German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

on the Commission's combined evaluation roadmap/Inception Impact Assessment "Review of the bank crisis management and deposit insurance framework (BRRD/SRMR/DGSD review)"

Register of Interest Representatives
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Comments on the Commission's combined evaluation roadmap/Inception Impact Assessment

The review of the legal framework for crisis management and deposit insurance should be restricted to the current regulations for BRRD, DGSD und SRMR. EDIS should not be part of the work programme – neither on the basis of the current proposal nor of a possible alternative proposal. In this context, it is considered necessary for the purpose of further proceedings to withdraw the original proposal by the Commission from 2015. In addition, resolution and deposit insurance should remain separate. Anything else would contradict the political agreements and the various modi operandi would no longer be distinguishable. This is a precondition for identifying any essential shortcomings.

We welcome the approach not to increase the administrative burden. Each proposed measure should always be measured against this benchmark. An extension of the scope of the resolution regime to include small and medium-sized institutions is, however, inconsistent with this approach. It would also counteract proportionality considerations for small, non-complex institutions, which – for good reasons – were only recently incorporated in the CRR/CRD framework.

In view of the complexity and significance of crisis management for banks, a careful, step-by-step approach is imperative. This is, in part, lacking in the Roadmap. It is thus difficult to judge on what basis an impact assessment should be conducted, as a follow-up to the review, without having initially identified existing problems and formulated suitable solutions, which could be the subject of an impact assessment. With regard to Art. 114 TFEU, as a basis for the review, we refer to the reservations voiced in conjunction with the EDIS proposal.

Before taking measures to overhaul BRRD/SRMR/DGSD, the fundamental question arises whether the deficiencies identified by the Commission are not solely attributable to the lack of rigorous application of the existing resolution instruments.

Differences in the functioning of the national deposit guarantee schemes should not be considered as being per se detrimental given that they stem from differences in the systems and structures of the Member States. The EBA opinions have described in detail where in its application the current system results in inefficiencies and practical problems and where technical reworking and clarifications are required. The EBA opinions thus constitute a sufficient basis for the conclusion of the review that has been due since July 3, 2019. The opinions provided for no evidence of fundamental deficiencies with regard to safeguarding depositor confidence.

Depositor confidence may well be a public good. However, it should be noted that this confidence has been fostered by well-tested (national) systems over decades. Therefore, any damage to these systems must be avoided. Contrary to the Commission's assertion, private, market-based solutions are long time proven elements of the crisis management. From a legal point of view, state intervention can only be the ultima ratio.

The existence of national differences in bank insolvency legislation is undisputed. However, a harmonisation of bank insolvency laws must be pondered carefully and is almost impossible to achieve in the short term. It requires an intense technical discussion on the areas of bank insolvency legislation, where alignment is urgently necessary. In any case, a harmonisation of (general) insolvency law should not be part of this discussion. A harmonisation of the national bank insolvency laws that goes beyond the paybox-mandate of deposit guarantee schemes, by providing them with the necessary powers to implement alternative measures, appears reasonable and would be in line with the current DGSD. The responsibility for such measures should lie with the respective national deposit guarantee schemes and

not with the SRB or national authorities. The same applies to preventive measures taken by institutional protection schemes to avoid insolvency scenarios.

In choosing appropriate courses of action, combining resources from the various funds (SRF and national deposit guarantee funds) should be avoided. A cross-subsidisation of measures should be avoided as well. There should be clear responsibilities and accountabilities for the use of individual funds.

It is important not to exclude the state aid rules from the review. Without a clarification that measures taken by deposit guarantee schemes do not constitute state aid, the application of resolution instruments will be marked by considerable legal uncertainty in the future.

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