

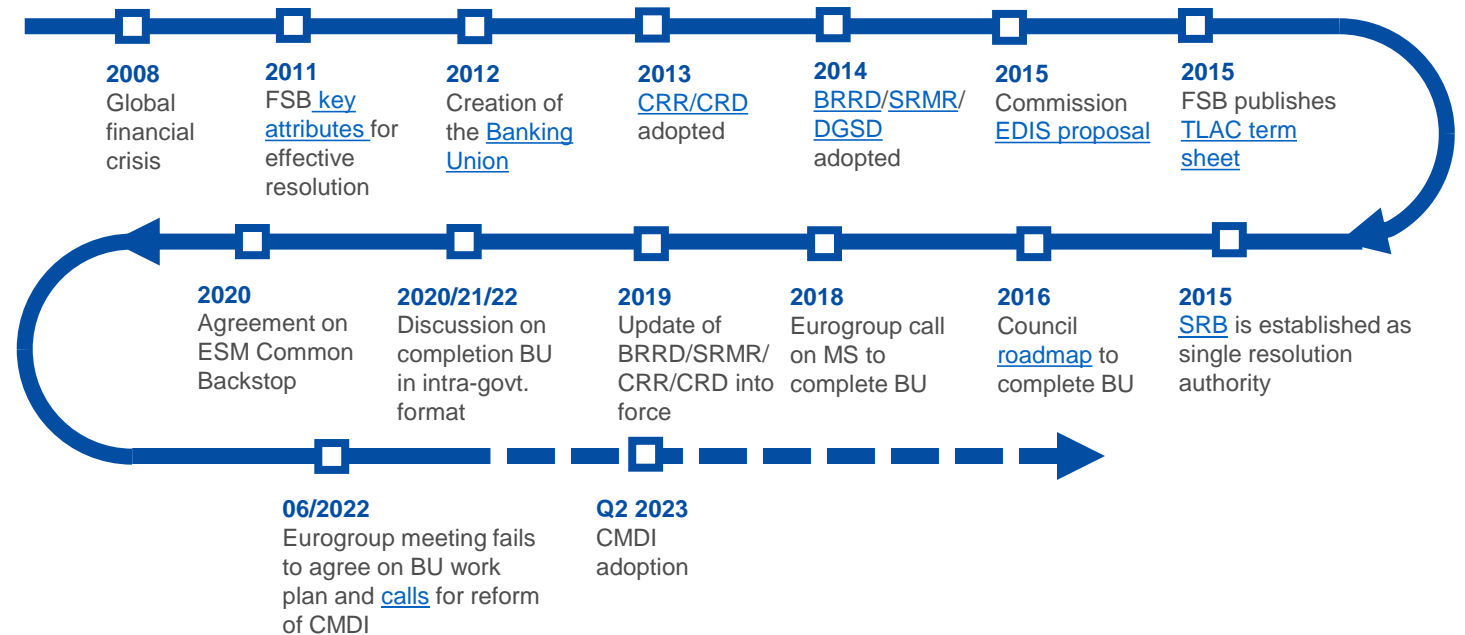


Bank Crisis Management and Deposit Insurance Package

27 April 2023

CMDI reform – a step towards BU completion

- Adoption by the Commission on 18 April 2023
- Important reform part of Commission's priorities (Political Guidelines, 2019)
- Long-standing project, contributing to the completion of the Banking Union
- Pave the way for new talks on completing Banking Union



Content

LEGISLATIVE ACTS

- Bank Recovery and Resolution Directive (amending Directive 2014/59/EU)
- Single Resolution Mechanism Regulation (amending Regulation 806/2014)
- Deposit Guarantee Schemes Directive (amending Directive 2014/49/EU)

FAST-TRACK

- Daisy Chain proposal (follow up of Regulation 2022/2036)

NON-LEGISLATIVE ACTS

- Single Supervisory Mechanism Review Report
- Impact assessment of the CMDI package
- Communication from the Commission on CMDI and the Banking Union

CMDI package - Narrative and objectives

KEY MESSAGES

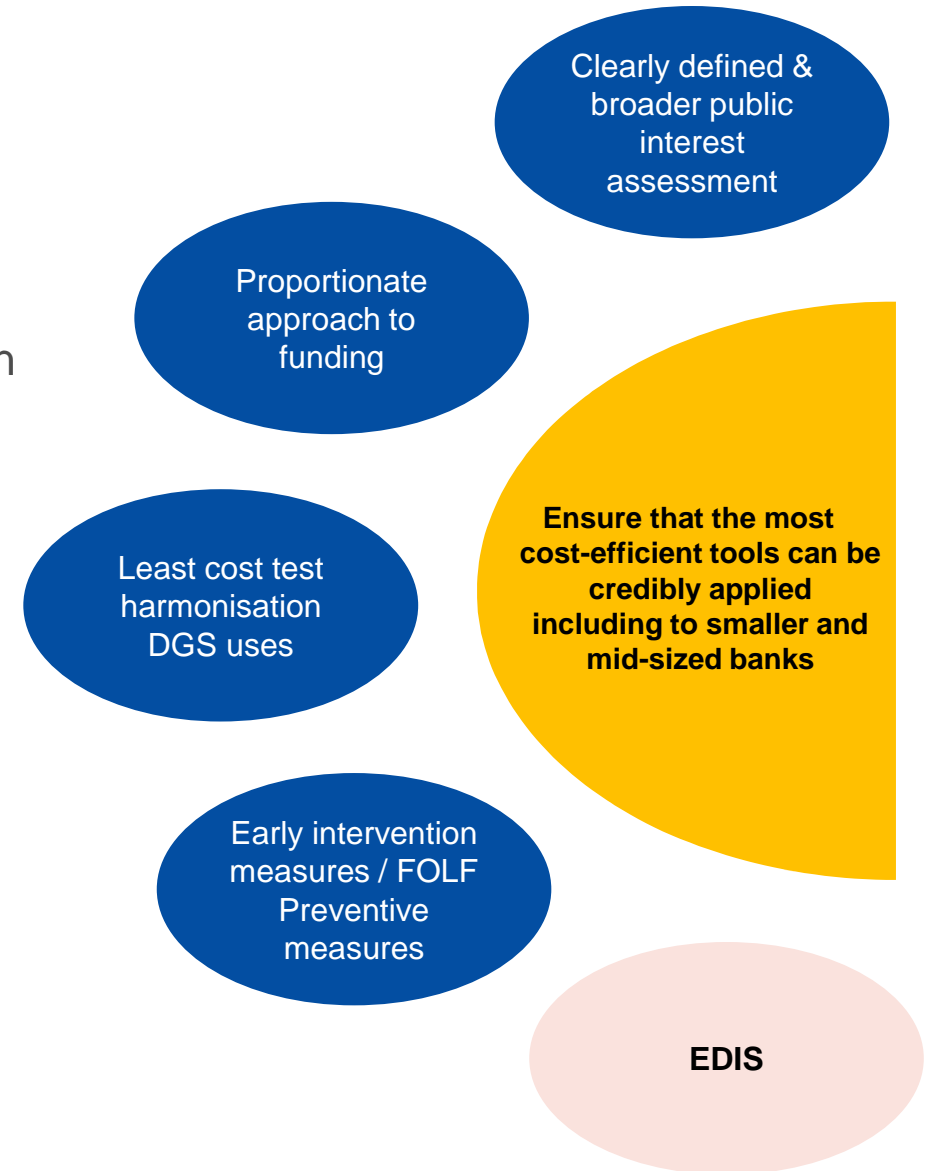
- Long-standing project – Not related to SVB and Credit Suisse failures. Public consultation started in 2021.
- Experiences of managing failed medium-sized and smaller banks outside resolution framework, with public funds - distorted incentives due to risk of bailing-in depositors in resolution
- Need for a consistent policy response, inter-relation between the provisions (no cherry-picking)

GOALS

- Preserve financial stability and taxpayers' money (use of DGS in resolution to shield depositors, where needed)
- Preserve value for the real-economy (advantages of resolution, in particular transfers. DGS uses other than payout are more cost-efficient)
- Better protection of depositors (no change to the coverage of EUR 100 000 but harmonisation of protection across the EU)

Main measures

- Improve predictability and encourage timely failing-or-likely-to-fail triggering (enhanced cooperation between competent and resolution authorities)
- Clarify early intervention measures
- Expansion of resolution scope (public interest assessment)
- Proportionate approach to funding in resolution: building on banks' internal loss absorbing capacity (first line of defence), effective use of deposit guarantee schemes resources and access to resolution funds
- Retain national options for preventive and alternative measures in insolvency, while improving level playing field and strengthening applicable conditions
- General, single-tier depositor preference in creditor hierarchy
- Harmonise least cost test safeguard (reduce arbitrage)



BRRD/SRMR: objectives of the review

Preserve **financial stability** and **enhance depositor protection**, instil **market discipline** and limit **moral hazard** and recourse to **taxpayers' money**

Promote a **wider use of the harmonised resolution framework**, while ensuring **consistency with national procedures** to avoid arbitrage

Balance between **level playing field** and **proportionate** approach (funding and bank-specific requirements)

Ensure that **industry-funded safety nets** can be used

BRRD/SRMR: content of the review

Early intervention measures

- Increase legal certainty and avoid overlaps between early intervention measures and CRD supervisory powers (triggers and available measures), while maintaining an escalation ladder (Articles 27-29 BRRD)
- Promote and strengthen coordination between competent authorities (CAs) and resolution authorities (RAs) (Article 30a BRRD / Article 13c SRMR)
- Provide directly applicable legal basis to ECB to apply those measures (Articles 13-13b SRMR)

Early warning of failing or likely to fail (FOLF)

- Provide for an enhanced cooperation and information sharing mechanism between CAs and RAs in the run-up to resolution (Article 30a BRRD / 13c SRMR)
- Require the CA to alert the RA sufficiently early in case of material risk of FOLF
- RA to define what is a 'reasonable timeframe' for the purposes of looking for alternative solutions able to prevent the failure

Public Interest Assessment (PIA)

- Definition of critical functions takes into account impact also at regional level (Article 2(1)(35) BRRD)
- Adjustments to the resolution objectives related to minimising reliance on public money and depositor protection (Article 31(1) BRRD / Article 14(2) SRMR)
- Procedural changes to the comparison between resolution and insolvency (Article 32(5) BRRD / Article 18(5) SRMR)

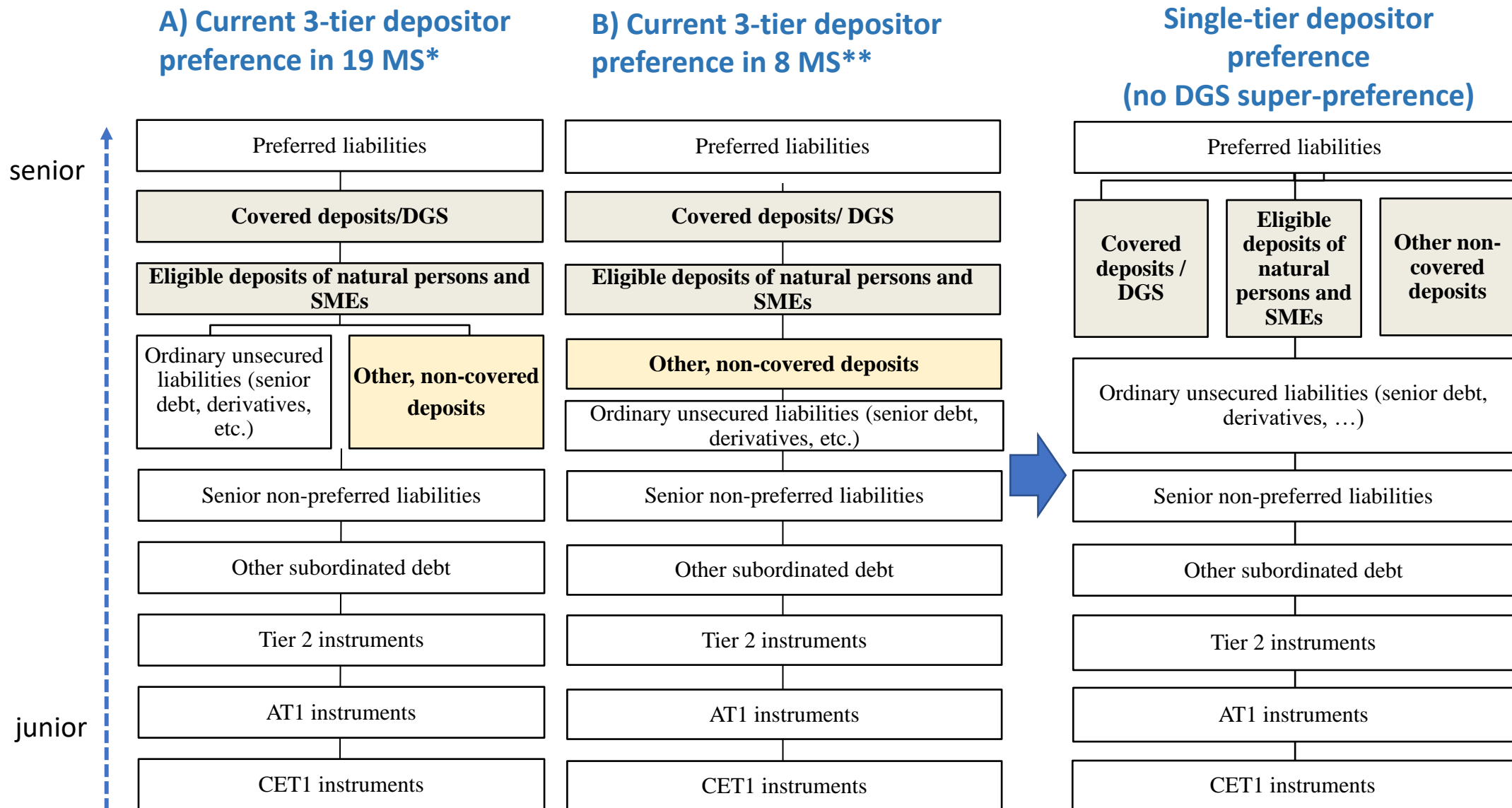
BRRD/SRMR: content of the review

Adequate funding in resolution

- **Banks' internal loss absorbing resources (MREL)** remain the first line of defence. The requirements to access the resolution fund/SRF are unchanged. Industry-funded safety nets, not taxpayers' money should be the second line of defence.
- The rules to **use DGS in resolution** are adjusted for **transfer strategies leading to market exit** (Article 109 BRRD / Article 79 SRMR):
 - The DGS may be used to cover the **difference** between the assets and the deposits transferred to a recipient and, where necessary, to contribute to the own funds of the recipient (negative price)
 - All **deposits** may be included in the scope of the transfer – however, for non-covered deposits, RA must demonstrate that the reasons for their protection are met (bail-in exclusions)
 - Other liabilities ranking below deposits may be included in the scope of the transfer, but the DGS can only be used to **support the transfer of deposits** (i.e. DGS contribution cannot be attributed to other liabilities)
 - The amount of the DGS contribution is limited by the **least cost test defined in the DGSD**
 - Where non-covered deposits are included in the transfer, the DGS contribution counts towards **compliance with the 8% TLOF requirement** for accessing the RF/SRF ('bridge function'), and is limited to the amount necessary to meet the 8% TLOF, compensating only for losses that would have otherwise been borne by deposits.
 - The use of DGS bridge to access the RF/SRF comes with safeguards: case by case decision of the RA (no automatism), only for transfer strategies with market exit, only for non-liquidation entities, only if the protection of non-covered deposits in a transfer is justified.
 - The DGS is covered by the '**no creditor worse off**' safeguard.

Depositor preference

- General depositor preference in the ranking of claims in national insolvency laws, with a single-tier ranking that removes the super-preference of DGS claims (Article 108(1) BRRD) – see next slide



* AT, BE, CZ, DE, DK, EE, ES, FI, FR, IE, LV, LT, LU, MT, NL, PL, RO, SE and SK.

** Other 8 MS have preferred non-covered deposits relative to ordinary unsecured claims (BG, CY, EL, HR, HU, IT, PT and SI).

Note: this illustration is stylized and simplified. In reality, the hierarchies of claims across MS are unharmonized, particularly in the senior layers, and may include additional sub-classes.

BRRD/SRMR: content of the review

EPFS and precautionary recapitalisation

- **List** of the admissible extraordinary public financial support (EPFS) outside resolution (Art 32c BRRD / Art 18a SRMR)
- Clarifications of **precautionary recapitalisation**:
 - Temporary nature, admissible instruments (CET1 as an exception and subject to a cap of 2% TREA of the institution) and exit strategy. Institution to be FOLTF if exit strategy is not followed.
 - Explicit reference to impaired asset measures
 - Assessment of solvency (Article 2(1)(54a) BRRD / Article 3(1)(5a) SRMR) by the competent authority
 - Quantification of losses done with the involvement of the competent authority, possibly on-site inspections

Additional changes

- **MREL calibration** for banks with transfer resolution strategies (Article 45ca BRRD / Article 12da SRMR)
- **Technical improvements of the MREL framework**, identified during the implementation of BRRD II (Articles 16a and 45b BRRD / Articles 10a and 12c SRMR)
- Further specifications on the applicable national procedures leading to **market exit** that should be available in case of **negative PIA** and role of **license withdrawal** (Article 32b BRRD)
- Treatment of **provisions** and **contingent liabilities** under the bail-in tool (Articles 36, 44, 46 and 53 BRRD)
- New **EBA mandates** on monitoring resolvability process, operationalisation of resolution tools and powers and coordination of crisis simulation exercises (Articles 15, 37, 44a and 128a BRRD)
- **Ranking in insolvency** of resolution fund/SRF claims (Article 108 BRRD / Article 76 SRMR)
- **Use of irrevocable payment commitments (IPCs) to contribute to resolution funds**: greater flexibility on their use with higher cap and enhanced role of the RA, clarification of situations where a bank exits the scope of BRRD/SRMR.

SRMR specificities

Governance of the Board

- Possibility for the Chair, Vice-Chair and permanent Board members to serve a **second term** in office (Article 56 SRMR)
- Granting of **voting rights to the Vice-Chair** (Articles 43, 53 and 55 SRMR)
- Adjustments to the procedural rules on establishment of the **budget** (Article 61 SRMR)

Task allocation between SRB and NRAs

- No change as to the original division of entities between SRB (SIs and cross-border LSIs) and NRAs (remaining entities)
- Clarification on **exercise** of certain powers in relation to SIs and cross-border LSIs: M-MDA restrictions (Article 10a SRMR), prior permission for eligible liabilities (Article 12 SRMR), detailed records of the financial contracts (Article 8 SRMR), pre-resolution moratorium (Article 18 SRMR), intervention in insolvency proceedings (Article 31 SRMR)

Exchange of information and disclosure

- Access to **ECB data** collected under its central bank function (Article 30 SRMR)
- Reference to **ESRB, ESAs, NCBs** in the obligations on cooperation and information exchange (Articles 30 and 34 SRMR)
- Possibility for the Board to **define the form of the data and the applicable procedure** when requesting data directly from institutions and entities (Article 34 SRMR)
- Possibility to **disclose** analyses, assessments and determinations made by the SRB (Article 88)

Daisy Chains Act: objectives of the review

Follow up on a **review clause** in Regulation (EU) 2022/2036 that introduced rules to foster the transfer of losses within banking groups

Assess possible **level playing field issues** among banking group structures, in particular for banks operating under a holding company

Separate proposal to ensure a **fast-track** negotiation before 2024 (1/1/2024 is the date of application of daisy chain rules)

Daisy Chains Act: content of the review

Internal MREL on a consolidated basis

- Allow resolution authorities to set internal MREL requirements for subsidiaries which are intermediate entities in daisy chains on a consolidated basis, leading to an exemption from the daisy chain deduction regime (Articles 45f BRRD and 12g SRMR)
- Scope: Intermediate entities part of *holding companies* and *operating companies* structures

Treatment of liquidation entities

- Removal of the general obligation to adopt an MREL decision for liquidation entities (Articles 45c BRRD and 12d SRMR) if MREL does not exceed own funds
- Clarifications of reporting obligations (Article 45i BRRD)
- Indirect effects on prior permission regime and daisy chain deduction regime

DGSD: objectives of the review

Clarify the scope of depositor protection to offer European depositors a harmonised top-notch level of protection across MS

Facilitate the least costly interventions of DGS funds when dealing with banks in distress to protect access to deposits

Enhance the functioning of the DGSs by simplifying administrative procedures, while improving their transparency towards depositors and relevant authorities

Increase convergence in the practices of DGSs to level the playing field for European depositors on coverage and repayment arrangements

Further improve cross border cooperation among the DGSs

DGSD: content of the review

Scope of depositor protection

- Protection of public entities, such as schools or hospitals
- Further harmonisation of the protection of temporary high balances – level of protection and scope of events
- Clarified and enhanced harmonisation of the protection of client funds deposits (deposits held by financial institutions because of segregation rules of clients funds: e-money institutions, investment firms etc.)

Uses of DGS funds

- Harmonised rules and safeguards on when and to what extent DGSs can use their funds to finance preventive measures (LCT, e.g. submission of a note to CA)
- Keep the possibility for DGS to intervene through alternative measures in insolvency, under certain conditions (LCT, marketing arrangements insolvency estate)

Least Cost Test

- Harmonised least cost test for all DGS interventions outside payout
- Net approach, time value of money and type of indirect costs in level 1 text
- EBA mandate for LCT detailed methodology

DGSD: content of the review

DGS funding

- Criteria on types of financial assets eligible to target level requirements
- Clarification of rule to rebuild target level in 6 years after depletion to less than two thirds of the target level
- Clarification of sequencing use of funds
- Investment strategy for DGS funds

Repayment process

- Harmonisation of the longer repayment period for most complex disbursements
- Burden of proof on depositors' side for beneficiary accounts and THB
- Withholding of the payout to a depositor that gives rise to AML/TF concerns
- Repayment above EUR 10.000 through credit transfer
- Some changes related to dormant accounts (cost threshold for active steps towards repayment, link to active account)
- Maximum period to claim deposits for depositors

International Cooperation

- Possibility for 'home' DGS to pay-out deposits in 'host' member states directly
- Host DGS point of contact under freedom of services
- Clarification on applicable amount to transfer in case of change of DGS affiliation
- Compulsory affiliation for third-country branches to DGS in EU Member State