



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on 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 – {COM (2015) 586 final}.

This proposal forms part of a broader package of measures designed to complete the Banking Union. The idea of having a common European Deposit Insurance Scheme (EDIS), rather than separate national schemes, is not new. It was covered by the impact assessment accompanying the 2009 proposal on Deposit Guarantee Schemes and by a report accompanying it {COM(2010) 368, COM(2010) 369, SEC(2010) 834/2, SEC(2010) 835 final}. It was again discussed when the Banking Union was established in 2012. More recently, the idea was included in the Five Presidents Report, as part of their recommendations to strengthen and complete the Economic and Monetary Union.

Deposit insurance is the basis for retail depositors' trust in the banking sector. A stable supply of retail bank deposits allows banks to expand their lending activities and therefore support the economy and foster growth. EDIS will provide greater protection for retail depositors, since the scheme will be larger than any existing national scheme.

The Commission welcomes the contribution of the Bundesrat to the debate and is pleased to have this opportunity to provide a number of clarifications and observations.

In its Opinion, the Bundesrat highlights that the transposition of the Deposit Guarantee Scheme Directive (DGSD) and the Bank Recovery and Resolution Directive (BRRD) by all Member States should have priority over any new legislative measure in the Banking Union.

The Commission fully agrees and considers it necessary that all existing legislation, such as BRRD and DGSD, is fully transposed and implemented by all Member States. As of 13 April 2016, three Member States have communicated only partial transposition of the BRRD. Regarding the DGSD three Member States have not communicated to the Commission any transposition measures and one Member States as communicated partial transposition. The remaining Member States have communicated full transposition. The Commission is pursuing infringements proceedings against Member States which have not yet fully

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implemented the relevant legislation and is confident that all Member States will have transposed the DGSD and BRRD in the second quarter of 2016, and therefore well before EDIS would enter into force.

The Bundesrat argues that EDIS would act as a dis-incentive for some Member States to build up their own functioning deposit guarantee schemes, in the hope of relying on EDIS. Indeed, the opposite is true. The EDIS proposal imposes a legal obligation on Member States to fully implement the DGSD and to start building up the funds of their national DGSs as otherwise the national DGSs do not have access to EDIS.

The Bundesrat opposes the introduction of EDIS due to the lack of control over national policies, which can have significant influence on the stability of the national banking sector.

In this respect, it should be noted that the Commission has adopted a Communication concerning the completion of the Banking Union at the same time as the EDIS proposal. The Communication provides for a set of risk reduction measures that need to be implemented in parallel with the transition to full EDIS. The risk reduction measures proposed in the Communication are being discussed together with the EDIS proposal in the legislative process. In this context, the Commission is committed to make two legislative initiatives already in 2016: The first initiative is implementing the G20 commitment related to the total loss absorbing capacity for global systemically important banks. As part of the Capital Markets Union Action Plan the second initiative is on business insolvency, including early restructuring and second chance, addressing the most important barriers to free flow of capital. In addition, further work is ongoing at the Commission, e.g. as regards the review of national options and discretions under the Single Supervisory Mechanism and targeted prudential measures in the banking sector. For other measures, such as further prudential treatment of bank exposures to sovereigns, the Commission's work critically depends on progress in international fora. On this basis, the Commission remains hopeful that an agreement on the EDIS proposal can be reached.

In response to the more technical comments in the Opinion the Commission would like to refer to the attached annex.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which the German Government is represented.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Lord Hill
Member of the Commission*

ANNEX

The Commission has carefully considered the issues raised by the Bundesrat in its Opinion and would like to offer the following observations.

1. *As regards the need for an impact assessment on the EDIS proposal:*

In 2010, in the context of preparing the current DGS Directive, which was adopted in 2014, the Commission conducted a comprehensive impact assessment and commissioned a report assessing different options that are relevant also in the context of EDIS {COM(2010) 368, COM(2010) 369, SEC(2010) 834 /2, SEC/2010/0835 final}. The 2010 analysis also demonstrated that introducing a pan-EU deposit guarantee scheme would have a number of advantages compared to the current system. We believe that this analysis is still valid and a good foundation for EDIS. Most notably, the overall level of funding required for EDIS will be maintained at 0.8% of total covered deposits. Therefore, no extra cost would be imposed on the banking system as a whole. However, the contributions of individual banks could change depending on their specific risk profiles. The envisaged system of risk-based contributions to EDIS means that banks which are relatively less risky within the Banking Union would pay less than the riskier banks. The Commission services stand ready to support the ongoing legislative negotiations with their expertise, including qualitative and quantitative analysis in relation to specific elements of the proposal.

2. *As regards the legal basis for the proposal:*

Article 114 TFEU allows the adoption of measures for the approximation of national provisions aimed at the establishment and functioning of the Internal Market. The proposed Regulation on EDIS aims to preserve the integrity and enhance the functioning of the Internal Market. Uniform application of a single set of rules for deposit insurance, together with access to a European Deposit Insurance Fund managed by a central authority, would contribute to the orderly functioning of the Union financial markets and to financial stability in the Union. It would remove obstacles to the exercise of fundamental freedoms avoiding significant distortion of competition, at least in those Member States which share the supervision and resolution of credit institutions and the protection of depositors at the European level.

Article 114 of the TFEU is, therefore, the appropriate legal base. The Commission also considers that an Intergovernmental Agreement (IGA) is not necessary. Already when adopting the Regulation on the Single Resolution Mechanism (SRM), the Commission took the view that an IGA was not legally necessary since the Regulation could have been based in its entirety on Art. 114 TFEU. In addition, both the factual and legal features of the EDIS proposal are different from the SRM Regulation: one of the purposes of the IGA in the context of the Single Resolution Fund was to ensure that contributions raised at national level by national resolution authorities can be transferred to the European level. By contrast, the EDIS proposal provides that contributions by banks affiliated to participating deposit guarantee schemes are directly paid and owed to the Board. Hence, no specific rules in an IGA on the transfer to the European level of such contributions are necessary.

3. *As regards the specificities of the German banking sector:*

The proposal follows the logic of the Banking Union and banks within the scope of the Single Supervisory Mechanism are automatically included.

However, the Commission is aware of the special features of the German banking sector, in particular with regard to the institutional protection schemes. If it can be demonstrated that membership in such schemes reduces the risk exposure to EDIS, banks which enjoy this additional layer of protection could benefit from the risk-based methodology for calculating contributions under EDIS. In such a case, German cooperative banks as well as savings banks would not be confronted with disproportionate contributions.

4. *As regards specific details of the proposal:*

a. *Scope of liability of EDIS*

The Bundesrat argues that the European Deposit Insurance Fund would be liable for the full amount, which national deposit guarantee schemes pay out as from the day EDIS will enter into force (point 7 indent 5 of the Opinion). However, it should be noted that the proposal distinguishes between the provision of initial funding (liquidity) in case of a pay-out event and the cover of a share of the ultimate loss a deposit guarantee scheme would face. In addition, the proposal provides for two intermediary stages (re-insurance and co-insurance) where EDIS would only cover a certain percentage of the liquidity need and the loss borne by a national deposit guarantee scheme and therefore would not be liable for the full amount during these intermediary stages.

In more detail: In all three stages, reinsurance, co-insurance and full insurance, EDIS would both provide funding to and cover losses of participating deposit guarantee schemes. The funding provided by EDIS addresses the initial liquidity need of a deposit guarantee scheme to compensate depositors within the pay-out deadline set by the Directive, and also satisfies the request for a contribution to a resolution procedure on a timely basis. The initial funding must be reimbursed by the participating deposit guarantee scheme to the Board.

In all stages, EDIS would also cover losses that the participating deposit guarantee scheme ultimately incurs by compensating depositors or contributing to resolution. A participating deposit guarantee scheme's ultimate loss is smaller than its compensation payments to depositors or its contribution to resolution because after a pay-out event the deposit guarantee scheme will collect any proceeds from the insolvency estate (based on the subrogation of the depositors' claims) and this will reduce the deposit guarantee scheme's ultimate loss. Given the priority ranking of covered deposits in insolvency proceedings (Art. 108 (b) BRRD) a relatively high recovery rate can be expected.

b. *Ex-post contributions*

The Bundesrat questions the way in which ex-post contributions shall be raised by the EDIS scheme. In addition, the Bundesrat expresses concerns with regard to the voluntary borrowing between financing arrangements and alternative funding means (point 7, indents 6 – 10 of the Opinion).

According to Art. 74d of the proposal, EDIS is entitled to raise extraordinary ex-post contributions from the banks affiliated to participating deposit guarantee schemes after the re-insurance phase (2020). Ex-post contributions are important for the credibility of the

scheme from 2020 onwards. In particular, they ensure the functioning of the scheme, as they allow a replenishment of the Fund following a pay-out event. However, the recourse on ex-post contribution is not arbitrary and is also part of the DGSD.

- *First, the calculation of ex-post contributions would follow the same risk-based methodology as the calculation of ex-ante contributions. This means that it is not possible that banks from one Member States would disproportionately contribute to the fund compared to other Member States.*
- *Second, the amount of ex-post contributions will be limited. According to the proposal the Commission is empowered to adopt delegated acts to specify the limits in detail.*
- *Third, decision-making on ex-post contributions is embedded into a strong governance structure. The Board in its EDIS plenary session (consisting of the Chair including the four full-time members of the Board and for each Member State a member representing their designated authority) needs to be involved. A majority of two third of the members of the EDIS plenary session representing at least 50% of contributions is needed to decide on ex-post contributions during the transitional period until 2024 (afterwards at least 30% of contributions). The same governance rules would apply in the case of decisions on voluntary borrowing between financing arrangements (Art. 74f) and alternative funding means (Art. 74g).*

In the view of the Commission the use of these supporting measures would therefore not lead to a disproportionate burden for German banks.

c. Funding path and derogations from the funding path

The Commission is pleased to see that the Bundesrat agrees with the approach of the EDIS proposal to establish a certain funding path (Art. 41j) which needs to be fulfilled by the national deposit guarantee schemes as a precondition to obtain funding from EDIS.

However, the Bundesrat criticises that the proposal contains an exemption clause which allows the Commission to grant a temporary derogation from the funding path in cases where this is justified due to reasons of linked to the business cycle in the respective Member State, to the impact of pro-cyclical contributions or a pay-out event which occurred at the national level. In this respect, it should be noted that the circumstances which would justify a derogation are narrowly circumscribed in this Article. Already the DGSD now contains the provisions with exactly the same wording which would allow for derogations from payments to national deposit guarantee schemes.