Impact assessment

Technical presentation by DG FISMA
Timeline: preparation of CMDI package

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

11/2020
Inception Impact Assessment

01/2021
Public general consultation

02/2021
Targeted technical consultation

03/2021
DG FISMA conference on CDMI

10/2021
EBA reply Call for Advice

09/2022
First submission RSB

01/2023
Second submission RSB

03/2023
Interservice consultation

04/2023
Adoption by College

➢ 15 responses from the Inception Impact Assessment
➢ 191 responses from public & technical consultations
➢ 11 expert group meetings (EGBPI)
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.
Problem definition

Problem drivers
- Lack of clarity, broad discretion and room for arbitrage in particular in applying resolution and insolvency tools*
- Difficulties in accessing funding and lack of clear, proportionate and consistent rules in relation to funding**
- Discrepancies and vulnerability to large shocks in national depositor protection in absence of a common safety net***

Problems
- Insufficient legal certainty and predictability in the management of bank failures
- Ineffective funding options and divergent access conditions in resolution and insolvency
- Uneven and inconsistent depositor protection and lack of robustness in DGS funding

First level consequences
- Sub-optimal EU framework for dealing with bank failures
- Single market functioning impeded

Second level consequences
- Persisting risks to financial stability and the functioning of financial markets.
- Taxpayer money continue being exposed to bank failures
- Negative effects on consumer confidence

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:

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<th>Option 2: Slightly improved funding and scope</th>
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<td>Conditions to access DGS (preventive, resolution, insolvency)</td>
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<td>Harmonisation of depositor preference in the hierarchy of claims</td>
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<td>Use of industry funded safety nets and cost synergies for banks</td>
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Common elements across all options: depositor protection, EIMs, timing of Failing or Likely to Fail declaration (FOLF), interaction between FOLF and insolvency…

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