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SUMMARY – EBF FEEDBACK TO DG FISMA'S CRISIS MANAGEMENT & DEPOSIT INSURANCE (CMDI) FRAMEWORK CONSULTATION

The EBF welcomes the European Commission's consultation on strengthening the EU crisis management and deposit insurance framework. We believe this is a good time to assess the application and performance of the framework, identify gaps that need to be bridged and name areas where further clarification and streamlining are needed. Moreover, as finally there is renewed movement towards the third Pillar of the Banking Union, this consultation is highly relevant as it will clarify important aspects of the use and exposure of DGS.

BRRD – room for improvement

The cornerstones of our response to the Commission are as follows:

- 1) The European Commission has voiced concern that Mrel may impose challenges for smaller and medium-sized banks with traditional business models and considers whether thus the BRRD framework has to be amended. We would urge the Commission to first run an **in-depth analysis based on all available data** to ensure that any possible issues are well understood and to ensure a proportionate, appropriate and effective response, considering that the EU crisis management framework is already very complex.
- 2) We strongly encourage a **targeted harmonisation of national insolvency regimes** for banks and a streamlining of conditions for the use of **DGS alternative measures** in this context.
- 3) The status-quo of the framework gives rise to the concern that, in a FOLF scenario, smaller and medium sized banks may fall into a grey area where resolution is prevented by a negative Public Interest Assessment but national insolvency/liquidation proceedings fall short of ensuring a smooth market exit. These circumstances may lead to limbo situations and/or an uneven application of the framework. Perspectives on solutions differ:

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- Most Members believe that the best remedy is to **readjust the criteria for the Public Interest Assessment (PIA) to admit to resolution also medium-sized banks** that are of regional relevance (i.e. where national insolvency proceedings may not be adequate, which can lead to a limbo situation following a FOLF assessment and to an uneven application of the BRRD). This should be accompanied by increased transparency on the expected PIA outcomes. Most Members are confident that this will provide the clarity needed to allow proportional MREL levels for medium-sized and smaller banks according to the resolution strategy while maintaining the same conditions of access to the SRF when needed for the implementation of resolution tools. According to most members, introducing, on the other hand, an **Orderly Liquidation Tool would lead to significantly greater complexity** and have considerable implications for the level playing field.
 - One national banking association believes that, taking stock of the US FDIC experience and rather than expanding the scope of the PIA criteria, **limbo situations for small and medium-sized banks should be addressed by allowing national DGS to carry out preventive/alternative measures** (i.e. financing the transfer of assets and liabilities from the concerned bank in crisis to a third party) in order to support an **orderly liquidation of banks that fail the PIA test**.
- 4) The use of **DGS preventive measures needs to be clarified and conditions should be streamlined across the EU**. DGS preventive measures should, in any case, remain available on a voluntary basis. Under the current lack of clarity/significant heterogeneity with respect to DGS preventive measures, safeguards would be needed to ensure that their use has no negative impact on either the third pillar of the Banking Union or the SRF.
 - 5) **Changes to the creditor hierarchy need to be very carefully weighed**. That said, maintaining the current differences in terms of the creditor hierarchy across the EU implies a persisting uneven level playing field, which is a very critical point for members in those (few) countries where an ad hoc system has been put in place. We support the goal of greater harmonisation but urge law makers to a) ensure the superseniority of DGS covered deposits (whilst providing for a well-designed Least Cost Test methodology) and b) avoid unintended consequences in terms of Moral Hazard and for banks' liquidity management. Any changes to the ranking of corporate deposits that would undermine banks' ability to issue subordinate debt instruments at a reasonable cost are clearly counterproductive.
 - 6) Regarding depositor protection, national DGS have played a longstanding important role in safeguarding financial stability and protecting depositors. We see **benefits in ensuring a liquidity provision mechanism amongst all Eurozone DGS without exceptions (e.g. for IPS) to further enhance confidence and financial stability**. We observe that discussions on a Hybrid EDIS are progressing and would call for greater clarity in this respect. We support the efforts to make progress on the Banking Union's third pillar.

The SRM and the Banking Union conundrum

From a crisis management perspective, it remains unclear whether the SRB would be able to manage the resolution of a large cross-border bank and whether all tools in place can be applied with success.

While the Banking Union's first pillar (Single Supervisor & Single Rulebook) is in place and consolidated, this unfortunately does not yet make the Eurozone an integrated market for banking in which the sale-of business tool can be applied easily in a cross-border context. Sector consolidation, including cross-border M&As, still meets with several obstacles and constraints. We find ourselves in a Single Market with a Single Supervisor and a Single Resolution Authority, yet on a day-to-day basis national borders are very much intact. Examples:

- lack of application of and experience with cross-border liquidity waivers within banking groups;
- lack of flexibility with respect to large exposure waivers even within banking groups;
- regulatory treatment of minority interest discourages cross-border M&A;
- BRRD approach to internal Mrel;
- strong preference by and large scope for domestic supervisors to add-on national capital buffer requirements which implies ring-fencing of capital held by subsidiaries in a host country;
- 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;
- a lack of a European Deposit Insurance Mechanism/Scheme where a solution should be found. We hope the Eurogroup will bring more clarity this summer.

Moreover, the resolution of any larger bank may be a considerable challenge for the Single Resolution Mechanism and the sector alike because there is 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 avoid contagion risk to other parts of the financial system. Importantly, this kind of assurance can only be provided by the public sector. Other jurisdictions like the UK and the US have long put such public backstops in place.

The EU and the Banking Union have built an elaborate and powerful resolution framework but are stuck on the final meters towards ensuring its successful application.

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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