Clifford Chance

BRIEFING

New EU rules on bank crisis management and deposit insurance (Part 1)

April 2026

The EU has adopted a package of new legislation making wide-ranging changes to the EU framework for bank crisis management and deposit insurance (CMDI). The new rules aim to make it easier to resolve failing smaller and medium-sized banks but will affect all EU banks. Most of the new rules apply from May 2028.

This briefing reviews the background to the legislative package and discusses the changes to the resolution regime, resolution funding, early intervention powers, the minimum requirement for own funds and eligible liabilities (MREL), recovery and resolution planning and the Single Resolution Mechanism (SRM). A second briefing discusses the changes to depositor preference, the scope of deposit insurance and other rules for deposit guarantee schemes (DGSs) and considers the impact on bank contributions to industry-funded backstops, possible areas for future development and the actions EU banks may take in response to the package.

Key issues

1. Legislative package amends BRRD, SRMR and DGSD
2. Further harmonises the conditions for resolution
3. Facilitates the use of DGS and resolution financing arrangements to support resolution
4. Clarifies the treatment of contingent liabilities in bail-in
5. Alters the rules governing MREL, including reporting and disclosure
6. Makes changes to early intervention powers and recovery and resolution planning
7. Changes the rules on contractual recognition of bail-in
8. Most new rules to apply from May 2028

What is in the legislative package?

The legislative package was published in the Official Journal on 20 April 2026 and comprises:

- a Directive (BRRD3) amending the Bank Recovery and Resolution Directive (BRRD);
- a Regulation (SRMR3) amending the Single Resolution Mechanism Regulation (SRMR); and
- a Directive (DGSD2) amending the Deposit Guarantee Scheme Directive (DGSD).

The package aims to ensure that the EU CMDI 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 that lack sufficient other liabilities that can be used to support resolution via a bail-in. Even within the Banking Union, the authorities have dealt with many failing smaller or medium-sized banks using national regimes rather than EU resolution tools, often using taxpayer money (bail-out) instead of industry-funded safety nets.

What is the background to the new legislation?

The EU CMDI framework was established in 2014 through the adoption of BRRD and the recast DGSD. In addition, for banks subject to the single supervisory mechanism (SSM) in the EU's Banking Union, SRMR created the SRM in which the Single Resolution Board (SRB) acts as the resolution authority for banks subject to the direct supervision of the European Central Bank (ECB) and cross-border groups in the eurozone and other participating Member States and the Single Resolution Fund (SRF) provides pre-funded resolution financing arrangements.

The EU co-legislators adopted a risk reduction package in 2019 making significant amendments to the framework. These included changes to the rules on 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 changed the types of investment firms that are treated like 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 (although this is still 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 funding or taking losses from pay-outs to depositors with failed banks in other Member States.

In June 2022, the Eurogroup called on the Commission to progress its work on strengthening the CMDI framework, 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.

In April 2023, the Commission responded by submitting the legislative proposals for BRRD3, SRMR3 and DGSD2. These were accompanied by a proposal for 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); this Directive was adopted more quickly and was published in the Official Journal in April 2024.

The other parts of the original package were subject to extensive amendment in the legislative process. In particular, the finally agreed text made significant changes to the original proposals regarding the criteria for determining when it is the public interest to use resolution tools rather than winding up to resolve a failing bank, the conditions on which the authorities can access DGS funds to support resolution, preventive actions outside resolution or alternative measures in winding up, and the levels of priority given to deposits in a winding up of a bank (i.e., depositor preference).

For more information on the original package, see our briefing, EU reforms bank crisis management and deposit insurance regime (April 2023).

What are the main changes to the execution of resolution actions?

The package changes the resolution objectives stated in the BRRD to make clear that they include ensuring the continuity of a bank's critical functions at both a national and regional level. This change was prompted by the SRB's 2017 conclusion that two failing banks in the Veneto region of Italy did not provide nationally important critical functions justifying resolution.

Currently, the BRRD requires a resolution authority to take 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 new legislation:

- changes the circumstances in which State aid or similar public financial support at a supranational level can be provided to preserve or restore the viability, liquidity or solvency of a bank without being treated as extraordinary public financial support triggering a finding that the bank is failing or likely to fail, e.g., it limits the extent to which a precautionary recapitalisation of bank can involve the acquisition of common equity tier 1 instruments of a bank but it allows DGSs to adopt preventive or alternative measures with respect to a bank in accordance with DGSD (as discussed in our second briefing on the package);
- provides that the public interest test is met if any of the resolution objectives would be at risk if the bank were wound up under normal insolvency proceedings, resolution is necessary for and proportionate to the resolution objectives and winding up would not be more effective in meeting the resolution objectives at risk (tilting the balance in favour of resolution of a failing bank instead of winding up under national rules);
- requires resolution authorities, when assessing the public interest, to compare any extraordinary public financial support provided in resolution and in winding up and the costs of resolution and winding up;

- provides that national competent authorities (not the ECB) assess whether a bank is failing or likely to fail as a condition of resolution action where the bank is subject to the SRB's authority but is not subject to direct supervision by the ECB; and
- in the case of resolution schemes adopted by the SRB, sets new procedures relating to the use of any State aid or SRF funds and the Commission's powers to object to such use not considered compatible with the internal market.

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 bank is wound up (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 package requires Member States to ensure that meeting the conditions for resolution (other than public interest test) is a sufficient basis for withdrawal of a bank's authorisation, that withdrawal of a bank's authorisation is a sufficient condition for winding up and that a bank that is wound up exits the market or terminates its banking activities within a reasonable timeframe.

The new legislation makes other changes to the execution of resolution actions:

- where resolution financing arrangements are used to absorb losses or a DGS makes a contribution to resolution, variable remuneration of the members of the management body and senior management of the bank that has not been paid out or has not vested must be cancelled and those individuals must return variable remuneration vested or paid out in the two years prior to resolution (unless the individual can prove that they did not participate in or were not responsible for the conduct that that resulted in or contributed to the failure);
- where resolution tools are used to transfer only part of the assets and liabilities of a failing bank to a purchaser or bridge institution in combination with the use of other resolution tools, it may no longer be necessary to place the residual entity in winding up or to write down and convert capital instruments left in the residual entity;
- resolution authorities will be able to waive the public ownership requirement for a bridge institution where its capital is fully provided by the conversion of bail-inable liabilities (but the resolution authority must still be able to control the bridge institution);
- where a DGS contributes to a recapitalisation of a bank as part of a bail-in, the DGS must transfer its shareholding in the bank to the private sector as soon as circumstances allow; and
- when taking resolution action or steps in preparation for resolution action, the resolution authority will have powers temporarily to suspend any obligation of the bank under the Market Abuse Regulation publicly to disclose inside information relating to those preparations or the resolution and to require the bank to keep that information confidential.

The package makes clear that liabilities of uncertain timing or amount are bail-inable in the same way as other liabilities where those liabilities are based on present obligations arising from past events which will result in a loss (unless they fall within an exclusion from bail-in). By contrast, it envisages that liabilities are not bail-inable if they might arise in the future

but would not result in a loss or if they might arise in the future only if an uncertain event were to occur. Nevertheless, it provides that resolution authorities must 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 those contingent liabilities.

How do the proposed changes increase access to resolution funding?

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

- It limits how much a DGS can contribute to resolution by capping its contribution at the amount of losses it would have incurred if the failed bank had instead been wound up under ordinary insolvency proceedings. Because insured deposits benefit from a 'super priority' in insolvency, a DGS would normally expect to recover all or most of the amounts it pays out to insured depositor in a winding up. This significantly reduces the extent to which DGS funds can be used to support resolution.
- It restricts the use of resolution financing arrangements to absorb losses directly or recapitalise a failed bank, restricts the use of resolution financing arrangements to support resolution action unless 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.

The package does not alter the 'super-priority' of insured deposits in a winding up but ensures that all uninsured deposits (with limited exceptions) are accorded priority over ordinary unsecured claims in the creditor hierarchy (see our second briefing on the package). In addition, it introduces a complex new set of rules aimed at:

- increasing the extent to which DGS funds can be used to support a resolution involving a transfer of a bank's insured or uninsured deposits to a purchaser or bridge institution; and
- when the resolution involves a transfer of uninsured deposits or other bail-inable liabilities of a smaller or medium-sized bank, permitting the DGS's contribution to the resolution to count towards the TLOF-related thresholds that allow the use of resolution financing arrangements to support the resolution (i.e., to help 'bridge the gap' to allow access to additional resolution financing from those arrangements).

First, the package requires a DGS to contribute the following amounts to support a resolution:

- where the bail-in tool is applied to recapitalise a bank, the amount by which insured deposits would have been written down or converted had insured deposits been included in the bail-in; and
- where insured deposits are transferred to a purchaser or bridge institution, leading to the bank's exit from the market:
    - the difference between the amount of the insured deposits and equally ranking or senior liabilities transferred and the value of assets transferred (plus an amount to ensure the buyer's capital neutrality); or

- where other deposits or bail-inable liabilities are also transferred (and the resolution authority has concluded that those deposits and liabilities would qualify to be protected in a bail-in) and the TLOF-related thresholds allowing the use of resolution financing arrangements have not been met, the difference between the amount of all preferred deposits and any equally ranking or senior liabilities transferred and the value of assets transferred (plus an amount to ensure the buyer's capital neutrality).

Secondly, for banks with up to €80 bn total assets (on an individual basis), a contribution by a DGS to a resolution involving a transfer of uninsured deposits or of other bail-inable liabilities counts towards the TLOF-related thresholds allowing the use of resolution financing arrangements. However, this is subject to other conditions:

- the resolution plan for the bank must not have identified winding up as the preferred resolution strategy in the last two years;
- the bank's own funds and MREL-eligible liabilities must have been used in full for loss absorption and recapitalisation to the extent possible; and
- for a bank with more than €30 bn total assets (on an individual basis), the bank's MREL is at least the new minimum required for banking groups of that size which have a preferred resolution strategy of a transfer of business, although Member States have an option to disallow the use of DGS contributions to 'bridge the gap' where the bank has breached its MREL in a specified period prior to resolution if other specified conditions are met.

Where a DGS's contribution counts towards the TLOF-related thresholds and extraordinary circumstances apply that allow the resolution authority to seek further funding from alternative financing sources, the DGS's contribution may also be increased by the amount of losses that insured deposits would have suffered, had insured deposits suffered losses in proportion to the losses suffered by creditors with the same priority ranking in insolvency. The DGS's additional contribution is limited to the loss that the DGS would bear in insolvency if it paid out insured depositors and was subrogated to their claims against the bank.

The package imposes additional limits on the level of contributions a DGS can make to support resolution of a bank:

- A DGS cannot be required to contribute an amount that exceeds the aggregate amount of the bank's insured deposits.
- Where a DGS contributes to a resolution primarily relying on bail-in to recapitalise a bank and continue its activities, the DGS's contribution is limited to the loss that the DGS would bear in insolvency if it paid out insured depositors and was subrogated to their claims against the bank.
- Where a DGS contributes to a resolution mainly involving a transfer of business to a purchaser or to a bridge institution, the DGS's contribution is limited to 62.5 % of the DGS's target level of funding (although this cap can be lifted to avoid adverse effects on financial stability or to preserve the access of depositors to their deposits).
- Where a DGS's contribution counts towards the TLOF-related thresholds allowing the use of resolution financing arrangements, the amount of that contribution is capped at the level necessary to trigger those thresholds and (in the case of the resolution of banks with total

assets of between €30 bn and €80 bn on an individual basis) further capped at 2.5% of TLOF on an individual basis.

Where a DGS has contributed to a resolution to finance a transfer of uninsured deposits or other bail-inable liabilities, the bank must not acquire stakes in other undertakings, make distributions to shareholders or payments on Additional Tier 1 instruments, or conduct other activities that may lead to an outflow of funds.

The UK Bank Resolution (Recapitalisation) Act 2025 also aims to improve access to industry-backed funding arrangements to support bank resolutions, informed by the experience of the 2023 resolution of Silicon Valley Bank (UK). The Act allows the Bank of England (the UK resolution authority) to require the Financial Services Compensation Scheme (the UK DGS) to make payments to recapitalise a bank where the Bank is exercising its resolution powers to transfer the bank to a purchaser or to a bridge institution. However, in contrast to the approach taken by the EU legislative package, the Act allows the use of DGS funding to support a transfer of the shares in a failed bank to a purchaser and does not impose any cap on the amount of the contribution or impose new requirements for an MREL in excess of minimum capital requirements for banks whose preferred resolution strategy involves a transfer to a purchaser or bridge institution. The Act also does not change the arrangements under which the UK government may provide its own funds to support resolution (based on the funds provided by the bank levy, but not maintained as a segregated resolution fund), use of which is conditioned (in some cases) on shareholders and creditors making a contribution of at least 8% of the failed bank's liabilities. For more information, see our RegTalk blogpost, Bank Resolution (Recapitalisation) Act 2025: new powers to fund UK bank resolutions (May 2025).

What are the changes to early intervention powers?

The package:

- allows supervisors (including the ECB) to use early intervention powers at an earlier stage, including powers to require the implementation of the recovery plan, remove and replace management and to appoint temporary administrators (and confers new powers to require the production of a wind-down plan);
- removes some of the overlap between the early intervention powers in BRRD and the supervisory powers under the Capital Requirements Directive (CRD);
- requires greater cooperation and exchange of information between supervisors and resolution authorities when the conditions for early intervention arise or there is a material risk of a bank's failure, including new requirements for supervisors to notify resolution authorities that those conditions are met and of any action taken and to give early warning to resolution authorities if there is a material risk of a bank's failure; and
- gives resolution authorities, as part of preparations for resolution, new powers to market, arrange the marketing of and to require banks to prepare for the marketing of the bank to potential buyers and to require banks to put in place arrangements, including a digital platform, for sharing information with potential purchasers or with advisors and valuers engaged by the resolution authority.

How does the package affect MREL?

The package:

- requires that, where resolution authorities are calibrating MREL for resolution entities in a resolution group with total assets over €30 bn and the preferred resolution strategy for those entities envisages a transfer of business to a purchaser or a bridge institution and exit from the market (and does not involve the use of bail-in), the resolution authorities must set an MREL of at least 15% of risk weighted assets and 4.5% of the leverage ratio exposure measure (or, under the SRMR, 16% of risk weighted assets and 4.75% of the leverage ratio exposure amount);
- imposes new conditions, including a requirement for authorisation from the resolution authority, where a bank wishes to include deposits in its MREL (but subject to a transitional period ending on 11 May 2029 for existing deposits taken before 12 May 2028 which qualify for inclusion in MREL);
- aligns the calculation of MREL with the calculation of TLAC by permitting the resolution authority to 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;
- aligns SRMR with BRRD by providing that EU subsidiaries of non-EU parents that are not resolution entities must satisfy their internal MREL under SRMR by issuing instruments to their ultimate non-EU parent or subsidiaries of that parent in the relevant non-EU country (or other entities outside the EU resolution group if specified conditions are met);
- gives resolution authorities a general power to set a transitional period of up to three years (with intermediate target levels) in relation to compliance with MREL requirements and a power to set a transitional period of up to four years or in some cases six years (with intermediate target levels) where the preferred resolution strategy changes from winding up to resolution action (these changes do not affect transitional periods fixed by resolution authorities before 12 May 2028);
- provides that the SRB is responsible for taking decisions to grant prior permissions under the Capital Requirements Regulation where banks subject to its authority effect the call, redemption, repayment or repurchase of eligible liabilities instruments other than own funds instruments;
- makes clear that the existing power of resolution authorities to prohibit certain distributions by entities failing to meet the combined buffer requirement can be applied based on an estimation of that requirement under CRD where an entity is not subject to the combined buffer requirement on the same basis as its MREL;
- provides for the development of new technical standards and IT solutions for banks to report MREL-related information to supervisors and resolution authorities and requires banks to make public disclosures of MREL-related information via the European Banking Authority (EBA) which will publish the information on its website; and

- requires Member States 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 or contravene the restrictions on selling subordinated eligible liabilities to retail clients.

What are the main changes to recovery and resolution planning?

The package:

- allows supervisors to waive (for up to a year) the requirement for an annual update of certain parts of the recovery plan where there have been no changes to the legal or organisational structure of the institution, its business or its financial situation that could materially affect the plan;
- specifies that recovery plans must not assume (in addition to extraordinary public financial support) access to central bank emergency liquidity assistance or central bank liquidity assistance on non-standard terms (but must include, where applicable, details of how the institution may access other central bank facilities); and
- allows resolution authorities to take a more proportionate approach in relation to resolution planning for subsidiaries that are not resolution entities.

The new legislation also amends the requirements to include contractual recognition of bail-in clauses in banks' contracts which are not governed by the law of an EU Member State. For more information, see our RegTalk blogpost, Contractual recognition of bail-in - amendments to Article 55 BRRD (April 2026).

What are the other changes to the SRM?

SRMR3 also:

- allows Member States to reverse an exercise of the option to confer on the SRB the powers to draw up resolution plans and to take resolution-related decisions for their banks that are not subject to ECB direct supervision or part of a cross-border group;
- gives the SRB additional powers to direct national resolution authorities to exercise their powers under national measures implementing BRRD in relation to banks subject to the SRB's authority;
- enhances the cooperation between the SRB and other EU and Member State authorities in relation to the performance of their tasks;
- gives the Court of Justice of the EU unlimited jurisdiction to review (and revise) SRB decisions imposing a fine or a periodic penalty payment; and
- makes changes to the governance of the SRB, including providing for the appointment of a vice-chair and internal auditor, new requirements to publish SRB policies, guidelines, general instructions and staff working papers, new procedures for consultation on SRB guidelines, general instructions and other instruments of general application and new budgetary procedures.

When do the new rules begin to apply?

The new legislation enters into force on 10 May 2026. Member States are required to transpose the changes to BRRD and DGSD into their national law within two years and to apply those changes from 12 May 2028 (in the case of BRRD3) and 11 May 2028 (in the case of DGSD2, subject to some transitional provisions). Most of the changes to SRMR apply from 11 May 2028. However, some provisions of SRMR3 apply from 11 June 2026.

The EBA is tasked with delivering to the Commission several sets of draft technical standards to implement the amended legislation, developing related IT solutions (including reporting templates, data standards, formats and instructions) and issuing guidelines on the application of the amended legislation. In most cases, the deadline for the EBA to deliver draft technical standards or issue guidelines is 11 May 2027 but in some cases the deadline is 11 May 2028 or 11 May 2029 (and the Commission will need additional time to adopt any technical standards after receiving the EBA draft). This may compress the time available to banks to prepare to implement the new rules.

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