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EVALUATION OF STATE AID RULES FOR BANKS IN DIFFICULTY TARGETED CONSULTATION

Fields marked with * are mandatory.

Introduction

State aid rules for banks in difficulty and the need to evaluate them

Since the start of the financial crisis in 2008, the European Commission has developed a dedicated set of rules to authorise State aid to banks in difficulty, specifically designed to address the effects of the financial crisis and avoid knock-on effects from the failure of banks on the financial sector and the economy. The purpose of these rules has been to provide a comprehensive framework for coordinated financial support by Member States in favour of their banking sectors. The overarching objective has been to ensure financial stability (i.e. a situation without major disturbances in the EU banking sector, in which people can access their bank accounts and banks can continue to provide payment services and lending to the real economy) while ensuring a level playing field by mitigating competition distortions, both between banks and across Member States. In the absence of a harmonised regulatory framework in the wake of the financial crisis, State aid control based on this set of rules provided the main policy response to tackle consistently and effectively bank failures across the EU, help restore confidence in the EU banking sector and place it on a more sound footing.

The rules set out the criteria which the Commission requires to be fulfilled for it to consider aid granted to banks in difficulty compatible with the EU's internal market. These "compatibility criteria" are categorised in three "pillars" according to their main aim: (i) to minimise competition distortions stemming from the granting of aid; (ii) to restore the long-term viability of aided banks with the potential to recover through restructuring and ensure the orderly market exit of unviable players; (iii) to ensure that the shareholders and selected creditors of an aided bank also bear part of the losses ("burden-sharing") to minimise the amount of aid, thereby protecting taxpayers, and discourage excessive risk-taking by banks, their shareholders and creditors ("moral hazard").

In 2008, the Commission adopted the first set of State aid rules for banks in difficulty (the so-called "2008 Banking Communication", now repealed). Since then, the Commission has revised, updated and expanded its State aid rules for banks several times to take into account the evolution of the financial crisis and lessons learned from their application. In practice, the currently applicable rules are set out in six Commission communications of which the most recent and comprehensive one entered into force in August 2013 (the so-called "2013 Banking Communication"):

- the 2009 Recapitalisation Communication;

- the 2009 Impaired Assets Communication;
- the 2009 Restructuring Communication;
- the 2010 Prolongation Communication;
- the 2011 Prolongation Communication;
- the 2013 Banking Communication.

The State aid rules for banks are based on Article 107(3)(b) of the Treaty on the Functioning of European Union (TFEU), which exceptionally allows the Commission to authorise aid to remedy a serious disturbance in the economy of a Member State.
An overview of all Commission decisions adopted under the State aid rules for banks in difficulty can be found here (situation up to 31 December 2018, for more recent decisions you can use the search engine here).

The Commission is now evaluating the State aid rules for banks in difficulty for the following reasons:

- Market realities have evolved. The financial crisis that started in 2008 has abated. At the same time, there are still important pockets of vulnerability in the banking sector in some Member States, while new risks for the sector have emerged. In the face of the COVID-19-related crisis, the banking sector has so far proven to be resilient, including thanks to the unprecedented response by monetary, supervisory, regulatory and fiscal authorities. Nonetheless the persistent, ongoing COVID-19 crisis produced a major shock to the Union's economies, the effects of which have not yet fully crystallised and could further affect the banking sector. Evaluating State aid rules for banks in difficulty in a timely manner, namely before such potential risks materialize, is therefore of the essence.
- Since 2013, the regulatory environment in which EU banks operate has changed significantly. The EU's micro-prudential framework has been strengthened. Moreover, new EU rules to manage bank crises and to protect bank depositors – the so-called "crisis management and deposit insurance (CMDI) framework" – have been put in place. In addition, the first two (of three) pillars of the Banking Union (for euro-area and opt-in Member States) were established, namely the Single Supervisory Mechanism (SSM) for the centralised supervision and the Single Resolution Mechanism (SRM) for the centralised resolution of banks, entailing major institutional changes. The CMDI framework lays out the rules for handling bank failures, while preserving financial stability, protecting depositors and avoiding the risk of excessive use of public financial resources. It consists of three EU legislative texts acting together with relevant national legislation: the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD). These texts are currently under review by the Commission.

In October 2020, in view of the findings of the European Court of Auditors' Special Report on the control of State aid to financial institutions in the EU, the Commission committed to conduct an evaluation of its State aid rules for banks in difficulty at the latest in 2023. This is in line with the Commission's commitment in the 2013 Banking Communication to review its State aid rules for banks as deemed appropriate, and in particular to cater for changes in market conditions or in the regulatory environment which may affect those rules. The evaluation would thus address also this commitment.

Purpose of the evaluation

The purpose of this evaluation is to analyse the extent to which the Commission's State aid rules for banks in difficulty preserved financial stability, while minimising competition distortions. The evaluation will assess to which extent the State aid rules for banks ensured the effective restructuring of viable banks and orderly market exit of unviable banks in a context in which one or several banks were in difficulty. The Commission will evaluate also how these State aid rules contributed to tackling moral hazard through burden-sharing measures, and how they mitigated competition distortions stemming from the granting of aid. The evaluation will also assess to which extent the current rules are still fit for purpose, including in the context of the new regulatory environment, and whether there is potential to simplify them and improve their interaction with the CMDI framework.

The evaluation covers the State aid rules for banks in difficulty set out in the various Commission communications that have been adopted since 2008. The period under consideration starts with the outbreak of the 2008 financial crisis and ends at the end of 2021.

More information on the evaluation can be found in the Call for Evidence.

Structure of the targeted consultation and how to respond to it

As part of the evaluation, the Commission will seek the views of stakeholders on the effectiveness, efficiency, relevance, coherence and EU added value of the State aid rules for banks in difficulty. To this end, both a **public** consultation and a **targeted** consultation are being organised in parallel. The results of these consultations will serve as input for the evaluation. Views are welcome from all stakeholders.

The targeted consultation is most suitable for stakeholders with more specific expertise and experience in State aid rules for banks in difficulty (for instance market participants, public authorities and academics). The public consultation instead is most suitable for the general public. All questions of the public consultation are also in the questionnaire of the targeted consultation, but the targeted consultation contains additional and more technical questions.

Both consultations are open for 12 weeks, and replies can be provided in all 24 official EU languages. Replies to either questionnaire will be equally considered.

You are now in the targeted consultation. If you want to switch to the public consultation, please click here.

This targeted consultation contains 46 high-level and more detailed technical questions, grouped by the five evaluation criteria under consideration, namely the effectiveness, efficiency, relevance, coherence and EU added value of the State aid rules for banks in difficulty. The questions are available in English. The questions which also appear in the questionnaire for the public consultation are marked with an asterisk (*).

You are invited to provide your feedback through this online questionnaire. Please explain your responses and, as far as possible, illustrate them with concrete examples. We also invite you to upload any documents and/or data that you consider useful to accompany your replies at the end of this online questionnaire.

You are requested to read the privacy statement attached to this consultation for information on how your personal data and contribution will be handled.

In order to ensure a fair and transparent consultation process, only responses received through this online questionnaire will be taken into account and included in the report summarising the responses.

If you encounter problems with completing this questionnaire or if you require assistance, please contact COMP-EVALUATION-BANK-RULES@ec.europa.eu.

Summary of the State aid rules for banks in difficulty

State aid rules for banks in difficulty

Article 107(1) of the Treaty on the Functioning of the EU (TFEU) objectively defines the notion of State aid and, as a general principle, Article 107 TFEU prohibits State aid because it distorts fair competition between companies active in the internal market. This is because, when State aid is granted, it may keep inefficient firms alive. It may also sustain barriers to the entry of new players in the market, weaken the incentives for non-aided companies to compete, invest and innovate, and encourage moral hazard, hence contributing to worse economic outcomes at the expense of consumers and taxpayers.

However, in a number of circumstances, the economic or societal advantages of a State aid intervention may outweigh its disadvantages and the Commission may authorise State aid because it is “compatible” with the internal market. One form of State aid that may be authorised is aid to remedy a serious disturbance in the economy of a Member State (Article 107(3)(b) TFEU), i.e. an exceptional economic situation in which the granting of State aid could be justified under certain conditions.

Such an exceptional situation in which State aid has proven to be warranted under Article 107(3)(b) TFEU was the financial crisis which started in 2008. This is because financial institutions occupy a special position in Member States' economies: they take on deposits, grant loans to companies and households and provide a wide range of financial services. In adverse circumstances, banks may be vulnerable to sudden collapses of confidence among customers and investors, which can have serious consequences for their liquidity and solvency. Given the interconnectedness of the financial sector and other elements, such as the bank-sovereign link, the sudden or disorderly failure of one institution may spread rapidly to other institutions and the economy at large, cause systemic stress, threaten financial stability and severely disrupt the functioning of the real economy. State aid to banks in difficulty may thus help to prevent or mitigate the above-mentioned adverse consequences in certain well-specified circumstances. However, it should then also be avoided that the granting of such State aid to ailing banks leads to large increases of public debt (the so-called “bank-sovereign nexus”), as could also be observed in a later phase of the financial crisis.

Until 2008, the Commission assessed the compatibility of State aid to banks in difficulty by the same standards as aid to companies in financial difficulty in other economic sectors. With the outbreak of the financial crisis, it became, however, evident that a tailored approach to State aid for the financial sector was needed. New financial-sector State aid rules were progressively adopted between 2008 and 2013 under a series of Commission communications, using Article 107(3)(b) TFEU as a legal basis. In the absence of a harmonised regulatory framework in the wake of the financial crisis, State aid control based on this set of rules provided the main policy response to tackle consistently and effectively bank failures across the EU, helped restore confidence in the EU banking sector and place it on a more sound footing.

In particular, these Commission communications lay down guidance on the compatibility of State aid to banks in difficulty. They clarified the criteria under which the Commission would authorise aid measures to banks in difficulty in order to safeguard financial stability, while at the same time preventing undue distortions of competition. They set out the following three aid compatibility “pillars”:

1. The minimisation of distortions of competition following the granting of aid to preserve fair competition to a maximum extent (e.g. by limiting the growth of the balance sheet of aided banks, requiring the sale of certain activities or assets, or prohibiting aggressive commercial practices);
2. The absorption of losses by a bank, its shareholders and creditors (the so-called “burden-sharing”) to limit the amount of State aid needed, thereby protecting the interest of taxpayers, and to reduce

moral hazard (e.g. through loss participation by bank shareholders and subordinated creditors, but also divestments and remuneration or pricing requirements);
3. Restoring a bank's long-term viability to minimise the risk that the aided bank would require aid again in the future, taking into account the measures required under the other two pillars, or when this is not possible, ensuring its orderly market exit.

Aid to banks in difficulty can be granted in the form of liquidity or capital support. Measures to shield a bank from losses on some of its assets which have become very risky or toxic (so-called "impaired asset measures") are considered a specific form of capital support. Regarding the purpose of an aid measure, State aid rules make a distinction between three types of aid:

1. Liquidity aid to address temporary liquidity concerns of otherwise solvent entities;
2. Restructuring aid through capital support to help entities in distress restore their long-term viability and thus support them in preserving their economic activity;
3. Liquidation aid to support the orderly market exit of entities in distress for which long-term viability cannot be restored.

Restructuring aid is considered more distortive to competition than liquidity aid (which is temporary in nature) and liquidation aid (which comes with an obligation for the aided bank to exit the market). The degree of competition distortion an aid measure entails determines, generally, how demanding the criteria are for that aid measure to be declared compatible.
It should be noted that the Commission's aid compatibility assessments are always ex-ante assessments, based on the facts available to the Commission at the time of the assessment of the notified measure.

Interaction of the State aid rules for banks in difficulty with the EU bank crisis management and deposit insurance (CMDI) framework

In 2014, the European Parliament and the Council adopted an EU bank resolution regime, laid down in the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR). The co-legislator further adopted the recast Deposit Guarantee Schemes Directive (DGSD), which also entered into force as from 2015. This framework brought about a new regulatory and institutional setting, with new powers for bank supervisors and the creation of national resolution authorities. In addition, for Member States participating in the Banking Union, the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM) were set up, consisting of the European Central Bank (ECB) and national supervisors and of the Single Resolution Board (SRB) and national resolution authorities respectively. Within this new setting, every actor has its own specific role to play.
The CMDI framework has created interdependencies between, on the one hand, the exercise of State aid control by the Commission and, on the other hand, the decisions and actions of bank supervisors and resolution authorities.
In particular, the EU bank resolution framework introduced new tools to deal with failing banks, while preserving financial stability and recognising the role of State aid control. For instance, if a bank needs State aid to remain viable, its supervisor (or resolution authority) will – as a general rule – declare that bank "failing or likely to fail". In that case, and in the absence of alternative private measures, the resolution authority in charge can then decide to resolve the bank under the EU's uniform bank resolution procedure, or allow it to be wound up under national insolvency proceedings. The interaction of the EU bank resolution

rules with State aid control also arises every time there is recourse to aid from the Single Resolution Fund (SRF) in the context of the resolution of a bank in a Banking Union Member State.
This new framework and the State aid rules for banks are thus strongly interlinked, and consequently, since 2015, the EU bank resolution rules and State aid rules have been applied by the Commission in close cooperation with the ECB, the SRB and national supervisory and resolution authorities. While each of these actors operate within their own mandate and have their own role and responsibilities, they all share the objective of a sound and stable financial sector. The Commission has regularly interacted and coordinated with supervisory and resolution authorities at EU and national level, particularly when a bank was in difficulty and was possibly going to request public financial support. The inter-institutional working arrangements are thus based on close cooperation to address complex and urgent situations and avoid the disorderly failure of banks entailing risks to financial stability.

About you

* Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ● English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish
- ○ Italian
- ○ Latvian
- ○ Lithuanian
- ○ Maltese
- ○ Polish
- ○ Portuguese
- ○ Romanian
- ○ Slovak
- ○ Slovenian
- ○ Spanish

- ( ) Swedish

* I am giving my contribution as

- ( ) Academic/research institution
- ( ) Business association
- ( ) Company/business organisation
- ( ) Consumer organisation
- ( ) EU citizen
- ( ) Environmental organisation
- ( ) Non-EU citizen
- ( ) Non-governmental organisation (NGO)
- (x) Public authority
- ( ) Trade union
- ( ) Other

* First name

* Surname

* Email (this won't be published)

* Scope

- ( ) International
- ( ) Local
- (x) National
- ( ) Regional

* Level of governance

- ( ) Parliament
- (x) Authority
- ( ) Agency

* Organisation name

255 character(s) maximum

Ministry of Finance (The Netherlands)

* Organisation size

- [ ] Micro (1 to 9 employees)
- [ ] Small (10 to 49 employees)
- [ ] Medium (50 to 249 employees)
- [x] Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- [ ] Afghanistan
- [ ] Åland Islands
- [ ] Albania
- [ ] Algeria
- [ ] American Samoa
- [ ] Andorra
- [ ] Angola
- [ ] Anguilla
- [ ] Antarctica
- [ ] Antigua and Barbuda
- [ ] Argentina
- [ ] Armenia
- [ ] Aruba
- [ ] Australia
- [ ] Djibouti
- [ ] Dominica
- [ ] Dominican Republic
- [ ] Ecuador
- [ ] Egypt
- [ ] El Salvador
- [ ] Equatorial Guinea
- [ ] Eritrea
- [ ] Estonia
- [ ] Eswatini
- [ ] Ethiopia
- [ ] Falkland Islands
- [ ] Faroe Islands
- [ ] Fiji
- [ ] Libya
- [ ] Liechtenstein
- [ ] Lithuania
- [ ] Luxembourg
- [ ] Macau
- [ ] Madagascar
- [ ] Malawi
- [ ] Malaysia
- [ ] Maldives
- [ ] Mali
- [ ] Malta
- [ ] Marshall Islands
- [ ] Martinique
- [ ] Mauritania
- [ ] Saint Martin
- [ ] Saint Pierre and Miquelon
- [ ] Saint Vincent and the Grenadines
- [ ] Samoa
- [ ] San Marino
- [ ] São Tomé and Príncipe
- [ ] Saudi Arabia
- [ ] Senegal
- [ ] Serbia
- [ ] Seychelles
- [ ] Sierra Leone
- [ ] Singapore
- [ ] Sint Maarten
- [ ] Slovakia

Austria	Finland	Mauritius	Slovenia
Azerbaijan	France	Mayotte	Solomon Islands
Bahamas	French Guiana	Mexico	Somalia
Bahrain	French Polynesia	Micronesia	South Africa
Bangladesh	French Southern and Antarctic Lands	Moldova	South Georgia and the South Sandwich Islands
Barbados	Gabon	Monaco	South Korea
Belarus	Georgia	Mongolia	South Sudan
Belgium	Germany	Montenegro	Spain
Belize	Ghana	Montserrat	Sri Lanka
Benin	Gibraltar	Morocco	Sudan
Bermuda	Greece	Mozambique	Suriname
Bhutan	Greenland	Myanmar/Burma	Svalbard and Jan Mayen
Bolivia	Grenada	Namibia	Sweden
Bonaire Saint Eustatius and Saba	Guadeloupe	Nauru	Switzerland
Bosnia and Herzegovina	Guam	Nepal	Syria
Botswana	Guatemala	Netherlands	Taiwan
Bouvet Island	Guernsey	New Caledonia	Tajikistan
Brazil	Guinea	New Zealand	Tanzania
British Indian Ocean Territory	Guinea-Bissau	Nicaragua	Thailand
British Virgin Islands	Guyana	Niger	The Gambia
Brunei	Haiti	Nigeria	Timor-Leste
Bulgaria	Heard Island and McDonald Islands	Niue	Togo
Burkina Faso	Honduras	Norfolk Island	Tokelau
Burundi	Hong Kong	Northern Mariana Islands	Tonga

- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

- ○ Denmark
- ○ Liberia
- ○ Saint Lucia

Main field(s) of activity or sector(s) (if applicable):

- [ ] Retail bank consumer / user of financial services / depositor
- [ ] Retail investor
- [ ] Credit institution
- [ ] Payment and electronic money institution
- [ ] Investment firm
- [ ] Professional investor
- [ ] Financial market analysis (incl. credit rating agency)
- [ ] Law firm
- [ ] Financial advisory firm
- [ ] Deposit guarantee scheme
- [ ] Non-financial company (incl. SME)
- [ ] Bank association
- [ ] Consumer association
- [ ] Independent research provider
- [ ] Supranational authority
- [ ] (National) competent authority (bank supervisor)
- [ ] (National) resolution authority
- [x] Finance Ministry
- [ ] Other national public authority (incl. regional or local)
- [ ] International organisation
- [ ] Bank employee
- [ ] Other
- [ ] Non applicable

What is your interest in participating in this public consultation?

- [ ] I am reacting as a retail bank customer / user of financial services / depositor.
- [ ] I am a reacting as a citizen / taxpayer.
- [ ] I am reacting as someone who works / has worked for (or is or has been otherwise professionally affiliated with) a bank that has received State aid.
- [ ] I am reacting as someone who works / has worked for (or is or has been otherwise professionally affiliated with) a bank that competes against banks that have received State aid.

- [x] I am reacting as someone who works / has worked for (or is or has been otherwise professionally affiliated with) a public authority involved in the granting of State aid to banks.
- [ ] I am reacting as a current or former shareholder of / investor in a bank that has received State aid and have suffered losses as a result of burden-sharing.
- [ ] Other

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **Fo r the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- (•) **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ( ) **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

- [x] I agree with the personal data protection provisions

Questions about the effectiveness of State aid rules for banks in difficulty

The questions in this section aim at assessing whether EU State aid rules for banks in difficulty have achieved their objectives, namely contributing to financial stability, preserving the level playing field, limiting competition distortions and the amounts of aid, as well as reinforcing market discipline and tackling moral hazard, in particular through adequate burden-sharing measures.

Background information on concepts referred to in the questions

Financial stability means that the financial system can withstand shocks without major disruption. In other words, people can still access their bank accounts, businesses can still make and receive payments, investors can continue to trade, and banks can refinance themselves by borrowing from each other or the central bank.

Burden-sharing measures aim at limiting the amount of State aid needed, thereby protecting the interest of taxpayers, and at reducing moral hazard by obliging the aided bank, its shareholders and some of its creditors to contribute to absorbing the bank's losses. Burden-sharing measures can also include divestments and management remuneration or pricing constraints. Before the entry into force of the 2013 Banking Communication, burden-sharing by subordinated creditors was not required. The 2013 Banking Communication tightened these burden-sharing rules by requiring that banks with a capital shortfall obtain shareholders' and subordinated debtholders' contribution before resorting to public recapitalisations or impaired asset measures.

Moral hazard refers to an incentive to the taking of excessive financial risk by a bank's management, shareholders and/or creditors because they count on being shielded from the bank's losses by the State. Such perverse incentives weaken market discipline. In State aid control, moral hazard is discouraged for example through burden-sharing measures.

Aided banks may be subject to **measures to mitigate competition distortions** between themselves and non-aided banks. Such measures include a ban to acquire a stake in other undertaking(s), divestments from certain activities, a ban on aggressive commercial practices, or constraints on the pricing of deposits and loans.

A bank's **long-term viability** is defined as the bank's capacity to cover all its costs and provide an appropriate return on equity, and to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements.

In order to demonstrate its long-term viability, a bank must submit a **restructuring plan** (including a capital raising plan) that convincingly demonstrates how it plans to become profitable again in the long term. If the long-term viability of a bank cannot be restored, an orderly wind-down plan has to be submitted instead.

Question 1 *.

To which extent have the State aid rules for banks in difficulty been successful in achieving the following objectives? Please also provide a short explanation why you gave a particular score (including by referring to specific circumstances of State aid granted to a bank that you may have in mind, and when these occurred).

	1 Not successful	**2** Rather not successful	**3** Neutral	**4** Rather successful	**5** Very successful	I don't know / No opinion
* a) Contributing to the preservation of financial stability by ensuring the continued smooth functioning of individual banks and the banking sector at large	○	○	●	○	○	○
* b) Minimising competition distortions between aided and non-aided banks	○	●	○	○	○	○
* c) Limiting the amounts of aid given to banks in difficulty to the minimum necessary	○	●	○	○	○	○

Please explain the reasoning behind your answers to question 1 (*also specifying 1a to 1c*).

4000 character(s) maximum

We appreciate the initiative of the Commission to hold a consultation on the review of the Banking Communication 2013. It is necessary that the state aid rules are reviewed in parallel with the crisis management framework, as these are closely linked to each other. The most recent Banking Communication is from 2013. Back then the evolution of a regulatory framework for banks created the need for a revision of the 2008 Banking Communication. Application and experience with the framework is a reason to update the Banking Communication. Furthermore, the 2013 text is outdated since it describes a situation without an European recovery and resolution regime, a European banking supervisor and resolution authorities. A new Banking communication should provide clarity about the interaction between all these rules.

The state aid framework applicable to financial institutions, inherited from the crisis, has allowed a certain discipline to be applied, but is now out of step with the principles of the European crisis management framework resulting from post-financial crisis reforms and the normalisation of the economic environment. Indeed, while the conditions imposed in return for precautionary recapitalisations or liquidation aid - which unfortunately sometimes resemble transfers to circumvent the market exit of failing or likely to fail (FOLTF) and unresolved banks - have allowed a certain contribution from private creditors and shareholders, thereby ensuring some market discipline to some extent, the applicable framework continues to be based on exceptional measures and excludes the application of fundamental principles applicable to rescue and restructuring aid for non-financial companies. This has made it possible to support, on several occasions in a very short timeframe, banks whose restructuring plans were inconsistent, or which clearly failed to produce satisfactory effects within a timeframe compatible with the restoration of fair competition. This has also allowed for the subsidisation of a number of creditors who would have been written-down and converted, or bailed-in in the resolution process, thereby creating opportunities for regulatory arbitrage between crisis management methods, which is particularly unfavourable to the application of the harmonised European resolution framework.

In line with the current discussions within the banking union, it is true that the crisis management framework should be improved, in order to make resolution work. There are various options discussed to ensure the framework is applied. In order for this to work, we need to have a clear and consistent Banking Communication. As such, it is crucial that the review of the state aid rules is done in parallel. We support to make an end to bail-outs, to deliver stronger market discipline, a more level playing field, and better protection of taxpayers’ money.

Question 2 *.

To which extent have the State aid rules for banks in difficulty been successful in achieving the following results? Please also provide a short explanation why you gave a particular score (including by referring to specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not successful	**2** Rather not successful	**3** Neutral	**4** Rather successful	**5** Very successful	I don't know / No opinion
* a) Addressing the temporary funding problems of banks (which received liquidity aid)	○	○	○	○	○	●
* b) Restoring the long-term viability of banks (which received restructuring aid)	○	●	○	○	○	○
* c) Ensuring the orderly market exit of unviable banks (which received liquidation aid)	○	●	○	○	○	○

Please explain the reasoning behind your answers to question 2 (*also specifying 2a to* 2*c).*

4000 character(s) maximum

The state aid framework is out of step with the current challenges of the European banking sector. It does not contribute sufficiently to the sector’s cleaning up, allowing non-viable or insufficiently competitive banks to remain on the market, leading to the maintenance of banking overcapacities, even though the profitability of the European sector is lower than that of its major foreign competitors. In the long run, this insufficient discipline in applying the banking crisis management framework, because of inconsistencies with the applicable State aid framework, contributes to the continued decrease of competitiveness and resulting loss of market share of European banking players, both on the internal and global markets. This could jeopardise our economic and financial sovereignty by limiting our ability to finance the ecological and digital transitions ourselves or a number of public goods to which the private sector must contribute.

Question 3 *.

To which extent have the State aid rules for banks in difficulty been successful in contributing to the following long-term impacts? Please also provide a short explanation why you gave a particular score (including by referring to specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not successful	**2** Rather not successful	**3** Neutral	**4** Rather successful	**5** Very successful	I don't know / No opinion
* a) Ensuring that creditworthy SMEs (i.e. mainly national) were able to get the bank loans or other forms of credit they needed	○	○	○	○	○	◉
* b) Ensuring that creditworthy large enterprises (i.e. mainly national) were able to get bank loans or other forms of credit they needed	○	○	○	○	○	◉
* c) Ensuring that creditworthy large enterprises (i.e. mainly multinational) were able to get bank loans or other forms of credit they needed	○	○	○	○	○	◉
* d) Ensuring that creditworthy households were able to get bank loans or other forms of credit they needed	○	○	○	○	○	◉
* e) Fostering the cross-border integration of banks in the EU	○	○	○	○	○	◉
* f) Making banks in the EU more competitive, so that they could offer to their customers better and more innovative financial products and services at lower prices	○	○	○	○	○	◉
* g) Restoring trust in banks in the EU	○	○	○	○	○	◉

Please explain the reasoning behind your answers to question 3 (*also specifying 3a to 3g).*

4000 character(s) maximum

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Question 4.

To which extent have the following measures – applied to reinforce market discipline and tackle moral hazard on behalf of bank management, shareholders and investors – been effective? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not effective	**2** Rather not effective	**3** Neutral	**4** Rather effective	**5** Very effective	I don't know / No opinion
* a) Management remuneration cap	○	○	○	○	○	●
* b) Management replacement	○	○	○	○	○	●
* c) Obligation to divest certain subsidiaries or activities	○	○	○	○	○	●
* d) Burden-sharing by bank shareholders (dilution)	○	○	○	○	○	●
* e) Burden-sharing by hybrid capital holders	○	○	○	○	○	●
* f) Burden-sharing by junior bondholders	○	○	○	○	○	●
* g) Ban on paying out dividends	○	○	○	○	○	●
* h) Ban on paying out discretionary coupons	○	○	○	○	○	●
* i) Other (please specify below)	○	○	○	○	○	●

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 4 (*also specifying 4a to 4h).*

4000 character(s) maximum

Requirements related to burden sharing, remuneration and restricting dividends and coupons are all tools to combat moral hazard. The conditions imposed on State aid have allowed a certain contribution from private creditors and shareholders, thereby ensuring some market discipline to some extent. However the State aid rules for banks do not enforce the fundamental principles resulting from post-financial crisis legislation (bail-in, end of implicit guarantees, protection of depositors and taxpayers) the same way the resolution framework does.

* **Question 5.**

Are you aware of other effective measures to reinforce market discipline and tackle moral hazard issues present on the side of bank management, shareholders and investors?

- (x) Yes
- ( ) No
- ( ) I don't know / No opinion

Please elaborate:

AQR have proven effective to make sure that State aid is not used to cover incurred or likely losses. This has been applied in several cases. An updated Banking Communication could therefore clarify that a precautionary recapitalization requires a public AQR to show that incurred or likely losses have been covered privately. Furthermore in such cases moral hazard was further reduced by requiring capital aid to be repaid quickly by setting incentives in the interest rate/fee structure.

Question 6.

To which extent have the burden-sharing requirements in the State aid rules for banks in difficulty been successful in achieving the following results? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred):

1) Ensuring that an aided bank's shareholders contribute to cover the losses (e.g. through the write-down of shares, dilution, etc.):

	1 Not successful	**2** Rather not successful	**3** Neutral	**4** Rather successful	**5** Very successful	I don't know / No opinion
* a) Before the introduction of the 2013 Banking Communication	○	○	○	○	○	●
* b) After the introduction of the 2013 Banking Communication	○	○	○	●	○	○

Please explain the reasoning behind your answers to question 6.1. (*also specifying 6.1.a to 6.1.b).*

4000 character(s) maximum

The conditions imposed on State aid have allowed a certain contribution from private creditors and shareholders, thereby ensuring market discipline to some extent. However the State aid rules for banks do not enforce the fundamental principles resulting from post-financial crisis legislation (bail-in, end of implicit guarantees, protection of depositors and taxpayers) the same way the resolution framework does.

It is necessary to align the burden sharing requirements in the banking communication 2013 with the bail-in requirements within the crisis management framework. State aid to support the liquidation of failing banks may be considered as compatible aid, subject to compliance with the Banking Communication, including burden-sharing. In addition to the state aid framework, in case of resolution a minimum contribution of 8% of total liabilities including own funds is required before resolution financing arrangements. To better align the outcomes for holders of debt in liquidation and resolution, an 8% requirement could also be implemented in an updated Banking Communication.

The Banking Communication refers to capital shortfalls established in a capital exercise, stress-test, asset quality review or an equivalent exercise. Also in context of precautionary recapitalizations the BRRD/SRMR refers to addressing these shortfalls, including asset quality reviews. In the application of the case law the European Commission has however stated that State aid can only cover the capital shortfall stemming from the adverse scenario's of stress tests, while capital needs stemming from asset quality reviews and baseline scenario's have to be covered by private means. An updated Banking Communication could therefore clarify that a precautionary recapitalization requires a public asset quality review to show that incurred or likely losses have been covered privately.

In several cases a contribution from senior debt holders has been successfully applied. Also the directive on the ranking of unsecured debt instruments created a new layer of senior non-preferred debt. The updated Banking Communication can mention the possibility to require a contribution from senior debt, especially non-preferred, in order to limit the amount of aid to the minimum necessary and address moral hazard.

2) Ensuring that an aided bank's junior bondholders contribute to cover the losses (e.g. through the conversion and or write-down of bonds, the cancellation of discretionary coupon payments, etc.)

	1 Not successful	**2** Rather not successful	**3** Neutral	**4** Rather successful	**5** Very successful	I don't know / No opinion
* a) Before the introduction of the 2013 Banking Communication	○	○	○	○	○	●
* b) After the introduction of the 2013 Banking Communication	○	○	○	●	○	○

Please explain the reasoning behind your answers to question 6.2. (*also specifying 6.2.a to 6.2.b).*

4000 character(s) maximum

See answer to question 6.1

Question 7.

To which extent have the following measures – applied to mitigate the competition distortions stemming from aid to banks in difficulty – been effective? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not effective	**2** Rather not effective	**3** Neutral	**4** Rather effective	**5** Very effective	I don't know / No opinion
* a) Obligation to divest certain subsidiaries	○	○	○	○	○	●
* b) Obligation to carve out and divest certain activities	○	○	○	○	○	●
* c) Obligation to reduce the balance sheet total	○	○	○	○	○	●
* d) Ban on aggressive commercial practices	○	○	○	○	○	●
* e) Constraints on the competitive pricing of banking products (e.g. loans, deposits)	○	○	○	○	○	●
* f) Acquisition ban	○	○	○	○	○	●
* g) Obligation to exit the market (in case of liquidation aid)	○	●	○	○	○	○
* h) Other (please specify below)	○	○	○	○	○	●

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 7 (*also specifying 7a to 7g).*

4000 character(s) maximum

The State aid rules for banks do not contribute sufficiently to the sector's cleaning up, allowing non-viable or insufficiently competitive banks to remain on the market, leading to the maintenance of banking overcapacities, even though the profitability of the European sector is lower than that of its major foreign competitors. In the long run, this insufficient discipline in applying the banking crisis management framework, because of inconsistencies with the applicable State aid framework, contributes to the continued decrease of competitiveness and resulting loss of market share of European banking players, both on the internal and global markets. This could jeopardise our economic and financial sovereignty by limiting our ability to finance the ecological and digital transitions ourselves or a number of public goods to which the private sector must contribute.

* **Question 8.**

Are you aware of other effective measures to mitigate the competition distortions stemming from the granting of aid to banks in difficulty?

- ( ) Yes
- (x) No
- ( ) I don't know / No opinion

* **Question 9.**

Are the contents of the model restructuring plan – as set out in the Annex of the 2009 Restructuring Communication – appropriate for an adequate assessment of a bank's long-term viability (e.g. data requested, scenarios to be simulated, time horizon to be considered, etc.)?

- ( ) Yes
- (x) No
- ( ) I don't know / No opinion

If no, please elaborate (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred):

The requirement for restructuring plans needs to be strengthened, credible, and allow for a good articulation with the resolution framework. Firstly, it is essential that the requirement to draw up restructuring plans be strengthened, in order to ensure that these plans allow a return to long-term viability, contrary to what has happened in various recent cases. It is therefore essential that the plans be based on credible and reasonable assumptions. Secondly, for resolution fund interventions, it is essential to better articulate the requirement to provide an ex-ante restructuring plan and the requirement, instituted by the resolution framework, to submit a business reorganisation plan to the resolution authority within one month of the application of the bail-in tool.

In order to strengthen the credibility of the plans presented, it is essential to introduce a rule limiting the number of state aids that each bank can receive, through the application of the “one time, last time” principle. In the guidelines for non-financial companies, no aid is allowed within 10 years of the granting of aid. As restructuring plans for banks can be spread over a period of 5 years, it might be useful to introduce such a principle over a period equal to the duration of the restructuring plan plus 5 years. However, exceptions should be made in order to preserve financial stability, in particular in the event when a bank is declared FOLTF, to allow for the conduct of an orderly resolution or winding up.

* **Question 10.**

Is the appointment of an independent monitoring trustee to verify the compliance of the Member State and aid beneficiary with the relevant State aid commitments (i.e. conditions which reflect the applicable compatibility criteria) an effective way to ensure the enforcement of the State aid rules for banks in difficulty?

- ○ Yes
- ○ No
- ● I don't know / No opinion

Question 11.

To which extent have the following measures applied to restore the long-term viability of banks been effective? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not effective	**2** Rather not effective	**3** Neutral	**4** Rather effective	**5** Very effective	I don't know / No opinion
* a) Measures and/or quantitative targets to improve revenue-generating potential						X
* b) Measures and/or quantitative targets to reduce operating costs						X
* c) The reform of internal risk management policy and corporate governance						X
* d) Measures to reduce complexity (e.g. reduction or termination of non-core activities)						X
* e) Divestment or termination of less profitable or loss-making activities						X
* f) Measures to de-risk the balance sheet (e.g. disposal of non-performing assets, risk protection, etc.)						X
* g) Investments (e.g. in IT infrastructure) to improve operational performance						X
* h) Other (please specify below)						X

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 11 (*also specifying 11a to 11g).*

4000 character(s) maximum

* **Question 12.**

Are you aware of other effective measures to restore the long-term viability of banks?

- Yes
- No
- I don't know / No opinion

Question 13:

To which extent have the State aid rules for banks in difficulty been successful in ensuring that the market exit of unviable banks (which was supported with liquidation aid) ...

	1 Not successful	**2** Rather not successful	**3** Neutral	**4** Rather successful	**5** Very successful	I don't know / No opinion
* a) ... did not take longer than the period strictly necessary for the orderly liquidation thereby limiting competition distortions?	○	○	○	○	○	◉
* b) ... occurred with the minimum amount of aid necessary to keep the bank afloat during the liquidation?	○	○	○	○	○	◉
* c) ... minimised moral hazard by ensuring that the claims of shareholders and subordinated debt holders of the unviable bank cannot be transferred to any continuing economic activity?	○	○	○	○	○	◉
* d) ... did not result to aid to the buyer in case the market exit is achieved via a sale of the unviable bank during the orderly liquidation procedure?	○	○	○	○	○	◉

Please explain the reasoning behind your answers to question 13 *(also specifying 13a to 13d).*

4000 character(s) maximum

Liquidation aid in the context of bank resolutions should not give rise to arbitrage opportunities between crisis management approaches. It is therefore essential to align the rules on the burden sharing of creditors and shareholders between resolution and national insolvency procedures. This implies in particular requiring senior creditors to contribute. It also implies defining, within the framework of national insolvency procedures, a minimum amount of liabilities to be contributed in order to benefit from portfolio transfer aid, which would be equivalent to the requirements applicable in resolution for banks exiting the market after application of transfer tools.

To be fully effective, such a framework for liquidation aid must be accompanied by the closure of circumventing routes around resolution, not captured by the state aid framework. Otherwise, the risk of regulatory arbitrage between resolution and national insolvency procedures would be reinforced, to the benefit of the least disciplined procedures. Alternative interventions by private deposit guarantee schemes should therefore be dealt with in this direction in DGSD.
Liquidation aid in the context of national insolvency proceedings should only be allowed in very specific cases.

Furthermore, the legislative framework should ensure in all cases the exit of from the market of FOLTF banks not going in resolution. To this end, it is important to clarify the objective of exit from the market and its definition, which must leave open the possibility of management in run-off/extinction when this is necessary to preserve financial stability or for other reasons of general interest, such as avoiding the disruption of essential commercial relationships. This clarification of the respective possible outcomes of resolution and national insolvency procedures should provide a stronger basis for state aid law to strictly regulate liquidation aid. Such a framework should be replicated in DGSD for alternative interventions by deposit guarantee schemes.

* **Question 14 *.**

Has the application of the State aid rules for banks in difficulty had any unexpected or unintended consequences – either positive or negative – which were not covered in the questions above?

- ◯ Yes
- ◯ No
- ◉ I don't know / No opinion

Question 15.

To which extent has the entry into force of the EU bank crisis management and deposit insurance (CMDI) framework in 2015 influenced – positively or negatively – whether the following objectives of the State aid rules for banks in difficulty have been achieved? In other words, to which extent could the achievement (or non-achievement) of the following general objectives of the State aid rules for banks in difficulty be attributed to the entry into force of the CMDI framework in 2015? Please also provide a short reasoning why you gave a particular score (including specific circumstances of State aid given to a bank which you may have in mind, and when these occurred).

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) Preserving financial stability					X	
* b) Preserving the level playing field in the EU by coordinating Member States' response to the financial crisis				X		
* c) Limiting the amounts of aid given to banks in difficulty to the minimum necessary			X			
* d) Reinforcing market discipline and tackling moral hazard issues on the side of bank management, shareholders and investors				X		

Please explain the reasoning behind your answers to question 15 (*also specifying 15a to 15d).*

4000 character(s) maximum

With the EU bank crisis management and deposit insurance (CMDI) framework entering into force important steps have been made to address financial stability risks from bank failures. Resolution plans are being set up ex-ante, banks build up MREL-buffers, and there is close cooperation between national and European supervisors and resolution authorities. This has reduced the risk of unorderly failure, thereby contributing to the objective of financial stability, and limited the necessity of state aid for failing banks, thereby protecting taxpayer's money.

Still, however, the resolution framework has been applied sparsely. Some failures have taken place outside of the resolution framework, e.g. with recourse to state resources. While this cannot always be prevented, incentives are currently in place that in some cases might favor handling of bank failures outside of the resolution framework.

As a result, the level playing field in Member States' response to a crisis could be improved, as well as the fact that burden sharing requirements should be harmonized. The amounts of aid given to banks could – and should - be reduced further. Reducing such arbitrage opportunities in the state aid framework will help to improve the functioning of the crisis management framework, thereby improving market discipline and tackling moral hazard.

The review of the applicable State aid framework, requested by the European Parliament and the Eurogroup, remains indispensable and urgent. It is an essential element for improving the crisis management framework, which should make it possible to better apply the fundamental principles resulting from post-financial crisis legislation (bail-in, end of implicit guarantees, protection of depositors and taxpayers), to bring State aid law in line with the resolution framework, and to adapt State aid control to a normalised economic environment in the banking sector. It is therefore essential that the guidelines on state aid to banks make the resolution process work, thus avoiding any risk to financial stability in the event of a crisis, by clarifying the distribution of roles and requirements in this case. At the same time, they should contribute to restoring fair competition in the banking market, at all stages of banking crisis and in all cases - although reform of the CMDI will be necessary to fully achieve this objective.

Question 16.

To which extent have other important drivers (e.g. market trends, economic developments, policies other than the EU bank crisis management and deposit insurance (CMDI) framework) influenced – positively or negatively – whether the following objectives of the State aid rules for banks in difficulty have been achieved? In other words, to which extent could the achievement (or non-achievement) of the following general objectives of the State aid rules for banks in difficulty be attributed to drivers other than the State aid rules for banks in difficulty? Please also provide a short reasoning why you gave a particular score (including specific circumstances of State aid given to a bank which you may have in mind, and when these occurred).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion
* a) Preserving financial stability	○	○	○	○	○	●
* b) Preserving the level playing field in the EU by coordinating Member States' response to the financial crisis	○	○	○	○	○	●
* c) Minimising competition distortions between aided and non-aided banks	○	○	○	○	○	●
* d) Limiting the amounts of aid given to banks in difficulty to the minimum necessary	○	○	○	○	○	●
* e) Reinforcing market discipline and tackling moral hazard issues on the side of bank management, shareholders and investors	○	○	○	○	○	●

Please explain the reasoning behind your answers to question 16 (*also specifying 16a to 16e).*

4000 character(s) maximum

* **Question 17 *.**

Have the State aid rules for banks in difficulty ensured an appropriate trade-off between the following policy objectives? If no, please also provide a short reasoning for your answer (including specific circumstances of State aid given to a bank which you may have in mind, and when these occurred).

Question 17.1*.

Preserving financial stability vs mitigating competition distortions:

- ○ Yes
- ○ No, more weight should have been given to the objective of preserving financial stability, even if this would have implied the granting of more State aid or the granting of State aid under less stringent conditions and could thus have been at the expense of achieving the objective of mitigating competition distortions
- ● No, more weight should have been given to the objective of mitigating competition distortions, even if this would have implied the granting of less State aid or granting of State aid under more stringent conditions

Please elaborate:

*

Question 17.2*.

Preserving financial stability vs. protecting taxpayers (by minimising aid):

- ○ Yes
- ○ - No, more weight should have been given to the objective of preserving financial stability, even if this would have implied the granting of more State aid
- ● No, more weight should have been given to the objective of minimising aid

Please elaborate:

The legislative framework should ensure that a failing bank that causes concerns for the financial stability goes into resolution. This way we ensure that state aid is not necessary to preserve financial stability and we minimise the need for state aid in order to protect taxpayers. It is therefore essential that the guidelines on state aid to banks make the resolution process work, thus avoiding any risk to financial stability in the event of a crisis, by clarifying the distribution of roles and requirements in this case. At the same time, they should contribute to restoring fair competition in the banking market, at all stages of banking crisis and in all cases - although reform of the CMDI will be necessary to fully achieve this objective.

*

Question 17.3*.

Preserving financial stability vs. tackling moral hazard:

- ○ Yes
- ○ -No, more weight should have been given to the objective of preserving financial stability, even if this would have implied the granting of more State aid (without additional burden-sharing)
- ● No, more weight should have been given to the objective of tackling moral hazard

Please elaborate:

It is important to break the sovereign bank nexus. Striking this balance is crucial. Every case where state aid is granted is a signal to the market that the state might as well intervene which upholds the implicit guarantee and preserves the sovereign-bank nexus

Questions about the efficiency of State aid rules for banks in difficulty

The questions in this section aim at evaluating the extent to which State aid rules for banks in difficulty have been cost-effective, i.e. whether the costs related to their implementation were proportional to their

beneficial objectives. The questions also seek to evaluate whether the State aid rules for banks in difficulty have been clear, transparent and easy to understand.
The costs and benefits of the control of State aid to banks in difficulty can be quantitative and qualitative. Costs include, but are not limited to, the amounts of State aid granted or disbursed, as well as the operational and administrative costs and burden borne by aided banks and public authorities. The benefits encompass the preservation of financial stability as well as the fostering of free and fair competition, leading to more competitive EU banks that are able to offer better and more innovative financial products and services at lower prices to their customers.

Background for respondents on key concepts

State aid to banks in difficulty can be authorised under an **individual State aid decision** or under an **aid scheme** (which in the case of aid to banks in difficulty can be a liquidity aid scheme, a recapitalisation or restructuring scheme, or an orderly liquidation aid scheme). The Commission authorises aid schemes only for a limited period of time, subject to conditions and only accessible by selected beneficiaries (e.g. solvent banks, small banks). When compatible aid is granted under an aid scheme, no individual State aid decision by the Commission is needed anymore for that aid to be authorised by the Commission.

Question 18 *.

To which extent do you agree with the following general statements? Please also provide a short explanation why you gave a particular score (including – where relevant – specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Strongly disagree	**2** Disagree	**3** Neutral	**4** Agree	**5** Strongly Agree	I don't know / No opinion
* a) The Commission communications containing the State aid rules for banks in difficulty are easy to find	○	○	○	●	○	○
* b) The Commission communications containing the State aid rules for banks in difficulty are easy to understand	○	○	○	●	○	○
* c) The State aid rules for banks in difficulty are formulated in a way which is likely to lead to a predictable Commission assessment of State aid to banks in difficulty in practice	○	○	○	●	○	○

* d) The State aid rules for banks in difficulty have been set out by theme in different (interlinked) Commission communications instead of in one single communication. This way of presentation is helpful to understand which rules apply in practice	○	○	○	●	○	○
* e) The Commission releases information in relation to State aid rules for banks in difficulty – for example, the non-confidential version of the State aid decisions, the associated press releases, and the Commission's Directorate-General for Competition's annual reports and publications. This publicly available information is adequate to ensure a good understanding by all stakeholders of the Commission's policy in this field	○	○	○	○	●	○

Please explain the reasoning behind your answers to question 18 (*also specifying 18a to 18e).*

4000 character(s) maximum

18a) The state aid rules are easy to find online.

18b) Overall the Banking Communication 2013 is generally well-drafted and clear. The state aid rules will benefit from a review to ensure the framework is up to date with related frameworks, as well as to clarify terminology (see answer at question 19)

18c) The State aid rules for banks in difficulty are formulated in a way which is likely to lead to a predictable Commission assessment.

18d) For clarity it would be more useful to have one comprehensive communication which contains the State aid regime for banks (and other financial institutions), instead of several interlinked communications.

18e) The Commission provides clear updates on state aid decisions in their press corner. The State aid register is a complete and up to date database. Its search function could be further improved, in particular by allowing for full-text search and advanced search options to search text within Commission documents. Another way to improve the search options would be standardize the titles of State aid decisions going forward (e.g. "SA number - Member State abbreviation – name of measure - type of aid – beneficiary")

Question 19.

To which extent have the following aspects of the control of State aid rules for banks in difficulty been easy to understand? Please also provide a short explanation why you gave a particular score (including – where relevant – specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion
* a) The determination whether a measure constitutes State aid (including the criteria for public support to be considered market-conform)	○	●	○	○	○	○
* b) The compatibility criteria for liquidity aid	○	○	○	○	○	●
* c) The compatibility criteria for restructuring aid	○	○	○	○	○	●
* d) The compatibility criteria for liquidation aid	○	○	○	○	○	●
* e) The requirements concerning burden-sharing	○	○	○	○	○	●
* f) The requirements concerning measures to mitigate competition distortions	○	○	○	○	○	●
* g) The requirements concerning restructuring plans to restore the long-term viability of aided banks	○	○	○	○	○	●
* h) The requirements concerning impaired asset measures	○	○	○	○	○	●

Please explain the reasoning behind your answers to question 19 (*also specifying 19a to 19h).*

4000 character(s) maximum

The Banking Communication is outdated and still describes a situation without BRRD, SRM SSM. We believe this interaction, as well as with the case law is necessary to clarify the rules. The clarity around whether a measure constitutes State aid could also be improved. E.g. regarding 'aid imputable to the state'

* **Question 20.**

Has the interaction between, on the one hand, the State aid rules for banks in difficulty and, on the other hand, the crisis management and deposit insurance (CMDI) framework (since its entry into force in 2015) been easy to understand?

- ○ Yes

- [x] -No
- [ ] I don't know / no opinion

If no, please elaborate (including – where relevant – specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred):

> It is not always clear how the state aid rules and the CMDI framework interact. Please see question 42 for a more elaborate response.

* **Question 21.**

Are there <u>certain aspects or concepts</u> related to the State aid rules for banks in difficulty that <u>could have been further</u> <u>clarified</u> or that <u>could have been defined more precisely</u>?

- [x] Yes
- [ ] -No
- [ ] I don't know / no opinion

If yes, please elaborate (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred):

> The following aspects should be defined more clearly:
>
> Serious disturbance to the economy:
> - We concur with various of the observations and recommendations by the European Court of Auditors. For instance, the report addresses the lack of explicit criteria for the determination of serious disturbance, leaving a great margin of appreciation for the Commission. We support the ECA recommendation to 'set out criteria for a "serious disturbance' under Article 107 (3)(b) TFEU.
> - It is also questionable if a serious disturbance can and should be decided on solely by the member state. As the SRB proposed in its non-paper, the Commission could perhaps challenge the member state on its assessment or do its own assessment of serious disturbance.
>
> Burden sharing and disproportionate results:
> - Within the Banking Communication 2013, Chapter 3.1.1, art 45; the 'disproportionate results' that would allow for avoidance of burden sharing should be further clarified.
> - The article reads: 'an exception to the requirements in points 43 and 44 can be made where implementing such measures would endanger financial stability or lead to disproportionate results. This exception could cover cases where the aid amount to be received is small in comparison to the bank's risk weighted assets and the capital shortfall has been reduced significantly in particular through capital raising measures as set out in point 35. Disproportionate results or a risk to financial stability could also be addressed by reconsidering the sequencing of measures to address the capital shortfall'.
> - Since burden sharing and bail-in is key to our framework, we would like to clarify under what circumstances this would be possible.

Question 22 *.

	1 Strongly disagree	2 Disagree	3 Neutral	4 Agree	5 Strongly agree	I don't know / No opinion
* To which extent do you agree that State aid rules for banks in difficulty have ensured that Member States used State expenditure efficiently when providing aid to banks in difficulty?	○	○	○	○	○	●

Please explain the reasoning behind your answer to question 22.

4000 character(s) maximum

* Question 23.

Has the application of the State aid rules for banks in difficulty created any dispropo rtionate administrative burden?

- ○ Yes
- ○ -No
- ● I don't know / no opinion

Question 24.

To which extent have aid schemes contributed to administrative simplification and r educed the administrative burden? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid channelled through a scheme or granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion
* a) Liquidity aid schemes	○	○	○	○	○	●
* b) Recapitalisation and restructuring schemes	○	○	○	○	○	●
* c) Liquidation aid schemes	○	○	○	○	○	●

Please explain the reasoning behind your answers to question 24 (*also specifying 22a to 22c).*

4000 character(s) maximum

* **Question 25.**

Generally speaking, to which extent do you consider that the achieved benefits (advantages) of the control of State aid to banks in difficulty outweigh the incurred costs (disadvantages)? Please also provide a short explanation for your answer (including the specific benefits (advantages) and costs (disadvantages) and the specific stakeholder group(s) you may have in mind).

- ○ The benefits (advantages) always outweigh the costs (disadvantages)
- ○ In most cases, the benefits (advantages) outweigh the costs (disadvantages)
- ○ In most cases, the costs (disadvantages) outweigh the benefits (advantages)
- ○ The costs (disadvantages) always outweigh the benefits (advantages)
- ◉ I don't know / no opinion

Question 26.

To which extent do you consider that the costs (disadvantages) incurred by the following stakeholder groups have been proportional, taking into account the distribution of the benefits (advantages) achieved by the control of State aid to banks in difficulty? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) Aided banks (including their shareholders and investors)	○	○	○	○	○	◉
* b) Non-aided banks	○	○	○	○	○	◉
* c) Aid-granting public authorities	○	○	○	○	○	◉
* d) Taxpayers	○	○	○	○	○	◉
* e) Bank clients (both retail and corporate clients)	○	○	○	○	○	◉
* f) Other	○	○	○	○	○	◉

If selected 'Other', please specify:

Please explain the reasoning behind your answers to question 26 (*also specifying 26a to 26e).*

4000 character(s) maximum

Question 27.

To which extent have the following applied measures to reinforce market discipline and tackle moral hazard on the side of bank management, shareholders and investors been proportionate to the operational and administrative cost and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) Management remuneration cap	○	○	○	○	○	●
* b) Obligation to divest certain subsidiaries or activities	○	○	○	○	○	●
* c) Burden-sharing by bank shareholders (dilution)	○	○	○	○	○	●
* d) Burden-sharing by hybrid capital holders	○	○	○	○	○	●
* e) Burden-sharing by junior bondholders	○	○	○	○	○	●
* f) Ban on paying out dividends	○	○	○	○	○	●
* g) Ban on paying out d iscretionary coupons	○	○	○	○	○	●
* h) Other (please specify)	○	○	○	○	○	●

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 27 (*also specifying 27a to 27g).*

4000 character(s) maximum

Question 28.

To which extent have the following applied measures to mitigate the competition distortions stemming from the granting of aid to banks in difficulty been proportionate to the operational and administrative cost and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) Obligation to divest certain subsidiaries	○	○	○	○	○	●
* b) Obligation to divest certain activities	○	○	○	○	○	●
* c) Obligation to reduce the balance sheet total	○	○	○	○	○	●
* d) Ban on aggressive commercial practices	○	○	○	○	○	●
* e) Constraints on the competitive pricing of banking products (e.g. loans, deposits)	○	○	○	○	○	●
* f) Acquisition ban	○	○	○	○	○	●
* g) Obligation to exit the market (in case of liquidation aid)	○	○	○	○	○	●
* h) Other (please specify)	○	○	○	○	○	●

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 28 (*also specifying 28a to 28g).*

4000 character(s) maximum

Question 29.

To which extent have the following applied measures to restore the long-term viability of banks been proportionate to the operational and administrative cost and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) Measure and/or quantitative targets to improve revenue-generating potential	○	○	○	○	○	●
* b) Measures and/or quantitative targets to reduce operating costs	○	○	○	○	○	●
* c) The reform of internal risk management policy and corporate governance	○	○	○	○	○	●
* d) Measures to reduce complexity (e.g. reduction or termination of non-core activities)	○	○	○	○	○	●
* e) Divestment or termination of less profitable or loss-making activities	○	○	○	○	○	●
* f) Measure to de-risk the balance sheet (e.g. disposal of non-performing assets, risk protection, etc.)	○	○	○	○	○	●
* g) Investments (e.g. in IT infrastructure) to improve operational performance	○	○	○	○	○	●
* h) Other (please specify)	○	○	○	○	○	●

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 29 (*also specifying 29a to 29g).*

4000 character(s) maximum

We have no recent experience with the mentioned measures to restore the long-term viability of banks and therefore we are not in a position to comment on the operational and administrative burden to implement them.

We would like to emphasize the importance of strictly studying the viability and long term prospects of a bank prior to providing precautionary capital. See also answer to question 9.

Question 30.

To which extent has the application of the following requirements to restore the long-term viability of banks been proportionate to the operational and administrative costs and burden to implement them? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) The drafting, negotiation and implementation of a restructuring plan to demonstrate an aided bank's long-term viability	○	○	○	○	○	●
* b) The appointment of and interaction with an independent monitoring trustee to verify the compliance of the Member State and aid beneficiary with relevant State aid conditions (which reflect the applicable compatibility criteria)	○	○	○	○	○	●

Please explain the reasoning behind your answers to question 30 (*also specifying 30a to 30b).*

4000 character(s) maximum

Question 31.

To which extent are the following conditions for recapitalisation and restructuring schemes for small institutions in the 2013 Banking Communication proportionate to mitigate competition distortions and limit the administrative burden? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank under such schemes, which you may have in mind, and when these occurred).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion
* a) The balance sheet total of an eligible bank may not exceed EUR 100 million	○	○	○	○	○	◉
* b) The sum of the balance sheets of the banks that receive aid under a recapitalisation and restructuring may not exceed 1,5 % of the total assets held by banks in the domestic market of the Member State concerned	○	○	○	○	○	◉
* c) The authorization of recapitalization and restructuring schemes is limited to a period of six months	○	○	○	○	○	◉
* d) A Member State implementing a recapitalisation and restructuring scheme must report to the Commission on the use of the scheme on a six-monthly basis	○	○	○	○	○	◉
* e) Other	○	○	○	○	○	◉

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 31 *(also specifying 31a to 31d).*

4000 character(s) maximum

Question 32.

To which extent are the following conditions for orderly liquidation schemes for small institutions in the 2013 Banking Communication proportionate to mitigate competition distortions and limit the administrative burden? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank under such schemes, which you may have in mind, and when these occurred).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion
* a) The balance sheet total of an eligible bank may not exceed EUR 3 billion	○	○	○	○	○	◉
* b) A Member State implementing an orderly liquidation scheme must report to the Commission on the use of the scheme on a six-monthly basis	○	○	○	○	◉	○
* c) Other (please specify)	○	○	○	○	○	◉

If you selected 'Other', please specify:

Please explain the reasoning behind your answers to question 32 (*also specifying 32a to 32b).*

4000 character(s) maximum

We concur with the recommendation of the SRB that the six months deadline for aid schemes for small institutions should be adhered to more strictly > See recommendation from SRB 3.6.1. (30/31) p. 11-12

Questions about the relevance of State aid rules for banks in difficulty

The questions in this section aim at evaluating the relevance of the State aid rules for banks in difficulty over time, considering amongst others macroeconomic, financial stability and regulatory changes.

Background information on concepts referred to in the questions

After the latest revision of the State aid rules for banks in difficulty in 2013, the context in which the rules were applied changed considerably. First, as from 2015 the EU bank crisis management and deposit insurance (CMDI) framework entered into force and provided new EU tools to deal with failing banks, aimed at preserving financial stability and fostering a shift away from bank bail-outs by taxpayers. Second, the financial crisis which started in 2008 and the government debt crisis in some Member States which occurred afterwards have largely abated, but have still had long-lasting effects on EU banks. This has led to residual pockets of vulnerabilities in the banking sector in some Member States, for instance related to persistently high levels of non-performing loans. Finally, the COVID-19 pandemic which started in 2020 has had a strong economic impact. Although adverse effects on EU banks have not yet materialized, mainly thanks to the broad range of support measures adopted by Member States and at the EU level, the effects have not yet fully crystallised and could further affect the banking sector.

Question 33 *.

To which extent has the evolution of the State aid rules for banks in difficulty over time – as reflected in the successive Commission communications between 2008 and 2013 – taken into account the following factors? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion
* a) Changes in the overall macroeconomic and financial stability context between 2008 and 2013 (including in relation to the government debt crisis in some Member States)	○	○	○	○	○	●
* b) Other factors (please specify which factors you have in mind in the box below)	○	○	○	○	○	●

If you selected 'Other factors', please specify:

Please explain the reasoning behind your answers to question 33a:

4000 character(s) maximum

Question 34.

To what extent have the following factors affected the relevance and appropriateness of the State aid rules for banks in difficulty over time? Please also provide a short explanation why you gave a particular score (including the objectives envisaged by the control of State aid to banks in difficulty – namely to ensure financial stability while minimising the amount of aid and competition distortions – which you may have in mind).

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion

* a) Changes in the overall macroeconomic and financial stability context						X
b) Changes in banking sector regulation (other than the introduction of the EU bank crisis management and deposit insurance (CMDI) framework in 2015)						X
* c) Other factors (please specify)						X

If you selected 'Other factors', please specify:

Please explain the reasoning behind your answers to question 34 (*also specifying 34a to 34b)*.

4000 character(s) maximum

Question 35.

To which extent are the following compatibility pillars underlying the State aid rules for banks in difficulty still relevant and appropriate since the entry into force of the crisis management and deposit insurance (CMDI) framework in 2015?

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) The minimisation of distortions of competition following the granting of aid to preserve fair competition to a maximum extent					X	
* b) The absorption of losses by a bank, its shareholders and creditors (the so-called "burden-sharing") to limit the amount of State aid needed, thereby protecting the interest of taxpayers, and to reduce moral hazard					X	
* c) Restoring a bank's long-term viability to minimise the risk that the aided bank would require aid again in the future, or when this is not possible, ensuring its orderly market exit					X	

Please explain the reasoning behind your answers to question 35 (*also specifying 35a to 35c).*

4000 character(s) maximum

The pillars underlying the state aid framework are all still very relevant. We would like to add that alignment and consistency with the crisis management framework are of great importance as to not make one of the two frameworks (state aid or crisis management) an escape route for the other.

* **Question 36 *.**

To which extent has it been necessary to have State aid rules tailored to the specificities and sensitivities of the banking sector, compared to other economic sectors? To which extent could State aid to banks in difficulty have been controlled based on more generic State aid rules?

- (x) Click here to add an answer (free text)
- ( ) I don't know / no opinion

Please elaborate:

We prefer specific State aid rules for the banking sector to remain in place. First and foremost, specific State aid rules for the banking sector provide more legal certainty compared to generic State aid rules. As State aid to banks is often provided under time pressure, predictability and legal certainty are of key concern. Furthermore, State aid to banks has particular features not present in other types of State aid, e.g. potentially very large amounts of public funds used for banks in difficulty, significant spillover effects to the real economy, moral hazard problems etc. These require a tailored State aid regime.

* **Question 37.**

To which extent is it still necessary to have State aid rules tailored to the specificities of the banking sector?

- (x) Click here to add an answer (free text)
- ( ) I don't know / no opinion

Please elaborate:

We prefer specific State aid rules for the banking sector to remain in place. First and foremost, specific State aid rules for the banking sector provide more legal certainty compared to generic State aid rules. As State aid to banks is often provided under time pressure, predictability and legal certainty are of key concern. Furthermore, State aid to banks has particular features not present in other types of State aid, e.g. potentially very large amounts of public funds used for banks in difficulty, significant spillover effects to the real economy, moral hazard problems etc. These require a tailored State aid regime.

*

Question 38.

Have the State aid rules for banks in difficulty been adequate to also be applied *mutatis mutandis* to non-bank financial institutions (for instance insurance companies)? Please also provide a short explanation why you gave a particular answer (including specific circumstances of State aid granted to a non-bank financial institution which you may have in mind, and when these occurred).

- (x) Yes
- ( ) No
- ( ) I don't know / no opinion

Please elaborate:

In our view the State aid rules for banks are adequate to be applied to insurance companies. However, the communications do not elaborate on the compatability of specific forms of state aid for insurance undertakings, from the view of their different role. For example, it is unclear which measures to protect or compensate policy holders would be compatible with the State Aid rules. More attention could be given to these issues. See also the answer to question 42.

* **Question 39.**

Do you think that since 2008 the likelihood that difficulties at one or several banks lead to a serious disturbance in the economy of a Member State – thereby potentially warranting the granting of State aid to such bank(s) – has changed?

- (x) Yes
- ( ) No
- ( ) I don't know / no opinion

If yes, please elaborate (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred):

In our view the new and improved regulations and supervision since 2008 have strengthened the resilience of financial institutions, contributed to financial stability and reduced the possibility of widespread contagion in the banking and broader financial sector. This has probably reduced the likelihood that difficulties at banks lead to serious disturbances to a member state economy.

Questions about the coherence of State aid rules for banks in difficulty

The questions in this section aim at evaluating the internal and external coherence of the State aid rules for banks in difficulty. Internal coherence refers to the extent to which the different Commission communications setting out the State aid rules for banks in difficulty complement each other and do not lead to contradictions. External coherence refers to whether these communications are consistent and do not have any drawbacks in terms of policy outcomes when they interact with other EU legislation which also apply to banks in difficulty. Since 2015, these include in particular the EU bank crisis management and deposit insurance (CMDI) framework which sets out rules for handling bank failures and better protecting depositors. The CMDI framework consists of three EU legislative texts: the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD).

Question 40.

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* To which extent are State aid rules for banks in difficulty internally coherent?	○	○	○	○	○	●

Please explain the reasoning behind your answer to question 40.

4000 character(s) maximum

Question 41 *.

Measures to mitigate competition distortions may entail constraints (e.g. limiting the growth of certain activities) that make some strategies of aided banks to restore long-term viability (e.g. trying to increase revenues) more difficult to implement.

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* To which extent have the State aid rules for banks in difficulty ensured an appropriate trade-off between restoring the long-term viability of banks and mitigating competition distortions stemming from the aid granted to those banks?	○	○	○	○	○	●

Please explain the reasoning behind your answer to question 41.

4000 character(s) maximum

Question 42.

To which extent are the State aid rules for banks in difficulty coherent with the following other EU policies and legislation? Please also provide a short explanation why you gave a particular score (including specific circumstances of State aid granted to a bank which you may have in mind, and when these occurred).

	1 Not at all	**2** Rather not	**3** Neutral	**4** To a certain extent	**5** A lot	I don't know / No opinion
* a) Bank resolution rules (BRRD/SRMR) (since their entry into force in 2015)	○	◉	○	○	○	○
* b) Rules applicable to deposit guarantee schemes (DGSD)	○	◉	○	○	○	○
* c) EU merger control rules	○	○	○	○	○	◉
* d) Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak since its introduction in 2020	○	○	◉	○	○	○
* e) Other (please specify below)	○	○	○	○	○	◉

If you selected 'Other', please specify the EU policies or legislation which you have in mind:

Insurance Recovery and Resolution Directive (IRRD)

Please explain the reasoning behind your answers to question 42 (*also specifying 42a to 42d).*

4000 character(s) maximum

BRRD/SRMR
- The BRRD has restricted the possibilities to grant aid to banks outside of resolution. Within the Banking Communication 2013 this is possible. In the revision of the CMDI and the state aid rules, should ensure more consistency in conditions for accessing public support across crisis management methods, and conditions should be identical across methods when aid is used for the same purpose and benefit the same creditors. The current misalignment allows member states to provide extraordinary public financial support, thereby skewing incentives and circumventing the resolution objective to protect public funds by minimizing reliance on extraordinary public financial support.
- It is currently not clear how the concepts of a serious disturbance to a MS economy tie in to the concept of public interest. There have been cases where SRB found the PIA to be negative, whilst the Commission subsequently approved liquidation aid in order to remedy a serious disturbance. Looking forward, no bank should be significant enough – for instance because of risks it poses to financial stability - to receive public

support in the form of new capital under the national liquidation regime, whereas it is deemed not significant enough to be put in resolution by the SRB.
- It should also be prevented that a bank is eligible to precautionary recapitalization if it thereby circumvents and delays the necessary resolution action, or if it should actually be liquidated (and not resolved) if it were to be failing or likely to fail.
- Once a bank is FOLF and the PIA is negative, as a rule, DGCOMP should only allow for State aid in the form of “liquidation” support as part of a clear wind down plan leading the bank to exit the market, under such terms as to ensure ex post full burden sharing of at least all shareholders and subordinated creditors (for instance through the pricing of the support measure). And in a resolution case, the various forms of public support (SRF, DGS) should be subject to the same preconditions in terms of burden sharing if they deliver the same outcome with regard to creditors shielded from losses.

DGSD
- The treatment of DGS early interventions vis-a-vis State Aid rules is unclear and should be clarified. Currently, it lacks predictability and it is prone to legal challenge. To ensure level playing field, it should be clarified that early intervention pursuant to article 11(3) DGSD should at least carry the same level of burden sharing as precautionary recap in article 32(4) BRRD.
- We would welcome the Commission to include in the next revision a judgement on whether such a contribution from the DGS would constitute state aid, taking in mind the consequences for possible future contributions from the DGS, also in the context of discussions on an EDIS.

COVID temporary framework;
- The temporary waiver from burden sharing set out in paragraph 7 of the Commission’s temporary framework for State aid measures to support the economy in the current COVID-19 outbreak is providing additional flexibility in the framework and may provide for additional incentives to circumvent resolution. While COVID-19 posed a significant challenge to the EU economy, private loss sharing should remain the cornerstone to our framework. Going forward, how will the Commission do this when another crisis comes up?

IRRD:
- Negotiations on the Commission proposal for an Insurance Recovery and Resolution Directive are ongoing. It should be ensured that the IRRD and the State Aid framework are consistent with each other for example with regard to the possibilities to grant aid outside resolution. This may require specific provisions on state aid to insurance undertakings to ensure synergy between the framework and IRRD in a similar way to the proposed synergy between the framework and BRRD.

Questions about the EU added value of State aid rules for banks in difficulty

The questions in this section aim at assessing the EU added value of the State aid rules for banks in difficulty.

Competition policy – which includes State aid control – represents an area of exclusive EU competence pursuant to Article 3(b) of the Treaty on the Functioning of the EU (TFEU). Therefore the subsidiarity principle does not apply. The State aid rules for banks in difficulty covered by this evaluation are Commission guidelines (soft law) in the field of State aid law. In the absence of such State aid guidelines, Member States would have to notify all planned State aid measures individually to the Commission, and the

Commission would have to assess them directly under Article 107 TFEU and take individual decisions on each of them, which could entail further administrative burden.

* Question 43.

Have the State aid rules for banks in difficulty provided an added value in comparison to a situation without such guidelines, in which case each individual measure would have to be dealt with separately, directly applying the TFEU?

- (x) Click here to add an answer (free text)
- ( ) I don't know / no opinion

Please elaborate:

Yes added value

Question 44 *.

	1 Not at all	2 Rather not	3 Neutral	4 To a certain extent	5 A lot	I don't know / No opinion
* To which extent have the State aid rules for banks in difficulty ensured a coordinated approach to the financial support given by Member States (with different budgetary capacities) to their respective banking sectors?	( )	( )	( )	(x)	( )	( )

Please explain the reasoning behind your answer to question 44.

4000 character(s) maximum

The approach should become more coordinated with less national discretion and decisions on the PIA and the definition of a serious disturbance

Other Questions

* Question 45 *.

Do you want to raise any other points which may be relevant for the evaluation of the State aid rules for banks in difficulty?

- ( ) Yes
- (x) No

Question 46 *.

If you want to share any documents (e.g. data, research paper, position paper, etc.) which may be relevant for the evaluation of the State aid rules for banks in difficulty, please upload it here. Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Contact

COMP-EVALUATION-BANK-RULES@ec.europa.eu