may delay the decision that a bank has become a FOLF case.

In the context of cross border banks, such issues are likely to be even more pronounced.

Adequacy of available tools in resolution and insolvency

Question 16. Do you consider the set of tools available in resolution and insolvency (in your Member State) sufficient to cater for the potential failure of all banks?

Yes	
No	
Don't know/ no opinion/ not relevant	X

Question 16.1 Please explain your answer to question 16

N/A

Question 17. What further measures could be taken regarding the availability, effectiveness and fitness of tools in the framework?

	Agree	Disagree	Don't know / No opinion / not relevant
No additional tools are needed but the existing tools in the resolution framework should be improved	X		
Additional tools should be introduced in the EU resolution framework		X	
Additional harmonised tools should be introduced in the insolvency frameworks of all Member States	X		
Additional tools should be introduced in both resolution and insolvency frameworks of all Member States		X	

Question 17.1 Please explain your answer to question 17, specify what type of tool you would envisage and describe briefly its characteristics:

The resolution toolbox for banks with a positive public interest assessment appears very comprehensive. As mentioned earlier we have some concerns whether in an actual resolution scenario all tools can be used as envisaged, e.g. whether there is sufficient demand for the sale of business tool to be used, for example in a cross-border context.

The sale-of-business tool could benefit from a clarification on whether the acquirer inherits potential liabilities from the FOLF bank (regime for acquisition of banks in resolution). Depending on the direction of this clarification this would enhance the incentives for potential acquirers of (parts of) the bank under resolution. The implementation of the sale-of-business tool can also be held back by the aforementioned remaining obstacles to cross-border consolidation (see i.a. Q2).

Regarding the question of Member States' insolvency frameworks for the banking sector, we would see clear benefits in a targeted harmonization of some aspects. We would propose that the Commission first undertakes a fact-finding exercise to identify features of national frameworks that have performed well. Well-functioning national

frameworks should be used as benchmarks for harmonization. Different approaches across Member States can co-exist as long as the outcome allows for an efficient and loss-minimizing liquidation of FOLF banks in the event of a negative PIA assessment.

We would also call for a better alignment of supervisors' and resolution authorities' requests to banks. In particular, there still appears to be a slightly different focus on occasions between the ECB's normal BU supervisory activities (including the SREP assessment), recovery planning and the SRB-led re resolution planning. This can lead to:

(i) Duplication of information requests from each supervisor;
(ii) Information provided, e.g. the data provided to the SRB as part of the annual liability date tape process, being interpreted and applied differently; and
(iii) A preference to use the information to facilitate the SREP process rather than potential early intervention considerations.

Question 18. Would you see merit in introducing an orderly liquidation tool, i.e. the power to sell the business of a bank or parts of it, possibly with funding from the DGS under Article 11(6) DGSD, also in cases where there is no public interest in putting the bank in resolution?

Yes	
No	
Don't know/ no opinion/ not relevant	X

Question 18.1 Please explain your answer to question 18

The EU's crisis management framework and with it the second Pillar of the Banking Union are very sophisticated but the last years have demonstrated the need for some re-adjustments.

Some members have voiced concern that especially smaller and medium sized banks fall into a grey area where, in a FOLF scenario, resolution is prevented by a negative Public Impact Assessment but national insolvency / liquidation proceedings fall short of ensuring a smooth market exit.

We appreciate all efforts to identify solutions that would allow to address these shortcomings and ensure that the crisis management framework can be applied in a proportional and efficient manner to all banks. Based on the domestic context our members tend to have different perceptions on which concerns are most pressing and how they could be best addressed. That said, there is a convergence towards the following assessment:

- A targeted harmonization of national insolvency regimes is necessary to ensure that across Member States insolvency frameworks can be applied equally well to smaller and medium-sized banks. In this case harmonization should not put into question – but should be inspired by – insolvency and/or liquidation proceedings that have proven fit for purpose. Please also see our response to Question 17.
- The current restrictive approach to the PIA contributes to an uneven application of the resolution vs. liquidation decision and is a main cause behind the "limbo" situation in which medium sized banks can find themselves following a FOLF

situation (i.e. the bank is considered too small for resolution, but turns out to be too big / relevant for liquidation).

- Most members' preferred way forward is a readjustment of the PIA approach to also admit to resolution medium-sized banks that are, for example, of regional relevance (see our response to Question 10). This solution is perceived as more efficient and more proportional. It could streamline, eve promote, the application of the crisis management framework. Several members highlight these benefits - on the other hand, introducing a harmonized orderly liquidation tool raises concerns: it would add considerable complexity to an already highly complex framework and might disturb the level playing field amongst banks as well as the balance between the different measures and requirements.

One NBA believes that. Taking stock of the FDIC experience, it sees merit in using national DGS to support the orderly liquidation of those banks which fail the PIA test, in order to avoid a disorderly liquidation scenario that would be costly (politically and in terms of value destruction) and disruptive to the regional economy.

Resolution strategy

Question 19. Do the current legislative provisions provide an adequate framework and an adequate source of financing for resolution authorities to effectively implement a transfer strategy (i.e. sale of business or bridge bank) in resolution to small/medium sized banks with predominantly deposit-based funding that have a positive public interest assessment (PIA) implying that they should undergo resolution?

Yes	X
No	
Don't know/ no opinion/ not relevant	

Question 19.1 Please explain your answer to question 19

Regarding the question of resolution tools, we believe that the transfer tools already in place are sufficient and well understood and that they can be used also for smaller and medium sized banks. With regard to the PIA outcome, please see our response to Question 10 and note the divergence in views amongst our members.

Considering the Commission's implied concern that resolution financing may be an issue more generally for smaller and medium-sized deposit financed banks, we would first and foremost highlight the importance of the Commission undertaking a thorough quantitative analysis as referred to in our response to Question 24.

That said we point out that for all banks Mrel requirements should already be set according to the preferred resolution strategy. If the resolution strategy is realistic - and this is the responsibility of the NRA – Mrel should ensure the necessary degree of loss absorption and recapitalisation to support the implementation of the resolution strategy should the FOLF scenario arise. A less restrictive PIA approach (as encouraged in our response to question 10 – please note the diverging views amongst members) can facilitate resolution planning and hence Mrel setting for medium-sized banks.

We would also point out that under the current restrictive PIA criteria the scenario described by the Commission does not appear overly likely. Especially in the Eurozone

past decisions by the SRB indicate that the threshold for a positive PIA, and hence for resolution, is quite high, implying that even medium-sized banks which are not strongly interlinked with other parts of the financial system (e.g. because they are heavily deposit financed) may go into liquidation. We understand that not even all banks under the SRB's remit are earmarked for resolution, but that nevertheless the SRB is attentive to ensure that access to the SRF is possible.

We also would highlight that the PIA criteria need to be clarified and that national insolvency frameworks for banks should be harmonised in a targeted manner (see our response to Question 17)

Funding sources in resolution

Question 20. What are your views on the access conditions to funding sources in resolution?

	Agree	Disagree	Don't know / No opinion / not relevant
The access conditions in BRRD/SRMR to allow for the use of the RF/SRF are adequate and proportionate to ensure that resolution can apply to potentially any bank, while taking into account the resolution strategy applied	X		
There is merit in providing a clear distinction in the law between access conditions to the RF/SRF depending on whether its intervention is meant to absorb losses or to provide liquidity		X	
The access conditions provided for in BRRD/SRMR to allow the authorities to use the DGS funds in resolution are adequate and proportionate to ensure that resolution can apply to potentially any bank, while taking into account the resolution strategy applied	X		
The access conditions to funding in resolution should be modified for certain banks (smaller/medium sized, with certain business models characterised by prevalence of deposit funding) for more proportionality		X	
The DGS/EDIS funds should be available to be used in resolution independently from the use of the RF/SRF and under different conditions than those required to access RF/SRF. In particular, it		X	

	Agree	Disagree	Don't know / No opinion / not relevant
should be clarified that the use of DGS does not require a minimum bail-in of 8% of total liabilities including own funds			
Additional sources of funding should be enabled.		X	

Question 20.1 Please explain your answer to question 20

SRF / national RFs should remain dedicated to resolution funding and the access conditions are adequate, considering banks' compliance with their MREL requirements.

Access to RF/SRF:

Most EBF members are in favour of readjusting the PIA to also allow for the resolution of mid-sized banks that are of regional significance (see answers to Questions 10 and 19). That said, we would oppose the establishment of an ad-hoc resolution mechanism for medium-sized banks and also oppose a "special" access to national RFs or the SRF under very favourable conditions, i.e. without having to bail-in at least 8% of the total balance sheet (TLOF -Total Liabilities and Own Funds). The latter scenario would be inconsistent with the single rule book rule and the principle of "same activity, same risk, same rules".

Nevertheless, as most EBF members believe that more mid-sized banks should be in fact going into resolution, the conditions for accessing the SRF should be recalibrated across the board. The TLOF base of the 8% requirement should be further fine-tuned to ensure that banks have a buffer of MREL resources that is consistent with the leverage ratio exposure, considering they are two sides of the same coin. This means that TLOF should exclude, for example, central bank liabilities as the CRR quick-fix allowed the exclusion of central bank deposits in the leverage ratio exposure. Such an adjustment, potentially combined with an appropriate transition period, could be helpful to allow mid-sized banks, once captured by the resolution framework in the future, to access the Resolution Fund if need be – and do so under the same conditions as other eligible banks.

Finally, as an intervention by the SRF / national resolution fund would consume the resources of banking peers, the contributing banks should be able to benefit from a claw-back that would stem from the resolution fund intervention.

Regarding a special access regime for medium-sized or smaller banks with a prevalence of deposit funding:

As a matter of principle, we object to picking out a certain type of banking model for a privileged access to resolution funding. This sets the wrong signal, contradicts the level playing field and will aggravate Moral Hazard, if depositors at those banks would de facto have a special protection from bail-in, not because of any efforts made by the bank to provide a buffer, for example in terms of subordinated debt, but because policy makers "have decided so". We also recall that resolution funds, after all, are built with the contributions from the banking sector and that for that reason alone already access conditions should be the same for all banks.

Relationship between DGS/EDIS and RFs/SRF:

We believe that the two need to remain separate.

Additional sources of funding:

We recall the that current target level of the SRF envisaged for 2023 is already well above the EUR 55bn originally expected. We also point out that together with the ESM backstop these are considerable resources and that an additional capacity financed by the banking sector would be neither warranted nor proportionate.

That said the ongoing pandemic crisis showed that in an emergency the market does not initially provide any liquidity after an institution's resolution and that the amounts required are not insignificant. A facility that can provide liquidity in such cases is called for. USA and UK already have solutions in place. Not only in view of the amount of funds needed, a facility of this kind can only be operated by a public-sector entity. Who if not the public authority can have confidence in the European resolution regime and in its decisions? A facility operated by a public-sector entity of this kind would send out a strong signal that would strengthen general and market confidence in the effectiveness of the resolution regime and – for the euro area – in the Banking Union.

Sources of funding available in insolvency

Question 21. In view of past experience, do you consider that the future framework should promote further alignment in the conditions for accessing external funding in insolvency and in resolution?

Yes	X
No	
Don't know/ no opinion/ not relevant	

Question 21.1 Please explain your answer to question 21

We support efforts to further align the conditions for accessing external funding throughout the framework – i.e. especially for resolution and national insolvency proceedings (including liquidation).

Alignment of conditions does not necessarily imply that the conditions have to be strictly the same. What is important is that differentiation / degradation needs to be transparent, well understood including with regard to its wider implications, and motivated by a clear purpose. Overall what is needed is a coherent and clear approach spanning both the crisis management & deposit insurance framework as well as the state-aid guidelines.

A better aligned framework would not only prevent level playing field issues, it would also help to reduce uncertainties given that all parties will have (approximately) the same incentives. If the conditions to access external funding outside resolution are broadly the same / or at least well aligned across member states, this would prevent situations where banks that are similar would be treated differently (in terms of going through resolution or going through insolvency). Please see also our reflections on the Public Interest Assessment in our response to Question 10.

Governance and funding

Question 22. Do you consider that governance arrangements should be revised to allow further alignment with the nature of the funding source (national/supra-national)?

Yes	
No	X
Don't know/ no opinion/ not relevant	

Question 22.1 Please explain your answer to question 22

The governance arrangements in place already reflect a delicate balance of different perspectives and interests. Opening this in the next BRRD review may likely result in further complexity, whilst benefits remain unclear.

Question 23. Is there room to improve the articulation between the roles of SRB and national authorities when the DGS is used to finance the resolution of a bank in the SRB remit?

Yes	X
No	
Don't know/ no opinion/ not relevant	

Question 23.1 Please explain your answer to question 23

As per BRRD Art 109, national DGSs can be required to contribute to funding a resolution (subject to some restrictions and conditions). But it seems that there is little involvement of DGSs in the resolution process itself and that they could simply be asked to pay without much warning. It could be considered to provide better information to DGSs throughout the overall resolution process (e.g. via sharing information from resolution plans).

Ability to issue MREL and impact on the feasibility of the resolution strategy

Question 24. What are your views on the prospect of MREL compliance by all banks, including in the particular case of smaller/medium sized banks with traditional business models?

	Agree	Disagree	Don't know / No opinion / not relevant
While issuing MREL-eligible instruments remains a priority, certain banks may not be capable of closing the shortfall sustainably for lack of market access			X

	Agree	Disagree	Don't know / No opinion / not relevant
Possible adverse market and economic circumstances can also affect the issuance capacity of certain banks.	X		
Transitional periods could be a tool to deal with MREL shortfalls, resolution authorities could consider prolonging these under the current framework.	X		

Question 24.1 Please explain your answer to question 24

DG FISMA is voicing concerns that raising Mrel is a challenge for smaller and medium sized banks more generally and especially when deposits are their predominant source of financing. EBF welcomes that the Commission will run an in-depth analysis to verify whether and to what extent this is indeed a challenge common to medium sized and smaller banks, which – should this problem be confirmed - we hope will also shed more light on appropriate solutions.

Views within our membership reflect different experiences and observations. Some members highlight that according to market data and/or their own medium-sized members' experience access to subordinate debt markets is neither particularly difficult nor disproportionately costly for medium-sized and even smaller banks. They also note that Mrel requirements can also be met on an Own Funds basis (e.g. by retained earnings). Other members, including from outside the Banking Union, report that within their membership complying with Mrel is indeed costly. In these cases important factors include the degree of development of domestic markets for financial instruments, a bank's size and status as listed versus non-listed company, the cost of obtaining credit ratings, and increased deposit taking as an inheritance of the financial and sovereign debt crisis.

Given the diversity of the European banking markets and different perspectives on the question at hand, conclusions need to be drawn carefully and unfounded generalisations should be avoided.

We welcome that the Commission will undertake an in-depth analysis of the matter, covering a close look at market data on issuances as well as individual banks' Mrel requirements. We encourage the Commission to include the following questions:

- Do both "medium-sized" and "smaller" banks tend to experience the same issues?
- Members' experience suggests that reliance on deposit taking per se does not impede on a bank's ability to raise Mrel. Are any of the following factors more relevant: size; listed vs. non-listed status; asset quality on balance sheets?
- How do TLOF and RWA compare for medium-sized banks – are there any clear patterns that would also impact on Mrel and access to resolution funds?
- Is the issue aggravated by Mrel levels being set relatively high by NRAs because the NRA itself is not confident about the outcome of the PIA test or because it has doubts whether national insolvency procedures are fit to deal with bank liquidation? The Commission is uniquely placed to have these conversations with NRAs across Europe and can thus assess whether for smaller banks high Mrel requirements are actually a consequence of wider problems that should be addressed?

- How important is the development of domestic markets for financial instruments and can the subordinate-debt challenge for parts of the national banking sector be solved by progress in building the EU Capital Markets Union?

The importance of a granular and thorough analysis cannot be overestimated. The EU crisis management framework is already very complex and carefully balanced. Any changes may have wider implications on funding costs for all types of banks, investor confidence, Moral Hazard and the level playing field for competition. Forthcoming amendments should be fully justified based on the Commission's analysis, proportional vis-à-vis the actual problems identified and well-tailored in order for improvements to be effective without creating undesired side-effects.

It should be especially assessed whether intrusive and potentially unbalancing changes of the framework are even warranted or whether simpler solutions would also be effective. In this context some members suggest looking into a) whether longer transition periods for meeting Mrel would be effective; or b) how Mrel reflects a bank's risk profile.

Concerning Mrel compliance by ALL banks, we would point out as highly problematic the current definition of "subordinated eligible instruments" in BRRD Art 2(1)(71b) for banks that have MREL instruments that are structurally subordinated. A restrictive reading of this definition means that senior HoldCo instruments, which are issued from the (mixed) financial holding company of a banking group and hence are structurally subordinated, would no longer be eligible as "subordinated MREL liabilities". It would also imply that CRR Art 72b(4), which considers a holding company with less than 5% liabilities which are excluded for bail-in but rank pari-passu or junior to the MREL eligible liabilities instruments, would become useless for MREL purposes and goes against the intention of the BRRD2. This may also create an unlevel playing field between contractual (issuance from OpCo) and structural subordination (issuance from HoldCo) and would create a discrepancy with TLAC.

Question 25. In case of failure of banks, which may lack sufficient amounts of subordinate debt (see question above) and/or would not meet the PIA criteria, what are your views on possible adjustments to the MREL requirements?

	Agree	Disagree	Don't know / No opinion / not relevant
MREL adjustments for resolution strategies other than bail-in can help in this context		X	
Rules defining how the MREL is set for banks likely not to meet the PIA criteria should be clarified.	X		
In any case, for all banks, an adequate burden sharing by existing shareholders and creditors should be ensured	X		

Question 25.1 Please explain your answer to question 25

We believe that the write-down and conversion of capital instruments and the bail-in instrument are key elements for any resolution strategy. The importance of burden sharing has been one key lesson of the financial crisis. From a level playing-field perspective as well as from a Moral Hazard point of view it would be inconceivable to exempt from bail-in and loss sharing the creditors and shareholders for any given subset of the sector.

That said, NRAs already tailor (or should tailor) banks' individual Mrel levels to whether in a FOLF event they are expected to be liquidated or to enter into resolution. For banks that are destined for resolution, NRAs should in any case already set Mrel levels according to the individual resolution strategy. The SRB for instance foresees Mrel adjustments for resolution strategies other than bail-in – e.g., the recapitalization requirement is lower if the resolution strategy includes transfer of assets. It would be beneficial also from a level playing field perspective if this approach was shared also by NRAs within and outside the Banking Union.

Since the question whether a bank will be liquidated or resolved has a significant impact on Mrel levels, we see issues for banks whose NRA cannot clearly anticipate the PIA outcome. In this context the widened scope and reorientation of the PIA (see our answer to Question 10 noting the divergence in members' views) together with greater transparency should provide assurance to NRAs allowing that Mrel is set in a more targeted and proportionate manner for those banks that, on the basis of the revised PIA, would still be destined for liquidation.

For banks that would be liquidated instead of resolved, according to the CMDI framework there is no need for Mrel to include a recapitalisation amount. I.e. the focus should be on loss absorption. In this it is of course very relevant that NRAs are confident that the national insolvency regimes allow for a smooth liquidation of such banks.

In this context we would refer to our response to question 17 where we highlight the need for a targeted harmonisation of national bank insolvency regimes. In our view this would – irrespectively of the outcome of any in-depth analysis as requested in our response to question 24 – remedy some of the concerns mentioned by the Commission especially for smaller banks. As a positive side-effect it would likely lead to more proportionality and greater comparability of Mrel levels for smaller banks.

Treatment of retail clients under the bail-in tool

Question 26. What are your views on the policy regarding retail clients' protection?

	Agree	Disagree	Don't know / No opinion / not relevant
The current protection for retail clients (MiFID II and BRRD II) is sufficient in the resolution framework, both at the stage of resolution planning and during the implementation of resolution action	X		
Additional powers should be explicitly given to resolution authorities allowing them to		X	

	Agree	Disagree	Don't know / No opinion / not relevant
safeguard retail clients from bearing losses in resolution			
Additional protection to retail clients should be introduced directly in the law (e.g., statutory exclusion from bail-in).		X	
Introducing additional measures limiting the sale of bail-inable instruments to retail clients or protecting them from bearing losses in resolution may have a substantial impact on the funding capacity of certain banks.	X		

Question 26.1 Please explain your answer to question 26

We find that the protection of retail investors as provided for by BRRD II and MiFID II is more than adequate. No other type of financial instrument faces such a level of detailed restrictions as Mrel-eligible debt; not even junk bonds or other speculative instruments where mis-selling also can be an issue. For Mrel-eligible instruments not covered by the minimum-denomination rule, in any case MiFID rules apply and are enforceable.

If concerns arise due to how MiFID II has been transposed into national law, this should be addressed – however the BRRD is not the right vehicle.

In any case the responsibility for protecting investors already lies with ESMA and NCAs. Duplication should be avoided and NRAs and the SRB should remain focused on resolution preparation and execution. We also would like to highlight that an excessive concentration of retail investors at any given bank can already be addressed via resolution authorities' powers.

Question 27. Do you consider that Article 44a BRRD should be amended and simplified so as to provide only for one single rule on the minimum denomination amount, to facilitate its implementation on a cross-border basis?

Yes	X
No	
Don't know/ no opinion/ not relevant	

Question 27.1 Please explain your answer to question 27

Further harmonisation may be beneficial, both from a level playing field perspective and in order to avoid a fragmentation of capital markets. We believe that the degree of investor protection should be the same across the EU, also given the shared goal of a functioning CMU.

We would also stress that greater harmonisation should not lead to even stricter rules. Here we are concerned that some Member States are already applying a higher minimum denomination amount and about the dynamics this may create.

We also would encourage a simplification of the requirements set out in BRRD Art 44a, as simpler rules would facilitate cross-border implementation. In particular we point out that Art 44a (2)–(4) sets out procedures and criteria other than those already established by MiFID2 with regard to both suitability and product governance and that the MiFID 2 provisions already have proven effective in the protection of retail investors.

BRRD Art 44a could thus be amended with a clear reference to MiFID 2 and focus largely on the minimum denomination amount.

Question 28. Do you agree that the scope of the rule on the minimum denomination amount to other subordinated instruments than subordinated eligible liabilities (e.g. own funds instruments) and/or other MREL eligible liabilities (senior eligible liabilities) should be extended?

Yes	
No	X
Don't know/ no opinion/ not relevant	

Question 28.1 Please explain your answer to question 28

We believe an extension would be ill-advised. First, retail investors are already protected by MiFID II.

Second, extending the scope of the minimum denomination amount will make it harder for banks to raise capital.

Tier2 instruments, for example, are a very simply designed product that has been established as an investment product with private customers for many years and whose functionality and risk content as (supplementary) capital is fully transparent in the course of the existing disclosure obligations under MiFID II.

Another argument against extending the scope of application of Art. 44a BRRD to include Tier2 supplementary capital, for example, is that this will gain in importance in the context of a changed Pillar 2 supervisory practice (SREP / capital requirement for target capital ratio). The introduction of a minimum denomination of EUR 50,000 would therefore exclude a significant proportion of current small investors without any factual necessity, since the Tier2 market segment traditionally includes both institutional and private investors. An extension would also not be appropriate with regard to the Write Down and Conversion of Capital Instruments, which, for example, also includes shares for which no minimum denomination is required.

Even a minimum denomination for subordinated papers that goes beyond the specific formulation of Art. 44a BRRD would not be expedient. While the design of eligible liabilities in the banking industry is a specific feature, classic subordinated instruments are a product class that is comparable to subordinated instruments of companies in the real economy. The necessary protection for retail investors has already been achieved through appropriate documentation. These obligations apply to subordinated instruments of all issuers, regardless of the sector they belong to. It is therefore neither

necessary nor appropriate to put credit institutions at a disadvantage in terms of raising capital in contrast to other market sectors by expanding the scope of application.

B. Level of harmonisation of creditor hierarchy in the EU and impact on NCWO

Question 29. Do you consider that the differences in the bank creditor hierarchy across the EU complicate the application of resolution action, particularly on a cross-border basis?

Yes	
No	
Don't know/ no opinion/ not relevant	X

Question 29.1 Please explain your answer to question 29

Our sector is fully aware that for banks in some markets, national approaches to the creditor hierarchy (including more recent initiatives) have impacted on funding costs and thus create level playing field concerns. We also understand that the remaining national differences in the creditor hierarchy can give rise to complications in a resolution scenario.

We understand that the Commission is considering a targeted harmonisation of the creditor hierarchy.

Maintaining the current situation implies a persisting uneven level playing field where national initiatives have already taken place, which is a very critical point for some members. Yet, we highlight that any changes have to be very carefully weighed given their wider implications. Depending on the approach chosen by EU law makers, re-opening the creditor hierarchy could lead to considerable costs for banks on a going concern day-to-day basis and expose DGS to greater losses. In our view these costs would greatly outweigh possible benefits for resolution authorities and certain groups of depositors (and possibly politicians), which moreover, materialise only in resolution and insolvency/liquidation scenarios – i.e. very rarely.

First, on the discussion whether to dilute the privileged rank of covered deposits: We believe this idea is misguided and highly problematic. We are very concerned by all considerations to put on a pari-passu basis DGS covered deposits and non-covered retail and SME deposits, or – even worse – to treat all deposits on the same basis which would then also include deposits by corporates. We firmly stress that the superseniority of covered deposits should not be questioned:

- DGS need to be protected against losses to the greatest extent possible. Putting the superseniority of DGS into question would a) increase possible costs to other banks (i.e. contributions to refill the DGS fund) and b) undermine the wider acceptance of a possible hybrid EDIS – as its purpose is to increase the confidence and protection of covered depositors, not to de facto subsidise a lack of "skin in the game" of other depositors, even including larger corporates.
- Treating corporate deposits on a pari-passu basis with covered deposits and retail deposits, would be highly problematic. Not only would it expose DGS to

potentially significant losses, it would also be detrimental for banks' ability to issue Mrel eligible liabilities. The very principle of loss sharing by creditors would become meaningless, whilst banks' funding and Mrel compliance costs would increase significantly.

- With regard to a possible pari-passu treatment of covered and non-covered retail and SME deposits, in a resolution or insolvency scenario it HAS to make a difference whether depositor funds are covered by a DGS or not. Putting all retail deposits on the same level in the creditor hierarchy would give rise to major Moral Hazard effects as depositors may feel that due diligence and fiduciary duties are no longer relevant – instead their decisions would be directed purely by prospects of higher returns (examples abound, dating back to the run-up to the financial crisis but also to the much more recent past). The impact of such dynamics on financial stability can be significant.
- We understand that the superseniority of DGS covered deposits and of DGS themselves can limit the use of DGS for preventive and/or alternative measures. As highlighted in our response to Question 9, we believe DG FISMA / EBA should assess this concern and address it via greater clarity on the considerations to be taken into account in the Least Cost Test.

That said, we would welcome further clarification on the treatment of retail & SME depositors in an actual bail-in scenario. Specific additional qualitative and quantitative guidance would be helpful as to when non-covered deposits are likely to be excluded from bail in (BRRD Art 44(3)(d)) to supplement the limited general guidance provided in the Single Resolution Mechanism, the SRB operational guidance on bail in playbooks and Arts 5-9 of Commission Delegated Regulation (EU) 2016/860 on discretionary exclusion from bail.

Second, on considerations to introduce a general depositor preference that would maintain the current tiered approach but imply that deposits by corporates would rank senior to bonds and other financial instruments: We are very concerned that this will have unintended consequences. More volatile corporate deposits will likely replace short- and medium-term notes and bonds. Bond ratings also may be affected. This has clear implications for banks' liquidity management and funding costs, not to mention the greater costs related to issuing Mrel eligible debt instruments.

We also stress that the Commission has voiced concern that deposit financed medium-sized banks struggle issuing subordinated debt instruments for Mrel purposes. In this light, extending depositor preference to corporate deposits is clearly counterproductive.

Question 30. Please rate, from 1 (lowest) to 10 (highest), the importance of the following actions:

	1	2	3	4	5	6	7	8	9	10
Granting of statutory preference to deposits currently not covered by Article 108(1) BRRD	X									
Introduction of a single-tiered ranking for all deposits	X									
Requiring preferred deposits to rank below all other preferred claims			X							

Granting of statutory preference in insolvency for liabilities excluded from bail-in under Article 44(2) BRRD Resolution		X								

C. Depositor insurance

Enhancing depositor protection in the EU

Question 31. Do you consider that there are any major issues relating to the depositor protection that would require clarification of the current rules and/or policy response?

Yes	
No	X
Don’t know/ no opinion/ not relevant	

Question 31.1 Please explain your answer to question 31

The EBA review did not reveal any major issues or dysfunctionalities. Also members’ practical experience does not indicate that there are major issues that need to be addressed.

However, two remarks:

- We maintain that the superseniority of preferred deposits in their current form should be secured.
- The option to use preventive and alternative measures for DGS should be retained. The conditions for preventive and alternative use of DGS need to be clarified and aligned with the EU crisis management and state aid frameworks (see our responses to Part 2A)

Question 32. Which of the following statements regarding the scope of depositor protection in the future framework would you support?

\	Agree	Disagree	Don’t know / No opinion / not relevant
The standard protection of EUR 100 000 per depositor, per bank across the EU is sufficient.	X		
The identified differences in the level of protection between Member States should be reduced, while taking into account national specificities.	X		
Deposits of public and local authorities should also be protected by the DGS.		X	

\	Agree	Disagree	Don’t know / No opinion / not relevant
Client funds of e-money institutions, payment institutions and investment firms deposited in credit institutions should be protected by a DGS in all Member States to preserve clients’ confidence and contribute to the developments in innovative financial services		X	

Question 32.1 Please explain your answer to question 32

Adding additional groups of covered depositors is a) not considered necessary and b) would create substantial additional costs to our sector. In fact it would significantly increase the target levels of national DGS without substantial benefits from a financial stability perspective and even impact the size of the Single Resolution Fund as its target level is based on covered deposits. On the other hand, the resulting increase in contributions by banks would be significant and compete with necessary and meaning-full investments in bank resilience and innovation.

We would like to add that from a more practical perspective, enhancing the DGS scope to certain types of authorities or the other institutions referred to in the questions would complicate the demarcation of exceptions. Moreover, we strongly question whether public and local authorities merit DGS protection also given their capacity to make informed decisions.

Considering the last question, in several Member States clients’ money which is deposited legally in a credit institution (under the relevant trigger) is protected by a DGS. However, if clients’ money has not been deposited in a credit institution it should not be protected by DGS. Here we point out that clients of e-money / payments institutions or investment firms are probably already protected in the case where those institutions use open trust accounts to deposit clients’ money at a credit institution. If that is not the case, an unequivocal identification of the depositors/ allocation of deposits might not be possible, and therefore inclusion in the scope could facilitate fraud. With regard to client funds at investment firms we also highlight that their inclusion into DGS would be highly problematic from a financial stability perspective considering their magnitude and possible contagion risks.

We oppose the inclusion into the DGS scope of client funds at e-money and payments institutions. However, if the Commission was to decide a move in this direction, this would necessitate as a first step a definition as to what e-money comprises and if and how it should be protected and require other regulatory adjustments. For example it would follow logically that for the purposes of the CRR LCR deposits of e-money and payments institutions would be reclassified as retail deposits. They should also be subject to withdrawal patterns that would limit the potential strain on DGS. Furthermore, additional prudential and supervisory requirements should be applied to payment/e-money institutions that achieve a systemic dimension as a failure of such an entity may single-handedly compromise the resilience of the entire DGS.

We also point out that DGS coverage is not the only way to safeguard client funds of e-money institutions, payment institutions or investment firms. An in our view preferable solution would be to place a right of separation on these funds in insolvency so that this amount will not count to the basket of insolvency claims, is not at creditor risk and could

be easily transferred to another bank, without, however, impeding on the superseniority of covered deposits.

A final reflection is that e-money and payment institutions are neither structured, regulated and supervised as providers of deposits, nor are the nature of the client funds held in these institutions as stable as deposit funds. Consequently, including these funds under bank Deposit Guarantee Schemes would reduce the robustness of the whole system. In this context we point out that the ECB has stated that it will impose balance limits on the euro CBDC holdings of retail clients to guarantee banks´ intermediation function and financial stability.

We point out that if the European Commission's main purpose is to increase consumer protection, the key would be to increase consumer awareness of the implications of their choices. I.e. e-money and payment institutions should be required to:

- provide better information to customers;
- be subject to strengthened prudential operational requirements as well as to enhanced supervision and enforcement to prevent the risk of failure of such institutions;
- be subject to diversification requirements as regards the safeguarding mechanism to be used especially for significant e-money issuers;
- limit the maximum timespan money can be placed in such accounts.

EBF will provide further input in the context of the Commission's Call for Advice on Digital Finance.

Keeping depositors informed

Question 33. Which of the following statements regarding the regular information about the protection of deposits do you consider appropriate?

	Agree	Disagree	Don't know / No opinion / not relevant
It is useful for depositors to receive information about the conditions of the protection of their deposits every year.			X
It would be even more useful to regularly inform depositors when part of or all of their deposits are not covered.		X	
The current rules on depositor information are sufficient for depositors to make informed decisions about their deposits.	X		
It is costly to mail such information, when electronic means of communication are available.	X		
Digital communication could improve the information available to depositors and help them	X		

	Agree	Disagree	Don't know / No opinion / not relevant
understand the risks related to their deposits.			

Question 33.1 Please elaborate on any of the statements in question 33, including any supporting documentation (where available) or ideas to improve the information disclosure, or add other suggestions concerning the depositor information in the future framework

We would like to highlight that depositor information about conditions of deposit protection is indeed useful, provided the right type of information is provided to the right recipient at the right time in the appropriate format. However, members' experience has shown that mailing the annual depositor information sheet is – while costly to banks – not the kind of information that is understandable and useful to depositors; it might even trigger uncertainty instead of confidence. We would therefore encourage the Commission to consider more efficient ways and formats of communication.

A possible way to organise the information of depositors could be as follows:

The starting point would be a formal way of information and acknowledgement with a much better depositor information template (DIT) during the contracting phase with a bank. Subsequently active provision of information should be restricted to whenever there are relevant changes to the status of coverage of deposits instead of annual depositor information.

In general, depositor protection information should not just take the form of "yet another letter". It should be available regardless of time and place. Digital media (website, online banking, social media etc.) are preferred platforms for placing such information. We also highlight that the use of digital communication and electronic means of communication can help reduce costs and should be unequivocally allowed to provide this information to depositors, considering their growing importance in daily life and the related cost savings. The hitherto practiced annual letter dispatch is not considered suitable and might even run counter to the original objective of enhancing confidence – in fact many customers wrongly perceive their bank actively sending this information as a hint that their bank may be in financial difficulties.

Moreover depositors should know where they can obtain such information through different measures provided by banks. Possibilities could include a) note in the bank account statement and sent periodically with a reference/link to its website/online banking; b) reference in the online/mobile banking platform; c) Information material for public or specific audiences.

Regarding the type of information we suggest that:

- Pertinent and meaningful information on the scope of protection should enable depositors to make informed decisions to adequately manage their risks related to deposits, when they are required;
- Depositor protection information - even the DIT - should be available in a language understandable for people with an average education and those not interested in financial matters;
- The DIT should contain a clear reference to the DGS but also to the bank providing it to the customer including contact details of the bank.

Making depositor protection more robust, including via the creation of a common deposit insurance scheme in the banking union

Question 34. In terms of financing, does the current depositor protection framework achieve the objective of ensuring financial stability and depositor confidence, and is it appropriate in terms of cost-benefit for the national banking sectors?

	Agree	Disagree	Don't know / No opinion / not relevant
The current depositor framework achieves the objective of ensuring financial stability and depositor confidence	X		
The cost of financing of the DGS up to the current target level of 0.8 % of covered deposits is proportionate, taking into account the objective to ensure robust and credible depositor insurance.	X		
A target level in a Member State could be adapted to the level of risk of its banking system.			X

Question 34.1 Please elaborate any of the statements in question 34, including any supporting documentation (where available), or add other suggestions concerning the financing of the DGS in the future framework.

First we take the view that the existing DGS framework already protects depositors and provides for depositor confidence and financial stability. A well designed and well balanced Third Pillar of the Banking Union can further enhance confidence and also financial stability.

Regarding the DGS target level, the provisions set out in DGSD Art 10 are appropriate.

We highlight that increasing target levels would raise costs significantly without any clear benefits in terms of depositor protection and financial stability.

In the last question, we would like to point out that it is not clear what the Commission means with "risk". In any case, we would strongly oppose a system where risks measured for national banking sectors (e.g. in terms of NPLs etc.) would translate into higher national target levels in terms of covered deposits, beyond the ones set in DGSD Art 10.

Question 35. Should any of the following provisions of the current framework be amended?

	Agree	Disagree	Don't know / No opinion / not relevant
Financing of the DGS (Article 10 DGSD)		X	
The DGS's strategy for investing their financial means (Article 10 DGSD).	X		
The sequence of use of the different funding sources of a DGS (available financial means, extraordinary contributions, alternative funding arrangements) (Article 11 DGSD)	X		
The transfer of contributions in case a bank changes its affiliation to a DGS (Article 11 DGSD)	X		

IF YES on any answers above, please explain how this/these provision(s) should be amended:

Financing of the DGS:

Our members call for greater transparency. The DGSD should provide that national authorities communicate annual contributions to banks in a more transparent manner. First, national authorities should calculate the risk profile of each bank in a transparent way. Second, whilst unexpected events can lead to increases in the contributions by banks, we nevertheless find that national authorities should be required to give more information on those increases and the underlying factors. As contributions are a significant cost factor, national authorities should be required to indicate to the extent possible events that will trigger an increase in upcoming contributions. We would like to highlight that any deviation would have a direct cost in the Profit and Loss account.

Whilst it is important that DGS can reconstitute their funds in a timely manner, it is nevertheless necessary to ensure that they do not so in a way that endangers the soundness of their member banks and might thus destabilize the national or even European financial system. Accordingly, we would favour limits to the annual contributions DGS can require from banks.

Irrevocable Payments Commitments:

We would call for greater flexibility for the use of IPCs in the sequencing of funding sources. In order to improve the level playing field across Member States, such greater flexibility could be extended via harmonization.

DGFs' investment strategies:

We are concerned that the current provisions are too restrictive - in the current market situation this policy destroys client money to the extent that banking fees for retail clients will increase to finance the investment loss of bank contributions to a DGF.

Against this backdrop the Commission should analyse the merits of opening the investment universe for a DGF to other categories of financial instruments (increased flexibility to adjust an investment policy based on the current market situation, better diversification of the portfolio).

Transfer of contributions due to changes in affiliation:

Based on Brexit-related experience we see a need to increase the amount of premia transferred upon a change in affiliation (12 months are not sufficient). We would call for further analysis as to the appropriate amount to be transferred.

Question 35.1 Please elaborate any of the statements in question 35, including any supporting documentation (where available), or add other suggestions concerning the financing of the DGS in the future framework.

The deposit guarantee system should be a tool to give confidence to depositors that their deposits are protected and that they will be able to access their deposits at all times without long interruption. The focus should be to secure this objective. This means that it should be ensured that deposits remain protected and that depositors retain access to their deposits, and that the public has confidence in this. National DGSs, after reaching their target level as set out by the DGSD, should be enough for the purposes of depositor protection.

It should thus be made sure that losses to DGS are avoided or at least minimized. To achieve this, bank insolvency procedures should be started so early and carried out so efficiently that the economic value of banks' balance sheets is preserved. Preservation of value is necessary at least to the extent that costs to the DGS stemming from paying out depositors can be recuperated in full.

It should not be the case, except perhaps in clearly stated extraordinary situations, that banks' contributions to DGS continue after the target level is reached. The main rule should be that the system is built in a way which makes sure that DGS can handle payments to depositors without resorting to funding of the members of the DGS. This is necessary to avoid unintended spill-over effects of limited bank failures to the whole banking system which could trigger a systemic shock.

Question 36. Which of the following statements regarding EDIS do you support?

	Agree	Disagree	Don't know / No opinion / not relevant
It is preferable to maintain the national protection of deposits, even if this means that national budgets, and taxpayers, are exposed to financial risks in case of bank failure and may create obstacles to cross-border activity.			X
From the depositors' perspective, a common scheme, in addition to the national DGSs, is essential for the protection of deposits and financial stability in the euro area.			X
From the credit institutions' perspective, a common scheme is more cost-effective than the current national DGSs if the pooling effects			X

	Agree	Disagree	Don't know / No opinion / not relevant
of the increased firepower are exploited.			
From the perspective of the EU single market, EDIS could exceptionally be used in the non-banking union Member States as an extraordinary lending facility in circumstances such as systemic crises and if justified for financial stability reasons.		X	

Question 36.1 Please elaborate any of the statements in question 36, including any supporting documentation (where available), or add other suggestions on how to achieve the objective of financial stability in the European Union and the integrity of the single market:

On the question whether it would be preferable to maintain the national protection of deposits we would argue that the question itself is somewhat unclear.

Several members believe it is premature to discuss whether the national protection of deposits should be abolished. We point out that national DGS have played a longstanding important role in safeguarding financial stability and protecting depositors. Several members emphasize that national DGS should remain an important cornerstone of the financial safety net and that to discuss whether national protection of deposits should be abolished misses the target. We also recall that the DGSD already obliges national DGSs to cooperate in cross-border payouts in order to ensure that depositors have at all times a competent point of contact to communicate with in their own language in a cross-border payout case – this will remain a crucial task of national DGS to ensure depositor confidence. Also "maintaining" national protection of deposits does not exclude putting in place a mechanism where national DGS provide each other with liquidity in case of need. On this, please see our response to question 37.

Other members believe that if national protection schemes remain in place, the sovereign-bank loop will also persist.

On the question whether for depositors a common scheme is "essential" we would argue that this formulation is likely to be perceived as overly polarising and at the same time rather unspecific (the features of the "common mechanism" are after all left undefined). Taking the question at face value, we find it very difficult to answer – stating that an undefined mechanism is "essential" for financial stability in the euro-area is unnecessarily dramatic and also belittles the regulatory and supervisory efforts undertaken since the 2007 financial crisis. That said, we appreciate that a well calibrated and fair mechanism for mutual lending in case of need would be beneficial for financial stability and, if well communicated and subject to sufficient safeguards, it can also further increase depositor confidence.

Regarding the question of cost-effectiveness, we remain agnostic, since it is difficult to reach a verdict without knowing further details.

We would object to using EDIS for the support of DGSs in non-Banking Union Member States. If other member states wish to join the Banking Union they can do so.

Question 37. In relation to a possible design of EDIS, which of the following statements do you support?

	Agree	Disagree	Don't know / No opinion / not relevant
As a first step, a common scheme provides only liquidity support subject to the agreed limits to increase a mutual trust among Member States.	X		
At least a part of the funds available in national DGSs is progressively transferred to a central fund.			X
If the central fund is depleted, all banks within the banking union contribute to its replenishment over a certain period.		X	
Loss coverage is an essential part of a common scheme, at least in the long term.			X

Question 37.1 Please elaborate on any of the statements in question 37, including any supporting documentation, or add suggestions concerning a possible design, including benefits and disadvantages as well as potential costs thereof:

We agree that in the context of a common scheme, providing liquidity support subject to agreed limits could be a first step. That said, EBF members' views differ in how far an EDIS (or even a hybrid EDIS) is desirable and/or necessary. One view held across our membership, however, is that the common mechanism should not be more costly for banks than the status-quo.

Regarding the need for a Central Fund, views in our membership remain divided whether such a fund is necessary and should be included in the lending mechanism. Without the central fund, the envisaged model would resemble a European Deposit Re-insurance Scheme / Single Deposit Re-financing Scheme which appears more acceptable (although not necessarily desirable) to some members. That said, other members consider the central fund to be an essential element of a hybrid EDIS and would actually have preferred an even further reaching model as a first step.

In the interest of reaching a broader consensus, at the current stage it is too early to consider the question of loss-sharing, which is suggested, but not clearly spelled out in the third question above. Even a system limited to liquidity support would have to have as a central feature that DGSs that receive liquidity support have to reimburse the fund as early as feasible, even before rebuilding their own fund.

Considering whether loss coverage should be envisaged in the long term, members' preferences differ. Several members share an understanding that any such a project needs to be evaluated based on the experience made with the liquidity support scheme. Setting a commitment towards a future loss sharing mechanism in stone already now would be premature and would contradict the principle of proportionality. Others believe that without a fully mutualised EDIS covering losses, the sovereign-bank loop cannot be broken.

We believe in the need of an objective and constructive debate on EDIS as liquidity support at this stage. Several members are concerned that any automaticity with regard to the further evolution of EDIS would make such a debate very difficult. Some members believe a clearer path towards completing EDIS is needed.

Moreover, members highlight that across the overall evolution of the Banking Union a full implementation of the Third Pillar (i.e. loss sharing) should be conditional on the Banking Union being recognised as a single jurisdiction also for prudential purposes, which would entail significant progress to be made in the First Pillar and notably with regard to home/host issues.

Question 38. Which of the following statements regarding the possible features of EDIS do you support?

	Agree	Disagree	Don't know / No opinion / not relevant
Setting a limit (cap) on the liquidity support from the central fund is appropriate to prevent the first mover advantage.	X		
Any bank that is currently a member of a national DGS is also part of the common scheme.	X		
The central fund should be allocated 50% or more and the national DGS 50% or less of the total resources.			X
Appropriate governance rules and interest rates provide the right incentive for the repayment of the liquidity support, while taking into account their procyclical impact.	X		
The central fund also covers the options and national discretions currently applicable in the Member States.		X	
A common scheme provides for a transitional period from liquidity support towards the loss coverage with a view to breaking the sovereign-bank nexus.			X

Question 38.1 Please elaborate on any of the statements in question 38, including any supporting documentation, or add suggestions concerning possible features of such a common scheme:

As indicated members differ on whether a central fund is appropriate or necessary at this stage. That said, if a central fund is put in place, caps on liquidity support would be necessary to avoid the first-mover advantage as well as to protect national DGS and national banking sectors against a crisis spilling from one national sector the others. For this reason, the maximum lending by individual DGS should also be capped. This would

also have the advantage of preserving depositors' confidence that 'their' DGS is not over-exposed to lending risks vis-a-vis other DGSs.

A common scheme should only benefit credit institutions that are members of a National or Dedicated Deposit Guarantee Scheme as defined in Directive 2014/49/UE, subject to the supervisory (CRR & CRD) and resolution (BRRD & SRMR) European legislative frameworks. In addition, all aforementioned credit institutions should be included within the scope of this common scheme – any possibility to op-out (e.g. for IPS) would weaken the firepower of the common scheme, lead to level playing field concerns, confuse depositors and also imply a persistence of the sovereign–bank loop.

As members' views differ on the need for a central fund, we cannot make a statement on the allocation of resources.

Appropriate governance rules and interest rates are very important. Also very important is that the DGS receiving liquidity support has to repay this support as soon as feasible and before rebuilding the domestic fund. A clear indication of maximum repayment periods would be welcomed.

Based on the current state of regulation as per DGSD, BRRD and EU state aid rules, we take the view that the common liquidity provision mechanism should not cover ONDs such as DGS preventive measures or alternative measures. It should be limited to covering the statutory responsibilities of DGS as per DGSD Art 11 (1) and (2). We also would call for safeguards to ensure that liquidity support does not become necessary because a DGS had already depleted its resources by using preventive or alternative measures at an earlier occasion. One possibility to avoid this situation would be to clarify that, if due to the use of preventive or alternative measures the DGS resources drop below a certain threshold, it would first need to restore resources up to that threshold before becoming eligible again for liquidity support destined to depositor indemnification or resolution funding. In order to achieve a balance between the different concerns, the Commission could postpone its assessment on whether DGS preventive and alternative measures could also be covered by liquidity provision via the common mechanism. These considerations could resume once the clarifications and streamlining of conditions and modalities for preventive measures (see response to Question 9) and alternative measures have been included into the CMDI framework and their use and impact on DGS resources has been observed.

As indicated already in Question 37, views diverge on whether this is a good time to set the path towards a loss sharing mechanism:

Some members would prefer a binding commitment or at least clear visibility on when a loss sharing mechanism can be reached.

Other members clearly reject the very idea of loss-sharing, which can imply that including a transition period towards loss sharing would substantially undermine the acceptance also of the liquidity providing mechanism.

Several members highlight that a common liquidity provision mechanism is already an expression of mutual trust and cross-border solidarity with depositors. Once enough experience has been gained on this basis it can be assessed – without any pre-conceived outcome – whether moving towards a loss-sharing mechanism is proportionate and necessary.

Last but not least, the EBF is of course waiting for the Eurogroup's High Level Working Group report on the Completion of the Banking Union. EDIS is part of a bigger picture,

and the various interlinkages with other elements of the Banking Union project need to be taken into account.

Question 39. Under the current Commission's proposal on EDIS, a common scheme would co-exist with the Single Resolution Fund.

Against the background of the general macroeconomic and financial environment for banks and subject to the cost benefit analysis, do you think that synergies between the two funds should be explored to further strengthen the firepower of the crisis management framework and to reduce the costs for the banking sector?

In that respect, which of the following statements do you support?

	Agree	Disagree	Don't know / No opinion / not relevant
The Single Resolution Fund and EDIS should be separate.	X		
The Single Resolution Fund should support EDIS when the latter is depleted.		X	
Synergies between the two funds should be exploited.			X
Synergies between the two funds should be used to reduce the costs of the crisis management framework for the banking sector.			X
Synergies between the two funds should be used to strengthen the firepower of the crisis management framework.			X

Question 39.1 Please elaborate on any of the statements in question 39, including any supporting documentation regarding the benefits and disadvantages of the above options as well as potential costs thereof:

SRF and EDIS should remain clearly separated.

We do not think we have sufficient information to make any affirmative statements on synergies. Moreover, we do not understand what is meant by exploiting synergies between the SRF and a possible EDIS central fund, and at what stage this would be envisaged.

That said, if synergies were used to reduce costs to the banking sector this would be a welcomed outcome and we would encourage a more detailed discussion.

About EBF

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.1 million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that securely handle more than 300 million payment transactions per day. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

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