Clifford Chance

BRIEFING

New EU rules on bank crisis management and deposit insurance (Part 2)

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.

Our first briefing on the legislative package reviewed the background to the package and discussed 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). This briefing discusses the changes to depositor preference in winding up, 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 that EU banks may take in response to the package.

Key issues

1. Legislative package amends BRRD, SRMR and DGSD
2. Maintains the super-priority for insured deposits in winding up
3. Extends the scope of depositor preference for uninsured deposits
4. Further harmonises the scope of deposits covered by DGSs
5. Changes the rules on contributions to resolution funds and DGSs
6. Most new rules to apply from May 2028

What is in the legislative package?

As discussed in our first briefing, 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).

How does the package extend depositor preference in bank insolvency?

The package:

- maintains the multi-tier depositor preference regime which gives a 'super-priority' in insolvency to insured deposits and the claims of DGSs to be reimbursed for repayment of insured deposits and a secondary priority to claims of natural persons and micro, small and medium sized entities for deposits to the extent not covered by the DGS (contrary to the original legislative proposal which had envisaged a regime under which all deposits would rank equally ahead of ordinary unsecured creditors in insolvency proceedings against a bank);
- extends the primary and secondary priority to cover deposit claims of the wider range of public authorities qualifying for DGS protection under the amendments;
- requires Member States to give a tertiary level of priority to other deposit claims, such as the deposit claims of large corporates that exceed the DGS coverage level and deposit claims of financial institutions (but excluding specified ineligible deposit claims, such as deposit claims of central and state governments and claims for deposits which qualify for inclusion in a bank's MREL calculation), ending the Member State option to choose whether and how to give a tertiary level of priority to other deposit claims;
- clarifies 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);
- extends the DGS's preferred claim for reimbursement to cases where the DGS makes payments to support alternative measures involving a transfer of deposits by a failing bank that is wound up; and
- ensures that the preferred claims of resolution authorities and resolution financing arrangements for reimbursement of resolution expenses rank above deposit claims (BRRD does not currently specify the ranking of these preferred claims relative to other preferred claims).

Member States will still be able to choose how to rank other preferred non-deposit claims (e.g., secured claims, liquidation expenses, tax and social security claims and claims of employees) relative to preferred deposit claims and to the preferred claims of DGSs, resolution authorities and resolution financing arrangements.

The requirement for every Member State to treat most, if not all, depositors as preferred creditors should make it easier for resolution authorities to execute a bail-in of other ordinary unsecured creditors (excluding depositors) or to execute a transfer of the entirety of a deposit book to a purchaser or bridge institution (leaving ordinary unsecured creditors behind in the residual entity). Ordinary unsecured creditors bailed-in or left behind are less likely to have 'no creditor worse off (NCWO)' claims for compensation if the more favourable treatment given to depositors reflects the priority of those depositors in the creditor hierarchy in winding up.

What are the changes to the scope of deposit insurance?

The package does not change the existing €100,000 cap on the insurance of eligible deposits, even though the distress in parts of the banking sector in March 2023 had focused attention on the level of insurance coverage for larger corporate deposits. However, the package:

- extends the scope of DGS coverage to cover deposits of all public authorities other than certain central or state government entities (currently, deposits of public authorities are excluded from DGS protection, although Member States have a national option to extend DGS protection to deposits of some smaller local authorities);
- excludes from the scope of DGS coverage any deposits which meet the conditions for inclusion in a bank's MREL calculation (including deposits with a residual maturity of less than one year);
- further harmonises the level of DGS coverage of temporary high balances by requiring Member States to ensure (supplemental) coverage of at least €500,000 for six months for deposits held by natural persons as a result of certain private residential real estate transactions and short-term deposits intended for such transactions (but up to a maximum coverage level of €2.5 million) and as a result of life events such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death and other specified circumstances laid down in national law;
- ensures 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 a failed EU bank which is segregated in accordance with EU rules (e.g., money held at EU banks by payment institutions, e-money institutions or investment firms not authorised as banks), while maintaining the existing provisions extending deposit protection to persons absolutely entitled to deposits held by an account holder;
- provides that eligible customers of non-bank financial institutions benefiting from DGS cover on a look-through basis and other persons benefiting from look-through treatment because they are absolutely entitled to deposits held in a protected separate account with a failed bank for professional purposes do not have to aggregate other deposits held with the failed bank when calculating the level of DGS coverage (and allows the DGS to pay out directly to the underlying beneficiary or the account holder);
- makes clear that a DGS must repay insured deposits at par even where the deposit is subject to negative interest rates;

Insolvency ranking of deposit claims under BRRD (highest to lowest)	
Current	**After the amendments**
	• Claims for reimbursement of resolution expenses.
• Primary preferred deposit claims; and • DGS claims for contributions to resolution financing.	• Primary preferred deposit claims; and • DGS claims for contributions to resolution financing or financing of alternative measures in winding up.
• Secondary preferred deposit claims.	• Secondary preferred deposit claims.
• Other deposit claims (at Member State national option).	• Other deposit claims (excluding specified ineligible deposit claims).
• Ordinary unsecured claims (including any non-preferred deposit claims).	• Ordinary unsecured claims (including any non-preferred deposit claims).

Notes

'*Deposit claims*' are claims for deposits within the meaning of DGSD.

'*Primary preferred deposit claims*' are deposit claims in respect of deposits covered by a DGS up to the DGS coverage limit (i.e., €100,000 or the higher limit for some protected temporary and other high balances), including claims of DGSs to be reimbursed for repayment of insured deposits (which, under the amendments, includes the deposit claims of public authorities qualifying for DGS protection and DGS claims to be reimbursed for repayment of those deposits).

'*Secondary preferred deposit claims*' are claims for:

- that part of eligible deposits from natural persons and micro, small and medium-sized enterprises (and, under the amendments, public authorities qualifying for DGS protection) which exceeds the DGS coverage limit; and
- deposits from natural persons and micro, small and medium-sized enterprises (and, under the amendments, public authorities qualifying for DGS protection) 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.

'*Other deposit claims*' are deposit claims other than primary and secondary preferred deposit claims.

'*Specified ineligible deposit claims*' are certain deposit claims which not eligible for coverage by a DGS under DGSD.

Currently, Member States have discretion as to how to rank the preferred claim of resolution authorities and resolution financing arrangements for reimbursement of resolution expenses. Member States can choose how to rank other preferred non-deposit claims.

For more information on the creditor hierarchy in Banking Union Member States, see SRB, Insolvency ranking in the jurisdictions of the Banking Union (last updated 8 January 2026).

- excludes deposits from DGS coverage where there has been a conviction for terrorist financing (extending the existing exclusion which only covers convictions for money laundering); and
- allows deposits held by customers not previously identified in accordance with anti-money laundering requirements to benefit from DGS cover where the holder requests payout, is identified in accordance with those requirements before payout and the previous failure to identify the holder was not attributable to the holder.

What are the other changes for DGSs?

The package requires DGSs to make payouts to insured depositors as soon as possible (but in any event, as currently, within seven working days) after a bank's deposits become unavailable. However, DGSs will only be required to pay out on beneficiary accounts, client funds and the extra cover for temporary high balances within 20 working days of receipt of complete documentation allowing the examination and verification of claims.

DGSs will have to suspend repayment where charges of money laundering or terrorist financing are pending, where financial intelligence units suspend transactions with a depositor on suspicion of money laundering or terrorist financing and where a deposit is subject to EU sanctions measures. However, DGSs will no longer be allowed to suspend repayment of deposits subject to other national or international sanctions measures.

The package sets new conditions on the use of DGS funds for:

- preventive measures, i.e., measures which prevent the deterioration of a bank's financial situation (e.g., through capital injections, guarantees or loans); and
- alternative measures, i.e., measures which support the transfer of deposits to another bank in the context of an insolvency proceeding to preserve depositors' access to their deposits.

The conditions for DGS funding of preventive measures include commitments from the bank to secure compliance with applicable supervisory requirements, requirements for updates to the bank's recovery plan, limits on covering capital shortfalls, a ban on dividends, share buy-backs and payments of variable remuneration, submission of a business reorganisation plan, additional monitoring and requirements for the DGS to transfer any resulting holdings of capital instruments as soon as circumstances allow. DGSD2 gives Member States additional time, until 11 May 2029, before they must apply their national measures implementing the provisions relating to the use of DGS funds for preventive measures (and Member States can allow IPSs recognised as DGSs until 31 December 2032 to comply with those measures).

The conditions for funding alternative measures allow a DGS, after appropriate marketing of the transfer, to finance the transfer in insolvency proceedings of uninsured deposits and other ordinary unsecured liabilities to a buyer and an amount to ensure the buyer's capital neutrality, as well as the transfer of the bank's insured deposits and the bank's assets, where the relevant national authority considers this necessary to avoid contagion risks, to maximise the value upon a sale or transfer to a buyer or to transfer the entirety of a relationship to preserve confidence.

However, the amount of any DGS funding of preventive or alternative measures in relation to a bank must not exceed the amount of the bank's insured deposits.

The new legislation also sets new conditions on the extent to which an institutional protection scheme (IPS) recognised as a DGS (such as in Germany) can lend or otherwise make available its available financial means raised as a DGS to the IPS's other funds.

The package further harmonises the timing, form and content of the information that banks must give their depositors about DGS coverage. The information must be provided in the form of a data extractable information sheet before entering into a deposit-taking contract, when there are any changes and at least every five years (instead of annually). The European Banking Authority (EBA) is tasked with delivering draft technical standards to specify the form of the information sheet as well as the information to be provided to depositors in the case of a merger, reorganisation, change of DGS affiliation or unavailability of deposits.

Banks will also have to maintain and provide DGSs on request with information to help them carry out stress testing and to prepare for repayment of depositors in accordance with technical standards to be drafted by the EBA. They will also have to provide, on request, information about depositors at the bank's EU branches and depositors who receive the bank's services in other Member States and will need to be able to identify deposits subject to EU sanctions measures.

The new legislation allows a bank's home DGS to pay out depositors at branches in another Member State directly, instead of via the DGS in that Member State. It also provides that a DGS in a Member State into which a bank provides cross-border services may act as a point of contact for depositors under agreement with the bank's home DGS.

The package requires EU branches of non-EU banks to become members of the local DGS in the Member State where the branch is located (but branches existing on 11 May 2028 have until 11 August 2028 to comply with this requirement). In addition, DGSs will 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.

What is the impact on bank contributions to industry-funded backstops?

The package does not change the target level of available funds that should be held by resolution financing arrangements (1% of total insured deposits) or DGSs (0.8% of total insured deposits).

However, tilting the balance in favour of resolution instead of winding up proceedings, making greater use of DGSs to finance resolution (or preventive and alternative measures) and increasing access to resolution financing arrangements may result in more frequent requirements for banks to make contributions to replenish the funds of resolution financing arrangements and DGSs (albeit mitigated by other measures such as the new minimum MREL thresholds for some medium-sized and larger banks).

The package provides for the resumption of banks' annual contributions to resolution financing arrangements if the arrangement's available funds fall below the target level of available funds. But resolution authorities may defer collections until the amount to be collected is proportionate to the collection process and can spread significant amounts over a collection

period of up to six years or, in the case of the Single Resolution Fund (SRF), up to ten years in some cases where access to the SRF has been triggered by the use of DGS funding.

The new legislation also changes the basis on which resolution authorities can make extraordinary calls to accelerate the replenishment of the available funds of a resolution financing arrangement. Under the package, those calls are limited to three times 12.5 % of the target level of available funds per year (instead of three times the annual amount of contributions).

The package does not change the limit on the use of collateralised irrevocable payment commitments (IPCs) in lieu of cash contributions to resolution financing arrangements (30% of total required annual contributions). However, subject to that limit, resolution authorities will have to reassess annually the share of IPCs in the total amount of contributions to be raised. Resolution authorities will be obliged to call on any IPCs whenever they make use of resolution financing arrangements. Resolution authorities will also be required to cancel any IPCs provided by an institution that ceases to fall within the scope of BRRD but they may require the institution to contribute to the resolution financing arrangement up to the amount of the IPC to avoid a shortfall in available funds. Recitals to the legislation exhort resolution authorities to take steps to mitigate any procyclical effect of IPCs depending on their accounting treatment. DGSs will also continue to be able to accept payment commitments in lieu of cash contributions up to 30% of total available financial means. However, these must be payable within two working days of a demand and the EBA will issue guidelines as to the criteria for admissibility of those commitments.

Where a DGS's available funds fall below the target level by less than one third, the DGS will have to require banks to resume making regular contributions so as to replenish the DGS's funds within two years (or three years where this is proportionate to collection costs). However, the package maintains the six-year time limit for replenishment in cases of larger shortfalls.

DGSD already provides for a transfer of DGS contributions where a bank ceases to be a member of a DGS and joins another DGS or if some of its activities are transferred to a DGS in another Member State. The package requires the original DGS to transfer to the receiving DGS an amount equal to the contributions or relevant proportion of the contributions due in the last 12 months (excluding extraordinary contributions), instead of the contributions paid in that period (and transfers are to be made within one month of the change or transfer).

DGSD already requires DGSs to have adequate alternative funding arrangements to enable them to obtain short-term funding before having to collect extraordinary contributions from member banks. However, the package provides that:

- DGSs can only use public financing to pay out insured depositors or to support resolution action (not preventive or alternative measures) but public financing must be a last resort and must be provided in the form of loans or guarantees with a maximum six-year term (extendable by three years in extraordinary circumstances); and
- where a DGS has used its funds for preventive measures in relation to a bank, the DGS's member banks must immediately cover the DGS for the funds used (if necessary, by extraordinary contributions) if it becomes necessary to pay out depositors or intervene in resolution

and the DGS's available funds are below two thirds of the target level or if the DGS's available funds fall below 25% of the target level.

The new legislation removes the national option to fund DGS payments via alternative national mandatory contribution schemes (although this option is left in place for resolution financing arrangements).

The package extends the supervisory powers and penalties that can be applied to banks that fail to comply with their obligations as members of a DGS. It also requires banks to pay the statutory rate of interest on late payments of contributions to a DGS.

What is not in the package?

The package does not change the principle that resolution can be used in relation to any bank (regardless of size) 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, based on the public interest test. However, the package aims to improve the framing of this discretion to ensure improved harmonisation at EU level.

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 package also does not address how liquidity should be provided to support resolution.

The package does not include any new special exemptions for Institutional Payment Schemes (IPSs). However, Member States will be allowed to give IPSs additional time in which to comply with the changes to DGSD relating to preventive measures. In addition, the package extends the definition of a 'resolution group' in relation to an IPS to include both credit institutions and financial institutions permanently affiliated to the central body of the IPS.

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 package requires Member States to ensure that depositors have access to an appropriate daily amount from those deposits where those powers are exercised.

The package does not change the way in which DGSs assess risk for the purposes of calculating contributions or require additional transparency for banks as to how DGS contributions are calculated. The package also does not require shareholders or creditors to participate in burden-sharing when a DGS provides support via preventive measures to assist a distressed bank.

The package does not include additional measures to restrict sales of subordinated eligible liabilities to retail clients (although it provides that deposits held by natural persons and micro, small and medium sized enterprises cannot be included in MREL). However, the EBA and the European Securities and Markets Authority are required to report to the Commission on the operation of the existing restrictions with a view to a possible future legislative proposal.

The Commission is currently reviewing the competitiveness of the EU banking sector with a view to issuing a report and possibly a legislative proposal later this year. The review may include additional proposals for changes to the CMDI framework in particular to reduce undue complexity in the framework. For example, the European Central Bank has proposed further alignment of the frameworks for loss-absorbing capacity to reduce the number of elements and stacks in the MREL framework and reviewing its interaction with going concern capital requirements. There may also be scope for reducing the burden of reporting requirements under the CMDI framework as part of the Commission's project to reduce reporting burdens on business.

When do the new rules begin to apply?

As discussed in our first briefing, 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.

What actions do EU banks need to take?

EU banks may need to take action as a result of the implementation of the package, including:

- updating disclosures in capital markets prospectuses and registration statements about the CMDI framework;
- changes to their systems and controls for identifying which depositors are covered by their DGS and to the disclosures that they make to customers on DGS coverage;
- changes to their arrangements for supervisory reporting and public disclosure of MREL-related information and for maintaining information to help DGSs carry out stress testing and to prepare for repayment of depositors;

- adapting to the changing rules for treating deposits as eligible liabilities for the purposes of their MREL;
- if they may become subject to an MREL above minimum capital requirements for the first time, taking steps to comply with the new requirement;
- reviewing the impact of the changes on IPCs and payment commitments to DGSs used in lieu of cash contributions; and
- changes to their policies and procedures for complying with the requirements for including bail-in recognition clauses in certain contracts.

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