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EAPB comments on the review of the crisis management and deposit insurance (CMDI) framework

The EAPB supports the objectives of the CMDI review which aims at strengthening rules for handling bank failures while protecting depositors. It is important however that the review duly considers the business model of promotional banks and other public banks which primarily fund the public sector and SMEs.

General comments on the scope of EU resolution and the specificities of public banks

We note that the Commission's intention is to extend the scope of the EU resolution framework to apply it to a larger subset of banks, including mid-sized banks. We like to note that this contrasts with past thinking where it was declared that resolution should be for the few not the many (Koenig 2020). While we understand that resolution authorities would retain a great degree of discretion, we think that the expected impact of the proposed changed should be clarified i.e. the number and type (large, medium, small) of entities that would be brought under the scope.

The EAPB's position is that the BRRD framework should distinguish between banks based on their business model, ownership structure and risk profile. The current resolution framework does not sufficiently account for the specificities and business models of promotional banks and other public banks, which have a very low risk profile and a public policy mandate to grant loans to the local government sector.

First and foremost, the rationale for the business model of public banks is generally contingent upon the very fact of public ownership, something that is generally not taken into account in the BRRD framework. Going concern resolution with resolution tools to transfer ownership to (private) creditors will generally not be feasible or credible, and may in any case not be consistent with the public policy objectives of the institution and its government mandate. BRRD does not sufficiently address or take into account resolution strategies where there is a public ownership premise.

For the vast majority of EU promotional banks, liquidation under national insolvency or national liquidation regimes is the normal scenario. Promotional banks and other public banks should thus be exempted from contributions to the Single Resolution Fund (SRF), as their contributions serve de facto as public cross-financing for bank resolution, which is not in line with the objectives of the Banking Union.

Comments on specific proposals of relevance to public banks

We welcome the Commission's proposal to extend depositor protection to public entities, meaning these would be compensated up to €100,000 by deposit guarantee schemes (DGS) should their bank fail. We note however that enlarging the scope of eligible deposits would in principle increase both the target levels of national DGS and SRF as these are expressed as percentages of covered deposits and thus thus down the line increase banks' ex-ante contributions to the funds.

Furthermore, it should be clarified within the framework of the CMDI that the banks' obligation to contribute also ends when the SRF and national resolution funds reach their target level at the end of 2023. An interpretation of Art. 69 (1) SRMR to the effect that the obligation to contribute continues and

that the target level is to be based "dynamically" on the respective annual volume of covered deposits would not be conceptually justified. On the one hand, covered deposits are already protected by the DGS. The resolution costs in the event of an institution's default are also not directly linked to the development of covered deposits. The increase in the volume of deposits, which is partly due to the ECB's extraordinarily expansionary monetary policy, does not make credit institutions riskier.

We have concerns regarding the proposal that the use of the DGS contribution should count towards the compliance with the 8% bail in threshold to access funding from the SRF (BRRD article 109). We oppose in general the lowering of the requirements for access to SRF funds. This way, we also have concerns regarding the proposal to introduce additional flexibility to use the SRF beyond the 5% TLOF by amending SRMR Article 27(9) and (10). It inevitably raises the chance of use, increasing the probability of contributions. Hence increasing the probability of contributions for promotional banks, which we deem not to be in line with the Banking Union in the first place as stated above.

We also think that the various changes proposed concerning the use of DGS funds for measures other than depositor payout should be considered with caution, including to ensure that these do not clash with how Institutional Protection Schemes (IPS) function. We also note that these changes could potentially lead to DGS funds being depleted more rapidly and thus require higher contribution to DGS, in conjunction with measures discussed above.

We also have concerns regarding the proposed changes to the creditor hierarchy and in particular the suggestion to introduce a general depositor preference with a single-tiered ranking. Ranking all deposits at the same level amongst themselves would expose DGS to potentially significant losses and would negatively impact banks' ability to issue MREL eligible liabilities.

In addition, we welcome the suggestion that supervisors should be allowed to waive the requirement for banks to update certain parts of the recovery plans, to reduce the administrative burden as regards the obligation to update recovery plans on an annual basis (BRRD Article 5). Furthermore, small banks should not be obliged to submit recovery plans. There is little added value for both banks and supervisors. Instead, the supervisory authority should be given the possibility to oblige small banks to carry out recovery plans in individual cases.

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