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From: Presidency  
To: Working Party on Financial Services and the Banking Union (Insurance)  
Financial Services Attachés

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Subject: IRRD: 20.07.22  
- Presidency non-paper on resolution financing arrangement

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# Non-paper Resolution Financing Arrangement

## Background

This non-paper is intended for discussion in order to follow up on the financing topic from the last two working parties that took place during the French Presidency. The Presidency would like to invite all Member States to share at least their preliminary positions in order to have a better understanding of Member states views, which would feed into the preparation of a possible concrete proposal for discussion at one of the next working parties. The discussion on funding has so far taken place only among a part of the Member States and there is no complete picture as to whether the majority of Member States would be in favour of including at least a minimalist option to provide for resolution funding in the IRRD proposal. Based on the ideas of the Dutch non-paper and bearing in mind the minimum harmonisation goal, the Presidency presents the following summary and questions for discussion.

Based on the previous discussions it seems that a specific form of resolution financing arrangements is an important part of establishing a credible recovery and resolution framework in the insurance sector. As noted in the Progress Report of the French Presidency, some Member States have called for an open discussion on the costs of resolution and the mechanisms for financing them. The draft IRRD addresses this issue by leaving flexibility to the Member States, with the exception of Article 26(5) of the IRRD, which provides for:

*„The resolution authority may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or exercising the resolution powers in one or more of the following ways:*

*(a) as a deduction from any consideration paid by a recipient to the undertaking under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;*



*(b) from the undertaking under resolution, as a preferred creditor;*

*(c) from any proceeds generated as a result of the termination of the operation of the bridge undertaking, the asset and liability management vehicle or the insurance or reinsurance undertaking in solvent run-off, as a preferred creditor.”*

### Home-host principle

One of the basic principles of IRRD is that public funds should be protected from bearing losses resulting from the failure of an insurance or reinsurance undertaking. At the working party in March the topic of financial arrangements was also raised in a cross-border context while also focusing on the home-host balance. Based on the previous discussions we are of the view that we should also avoid applying a double burden in the case of cross-border activity of an undertaking and therefore external financing arrangements should be established on one of the following principles

(a) **the home Member State**, where it applies to the business of the insurance or reinsurance undertaking carried out in both the home and the host Member State. It implies that insurance or reinsurance undertakings operating in the host Member State should not be required, under the right to establish branches or the freedom to provide services, to participate in the host State's resolution financing arrangement, or

(b) **the host Member State**, where it applies to the activities of a domestic insurance or reinsurance undertaking carried out in the home Member State and of an insurance or reinsurance undertaking from another Member State carried out under the right of establishment of branches or the freedom to provide services. It implies that insurance or reinsurance undertakings from another Member State operating in the host Member State under the right of establishment or the freedom to provide services should be required to participate in the resolution financing arrangement of that host State.

### Questions to the Member States:

Q1. Would Member States agree with the broadening of the IRRD proposal via the obligation to set up any form of national arrangements for external resolution financing?



Q2. If the answer to question 1 is yes, which one of the principles mentioned above should be incorporated in the draft IRRD and why?

### Use of resolution financing arrangements

The IRRD proposal should in line with the minimum harmonisation principle leave the decision on the form and method of financing arrangement up to the Member States. However, the Presidency considers as important to specify also the types of costs that should be covered by such an arrangement.

The resolution financing arrangement should **at least** cover costs

(a) administrative expenditures linked to the specific resolution case, such as valuation undertaken by independent valuer,

(b) for the implementation of resolution tools such as the establishment of a bridge undertaking, the costs of transferring the portfolio and covering the solvency capital shortfall for the acquiring insurance/re-insurance company etc.,

(c) for compensation of the shareholders and creditors of the insurer/re-insurer if it turns out that the resolution was not in the public interest, was premature or did not comply with the NCWO principle.

### Questions to the Member States:

Q3. Would Member States consider it appropriate to complement the framework also with a demonstrative list of purposes for the use of resolution financing arrangement, which would represent a harmonized minimum of the costs that have to be covered?

Q4. If the answer to question 3 is yes, what range of purposes for the use of financing arrangement should the framework include and why?