Brussels, 08th December 2020

EACB comments on the European Commission's Combined Evaluation Roadmap/Inception Impact Assessment on Banking Union: Review of the bank crisis management and deposit insurance framework (BRRD/SRMR/DGSD review)

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General comments

Depositor confidence is a public good built up hard for decades by relevant national schemes, including private schemes. Harmonization should be sought but not pose downside effects.

In view of the upcoming consultation and next steps, the value of existing crisis management tools must be assessed and reflected.

In particular, the value of existing support schemes of cooperative banks, such as guarantee schemes, institutional protection schemes or law-based solidarity mechanism which have proven to be a guarantor of stability over decades should be properly reflected.

Preventive uses of the DGS or other measures

Private measures to avoid the failure of banks must remain possible due their proven efficiency in the past and for legal reasons (not affecting the principles of private ownership). Generally, such private measures (e.g. Art. 32(1)(b) BRRD) must take precedence over government measures. The EU rules on state aid determine the limits for purely private measures.

An exchange is needed to clarify conditions, limits and purpose of preventive, alternative and resolution measures. In practice, preference should be given to the least intrusive, but most efficient tool. The least cost test is an adequate means to ensure efficiency for measures according to Art. 11(6) DGSD.

Contributions to DGS schemes should be risk-based and linked to a bank's likelihood to tap the DGS for measures. When banks do not go into liquidation because they received support, a recovery of cost should be envisaged.

As the compatibility of DGS interventions with state aid rules can cause significant impediments for all safety net players, they should not be excluded from this review.

Finally, covered deposits' highest rank in the creditor hierarchy, as per Article 108 (b) BRRD, should remain unchanged.

Public Interest Assessment (PIA) and small/medium-sized institutions

We agree that the PIA should be better framed and applied consistently in the EU to ensure that the same standards are applied in the EU to banks of a relevant size. We understand that

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the Commission strives that at least medium-sized banks should be subject to resolution. Yet we do not see in resolution a better approach for smaller banks compared to insolvency. An insolvency approach would be a more proportionate approach for these banks in terms of administrative burdens (reporting to RA). In the revised CRR the category of non-complex institutions was introduced and justified with risk and proportionality aspects. This should apply here as well.

On the other hand, it must be ensured that smaller banks, which do not meet the PIA, undergo an appropriate treatment (liquidation, alternative measures, etc.) subject to a strict respect of state aid rules and least cost test. The exemption from resolution procedures must not result in a "free ride" for MSs.

To increase transparency and limit the risk of a state aid, RA authorities should make public whether bank is to be resolved / liquidated in a FOLF situation. State aid, if provided by national DGS, must generally not be incorporated in the counterfactual analysis for the PIA.

Harmonisation of insolvency laws

Harmonisation must be carefully calibrated. Otherwise, the counterfactual analysis in the PIA would tip the balance towards liquidation and the 2nd pillar of the BU would lose its purpose. The harmonisation of the creditor hierarchy also requires caution (side effects must be studied: eviction effects on other debts eligible for MREL or banks' funding cost).

Market integration

Requirements for entities that are not resolution entities (45g BRRD2), maintain unnecessary national buffers, undermine the principle of the BU and the SPE resolution strategy. Waivers of internal MRELs within a MS should be allowed by RAs if all conditions set in the law are fulfilled once the BRRD2 kicks in 2021. Cross-border internal MREL waivers should operationalize the principles of the BU.

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