SCHOOL OF ECONOMICS, BUSINESS AND INTERNATIONAL STUDIES

European Deposit Insurance Scheme: A Financial Crisis Aftermath

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ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ
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ΒΕΒΑΙΩΣΗ ΕΚΠΟΝΗΣΗΣ ΔΙΠΛΩΜΑΤΙΚΗΣ ΕΡΓΑΣΙΑΣ

Δηλώνω υπεύθυνα ότι η διπλωματική εργασία για τη λήψη του μεταπτυχιακού τίτλου σπουδών, του Πανεπιστημίου Πειραιώς, «Δίκαιο και Οικονομία» με τίτλο «Ευρωπαϊκό Σύστημα Ασφάλισης Καταθέσεων: Επαύριον της χρηματοοικονομικής κρίσης» / "European Deposit Insurance Scheme (EDIS): A financial crisis aftermath" έχει συγγραφεί από εμένα αποκλειστικά και στο σύνολό της. Δεν έχει υποβληθεί ούτε έχει εγκριθεί στο πλαίσιο κάποιου άλλου μεταπτυχιακού προγράμματος ή προπτυχιακού τίτλου σπουδών, στην Ελλάδα ή στο εξωτερικό, ούτε είναι εργασία ή τμήμα εργασίας ακαδημαϊκού ή επαγγελματικού χαρακτήρα.

Δηλώνω επίσης υπεύθυνα ότι οι πηγές στις οποίες ανέτρεξα για την εκπόνηση της συγκεκριμένης εργασίας, αναφέρονται στο σύνολό τους, κάνοντας πλήρη αναφορά στους συγγραφείς, τον εκδοτικό οίκο ή το περιοδικό, συμπεριλαμβανομένων και των πηγών που ενδεχομένως χρησιμοποιήθηκαν από το διαδίκτυο. Παράβαση της ανωτέρω ακαδημαϊκής μου ευθύνης αποτελεί ουσιώδη λόγο για την ανάκληση του πτυχίου μου.

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Foreword

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Abstract

The financial crisis of 2008 has revealed important shortcomings in financial supervision. The European competent authorities and bodies had therefore decided to move to radical reform of the regulatory and the supervisory framework and therefore adopt the rules of the 'single rulebook'.

The creation of the European Banking Union was the response to the Eurozone crisis. The EBU's two pillars, i.e. the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism complement each other and aim to monitor the implementation of the single rulebook by the banks and to be responsible for their resolution, if needed, accordingly. In this context, the Commission through its comprehensive package of reforms in November 2016, aimed to establish same level of protection for all depositors within the Banking Union. For this purpose, the creation of a Single European Deposit Insurance Scheme (EDIS) is deemed to be necessary.

The purpose of this thesis is to present the so called 'third pillar' of the European Banking Union and the reasons the creation of the EDIS is of such importance highlighting its structure and the transition from the previous deposit insurance framework to the one to be implemented under the Commission's proposal.

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List of Abbreviations

Board	Single Resolution and Deposit Insurance Board
BRRD	Bank Recovery and Resolution Directive (2014/49/EU)
CRD IV	Capital Requirements Directive no. IV (2013/36/EU)
CRR	Capital Requirements Regulation (575/2013)
DGS	Deposit Insurance Scheme
EBA	European Banking Authority
EBU	European Banking Union
ECB	European Central Bank
ECOFIN	Economic and Financial Affairs Council
EDIS	European Deposit Insurance Scheme
ESAs	European Supervisory Authorities
ESM	European Stability Mechanism
ESRB	European Systemic Risk Board
IPS	Institutional protection scheme
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism

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Introductory Remarks

The main activity of a credit institution is to take deposits or other repayable funds from the public and to grant credits for its own account[1]. Credit institutions are being exposed to credit risk and they provoke deep concern over the possibility of further transmission of the disturbance due to their interconnection[2]. As a result, any interruption of the banking services would lead to negative externalities, since the total loss of the shareholders in case of a failing bank is lower from the total social cost[3] [4].

Therefore, the most efficient response in order to safeguard a possible breakdown of the banking system is the creation of a bank safety net. By way of explanation, the term 'safety net'[5] refers to a framework establishing a protective system of rules and principles for the bank customers. But which are the key elements of a proper and effective safety net[6] [7]?

(a) *Delineation of activities*: A credit institution shall provide specific services and shall operate as to fulfill its purpose. Therefore, credit institutions should not provide insurance and reinsurance services on a collective basis. Otherwise, the creation of a legal entity e.g. a subsidiary in order to carry out such activities is deemed to be necessary.

(b) *Role of private sector*: Private funds should always be the preferable solution. In case of a bail–in or a succession of another institution without public funds, private sector shall reduce the resulting costs to be borne. Private funds would

[1] See Article 4 (1) (1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

[2] Charles Goodhart and Dirk Schoenmaker (2009), "Fiscal Burden Sharing in Cross-Border Banking Crises", International Journal of Central Banking, 5:141-165

[3] Schoenmaker, D., and S. Oosterloo. (2005). "Financial Supervision in an Integrating Europe: Measuring Cross-Border Externalities." International Finance 8 (1): 1–27.

[4] David Llewellyn, (1999),"The Economic Rationale for Financial Regulation", FSA Occasional Paper No.1

[5] Chr. Gortsos, A. Mikroulea, Ch. Livada (2016). Elements of Banking Law, (3rd ed.), Nomiki Bibliothiki S.A, Athens, 38-54

[6] Sebastian Schich, (2008). Financial Crisis: Deposit Insurance and Related Financial Safety Net Aspects, ISSN 1995-2864, Financial Market Trends, OECD 2008

[7] Dirk Schoenmaker and Daniel Gros, (2012). A European Deposit and Resolution Fund

also benefit in the event of a bank resolution.

(c) *Least cost procedures*: A sound management of the existing funds and resources is necessary. Therefore, the competent authorities and namely the competent resolution authority should take action in making the most economical use of its administrative resources, in order to provide maximum benefit at minimum cost of the deposit insurance and resolution fund.

(d) *Fiscal backstop*: There is no doubt, that crises affecting the banking sector influence the macroeconomics of the region too. Consequently, the need of funds is also essential for the European Deposit Insurance Funds, as it is very likely to face difficulties to reimburse the depositors. Therefore, a governmental fiscal backstop is vital.

(e) *Good governance*: An appropriate and a well-structured framework is fundamental when establishing a financial safety net. The rules whereby the macro-prudential regulation and the micro-prudential policies are adopted should be ensured by a responsible organization and by capable and qualified individuals on the board.

At the EU level, several efforts have been made since late 1980s in order to gradually harmonize the aspects of the financial safety net.[8] "Passport" directives applying to banking, insurance and other sectors have been adopted, along with the rule of the mutual recognition and of the "home country control"[9] [10]. The Economic and Monetary Union (EMU) was launched on 1.1.1999 and focused mainly on the monetary policy and to some extent on the fiscal

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[8] Christos Hadjiemmanuil, The Banking Union's Convoluted Regulatory Architecture, 3rd CCLS Roundtable on Financial Regulation, "Financial Markets: Impossible to Govern?", London, 26 June 2014

[9] Eva Lomnicka (2000), The Home Country Control Principle in the Financial Services Directives and the Case Law, part 5, 324 – 336

[10] See also First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31977L0780&from=EN , and Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0646:EN:HTML

policy. In contrast, the Treaty establishing the European Community in the Article 105 (6) provided that “The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the European Central Bank, hereinafter referred to as the “ECB”, specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings” giving only the power to the ECB to submit opinions on matters in its fields of competence.[11] Later on, with the application of the Treaty on the functioning of the European Union no substantive changes were made to this issue. The article 105 (6) of the Treaty establishing the European Community has been reworded[12] accordingly, only in order to implement the necessary amendments on the procedure of the adoption of the European legal acts.

During 2009 we may notice two key issues: (a) moving towards the realization of a “Single Rulebook” and (b) the De Larosière report.
(a) Directives setting the rules on how then European banks would operate across the euro area, had left enough space to the national legislature of each participating member state to form the European banking legislation till 2009. As a result, misconceptions and various or different interpretations caused burdens to a harmonized operation of the banking institutions across the Single Market.

Accordingly, in 2009 the European Council launched the concept of the “Single Rulebook” in order to set an undivided regulatory framework for the EU financial sector[13]. The aim of the Single Rulebook has been to ensure a more efficient, more resilient and

[11] See Article 105 (4), Treaty establishing the European Community, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12002E/TXT&from=EN
[12] See Article 127 (6) of the Consolidated version of the Treaty on the Functioning of the European Union
[13] Council of the European Union, Presidency Conclusions, Brussels, 10 July 2009, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf

more transparent banking factor across the Europe[14]. Therefore, after several changes in the institutional and regulatory framework, the "Single Rulebook" currently includes a set of legislative contents that the financial institutions operating across the EU must comply with. In particular, Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[15], known as CRD IV, Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms[16], known as CRR, Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms**[17]**, known as BRRD, and Directive 2014/49/EU of the European Parliament and of the Council on deposit guarantee schemes making up the Single Rulebook (DGSD)[18] [19].

The regulatory rules of the Basel III Committee are incorporated to the European law with the CRR and the CRD texts[20]. The aim of this framework is to tackle the shortcomings of the previous regulatory framework highlighted by the crisis of 2007-2009.

Thus, the main target of Basel III is to reinforce both the quantity and the quality of the capital adequacy of the credit institutions and to introduce the innovative instruments of preventative regulatory intervention of the Liquidity Coverage Ratio (LCR), the Net Stable

[14] EBA, The Single Rulebook, https://www.eba.europa.eu/regulation-and-policy/single-rulebook

[15] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC

[16] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance

[17] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance

[18] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0049&from=EN

[19] Valia Babis (2014).Single Rulebook for Prudential Regulation of Banks: Mission Accomplished? , Faculty of Law, University of Cambridge.

[20] N. Rokas, Chr. Gortsos, A. Mikroulea, Ch. Livada (2016), Elements of Banking Law, 103

Funding Ratio and the Leverage Ratio[21]. The implementation of the aforementioned rules took place within the period of 2013-2014 and it is better explained in the chronological order that follows.

(b)Reforms to the structure of supervision of the financial sector in the European Union were initiated by the European Commission, following the recommendations of a Committee of Wise Men, chaired by Mr. de Larosière, and supported by the European Council and Parliament. In de Larosière report[22] of 2009 the reasons of the international financial crisis had been investigated and Jacques de Larosière made proposals on the micro-prudential supervision for the financial institutions. Following the spirit of this report, the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority (hereinafter referred to as the ESA's) were established in January 2011 as a direct result of the recommendations of the de Larosière report which called for the establishment of a European System of Financial Supervision (ESFS). The ESA's purpose is to enhance the function of the internal market by safeguarding appropriate, efficient, effective and unified European supervision and regulation. In the area of macro prudential supervision, the ESRB was set up in 2010 in order to provide oversight of the EU financial system and to prevent and mitigate of systemic risk.

Following the fiscal crisis of 2010 in the Eurozone, on 29 June of 2010 the euro area summit's brief statement, began with a declaration of intent," We affirm that it is imperative to break the vicious circle between banks and sovereigns[23]". Later, during 2012, major initiatives were undertaken by the European Commission. On 12 of September, (i) a communication outlining the necessity to

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[21] Professor Christos Hadjiemmanuil, University of Piraeus & London School of Economics Advisor to the Governor, Bank of Greece, The Impending Review of the European Resolution Framework, http://www.ilf-frankfurt.de/fileadmin/user_upload/Christos_HADJIEMMANUIL.pdf

[22] http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf

[23] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf

create a banking union[24], (ii) a proposed Council regulation referring to the ECB's specific tasks concerning policies relating to the prudential supervision of credit institutions[25] and (iii) a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, had therefore been published.

During the next two years (2013-2014) the adoption of European regulations and of legal acts by the European Parliament and the Council, enabled the establishment of the European Banking Union. In particular, the Single Supervisory Mechanism regulation[26], Regulation (EU) No 1022/2013[27] which did align the EBA's legislation to the framework for the banking supervision, and the signing of the Memorandum of Understanding (MoU) between the European Parliament and the European Central Bank, were the first steps on the creation of the European Banking Union, hereinafter referred to as the "EBU". At the same time the CRR regulation[28] and the CRD IV[29] adopted by the participating Member States, have laid down a set of rules incorporating the Basel III regulatory framework[30]. In 2014, the EBU was steadily being phased into operation. Further rules were established with the adoption of the Single Resolution Mechanism regulation[31], the intergovernmental

[24] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012DC0510&from=en
[25] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0511:FIN:EN:PDF
[26] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions
[27] Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as
[28] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0575&from=EN
[29] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0036&from=EN
[30] N. Rokas, Chr. Gortsos, A. Mikroulea, Ch. Livada (2016), Elements of Banking Law, (3rd ed.), Nomiki Bibliothiki S.A, Athens, 115-117
[31] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010

agreement relating to the transfer and mutualization of contributions to the Single Resolution Fund and the BRRD directive[32].

In 2015, the European Commission, following the Five President's Report on completing Europe's economic and monetary union[33], submitted a proposal for a Council Regulation “in order to establish a European Deposit Insurance Scheme”[34]. EDIS, which is the topic of this dissertation, shall be presumed to be the missing third pillar completing the EBU.

[32] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0059&from=EN

[33] The Five President's Report: Completing Europe's Economic and Monetary Union, https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report_en.pdf

[34] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015PC0586&from=EN

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Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance

First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions

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https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0059&from=EN

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0575&from=EN

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0036&from=EN

http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012DC0510&from=en

https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0511:FIN:EN:PDF

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0049&from=EN

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf

https://www.eba.europa.eu/regulation-and-policy/single-rulebook

THE EBU PILLARS

The European Banking Union (EBU) arose on the basis of the European Commission roadmap
[35] following the period of political developments occurred during the financial crisis evolved into the euro area[36]. EBU rests on three pillars: 1) Supervision, 2) Bank Recovery and Resolution, 3) Deposit Insurance.

The EBU's constituent elements embodying the aforementioned three pillars are the Single Supervisory Mechanism, hereinafter referred to as "SSM" and the Single Resolution Mechanism, hereinafter referred to as "SRM". Both of them apply the requirements of the "single rulebook"[37]. Regarding the Deposit Insurance pillar, it was obvious that the Commission stayed inactive initially. The adoption of Directive 2014/49/EU[38] was the first attempt towards integrating deposit insurance at the EU level.

The Single Supervisory Mechanism

The Single Supervisory Mechanism has granted the European Central Bank a supervisory role witch main objective is to monitor the financial stability of the banks based in the participating states of the Eurozone. Another major aim of the ECB is to maintain the existence of a European supervisory mechanism that operates irrespectively and act outside of any national interests, weakening the bank-sovereign nexus.

Member States of the European Union which are outside of the Eurozone may also participate voluntarily by adopting the common standards of the single rulebook. A memorandum of understanding

[35] See footnote 24
[36] See Introductory remarks, p. 7
[37] See footnotes 14,24
[38] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes

setting out the collaboration of the European Central Bank (ECB) and the National Competent Authorities, hereinafter referred to as the "NCA's", has to be signed for the participation of a country[39]. Regulations 468/2014[40], 1022/2013[41] and 1024/2013[42] set the framework of the cooperation of the ECB and the National Competent Authorities, while also contribute to the safety and the soundness of the credit institutions and the stability of the financial system in the EU in general.

Based on the criteria of the size, the economic importance, the direct public financial assistance and the cross-border activities, credit institutions are classified as 'significant' or 'less significant'. The criteria in order to determine the credit institution' status are set out in the SSM regulation[43] and the SSM framework regulation[44]. It should be mentioned that a credit institution is qualified as 'significant' provided it meets at least one of the aforementioned criteria. A supervised bank shall also be classified as a significant institution, if it fulfills the criteria of being one of the three most significant banks established in a participating Member state. Nonetheless, the ECB may change the supervisory status of a credit institution anytime it identifies that the institution either fulfills one of the criteria or misses all of them.

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[39] Under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions and the Decision of the European Central Bank of 31 January 2014 on the close cooperation with the national competent authorities of participating Member States whose currency is not the euro "*Member States whose currency is not the euro may wish to participate in the Single Supervisory Mechanism (SSM). For this purpose, they may request the European Central Bank (ECB) to enter into a close cooperation in relation to the tasks referred to in Articles 4 and 5 of Regulation (EU) No 1024/2013 with regard to all credit institutions established in that Member State".*

[40] Regulation (EU) No 468/2014 of the European Central Bank establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities https://www.ecb.europa.eu/ecb/legal/pdf/celex_32014r0468_en_txt.pdf

[41] Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013

[42] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

[43] See footnote 26

[44] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17)

Hence, the ECB is responsible for directly supervising the 123 significant banks that hold almost 82% of banking assets in the euro area. Less significant institutions are supervised by their national supervisory authorities, but in a close cooperation with the ECB.

The Single Resolution Mechanism

The Single Resolution Mechanism is complementary to the Single Supervision Mechanism. The SRM consists of the Single Resolution Board (SRB), the Single Resolution Fund (SRF) and the National Competent Authorities (NCA's), as well as the European Commission and the Economic and Financial Affairs Council (ECOFIN). The initial role of the SRM is ensuring that a credit institution being supervised by the SSM and in parallel is facing financial difficulties, will be resolved with the most effective way, as to reduce the cost to tax payers and the economy. The SRM regulation[45] along with the BRRD[46] lay down the rules on recovery and resolution of the credit institutions. The SRM regulation applies to banks covered by the SSM.

The BRRD deals with bank crises following three stages: 1) the preparation of the proceedings of resolution, 2) early intervention measures by the supervisor, 3) the application of resolution tools and powers. Therefore, the SRB is responsible for the preparation of the resolution plans for those credit institutions being supervised by the ECB; NCA's however, prepare the resolution plans of the credit institutions operating in a national level, without being directly supervised by the ECB. It should be mentioned that the SRF shall decide on financing the credit institutions that are directly and indirectly supervised by the ECB.

When the SRB, the Commission and the NCA's are notified by the

[45] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010
[46] See footnotes 17,32

ECB that a credit institution is failing or likely to fail, the SRB assesses whether the institution poses systemic threats. In this case, the SRB examines if the risk may be properly addressed by a private sector funding or the credit institution is in need of the resolution tools as laid down in the article 37 (3) of the BRRD[47] and the SRF funds.

[47] See article 37 (3) "*The resolution tools referred to in paragraph 1 are the following: (a) the sale of business tool; (b) the bridge institution tool; (c) the asset separation tool; (d) the bail-in tool*."

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Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes

Regulation (EU) No 468/2014 of the European Central Bank establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities

Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013

Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010

DEPOSIT INSURANCE

Systemic banking crises have appeared several times during the last decades, not only in the Eurozone but also around the globe. As a result, a large number of depositors lost their access to their funds, borrowers lost their access to credit and many sound banks were driven to close down or went bankrupt. The markets have been seriously weakened and this worked to the detriment of the taxpayers. In response to the financial crises and the systemic breakdowns, among other safety net policies, the use of deposit insurance has spread rapidly in recent years[48]. But which is actually the proper interpretation of the term 'deposit insurance'?

First of all, the term deposit insurance is also known as deposit guarantee or deposit protection. For Samuel H. Talley and Ignacio Mas deposit insurance systems "*are typically created to prevent contagious bank runs, to provide a formal national mechanism for handling failing banks, and to protect small depositors from losses when banks fail*.[49]" It is also a significant part of the safety net and contributes to the stability of the financial system. In Francesca Carapella and Giorgio Di Giorgio[50] opinion, the explicit system of deposit insurance is like an instrument through which the banking system guarantees that funds deposited by the public in a bank are independent of solvency and liquidity conditions of the latter. Last but not least, according to Gillian Garcia[51] *"Deposit insurance is defined as a limited but formal scheme that explicitly provides a legally enforceable guarantee of the principal of (and usually also the interest on) a deposit. The guarantee is typically mutually*

[48] Asli Demirguc - Kunt, Edward J. Kane (2001),World Bank and Boston College. Deposit insurance around the globe: where does it work?, http://www.nber.org/papers/w8493

[49] Talley, Samuel H.; Mas, Ignacio; Talley, Samuel H.*Mas, Ignacio. 1990. *Deposit insurance in developing countries (English)*. Policy, Research, and External Affairs working papers ; no. WPS 548. Financial policy and systems. Washington, DC: World Bank

[50] Francesca Carapella, Giorgio Di Giorgio (2003). Columbia University, Economics Department, Deposit insurance, institutions and bank interest rates

[51] Garcia, Gillian, Deposit Insurance and Crisis Management (March 2000). IMF Working Paper, Vol. , pp. 1-81, 2000, https://ssrn.com/abstract=879531

funded by banks based either on ex ante contributions or on ex post assessments and it may be backed by the government formally or informally."

However, in any event and despite the term that better corresponds to its definition, there is no doubt that deposit insurance has several ambitions and unique goals.

A deposit guarantee scheme aims to the protection of the inexperienced small investors when undertaking business decisions. Moreover, a small depositor is not able to easily comprehend and discern the risk taken by the financial institutions neither to monitor them. A Deposit Guarantee Scheme is possibly able to take care of the depositors' safety. Furthermore, deposit insurance struggles for every single institution and individual bank. Bank runs on credit institutions shall be prevented through a proper perform of a deposit insurance scheme. Last but not least, deposit insurance plays a major role when talking about the competition in the banking industry, as it contributes to the establishment of appropriate and fair terms.

Quite apart from that, although the deposit insurance concept is quite simple, the deposit insurance schemes are actually deemed to be relatively complex mechanisms. They do present a number of complicated issues that cannot be easily settled[52]. The nature of deposit insurance is controversial as far as its administration i.e public or private DGSs is concerned. Therefore, maybe the most challenging issue is the assessment of the values on a statistical base regarding the specific risk of individual insured financial institutions. Furthermore, a well-designed insurance system shall seriously consider the relationship between the regulator and the deposit insurance agency, the compulsory or voluntary membership in case of a publicly run deposit insurance system, the scope of the coverage, the currency of deposits to be protected,

[52] http://documents.worldbank.org/curated/en/593131468330040612/pdf/wps36280rev.pdf

and the level of the protection. In addition, the funding of the deposit insurance scheme is definitely a crucial and primary matter when conceiving a deposit insurance system.

Undoubtedly, deposit insurance systems are not a remedy[53] to all banking problems. Hence, it is widely supported that deposit insurance system may cause greater negative effects instead of relieving banking sector's problems. However, a proper working scheme may overcome many, if not each one of the deep-routed and permanent complications and obstacles of deposit insurance.

Deposit insurance around the word

Deposit insurance was not first appeared during the banking crisis of 2008. The U.S was the front- runner in developing and establishing a national deposit insurance system with a view to gain the trust related to the liquidity of the bank deposits (Golembe, 1960). However, several financial crises occurred throughout the 80's and the 90's had vastly contributed to a wide spread of deposit insurance systems. Thailand, Malaysia and Korea established insurance schemes within this period[54]. As Francesca Carapella and Giorgio Di Giorgio observe, 30 of 72 countries established a deposit insurance protection scheme in the 90s and 33 countries have undertaken amendments of their existing deposit protection schemes within the same period. Finally, in 1999, Ecuador, El Salvador, Cameroon, Chad and the Republic of Congo adopted an insurance deposit system[55].

Apart from the aforementioned data, it should be stated that the application of the deposit insurance as a protective instrument for

[53] Wai Sing Lee, Chuck C.Y. Kwok (1999), Journal of Multinational Financial Management, Domestic and international practice of deposit insurance: a survey
[54] Asli Demirguc - Kunt, Edward J. Kane (2001),World Bank and Boston College. Deposit insurance around the globe: where does it work?, http://www.nber.org/papers/w8493
[55] See footnote 54

the financial factor is not similar around the globe. The IMF and the World Bank pinpoint that there are no homogeneous national deposit insurance schemes. Yet, the currently adopted schemes are quite different and diverged.

For example, the level of coverage varies from unlimited guarantees to tight coverage limits. According to Asli Demirguc-Kunt and Edward J. Kane, countries such as Mexico, Turkey and Japan adopted 100 percent depositor coverage. On the other hand, countries like Chile, Switzerland and the U.K covered a part of the deposits, less than their per capita GDP. It is also possible to come across with schemes that co-insure an amount of account-holders deposit balances. Other schemes may exclude from their protection the interbank deposits and focus on the coverage of amounts in foreign currency or even insure some categories of deposits or depositors[56]. Insurance schemes are either public or private or mixed, meaning they are organized and managed by a government agency or a public-private partnership or by both[57]. Privately managed insurance schemes are for example those of Switzerland, Germany and Argentina. Additionally, in more advanced countries we may meet supervisory powers given to a scheme, such in the case of the FDIC in the U.S. Last but not least, countries like Spain and Germany have more than one active deposit insurance schemes covering different types of institutions based on their nature.

Concerning its financial resources, a deposit guarantee scheme may be compulsory or voluntary for the participating members and may be funded by either ex-ante or ex-post contributions of its members. According to Francesca Carapella and Giorgio Di Giorgio, more insured institutions and a less concentrated banking sector offer a sounder protection system, as the payouts for a failed bank

[56] See footnote 54
[57] See footnote 52

may be spread to a considerable number of institutions.

Researches prove that deposit insurance lowers banks' interest expenses so as interest payments becoming less sensitive to bank risk and liquidity[58]. Furthermore, deposit insurance leaves its mark to the field of the market discipline. High deposit insurance interests rates mean greater level of market discipline on bank risk taking. Hence, market discipline is more robust in countries with a higher institutional development. However, an ineffective deposit insurance scheme may harm even the market discipline of the aforementioned countries.

The financial development of a country may also be affected by the existence of a deposit insurance system. In case of economies with strong institutional development deposit insurance may only work positively. Nevertheless, an unstable deposit insurance and regulatory scheme not only holds back the financial development but also delays the progress of the non-bank financing mechanisms. However, in countries with institutional weaknesses things seem different. While deposit insurance systems are established in an inadequate environment, financial development is lagging behind rather than being accelerated. Any positive result in financial development may assist in the very short run. Moreover, in the long-term subverts market discipline, enhance the appearance of the moral hazard and leads to the weakening of the financial stability. As a result, poorly designed deposit-insurance arrangements tend to raise the likelihood of a future banking crisis[59].

In conclusion, the above analysis proved that deposit insurance has a positive influence on the financial development of the countries; however, the government official should take seriously into

[58] See footnote 54

[59] See footnote 54

account that the environment of its country is different and must be ready to support explicit deposit insurance in an effective and efficient manner[60]. Otherwise, the bank solvency and the real economy capital of the country tend to be undermined.

Table 1: Summary Statistics of Deposit Insurance Around the World

	1980	1980 - 1985	1986- 1990	1991- 1995	1996- 2000	2001- 2004
Number of countries with deposit insurance	12	19	27	34	46	52
Number of countries with unlimited guarantee (full) deposit insurance	3	3	4	5	9	6
Number of countries with coinsurance	3	4	6	7	8	8
Number of countries with risk adjusted premiums of deposit insurance	1	2	3	6	7	7
Number of countries with deposit insurance covering foreign exchange deposits	10	14	18	25	31	32
Number of countries with deposit insurance covering interbank deposits	2	3	4	5	8	8
Number of countries with deposit insurance with a permanent fund	10	15	22	29	37	39
Number of countries with a compulsory membership deposit insurance	10	15	23	32	40	42

NOTE: - All figures are for end period
Source: (Demirgüç-Kunt et al., 2005)

[60] See footnote 54

Table 2 Type of fund and premium information

Country name	Permanent fund (funded=1 unfunded=0)	Premium or assessment base	Annual premiums (% of base)	Risk-adjusted premiums (yes=1 no=0)
Albania	1	insured deposits	0.50%	0
Algeria	1			0
Argentina	1	insured deposits	risk-based, 0.36% to 0.72%	1
Austria	0	insured deposits	pro rata, ex post	0
Bahamas	1	insured deposits	0.05%	0
Bahrain	0	deposits	ex post	0
Bangladesh	1	deposits	0.50%	0
Belarus	1	household deposits	risk based: 0 for two state banks. 0.1% to 0.3% of household deposits for other banks, depending on the bank's household deposits to capital ratio	1
Belgium	1	insured liabilities	0.02% + 0.04%	0
Bolivia	1	deposits		1
Bosnia-Herzegovina	1	deposits	0.5% until July 2001, then changed to 0.3%	0
Brazil	1	insured deposits	0.30%	0
Bulgaria	1	insured deposits	risk based to 0.5%	1
Canada	1	insured deposits	0.33% max	0
Chile	0	not applicable	none	0
Colombia	1	insured deposits	0.5% from January 2002 to December 2006	0
Croatia	1	insured deposits	0.80%	0
Cyprus	1	n.a.	n.a.	0
Czech Rep.	1	insured deposits	0.10%	0
Denmark	1	insured deposits	0.2% (maximum)	0
Dominican Republic	1	deposits	0.1875%	0
Ecuador	1	deposits	0.65%	0
El Salvador	1	insured deposits	risk-based, 0.1% to 0.3%	1
Estonia	1	deposits until 2002	0.5% (maximum) (0.28% at present)	0
Finland	1	insured deposits	risk based: 0.05% to 0.3%	1
France	0	n.a.	on demand but limited	0
Germany	1	insured deposits in commercial banks DIS, risk-assets in other DIS	official is 0.03% but can be doubled	0
Gibraltar	0	insured deposits	administrative expenses and expost contributions	0
Greece	1	deposits	decreasing by size: 1.25% to 0.025%	0
Guatemala	1	insured deposits	1.0% plus 0.5% when the fund falls below its target	0
Honduras	1	deposits	not more than 0.25%	0
Hungary	1	insured deposits	risk based to 0.3%	1
Iceland	1	insured deposits	0.15%	0
India	1	deposits	0.05%	0
Indonesia				
Ireland	1	EU and EEA, i.e insured deposits	0.20%	0

Domestic – private schemes

As previously mentioned, deposit insurance schemes differ from country to country and each follows its proceedings and rules. There are several reasons for the uniformity of the deposit insurance around the world[61]. Hence, there will be an effort to identify the exact rationale of adopting deposit insurance scheme on a case-by-case basis.

(i) Administration of deposit insurance[62]: A private scheme is ultimately different from a public scheme. The advantages of a privately designed scheme focus on the idea that the private insurance providers are more selective when they providing insurance. Furthermore, a private scheme is independent of monitoring and controlling risks that credit institutions undertake, as well as operates without political or other social pressure that may influence its function. On the other hand, a private deposit insurance scheme may present a major safety of deposits, while there is limited oversight of the participating members, insurability, limited information when measuring risks and other drawbacks.

(ii) Scope of coverage[63]: Several factors are taken into account before structuring a deposit insurance scheme. The economy of the country, the number of the institutions to participate in the scheme and their risk characteristics, their exposure to failure etc. would definitely contribute to reach a decision. Moreover, the extent of the deposit insurance coverage shall be considered. For example, will the deposit insurance scheme cover domestic branches of foreign banks? In this event, which is the currency of the deposits to be protected?

[61] See also footnote 54

[62] Demirguc-Kunt, Asli; Karacaovali, Baybars; Laeven, Luc. 2005. *Deposit insurance around the world : a comprehensive database (English)*. Policy, Research working paper ; no. WPS 3628. Washington, DC: World Bank.

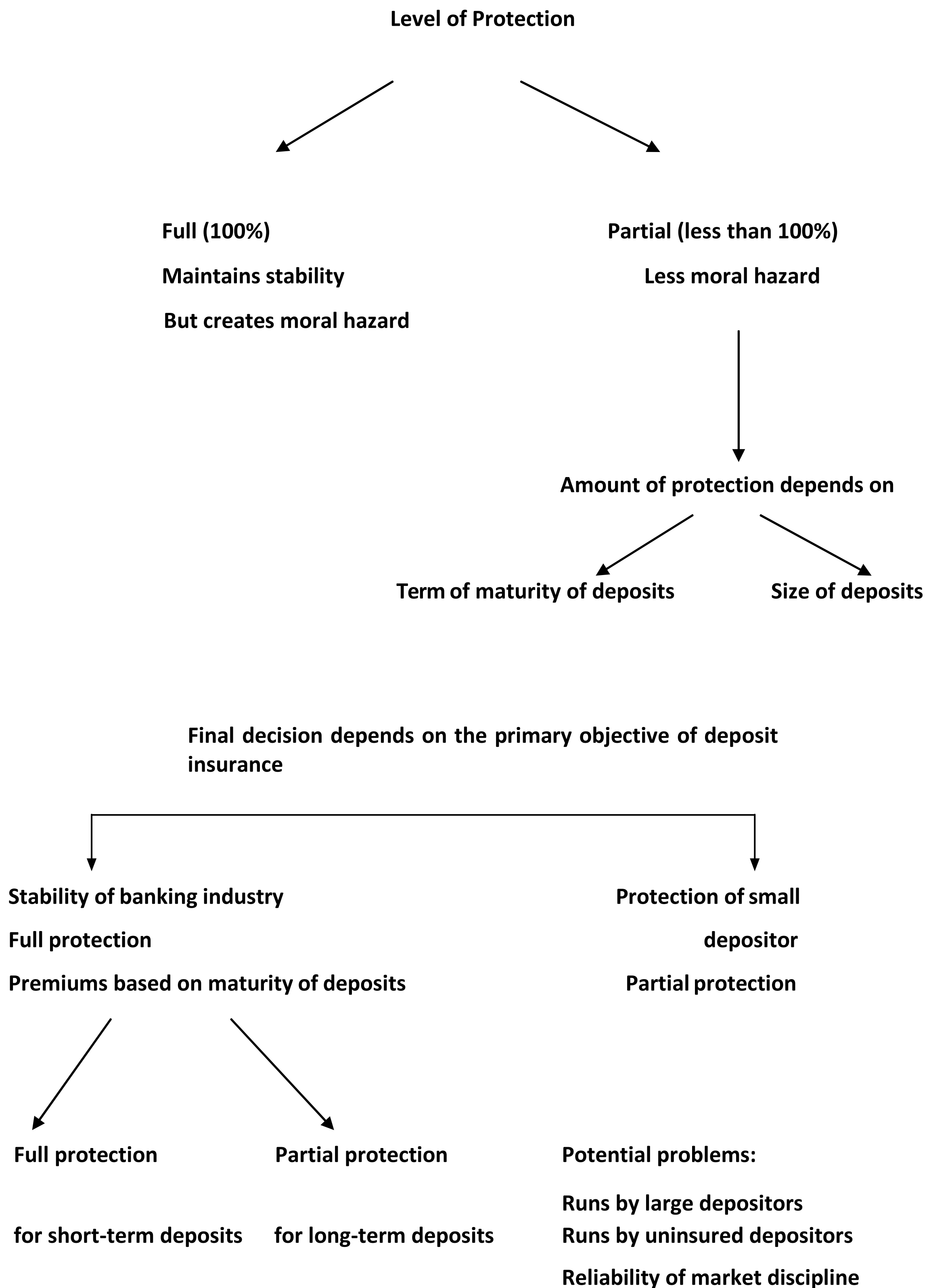
[63] See footnote 62

(iii) Another controversial issue is whether deposit should be fully or partially protected. The event of a bank – run, the moral hazard and the adverse selection should definitely be taken under consideration[64].

(iv) Last but not least, designing a deposit insurance scheme shall include the way of its funding. In this case there are two options[65]: (a) to set up a fund with regular contributions from insured banks out of which claims can be met, or (b) not to have a fund or decide to have a relatively small initial fund, taking an ex post approach with premium assessments levied after bank failures.

[64] See footnote 62
[65] See footnote 50

Table 3 – Design of deposit insurance- A framework of analysis



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THE CURRENT FRAMEWORK UNDER THE DGSD

Considering that the deposit protection is a fundamental component and a necessary supplement for the completion of the internal market and the effective banking supervision, Directive 94/19/EC[66] on deposit-guarantee schemes was adopted by the EU on 30 May 1994.

However, the latest financial crisis has highlighted the need for a stronger and more completed deposit insurance system within the financial safety net of the European Banking Union. Therefore, a more thorough approach of the deposit insurance was reached through the adoption of the Directive 2009/14/EC on deposit-guarantee schemes as regards the coverage level and the payout delay. This Directive aimed to amend the previous one, by correcting its weaknesses and therefore achieving a more coordinated action of the European Deposit Guarantee Schemes. On 12 June 2014, following a long process of political discussion, the new Directive on Deposit Guarantee Scheme[67], was adopted in order to a further reform of the 2009 initial Directive.

The DGSD is addressed to the Member States of the European Economic Area (EEA). It applies to three categories of DGSs. In article 1 of the Directive, the DGSs are categorized as statutory, contractual or as institutional protection schemes ("hereinafter the IPSs"). The first two types are either provided by the law or they are officially recognized as laid down in par.2 of article 4 of the Directive[68]. The IPSs are liability arrangements among credit institutions and other financial firms, which protect their members

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[66] Directive 94/19/EC of the European Parliament and of the Council of 30 may 1994 on deposit-guarantee schemes
[67] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes Text with EEA relevance
[68] See article 4(2) of the DGSD "*A contractual scheme as referred to in point (b) of Article 1(2) of this Directive may be officially recognised as a DGS if it complies with this Directive. An IPS may be officially recognised as a DGS if it fulfils the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 and complies with this Directive.*"

through mutual bail-out arrangements, as C. Gortsos points out[69]. The Directive also applies to affiliated credit institutions to the aforementioned three types of schemes, under article 1 par. 2 (d). For the cases of schemes that are not officially recognized, contractual DGS and IPSs should be excluded from the application of the Directive[70].

Regarding the DGSs' financing, a distinction[71] should be drawn between the 'available financial means' and the sources of this financing. Hence, the 'available financial means' shall be defined as the funds arising from deposits, payment commitments, low-risk assets and cash[72]. The question is where do the available financial means acquiring from? The sources of the DGSs' financing are either ex ante or ex post. "Ex post" funds are understood as to embrace a systematic – at least on an annualized basis- financing through contributions paid by the DGSs' members. However, according to the Directive[73], "additional financing from other sources" shall not be excluded. On the other hand, "ex post" funds arise from ex post extraordinary contributions, borrowing from the DGSs and from alternative funding arrangements[74]. "Ex post" extraordinary contributions are provided for in recital 34 of the DGSD. The ECB in its 2011 Opinion[75] noted the following: "The ECB welcomes this solution, which engages the financial sector itself in meeting extraordinary demands, hence limiting moral hazard incentives inherent in DGS arrangements and providing the grounds for effective peer pressure". According to the provision of Article 12 of the Directive, rules of borrowing between DGSs are set out. In

[69] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 37-40
[70] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 40
[71] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 75
[72] See recital 34 of Directive 2014/49/EU *"…It should be possible for the available financial means of DGSs to include cash, deposits, payment commitments and low-risk assets, which can be liquidated within a short period of time…"*
[73] See article 10 par. 1 of Directive 2014/49/EU *"This shall not prevent additional financing from other sources."*
[74] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 95
[75] ECB opinion on a proposal for a directive of the European Parliament and of the Council on deposit guarantee schemes (recast) and on a proposal for a directive amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes (CON/2011/12), OJ C 99, 31.3.2011

any case, this source of financing which takes place voluntarily from one DGS to another within the European Union is left to Member States' discretion. Member States shall also be qualified and in readiness to obtain adequate alternative funding arrangements in order to enable them to obtain short- term funding to satisfy the claims towards those DGSs. Finally, mandatory contributions to the existing schemes of mandatory contributions paid by the participating credit institutions are provided for in Directive 2014/49/EU[76]. In this case, as laid down in article 10: "*1.DGSs shall be entitled to an amount equal to the amount of such contributions up to the target level*[77] *set out in paragraph 2 of this Article, which the Member State will make immediately available to those DGSs upon request, for use exclusively for the purposes provided for in Article 11*[78]*.2. DGSs are entitled to that amount only if the competent authority considers that they are unable to raise extraordinary contributions from their members…*"

Eligibility of deposits

According to the Directive 2014/49/EU not all deposits are eligible for guarantee by the DGSs. "Deposit"[79] shall be defined as the credit balance which results from funds left in an account or from temporary situations arising from normal banking transactions. However, in order to consider a deposit as "eligible", it shall be excluded from any category listed in Article 5[80] of the Directive. Hence, interbank deposits, own funds, deposits by financial institutions, deposits by public authorities, investment firms, pension and retirement funds etc., shall be marked as "non-eligible deposits" under the DGSD. Consequently, any other deposit within

[76] See Directive 2014/49/EU, article 10 (4) *"Notwithstanding paragraph 1 of this Article, a Member State may, for the purpose of fulfilling its obligations thereunder, raise the available financial means through the mandatory contributions paid by credit institutions to existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure, and resolution of institutions."*
[77] I.e the target level of 0,8
[78] See article 11 "Use of funds" of Directive 2014/49/EU
[79] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 105, table 9
[80] See article 5 "Eligibility of deposits" of Directive 2014/19/EU

the aforementioned meaning is considered “eligible” ad absurdum.

Coverage level

The coverage level was initially set by the DGSD at “at least” 50,000[81] euro per depositor, per bank, increasing to 100,000 euro by the end of 2010. However the coverage level may differ in certain cases. C. Gortsos[82] distinguishes two types of exemptions of the coverage level introduced by the Directive. Thus, there are (i) permanent exemptions and (ii) a transitional one.

(i) (A) Under Article 6 par. 2[83] “*(a) deposits resulting from real estate transactions relating to private residential properties; (b) deposits that serve social purposes laid down in national law and are linked to particular life events of a depositor such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death; (c) deposits that serve purposes laid down in national law and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction. “*, must be protected above the level of 100,000 euro, under the responsibility of the Member State concerned. The period of the protection of the deposits was set by the Directive at -for at least- three (3) to a maximum of twelve

(12) months “*after the amount has been credited or from the moment when such deposits become legally transferable[84]”.*

(B) Paragraph 3 of the aforementioned article gives the discretion to the Member States to either maintain or introduce schemes protecting old-age provision

[81] See article 7 (1) of Directive 94/19/EC:*”Deposit-guarantee schemes shall stipulate that the aggregate deposits of each depositor must be covered up to ECU 20 000 in the event of deposits' being unavailable.”*

[82] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 113-115

[83] Directive 2014/49/EU on deposit guarantee schemes

[84] Under article 6 (2) of Directive 2014/49/EU

products and pensions. However, such schemes must cumulatively cover deposits and offer comprehensive coverage for all products and situations relevant in this regard.

(ii) According to the provision of the par. 4 of the Article 19 of the Directive, a discretionary power is given to the Member States in order to raise their high coverage level. This provision applies only to Member States which, on 1 January 2008, provided for a coverage level of between EUR 100 000 and EUR 300 000. Moreover, any adjustments to the coverage should take place until 31 December 2018, and therefore both contributions to the DGS on behalf of the credit institutions and the target level shall also be modified accordingly.

Determination of the repayable amount

Concerning the amount to be repaid, the rules of Directive 2014/49/EU apply as follows:

(i) The total amount of 100.000 euro applies to the accumulated deposits which each depositor - either a natural person or a legal entity - holds in the same institution.

(ii) The aforementioned amount applies regardless of the number and the currency of the accounts of the depositor.

(iii) Similarly, the amount is also irrespective of the location of the credit institution within the Union that holds depositor's deposits.

(iv) Regarding the joint accounts that may be held in credit institutions, the DGSD establishes that the total repayable amount of 100 000 euro is being calculated of each depositor's share in a joint account. Unless

stated otherwise, joint accounts are divided equally between the holders.

(v) In case of absolutely entitled persons[85], according to recital 22 of the aforementioned directive "*It is therefore appropriate to take into consideration the deposits made by depositors who are not mentioned as holders of an account or*

who are not the sole holders of an account" provided that these persons have been identified or are identifiable, before accounts become 'unavailable'.

(vi) Rule under (v) of this chapter does not apply to collective investment undertakings subject to special protection rules which do not apply to such deposits[86].

(vii) Member States have the discretion to decide if the liabilities of the depositor to the credit institution are taken into account when calculating the repayable amount in cases they have become 'unavailable'. The Member States also decide to set off liabilities, only if such case is permissible under the statutory and contractual provisions governing the contract between the credit institution and the depositor[87].

Payout procedure

As mentioned above reimbursing depositors initiates when deposits[88] become unavailable[89]. The meaning of an unavailable deposit is defined in Article 2 par. 1 (8). Hence, an 'unavailable

[85] *"For such cases, Directive 2014/49/EU has maintained the main provisions of Article 8, paragraph 3 of Directive 94/19/EC with regard to the protection of the 'account owner', who according to the terminology used in the two Directives is the 'absolutely entitled person"'*, Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 121

[86] See recital 22 of Directive 2014/49/EU *"This Directive retains the principle of a harmonised limit per depositor rather than per deposit. It is therefore appropriate to take into consideration the deposits made by depositors who are not mentioned as holders of an account or who are not the sole holders of an account. The limit should be applied to each identifiable depositor. The principle that the limit be applied to each identifiable depositor should not apply to collective investment undertakings subject to special protection rules which do not apply to such deposits."*

[87] See article 7 (5) of Directive 2014/49/EU

[88] See article 2 (3) of Directive 2014/49/EU

[89] See article 6 (1) of Directive 2014/49/EU

deposit' means *a deposit that is due and payable but that has not been paid by a credit institution under the legal or contractual conditions applicable thereto, where either:*

(a) the relevant administrative authorities[90] *have determined that in their view the credit institution concerned appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and the institution has no current prospect of being able to do so; or*

(b) a judicial authority has made a ruling for reasons which are directly related to the credit institution's financial circumstances and which has the effect of suspending the rights of depositors to make claims against it;.

Under the spirit of the Directive, it is clarified that the unavailability of the deposits occurs in the event of a credit institution sliding into crisis. In all other cases, where a suspension of payments arises from e.g. a natural disaster or a war, the payout procedure is not triggered[91]. Regarding the period within the credit institution has to repay the depositors, the following should be mentioned:

- DGSs shall ensure that the repayable amount will be available to be paid to the depositors within seven working days. This seven working days period must begin when the relevant administrative authority has been ascertained that the credit institution is deemed as unable to reimburse the depositors at that time or in the near future or either in case a judicial authority has decided to suspend depositors' rights to make claims against the aforementioned -unable to repay them-institution, as referred to in point (8) (b) of Article 2(1) of the DGSD[92].

[90] See article 3 (1) of Directive 2014/49/EU

[91] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 126

[92] See article 8 (1) of Directive 2014/49/EU

- However, under the Directive and due to disabilities and infrastructures of the current payment procedures, the Member States are given the opportunity[93] to establish a transitional period until 31 December 2023 for specific periods within the repayments must take place. Therefore, article 8 (2) provides that repayments take place within twenty (20) working days until 31.12.2018, fifteen (15) working days from 1.1.2019 until 31.12.2020, ten (10) working days from 1.1.2021 until 31.12.2023. In any case, repayments periods shall be gradually reduced to seven working days, as provided for in the first paragraph of the Article 8 of the Directive 2014/49/EU.
- Additionally, the text of the DGSD ensures the cases where schemes have difficulty in determining the amount of repayment and the rights of the depositor. Recital 40 of the Directive enshrines that in cases of deposits arising from residential housing transactions or certain life events, '*if a depositor is not absolutely entitled to the sums held on an account, if the deposit is the subject of a legal dispute or competing claims to the sums held on the account or if the deposit is the subject of economic sanctions imposed by national governments or international bodies*'. Thus, the article 8 (3) stipulates that the Member States have the discretion to decide on longer repayment periods for the case of an absolutely entitled person. However, such prolongations of the repayment shall not exceed a three month period initiating from the date on which a relevant administrative authority makes a determination as or a judicial authority makes a decision, as determined by Article 2 (1) of the Directive.

[93] See also recital 39 of Directive 2014/19/EU

- Repayments may be deferred under paragraph 5 of Article 8 of the Directive. Therefore, (i) if there is question whether a person is entitled to receive repayment or the deposit is subject to legal dispute, (ii) if the deposits are subjects to any restrictive measures imposed by national governments or international bodies, (iii) are "inactive" within the meaning of Article 8 (9)[94], (iv) if the repayable amount is regarded as part of a temporary high balance within the meaning of Article 6 (2),[95] (v) or if the repayable amount should be paid out by the DGS of the host Member State[96].
- In addition, the repayable amounts are paid out without the need to request them to the DGS. Any necessary information relating to the beneficiary depositor becomes available to the DGS with the assistant of the credit institutions.
- It should be mentioned that for the cases where depositors or persons entitled to sums held in accounts have been charged an offence arising out of or in relation to money laundering, within the meaning of Directive 2005/60/EC[97] on the prevention of the use of the financial system for the purpose of money

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[94]Article 8 (9) of Directive 2014/49/EU *"No repayment shall be made where there has been no transaction relating to the deposit within the last 24 months and the value of the deposit is lower than the administrative costs that would be incurred by the DGS in making such a repayment."*

[95] Article 6 (2) of Directive 201449/EU *"…. Member States shall ensure that the following deposits are protected above EUR 100 000 for at least three months and no longer than 12 months after the amount has been credited or from the moment when such deposits become legally transferable: (a) deposits resulting from real estate transactions relating to private residential properties; (b) deposits that serve social purposes laid down in national law and are linked to particular life events of a depositor such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death; (c) deposits that serve purposes laid down in national law and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction."*

[96] Article 14 (2) of Directive 2014/49/EU on the Cooperation within the Union

[97] Article 1 (2) *"For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering: (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action; (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity; (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points."*

laundering and terrorist financing**,** the DGS may suspend any payment relating to the depositors concerned, pending the Court's decision.

As previously stated, there is no repayment in case "*where there has been no transaction relating to the deposit within the last 24 months and the value of the deposit is lower than the administrative costs that would be incurred by the DGS in making such a repayment",* under paragraph 9 of the Article 8 of Directive 2014/49/EU.

- Finally, Articles 6 (4) and 8 (6-7) of the Directive, provide detailed information on the currency of the amounts to be paid to the depositors and on the exchange rates if needed e.g. for cases of accounts were maintained in a currency different from that of the payout, the exchange rate used shall be that of the date on which the relevant administrative authority makes a relevant determination[98], referred as to article 2, as well as the official language that shall be used for any correspondence and communication between the DGS, the depositors and the credit institutions, accordingly.

Claims

Right of Subrogation

Under paragraph 2 of Article 9 of the DGSD "Without prejudice to rights which it may have under national law, the DGS that makes payments….shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to their payments made to depositors ".

[98] See article 6 (2) *"If accounts were maintained in a currency different from that of the payout, the exchange rate used shall be that of the date on which the relevant administrative authority makes a determination as referred to in point (8) (a) of Article 2(1) or when a judicial authority makes a ruling as referred to in point (8)(b) of Article 2(1)."*

Hence, the spirit of the Directive is in accordance with the recital 41[99], which declares that for the security of the repayments to be paid out, DGSs should be entitled to subrogate into the rights of the repaid depositors against failed credit institutions.

Within the same context, Directive 2014/59/EU of the European Parliament and of the Council establishing the framework for the recovery and resolution of credit institutions and investment firms, provides that under the resolution framework the eligible deposits are potentially available for loss absorbency purposes. "In order to provide a certain level of protection for natural persons and micro, small and medium-sized enterprises holding eligible deposits above the level of covered deposits, such deposits should have a higher priority *ranking over the claims of ordinary unsecured…The claim of the deposit guarantee scheme should have an even higher ranking under such national... ".* The Article 108 of the BBRD lays down the rules on ranking of deposits in insolvency hierarchy, accordingly[100].

Furthermore, the article 9 (2) of Directive 2014/49/EU provides as follows: *"Where a DGS makes payments in the context of resolution proceedings, including the application of resolution tools or the exercise of resolution powers in accordance with Article 11[101], the DGS shall have a claim against the relevant credit institution for an amount equal to its payments."* In this case, the claim shall rank at the selfsame level as covered deposits under national law governing normal insolvency proceedings. The term "Normal insolvency proceedings" has to be interpreted as laid down in point (47) of article 2 (1) of Directive 2014/59/EU, i.e as the collective insolvency proceedings which entail the partial or total divestment

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[99] See recital 41 of Directive 2014/49/EU *"In order to secure repayment, DGSs should be entitled to subrogate into the rights of repaid depositors against a failed credit institution. Member States should be able to limit the time in which depositors whose deposits were not repaid, or not acknowledged within the deadline for repayment, can claim repayment of their deposits, in order to enable DGSs to exercise the rights into which it is subrogated by the date on which those rights are due to be registered in insolvency proceedings."*

[100] Christos Vl. Gortsos, (2014). The new EU Directive (2014/49/EU) on deposit guarantee schemes: an element of the European Banking Union, Nomiki Bibliothiki S.A, Athens, 131-132

[101] See article 11 of Directive 2014/49/EU on the "Use of Funds"

of a debtor and the appointment of a liquidator or an administrator normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal person.

Depositors' claims

Depositors' claims against the DGSs are also protected under the DGSD. In particular, under paragraph 1 of article 9 *"Member States shall ensure that the depositors' rights to compensation may be the subject of an action against the DGS." The provision refers to depositors' right of taking any legal action against the DGSs.* However, it should be underlined the Member States' discretion to … "limit the time in which depositors whose deposits were not repaid, or not acknowledged within the deadline for repayment, can claim repayment of their deposits, in order to enable DGSs to exercise the rights into which it is subrogated by the date on which those rights are due to be registered in insolvency proceedings.", under recital 41 of Directive 2014/49/EU on deposit guarantee schemes.

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THE NEED TO ESTABLISH THE EUROPEAN DEPOSIT INSURANCE SCHEME

A common deposit insurance scheme was initially under discussion in 2012. Despite the Commission's suggestion to include mandatory mutual borrowing and lending between national deposit guarantee schemes in its amendment of the existing DGS Directive in 2012, only in 2014 the DGS Directive introduced improvements to national deposit guarantee schemes.

Under the Communication published in November 2015[102], "despite the improvements brought by the 2014 Directive, the absence of a common deposit insurance scheme for the Banking Union means that depositors remain vulnerable to large local shocks, which could overwhelm national deposit guarantee schemes." In the same text is underlined that the establishment of the EDIS appeared to be the logical next step or the necessary complement to the existing form of the European Banking Union[103].

But which are the reasons that make EDIS an essential part of the banking and the financial sector[104]? Which is the gap EDIS is called to fill and therefore align the architecture of the European Banking Union[105]? Last but not least, why EDIS calls for "the coordinated introduction of sovereign concentration charges for banks and common deposit insurance"[106]?

First of all, since the deposit insurance remains a national issue,

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[102] European Commission (2015), Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions "Towards the completion of the Banking Union, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0587&from=EN

[103] A stronger Banking Union – Europa EU, europa.eu/rapid/.../IP.../Factsheets_BankingUnion.pdf

[104] Alessi Lucia, Cannas Giuseppina, Maccaferri Sara, Petracco Giudici Marco, JRC Working Papers in Economics and Finance, (2017). The European Deposit Insurance Scheme: Assessing risk absorption via SYMBOL, http://publications.jrc.ec.europa.eu/repository/bitstream/JRC109381/jrc109381_wp_edis_effectpaper_final_pubsy_withid.pdf

[105] European Commission Fact Sheet (2015). A European Deposit Insurance Scheme (EDIS) – Frequently Asked Questions, europa.eu/rapid/press-release_MEMO-15-6153_en.pdf

[106] Isabel Schnabel and Nicolas Véron(2008). Breaking the stalemate on European Deposit Insurance, http://bruegel.org/2018/03/breaking-the-stalemate-on-european-deposit-insurance/

national DGSs are vulnerable to large local shocks, thereby giving rise to obstacles to the proper functioning of the internal market and its benefits. Additionally, even if all DGSs operating in the participating Member States have similarities and common elements, however some of their crucial aspects are still left to the national discretion of the Member States. Consequently, this is a direct negative impact not only to the depositors' confidence, but also to the right of the establishment and the freedom to provide services held by the credit institutions. In parallel, divergences between national rules governing the deposit insurance may cause market fragmentation affecting the banks' ability and their willingness to undertake and extend their business on a cross-border basis in the Eurozone[107].

A European deposit insurance scheme is also called to deal with the moral hazard. The moral hazard may be interpreted as the "deterrent factor" for the depositors to monitor their bank performance, while in the case of a bank failure depositors will not be at risk to suffer loss. Excessive risk taking while banks are encouraged to invest more riskily without the fear of loss of their assets is also a disincentive for them to demonstrate prudence and discipline. EDIS will enhance depositors' confidence and therefore credibility to their banks.

Moreover, the problem of the bank-sovereign nexus and the inter-linkages between the banking sector and the sovereign is responsible for developing mutual crises, and therefore has to be restricted. While EDIS aims to the stabilization of the internal market, to the enhancement of the Banking Union and to the protection of the depositors, it would also contribute to a further and gradual weakening of the interdependence between the general government debt and the banks. Accordingly, the taxpayers will not be the first to bear the cost of a failing credit institution that

[107] See Explanatory Memorandum of the Commission's Proposal Regulation amending Regulation 806/2014/EU, recital 6-10

has to be restructured and then be rescued. Another benefit to be brought by the functioning of the EDIS is that it would ensure a level playing field between the depositors and the banks within the European Banking Union[108].

In view of the above, EDIS is expected to reduce the risk of the bank runs by overcoming depositors' concerns of losing their savings. Additionally, it is estimated to contribute to increasing the financial stability. Furthermore, it would also reinforce the cooperation between the national DGSs when dealing with cross-border banking failures. As a result, the so-called third pillar of the European Banking Union would boost depositors' trust and confidence to the banks, irrespective of the geographical location of the credit institutions. Guaranteeing conditions of fair competition would raise the responsibility for the banking supervision and bank resolution at the European Banking Union level. Finally, rising confidence in bank deposits would lead to greater lending to the European economy, and consequently, would generate growth and create more jobs opportunities in the euro area[109].

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[108] https://www.esm.europa.eu/speeches-and-presentations/"completing-monetary-union-role-esm"-speech-rolf-strauch

[109] European Commission, COM (2015), Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions "Towards the completion of the Banking Union"

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THE PROPOSAL FOR A REGULATION

Legal Basis

According to article 114 par.1 of the Treaty on European Union and the Treaty on the Functioning of the European Union[110], "*The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market*".

Therefore, given the fact that the legal basis of the proposed regulation is the aforementioned provision[111], it is clear that the main purpose of this regulation is to enhance the functioning of the internal market, as well as to safeguard its integrity.

Thus, in order to protect the deposits across the Eurozone and to ease the accessibility to a European fund which aims to maintaining a safe environment for the deposits, a single set of rules governed by a central authority is necessary for the effective and efficient function of the European financial market and the financial stability. Additionally, the new framework intends to eliminate impediments to the competition between the participating members.

Moreover, it is worth mentioning that the provisions of the draft text are based on an approach that rests on the application of the principles of subsidiarity and of proportionality.

When applied in the context of the European Union, the principle of subsidiarity[112] aims to regulate the exercise of non-exclusive

[110] See the Consolidated version of the Treaty on the Functioning of the European Union
[111] I.e Procedure 2015/0270/COD, COM (2015) 586: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme
[112] See article 5 of the consolidated version of the Treaty on the Functioning of the European Union

powers. It rules out the Union intervention when an issue cannot be dealt with effectively by the Member states at central, regional or local level and means that the Union is justified in exercising its powers when Member states are unable to achieve the objectives of a proposed action. If this is the case, added value can be provided only if the action is carried out at Union level[113].

Since a national deposit insurance scheme is vulnerable to national financial crises, it may cause wider financial problems due to the bank – sovereign nexus among the financial institutions and the individual Member states. This in turn, would lead to bank runs[114], as it weakens depositors' confidence in the Deposit Guarantee Schemes. Therefore, only integrated action taken by the EBU and primarily by the EDIS can be effective in the field of deposit insurance.

Another necessary principle is the proportionality[115]. Based on the principle of the proportionality, it seems that a safe and a sound financial system would require a unified set of rules adopted by the participating members around the Eurozone. In this context, the provisions included in the new regulation must fulfill the legitimate aim, must be suitable and necessary in order to accomplish the aim, as well as be reasonable.

Scope

The legislative proposal for the European Deposit Insurance System applies to all Deposit Guarantee Schemes that have been officially recognized in the participating member states. Participating Member States shall be interpreted as the Member states which have adopted euro as their currency or have a close cooperation with the ECB, participating in the SSM regulation[116]. Furthermore,

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[113] See also: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.2.2.html
[114] See also Deposit insurance, p.23
[115] See footnote 113
[116] See article 2 (1) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the

credit institutions that are subject to the aforementioned schemes are also covered by the proposed regulation. EDIS shall firstly apply to schemes facing difficulties to repay the depositors or are requested to take part in resolution procedure.

However, in case where a Member states outside the Eurozone decides to terminate or suspend its relationship with the ECB, both the DGSs' and the credit institutions subject to them as previously mentioned, are no longer covered by the SRM regulation[117].

When a participating member which does not belong to the Eurozone terminates its close cooperation with the ECB, then it is not covered by the provisions of the SSM regulation related to the EDIS and the SSM[118]. The same shall apply mutandis mutandis to all the officially recognized by this Member state participating DGSs and the affiliated to them credit institutions. In this event, DGSs hold the right to raise funds of the available financial means of the Deposit Guarantee Fund, at the termination of the cooperation, as provided in for in point 5 of the draft proposal[119].

The maximum amount of the given share to a Deposit Guarantee Scheme shall not exceed the necessary corresponding amount. This aims to enable the DGS to reach the two thirds of its target level[120]. Therefore, the Single Board is responsible to determine all the essential terms and the conditions of the transfer of the funds to the DGS, within three months, following an agreement with the Member state.

EDIS

European Central Bank concerning policies relating to the prudential supervision of credit institutions

[117] See point 5 of Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European deposit insurance scheme

[118] See footnote 117

[119] See footnote 117

[120] I.e the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European deposit insurance scheme

The 'reinsurance' phase

As previously stated, under the proposed regulation, the European Deposit Insurance Scheme is to be established and structured at three levels/stages. The first stage, the so-called reinsurance stage will be the first part of this structure, followed by the co-insurance stage and the final stage of the full insurance by 2024. The reinsurance stage is estimated - under the proposed text- to last for a period of three years from the date the regulation will be into force[121].

The reinsurance stage therefore, reflects the attempt of the EDIS to aid and enhance the pre- existing work of the DGSs to a national level. In other words, EDIS may strengthen the DGSs by providing financial aid (meaning to increase their liquidity needs) or by absorbing losses faced by the participating deposit guarantee schemes.

But which is the accurate interpretation of the terms "liquidity needs" and "loss" of a DGS? Additionally, how EDIS will contribute to the DGSs existing work?

The above-mentioned terms may be better defined and clarified with regard to the use of the following table[122]:

[121] See point 44 of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme

[122] Giuseppe Boccuzzi, Riccardo de Lisa (2016). The Changing Face of Deposit Insurance in Europe: From the DGSD to the EDIS Proposal, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2850459

Table 4 – Calculation of liquidity need and loss

<table>
<tr><th></th><th></th><th colspan="2">Payout</th><th colspan="2">Resolution</th></tr>
<tr><th></th><th></th><th>Liquidity need</th><th>Loss</th><th>Liquidity need</th><th>Loss</th></tr>
<tr><td>2017</td><td rowspan="3">Reinsurance</td><td rowspan="3">Failing bank covered deposits
(-) Funding path financial means
(-) Extra contributions</td><td rowspan="3">Failing bank covered deposits
(-) Subrogating recovered amounts
(-) Funding path financial means
(-) Extra contributions</td><td rowspan="3">Resolution Authority request
(-) Funding path financial means</td><td rowspan="3">Resolution Authority request
(-) Art 75 2014/59
(-) Funding path financial means</td></tr>
<tr><td>2018</td></tr>
<tr><td>2019</td></tr>
<tr><td>2020</td><td rowspan="4">Co-insurance</td><td rowspan="5">Failing bank covered deposits</td><td rowspan="5">Failing bank covered deposits
(-) Subrogating recovered amounts</td><td rowspan="5">Resolution Authority request</td><td rowspan="5">Resolution Authority request
(-) Art 75 2014/59</td></tr>
<tr><td>2021</td></tr>
<tr><td>2022</td></tr>
<tr><td>2023</td></tr>
<tr><td>2024</td><td>Full insurance</td></tr>
</table>

Hence, throughout the first stage, the target for the EDIS is to financially contribute the DGSs in case they are unable to reimburse depositors in the undesirable event of default of payments. Initially, when a participating DGS faces a payout event or is used in resolution in accordance with Article 79 of the regulation to be amended[123], may be funded by the Deposit Insurance Fund of up to 20% of its liquidity shortfall. The amount of the liquidity shortfall shall be calculated as follows: the coverage level for the aggregate deposits of each depositor EUR 100 000[124] minus the DGS available financial means raised by contributions amount to at least the percentages laid down in paragraph 1 of the Article 41j[125] of the proposed regulation of the total amount of covered deposits of all credit institutions affiliated to it, and the amount of the extraordinary contributions the DGS can raise within three days from the payout event[126]. Hence, when a national DGS faces is used

[123] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010

[124] See article 6 (1) of Directive 2014/49/EU and footnote 122

[125] I.*e "A participating DGS shall only be reinsured, co-insured or fully insured by EDIS during the year following any of the dates set out below, if, by that date, its available financial means raised by contributions referred to in Article 10(1) of Directive 2014/49/EU amount to at least the following percentages of the total amount of covered deposits of all credit institutions affiliated to the participating DGS: by 3 July 2017: 0.14%; by 3 July 2018: 0.21%; by 3 July 2019: 0.28%; by 3 July 2020: 0.28%; by 3 July 2021: 0.26%; by 3 July 2022: 0.20%; by 3 July 2023: 0.11%; by 3 July 2024: 0%."*

[126] See article 10 (8) of Directive 2014/49/EU

in resolution its liquidity shortfall is calculated as the amount defined by the resolution authority[127] after deduction of the participating DGS's financial means should have hold *'at the time of the determination if it had raised ex-ante contributions in accordance with Article 41j'*, under article 41b (2).

As another option, in the event there is a weakness on behalf of the DGS to pay out the covered amounts the Deposit Insurance Fund may cover the 20% of the excess loss i.e the amount of deposits that remains uncovered after recovery and extraordinary contributions[128]. In this case, the national DGS repays the amount paid in the case as described above, but after first deducting the amount of the covering excess loss. The payment procedure is as follows: the participating DGS pays to the Single Resolution Board, by the end of the first calendar year after the funding was provided, under the specific terms of the Article 41o (3).

In all cases though*, any funding or covering of the excess loss can not exceed the limit* of 20% of four ninth of the sum of the minimum target levels that participating DGSs shall at least reach a target level of 0,8 % of the amount of the covered deposits of its members, by 3 July 2024, under article 74b (1) of the proposed regulation and article 10 (2) of the DGSD.

The 'Coinsurance' phase

The second level of the EDIS architecture is the 'coinsurance phase'. At this phase EDIS aims to cover losses, as in the first stage of reinsurance, but this time without recouping the payments from the DGSs and use of available resources. Actually, cooperation and mutual contribution of both the EDIS and the national Deposit Insurance Schemes in parallel and from the first euro of losses is

[127] See article 79 of Regulation (EU) 806/2014
[128] See footnote 127

planned[129]. EDIS will contribute shares since the national deposit insurance scheme is activated and therefore has to repay the depositors. In this way, the risk-sharing between national DGSs through EDIS will be gradually increased, as Christos Gortsos points out.

The transition period from the reinsurance phase will take place automatically. The beginning of the coinsurance phase shall be calculated from the end of the previous phase and is estimated to last for a period of four years, under the provision of article 41d (a) of the draft regulation.

In addition, the national Deposit Insurance Schemes will have the option to be funded and to be loss covered by the Deposit Insurance Fund in case of a payout event or in case it has been asked to participate in the funding of a resolution.[130] At this stage European Deposit Insurance Scheme will partly fund and cover DGSs' liquidity needs. The term "liquidity need" in this case shall be deemed as the total amount of the covered deposits held in the credit institution at the time of the payout event[131] or the amount determined by the resolution authority when the participating DGS is used in resolution proceedings.[132] [133]

Regarding to DGSs' loss we shall define the term as the total amount repaid to depositors following the deduction of the amount the participating DGS recovered from subrogating to the rights of depositors in winding up or reorganization proceedings in case of a payout event, or the total amount determined by the resolution authority amount when the participating DGS is used in resolution proceedings, following the deduction of the amount of any difference the participating DGS was paid in accordance with Article

[129] European Commission (2017).Communication to the European Parliament, the Council, the European Central Bank, The European Economic and Social Committee and the Committee of the Regions, COM (2017) 592 final
[130] See article 41d (2) of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme
[131] See article 6 (1) of Directive 2014/49/EU
[132] See article 79 of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme
[133] See article 109 of Directive 2014/59/EU

75 of Directive 2014/59/EU, as provided in article 41g of the proposed regulation.

In all three aforementioned cases[134], the funding been claimed for reimbursement shall be increased. Hence, under article 41e of the proposal text, the share of the coverage provided by the Deposit Insurance Fund shall increase as follows:

- in the first year of the co-insurance period it shall be 20%;
- in the second year of the co-insurance period it shall 40%;
- in the third year of the co-insurance period it shall be 60%;
- in the fourth year of the co-insurance period it shall be 80%.

Nevertheless, we can clearly discern based on the above-mentioned, that the percentage upsurges each year by 20 %.

Table 5- Share of coverage provided by EDIS

		Payout/Resolution	
		Liquidity need	*Loss*
2017	Reinsurance	20%	
2018			
2019			
2020	Co-insurance	20%	
2021		40%	
2022		60%	
2023		80%	
2024	Full insurance	100%	

Full insurance

The last brick in constructing the European Deposit Insurance Scheme is the phase called “full insurance”. Following the stage of the co-insurance, under the aim of the proposed amending regulation the participating DGSs will be fully insured by EDIS. The

[134] I.e in case of a payout event or in case it has been asked to participate in the funding of a resolution or in case of loss

term “full insurance” shall be interpreted as providing full funding and covering of loss on the part of the Deposit Insurance Fund, in case of an either a payout event or contributions due to resolution proceedings.

Nevertheless, when a member state does not comply with the obligations associated with “*the Regulation or the national law implementing key provisions of the Directive, or if the respective Member State has failed to correctly implement these Articles”*[135], it will be excluded. Board’s decision on disqualifying a participating DGS shall be adopted by specific voting requirements. In this case, EDIS will solely cover them only when its fiscal means are equal to the consistent fund path that is established by the Article 41j.[136]

Furthermore, article 41h par. 3 provides that “The DIF shall also cover the loss of the participating DGS as defined by Article 41g.” In other words, the participating DGS shall repay the amount of funding it obtained in portions corresponding to the ex-post contributions or proceeds from the insolvency estate as they become available to the participating DGS, less the amount of loss cover, in accordance with the procedure set out in Article 41o under the title “*Repayment of funding and determination of excess loss and loss*”.

Deposit insurance and banking Resolution

Even if deposit insurance and resolution are separated functions in EU level and against the opinion of those arguing that the re-insurance phase will not be able to address the ‘fiscal backstop’ and therefore to avoid costs for taxpayers, cases such as the US demonstrate that -in practice- combining insurance and resolution can be effective. In fact, interaction between the aforementioned

[135] See Article 41i of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme
[136] See point 5.2.2 of the Explanatory Memorandum *of* the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme

functions may provide swift - decision making and the principle of least-cost.

It appears that a clear link between the Single Resolution Mechanism and the European Deposit Insurance Scheme is initiated through the EDIS proposal. Since the combination of European supervision and national resolution has so far proved to be non incentive- compatible, a new European Deposit Insurance and Resolution Authority (EDIRA)[137] with ECB supervisory powers shall be deemed necessary for the desired integrated European banking system.

Therefore, the adoption of the European Commission's proposed package for strengthening the resilience of the EU banks calls SRB for progress on the EBU, in order to complete the so- called "triangle" of insolvency, resolution and deposit insurance, and impacts the SRB' s operations.

The SRF

The Single Resolution Fund (SRF) has been established by the Regulation (EU) No 806/2014, i.e the SRM Regulation. It is an essential part of the Single Resolution Mechanism aiming at ensuring the effective application of the resolution tools provided in the BRRD and exercising of the resolution powers to the SRB by the SRM Regulation.

The SRF will take action in case of an institution under resolution, after other options (such as the bail-in tool) have been exhausted. In other words, *"a precondition for accessing the Fund is the application of the bail-in rules and principles laid down in the bank recovery and resolution directive and in the single resolution mechanism regulation*"[138]. The total target size of the Fund will shall

[137] Dirk Schoenmake, Daniel Gros (2012). CEPS Policy Brief, A European Deposit Insurance and Resolution Fund - An Update

[138] European Council, Council of the European Union, Single Resolution

reach the target level of at least 1% by 31 December 2023 of the covered deposits of all credit institutions in Member States participating in the Banking Union[139]. The SRF is to be gradually built up over eight years, beginning in 2016.

In view of the above, there is no doubt that a strong and independent authority is needed to administer the EDIS. Hence, under the draft proposal, EDIS will be administered by a Single Resolution and Deposit Insurance Board hereinafter referred to as 'the Board', a part of the SRB that will be responsible for decision-making, monitoring and the enforcement powers relating to the EDIS framework.[140] The Board will also manage the Single Resolution Fund (SRF) and therefore the creation of interlinks when combining responsibilities for resolution and deposit insurance seems unavoidable. It is therefore essential to ensure that the Board will act efficiently and in a timely manner in case of a failing or likely to fail institution[141].

Nonetheless, due to this innovative cooperation new questions shall arise relating to its proper and effective operation. For example, when designing EDIS, it is fundamental to take account of the role of deposit insurance in the context of the CRR regulation and the BRRD. Does the BRRD require DGSs to contribute to resolution?[142] In the event of an affirmative answer, to what extent do national Deposit Insurance Schemes have to contribute?

Amendments to the resolution framework of 2016[143] demonstrate that DGSs will not play a major role on covering losses due to an improvement of the depositors' position. In other words, under the new provisions of the BRRD related to the recovery plans, capital

Mechanism, http://www.consilium.europa.eu/en/policies/banking-union/single-resolution-mechanism/

[139] https://www.esm.europa.eu/speeches-and-presentations/%E2%80%9Ccompleting-monetary-union-role-esm%E2%80%9D-speech-rolf-strauch

[140] European Commission – Fact Sheet (2015). A European Deposit Insurance Scheme (EDIS) – Frequently Asked Questions, europa.eu/rapid/press-release_MEMO-15-6153_en.pdf

[141] http://european-economy.eu/2016-2/bank-resolution-and-mutualization-in-the-euro-area/

[142] See footnote 141

[143] European Commission – Fact Sheet (2016). Frequently Asked Questions: Capital requirements (CRR/CRD IV) and resolution framework (BRRD/SRM) amendments, http://europa.eu/rapid/press-release_MEMO-16- 3840_en.htm

and liquidity requirements, resolution plans and loss absorbing liabilities enable reducing the bank risks, the continuity of the crucial functions of the institutions, resolution proceeding with zero participation on behalf of the depositors and taxpayers. Consequently, the probability of the DIF to suffer loss is extremely low since any losses would have to exceed the value of all capital, and liquidity requirements. In exceptional circumstances, where an eligible bank liability or class of liabilities is excluded or partially excluded from bailing-in, the BRRD has set limits on the extent to which the SRF might be used, i.e contributions from the SRF cannot exceed a maximum of 5% of total bank liabilities including own funds and then only after at least 8% of the total liabilities including own funds of the bank under resolution that have been bailed in[144].

To sum up, as already analyzed, the EDIS covers all the liquidity needs and losses of the participating DGS. The mutualization of EDIS and of the SRF will occur simultaneously and expected to have been completed by 2024. After this period, any claims on the SRF on behalf of the creditors shall be come to an end. It is worth mentioning that the SRF and the EDIS are financed by their participating members and neither of them have the ESM as a fiscal backstop[145]. In conclusion, both are designed as equal weighting mechanisms, on private.

[144] European Banking Authority Q&A, http://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_1784

[145] http://europa.eu/rapid/press-release_IP-17-3721_en.htm

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Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European deposit insurance scheme

Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010

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POLITICAL CONSIDERATIONS AND CURRENT STATUS

From the outset, the establishment of the European Deposit Insurance Scheme has been of considerable concern to the European Council and the Council of the European Union as well as to other principal decision-making bodies of the European Union.

From the creation of the Ad Hoc Working Party on the Strengthening of the Banking Union by the Permanent Representatives Committee on **13.01.2015**[146] until the present day, several legal and technical uncertainties have been identified that cause strong political objections to the strengthening of the Banking Union and therefore need to be reviewed.

In the meeting of the Economic and Financial Affairs Council on the **17.06.2016** the Council presidency presented a progress report[147] reviewing the fundamental questions over the formation of the EDIS by the Member States. Mainly, there was acute concern about the link between the progress on the risk sharing between the EDIS and the SRF and on the measures on the risk reduction of the banking sector, the lack of specific impact assessment of the future function of the EDIS and the suitability of its legal basis. Moreover, according to the analysis presented by the Commission services, the mandatory lending would demand a central body for its proper operation. Additionally, although the economic benefits that a single resolution fund would offer, the Commission services pointed out that for several Members States it would be more efficient if for a short period retained a fully national DGS. Last but not least, the aforementioned analysis presented that the reinsurance phase would be less cost-efficient than the co-insurance and the full insurance phases. Another issue raised strong

[146] Establishment of an Ad Hoc Working Party on the Strengthening of the Banking Union, Council of the European Union, http://data.consilium.europa.eu/doc/document/ST-5006-2016-INIT/en/pdf
[147] Council of the European Union, http://data.consilium.europa.eu/doc/document/ST-10036-2016-INIT/en/pdf

concerns was the suitability of the article 114 TFEU[148] as the legal basis of the EDIS proposal. Since the credit institutions are called to pay contributions to the European Deposit Insurance Fund, the Member States would bear the impact on its budgetary sovereignty and the need for an Intergovernmental Agreement should therefore be explored. Finally, the report also presented the state of play in the discussions among the national experts on some specific elements of the Commission proposal, which were classified in three main categories (provisions amended by the presidency accepted by a large number of member states, provisions requiring further refinement/clarification, provisions requiring fundamental discussion within the Ad Hoc Working Party). The Council Conclusions on a roadmap to complete the Banking Union[149] stressed the importance of pursuing risk reduction and risk sharing measures in an appropriate sequence, postponing therefore the political discussions on the EDIS proposal.

Later on, on **19th December of 2016** the meeting of the Economic and Financial Affair Council, the presidency presented with the progress report of **November 2016**[150] to the Council the work carried out on the EDIS proposal. This time, the main interest was on the scope of the proposal and whether this should cover the third – country branches and the credit unions. In other words, the question raised was on the coverage of the non-CRR entities. Emphasis was also put on the three stages of the proposal -not only in the full insurance as in the previous period- while the majority of the Member States shared the view that the original timing of the EDIS could not be met. In addition, issues such as the governance of the scheme, the financing, the calculation of the contributions should be paid by the Member States to the fund and other

[148] Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE VII: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - Chapter 3: Approximation of laws - Article 114 (ex Article 95 TEC), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E114&from=EN

[149] European Council, Council of the European Union, http://www.consilium.europa.eu/en/press/press-releases/2016/06/17/conclusions-on-banking-union

[150] Council of the European Union, http://data.consilium.europa.eu/doc/document/ST-14841-2016-INIT/en/pdf

provisions that should be solved at technical level or requiring further political guidance had been taken over the discussion.

In **June 2017**[151], the Economic and Financial Affairs Council reviewed progress on proposals related to risk-reduction in the banking union and on the proposal for a regulation establishing a European Deposit Insurance Scheme. The progress issued by the presidency of the Council revealed that the design of the European Deposit insurance Scheme was still an issue of disagreement between the delegations and specifically the way it would impact the EU internal market. The options and the national discretions arising from the DGSD i.e the use of preventive measures in national insolvency proceedings to preserve access of depositors to covered deposits, had been identified and put up for discussion and it was finally decided not to be incorporated by the deposit insurance fund of the EDIS structure. The inclusion of the irrevocable payment commitments in the financial means to be transferred to the deposit insurance fund by the credit institutions was also of presidencies' interest and there were several objections on amending the provision under the DGSD and using it in the EDIS. Finally the scope of EDIS and especially the coverage of the non-CRR entities was once again a point of argument. Few months later, in **November**, a presidency note[152] on EDIS, the banking package and the NPLs was issued taking account the progress report on the EDIS proposal of the 24th of November[153]. The Council focused on the areas of the risk-based contributions methodology, the alternative measures on the available financial means to finance measures to preserve the access of depositors to covered deposits in the context of national insolvency proceedings, and the scope of the EDIS, following the previous presidencies.

Ongoing progress

[151] Council of the European Union, http://data.consilium.europa.eu/doc/document/ST-9484-2017-REV-1/en/pdf
[152] Council of the European Union, http://data.consilium.europa.eu/doc/document/ST-14932-2017-REV-1/en/pdf
[153] Council of the European Union, http://data.consilium.europa.eu/doc/document/ST-14808-2017-INIT/en/pdf

In **March 2018**[154] the Economic and Financial Affairs Council agreed its stance on a package of measures aimed at reducing risk in the banking industry as a perquisite to deal with the EDIS proposal. Few months later, on 22 June 2018 the Council took note of progress on EDIS proposal following the six-monthly progress reports of **12 June 2018**[155]. The main topic of the Presidency progress report, as far as the EDIS is concerned, was the continuation of the work of the Ad hoc Working Party (AHWP) on technical issues of the two alternatives for the initial model of EDIS, i.e of the re-insurance phase of EDIS[156] and of the mandatory lending.

The re-insurance phase

The Commission, taking under consideration that any expression like "stage" or "phase" of the EDIS may be prove to be misleading and therefore should be avoided, prepared a non- paper on the re-insurance phase to discuss further possible features of the first phase. The main areas of focus were the nature of the liquidity support, possible sources of financing, repayment plans, access to EDIS coverage, governance issues and the role of DGSs, participating in EDIS and national discretions.

In its non-papers, the Commission specified the *nature of the liquidity* support provided by EDIS in the re-insurance phase. It presented that *"the national DGSs would be required to reimburse the liquidity provided and therefore all potential losses stemming from pay-outs would be borne entirely at the national level. Ultimately, DGSs could recoup the losses from the recovery of the insolvency estate of the failed bank and from ex-post contributions collected from the banks affiliated to them."* [157]

The progress report suggests two *possible sources of financing*, i.e.

[154] European Council, Council of the European Union, http://www.consilium.europa.eu/en/press/press-releases/2018/05/25/banking-council-agreement-on-measures-to-reduce-risk
[155]See: http://data.consilium.europa.eu/doc/document/ST-9819-2018-INIT/en/pdf
[156] As expressed in the Commission Communication of October 2017, http://ec.europa.eu/finance/docs/law/171011-communication-banking-union_en.pdf
[157] See footnote 155

(1) ex-ante contributions from banks and (2) short-term funding from capital markets. In this view, EDIS would raise ex- ante contributions from the banks. However, a joint decision was not able to be reached and therefore concrete funding arrangements would need to be further discussed in order to define the amount of contributions to be collected from banks. Based on the same report, Member states were also split for the funding path for the DIF.

Furthermore, the Commission moved on to the suggestion of a repayment plan in order to ensure the full repayment of any liquidity support provided by EDIS. The delegations agreed on the introduction of a repayment plan as a good starting point for further discussions.

As far as the access to liquidity coverage from EDIS, the provisions of the initial proposal was in general acceptable, however a point was raised concerning the need of a stronger conditionality. On the other hand, regarding the governance issues and the role of the DGS in the EDIS, majority of opinions were expressed on role of the National Designated Authority, pre-existed provisions of the 2015 package[158], on the role of the SRB as the preferred decision making body.

Finally, based on the Commission's non-paper, Member States also expressed opinions on certain options and national discretions.

Mandatory lending

The idea of mandatory lending as an alternative to the re-insurance phase includes only liquidity but no loss coverage to be provided to a national DGS in need. In this case, national DGSs would first exhaust their funds and then they would turn to other DGSs -within the Banking Union- for help." *Other DGSs would lend to the DGS in need pro-rata to the total amount of their covered deposits. These*

[158] See: http://europa.eu/rapid/press-release_IP-15-5874_en.htm?locale=en

amounts would be considered assets from accounting point of view and would count for the DGS target level. The amounts lent should also count in case of a subsequent pay-out event within the jurisdiction of a lending DGS for the purpose of determining whether this DGS has exhausted its available means for access to liquidity support. These funds should quickly be available before the DGS would have to borrow from other sources."[159]

The mandatory lending arrangements provide two options: (1) mandatory lending by a network of national DGSs and (2) mandatory lending through a central body. The progress report promotes as more feasible and operationally sounder option the second one, where the SRB would play a coordinating, process managing and monitoring role.

Nonetheless, national DGSs as long as they remain fully responsible for the timely pay-out and bear all losses are deemed as crucial parts of the EDIS structure. In addition, National DGS would also keep the role of collecting contributions in a national level. Consequently, the coordination and cooperation between the national DGSs and the SRB is urgent.

Under the suggestion of the Presidency DGSs have access the liquidity coverage from EDIS as long as they comply with the DGSD's provisions and of other relevant laws. Hence, any possible drawback of the mandatory lending scheme would perquisite a pre-funded central fund to safeguard depositors' reimbursements.

Considerations

Overall, the main issue is that the EDIS establishment is held up on the premise that risk reduction must come before risk-sharing.

According to Luis de Guindos, the Vice-President of the ECB[160]: *"substantial risk reduction has already taken place…In its envisaged*

[159] See footnote 155
[160]The euro area: current status and challenges ahead, https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp180831.en.html

steady state as a fully mutualised fund, EDIS would reduce the risk of bank runs and allow full fungibility of deposits across the euro area, thereby mitigating the risk of financial fragmentation. EDIS would hence help contain market panic when crises hit and reduce the fallout for taxpayers, as costs can be borne by the banks themselves. Risk-sharing and risk reduction are thus mutually reinforcing."

However, Members States like Germany and other bodies and institutions express their opposition to the development of the EDIS.

Germany

The first objection to a common European deposit insurance scheme has been due to the idea of the German banks to have institutional insurance, avoiding the risk-taking and the bankruptcy[161]. These banks are participating in an institutional insurance system that provides them with financial assistance in case of insolvency. Thus, the depositors are insured at first place and a European deposit insurance scheme would not be able to benefit more Germany's banking sector.

The main preoccupation of the German Government involves the possible creation of a moral hazard that common funds would create for banks operating in Member States with had weak banking systems. In 2016, Chancellor Merkel stated that "the time has not yet come[162]. Attention must be paid, not to mutualizing risks, but reducing risks first".[163] Apart from that, the need for an Intergovernmental Agreement like the Single Resolution Fund and releasing money from the fund would be in contrast to the Commission's proposal on gradual mutualization by qualified majority vote.[164] While in another point of view, Germany's concern

[161] Shawn Donnelly (2018) Advocacy coalitions and the lack of deposit insurance in Banking Union, Journal of Economic Policy Reform, https://www.tandfonline.com/doi/full/10.1080/17487870.2017.1400437#_i6
[162] i.e for EDIS
[163]See footnote 161
[164] See footnote 161

is that well-funded German deposit guarantee schemes would compensate the underfunded DGS in other participating countries.

Associations' views

The European Banking Federation (EBF) although is generally in favor of the EDIS, is however concerned over the issue of the full transposition of the DGSD.[165] On the other hand, the Association for Financial Markets in Europe (AFME) expressed the need to ensure that contributions to the Deposit Insurance Fund (DIF) reflect the risk of loss to the fund and safeguarding cost neutrality for the banks at the same time.[166] Furthermore, the Dutch Banking Association (NVL) states that EDIS should not be preceded without a further harmonization of deposit insurance rules[167].

[165] EBF statement on European Deposit Insurance Scheme proposal, https://www.ebf.eu/wp-content/uploads/2017/01/EBF_018298-EBF-statement-on-EDIS-proposal.pdf

[166] Proposal for a European Deposit Insurance Scheme (EDIS), Key considerations for the design of EDIS, https://www.afme.eu/globalassets/downloads/consultation-responses/afme-paper-on-the-proposed-european-deposit-insurance-scheme-edis.pdf

[167] European Parliament, Briefing 14 March 2016, European Deposit Insurance Scheme, Completing the Banking Union, http://www.efdi.eu/sites/default/files/archive/eprs_bri2016579090_en.pdf

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Conclusions

Moving deposit insurance to a European level is expected to complement the work of the banking supervision across the euro area.

However, the Banking Union faces many legal and political impediments that have to be solved. Taking under consideration that different supervisory frameworks at a national level should be harmonized, everything seems more tangled. Accordingly, issues have risen related to the need for a European deposit insurance scheme.

Daniel Gros points out that[168] *"in reality bank failures are not evenly distributed over member countries. They tend to be bunched together at times of macroeconomic stress…This fact of banking life can be managed with the re-insurance approach, but not when resolution and deposit insurance are both totally centralised at the European level... It should be clear that any mutualisation of the protection of depositors makes sense only if the sovereign risk on bank balance sheets is also 'mutualised', or rather distributed."*

Political controversy stems from the view that the risk sharing among the participating to the EDIS members is the payment for the financial stability. But in reality, the issue is more perplexing. Several banking institutions operating in the eurozone are facing problems with the high levels of the NPL's and the NPE's and therefore the healthy institutions are not in favour of offering insurance against these losses. Furthermore, the fear of government default due to the high level of domestic government bonds is a major constraint to the European deposit insurance.

In conclusion, the European Fund which is called to face the consequences of malfunctioning of the banking supervision should not be considered as panacea. Nonetheless, a fully –developed EDIS

[168]Daniel Gros, Ceps Policy Brief (2015). Completing the Banking Union: Deposit Insurance, https://www.ceps.eu/system/files/PB335%20DG%20Completing%20BU_0.pdf

would offer major benefits in terms of depositor protection while posing limited risks in terms of EDIS exposure[169]. Appropriately-designed risk-based contributions are therefore urgent in order to minimize the risk of cross-subsidization across the participating Member states. If this is the case, the EDIS would also build depositors' confidence, ensuring that every single country across the EU area will be equally advantaged and equally treated.

[169] ECB, Macroprudential Bulletin, Issue 3 (2017), https://www.ecb.europa.eu/pub/pdf/mpbu/ecb.mpbu201706.en.pdf?a0ca5c14c0065da8601d2995de6bc622

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