The Consumer Voice in Europe

PUBLIC CONSULTATION ON THE REVIEW OF THE CRISIS MANAGEMENT AND DEPOSIT INSURANCE FRAMEWORK

BEUC response

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Why it matters to consumers

The Crisis Management and Deposit Insurance (CMDI) framework has made banks more resilient since the 2008 financial crisis and has increased the level of depositor protection. However, significant gaps still need to be filled for consumers to be adequately protected in the event of a bank failure and for taxpayers not to foot the bill. An EU-wide depositor protection mechanism, which would ensure a uniform level of protection for depositors and increase their confidence in the banking system, is still missing. Under the current system, consumers who invest their money also face significant risks of being mis-sold risky and complex financial products, and of losing their investment in the event of a crisis.

Summary

Since the global financial crisis, the EU laid out the rules for handling bank failures and enhancing depositor protection. The EU's Crisis Management and Deposit Insurance (CMDI) framework aims at (i) limiting the risk for financial stability stemming from bank failures, (ii) shielding public money from the effects of such failures and (iii) providing adequate protection to depositors. From a consumer protection perspective, however, these objectives have only been partially achieved:

- **Taxpayers' money has been largely used** as part of national resolution and insolvency procedures, and in the context of precautionary measures. For example, bank failures in Italy and Portugal have cost several EUR billion to tax-payers;
- **Deposit guarantee schemes (DGS) are still national** and depositors enjoy different levels and types of guarantees depending on their location;
- The current rules contained in the Deposit Guarantee Scheme Directive (DGSD) **do not ensure a sufficient level of protection** for depositors;
- Currently, funds which are held by **payment institutions and e-money institutions are not covered** by the DGSD;
- The **need to protect retail investors is missing** from the list of objectives pursued by the Bank Recovery and Resolution Directive (BRRD).

As such, BEUC calls for the following measures to be implemented:

- Banks' **capital requirements should be raised** to avoid the use of public money during a crisis. The use of state aid in liquidation proceedings and of precautionary support should be subject to a **stricter test**;
- An agreement should urgently be reached on a **European deposit insurance scheme (EDIS)**, which would reinforce the confidence of consumers in the system and ensure a uniform level of protection of depositors across the EU;
- The level of DGS contributions and of depositor protection should **be raised,** and conditions under the DGSD should be **harmonised** (minimum harmonisation);
- Funds deposited by **payment institutions and e-money institutions** in banks on behalf of their clients for safeguarding purposes should be **fully protected and included within the scope** of the DGSD;
- Retail investors should be **better protected** against mis-selling through stricter regulation, better information requirements about the risks entailed, and through unbiased financial advice.

Question 1. In your view, has the current CMDI framework achieved the following objectives?

On a scale from 1 to 10 (1 being "achievement is very low" and 10 being "achievement is very high"), please rate each of the following objectives:

- Limiting the risk for financial stability stemming from bank failures: **6**
- Minimising recourse to public financing and taxpayers' money: **3**
- Protecting depositors: **5**
- Breaking the bank/sovereign loop: **4**
- Fostering the level playing field among banks from different Member States: **4**
- Legal certainty and predictability**: 2**
- Addressing cross-border bank failures**: 4**
- The scope of application of the framework beyond banks (which includes some investment firms but not, for example, PSPs and e-money providers) is appropriate: **3**

Question 1.1 Please explain your answers to question 1:

The CMDI framework has made banks more resilient since the 2008 financial crisis. However, from a consumer protection perspective, several objectives of the CMDI framework have only been partially achieved:

Minimising the use of taxpayers' money

This objective is not always achieved in practice. In particular, the resolution procedure has been rarely used since the entry into force of the 2014 Bank Recovery and Resolution Directive (BRRD), and alternative solutions which are adopted to deal with failing or likely to fail (FOLF) banks are not always optimal. Indeed, for banks which are not considered systemically important and which are resolved under national insolvency laws, procedures often involve **state aid**. In addition, insolvency laws are very different per Member State which leads to **legal uncertainty and complexity**. Public money is also granted in the context of **precautionary measures** (e.g. precautionary recapitalisation). Indeed, extraordinary public financial support is allowed if it is needed to "remedy a serious disturbance in the economy", a notion which has been interpreted widely. Examples in Italy include the recapitalisation of Monte Dei Paschi di Siena bank, and the liquidation of Veneto Banca and Banca Popolare di Vicenza in 2017. These have cost at least **EUR 23 bn** to the Italian taxpayer.[1]

In Portugal, the resolution and recapitalisation of Banco Espírito Santo (into Novo Banco) has cost over **EUR 6.03 bn** of taxpayers' money and EUR 1.8 bn from a resolution fund.[2] A recent audit by the Portuguese Court for Accounts pointed out several failures in the process, the role of Banco de Portugal and the steps taken to determine the amounts for resolution purposes.[3]

In that respect, we believe that **capital requirements** and in particular the leverage ratio, should be raised to ensure that banks are sufficiently capitalised to avoid the use of public money during a crisis. As we mentioned in the past, and in particular in BEUC's response to the Commission's consultation on the final report of the High-level Expert Group on Reforming the Structure of the EU Banking Sector, we are also in favour of a banking structure reform which would tackle the "too big to fail" issue, as we believe that there

1 See Three reforms to strengthen the Banking Union and the euro area | Finance Watch (finance-watch.org)
2 https://www.dinheirovivo.pt/empresas/fatura-do-novo-banco-pode-recair-sobre-o-estado-13685452.html
3 https://www.jornaldenegocios.pt/empresas/banca---financas/detalhe/fundo-de-resolucao-nao-exigiu-evidencia-das-necessidades-de-capital-ao-novo-banco

should be a **structural separation** between the capital markets/trading side of banks and their core banking activities. In addition, the use of **state aid** in liquidation proceedings and of **precautionary support** should be subject to a **stricter test**.

Guaranteeing a uniform and high level of depositor protection

Deposit guarantee schemes (DGS) are still national and depositors enjoy different levels and types of guarantees depending on their location (e.g. in case of temporary high balances). This is not acceptable as there should be a **uniform and high level of depositor protection** across the EU. In addition, the amount of funds held by national DGS is **unlikely to be sufficient** in case of the liquidation of one or more major banks. For example, Test-Achats reports that Belgian deposits amount to ca. EUR 278 bn, while the reserves of the national DGS amount to ca. EUR 3 bn. As noted by Test-Achats, and also by BEUC's Portuguese member DECO, in case of a major crisis and failure of one or more major banks, it is therefore likely that the Belgian State would have to intervene, **using tax-payers' money**. In addition, as recently noted by the EBA, only 18 DGSs have met the target level of 0.8% of Available Financial Means (AFM) to covered deposits, while 16 DGSs have yet to reach it. This issue is emphasised today by the strong increase in covered deposits due to the Covid-crisis, with higher contributions needed from the industry to meet the target level. BEUC urges regulators to ensure the industry's compliance with their regulatory obligations via a sufficient level of contributions. In addition (as explained below), this current threshold does not offer a sufficient level of protection to consumers and should be increased.

BEUC is therefore in favour of an **EU-wide depositor protection mechanism** (EDIS), which would reinforce the confidence of consumers in the system, ensure a uniform level of protection of depositors across the EU, and prevent bank runs in case of crisis and the impact they can have for the wider financial system. Consumers do not have sufficient information to evaluate the risk levels of the banks in which they invest, which is why having a strong system of depositor protection in place is crucial. This is particularly important as banks increasingly operate cross-borders. Branches and subsidiaries operating in other Member States, as well as online cross-border activities (e.g. of neo-banks) should be adequately covered. A European scheme could pool the intervention capabilities of the various national DGS, which would make it easier to manage a major crisis without the need to call on taxpayers. A European system would also ensure that there is no more dependence of banks on their own State. As banking supervision and resolution were lifted to the European level, deposit protection should follow.[4]

The scope of application of the framework beyond banks

Currently, funds which are held by payment institutions and e-money institutions are not covered by the Deposit Guarantee Scheme Directive (DGSD). While safeguarding requirements have been put in place under the Payment Services Directive 2 (PSD 2)[5] (article 10) and the E-money Directive[6], which require electronic money institutions (EMI) and payment institutions (PIs) to safeguard their clients' funds by depositing them in banks, investing them in low risk and liquid assets, or securing the funds with insurance policies, these **do not offer a full protection to consumers' funds**. Although the funds deposited in banks constitute bank deposits and they should be clearly separated from the EMI's or PI's own funds, these "client fund" deposits are not considered as eligible to be covered by DGS should the underlying bank become insolvent.

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4 See https://www.finance-watch.org/the-insufficient-role-of-edis-in-restoring-trust-in-banks/

5 Directive (EU) 2015/2366 on payment services in the market (PSD2).

6 Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (e-Money Directive).

Consumers may not realise that there is a different degree of protection depending on whether their funds are held in a bank deposit, in a payment account, or an e-money account. As such, we believe that the funds deposited by PIs and EMIs in banks on behalf of their clients for safeguarding purposes should be **fully protected and included within the scope** of the DGSD. This would enable the reimbursement of the funds when the bank in which EMI or PI have deposited their customers' funds goes bankrupt. In turn, this would increase public trust in digital payment services offered by non-banks, increase competition in the market, and prevent possible financial instability due to the chain effects that a bank bankruptcy could create on the financial health of EMIs or PIs.[7]

Protecting retail investors

The need to protect retail investors is missing from the list of objectives pursued by the BRRD. This is extremely problematic, as **retail investors incur risks in case of bail-in by resolution authorities** – and should be better protected. There have been many instances of mis-selling of bail-in securities (equity, bonds) to retail investors. For example, BEUC member Altroconsumo notes that in Italy, after the failure of a number of regional banks in 2015 and 2016 and the application of bail-in obligations, a large number of retail investors lost their life savings and were not previously informed of the risks, believing that they were placing their money in something comparable to a savings account.[8] BEUC's campaign on the Price of Bad Advice contains numerous examples of such mis-selling scandals.

As such, BEUC believes that retail investors should be **better protected** against mis-selling through stricter regulation (see our response to Question 1.2. below), better information requirements about the risks entailed, and through unbiased financial advice. As such, BEUC calls for a ban on inducements which incite financial advisers to steer consumers towards overly complex and expensive investment options, often unsuitable for the needs and risk level consumers are willing to take. In parallel, professional investors and "insiders" such as top management, who are able to detect **a bank's "likeliness to fail" shortly before supervisors,** and sell out their securities in advance without incurring losses, **should be subject to greater scrutiny and liability**.[9]

Question 1.2 Which additional objectives should the reform of the CMDI framework ensure? Do you consider that the BRRD resolution toolbox already caters for all types of banks, depending on their resolution strategy? In particular, are changes necessary to ensure that the measures available in the framework (including tools to manage the bank's crisis and external sources of funding) are used in a more proportionate manner, depending on the specificities of different banks, including the banks' different business models?

As noted above, it is **crucial that investor protection is ensured** as part of the CMDI framework. The aim of protecting taxpayers cannot translate into harming retail investors, who are both taxpayers and consumers, and who are often mis-sold risky investment products through biased financial advice. The current framework does not sufficiently protect retail investors. As noted in a joint statement of the EBA and ESMA on the treatment of retail holdings of debt financial instruments subject to the BRRD, "*resolution authorities are required to apply the bail-in tool according to the waterfall of liabilities established in the framework* ***regardless of the nature of the holders of the debt.***" While the joint statement by the EBA and ESMA specifies that a particularly large number of retail bond-holders can be considered an "exceptional circumstance" under Article 44(3) of the BRRD,

[7] See https://www.findevgateway.org/sites/default/files/publications/submissions/78156/Paper_E-money%20deposit%20insurance_%20English_full%20version-converted.pdf

[8] See also: https://www.reuters.com/article/italy-banks-bonds/italian-bank-rescue-leaves-bitter-families-marooned-idUSL8N1490SJ20151221

[9] https://betterfinance.eu/wp-content/uploads/BF-Position-Paper-on-Banking-Union.pdf

under which resolution authorities can exclude a series of bank liabilities from the bail-in, we believe that the application of this provision is **too uncertain**.

BEUC supports the new amendments introduced under the new Banking Recovery and Resolution Directive 2 (BRRD 2, Article 44a)[10] that place new restrictions on the sale of bail-inable instruments to retail investors, requiring a suitability test and ensuring that retail investors with **limited financial wealth** do not invest substantial amounts of money in such investment propositions (no more than 10% of his/her investable wealth). However, these provisions **do not go far enough** to adequately protect retail investors and we believe that there should be a **regulatory prohibition** to sell complex **bail-in securities** to retail investors. Such securities should only be held by investors who are capable of absorbing losses. Some national supervisors have taken steps to prevent the distribution of such products to retail clients. For example, regulation introduced by the FCA in the UK has restricted the sale of contingent convertible instruments to retail investors.

BEUC also believes that the BRRD resolution toolbox should be amended to make sure that small and medium banks, which rely more heavily on **deposits** and only have a limited access to capital markets to issue bail-in instruments, can be adequately resolved when it is in the public interest or liquidated, **without harming tax-payers, depositors or retail investors**. Access to the **resolution fund and/or to deposit guarantee schemes (DGS)** for such banks could be facilitated in appropriate cases.

Question 2. Do you consider that the measures and procedures available in the current legislative framework have fulfilled the intended policy objectives and contributed effectively to the management of banks' crises?

On a scale from 1 to 10 (1 being "have not fulfilled the intended policy objectives/have not contributed effectively to the management of banks' crises" and 10 being "have entirely fulfilled the intended policy objectives /have contributed effectively to the management of banks' crises"), please rate each of the following measures:

- Early intervention measures: **4**
- Precautionary measures: **3**
- DGS preventive measures: **5**
- Resolution **: 4**
- National insolvency proceedings, including DGS alternative measures where available: **3**

Question 2.1 If possible, please explain your replies to question 2, and in particular elaborate on which elements of the framework could in your view be improved:

BEUC believes that possibilities to use tax-payers' money should be further reduced. In particular, precautionary recapitalisations, when involving state aid, should be subject to **stricter conditions** and should be more strictly enforced. The conditions for granting state aid as part of national insolvency proceedings should also be narrowed. In that respect, we are in favour of a **review** of the European Commission's Banking Communication.[11]

[10] Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

[11] Communication from the Commission on the application, from 1 August 2013 , of State aid rules to support measures in favour of banks in the context of the financial crisis ("Banking Communication").

BEUC is in favour of harmonising the use of DGS preventive measures and alternative measures in order to prevent bank failures, subject to appropriate safeguards, and to an appropriate level of contributions to DGS funds by the banking sector. Those alternative interventions enable the continued availability of deposits for consumers, without having recourse to tax-payers' money. However, it is crucial to ensure that the use of DGS funds for alternative/preventive purposes does not imply any reduction in depositor protection.

Question 3. Should the use of the tools and powers in the BRRD be exclusively made available in resolution or should similar tools and powers be also available for those banks for which it is considered that there is no public interest in resolution?

In this respect, would you see merit in extending the use of resolution, to apply it to a larger population of banks than it currently has been applied to? Or, conversely, would you see merit in introducing harmonised tools outside of resolution (i.e. integrated in national insolvency proceedings or in addition to those) and using them when the public interest test is not met? If such a tool is introduced, should it be handled centrally at the European (banking union) level or by national authorities? Please explain and provide arguments for your view:

As noted in our response to Question 1, we believe that the differences in tools and frameworks surrounding resolution and insolvency proceedings give rise to complexity and legal uncertainty. A harmonisation of the tools used as part of resolution and insolvency, would ensure more consistency and prevent the excessive use of taxpayers' money under national insolvency proceedings. A greater oversight of such procedures by the Single Resolution Board would help achieve these objectives.

Question 4. Do you see merit in revising the conditions to access different sources of funding in resolution and in insolvency (i.e. resolution funds and DGS)?

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 4.1 Would an alignment of those conditions be justified?

- **Yes**
- No
- Don't know / no opinion / not relevant

If you think an alignment of those conditions would be justified, how should this be achieved and what would the impact of such a revision be on the incentives to use one procedure or the other?

Question 4.2 Please explain and provide arguments for your views expressed in questions 4 and 4.1:

Please see our response to Question 3 above.

Question 5. Bearing in mind the underlying principle of protection of taxpayers, should the future framework maintain the measures currently available when the conditions for resolution and insolvency are not met (i.e. precautionary measures, early intervention measures and DGS preventive measures)?

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 5.1 Should these measures be amended?

- **Yes**
- No
- Don't know / no opinion / not relevant

If you think these measures should be amended, please explain why and how?

Question 5.2 Please elaborate on your answers to questions 5 and 5.1:

Please see our response to Question 2.1. above.

Question 6. Do you agree or disagree with the following statements regarding a potential reform of the use of DGS funds in the future framework?

- The DGSs should only be allowed to pay out depositors, when deposits are unavailable, or contribute to resolution (i.e. DGS preventive or alternative measures should be eliminated). **Disagree.**
- The possibility for DGSs to use their funds to prevent the failure of a bank, within pre-established safeguards (i.e. DGS preventive measures), should be preserved. **Agree.**
- The possibility for a DGS to finance measures other than a payout, such as a sale of the bank or part of it to a buyer, in the context of insolvency proceedings (i.e. DGS alternative measures), if it is not more costly than payout, should be preserved**. Agree.**
- The conditions for preventive and alternative measures (particularly the least cost methodology) should be harmonised across Member States. **Agree.**

Question 6.1 If none of the statements listed in Question 6 does reflect your views or you have additional considerations, please provide further details:

BEUC believes that repayment of depositors should not be privileged over other DGS interventions in order to finance the transfer of deposits to another credit institution or prevent the bankruptcy of a credit institution. Those alternative interventions are more consumer-friendly because **deposits stay available**. Consumer confidence in the financial sector is thus less affected than when depositors must wait on repayment. Strict and harmonised conditions should be in place for the use of such preventive and alternative measures, in order to prevent distortions of competition, and to ensure that DGS funds are used in the interest of consumers/depositors.

Question 7. Do you consider that there are any major issues relating to the depositor protection that would require clarification of the current rules and/or policy response?

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 7.1 Please elaborate on your answer to question 7:

[Please see our responses to Question 8 regarding **the scope of depositor protection**, which in BEUC's view should be widened.]

Ex-ante financing

Article 10(2) of the Deposit Guarantee Scheme Directive (DGSD) provides that by 3 July 2024, the available financial means of a DGS shall at least reach a target level of 0,8 % of the amount of the covered deposits of its members. BEUC believes that the threshold for ex-ante financing should be increased. As noted above, the current level of contributions will not be sufficient to prevent Member States from having to intervene in case of a major crisis/failure of several important credit institutions. More specifically, ex-ante contributions are important in that they achieve a level playing field between banks from different Member States, they make the repayment or other interventions in a short timeframe more plausible, and they do not operate cyclically like heavy contributions in times of crisis.

In addition, revised regulation should ensure that contributions fully reflect the level of risk of a given business model, and disincentivise heavy risk-taking. Greensill Bank in Germany, owned by Greensill capital having recently filed for bankruptcy, is reported to have attracted customers with unusually high interest rates via comparison websites, putting forward the protection of funds by the DGS of the Association of German banks as a marketing argument. This led a large amount of customers lending money to the bank. This is not acceptable, and regulation should ensure that risks and liability in particular in the form of contributions to DGSs are strictly proportional.[12] In addition, the use of information on DGS as part of advertising mentioned in Article 16(5) of the DGSD should be regulated more strictly.

Time period to make the repayment and to claim compensation

Article 9(3) of the DGSD, provides that Member States may limit the time in which depositors whose deposits were not repaid or acknowledged by the DGS within the deadlines set out in Article 8(1) and (3) can claim the repayment of their deposits. Such a provision is **not acceptable, puts vulnerable consumers at risk, and diminishes the confidence of depositors in the system**. CEPS' report notes in particular, that there are large differences between Member States in the way this article has been transposed, in terms of nature of the claims (e.g. administrative, judicial), the starting point from which a claim may be submitted, and the duration during which a claim may be submitted (between three months and ten years). In BEUC's view, a harmonised limitation period of **5 years** should be put in place. In addition, the revised Directive should set an obligation for DGS and banks to notify all eligible depositors of their repayment right, and the limitation period for any claim should only start running **after such notice has been duly received** by depositors, as is currently the case in Germany. This will increase the awareness of depositors, including the most vulnerable ones, and ensure that they are fully empowered to exercise their rights.

[12] https://sven-giegold.de/en/greensill-bank-deposit-insurance/

Article 8(5)(c),(d), and (e) of the Directive provide that repayment may be deferred (i.e. not repaid within the 7 day period foreseen in Article 8(1)), where there has been no transaction relating to the deposit within the last 24 months (the account is dormant), where the amount to be repaid is deemed to be part of a temporary high balance, or where the amount to be repaid is to be paid out by the DGS of the host Member State. This open-ended deferral period is not acceptable. Receiving such funds rapidly is crucial from the perspective of consumers, and consumers should be equally protected irrespective of the location of their bank's headquarters. The revised Directive should put in place a maximum time-limit (not exceeding 14 days) for the repayment to be made under such circumstances.

Determination of the repayable amount

Article 7(5) of the directive provides an option for Member States to allow a compensation between the deposit amount and the depositor's liabilities towards the credit institution, subject to the prior information of the depositor. Such a provision is not acceptable from a consumer's perspective, and BEUC firmly believes that this option should be removed. The compensation of deposits with long term liabilities such as mortgage or car loans can reduce or even eliminate the repayment by the DGS. This can lead to critical situations for consumers and a lack of liquidity. In addition, this increases the risk of bank runs of depositors in the event of a crisis, as they will want to maintain a degree of liquidity.

Question 8. Which of the following statements regarding the scope of depositor protection in the future framework would you support?

- The standard protection of EUR 100 000 per depositor, per bank across the EU is sufficient. **Disagree.**
- The identified differences in the level of protection between Member States should be reduced, while taking into account national specificities. **Agree.**
- Deposits of public and local authorities should also be protected by the DGS. **N/A**
- Client funds of e-money institutions, payment institutions and investment firms deposited in credit institutions should be protected by a DGS in all Member States to preserve clients' confidence and contribute to the developments in innovative financial services. **Agree.**

Question 8.1 Please elaborate on any of the statements in question 8, including any supporting documentation (where available), or add other suggestions concerning the depositor protection in the future framework:

Scope of protection

Temporary high balances

In BEUC's view, the level of harmonisation in relation to DGS is too low. Coverage levels vary per Member State, in particular, in relation to temporary high balances (in relation to their duration and the scope of protection). In this respect, all Member States should have to implement a higher balance coverage for the **three types of events** listed under Article 6(2) of the DGSD (real estate transactions to private residential properties; life events; and payment of insurance benefits or compensation for criminal injuries or wrongful conviction). The covered amount should be of **300,000 EUR** as a minimum and should be applied for a period of **12 months**. Losing high balances would be extremely detrimental for consumers, especially when those high balances are due to circumstances where the consumer does not choose to receive a payment in excess of the compensation limit. BEUC also agrees with the suggestion by CEPS in its Report on "option and national discretions

under the DGSD", that all these deposits should be included in the calculation of the risk-based contributions (based on estimations where relevant).

Protection per brand

Article 7 of the Directive provides that the limit of 100,000 EUR applies to aggregate deposits placed with the same credit institution irrespective of the number of deposits, the currency and the location within the Union. BEUC believes that the limit of 100,000 EUR should apply **per brand** and not per credit institution. This is because consumers identify brands as different entities, and credit institutions may operate under different brands within different Member States, or following mergers or acquisitions. Depositor information foreseen under Article 7(9) and Article 16 is not sufficient to ensure adequate knowledge and protection of depositors. Consumers receive numerous documents at the moment of entering into a deposit contract and throughout the duration of such contract, and it is unrealistic to assume that consumers, and in particular vulnerable ones, will be adequately informed, at all times, about all brands operated within the EU by the same credit institution. The complexity of such system is illustrated by the fact that BEUC's UK Member "Which?" had to set up a tool entitled "who owns who in banking" to help consumers understand how much protection they can get under a given brand. Which? explains that "*armed with this information, you'll be able to spread your money around different companies to ensure you're fully protected should the worst happen. If you see that two or more banking brands share the same banking licence, this means you cannot safely save more than £85,000 across all of them*."

Home/host system and third country branches

The current system put in place by the DGSD, according to which branches are covered by their home country DGS, and the consumer has to wait for instructions and for the "home" DGS to provide the necessary funding to the "host" DGS before getting compensated (Article 14)(2) DGSD), is not satisfactory to adequately protect depositors. The financial crisis has shown that in several cases, host countries had to step in as the home deposit insurer could not honour its obligations.[13] This is why BEUC advocates for the quick implementation of EDIS (see below). In the meantime, BEUC believes that DGSs of the host Member States should re-pay consumers within 7 days, without having to wait for the funds of the DGSs of the home Member States. The DGSs of host Member States should then have a right of recourse against the DGS of the home Member State. In case the DGS of the host Member State is not able to pay, the consumer should be subrogated in the rights of the host DGS and have a direct claim against the DGS of the home Member State.

In addition, in order to ensure a more complete and uniform level of protection of EU depositors, all branches of credit institutions established in third countries should be required to participate in the DGS of the Member States in which they operate, under Article 15 of the Directive, and the relevant conditions for doing so should be harmonised.

Coverage

There are also some **uncertainties regarding the scope of the coverage** in certain Member States. One issue which has been reported by BEUC's Belgian member Test-Achats, is the unclear application of provisions on the deposit guarantee to married couples, where the funds which are part of the account of one of the spouses *de facto* belong to both partners (when they are married under the "community of goods" legal regime). Test-Achats is of the opinion that in that case, the funds should be divided by two as if belonging to each partner (as is the case with joint accounts), and the legal protection of up to 100,000 EUR is applied to each spouse separately. This means that for example,

[13] See http://aei.pitt.edu/30828/1/ECRI_Policy_Brief_4.pdf

if there is 200,000 EUR in the spouse's account, each spouse would be considered to own 100,000 EUR (and the whole amount would therefore be protected under the deposit guarantee scheme). If this interpretation is not applied, in case the bank gets liquidated, the spouse who "officially" owns the account will only able to recover 100,000 EUR (and the other won't get anything). However, the Belgian deposit guarantee fund does not agree with this interpretation. Test-Achats therefore warns consumers that they should use joint accounts instead.

Protection of funds of e-money institutions (EMIs) and payment institutions (PIs)

As noted above, we believe that the funds deposited by PIs and EMIs in banks on behalf of their clients for safeguarding purposes should be **fully protected and included within the scope** of the DGSD. This would enable the reimbursement of the funds when the bank in which EMI or PI have deposited their customers' funds goes bankrupt. In turn, this would increase public trust in digital payment services offered by non-banks, increase competition in the market, and prevent possible financial instability due to the chain effects that a bank bankruptcy could create on the financial health of EMIs or PIs.[14]

Consumers may not realise that there is a different degree of protection depending on whether their funds are held in a bank deposit, in a payment account, or an e-money account. Revolut, for example, obtained a banking license in 2018 in other to allow its customers to deposit funds in protected accounts. The recent Wirecard scandal also raised questions about the protection of the funds of Wirecard's customers, with the FCA temporarily freezing the access to funds held by a subsidiary of Wirecard in order to "*protect the electronic money funds of consumers"*. As noted by the EBA in its Opinion "on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes", "*not applying the see-through approach to the separate accounts set up by payment institutions or electronic money institutions, if the credit institution where the separate account is held fails, would have the consequence that* ***the safeguarded funds are not accessible any more***" which "***would damage the protection offered to the clients, users or holders***".

Question 9. Which of the following statements regarding the regular information about the protection of deposits do you consider appropriate?

- It is useful for depositors to receive information about the conditions of the protection of their deposits every year. **Agree.**
- It would be even more useful to regularly inform depositors when part of or all of their deposits are not covered. **Agree.**
- The current rules on depositor information are sufficient for depositors to make informed decisions about their deposits. **Disagree.**
- It is costly to mail such information, when electronic means of communication are available. **N/A**
- Digital communication could improve the information available to depositors and help them understand the risks related to their deposits. **Agree**

Question 9.1 Please elaborate on any of the statements in question 9, including any supporting documentation (where available), or add other suggestions concerning concerning the depositor information in the future framework:

Having regard in particular to the increased digitalisation of the financial sector, Article 16 on depositor information as well as the template in Annex I of the DGSD, should be updated

[14] See https://www.findevgateway.org/sites/default/files/publications/submissions/78156/Paper_E-money%20deposit%20insurance_%20English_full%20version-converted.pdf

and clarified, and its format should be adapted to become more consumer-friendly. BEUC believes that the EBA should be mandated to develop draft regulatory technical standards stipulating the format and presentation of the depositor information notice, setting out prominently the most important information for the consumer. Such presentation should be clear, intelligible, accessible, and should be adapted both to offline and digital channels (mobile banking, banks' websites). The EBA should also set out draft technical standards for including relevant information on the website of banks and DGSs. There should be a requirement for lenders to include prominent information on depositor protection, on their own websites and branches. Such requirements were implemented, for example, by the Financial Conduct Authority (FCA) in the UK, via information stickers and posters, the aim of which was (I) to offer consumers clear, accessible, accurate and consistent information about depositor protection; (ii) provide consumer-friendly material that alerts, but doesn't alarm, them about the existence of deposit protection whether from the [UK fund] or an EEA scheme and (iii) point to ways in which they can find additional information should they wish to do so. Finally, BEUC agrees that consumers whose deposits are not protected by a guarantee, should be duly informed.

Question 10. Which of the following statements regarding EDIS do you support?

- It is preferable to maintain the national protection of deposits, even if this means that national budgets, and taxpayers, are exposed to financial risks in case of bank failure and may create obstacles to cross-border activity. **Disagree.**
- From the depositors' perspective, a common scheme, in addition to the national DGSs, is essential for the protection of deposits and financial stability in the euro area. **Agree.**

Question 10.1 Please elaborate on any of the statements in question 10, including any supporting documentation (where available), or add suggestions on how to achieve the objective of financial stability in the European Union and the integrity of the Single Market:

As noted above, BEUC is in favour of an **EU-wide depositor protection mechanism** (EDIS) which would reinforce the confidence of consumers in the system, ensure a uniform level of protection of depositors across the EU, and prevent bank runs in case of crisis and the impact they can have for the wider financial system. Consumers do not have sufficient information to evaluate the risk levels of the banks in which they invest, which is why having a strong system of depositor protection in place is crucial. This is particularly important as banks increasingly operate cross-borders. Branches and subsidiaries operating in other Member States, as well as online cross-border activities (e.g. of neo-banks) should be adequately covered. A European scheme could pool the intervention capabilities of the various national DGS, which would make it easier to manage a major crisis without the need to call on taxpayers. A European system would also ensure that there is no more dependence of banks on their own State. As banking supervision and resolution were lifted to the European level, deposit protection should follow.[15]

END

[15] See https://www.finance-watch.org/the-insufficient-role-of-edis-in-restoring-trust-in-banks/

BEUC The European Consumer Organisation

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