Impact assessment

Technical presentation by DG FISMA

Timeline: preparation of CMDI package

11/2020	01/2021	02/2021	03/2021	10/2021	09/2022	01/2023	03/2023	04/2023
Inception Impact Assessment	**Public general consultation**	**Targeted technical consultation**	**DG FISMA conference on CDMI**	**EBA reply Call for Advice**	**First submission RSB**	**Second submission RSB**	**Interservice consultation**	**Adoption by College**

2020 - 2023

Multiple meetings, workstreams and extensive research

High Level Working Group and Eurogroup meetings

- Council Working Parties meetings during the PT, DE and SI Presidencies
- >50 Bilateral meetings with resolution authorities and competent authorities
- >60 Bilateral meetings with industry stakeholders
- Five EBA opinions on DGSD
- Two studies financed by the European Parliament on DGSD and banking solvency laws and seven yearly reports on the Banking Union
- Four editions of risk reduction monitoring reports prepared by the ECB, Commission and SRB
- Call for advice to the EBA on funding considered in the CMDI framework

- 15 responses from the Inception Impact Assessment
- 191 responses from public & technical consultations
- 11 expert group meetings (EGBPI)

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Evaluation of current framework (1/2)

- The evaluation covers BRRD, SRMR and DGSD, since their entry into force. It complements the impact assessment of the CMDI review and its conclusions feed into the problem definition.
- General objectives of the CMDI framework:
  - Financial stability, market discipline, continuity of critical functions for society
  - Single market functioning, level playing field
  - Minimise recourse to taxpayer money, weaken bank-sovereign loop
  - Protect depositors, ensure consumer confidence
- Five assessment criteria (Better Regulation): efficiency, effectiveness, relevance, coherence and added-value of EU action.
- Broad range of information sources such as results of consultations with stakeholders, exchanges with Member States, pilot studies of the European Parliament, exchanges with relevant authorities, reports from the EBA, reports from the JRC and desk research of the Commission services.

Evaluation of current framework (2/2)

- The application of the CMDI framework brought important benefits in terms of maintaining financial stability, significantly improved depositor protection and contributed to boosting consumer confidence in the EU banking sector.

- **Effectiveness**: the framework partially achieved its objectives of containing risks to financial stability and protecting depositors, but failed to enhance the functioning of the single market and minimising recourse to taxpayers' money.

- **Efficiency**: the framework is not sufficiently cost-effective. Despite the costs of implementation, the framework and its tools and powers have been scarcely used in practice, especially in the Banking Union.

- **Coherence**: further improvements are necessary to ensure a better internal interaction and consistency between the various pieces of legislation forming the CMDI framework, as well as improving the coherence of the CMDI framework with other relevant legislation, in particular with regard to State aid rules.

- The framework remains very **relevant** and **adds EU value** because cross-border crisis management cannot be left to the national level.

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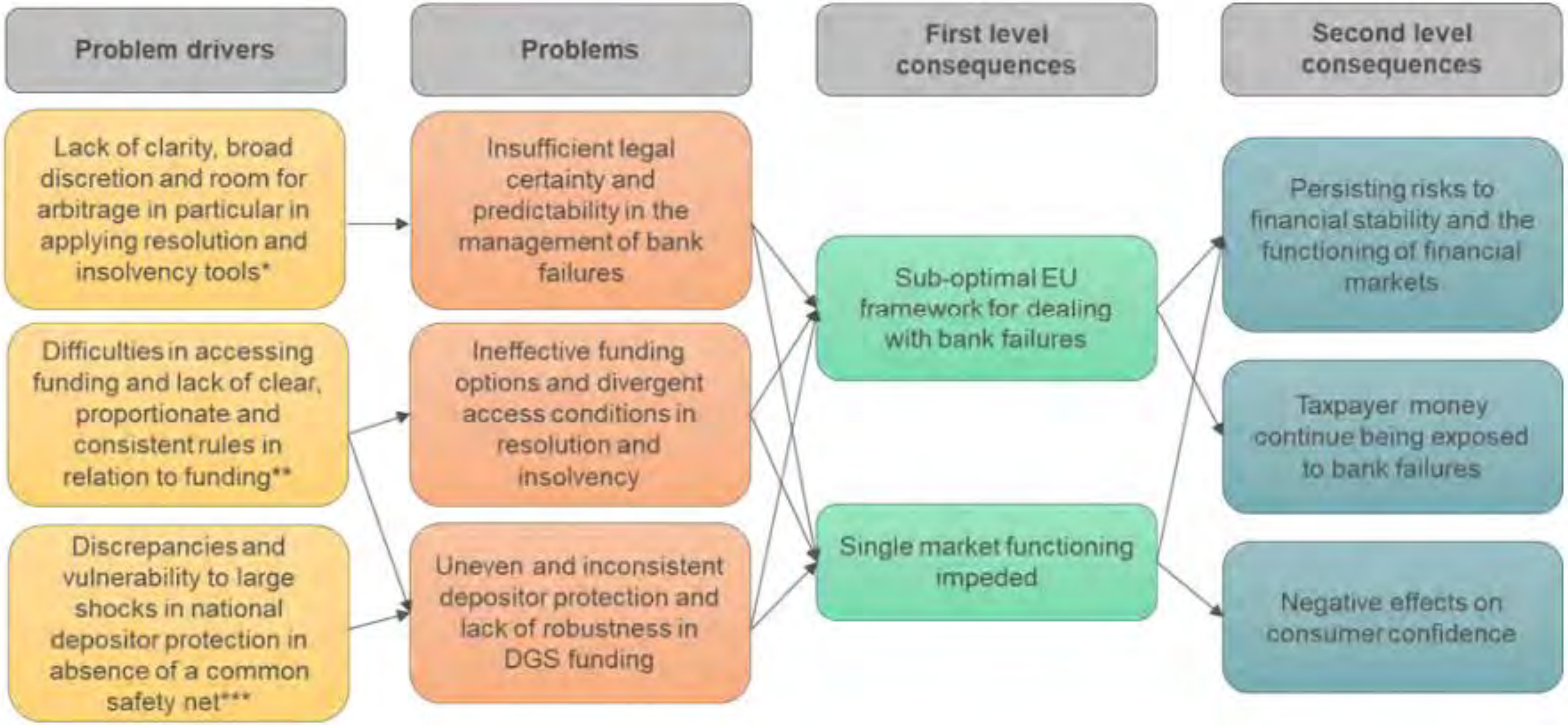
Problem definition



Notes: * PD 1.1. Lack of clarity and framing of the BRRD precautionary measures and the DGSD preventive measures
PD 1.2. Discretionary application of the PIA
PD 1.3. Divergence in the hierarchy of claims in national insolvency laws

** PD 2.1. Structural difficulty in fulfilling the minimum conditions to access the RF/SRF for certain banks
PD 2.2. Divergent access requirements for the resolution fund and for funding outside resolution
PD 2.3. Limited scope to grant DGS funding in resolution and insolvency

*** PD 3.1. Discrepancies in national depositor protection across Member States
PD 3.2. Insufficient means of national DGSs

Design of policy options

- The approach to formulating policy options needs to be **holistic** given the critical interplay among key policy aspects
- The impact assessment **bundles** together relevant design features of the framework to deliver consistency in the resulting **packages of options**
- Aim to provide a **coherent and logical articulation** for each encompassing package of policy options. However, each package delivers different degrees of effectiveness and efficiency in achieving the key objectives of the framework
- Interchanging elements across option packages could create **inconsistencies** and reduce the intended improvements of the framework

Baseline

- Under the baseline, the existing CMDI framework and national regimes for handling failing banks would continue to apply without any legislative changes:
  - Broad discretion in the application of the **public interest assessment** would continue to be exercised by resolution authorities, with the risk of maintaining divergences across the EU
  - **Access to the resolution funds** for certain smaller and medium-sized banks would remain challenging
  - **DGS interventions** would remain divergent due to uneven access conditions across Member States (least cost test). The super-preference of the DGS would make it almost impossible to use DGS funds outside the paybox function
  - Persisting differences in the hierarchy of claims would continue to make the level of **depositor protection** uneven between Member State
  - Current room for **regulatory arbitrage** would remain unchanged, leaving the possibility to apply measures outside resolution, financed through DGS funds or taxpayer money
  - **Taxpayer's money** would continue to be used despite the build-up of MREL and significant safety nets
  - Absence of changes would weaken confidence in the EU banking sector and the **Banking Union project**

Packages of policy options

- **Packages of internally-consistent options**:

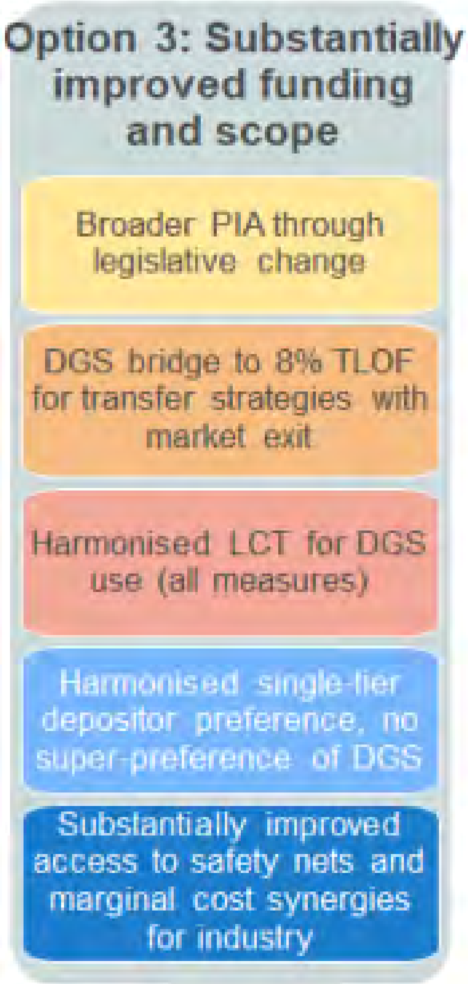
Key dimensions	Option 1: Baseline (status quo)	Option 2: Slightly improved funding and scope	Option 3: Substantially improved funding and scope	Option 4: Ambitious CMDI review including EDIS
Public interest assessment (PIA)	Extent of PIA delivered through interpretation	Slightly broader PIA through legislative change	Broader PIA through legislative change	Broader PIA through legislative change, general resolution presumption
Access funding in resolution (RF/SRF)	Ineffective use of DGS (despite existing Art. 109 BRRD)	DGS bridge to 8% TLOF for transfer strategies with market exit	DGS bridge to 8% TLOF for transfer strategies with market exit	DGS/EDIS bridge to 8% TLOF for transfer strategies with market exit
Conditions to access DGS (preventive, resolution, insolvency)	Divergent LCT for DGS uses	Harmonised LCT for DGS use (all measures)	Harmonised LCT for DGS use (all measures)	Harmonised LCT for DGS use (all measures) and EDIS under SRB strong governance
Harmonisation of depositor preference in the hierarchy of claims	Unharmonised 3-tier depositor preference, with super-preference of DGS	Harmonised 2-tier depositor preference, no super-preference of DGS	Harmonised single-tier depositor preference, no super-preference of DGS	Harmonised single-tier depositor preference, no super-preference of DGS
Use of industry funded safety nets and cost synergies for banks	Difficulty to substitute use of public funds with industry safety nets and no cost synergies for industry	Marginally improved access to safety nets and no cost synergies for industry	Substantially improved access to safety nets and marginal cost synergies for industry	EDIS pooling delivering significant cost synergies for industry (lower target level)

2013 Banking communication (State aid) review – to be conducted in parallel with the CMDI review*

Common elements across all options: depositor protection, EIMs, timing of Failing or Likely to Fail declaration (FOLF), interaction between FOLF and insolvency…

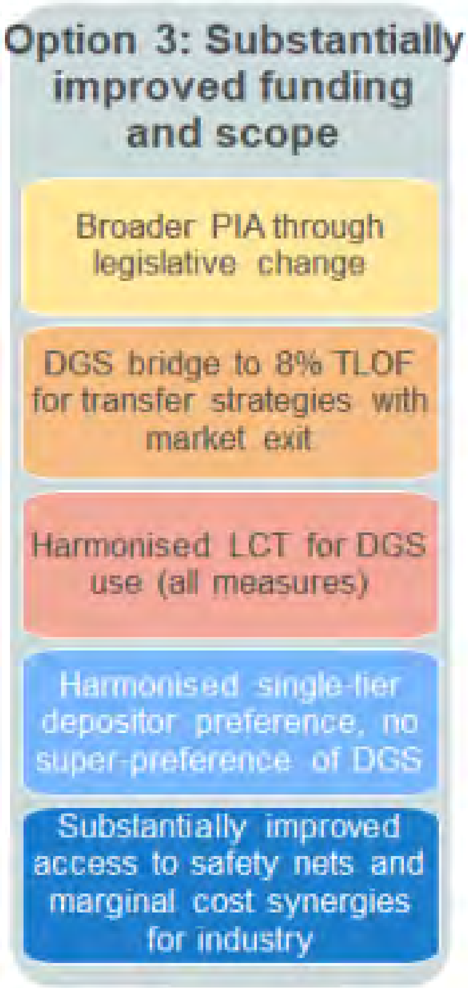
Preferred policy option(s) (1/2)

- **Benefits**
  - Strengthen the level playing field, improve legal certainty and predictability, and make the CMDI framework more incentive-compatible across all possible interventions available in the toolbox
  - Deliver tangible benefits to resolution authorities by increasing the legal certainty and providing them with stronger financing solutions to handle bank failures effectively
  - Limit further the recourse to public funds and enhance financial stability, without undermining the access conditions to industry-funded safety nets and the principle that MREL remains the first line of defense
  - Enhance depositor protection and a more efficient use of industry funds
  - Be conducive to further cross-border market integration and consolidation based on credible reliance on transfer strategies in resolution



Preferred policy option(s) (2/2)

- **Costs**
  - Potential additional replenishment needs by the industry without benefiting from lower contributions (in the absence of EDIS)
  - Potential risks of shortfalls in national DGS funds
  - Additional coordination efforts between resolution and DGSs authorities
  - Need for banks newly earmarked for resolution to raise the required levels of MREL and set up reporting capabilities, and authorities to prepare resolution plans
- Option 4 (Ambitious reform of the CMDI framework including EDIS), while providing a superior outcome, was not retained in absence of political agreement by co-legislators



Thank you!

More information:

- Impact assessment CMDI review
- EBA reply to Commission's Call for advice (Oct 2021 – EBA/REP/2021/31)
- EBA opinions on DGSD
- ECB occasional paper on uses of DGS (Oct 2022)
- Press release - Banking Union: Commission proposes reform of bank CMDI framework
- Questions and answers – Reform of bank CMDI framework
- Factsheet
- Joint Research Center research update on CMDI

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