EC’s TARGETED CONSULTATION REVIEW OF THE CRISIS MANAGEMENT AND DEPOSIT INSURANCE FRAMEWORK

Answer from FGDR, France

The French DGS, Fonds de Garantie des Dépôts et de Résolution (FGDR), thanks the European Commission for its consultation over the possible evolution of the EU crisis management and deposit insurance framework (“CMID Framework”). It has taken note of the European Commission’s planned review of the crisis management and deposit insurance framework of the EU and welcomes any approach to further strengthen depositor protection and financial stability.

General remarks and key messages

FGDR would like here to outline the general approach of the CMDI framework it sees as technically consistent and efficient.

The articulation between resolution and deposit insurers’ actions within the CMDI framework is based on the core element of a public interest assessment (PIA).

This PIA might be further assessed and specified by the regulation, so to be both demanding and not disputable. But in all cases, it should stay a demanding one, as strict as it is currently: a positive fulfilment of the PIA triggers the use of powerful resolution instruments, outside the scope of ordinary law, which infringe on constitutional property rights. The resolution cases which occurred in the EU in the recent past also showed that those processes are particularly complex ones to handle and give rise to a number of litigations and then, uncertainties. Resolution should stay “for the few”.

In case the PIA is positively fulfilled

Then, the failing bank, or some of its part, look essential to the functioning of the market and to financial stability. Because of this core feature, resolution authorities are justified in their use of extraordinary legal powers. In addition, keeping those function alive cannot be done at the benefit of the existing stakeholders.

A burden sharing should be enforced by resolution authorities against shareholders and debt holders, according to the creditor hierarchy and the access to the resources of the SRF or any national Resolution Fund should be subordinated to this burden sharing. This burden sharing needs to be as demanding as it is today, in relation with the use of extraordinary public resources, collected on competitors. From this viewpoint (extraordinary actions, fairness vis-à-vis the rest of the marketplace), it would not look relevant to weaken the level of burden sharing required by the existing CMDI framework.

In case the PIA is negative (or just not performed)
The test could be negative, or just no performed because the case looks clearly below the conditions required for a resolution scenario. Then, the failing bank can exit the market without much harm (gone concern).

It looks then inappropriate that the resources collected by DGSs on their member banks could be used to restore the viability of a failing (unessential) competitor. DGSs should use those resources and their specific powers (preventive actions, alternative measures, payout) to organise the exit of the market in the most efficient way, with an immediate or short-term liquidation perspective, something that was not always enforced in the past.

This liquidation perspective can be set through a (pragmatic) requirement for market prices when divesting assets and through adequate least-cost tests. Then, such a liquidation perspective ensures an effective burden sharing by the stakeholders of the failing bank (according to the creditor hierarchy), as well as the level playing field for all market players. A control of the DGS's action, whether private or public, under the State aid rules is also no longer needed.

Correctly designed and enforced, a clear liquidation perspective given to all DGSs' interventions also makes the issue of whether DGSs could be authorised to use preventive powers, alternative measures or payout less relevant. As a matter of fact, while some cautionary conditions could be set for defining the frame of those interventions, DGSs should remain fully able to make use of the whole range of crisis intervention instruments, so as to allow them to face all possible crisis situations. FGDR's experience in that field, always conducted under a liquidation approach, supports that assessment.

Exceptions to this approach
FGDR sees two scenarios where this general approach would not apply as previously stated.

First, for Institutional Protection Schemes and alike (IPSs): when undertaking preventive actions, IPSs do not use their resources to restore the viability of a competitor, but to fulfil their solidarity commitment and to maintain the reputation of the network.

Second, for supporting a failing entity in going concern: in case a DGS, or national authorities would prefer avoiding a liquidation perspective for the failing bank in favour of a going concern approach, the needed resources should then be collected on a voluntary basis, aside the DGSD requirements, and be subject to a State aid control as the case may be.

Conclusion on the CMDI framework
As a whole, this approach (i/ resolution processes kept for exceptional cases, in a going concern perspective, with no weakening of the PIA, and ii/ DGSs' instruments maintained, but triggered in a rigorous gone concern perspective), with the exceptions mentioned above would in our view:

- clarify the CMDI framework;
- concur to financial stability and to a sounder banking market;
- establish a better level-playing field;
- ensure an adequate and efficient in the use of joint resources of resolution funds and DGSs.

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As for EDIS, FGDR keeps in mind that various preconditions are required before the establishment of a single European deposit insurance scheme and that political decisions will be key also in that matter.

From a technical viewpoint, FGDR considers that a clear difference should be made for the setting and for decision-making processes of EDIS, between liquidity providing (refinancing) and burden sharing.

When time comes and with no reference to a possibly more mutualized instrument, a centralized second-level liquidity provider is likely to offer a useful funding instrument for DGSs, which could help DGSs to smoothen their funding operations in case of significant banking crises. Quite importantly, as also underlined by the EFDI community, when the conditions for a DGS intervention are met, only an unconditional and very short-term access to such liquidity could meet with the requirements made on DGSs (unconditional compensation within 7 working days), while not implying any burden sharing per se.

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