



DECISION

The German Bundestag, at its 158th sitting of 25 February 2016,
on the basis of Bundestag printed paper 18/7644
on the

**Proposal for a Regulation of the European Parliament and of the Council
amending Regulation (EU) 806/2014 in order to establish a European Deposit
Insurance Scheme
COM(2015) 586 fin.; Council Doc. 14649/15**

re: Political dialogue with the European Commission

decided,

I. The German Bundestag notes:

1. On 24 November 2015 the European Commission published a legislative proposal on communitising deposit insurance ('EDIS - European Deposit Insurance Scheme'). The European Commission bases its proposal on Article 114 of the Treaty on the Functioning of the EU (internal market). Accordingly, EDIS is to be established in three stages: a re-insurance scheme in a first period (2017-2020), a 'co-insurance' scheme based on growing communitisation in a second period (2020-2023) and then, in a third period starting in 2024, the full communitisation of deposit insurance.
2. In its resolution of 4 November 2015 on the European Commission's deliberations on the establishment of a European deposit insurance scheme (printed paper 18/6548) the German Bundestag had already noted that the proposals on establishing a European deposit insurance scheme, including in the form of re-insurance, set out in the Five Presidents' Report of 22 June 2015 are not acceptable. Communitising banking risks by means of a common European deposit insurance scheme does not create trust in the security of savings deposits in Europe and does not contribute to the stability of banks. Moreover, it creates the wrong incentives: for national political measures at the cost of banks, and against a sustainable economic policy.

Against this background, the German Bundestag therefore called for steps to be taken now to ensure that the risks arising from banks for states and those arising from states for banks continue to be reduced on a sustained basis. In particular, that requires the consistent implementation of the resolution and deposit insurance directives in all Member States and the tested functionality of the Single Resolution Mechanism; to that end, it is vital to



have an effective and legally certain bail-in mechanism and to establish and finance effective national deposit insurance schemes. It is up to the Commission as guardian of the Treaties to monitor and implement this European legislation. It is also particularly necessary to reduce sovereign risks in banks' balance sheets and to that end to check the regulatory treatment of government bonds, especially in Europe. Member States must not be able to shift the consequences of national political decisions and the resulting banking risks to a Community fund. It is also advisory to implement at European level the proposals of the European High-level Expert Group chaired by Erkki Liikanen on restricting risky transactions, the introduction of loan ceilings in the case of real estate loans and ensuring a stricter separation between investment and commercial banking. This must not, however, put the financing of the real economy by the proven universal banking system at risk. On 24 November 2015 the European Commission presented a proposal for a regulation that, contrary to earlier communications from the President of the EU Commission, provides not for re-insurance but for the total communitisation of the European deposit insurance system within a period of eight years, whereas in regard to measures to reduce risks it merely published a communication setting out no concrete considerations and with no timetable.

3. It is most doubtful whether the current Commission proposal for a regulation complies with the principle of subsidiarity. For a start, it does not contain the justification and consultation required under Articles 2 and 5 of the subsidiarity protocol (Protocol No 2 to the Treaty on European Union). The declared aim of the Commission proposal is to preserve the integrity and enhance the functioning of the internal market, by establishing a more efficient and effective framework for deposit protection and ensuring a consistent application of the provisions on deposit protection. These aims can be adequately achieved at Member State level by implementing the Deposit Guarantee Schemes Directive (2014/49/EU; DGSD). The DGSD makes further-reaching, harmonised demands on the national deposit protection systems. In particular, it provides that in future Member States must ensure that the available financial means of a deposit guarantee scheme (DGS) must in principle reach a target level of 0.8% of the amount of the covered deposits of its member CRR credit institutions. Where the financing means of a deposit guarantee scheme are not sufficient to compensate depositors, special contributions must be raised. Moreover, Member States must ensure that deposit guarantee schemes have adequate alternative funding arrangements for short-term financing (e.g. by borrowing). These common requirements established for Member States already create a uniform level of protection at Member State level for depositors throughout the European Union while at the same time ensuring that deposit guarantee schemes show the same level of stability. Should Member States not apply, not fully apply or wrongly apply EU legislation in this area, the Commission as guardian of the Treaties must institute Treaty infringement proceedings against those Member States pursuant to Article 258 TFEU.

In addition, the Deposit Guarantee Schemes Directive (DGSD) allows lending to or borrowing from other deposit guarantee schemes. It also makes it possible to merge the deposit guarantee schemes of different Member States or to create separate cross-border deposit guarantee schemes. That enables the objectives of the proposal for a regulation – insofar as they also aim at improved financing mechanisms – to be achieved through cooperation among individual Member States. The Commission has not explained to what



extent the ‘substantial differences in the protection of depositors taken at national level, and subject to local specificities and funding constraints’ referred to in its explanatory memorandum, may, in spite of the implementation of the DGSD in all Member States, ‘undermine the integrity of the internal market’. The Commission proposal does not touch on national options. Nor has the Commission shown to what extent the proposed communitisation of deposit protection will be better able to achieve the stated objectives; in particular, it has not set out any qualitative or quantitative criteria. Contrary to the European Commission’s own Better Regulation Guidelines, it has neither submitted an impact assessment nor consulted the stakeholders concerned.

4. There are also considerable concerns as to whether the proposal for a regulation complies with the principle of proportionality. For a start, the Commission has not conducted the necessary impact assessment. By that token the proposal is not a suitable means of achieving the above objectives. The proposal is not aimed at the approximation of national legislative and administrative provisions and a homogenous internal market. It is designed solely to create a new financing instrument of deposit protection for banks in Member States that participate in the Banking Union (currently only eurozone states) by fully communitising national deposit protection schemes. Firstly, that would create unequal conditions for national deposit protection schemes, banks and depositors within and outside the Banking Union. Secondly, it would enable Member States to shift risks from the national banking sector to the European level. This is the wrong approach. It is more important to ensure now that the risks arising from banks for states and also those arising from states for banks continue to be reduced on a sustained basis.
5. The German Bundestag takes the view that Article 114 TFEU does not form a sound legal basis for the proposal for a regulation. The proposal is not aimed at the approximation of national legislative and administrative provisions. Unlike the original SRM regulation – which creates a resolution mechanism for credit institutions and certain investment firms at European level, supplemented by a fund (SRF) based on an intergovernmental agreement – the current proposal for a regulation (which is designed to supplement the SRM regulation) aims exclusively at creating a new financing instrument for deposit insurance at European level. The end result would be the total communitisation of the banks’ contributions and of the risks of deposit insurance in the Banking Union. That means the proposal goes much further than simply harmonising the legislative and administrative provisions of the Member States. Against this background, the German Bundestag takes the view that Article 114 TFEU does not constitute an appropriate legal basis for the proposal for a regulation.

The Commission proposal provides for setting up a fund to (re)finance national deposit protection systems and aims thereby to create a new EU task. Under current legislation, the introduction of new sources of revenue to finance EU tasks requires the unanimous decision of all Member States. This principle of unanimity protects budget autonomy and Member States’ responsibility; it applies regardless of whether the resources concerned are transferred by the Member States or paid directly by private credit institutions. Accordingly the Member States have agreed, e.g. in the framework of the Single Resolution Mechanism (SRM), that the banks’ contributions should be raised at national level and transferred by the Member States to the European level. To that end, the SRM regulation is to be supplemented by an intergovernmental agreement (IGA).



II. The German Bundestag therefore expects the Commission

1. against the background of the as yet incomplete implementation of the agreed rules in the framework of the Banking Union and the lack of practical experience in this regard, and also for the considerations of principle and law it has set out, to refrain from setting up a common European deposit insurance or deposit re-insurance scheme at this point in time,
2. to ensure that the adopted measures to set up the Banking Union are effectively implemented in all Member States and at European level; in particular, that means that major banks must have adequate buffers to absorb losses in the event of bank resolution,
3. to ensure that the risks arising from states for banks will be effectively reduced by further measures.

III. The German Bundestag requests its President to forward this decision to the Commission, the European Parliament and the Council.