

Resolution
of the Bundesrat

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
COM(2015) 586 final

The Bundesrat, at its 941st session on 29 January 2016, adopted the following Resolution in accordance with §§ 3 and 5 of the Act on Cooperation between the Federation and the *Länder* in European Union Affairs (EUZBLG):

The Proposal for a Resolution, in general

1. The Bundesrat notes that significant conditions for a more stable banking sector in Europe were created by the Single Supervisory Mechanism, the Single Resolution Mechanism in the Eurozone and the harmonisation of the rules on deposit guarantee schemes in all the Member States – the three pillars of Banking Union. It also notes that not all Member States have yet implemented the Bank Recovery and Resolution Directive (BRRD) and the Deposit Guarantee Scheme Directive (DGSD) in full.
2. Having an effective, reliable deposit guarantee scheme (DGS) makes an important contribution to maintaining the confidence of investors in the banking system and, in the event of a crisis, preventing a massive withdrawal of savings – a 'run' on the banks. It is thus a cornerstone for the stability of the banking system and the overall viability of the financial markets.

The new Deposit Guarantee Schemes Directive that was only adopted in 2014 further improved the level of protection for investors in the EU. The new provisions ensure sufficient protection of investments. However, they must be consistently applied by all Member States, as must the standardised rules for the allocation of funds to deposit guarantee systems. The Bundesrat is concerned that some Member States have not implemented the Deposit Guarantee Schemes Directive, or have implemented it only in

part.

The Bundesrat takes the view that it is a priority task of all Member States to implement the DGSD as soon as possible, in order to contribute to the development of stable and effective deposit guarantee systems in Europe.

3. The Bundesrat deplores the fact that, contrary to its own guidelines on better regulation, the Commission did not perform an impact assessment in advance.
4. The Bundesrat rejects the proposal to set up a European deposit insurance scheme with a joint deposit insurance fund. The proposal to set up a European deposit guarantee scheme in three stages – a reinsurance scheme complementing the existing national deposit guarantees schemes, a co-insurance scheme and a full insurance scheme – is unacceptable and would not work, for the following reasons:
 - In our view the communitisation of bank risks through a European deposit guarantee scheme would not create confidence in the security of deposits everywhere in Europe or contribute to the stability of the banks. It is true that, in parts of Europe that currently do not have a functioning deposit guarantee system, confidence would be enhanced, but, in parts of Europe such as Germany which already have a reliable system which proved itself during the financial crisis, confidence would be jeopardised.
 - The creation of a European deposit insurance scheme, as the Commission proposes, would discourage Member States that do not have a functioning deposit guarantee scheme from developing one. Moreover, creating a European system prematurely brings with it the risk of the well-functioning guarantee schemes in Germany simply being transferred to EU level, without the other Member States making the same efforts. The Bundesrat therefore emphasises the need to encourage the Member States, the banks and their guarantee systems to take responsibility for themselves.
 - The Bundesrat is concerned that, given the different economic circumstances of the individual Member States and the equity problems of certain credit institutions in those countries, the plans to communitise deposit guarantee schemes could lead to a kind of transfer union between banks in the Eurozone, with stable and effective banking systems and their guarantee schemes having to prop up unstable systems without having any influence on their risk management. It therefore takes the view that the proposal is clearly at odds with the principles of good governance.
 - Moreover, a European-level deposit guarantee scheme could lead to moral hazard if inappropriate incentives – in particular relating to the financing of the public sector

– are created or reinforced for those Member States that have, so far, been negligent when it comes to deposit guarantees.

- The Bundesrat takes the view that the stability of the banking sector is influenced fundamentally by national economic policy and national laws – such as national insolvency rules. Generous rules on the insolvency of enterprises or private persons can have a negative impact on the profitability of banks and shift the burden from the private or public sector to the banks. If a bank were in difficulties as a result of this situation, investors from other Member States would *de facto* have to step in.

5. As already stated in its Resolution of 18 December 2015 (Document 502/15 (Resolution)), the Bundesrat therefore still rejects the idea of a European deposit guarantee scheme and thus the proposals contained in the Proposal for a Regulation, even in the form of a joint reinsurance fund to complement the national deposit guarantee schemes as a first stage. It calls on the Federal Government to push for existing measures relating to the resolution mechanism and deposit safeguarding to be effectively implemented in all the Member States.

The legal basis

6. The Bundesrat takes the view that Article 114 TFEU, on which the Commission bases the Regulation, is not a suitable legal basis. The plan to set up a European-level deposit guarantee scheme constitutes a far-reaching shift of competences in favour of the EU. We support the Federal Government in its criticism of the selected legal basis and would urge it to work at European level for the establishment of an appropriate legal basis.

The various stages of the European deposit guarantee scheme

7. In addition to rejecting the idea of a European deposit guarantee scheme in principle, the Bundesrat takes the view that certain aspects of the content of the Commission proposal are not appropriate.

- The specific nature of the German credit industry, in particular the role of savings banks and cooperative banks, has not been taken sufficiently into account. These two systems require a well-functioning institutional guarantee system, because of the form of their cooperation.
- The Bundesrat notes that, pursuant to the Proposal for a Regulation, savings banks and cooperative banks would have to pay into the European deposit insurance

fund (DIF) but could never benefit from it, because of the recognised institutional guarantee system. That is unacceptable.

- Scrapping the tried-and-tested deposit and institutional guarantee schemes in Germany could have an indirect impact on the tripartite banking system and thus a far-reaching structural impact on the banking environment and on the corporate environment, characterised by SMEs, as a result of the central financing function.
- The proposed European deposit insurance scheme with a joint deposit insurance fund is not the appropriate solution at the present time and could have serious consequences for the entire German banking sector. Smaller, regional credit institutions, or those working specifically with SMEs, which often have more conservative business models would end up, with their contributions to a European deposit insurance scheme with a single deposit guarantee fund, helping to prop up the, in some cases, riskier business models of other banks in the Eurozone. Stable, effective schemes would end up responsible for unstable, ineffective ones.
- The Bundesrat is concerned that the European deposit guarantee scheme would end up acting a guarantor for all payments from the national deposit guarantee schemes from the date of the Proposal for a Regulation entering into force, because of the arrangements for the repayment of funds made available by the European DGS to a national guarantee scheme. In the reinsurance, co-insurance and full insurance stages, a participating national deposit guarantee scheme must, pursuant to Article 41o(1) of the Proposal for a Regulation, repay the funding provided from the DIF, minus the amount covered by the DIF. This provision and the other provisions on repayment (e.g. Article 41a(3)) do not demonstrate that the European deposit guarantee system may only make the amount available which it is itself taking on.
- The Bundesrat objects strongly to the arrangements for the levying of contributions.

Particularly problematic is the fact that the DIF is being placed in a position where, to cover unlimited payment obligations, it has to take out loans. If the funds collected from the contributions of the national deposit guarantee schemes in the re-insurance and co-insurance stages are not enough to cover the payment obligations of one or more national deposit guarantee schemes vis-à-vis depositors, the DIF can raise the shortfall, pursuant to Article 74g of the Proposal for a Regulation, from "institutions, financial institutions or other third parties". Article 74f of the Proposal for a Regulation provides that the DIF can borrow funds from the national deposit guarantee schemes right from the start. In our view, it should be made clear that borrowed funds should not be the subject of the commitment to supply capital under

Article 74d in cases where a national deposit guarantee system does not or cannot meet its own repayment obligations.

In particular, the option of raising extraordinary ex-post contributions could lead to a considerable burden for the entire German banking sector, in particular small and medium-sized banks which, ultimately, would have to be borne by investors and the owners of banks.

- The Bundesrat therefore objects to the fact that, as early as the co-insurance stage – i.e. from 2020 – a commitment to supply capital is to be introduced for all financial institutions in the Eurozone, pursuant to Article 74d of the Proposal for a Regulation. From this point onwards, the European deposit guarantee scheme would be able to raise any shortfall from the affiliated credit institutions by levying additional contributions retrospectively. In this phase of the merging of the national deposit guarantee systems, the danger is that a shortfall in funds in one national system could be transferred to banks in the other Member States. A commitment to supply capital of this kind would be justified only if the national deposit guarantee schemes in question and/or the European Deposit Insurance Fund have reached the minimum target level of the amount of 0.8% of covered deposits, as set out in the first sentence of Article 10(2)(1) of the Directive on Deposit Guarantee Schemes and Article 74b(2) of this Proposal for a Regulation.
- It is appropriate that, pursuant to Article 41j(1) of the Proposal for a Regulation, a national DGS should not be covered by the European DGS until certain target values have been reached. However, this rule must be applied consistently and should not be undermined in advance by the derogation set out in Article 41j(2) of the Proposal for a Regulation, according to which the Commission may approve a derogation from the requirements for national deposit guarantee schemes for duly justified reasons linked to the business cycle in the respective Member State. We fear that this derogation could oblige the European DGS to make all the required funding available to a national scheme in cases of need.
- Moreover, national deposit guarantee schemes which do not have (enough) funds of their own or have not properly implemented the DGSD are not excluded per se but only after a Commission Decision from participation in the European scheme, pursuant to Article 41i of the Proposal for a Regulation. If a ground for disqualification does not become apparent until after the funds have been made available by the European deposit guarantee scheme (in other words, if the funds have been taken illegitimately), Article 41i(2) provides only that the Commission *may* but does not *have to* order full or partial repayment of the funding. In our view, this can only further undermine a system predicated on the consistent merging of functioning national deposit guarantee schemes.

Direct communication of this Resolution

8. The Bundesrat shall communicate this Resolution directly to the Commission.