



## RESOLUTION

At its 158<sup>th</sup> sitting on 25 February 2016, the German Bundestag, on the basis of Bundestag document 18/7644, adopted the following resolution concerning the

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 in order to establish a European Deposit Insurance Scheme  
COM(2015)586 final; Council document 14649/15**

**Here: Policy dialogue with the European Commission**

I. The German Bundestag finds as follows:

1. On 24 November 2015, the European Commission published a legislative proposal on the mutualisation of deposit protection ('EDIS – European Deposit Insurance Scheme'). The Commission bases its proposal on Article 114 of the Treaty on the Functioning of the European Union (internal market). The proposal envisages EDIS being developed in three stages. In the first stage, a reinsurance scheme is proposed for the period from 2017 to 2020. In the second stage (2020-2023), increasing mutualisation through 'co-insurance' is proposed. In the third stage, from 2024 onwards, there would be complete mutualisation of deposit protection.
2. In its decision of 4 November 2015 on the European Commission's considerations regarding the creation of a European deposit insurance scheme (document 18/6548), the German Bundestag found that the proposals contained in the five presidents' report of 22 June 2015 for the establishment of a European deposit insurance scheme, also in the form of reinsurance, were not acceptable. The mutualisation of bank risks through a common European deposit insurance scheme does not create trust in the security of savings deposits in Europe and does not contribute to the stability of the banks. It also creates the wrong incentives: in favour of national policies which are detrimental to banks and against a sustainable economic policy.

Against this background, the German Bundestag therefore demanded that steps be taken to ensure that the risks posed by banks to states and by states to banks continue to be reduced in a sustainable way. One of the main prerequisites for this is the systematic implementation of the Resolution and Deposit Guarantee Scheme Directive in all Member States and the continued effective functioning of the common resolution mechanism; essential elements of this are an effective and legally sound bail-in mechanism and the establishment and financing of effective national deposit guarantee schemes. The European Commission, as guardian of the Treaties, is

responsible for monitoring implementation of this European legislation. It is also important that sovereign risk in bank balance sheets be reduced and, to this end, that the regulatory treatment of government loans be examined in Europe in particular. The Member States must not be allowed to transfer the consequences of national policy decisions and the resultant banking risks to an EU fund. The proposals of the group of European experts headed by Erki Liikanen to limit risky transactions by introducing upper lending limits for property loans and to create a stricter division between investment banking and commercial banking at European level should be put into practice. This must not, however, jeopardise the financing of the real economy through the tried-and-tested system of universal banking. On 24 November 2015, the European Commission tabled a proposal for a regulation which, contrary to prior announcements by the President of the European Commission, envisages, instead of reinsurance, complete mutualisation of the European deposit insurance scheme within eight years whereas, regarding risk-reducing measures, the Commission merely published an announcement with non-specific considerations and without a timetable.

3. It is highly doubtful whether the European Commission's proposal for a regulation is compatible with the principle of subsidiarity. For a start, the consultation and justification required under Articles 2 and 5 of the Subsidiarity Protocol (Protocol 2 of the Treaty on European Union) have not taken place or been provided. The stated aim of the Commission's proposal is to preserve the integrity and enhance the functioning of the internal market by creating a more efficient and more effective framework for deposit protection and ensuring that the provisions for deposit protection are applied consistently. These objectives can be achieved adequately by the Member States through the transposal of the Deposit Guarantee Scheme Directive (2014/49/EU; DGSD). The DGSD lays down far-reaching harmonised requirements for national deposit guarantee schemes. In particular, all deposit guarantee schemes within a Member State must by 2024 save minimum assets of 0.8% of the covered deposits of their CRR credit institutions. If the funds from a deposit guarantee scheme are not sufficient to recompense depositors, special amounts must be levied. The Member States must also ensure that deposit guarantee schemes have appropriate alternative financing options which allow short-term financing (e.g. the possibility of borrowing). These common requirements which must be met by the Member States create a uniform level of protection for depositors at national level throughout the EU and also ensure that the deposit guarantee schemes have the same degree of stability. If the Member States fail to apply EU law in this area correctly or at all, the Commission, as guardian of the Treaties, can initiate Treaty infringement proceedings against the Member States in question under Article 258 TFEU.

In addition, the DGSD allows deposit guarantee schemes to grant other deposit guarantee schemes loans or to receive loans from them. It is also possible to combine the deposit guarantee schemes of individual Member States or to create cross-border deposit guarantee schemes. This will allow the objectives of the proposal for a regulation — insofar as they involve making improvements to financing mechanisms — to be achieved through cooperation between Member States. The Commission does not explain why 'substantial differences in the protection of depositors taken at national level, and subject to local specificities and funding constraints, may undermine the integrity of the internal market' (given as the reasoning for tabling the proposal) despite the fact that the DGSD has been transposed into national law. The Commission's proposal does not refer to national voting rights. Nor does the

Commission explain to what extent the proposed mutualisation of deposit protection would allow the stated objectives to be achieved more effectively; in particular, there is no mention of qualitative or quantitative criteria. Contrary to its own guidelines on better law-making, the European Commission neither presented an impact assessment nor carried out a consultation of interested parties.

4. There is also great concern about whether the proposal for a regulation complies with the principle of proportionality. For a start, the Commission has not carried out the necessary impact assessment. The proposal is not appropriate to achieving the aforementioned objectives. It does not seek to bring about convergence of national legislative and administrative provisions or to create a homogeneous internal market. Its sole aim is to create a new financing instrument for deposit protection for the banks in the Member States participating in banking union (currently only the eurozone) through complete mutualisation of national deposit guarantee schemes. On the one hand, this would create inequitable conditions for national deposit guarantee schemes, banks and depositors within and outside the banking union. On the other, it would enable the Member States to transfer risks from the national banking sector to the European level. This is the wrong approach. Instead, action must be taken to ensure that the risks posed by banks to states and the risks posed by states to banks continue to be reduced in a sustainable manner.
5. The German Bundestag takes the view that Article 114 TFEU does not provide a sound legal basis for the proposal for a regulation. It does not seek to bring about the convergence of national legal and administrative provisions. Unlike the original SRM Regulation (which creates a resolution mechanism for credit institutions and certain investment firms at European level, which is supplemented by a fund (SRF) based on an international treaty), this proposal for a regulation (which is intended to supplement the SRM Regulation) has the sole purpose of creating a new financing instrument at European level for deposit protection. This would lead to the full mutualisation of the contributions from banks and of the risk of deposit protection within the banking union. The proposal therefore goes far beyond simply harmonising the legislative and administrative provisions of the Member States. In light of this, the German Bundestag takes the view that Article 114 TFEU does not provide a suitable legal basis for the proposal for a regulation.

The Commission's proposal makes provision for the establishment of a fund for the refinancing of national deposit guarantee schemes and is to thereby create a new task for the EU. Under the laws currently in place, the introduction of new sources of revenue for the financing of EU tasks requires a unanimous decision of the Member States. This unanimity principle protects the budget autonomy and competence of the Member States. It applies irrespective of whether the funds in question are transferred by the Member States or paid directly by private credit institutions. The Member States have therefore agreed, e.g. in the context of the Single Resolution Mechanism (SRM), that the contributions from the banks should be levied at national level and should be transferred to the European level by the Member States. To achieve this, the SRM Regulation should be supplemented by an Intergovernmental Agreement (IGA).

II. The German Bundestag therefore expects the Commission to ensure that:

1. a common European deposit insurance scheme or deposit reinsurance scheme is not introduced at the present time, in light of the as yet incomplete transposal of the

provisions agreed in the context of banking union and the lack of practical experience with this and the fundamental and legal considerations stated,

2. the measures adopted for establishing banking union are transposed effectively in all the Member States and at European level; this involves, in particular, ensuring that important banks have enough of a buffer to absorb losses in the event of resolution,
3. the risks posed by states to banks are reduced effectively through further measures.

III. The German Bundestag asks its President to convey this resolution to the European Commission, the European Parliament and the Council.