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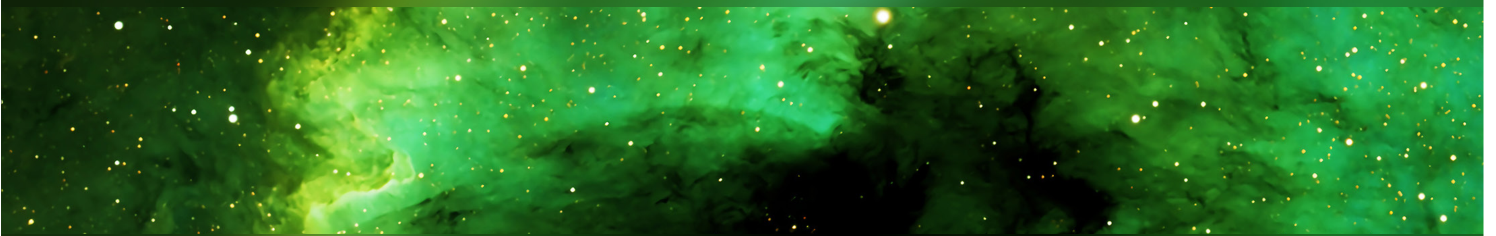

EU REFORMS BANK CRISIS MANAGEMENT AND DEPOSIT INSURANCE REGIME

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The European Commission has published a legislative package of reforms to the EU regime for bank crisis management and deposit insurance (CMDI). The proposals aim to make it easier to resolve failing smaller and medium-sized banks but will affect all EU banks. In particular, they would end the super-priority of deposit guarantee schemes and give all depositors equal preference in the winding up of an EU bank.

What is in the legislative package?

The legislative package will make significant amendments to the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Scheme Directive (DGSD). It comprises the following legislative proposals:

- a Directive amending the BRRD (BRRD3);
- a Regulation amending the SRMR (SRMR3);
- a Directive amending the DGSD (DGSD2);
- a Directive amending the BRRD and SRMR on the methods for the indirect subscription of instruments eligible for meeting a bank's loss absorbency requirements (the daisy chain amendments).

The Commission has also published a review of the operation of the Single Supervisory Mechanism (SSM) and a communication explaining how the package helps to enhance the resolution framework. The Commission is also carrying out an evaluation of its State aid framework for banks, which it expects to complete in the first quarter of 2024.

The Commission will set an eight-week period for feedback on the proposals and the European Parliament and the Council may amend the proposals during the legislative process. This briefing assumes that the legislation is adopted in the form proposed by the Commission.

The package of proposals is available on the Commission website here.
The Commission's 2021 public consultation and targeted consultation are available here and here.

Key issues

- Legislative package amends BRRD, SRMR and DGSD
- Changes the resolution conditions to make it easier to take resolution action
- Ends the super-priority of deposit guarantee schemes
- Gives all depositors equal preference in winding up
- Facilitates the use of DGS and resolution financing arrangements to support resolution
- Further harmonises the scope of deposits covered by DGSs
- Changes the rules on DGS funding and use of DGS funds
- Alters the rules for calculating internal and external MREL
- Clarifies the treatment of contingent liabilities in bail-in
- Makes changes to recovery and resolution planning and early intervention powers
- Most new rules to apply 18 months after the legislation enters into force

What is the current crisis management and deposit insurance framework?

The current EU CMDI framework is set out in the BRRD and DGSD adopted in 2014. For eurozone and other banks subject to the SSM in the Banking Union, this framework is supplemented by the SRMR which created a single resolution mechanism (SRM) in which the Single Resolution Board (SRB) acts as the resolution authority for significant and cross-border banks and the Single Resolution Fund (SRF) provides pre-funded resolution financing arrangements.

The EU co-legislators agreed a risk reduction package in 2019 making significant amendments to the framework. These included changes to the rules on the minimum requirement for own funds and eligible liabilities (MREL) and new rules on Total Loss Absorbing Capacity (TLAC) for EU Global Systemically Important Institutions to facilitate the recapitalisation of failing banks. The 2019 Investment Firm Regulation also made changes to the types of investment firms that are treated in a similar way to banks under the crisis management regime. In 2020, the Eurogroup agreed on the creation and early introduction of a €68bn backstop credit line under which the European Stability Mechanism can provide funding to the SRF (which is awaiting full ratification).

However, negotiations have stalled on the Commission's 2015 proposals for a European Deposit Insurance Scheme (EDIS) as the third pillar of the Banking Union alongside the SSM and the SRM. These proposals have been controversial because some member states are concerned about their deposit guarantee schemes (DGSs) funding or taking losses from pay-outs to depositors with failed banks in other member states. In addition, there is no agreed mechanism for providing liquidity in resolution in the Banking Union.

In June 2022, the Eurogroup called on the Commission to progress its work on strengthening the CMDI framework, with the aim of adoption of the legislation in 2024, leaving projects such as EDIS and further progress on market integration to be re-assessed later. The European Parliament's 2021 annual report on Banking Union also supported improving the functioning and predictability of the way in which the framework manages bank failures.

The Commission is concerned that resolution tools have not often been used, especially in the Banking Union, notwithstanding the framework put in place since 2014. Instead, many failing smaller or medium-sized banks have been dealt with under national regimes, often using taxpayer money (bail-out) instead of industry-funded safety nets such as the SRF. The legislative package aims to ensure that the framework better achieves its objectives of ensuring a level playing field within the EU, handling cross-border and domestic crises and minimising recourse to taxpayer money, especially with respect to the resolution of failing smaller and medium-sized banks that are primarily funded through deposits and without sufficient other bail-inable liabilities.

What are the proposed changes to the triggers for resolution action?

The proposals would change the triggers for resolution action to make it easier to take resolution action against a failing bank instead of placing the bank in insolvency proceedings. Currently, the BRRD requires the taking of resolution action where a bank is failing or is likely to fail, there is no reasonable prospect of alternative private sector measures to avert failure and the resolution authority assesses that resolution action is in the public interest to achieve the resolution objectives.

The proposals would amend the resolution objectives to make clear that:

- they include ensuring the continuity of critical functions at both a national and regional level (compare the conclusion by the SRB in 2017 that two failing banks in the Veneto region of Italy did not provide critical functions justifying resolution);
- there is a preference for support via industry-funded safety nets (e.g., the Atlante scheme in Italy) over support provided out of taxpayer funds; and
- resolution should protect depositors, while minimising losses for DGSs (so that resolution would be preferred if insolvency would be more costly for the DGS).

The proposals would change the resolution triggers to make it easier to take resolution action against failing banks

The proposals would also change the public interest test to tilt the balance in favour of resolution action – insolvency proceedings would be chosen as the preferred outcome only when they achieve the resolution objectives better than resolution (and not only when they do so to the same extent). When applying the public interest test, resolution authorities would also be required to consider and compare the extraordinary public support that may be provided in resolution and in the insolvency counterfactual. The public interest test is likely to be met if extraordinary public support would be made available in the insolvency counterfactual.

The proposals would also limit the use of extraordinary public financial support outside of resolution except in the case of State guarantees of central bank facilities and newly issued liabilities, precautionary recapitalisations, preventive measures by DGS, and measures taken by DGS and other forms of permitted State aid in the context of winding up. The new rules would also specify stricter conditions as to when precautionary recapitalisations are permitted. A precautionary recapitalisation should take the form of a subscription of own fund instruments other than common equity tier 1 instruments (except in limited exceptional cases), other capital instruments or impaired asset support at a time when the bank is not failing or likely to fail. State guarantees and precautionary recapitalisations would only be available to solvent institutions, be of a temporary nature with a clear exit strategy, be proportionate and not be used to offset losses. The grant of other forms of extraordinary public financial support to a bank would result in the bank being treated as failing or likely to fail.

Where a failing bank is not subject to resolution action because the public interest test is not met, the BRRD currently requires member states to ensure the winding up the bank (to avoid a failing bank falling into a 'limbo' where it is not subject to resolution action but does not meet the national law tests for starting insolvency proceedings). The proposals would now require member states to ensure that the supervisor can withdraw the bank's authorisation in such a case, that the withdrawal of the

authorisation is a ground for insolvency proceedings and that the bank exits the market or terminates its banking activities within a reasonable timeframe after the commencement of insolvency proceedings. These changes aim to increase the certainty that failing banks not placed in resolution will be wound up and exit the market.

How would the proposals enhance depositor preference in insolvency?

The BRRD partially harmonises the treatment of deposits in the order of distributions of realisations in ordinary insolvency proceedings. It gives a 'super-priority' to deposits covered by a DGS and the claims of DGSs to be reimbursed for payment of insured deposits and a secondary priority for claims of natural persons and micro, small and medium sized entities for deposits to the extent not covered by the DGS. DGSs also have a *pari passu* super-priority claim for payments made in the context of resolution and resolution authorities and resolution financing arrangements have a preferred claim for reimbursement of resolution expenses (but BRRD does not currently specify the ranking of this preferred claim relative to deposit claims). Member states can choose whether to give a tertiary level of priority to other deposit claims and how to rank other preferred non-deposit claims relative to preferred deposits and the preferred claims of DGSs, resolution authorities and resolution financing arrangements.

Insolvency ranking of deposits under BRRD (highest to lowest)

Current	After proposed amendments
Primary preferred deposit claims DGS resolution payments	Claims for reimbursement of resolution expenses
Secondary preferred deposit claims	All deposit claims DGS resolution payments
Other deposit claims (optional)*	
Ordinary unsecured claims (including any non-preferred deposit claims)	Ordinary unsecured claims

Notes

Member states may rank other preferred non-deposit claims (e.g., secured claims, liquidation expenses, tax and social security claims and claims of employees) in priority to, *pari passu* with or below the deposit and other claims preferred by the BRRD and DGSD.

'Deposit claims' are claims for deposits within the meaning of the DGSD (including claims of DGSs subrogated to insured depositors).

'Primary preferred deposit claims' are deposit claims in respect of deposits covered by a DGS.

'Secondary preferred deposit claims' are claims for:

- that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the DGS coverage limit (i.e., €100,000 or the limit for some protected temporary and other high balances); and
- deposits from natural persons and micro, small and medium-sized enterprises at non-EU branches of an EU bank that would be eligible deposits under the DGS were they made at an EU branch of the bank.

*The Commission states that eight member states give a tertiary preference to other deposit claims: Bulgaria, Croatia, Cyprus, Greece, Hungary, Italy, Poland and Slovenia.

'DGS resolution payments' are payments by the DGS in the context of resolution (or, under the proposals, in the context of winding up in place of resolution).

Resolution authorities and resolution financing arrangements also have a preferred claim for reimbursement of resolution expenses, but BRRD does not currently specify the ranking of this preferred claim relative to preferred deposit claims and the other preferred claims of DGSs.

The proposals would:

- replace this multi-tier depositor preference regime with a single tier regime under which all deposit claims would be preferred claims, including the claims of DGSs subrogated to the claims of insured depositors, deposits by large corporates which exceed DGS coverage limits, deposits of banks, other financial institutions and collective investment undertakings that are excluded from DGS coverage and deposits at non-EU branches of EU banks (but not, e.g., deposits represented by transferable securities or deposits not repayable at par);
- clarify that a DGS's preferred claim for reimbursement for payments made in the context of resolution only covers payments to support the use of a business transfer in resolution (but not any contribution made in the context of a bail-in);
- extend the DGS's preferred claim for reimbursement to cases where the DGS makes payments to support a business transfer by a failing bank that is wound up in place of resolution proceedings because the public interest test is not met; and
- ensure that the preferred claims of resolution authorities and resolution financing arrangements for reimbursement of resolution expenses rank above deposit claims.

The proposals would end the super-priority of DGSs and give all depositors equal preference in winding up

Member states would still be able to choose how to rank other preferred non-deposit claims relative to preferred deposits and the preferred claims of DGSs, resolution authorities and resolution financing arrangements.

How would the proposed changes expand access to resolution funding?

The current regime restricts the use of industry-financed funding arrangements to support resolution in two main ways:

- It restricts the extent to which a DGS can contribute to a resolution by limiting the DGS's contribution in resolution to the amount of losses that it would have had to bear had the failed bank been wound up under normal insolvency proceedings. The super-priority of a DGS in the insolvency of a bank means DGS funds can almost never be used to contribute to a resolution, because the DGS would expect a full or very high recovery of any payments made to repay insured deposits.
- It restricts the use of resolution financing arrangements directly to absorb losses or recapitalise a failed bank, only allows resolution financing arrangements to be used indirectly to cover losses arising from resolution action where shareholders and other creditors make a contribution to loss absorption and recapitalisation of at least 8% of the bank's total liabilities including own funds (TLOF) (an alternative threshold is set for some smaller banks) and generally limits the contribution by resolution financing arrangements to 5% of TLOF. This restricts any use of resolution financing arrangements to cover losses in resolution not just the covering of 'no creditor worse off (NCWO)' losses incurred by bailed-in creditors as a result of the exclusion of *pari passu* or junior ranking creditors from the scope of a bail-in.

First, the proposal to give preference to all deposits in insolvency would reduce the need for resolution funding by making it easier for the resolution authority to use resolution powers to transfer the entirety of a failed bank's deposit book to a buyer without triggering NCWO claims by non-transferred creditors. Under the current regime, non-transferred ordinary unsecured creditors may suffer greater losses than they would in insolvency proceedings where the failed bank's assets are transferred to a buyer in consideration of the assumption of the failed bank's liability for deposits that would rank *pari passu* with those creditors.

The proposals would facilitate the use of DGSs and resolution financing arrangements to support resolution

Secondly, the proposals would require a DGS to support a transfer of insured and uninsured deposits and other liabilities by making up the difference between the value of the transferred assets and the amount of the assumed deposits and *pari passu* or senior liabilities and contributing an amount to ensure the buyer's capital neutrality. The DGS would only make a contribution to a transfer of uninsured deposits or other bail-inable liabilities if it is necessary to protect them from losses and its liability would still be limited to the expected costs that it would have otherwise incurred in repaying insured depositors (net of recoveries). However, the proposed removal of DGSs' super-priority over other depositors would mean that the DGS is more likely to suffer loss when repaying insured depositors and thus is more likely to be able to make a contribution to the resolution. DGSs could also make a similar contribution as an alternative measure to support a transfer of deposits in the context of insolvency proceedings.

Thirdly, the proposals would allow any contribution made by a DGS to support a transfer of uninsured deposits or other bail-inable liabilities to count towards the 8% TLOF (or alternative threshold) requirement for accessing resolution financing arrangements. This is likely to be most significant for deposit-funded smaller and medium-sized banks whose MREL does not require the maintenance of significant additional loss-absorbing capacity over and above minimum capital requirements.

How would these changes impact bank contributions to industry-funded backstops?

The proposals would not change the target level of available funds that should be held by DGSs (0.8% of insured deposits) or resolution financing arrangements (1% of insured deposits). These are expected to reach over €55bn and €80bn respectively in the Banking Union by 2024.

However, the Commission recognises that expanding the use of resolution instead of winding up proceedings, ending the super-priority of DGSs, making greater use of DGSs to finance resolution and increasing the access to resolution financing arrangements may result in more frequent requirements for banks to make contributions to replenish DGS funds and resolution financing arrangements. The Commission considers that these costs would be offset by the benefits of enhanced preparedness for a larger spectrum of banks, clarified incentives when deciding which crisis tools to use, reduced recourse to taxpayer funds, increased financial stability and depositor confidence.

The proposals do not include changes to limit the extent to which additional costs may fall disproportionately on larger banks with a lower risk profile. However, the impact on larger banks may be mitigated to the extent that MREL for smaller and medium-sized banks is calibrated to ensure that they have sufficient loss-absorbing capacity to avoid the need to make use of industry-funded backstops to support a sale of all or part of the business or the transfer of non-performing assets to an asset management vehicle.

Banks may have to make more frequent contributions to replenish DGSs and resolution funding arrangements

The proposals would also allow the resumption of banks' annual contributions to the resolution financing arrangement if its available funds fall below the target level of 1% of insured deposits. They would also decouple the amount of extraordinary *ex post* calls to replenish available funds from the amount of annual contributions. Instead, those calls would be limited to three times 12.5 % of the target level of available funds. These changes would enable resolution authorities to call on banks to accelerate the replenishment of available funds after the use of resolution financing arrangements to support a resolution.

The proposals would increase the level of permitted use of collateralised irrevocable payment commitments in lieu of cash contributions from 30% to 50% of total required *ex ante* contributions but, subject to that limit, resolution authorities would have to reassess annually the share of those commitments in the total amount of contributions to be raised. Resolution authorities would be obliged to call on any irrevocable payment commitments whenever they make use of resolution financing arrangements. They would also be required to call on the irrevocable payment commitments provided by a bank if the bank ceases to fall within the scope of the BRRD and to be subject to the obligation to make contributions. Banks will need to consider whether these changes affect the accounting treatment of these commitments.

What are the other impacts of these changes?

Treating all deposits as preferred claims effectively increases the subordination of ordinary unsecured creditors of banks (at least in the 19 member states that do not already treat all deposits as preferred claims). This may:

- increase the propensity of those creditors to 'run' if a bank becomes distressed;
- increase banks' cost of, or reduce their access to, unsecured non-deposit funding; and
- cause creditors to take other measures to protect themselves against the risk of loss (e.g., by taking collateral or otherwise seeking to ring-fence assets available to them if the bank fails) and encourage banks to make greater use of secured funding (e.g., securitisation and covered bonds). This may have an adverse impact on the recoveries of preferred depositors and increase the fragility of the bank in the face of shocks (e.g., because of the reduced ability to borrow against assets).

These effects may be exacerbated by creditors' lack of access to timely information on the level of subordination resulting from depositor preference (or asset encumbrances). However, to the extent that these effects arise, they may enhance the market discipline on banks.

Conversely, treating all deposits as preferred claims may aggravate the moral hazard arising from uninsured preferred depositors assuming that they will not suffer losses if a bank fails, even though they may still be exposed to losses in a winding up or resolution and may lose timely access to their funds.

The proposals would treat deposits at non-EU branches of an EU bank as preferred deposits ranking *pari passu* with deposits at the bank's EU branches (in contrast to the US single-tier depositor preference regime which does not apply to deposits payable exclusively outside the US). This reduces the risk that third countries might otherwise restrict the activities of local branches of EU banks or impose additional local asset-maintenance requirements on local branches of EU banks if the preference were restricted to deposits at EU branches of EU banks.

On the other hand, an EU resolution authority may not be able effectively to use EU resolution tools to transfer deposits at non-EU branches of bank to a buyer. The transfer of deposits at EU branches to a buyer, leaving deposits at non-EU branches behind in the residual bank, may trigger NCWO claims by the depositors at non-EU branches whose claims rank *pari passu* with the transferred deposits. However, smaller and medium-sized EU banks may not have significant non-EU branches and any adverse impact on depositors at those branches may be offset by local deposit insurance or local depositor or creditor preference regimes in the third country.

The proposals would also exempt all deposits, including those at non-EU branches of EU banks, from the requirements of Article 55 BRRD requiring the inclusion of contractual clauses recognising the use of bail-in powers in contracts governed by third country law.

The proposals would leave it to member states to decide how to apply depositor preference in the context of national insolvency proceedings in relation to non-EU banks with local branches.

For more background on the impact of depositor preference regimes, see our briefing: *Bank depositor preference regimes – Policy advantages and disadvantages* (April 2023), available here.

How would the package affect MREL?

The proposals would:

- set out the principles that should be applied when calibrating MREL for smaller and medium-sized banks where the preferred resolution strategies involve the sale of all or parts of the business to a buyer or a bridge bank, the transfer of non-performing assets to an asset management vehicle and market exit (including where DGS funds may be used to support the transfer of deposits in the context of an insolvency proceeding);
- make clear that the existing power of the resolution authorities to prohibit certain distributions can be applied based on an estimation of the combined buffer requirement under the Capital Requirements Directive (CRD) where the bank is not subject to the combined buffer requirement on the same basis as its MREL;
- allow structurally subordinated liabilities that are eligible loss-absorbing capacity under the *de minimis* exemption in the Capital Requirements Regulation to qualify as permitted subordinated eligible instruments for the purposes of MREL under the BRRD (ending the anomaly created in 2019) and align the calculation of MREL with the calculation of TLAC for entities relying on the exception;
- under the daisy-chain amendments, amend the rules governing the indirect subscription of instruments eligible for meeting a bank's internal MREL by giving the resolution authority power to allow certain intermediate entities to comply with internal MREL on a sub-consolidated basis and removing issuances of EU subsidiaries from the scope of the existing deduction mechanism where the resolution plan envisages that they will be wound up as part of the resolution process; and
- member states would be required to ensure that they can impose penalties (including administrative fines of up to 10% of turnover) and other measures on banks that fail to meet their external or internal MREL.

What are the other changes for DGSs?

The proposals would not change the existing €100,000 cap on the insurance of eligible deposits, even though recent distress in parts of the banking sector has focused attention on the level of insurance coverage for larger corporate deposits. However, the proposals would:

- include all deposits of public authorities within the scope of DGS coverage;
- further harmonise the level of DGS coverage of temporary high balances (requiring member states to ensure coverage as a minimum in an amount of €500,000 for six months for deposits held as a result of certain private residential real estate transactions, life events such as marriage, divorce or death and other specified circumstances);
- ensure that eligible customers of a non-bank financial institution can benefit from deposit insurance on a 'look through' basis where the institution holds money for their account at an EU bank which is segregated in accordance with EU rules (e.g., money held at EU banks by payment or e-money institutions or investment firms – but apparently excluding 'class 1' investment firms authorised as credit institutions even though they are not authorised to take deposits);

- end the ability of DGSs to offset money owing by a depositor to the bank against the insurance pay-out (and clarify the impact of negative interest rates on pay-outs);
- exclude deposits from coverage where the depositor has not been identified or where the deposit relates to money laundering or terrorist financing.

The proposals would further harmonise the scope of deposit insurance

DGSs would not be required to repay beneficiary accounts, client funds and temporary high balances within seven working days of the bank failing. Instead, DGSs would only be required to repay those depositors within 20 working days of receipt of complete documentation allowing the examination and verification of claims. DGSs would also be allowed more flexibility about the timing of repayment of dormant accounts.

DGSs would be given more flexibility to make use of alternative funding arrangements to allow them to pay out insured depositors before they collect extraordinary contributions from member banks (but financing from public funds would be a last resort).

The proposals would set new conditions around the use of DGS funds for:

- preventive measures which support the financial soundness of a distressed bank (e.g., through guarantees, cash injections or participation in a capital increase); and
- alternative measures which support the transfer of deposits to another bank in the context of an insolvency proceeding to preserve depositors' access to their money.

In particular, the proposals would create a new 'least cost test' for the use of DGS funds for preventive or alternative measures and for use of DGS funds to support resolution. The amount of the direct and indirect costs that could be incurred by the DGS and its members would be limited to the amount of the estimated cost of repaying insured depositors net of expected recoveries (but for preventive measures the DGS would not be permitted to assume a recovery ratio in excess of 85%).

The DGSD already provides for a transfer of DGS contributions where some of a bank's activities are transferred to a DGS in another member state. The proposals would require the original DGS to transfer to the receiving DGS an amount equal to the contributions due for the last 12 months (excluding extraordinary contributions) instead of the contributions paid in that period. They would also make clear that the transfer also applies where a bank ceases to be a member of a DGS in one member state and joins a DGS in another member state (e.g., as a result of a cross-border merger).

The proposals would also harmonise the information that banks must give their depositors annually and in the case of a merger, reorganisation, change of DGS affiliation or unavailability of deposits. Banks would also have to provide DGSs with information to help them prepare for repayment of depositors and, on request, information about depositors at the bank's EU branches and depositors who receive the bank's services in other member states.

The proposals would eliminate the national option to fund DGS payments via alternative national mandatory contribution schemes (although this option is left in place for resolution financing arrangements under the BRRD).

The proposals would require EU branches of non-EU banks to become members of the local DGS in the member state where the branch is located within three months after entry into force of the legislation (the EBA previously advised that only five of 74 such branches of non-EU banks were not already members of the local EU DGS). In addition, DGSs would not be permitted to cover deposits at non-EU branches of EU banks unless those banks provide additional contributions to cover the risks to the DGS.

How would the proposals affect the bail-in of contingent liabilities?

The proposals would make clear that provisions are bail-inable liabilities, unless they fall within an exclusion, but that contingent liabilities are not. Provisions are liabilities that give rise to an accounting provision because they relate to a probable outflow of funds and which can be reliably estimated. Contingent liabilities are not recognised as accounting liabilities as they relate to an obligation which cannot be considered probable at the time of the estimate or cannot be reliably estimated. However, resolution authorities should use their bail-in powers in a way that ensures that the recapitalisation of the bank is sufficient to cover potential loss from the future crystallisation of contingent liabilities.

This change would not appear to affect the requirements of Article 55 BRRD under which banks must ensure that any agreement or instrument creating a liability which is governed by the law of a third country includes a contractual term recognising that that liability may be subject to the write down and conversion powers (unless specified exclusions apply). Liabilities that are initially only contingent liabilities may give rise to provisions at a later stage when there is a change in circumstances triggering a probable outflow of funds that can be reliably estimated.

What changes are proposed to recovery and resolution planning?

The proposals would:

- allow supervisors to waive the requirement for an annual update of certain parts of the recovery plan in the absence of any changes to the legal or organisational structure of the institution, its business or its financial situation;
- specify that recovery plans must not assume (in addition to public financial support) access to central bank emergency liquidity assistance or any central bank liquidity assistance on non-standard terms;
- allow resolution authorities to take a simplified approach in relation to resolution planning for subsidiaries that are not resolution entities.

What changes are proposed to early intervention powers?

The proposals would:

- allow supervisors to use their early intervention powers, including powers to remove management and appoint temporary managers, at an earlier stage;
- remove some of the overlap between the early intervention powers in BRRD and the supervisory powers under the CRD; and
- require greater cooperation and exchange of information between supervisors and resolution authorities when a bank's financial situation begins to deteriorate, including a new requirement for the supervisor to give early warning to the resolution authority if it considers that there is a material risk of a bank's failure.

What is not in the package?

The proposals do not change the principle that resolution does not apply only to large banks, but potentially to any bank that has economically critical functions or whose failure could be systemic (or the principle that there should be no fixed quantitative thresholds to determine whether banks should be subject to resolution). Resolution authorities decide on a case-by-case basis if a bank should be resolved or enter national insolvency proceedings, on the basis of the public interest test. However, the proposals aim to improve the framing of this discretion to ensure improved harmonisation at EU level. The package also does not change the division of tasks between the SRB and the national resolution authorities in the Banking Union.

The package does not include any further steps to mutualise the risks faced by national DGS in the Banking Union. However, it does aim to make it easier to access the resolution funding provided by the SRF, which already mutualises the burden of resolution costs within the Banking Union to some extent. The proposals also do not address how liquidity should be provided to support resolution.

The proposals do not include any special exemptions for institutional protection schemes which some member states, such as Germany, have recognised as DGSs. However, those member states would be allowed to give those schemes additional time in which to comply with the changes to the DGSD relating to preventive measures. The proposals do not affect the existing provisions allowing member states to decide that members of institutional protection schemes should pay lower contributions to their DGS.

The package does not include other measures to harmonise national insolvency regimes for banks, such as other measures to harmonise the conditions for winding up of a bank or requiring member states to introduce an orderly liquidation tool allowing a liquidator to transfer deposits to a buyer.

The package does not extend the powers of resolution authorities under BRRD to impose a short temporary pre- or post-resolution moratorium on the obligations of a failing bank. However, authorities in some member states have other powers to impose a moratorium on a bank which may result in depositors losing access to their deposits for an extended period. The proposals would require member states to ensure that depositors have access to an appropriate daily amount from those deposits.

The proposals do not make changes to the way in which DGSs assess risk for the purposes of calculating contributions, require additional transparency for banks as to how DGS contributions are calculated or further harmonise the use of irrevocable payment commitments in lieu of DGS contributions. They also do not require shareholders or creditors to participate in burden-sharing measures when a relevant DGS provides support via preventive measures to assist a distressed bank (outside the state aid regime).

When would the new rules begin to apply?

The proposals set out the dates from which the new rules will begin to apply after the legislation is adopted and enters into force (20 days after publication in the Official Journal). The actual application dates will depend on the length of the legislative process. The Eurogroup asked for this to be concluded by 2024. However, differences of view in the Parliament and the Council, the elections for the new Parliament in the summer of 2024 and the appointment of a new Commission in October 2024 may delay the adoption of the legislation (although the daisy chain amendments may be agreed more quickly).

	Proposed application date (after entry into force)	Estimated application date
Daisy chain amendments	6 months	Q2 2025
BRRD3 and SRMR3	18 months	Q2 2026
DGSD2	24 months	Q4 2026

Notes

Proposed application date indicates the proposed date (months after the date of entry into force of the legislation) when member states must apply the main required national implementing measures and the main amendments to EU regulations.

Estimated application date assumes a relatively quick, 18-month legislative process.

Member states must apply the provisions relating to the use of DGS funds for preventive measures 48 months after entry into force (but member states would be permitted to allow institutional protection schemes recognised as DGSs 72 months in which to comply with the national measures implementing those provisions).

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C H A N C E

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