EU BANK CRISIS MANAGEMENT FRAMEWORK

EDOUARD FERNANDEZ-BOLLO
Member of the Supervisory Board - European Central Bank (ECB)

Priorities for improving the EU crisis management framework

Both the industry and the public sector agree that there is a need to improve the crisis management framework in its different dimensions: supervision, resolution and insolvency. the persistence of divergent views about the way forward for the banking union has so far prevented breakthroughs in this area. The banking package currently under discussion by the co-legislators already includes a most welcome proposal that would allow the supervisor to withdraw the banking license where a bank has been declared failing or likely to fail but does not pass the public interest test for resolution, ensuring that such banks exit the market. We at the ECB strongly support this proposal, but it alone will not be sufficient to ensure that such badly needed market exits will be orderly, without economic disruptions or indirect forms of bailout by public authorities. Therefore, the ECB remains convinced that additional changes to this framework are needed to enhance the consistency of treatment, in particular of small- to medium-sized banks, and thus to make the EU banking sector more competitive and resilient. Currently, when they do not pass the public interest test applied by the relevant resolution authority, these banks are treated exclusively under national law, and we have seen how different the outcomes can be.

Concrete steps to enhance this framework should prioritise ensuring EU-wide convergence. This would guarantee that, regardless of the differences in national insolvency regimes, the most efficient resolution and wind-down tools are available in all countries – including administrative powers to transfer the assets and liabilities of a failed bank, and the use of a bridge bank to avoid asset liquidation at fire-sale prices. This will help to limit the cost of a bank exit and, as such, is in the interest of all stakeholders: public authorities, the industry and the creditors of the failed bank. But, of course, the use of these resolution and liquidation tools also requires funding. To this end, we need greater European harmonisation of the rules on participation in this funding, including also the rules on burden sharing to absorb potential residual losses.

> **Now is the time to take very concrete steps to increase the resilience of the European crisis management framework.**

Within resolution, the first key issue is exploring the scope for a more consistent and wider application of the public interest test by resolution authorities, which is the necessary precondition for accessing the tools and funding provided by the current framework. For orderly wind-down outside of resolution, the problem is more acute, given in particular the present differences in the role and tasks of the national deposit guarantee schemes (DGS). Clearly, a broader use of DGS resources in liquidation and resolution would facilitate the application of transfer tools. To achieve this, the ability of the deposit guarantee schemes to support "alternative" measures to depositor payout should be extended and harmonised. This in turn requires further harmonisation of the least-cost test that is the necessary precondition for DGS interventions. Harmonising the ranking of depositors may facilitate these kinds of intervention and deserves some further reflection.

Furthermore, within the banking union, we find it necessary that this ability to fund alternative measures should benefit from support from the whole of the banking union. This should be the case as soon as possible, within a first transitional re-insurance European deposit insurance scheme mechanism already, as a firm step towards completing the banking union, and not only at the end of the process. In our view, this requires centralised management and steering by a European authority – the Single Resolution Board being the most obvious candidate – to ensure the necessary convergence and a level playing field for mobilising this form of European support from the beginning.

Advances in harmonisation should be thus accompanied by concrete progress towards completing the banking union and the capital markets union. Even if a decisive political breakthrough on the banking union is not reached in the months ahead, it would nonetheless be crucial to undertake further reforms on the crisis management front and push for greater European harmonisation.

We need to send a strong signal mobilising the entire Single Market to finance the recovery as well as the green and digital transformation of the European economy. We should not miss this opportunity to reinforce European financial leverage to secure the best possible path out of the crisis.

ELKE KÖNIG

Chair - Single Resolution Board (SRB)

Deposit Guarantee Schemes: remove super priority, harmonise the least cost test

The adoption of the Deposit Guarantee Scheme Directive in 2014 was an essential landmark in the setup of the Single Rulebook for the EU banking sector. While it helps to foster financial stability and reduce the risk of bank runs across the Union, it is time to update it as part of the Crisis Management Deposit Insurance review (CMDI).

With a view to protecting depositors and financial stability, Deposit Guarantee Schemes (DGS) have several functions. Their main role is to pay out depositors of failed institutions. As this is not always the most suitable solution, the regulator provides for alternative uses of DGS funds to better protect depositors and financial stability, while lowering the overall costs for the system. This option has not been transposed by all Member States, creating an uneven playing field.

The SRMR allows the Board to use the DGS funds in resolution, under certain conditions. Yet, the required least cost test (LCT), combined with the DGS' super priority in the creditor hierarchy, significantly limits the use in resolution. Together with the access conditions to the Single Resolution Fund (SRF), this implies a hurdle to accessing external funds in resolution, hence potentially undermining the credibility and predictability of the resolution framework.

The SRB supports removing the DGS' super priority and adopting a general depositor preference with a fully harmonised LCT; including, but also limited to relevant quantifiable costs. This can facilitate using DGS funds in resolution, as suggested by the European Banking Authority in the European Commission's call for advice on funding in resolution and insolvency. Such a general depositor preference can ease access to funds in resolution through transfer strategies for small and medium-sized banks that would meet the public interest assessment for resolution. Here, we might also consider using DGS funds to bridge the gap until use of the SRF is possible (after bail in reaches 8% total liabilities and own funds (TLOF) for capital support).

In the interest of transparency and consistency in the Banking Union, we should harmonise DGS uses.

As to preventive measures, DGS funds can be mobilised where the costs of these measures do not exceed the costs of fulfilling the DGS statutory or contractual mandate. The DGSD does not give detailed guidance on the approach to this least cost test, therefore different interpretations (including statutory or contractual mandates) give some margins of manoeuvre to the DGS. In the interest of transparency and consistency in the Banking Union, we should harmonise DGS uses.

The rules around use of DGS funds in resolution are more stringent than those outside resolution. No creditor worse off (NCWO) safeguards in the BRRD have to be respected, so that DGS funds have sound protection from losses when resolution authorities use such funds. If there is a breach of the NCWO safeguard, the resolution fund will refund the DGS funds. Such provisions do not exist for the use of preventive or alternative measures; the DGS would have to replenish its funds by raising contributions ex-post from the banks. While we support maintaining the options provided in the DSGD, we expect further work at a European level to ensure there are aligned incentives and outcomes when selecting different options.

In the CMDI review, the Commission is considering enhancing alignment of the different options and tools available; we hope that ideas in this article around DGS super priority and LCT will help in these considerations. While work on this is an important step forward, we should not lose sight of the steady state. The European Deposit Insurance Scheme (EDIS) would replace the existing national DGS. Private risk sharing reduces financial fragmentation and helps to overcome the sovereign-bank doom-loop. In combination with the SRF, EDIS can significantly increase the firepower and agility to deal with ailing banks in a consistent manner under the second pillar of the Banking Union. As the ECB Financial Stability Review November report recalls, a number of vulnerabilities in the financial sector have intensified. Let us work together to make sure we are equipped with the best possible toolkit when these vulnerabilities materialise.

We should not stop halfway with a partial EDIS. We need to get the ball rolling in the political discussions to upgrade our crisis management framework. We now have a momentum to relaunch the discussions on completing the Banking Union and reaching an agreement on the work plan before the summer. Liquidation of banks, just like resolution, could take place at a European level. We should work towards a European FDIC model with one fund to cover depositors and/ or facilitate – under strict conditions – resolution.

HELMUT ETTL
Executive Director - Austrian Financial Market Authority

The role of institutional protection schemes in resolving small and medium banks

In international debates on how to guarantee an effective and orderly market exit for small and medium sized banks in case of a "failing or likely to fail" (FOLF) it is widely acknowledged that the existing crisis management framework is not yet fit for purpose. What is still lacking, though, is a solution addressing the "elephant in the room", namely the external funding of wind down and exit-procedures for such banks.

In case of a FOLF of small and medium sized banks, it has to be acknowledged that there is a relevant and substantial risk that these banks may face a shortfall of internal loss absorbing capacity to fund a resolution procedure according to the BRRD. This is a persistent and structural issue rooted in the size and the business model of these banks. To mitigate this risk, possibilities for providing external funding sources will need to be evaluated.

In a previous article in this Magazine, I have highlighted a possible way forward by introducing an administrative liquidation regime including a standardized additional loss absorbance buffer. Let me try to develop a different way forward this time.

As a starting point, a crystal clear hierarchy of loss absorption has to be a necessary precondition. Shareholders shall bear losses first, holders of other regulatory capital instruments shall follow. Only after the write down of all capital instruments, a discussion may start if and to what extent further external funding could be provided.

Second, it should be common understanding that no additional new funding source are required for small and medium sized banks. The existing sources are sufficient and available. In this context, current discussions are circling mainly around the two main financial funds: contributions from the DGS and the SRF and various combinations of these two elements.

Let me here take a broader approach and consider another existing source of financial means, which was not so much in the spotlight of discussions so far: the IPS. IPS are part of the crisis management framework, have an ex ante fund available and – most importantly - have proven already all over Europe that they are efficient and loss absorbing. The main goal of an IPS is of course to prevent an FOLF of a member institution in the first place. It is thus rather an instrument of the recovery toolbox than of the resolution framework. IPS have nevertheless also supported in one way or the other market exits of member institutions in the past (e.g. by supporting a merger of the failing institution or even a solvent wind down).

The solution is just around the corner: using IPS schemes to bridge the funding gap in resolution.

I would hence suggest an evaluation if and to what extent IPS schemes could provide added value in a resolution framework for small and medium sized banks. More precisely, one should investigate, if and to what extent the role and the function of an IPS could be enlarged in order to (financially) support a liquidation or resolution of an IPS-member-institution in case of a FOLF. In return for this enlarged function of an IPS, the loss absorbing capacity of the IPS (ex-ante funds and ex-post contributions of the members) could justify a corresponding reduction of MREL-requirements for member institutions. Implementing such an approach for IPS-members would constitute an efficient alternative to the creation of an additional regime for failing small and medium sized banks. The (lowered) MREL requirement for banks included in an IPS would additionally honour their respective business models, which often hamper the issuance of sufficient MREL.

By extending its role, the IPS - as an established model of cooperative and savings banks - might also become more attractive for standalone banks. These banks would have a choice to make to either stay on a standalone basis and – consequently – be fully compliant with BRRD-requirements (including a fully fletched MREL-requirement) or to join an IPS and benefit from a reduced MREL requirement. In addition, bank forming an IPS could seek other economies of scale and synergies regarding resolvability requirements (e.g. common development of playbooks, MIS for data in resolution etc.).

From a supervisor's perspective, incentives for standalone banks to establish an IPS would yield additional advantages regarding going concern and banking supervision, since an IPS-structure entails a consolidated risk monitoring, an early warning system and an IPS-recovery plan. Besides that, banks willing to join an IPS will most likely be subject to a thorough risk assessment by the IPS, which will introduce an additional layer of scrutiny. These factors combined with the mutualized financial means available to avoid FOLF and to support struggling members, would substantially lower the probability of a FOLF of IPS-members compared to standalone banks.

Summing up, by incentivising IPS-structures for resolution purposes of small and mid-sized banks we would make use of successful existing structures and in addition create added value in going concern and banking supervision.

JOHN BERRIGAN
Director General -
DG for Financial Stability,
Financial Services and
Capital Markets Union -
European Commission

The way forward on the EU crisis management and deposit insurance framework

The goal of the crisis management and deposit insurance framework is to safeguard financial stability, by managing the failure of all banks - irrespective of their size and business model - while protecting depositors and taxpayers. We have learned a lot over the past years during the rollout of this framework. In particular, concerns have been raised about how the framework manages the failure of small and medium-sized banks without undermining the level playing field and ensuring that failing banks exit the market.

Improving the framework for small and medium sized banks

Small and medium-sized banks in the European Union are a diverse category and ensuring they can fail without jeopardising our financial system or imposing costs on taxpayers is a priority.

Specific features of the current framework may affect how authorities handle the failure of small and medium-sized banks, in particular for business models funded primarily by deposits and equity.

Under the current framework, there are uncertainties around the ability of small and medium-sized banks funded primarily by deposits to access resolution funds without bailing in depositors, with a possible risk for financial stability in specific circumstances.

In addition, other private collective sources of funding - such as deposit guarantee schemes - may be out of reach in resolution. As it stands, alternative - and more easily accessible – insolvency solutions have been sought, including with the support of taxpayers' money. This needs to change.

Reviewing our framework will put us in a stronger position to manage bank crises in the EU. It is an opportunity to address the shortcomings of the framework, so that we can handle the failure of not just some banks, but all banks in the EU. We need to ensure that banks' internal loss absorption continues to be the first line of defence. What's more, industry-funded safety nets must be accessible for all banks, if and when they are needed, subject to proportionate access conditions.

Reviewing our framework will put us in a stronger position to manage bank crises in the EU.

Deposit guarantee schemes could act as bridge financing tools, helping to meet access requirements to the resolution fund while sparing depositors from bearing losses. This type of funding can play a more substantial role in resolution, beyond what is possible under the current framework.

To unlock the full potential of the deposit guarantee schemes, and to enhance the level playing field, other changes to the crisis management and deposit insurance framework are required. This includes changes to the least cost test and the hierarchy of deposit guarantee schemes claims in national insolvency rankings. In cases where this source of funding might come up short, a hybrid European deposit insurance scheme mechanism would be key, providing liquidity support and ensuring the robustness of the framework.

Failing banks and market exit

Put simply, banks that cannot be put in resolution need to be able to quickly exit the market. The outcome of a resolution procedure is clear and harmonised at EU level - banks that are in resolution may stay in the market (open bank bail-in strategy) or exit the market immediately or after a certain time (transfer strategy).

However, the situation is different when resolution is not in the public interest and the national insolvency proceedings apply, as they remain heterogeneous across Member States. What's more, it is not always guaranteed under the current rules that a bank put in insolvency will exit the market swiftly. We need to avoid these limbo situations, when a bank is failing and does not qualify for resolution, but the triggers to initiate insolvency under national law are not met.

The second EU Bank Recovery and Resolution Directive addresses this - in the event of failure with no public interest in resolution, a bank must be wound up under national law. However, there is still some uncertainty around which procedure to apply in these cases. Should only normal insolvency proceedings apply? Is any available national procedure acceptable, even if it does not entail the termination of the bank's activities?

One way to tackle this could be clarifying the procedures around market exit, particularly on the exit timeframe, possibly leaving room for the form of exit to be determined at national level. This would further reduce the risk of limbo situations and enhance predictability.

To conclude, the review of the framework offers an opportunity to ensure that we have the tools we need to handle banking crises in an orderly manner, in resolution or in insolvency. Among many other parts of the reform, addressing the case of small and medium sized banks would make our framework more resilient, more predictable, and ultimately improve trust in the way we deal with failing banks to protect the depositors, taxpayers, and the economy in general.

JÉRÔME GRIVET
Deputy General Manager, Chief Financial Officer - Crédit Agricole S.A.

Strengthening the crisis management framework: a milestone for the Banking Union

Over the last decade, the reforms brought significant changes to the crisis management framework. These changes have contributed to improve the resilience of the European banking system, noticeably thanks to the building up of significant MREL/TLAC buffers by banks. The Single Resolution Fund (SRF), as a sector-wide safety net expected at around EUR 75bn by 2024, has also been an important milestone. Although it has never been used, the SRF has come with a steep price for the sector over the years.

However, the EU crisis management system that has been in place since 2016 has not fully lived up to its initial promise: the framework has contributed to maintain a high level of fragmentation of the banking market, and a single banking jurisdiction also lacks to build a Banking Union. As it has failed to be fully implemented and operational for some small & mid-size banks, the crisis management framework further contributed to the renationalization of banking sectors across the continent (especially thanks to the persistent use of public funds) while at the same time maintaining excess capacity.

The EU crisis management framework should therefore be strengthened to ensure that public funds are no more used at the expense of healthy competition and the streamlining of the European banking sector. This should be done through a comprehensive solution tackling simultaneously all aspects necessary to further foster the integration of the Banking Union: single jurisdiction, cross-border capital and liquidity waivers. Concerning crisis management, this would typically mean an extension of resolution to a larger group of small & mid-size banks in the Banking Union:

- The way resolution authorities conduct the Public Interest Assessment should better capture the financial stability risks stemming from the failure of small & mid-size banks and the higher likelihood that they cannot be simply liquidated without recourse to external funds in a crisis.
- Such enlargement is paramount to minimize competition distortions in the Single Market. Directly competing against big banks, many small & mid-size banks are not subject today to the constraints of the resolution framework in going-concern (especially fully-fledged MREL requirements and other resolution planning works to ensure alignment with the SRB's Expectations for Banks). However they would benefit from external resources in gone-concern (or be rescued even though they are not viable) WITHOUT any strings attached.

The crisis management framework further contributed to the renationalization of banking sectors.

Any access to external resources must remain conditional on a compliance with a stringent burden-sharing requirement. The current rule applicable to access the SRF must remain intact and extended to other possible sources of external funds while ensuring a more balanced allocation of SRF contributions across the banking sector:

- A stringent burden-sharing requirement would ensure that shareholders and creditors of failing banks absorb their fair share of losses and thus minimize the burden on sound banks.
- To comply with such burden-sharing requirement, small and mid-sized banks should build up a MREL buffer that would enable shareholders and creditors to take a hit before resorting to external resources. As the Chair of the SRB recently said, "the market is wide open". If some of them cannot somehow do this, there are other solutions, like a longer transitional period or creating an escrow account that could be tapped in resolution. Otherwise, it would mean that these institutions are not viable and should either restructure themselves or exit the market.
- Burden sharing should also be made consistent between resolution and liquidation under a national insolvency proceeding, i.e. the 8% TLOF rule should be incorporated into the state-aid rules for liquidation aid. Doing so would decrease the need for external resources to facilitate the liquidation of a bank that has a negative Public Interest Assessment while eliminating the risk of regulatory arbitrage by national resolution authorities or the SRB.

Finally, many stakeholders tout the establishment of a European Deposit Insurance Scheme (so-called "EDIS") as a key element to strengthen the crisis management framework. Instead, without any simultaneous tangible progress on other aspects of the Banking Union such as the single jurisdiction, such mechanism would actually pose an important risk. Indeed, it could generate additional contributions from banks, lead to a hidden cross-border subsidy between healthy and weak banks, without removing the barriers on the market preventing the emergence of a real Banking Union.

We need a holistic European solution. The problem cannot be solved by preserving a set of national banking markets with their own restructuring mechanisms.

FRANCESCO CECCATO

Chief Executive Officer - Barclays Europe

The EU crisis management framework for small and medium sized banks

The EU has a robust crisis management framework in place, underpinned by the BRRD. This addresses the "too big to fail" problem for systemically important banks, protecting taxpayers in the euro area. However, the resolution of small and medium sized banks, which represent the vast majority of total banks in the region, is managed by national authorities, giving rise to several issues.

Firstly, there are level playing field considerations due to the degree of heterogeneity across national approaches to resolution in EU countries. In order to further strengthen the EU crisis management framework, I believe that policymakers should look for ways in which national insolvency procedures can be harmonised for banks that are not considered to be systemically important.

The potential for home-host frictions can also have an adverse impact on cross-border resolution. This is particularly true for SPE resolution strategies for cross-border banks which require home and host resolution authorities to rely on each other. Co-ordination and clear communication channels between resolution authorities are essential for building trust. This is particularly evident for small and medium sized banks in the EU that are subsidiaries of other banks. Regarding such banks, Barclays Europe Board member Tom Huertas wrote in a 2014 research paper[1] that, "the SPE approach is viable, if and only if, (i) the home country resolution authority is authorised, able and willing to assume command of what amounts to a global resolution syndicate, and (ii) the host countries are willing to accept such leadership by the home country resolution authority."

The MREL regime is another area that requires careful consideration by the resolution authorities with respect to small and medium sized institutions. There is a public interest in promoting the financial resilience of these banks but there is also a risk that the imposition of too high MREL requirements could have a negative impact on the real economy. Furthermore, the fact that the MREL calibration for small and medium banks is typically decided by national resolution authorities, and thereby subject to different approaches to bail-in, can give rise to further level playing field issues.

Resolution safeguards must be tailored to address the challenges faced by smaller banks.

As the cost of MREL is likely much higher for small and medium sized banks relative to larger institutions, due to the more constrained market for MREL issued by these banks, potentially lower credit ratings and the requirement to issue smaller size (sub-benchmark) transactions, this group will be more heavily penalised by the cost of meeting an MREL requirement. This could result in them having to constrain their balance sheet to minimise MREL costs, or pass on higher costs to the consumer, making them less competitive. Longer transition periods for these banks would help. Small banks that are growing should also be given sufficient transition time should they become subject to an MREL requirement.

In addition, small and medium sized institutions are often disproportionately reliant on retail deposits in their funding mix. Although this type of funding has proven to be very stable in practice, it is uncertain how depositors would react in a resolution scenario. The limited available empirical evidence seems to suggest that Deposit Guarantee Schemes, put into place to avoid such scenarios, could be effective in resolution. In the event of substantial and sudden deposit outflows, finding access to alternative sources of debt, such as from shareholders, will determine whether small and medium sized banks can return as going concerns.

Although the implementation of a EDIS would be the obvious way to achieve this, it is met with a degree of resistance by some member states, in particular from those who already have strong national insurance schemes in place. One could argue that a European Digital Currency, if implemented properly, would sidestep the challenge of finding political consensus and a lengthy ratification process into national law. Depositors would hold funds up to a politically acceptable limit in a separate account, which would be fully backed by the ECB. Savers would pay into it and withdraw from it, subject to the cap, whereas excess balances and funds used for transactional purposes would remain in "traditional" savings and current accounts and be subject to national deposit insurance schemes. The latter would also address any Orwellian concerns around the ECB acting in a "Big Brother" fashion.

Ultimately, whatever improvements are agreed, retaining the central principle that resolution safeguards must be appropriately tailored to address the specific challenges faced by small and medium-sized banks is essential. By tackling the national divergence in approaches to this important issue the overall safety and stability of the financial ecosystem across the bloc would be enhanced.

[1] *"A resolvable bank", Thomas F. Huertas, LSE Financial Markets Group Special Paper Series, 2014*

SANTIAGO FERNÁNDEZ DE LIS

Head of Regulation - Banco Bilbao Vizcaya Argentaria (BBVA)

Areas for improvement in the EU crisis management framework

The European institutions have done much work over recent years to develop a credible Banking Union through a single banking regulation, supervision and resolution framework. Regarding crisis management, we should emphasize the progress made by banking institutions in enhancing resolvability, improving their recovery and resolution planning and raising loss absorbing debt (MREL).

Despite these achievements, the Banking Union is far from complete, as shown by the diversity of solutions to the (thankfully) few resolution cases in recent years. Further action is required in the crisis management and deposit insurance frameworks, in three main fields: first, the creation of a European Deposit Insurance Scheme (EDIS), the missing element of the Banking Union architecture; second, a liquidity in resolution tool, an essential element in any resolution regime that the Eurozone lacks; and third, a single insolvency regime for banks, including a harmonized creditor hierarchy.

Completing the crisis management framework with a fully-fledged EDIS is crucial not only for depositors protection but also for safeguarding the single market and the economic and monetary union. The credibility of any Deposit Guarantee Scheme (DGS) relies on the implicit support by the sovereign. Insofar as deposit insurance is kept in national hands we cannot ensure that one euro is worth the same in any country of the Eurozone and we would be exposed to the risks of fragmentation as well as sovereign and banking risks doom loop. There is a blatant inconsistency in having a European banking regulation, supervision and resolution but maintaining deposit insurance in national hands. The progress made in mutualization of risks with the Next Generation EU funds shows the way to address this inconsistency when there is political will and ambition, although the transition period to a fully fledged EDIS could be relatively long, and hybrid solutions can be considered in the interim period.

Completing the crisis management framework with a fully-fledged EDIS is crucial.

The lack of a funding in resolution mechanism is also a major flaw in the Banking Union. The ESM backstop is a key element in the framework, but it is not enough to deal with a systemic liquidity crisis. The Eurozone is the only major economy lacking a lender of last resort (LOLR), a function carried out by the central bank in most jurisdictions. The reluctance of the ECB to commit to a predetermined course of action in an emergency liquidity situation is understandable, but the authorities need to acknowledge that private insurance mechanisms cannot be a substitute for a proper LOLR.

The remaining differences in the creditor hierarchy across EU countries implies that similar creditors could be treated differently during the resolution or liquidation of an entity, creating a potential problem of level playing field in the Capital Markets Union. A further harmonisation is needed on the triggers to begin an insolvency procedure and the ranking of creditors in insolvency.
Parallel to this debate, the future review of the crisis management framework could help to address some of the shortcomings identified in the current system. Of particular relevance is the treatment of mid-sized banks that fail the Public Interest Assessment (PIA) test and thus remain subject to national insolvency frameworks. For them it is important to apply solutions that guarantee the level playing field, treating similar banks in equal terms regardless of location. The absence of a harmonized insolvency framework also hampers the predictability of the system.

The present resolution framework is far too complex, in particular as regards MREL definition and calculation. A simplification would be welcome, especially considering its important implications for banks' market funding. Banks should be able to convey to the markets relatively simple and stable resolvability strategies.

A series of proposals have been made recently on streamlining the resolution of medium-sized banks (facilitating the sale of business as a resolution tool) and a more flexible and prompt use of the DGS. These proposals are a valuable contribution towards a more pragmatic resolution framework, but it is important in any case to preserve the key role of the bail-in paradigm as a central element of the EU resolution framework.

The COVID-19 crisis has clearly shown the benefits of having pan-European structures to regulate and oversee banking activity, and has made more evident the need to complete the crisis management framework and the Banking Union as soon as practicable. Now it is time that policy makers and legislators complete this work.

JOHANNES REHULKA

Managing Director & Secretary General, Austrian Raiffeisen Association - Raiffeisenbank International (RBI)

Why regulation is not an end in itself

No exclusion of retail investors of the bail-in tool

Should retail depositors be excluded by the application of the bail-in tool? The answer seems to be clear: of course not. Nonetheless this question is regularly discussed with regard to the revision of the crisis management framework. An exclusion of retail investors by resolution authorities, who were informed according to MIFID-requirements in detail about the risks of the bail-in able instruments, does not fulfil the original objective of BRRD of a high rate of loss absorbency.

Small and non-complex institutions should be out of scope

Europe has to maintain a diversity of different banking models and banking sizes. In 2014 after intensive negotiations, the legislative bodies came to the political decisions to establish a regulatory framework for systemic relevant institutions (BRRD and SRMR) and a regulatory framework for non-systemic institutions (DGSD). One of the main reason for this divergent approach was that the a failing systemic relevant bank could bring the common currency in serious troubles while the insolvency of a smaller bank is not of relevance for the Monetary Union.

With this background in mind it sounds strange if someone would argue to include small and non-complex institutions in the scope of BRRD. All of them have balance sheets lower than EUR 5 bn and most of them are operating on a national regional level only. A failing of these banks of these institutions would definitely not be of public interest for the Eurozone. In line with the recent adopted exemptions in BRRD II small and non-complex institutions should be out of scope of the MREL requirements due to their size and irrelevance for the common currency.

To include other institutions than small and non-complex institutions in the scope of the BRRD according to the current legal framework the resolution authorities have a broad range of instruments. The requirements of the "public interest assessment" are broadly defined and it does not seem to be smart to limit the definition of these requirements for the application of BRRD. Some authorities have not applied the resolution framework in the past although the current legislative framework would have allowed an application. The resolution authorities should rather change their restrictive application approach in certain cases instead of demanding changes in the general resolution framework.

We have to work out the pressing points but should not turn the whole system upside down.

Maintain highest ranking for covered deposits

The current legal framework provides that deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency have the highest ranking. This highest ranking of covered deposits is the guarantee for a working system as it safeguards the claims of the DGS which has to ensure that payouts to depositors are successfully executed. If the DGS would not be primarily reimbursed by the backflow of the insolvency assets the ambition for DGS for a smooth operation of pay-outs could be lower than currently. Furthermore the consequence would be an unjustified severe disadvantage for DGS and the member-banks financing the DGS in relation to other creditors as they would have to finance the payouts but would loose the highest ranking. This approach does not seem to be very balanced.

Preventative Measures for IPS only

Preventive measures of DGS are inherent to banking sectors which are organized in an institutional protection scheme (IPS). An IPS is a contractual liability arrangement that ensures the liquidity and solvency of its member banks to foster their financial stability. These IPS have implemented early intervention and risk assessing systems to avoid bank failures at an early stage. It is obvious that IPS which are recognized as DGS are the typical case of application of preventative measures in the current legal framework as other DGS do not have by far the same instruments. The early intervention and risk assessing systems of IPS have successfully avoided bank failures in the past and should therefore enable IPS as recognized DGS to apply preventative measures in the sense of DGS-Directive.

Restricted use of DGS in bank resolution

Europa should avoid fundamental structural changes like the establishment of EDIS, higher contributions of the national DGS to the resolution funds or a shift of competences from the national to the European level. Such far reaching changes would rather have a negative impact on the confidence of citizens and market participants in the functioning of the systems. The arguments raised for a higher contribution of DGS funds in bank resolutions are still not convincing. While a resolution is only applicable to systemic relevant institutions these instruments cannot be one be one applied to smaller institutions. Therefore the different purposes and instruments of the resolution framework and DGSD should not be mixed up and the use of DGS fund in resolution should be restricted to a maximum of half of the target level of the DGS fund.