Ministerie van Financiën

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Onze referentie
2026-0000136391

Datum 8 mei 2026
Betreft Nederlandse consultatiereactie herziening staatssteunkader voor banken

Geachte voorzitter,

De Europese Commissie heeft een consultatie geopend voor lidstaten over de herziening van het staatssteunkader voor banken. Het is goed dat de Europese Commissie het staatssteunkader voor banken herziet om deze in lijn te brengen met de recente aanpassingen van het raamwerk voor crisismanagement voor banken (*crisis management and deposit insurance*, CMDI).[1] Ik vind het belangrijk dat Nederland actief betrokken is bij deze discussie, vandaar dat ik ervoor gekozen heb om op deze consultatie te reageren.

Via deze weg stuur ik uw Kamer graag een afschrift van de Nederlandse reactie op de consultatie.

Hoogachtend,

de minister van Financiën,

E. Heinen

[1] Eerste Kamer der Staten-Generaal

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMPETITION

Markets and cases III: Financial services
State aid - Financial Institutions

Brussels, 01.04.2026
COMP.D.3/PAP/WD/LDS/BS/MP/OL/EM*
COMP(2026)3855380

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Subject: HT.4078 - Revision of SA rules for banks in difficulty – Call for Evidence – Targeted Consultation with Member States

Dear Madame/Sir,

To inform the ongoing review of the State aid rules for banks in difficulty, the Directorate-General for Competition would be glad to receive your views, as part of the targeted consultation envisaged under the related call for evidence.

The call for evidence followed the evaluation of the currently applicable rules for banks in difficulty. The evaluation found those rules as broadly fit for purpose. The rules seem to have been largely effective in reaching their twin objective of preserving financial stability while mitigating distortions to competition. However, the evaluation also concluded that the rules could be made clearer, as they are distributed across six communications, and more coherent with the EU institutional and regulatory structure, as evolved notably with the introduction of the Banking Union and the CMDI framework ([1]).

Annexed to this letter, you will find a questionnaire that focuses on the areas where consistency between the State aid rules and the EU CMDI framework could be improved and explores potential avenues to do so. We would appreciate your replies by no later than 8 May 2026. In your reply, you are kindly requested to inform the Commission services if any of the information provided is confidential ([2]). Otherwise, the Commission services will consider that none of the information provided in your reply contains professional or business secrets ([3]).

We would also like to invite you to participate in a virtual call that will take place on Monday 27 April 2026 from 14.00 to 17:00 with representatives of all Member States, ECB and SRB. The meeting would focus on the questions of the scope of the revised rules and wind-up aid scenario (sections A and B below), a more precise agenda will follow. We would be glad if you could confirm your participation by indicating, no later than 13 April 2026, the names of the participants via email to COMP-D3-MAIL@ec.europa.eu and comp-review-bc@ec.europa.eu.

Yours sincerely,

(1) Crisis management and deposit insurance, as resulting from the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD). References to the CMDI framework in the citations below refer to the recently agreed CMDI review versions.

(2) Commission communication on Professional secrecy 4582 of 1 December 2003 – Official Journal C 297, 9 December 2003 p. 6-9.

(3) To clarify, the Commission does not intend to publish the replies received but cannot discard potential future requests for information.

Electronically signed

Pierre-Arnaud PROUX

Head of Unit

Contact: comp-review-bc@ec.europa.eu

Annex: Questionnaire

A. Scope

Article 2(1) no. 28 BRRD and Article 3(1) no. 29 SRMR define "*extraordinary public financial support*" as "*State aid within the meaning of Article 107(1) Treaty of Functioning of the European Union ('TFEU'), or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) BRRD or referred to in Article 2 SRMR.* Extraordinary public financial support may occur in the following scenarios:

a. precautionary measures (see paragraph 1, point (a), paragraph 2 of Article 32c BRRD);

b. preventive DGS measures, if qualifying as State aid ([4]) (paragraph 1, point (b) of Article 32c BRRD, Articles 11(3), 11a DGSD);

c. aid in Resolution (i.e. following a positive public interest assessment – PIA): DGS contributions, if qualifying as State aid, and support by national resolution financing arrangements; Fund aid from the Single Resolution Fund (incl. its alternative funding sources); Government Financial Stabilisation Tools;

d. wind-up aid (outside resolution, i.e. following a negative PIA, e.g. in national insolvency or voluntary proceedings): alternative DGS measures, if qualifying as State aid (paragraph 1, point (c) of Article 32c BRRD, Article 11(5) DGSD) and State aid from the State budget (paragraph 1, point (d) of Article 32c BRRD).

1) Do you agree that the CMDI does not allow any other aid interventions for banks in difficulty?

We are missing a reference here towards state emergency law in Article 56-58 of the BRRD. Although outside the scope of CMDI, we note that there are possibilities to have aid from the ESM and aid from the State under contractual conditions (not being directly State aid).

2) Do you agree with a strict alignment of the scope of entities to be covered by the future Banking Communication with the scope of entities subject to BRRD/SRMR? This would not prevent other types of financial undertakings in difficulty from getting aid, but the assessment would be based directly on the TFEU. Reflecting the specificities of additional resolution frameworks beyond the CMDI, as they currently exist for insurance undertakings and central counter parties, would unnecessarily overburden the future Banking Communication, also given that there is no case history to date and dedicated guidelines could be established if the need arises.

We note that paragraph 26 of the Banking Communication currently entails a mutatis mutandis reference for insurers and we acknowledge the resolution framework in place for insurers, central counter parties (CCP's) and for investment firms under the BRRD.

Similarly, the current Banking Communication has important principles that we believe should govern State-aid towards all of those other financial entities. Amongst others:

(1) Minimization of competition distortions to preserve a maximum level of market discipline,

(2) Burden-sharing for shareholders and senior creditors to reduce moral hazard as well as protecting the interest of taxpayers, and

(3) Resorting the long-term viability and minimizing the risk that aid is again needed in the future or ensuring its orderly market exit.

To avoid overburdening the future Banking Communication, while at the same time adhering to these foundational principles, we suggest looking into similar guidelines dedicated for these other types of financial entities. This also increases consistency with the broader crisis management framework of these entities.

This should be done ex-ante to create transparency with regards to other crisis management approaches. Moreover, the guidelines should take care of the specificities of the entity, for instance with regards to the different financial risks of life insurers and health insurers.

We disagree with strict alignment of the scope of entities (and removing the mutatis mutandis reference to insurers) without replacing it with other (ex-ante) dedicated guidelines.

3) Would you be in favour of treating aid to specific other types of financial undertakings, e.g. credit unions, which are not in the scope of the CMDI, under the future Banking Communication? If yes, why so? What type of aid could be granted to such other financial undertakings and under which requirements?

(4) Deposit Guarantee Scheme (DGS) measures that are not imputable to the State do not qualify as State aid and are not subject to a compatibility assessment under State aid rules. In the present document, any reference to DGS measures is to be interpreted as limited to the measures constituting State aid.

How could the inclusion of credit unions, which fall outside the scope of the CMDI, fit into a Communication that has been aligned with the CMDI?

With geopolitical uncertainty as well as recent developments in AI and private credit, there might be non-bank financial entities in the future that resemble banks or perform bank-like functions. With that in mind, we can foresee those entities also within the scope of a future Banking Communication or with alternative similar guidelines tailored for these entities.

Credit unions fulfill in NL primarily a specific credit-facilitating function for small or medium sized enterprises. Dutch retail customers generally do not save or invest in credit unions. A credit union primarily constitutes a limited group of SME entities that form a cooperation. This cooperation chooses to lend money within the group, without intermediation from a bank. The target group consists mainly of SME-entities that could have problems with access to finance from traditional banks.

B. Objectives and types of aid

Aid to banks can only be compatible with the internal market for the purposes detailed under Article 107 TFEU. Under the 2013 Banking Communication, aid to banks in difficulty was to be assessed for the aim, under Article 107(3)(b) TFEU, of remedying a serious disturbance in the economy of a Member State. Other potential aims of compatible aid to banks can be e.g. those described under Article 107(3)(c) TFEU, i.e. to facilitate the development of certain economic activities or of certain economic areas.

4) With regard to wind-up aid (scenarios c. and d. above),

a. The revised PIA can be negative because national insolvency proceedings achieve the resolution objectives more effectively. In which cases would you expect that to be the case?

To our knowledge, we are currently not aware of concrete cases that clearly demonstrate national insolvency proceedings achieve the resolution objectives more effectively.

b. Which justification, within the scope defined by Article 107 TFEU, other than resolution objectives do you see for wind-up aid? Would this State aid objective be limited to specific national insolvency contexts or set of beneficiaries (e.g. banks with a certain geographical scope or size of activities)?

We believe that there is hardly any justification for State aid outside of the resolution objectives. In that regard, it is essential that the Banking Communication makes the resolution process work, in order to minimize the need for state aid as a last resort option.

When there are no resolution objectives at stake and the PIA is considered negative, we see this as a strong indicator to limit state aid as much as possible.

c. Do you think continued deposit access should be an objective for State budget aid in wind up or should this be reserved for alternative DGS

measures to be introduced in the jurisdiction?

We do not think continued deposit access should be an objective for State budget aid in wind up. This would essentially mean that the primary pay-out function of the DGS would be supplemented. The DGS is already compensating depositors up to EUR 100.000 and during the revision of the DGSD, this was considered a sufficient level of coverage in view of financial stability and consumer protection.[1] This could incentivize more use of the State budget instead of the private resources of the DGS, which is contrary to the overall objective of minimizing reliance on taxpayer money.

Moreover, continued overall deposit access is not a resolution objective or the result of a deposit pay-out in insolvency. This could result in a situation where deposits enjoy different levels of protection in resolution and in insolvency. Moreover, this could lead to different rules on burden sharing of (senior) creditors between resolution and national insolvency proceedings.

Taken together, we are critical of this concept and believe we should aim for a level playing field across Member States when it comes to the treatment of various crisis management approaches in the process in managing banking failures, thereby aligning the rules of burden sharing in resolution as well as insolvency as much as possible.

d. If continued deposit access should be an eligible objective also for aid from the State budget, do you think that wind-up aid from the State budget should not exceed the amount of covered deposits in the beneficiary bank, comparable to the least cost test for alternative DGS measures? Should the State have a right to recourse to the DGS when preventing a DGS payout obligation by using the State budget instead? The argument could be that Member States should prefer using the deposit insurance for its purpose (here, payout or alternative DGS measures), rather than injecting State budget resources and thus ensure continued access to deposits. If Member States use State budget instead of DGS funds and are not reimbursed by the DGS, this may subsidise the national banking sector, as it is spared from refilling the DGS.

As said above, we do not think that continued deposit access should be an objective for State budget aid. Furthermore, DGS funds should in all cases be used firstly before the question should arise whether state aid should be used.

e. In consistency with the objective(s) that you have identified (4.a to 4.c), what type of aid measures (e.g., capital, liquidity, type of tools funded) could be granted as wind-up aid from DGS or State budget? In particular, do you see a role for the provision of liquidity in wind up? If yes, under which circumstances and with which aim would you envisage the provision of liquidity?

[1] An increase in the current deposit coverage level of EUR 100,000 would have limited impact on financial stability and depositor protection, an EBA simulation shows | European Banking Authority

In similar vain as above, we believe that there is hardly any justification for wind-up aid from the State outside of the resolution objectives. In that regard, it is essential that the Communication on state aid ensures that resolution processes work with appropriate private burden sharing, in order to minimize the need for state aid as a last resort option in order to protect taxpayers.

If wind-up (liquidity) aid is considered in insolvency cases with a negative PIA, it should be limited as much as possible and only be allowed in very specific cases. These specific cases should not be justified on grounds that are already assessed in the context of the PIA. Moreover, it should be conditioned as part of a market exit plan and not give options for arbitration between crisis management approaches.

Lastly, DGS funds should only be used accordingly within the merits of the DGSD and before State aid is considered as a last resort option.

5) Aid can be provided by Member States either on an individual basis or through schemes that the Commission approves ahead of individual disbursements, waiving future notifications, provided the aid complies with pre-established compatibility criteria. The evaluation found that past State aid schemes contributed to the minimisation of competition distortions.

a. Do you consider pre-approved schemes still relevant and justified? If yes, in which CMDI scenario a-d., as described above?

We do consider pre-approved schemes still relevant and justified. This gives more clarity and consistency with regards what constitutes state aid and wat does not. This is particularly relevant in scenario's of imminent banking crisis where quick intervention is warranted.

b. Could it make sense to allow dedicated schemes for precautionary liquidity and/or capital measures in times of extraordinary market stress, as it happened e.g. during the 2008-09 global financial crisis?

We note that during COVID-19, a temporary waiver from burden sharing was set out in the State aid measures to support the economy. In our view, private loss sharing should remain a cornerstone to the overall framework. From this perspective we would see merit for having dedicated schemes ex-ante to increase transparency and consistency across the framework and avoid having to rely on ad-hoc measures.

c. Given the expansion of the scope of resolution in the CMDI review, but also the ultimate uncertainty in the outcome of the PIA, would you see room for wind-up aid schemes and, if yes, how could they be operationalised? Which thresholds, e.g. in terms of size of the potential beneficiaries, should be applicable?

In similar vain as above, we believe that there is hardly any justification for wind-up aid from the State outside of the resolution objectives. With regards to aid-schemes in insolvency cases (with a negative PIA), it should be limited as much as possible and only be allowed in very specific cases. These specific cases should not be justified on grounds that are already assessed in the context of the PIA.

C. Compatibility Assessment

In its assessment of aid compatibility, the Commission is guided by the TFEU and the past practice, as scrutinized by the Court. Under the 2013 Banking Communication, aid compatibility was to be assessed around three pillars: (i) viability prospects of the beneficiary's bank, (ii) minimization of aid through own contribution, (iii) minimization of competition distortion. The evaluation found these compatibility principles relevant, but their details may be reviewed. The future State aid guidelines for banks in difficulty can take into positive account the CMDI provisions that help meet the – possibly reviewed – compatibility principles in each specific scenario a-d., as described above.

i. Viability Assessment

The evaluation confirmed that the assessment of the viability prospects of the beneficiary bank is important to ensure that aid is appropriately channelled to meet its objective. Currently, Member States are expected to submit a restructuring plan, in the context of the compatibility assessment of aid aimed at maintaining the beneficiary bank in the market (now called restructuring aid), to – among others – demonstrate the bank's viability prospects and commit to the actions deemed necessary for the restoration/preservation of its viability. Also in the case of sale with liquidation aid, the Commission assesses the viability of the entity resulting from the sale, sometimes on the basis of a restructuring or integration plan.

6) Please share your views on the possibility of waiving the requirement for a restructuring plan, at least the part dedicated to viability aspects, in the cases of,

   a. Precautionary measures, *if* the amounts of injected capital or liquidity are within certain limits (e.g. 2% of Total Risk Exposure Amount for capital measures and 5% of liabilities for liquidity measures) and/or *if* the beneficiary's unlikely losses are quantified in a conservative manner based on a recent, comprehensive and dedicated Asset Quality Review (or at least an On-Site Inspection). In such cases, the Commission may find comfort on the beneficiary's viability prospects in the safeguards embedded in the CMDI, as represented by e.g. the solvency assessment and the envisaged exit/remediation plan;

Precautionary measures are typically deployed within a narrow time window, where the effectiveness of intervention depends on the speed of action. In such circumstances, requiring a full viability assessment as part of a restructuring plan may delay the implementation of support measures, thereby increasing the risk of escalation and potential contagion.

Furthermore, key elements of viability are already comprehensively assessed in the existing prudential and crisis management frameworks. In particular, the CMDI framework requires authorities to determine whether an institution is failing or likely to fail and, where relevant, to ensure the implementation of appropriate remediation measures.

Where this is combined with additional safeguards, such as a recent and comprehensive Asset Quality Review (or an on-site inspection), the value of a dedicated viability section within a restructuring plan may be limited. In such cases, the requirement risks becoming

duplicative.

It is important for us that the State aid framework is, to the greatest extent possible, aligned with the CMDI framework. Recognizing that viability is already implicitly assessed within the CMDI framework would support such alignment and enhance the overall coherence of the EU crisis management architecture. Therefore, there may be merit in introducing a conditional and proportionate waiver of the requirement to submit a full viability assessment in the context of precautionary measures, subject to appropriate safeguards.

b. DGS preventive measures, resolution and (depending on the scenario potentially also) wind-up, if and where the Commission may rely, with the aim of avoiding duplications and without compromising its own State aid control mandate, on the viability assessment performed e.g. by the supervisory and resolution authorities ([5]).

Please see the answer above.

7) On the contrary, do you consider that the requirement for a restructuring plan / viability assessment by the Commission should be waived in all cases, given the institutional framework as well as the CMDI requirements to establish the viability of supported activities or their market exit?

We do not consider that the requirement to submit a restructuring plan should be waived in all cases.

While the existing institutional framework such as the CMDI framework, provides for comprehensive assessments of institutions' financial soundness and, where relevant, their failure or likely failure and market exit, these assessments serve different purposes. State aid control has a role in ensuring compatibility with the internal market, including the proportionality of aid and the limitation of distortions of competition. In this context, a viability assessment remains an important element.

At the same time, we acknowledge that there is significant overlap between the assessments carried out by supervisory and resolution authorities and those required under State aid rules. The existing framework therefore offers room to streamline procedures and reduce duplication, in particular by allowing the Commission to rely, where appropriate, on robust and recent supervisory or resolution assessments.

Against this background, rather than a general waiver, we would favor a more targeted and proportionate approach by the European Commission. This could involve limiting the requirement for a full restructuring plan in circumstances where viability has already been credibly assessed through existing frameworks and where adequate safeguards are in place.

8) In case a restructuring plan were to be required, what is your view on the principles guiding its design? Do you agree with the view – as emerged in the context of the consultation performed when evaluating the current rules – that measures aiming at reforming internal risk management policy and corporate governance, the divestment of loss-making activities and more generally the balance-sheet de-risking should be preferred to, e.g., measures aiming at improving the aided bank's revenue-generating potential?

We agree with the view that balance-sheet derisking is preferred. Amongst others, a proportionality principle can be used to guide its design, ensuring duplication is minimized, overlap is tackled and procedures are streamlined to the maximum possible.

ii. Minimisation of the aid, including through burden sharing

To be compatible, aid must be limited to the minimum necessary to meet its objectives. With that aim, the 2013 Banking Communication introduced a uniform burden sharing requirement applied in all cases (except mere liquidity aid) and demanding that the most junior categories of incumbent investors (i.e. shareholders and subordinated debtholders) in the beneficiary bank shared the burden with the aid provider. In parallel, the CMDI framework has introduced various provisions requiring that certain losses are first absorbed by the bank's incumbent investors (e.g. write down and conversion of MREL). The evaluation found that State aid burden sharing requirements have been effective in addressing moral hazard and reinforcing market discipline, but that their review – possibly with a progressive approach throughout the various aid scenarios a-d. described above – is necessary to ensure EU legislative coherence.

9) Please share your views about the appropriate levels of private contribution for competition purposes (and the consistent State aid burden-sharing requirements) in the context of:

   a. precautionary (capital) measures, where the CMDI prohibition to cover incurred or likely losses already implies that those losses are borne by the beneficiary bank's incumbent investors. Do you agree that this implicit private contribution may also be appropriate for competition purposes, so that the State aid burden sharing requirements may rely on that provision? If not, what would justify additional burden sharing?

In the context of precautionary recapitalization measures, we consider that the CMDI framework ensures a meaningful level of private sector contribution, as such losses must be fully borne by the institution's existing shareholders and, where relevant, subordinated creditors. This mechanism effectively delivers an implicit form of burden-sharing, which contributes to limiting moral hazard and mitigating distortions of competition.

In this respect, it is important that the State aid framework is, to the greatest extent possible, aligned with the CMDI framework. Recognizing the implicit burden-sharing embedded in CMDI would support such alignment and enhance the overall coherence of the EU crisis management architecture.

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(5) In preventive DGS measures, the accompanying note and the business reorganisation plan should ensure the restoration of long-term viability according to the CMDI. In resolution, the resolution authority may apply the bail-in tool to recapitalise an entity only if there is a reasonable prospect that the application of the tool together with other relevant measures will, in addition to achieving relevant resolution objectives, restore the aided entity to financial soundness and long-term viability. The viability of bridge banks is subject to banking supervision. The business plan for the acquired entity is to be presented by the buyer in the qualifying holding proceedings.

b. preventive DGS (capital) measures, where the CMDI does not foresee an implicit private contribution comparable to that in e.g. precautionary measures. Do you agree that burden sharing requirements remain warranted under State aid rules, to ensure consistency of treatment across different instruments (e.g. between precautionary and preventive measures)?

Overall, we would support maintaining burden-sharing requirements in this context.
In the context of preventive DGS capital measures, we note that, unlike in precautionary recapitalization, the CMDI framework does not explicitly ensure an implicit private sector contribution through the absorption of losses. As a result, the level of private contribution may be more limited or less clearly defined.

In this context, we consider that burden-sharing requirements under State aid rules continue to play an important role. In particular, they help to ensure that shareholders and, where appropriate, subordinated creditors contribute to the costs of intervention, thereby limiting moral hazard and mitigating distortions of competition.

We also see merit in maintaining a degree of consistency in the treatment of different intervention tools. Ensuring that comparable levels of private contribution are required across precautionary and preventive measures would support a level playing field and reduce incentives for regulatory arbitrage between instruments.

c. wind up aid (from alternative DGS measures or State budget): What would be the necessary level of burden sharing? Would you agree that the burden sharing requirements in wind up should be as close as possible to the bail-in mechanism that allocates losses to the incumbent investors in resolution, with the aim of ensuring a consistent, i.e. unbiased, application of the two instruments? At the same time, given the operational peculiarities of the two instruments, including their legal set up and the different set of powers enjoyed by e.g. the Single Resolution Board and the national insolvency receiver, how do you think this alignment could be reached? Do you think that excluding eligible deposits from burden-sharing could be appropriate? Alternatively, should exclusions from burden-sharing be more constraint, given that grounds for exclusions (comparable to those in resolution under Article 44(3) BRRD) might not be as relevant, in particular where the existence of resolution objectives has been denied?

In the context of wind-up aid, whether financed through alternative DGS measures or the State budget, we consider that a robust level of private contribution remains essential to limit distortions of competition and safeguard market discipline.

Therefore, we see clear merit in aligning burden-sharing requirements in wind-up as closely as possible with the bail-in principles applied in resolution.

Such alignment would support robust burden sharing, and a consistent and unbiased application of the two frameworks, reduce incentives for regulatory arbitrage between instruments, and strengthen the credibility of the overall crisis management architecture.

iii. Minimisation of competition distortion

The minimisation of competition distortion is the core element to ensure aid compatibility. With that aim, Member States have typically committed, to an extent depending on the specific aid context, to measures that the evaluation found to have played an effective role in mitigating competition distortions. These measures can be classified in the following two main groups:

- Behavioural measures, which are constraints of the aided entity's behaviour and strategy on the market and include acquisition bans and the prohibition to advertise the receipt of State aid.
- (Quasi-) structural measures, which are commitments to alter the balance sheet towards a non- or less-distortive structure and may encompass divestments (e.g. of a bank's subsidiaries), the sale of certain assets, the closure of activities, etc.

10) Do you share the view that (quasi-) structural measures may remain appropriate in e.g.

   a. precautionary (capital) measures, if the injected capital exceeds 2% of the beneficiary's TREA;

   b. preventive (capital) DGS measures, taking into account your reply to question 9)b above (in light of the existing trade-off between the aid amount and the ensuing distortion of competition) and the fact that – in this scenario – competitors contributing to the DGS are compelled to rescue a failing bank and continue to compete against that aided entity;

   c. (capital support in) an open bank bail-in, as opposed to other resolution tools and wind-up scenarios, where most of the bank's operations are typically expected to be sold or discontinued by the nature of those scenarios and regardless of the application of State aid rules.

We share the view that (quasi-) structural measures are appropriate for all the options mentioned below.

D. Other

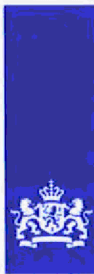
1) Are there any other considerations that you want to share with the Commission's services with regard to the review of the State aid rules for banks in difficulty? Please limit the reply to this question to one page.

In our contribution to the 2022 evaluation of State aid rules for banks in difficulty, it is stated that we need to review the State aid rules in order to make the Banking Communication clear and consistent. This is necessary to achieve our overarching goals: to make an end to public bail-outs, to deliver stronger market discipline, a more level playing field, and better protection of taxpayers' money. We deem many of the points made in this contribution still relevant for the current review. We would like to highlight a few of these points:

- *It is important for us that the State aid framework is, to the greatest extent possible, aligned with the CMDI framework.*
- *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.

- *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.*
- *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 an 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.*
- *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.*
- *The concept of 'serious disturbance' under Article 107 (3)(b) TFEU should be defined more clearly by establishing clear criteria.*



Ministerie van Financiën

TER BESLISSING – REACTIE GRAAG UITERLIJK 7 MEI I.V.M. DEADLINE

Aan

De minister

Financiële Markten
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Persoonsgegevens

nota

FM 136065 Nederlandse consultatiereactie herziening staatssteunkader voor banken

Datum
20 april 2026

Notanummer
2026-0000136065

Bijlagen
1. Nederlandse consulta
2. Kamerbrief EK
3. Kamerbrief TK

Aanleiding

Het Europese staatssteunkader voor banken wordt herzien. Voorafgaand aan de herziening heeft de Europese Commissie een consultatie uitgezet bij lidstaten om inbreng op te halen. Om het Nederlandse standpunt over te brengen adviseren wij te reageren op deze consultatie. In de bijlage vindt u de concept beantwoording.

Beslispunten

1. Bent u akkoord met verzending van bijgevoegde consultatiereactie?
2. Zo ja, dan zullen we de reactie naar de Europese Commissie sturen. U informeert de Tweede Kamer en Eerste Kamer door hen een afschrift te sturen. Wij verzoeken de aanbiedingsbrieven (bijlage 2 en 3) te ondertekenen ten behoeve van verzending aan de Tweede Kamer en Eerste Kamer.
3. Bent u akkoord met het openbaar maken van de nu voorliggende stukken?

Kernpunten

- In de conceptreactie op de consultatie geven we aan dat het staatssteunkader voor banken in lijn moet zijn met de recente herziening van het crisisraamwerk voor banken. Daarnaast onderschrijven we het belang van een gelijk speelveld en private lastendeling voor aandeelhouders en senior crediteuren.
- De Europese Commissie heeft alle lidstaten, de Europese Centrale Bank (ECB) en de Single Resolution Board (SRB) op 27 april uitgenodigd voor een eerste bespreking van de consultatie.

Toelichting

- Het uitgangspunt in de EU is dat het geven van staatssteun aan ondernemingen niet is toegestaan omdat dat in strijd is met de interne markt. Het verdrag betreffende de werking van de EU voorziet in een aantal uitzonderingsgronden waaronder een lidstaat wel geoorloofde staatssteun kan verlenen.
- Het is een exclusieve competentie van de Europese Commissie om te beoordelen of staatssteun geoorloofd is. Om hier vooraf aan lidstaten duidelijkheid over te scheppen heeft de Commissie hier kaders voor.
- Banken zijn specifieke ondernemingen met een centrale (systeem)rol in de economie en het financiële systeem; het omvallen van een bank kan de financiële en economische stabiliteit in gevaar brengen. Om dit te voorkomen kan het verlenen van staatssteun toegestaan zijn, waarvoor de Europese

Commissie een specifiek kader heeft opgesteld. Dit kader is ontwikkeld tijdens de financiële crisis (vanaf 2008) en in 2013 in werking getreden.

- Het staatssteunkader dateert daarmee van voor het crisisraamwerk voor banken (CMDI, Crisis Management and Deposit Insurance). Een van de doelen van het crisisraamwerk voor banken is juist het beperken van de noodzaak van staatssteun aan banken door met resolutie een alternatieve afwikkelingsroute te creëren waarbij de financiële stabiliteit gewaarborgd kan worden zonder staatssteun te hoeven verlenen.
- Het is dan ook de bedoeling om het staatssteunkader in lijn met de herziening van het crisisraamwerk te moderniseren. De Europese Commissie heeft daarom een consultatie uitgezet om inbreng op te halen voor de herziening van het staatssteunkader voor banken.
- Nederland heeft in Europese discussies altijd benadrukt dat het staatssteunkader voor banken in lijn moet worden gebracht met de regels en principes uit het crisisraamwerk. In het algemeen betekent dat het volgende:
  - Staatssteun moet zoveel mogelijk worden beperkt om belastingbetalers te beschermen en een gelijk speelveld tussen banken te garanderen.
  - Financiëlestabiliteitsoverwegingen mogen geen hoofdreden meer zijn om staatssteun te verlenen, omdat de financiële stabiliteit wordt geborgd door een bank in resolutie te laten gaan.
  - In het geval er toch staatssteun wordt gegeven, moet er een adequate mate van private lastendeling (*bail-in*) worden toegepast.
- Dat betekent onder meer dat we het uitbreiden van de bescherming van deposanten niet als legitieme doelstelling voor staatssteun zien[1]. De huidige mate van bescherming via private fondsen zoals het DGS (tot EUR 100,000) vinden we voldoende.
- Ook voor beleggingsfondsen, verzekeraars en centrale tegenpartijen (CCP's) zijn separate crisisraamwerken ontwikkeld. Vanuit het oogpunt van consistentie is het wenselijk dat de belangrijkste principes (zoals private lastendeling) uit deze crisisraamwerken eveneens worden toegepast binnen het staatssteunkader voor deze partijen, en dat staatssteun voor deze partijen ook zoveel mogelijk wordt beperkt. Daarom stellen we voor om, naast banken, ook voor deze partijen aparte kaders in te richten om deze principes te borgen. Dit draagt bij aan een coherent geheel van crisisbeleid voor deze financiële instellingen.

Communicatie
n.v.t.

Politiek/bestuurlijke context
In het verleden was er aandacht voor staatssteun aan de Europese bankensector, onder meer in het kader van de financiële crisis van 2007/08.

Informatie die niet openbaar gemaakt kan worden
Niet van toepassing.

[1] De doelstellingen in resolutie is het beschermen van gegarandeerde deposito's. Dat zijn tegoeden onder EUR 100.000,- In dezelfde lijn is het depositogarantiefonds (DGS) in faillissement erop gericht om gegarandeerde deposito's te compenseren. Deposito's boven EUR 100.000,- zijn dus niet beschermd.