

Consultation strategy

Banking Union: Review of the bank crisis management and deposit insurance framework (BRRD/SRMR/DGSD review)

1. Background information

The EU bank crisis management and deposit insurance framework lays out the rules for handling bank failures. The framework has a direct effect on a number of stakeholders. It stipulates how banks and authorities should prepare for the event of a possible future bank failure (e.g. through plans for averting and handling the failure or situations where failure is likely, through the issuance by banks of certain liability instruments earmarked for loss absorption). It also sets the exact rules on how concrete bank failures are managed and what impact this has on the failing bank and the creditors and shareholders of that bank (e.g. the distribution of losses from that failure, the concrete steps to protect depositors, etc.). The framework in its current shape was established after the global financial crisis. It consists of three EU legislative texts, namely the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR), and the Deposit Guarantee Schemes Directive (DGSD), which act together with relevant national legislation (e.g. national insolvency law applicable to banks). The BRRD, SRMR and DGSD give a mandate to the Commission to review their application.

The obligations under the review clause of the BRRD and SRMR have been fulfilled by the 2019 Commission report on the application of the BRRD and the SRMR¹ (BRRD/SRMR report). The BRRD/SRMR report concluded that, while it was premature at that juncture to put forward a legislative proposal, the Commission would continue monitoring the application of the framework and engage in a comprehensive discussion of identified topics with experts and relevant stakeholders. The report also signalled that the Commission would take into account policy developments in the deposit insurance field, in particular discussions of the High-Level Working Group established under the auspices of the Eurogroup and the review of the DGSD pursuant to the latter's review clause. With a view to the preparation of the DGSD review, the European Banking Authority (EBA) has published three opinions on the implementation of the DGSD².

The main purpose of this BRRD/SRMR/DGSD review is to increase the efficiency, proportionality and overall coherence of the framework, to ensure equivalent treatment of banks and banks' creditors across the EU whatever the location, size or business model of the bank concerned and to enhance the level of depositor protection, including through the creation of a common depositor protection mechanism in the Banking Union.

As part of the impact assessment accompanying the present review, the Commission will perform a targeted evaluation of the applicable framework. There is now some experience with the crisis

¹ See https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190430-report-bank-recovery-resolution_en.pdf

² The three EBA opinions have been published in [August 2019](#), [October 2019](#), and [January 2020](#).

management and deposit insurance framework but, as signalled in the BRRD/SRMR report, in some areas it remains limited. In addition to the three EBA opinions on the DGSD implementation, the review will benefit also from two external studies³. The evaluation will rely on the following criteria: i. effectiveness, ii. efficiency, iii. relevance, iv. coherence (in relation to other banking and financial sector legislation), v. proportionality and incentive compatibility (i.e. creating a balanced set of incentives for using the different tools within the framework) , and vi. EU added value.

2. Consultation scope and objectives

As mentioned in the introduction, a number of analytical inputs have been completed in preparation of the present review both internally as well as from external sources. This includes on-going Commission work with experts from Member States in the context of the Expert group on banking, payments and insurance, discussions in the Council's Ad hoc working party on completing the Banking Union, the analyses by the EBA jointly with the Commission and national authorities in the preparation of the three EBA opinions, other relevant EBA work (e.g. on early intervention measures, public interest assessment, MREL), relevant work by the European Central Bank and the Single Resolution Board, IMF assessments in particular in the context of the Article IV Consultation process for the Euro Area, as well as the two aforementioned external studies. These inputs covered, among others, the experience with the application of the framework and views on the potential for and merits of amending it, from a regulatory and legal feasibility point of view. Overall, **available evidence so far focusses on the factual, technical and legal aspects**, and some **political considerations** on Member States' preferences. However, an encompassing analysis of the opinions and perceptions by a broader range of stakeholders (e.g. industry, citizens, etc.) has not yet been performed. The consultation activities performed under the BRRD/SRMR/DGSD review will therefore aim at gathering such views and opinions from the identified key stakeholders.

The consultation activities will have two objectives. First, they will aim at gathering stakeholders' views on and experience with the current crisis management and deposit insurance framework. This backward-looking part of the consultation will inform the targeted evaluation that will be part of the impact assessment and will cover the six evaluation criteria listed above. Second, the consultation will also cover the framework's possible evolution in the present review that is subject to an impact assessment, covering the problem definition, the issue of subsidiarity and the EU dimension, the identified policy options including their likely impacts, and the potential for any regulatory cost reduction and simplification.

The consultation strategy will be designed in a **two-level content structure**, distinguishing fundamental issues and main design principles of the framework on the one hand, and detailed technical issues related to the implementation and use of individual elements of the framework on the other hand. In this first part, questions such as the relative extent of the use of resolution and insolvency, the availability of crisis management tools in resolution and insolvency, or the perceived credibility of the depositor protection mechanism could be tackled. Subsequently, the consultation could cover deeper technical questions such as changes of the hierarchy of claims in insolvency, the

³ The two external studies cover the [potential for harmonisation of bank insolvency laws](#) and the so-called [options and national discretions \(ONDs\) under the DGSD and their treatment in a future European Deposit Insurance Scheme](#).

definition and implementation of the least cost test for deposit guarantee schemes' interventions other than payouts, or the so-called issue of temporary high deposit balances could be covered.

3. Mapping of stakeholders

This initiative is likely to have effects mostly on the following stakeholders:

- **Credit institutions** – credit institutions are one of the key stakeholders of this initiative. They are covered by the scopes of the BRRD, DGSD and SRMR. They are directly involved in both the preparatory phase of crisis management and deposit insurance (i.e. in “good times” when no signs of distress are apparent), as well as in the intervention phase (i.e. where signs of distress appear in a concrete entity, possibly leading up to its failure, that need to be managed by the crisis management and deposit insurance framework).
- **Other financial market participants** – this category includes investment firms covered by the scope of the BRRD and therefore also affected by the preparatory and the intervention phases of the framework. This category also includes entities participating in financial markets that would likely be holders of the loss-absorbing securities, and other specific actors such as payment and electronic money institutions, financial infrastructure providers, etc.
- **Non-financial companies, including SMEs** – these companies are affected in their quality of users of financial services, depositors and investors in securities issued by financial entities. They are mostly affected by the specific interventions of the crisis management and deposit insurance framework in a specific event (some elements of the preparatory phase may also be relevant, such as information provision).
- **Citizens and households** – individual citizens can also be affected by interventions of the framework in their quality of consumers/users of financial services, depositors and investors in securities issued by financial entities (some elements of the preparatory phase may also be relevant, such as information provision).
- **National and supranational authorities and institutions** – this category includes national governments and EU public authorities, mandated authorities and bodies in charge of implementing the crisis management and deposit insurance framework (possibly also including non-public bodies, in particular in deposit insurance), and international organisations.

They could participate in the consultation activities individually or through their respective representative body.

4. Selection of consultation activities & their accessibility

To ensure a representative stakeholder coverage and sufficient inputs on both levels of content of the consultation strategy, as explained in section 2., the following consultation activities are envisaged:

- **Public consultation** – to take place tentatively in November 2020 and be held for a total period of 12 weeks. The consultation document will be available on the Commission's central [public consultations page](#) in EN/DE/FR [+possibly other languages as an intermediate

solution, e.g. IT, ES, PL] and answers can be submitted in any of the official EU languages. The main focus will be on fundamental issues and design principles.

- **Targeted consultation with key stakeholder representatives** – meetings will be organised in parallel with the public consultation, covering both fundamental design issues and specific technical issues. The selection of representative bodies to be invited will be done in order to cover in a balanced way the first four stakeholder groups (see section 3.). Voluntary requests from additional entities would be in principle accepted, to the extent that the overall balance is maintained.
- **Industry forum or conference** – a public event would be organised in early 2021 (tentatively January or February) targeting financial industry participants, legal practitioners and national/supra-national bodies. The event would be on invitations only and among industry participants it would target individual entities in a way that would ensure good geographical and entity type-related balance. The forum would target fundamental design issues and specific technical issues.
- **Expert group** - Work will continue within the context of the [Expert group on banking, payments and insurance](#) with experts nominated by Member States. The main focus of the work in this forum is on specific technical issues.

The public consultation and the possibility of targeted consultation meetings will be advertised with the main industry and consumer representative bodies, as well as on Commission's web pages.

The results of the consultation activities will be summarised in a synopsis report annexed to the impact assessment and published on the consultation page.

5. Summary /overview on consultation activities by stakeholder groups and indicative timing

The following table summarises the envisaged consultation activities, their stakeholder coverage and their focus in terms of content.

Content coverage: ● = fundamental issues and main design principles ◆ = technical issues

	Activity	Public consultation	Targeted consultation	Industry forum/conference	Expert group
	Timing	Nov 2020- Feb 2021	Dec 2020 – Feb 2021	Jan or Feb 2021	On-going, until Q1 2021
Stakeholders					
Credit institutions		●	●◆ (repr. body)	●◆	
Other fin. market participants		●	●◆ (repr. body)	●◆	
Non-financial companies, including SMEs		●	●◆ (repr. body)		
Citizens and households		●	●◆ (repr. body)		
National and supranational authorities and institutions		●		●◆	◆

6. Consultation webpage & communication activities

TBC