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WK 1021/2024 INIT

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WORKING DOCUMENT

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

Subject:	CMDI: Presidency questionnaire following working party of 09 October 2023 - Replies from 20 MS
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Presidency questionnaire following working party of 09 October 2023

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Questions from the Presidency	MS comments
WK 12614/2023 Presidency note on PIA	
Q0: Do Member States agree with the description of the current state of affairs?	SI (Comments): SI Yes, we agree. NL (Comments): NL Yes Furthermore we would like to thank the presidency for circulating this note on the PIA with some concrete suggestions for compromise. Although the changes to the PIA are central to the CMDI review and are interlinked with almost all other elements, we do think it is helpful to move forward with this topic to provide more clarity on the resolution scope. In our view unclarity about the resolution scope currently clouds the discussion on many other elements. SK

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Questions from the Presidency	MS comments
	(Comments): SK Yes HU (Comments): HU Yes, we can agree with the Presidency description of current state of affairs. We would like to highlight the importance of 3 matters: ○ the possibility for small banks to be earmarked for resolution ○ the discretion to be given for national resolution authorities regarding the resolution scope to examine the deposits to be protected as suggested by the FR non-paper (granular approach) DK

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Questions from the Presidency	MS comments
	(Comments): DK We agree with the current state of affairs. CZ (Comments): CZ CZ: Yes, and we agree with the Member States who propose to focus the discussion first on defining the basic objectives to be achieved by the legislative proposal. FR (Comments): FR We subscribe to the description of the current state of affairs. PL (Comments): PL Yes, we think this is a correct reflection. BE

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Questions from the Presidency	MS comments
	(Comments): BE / LV (Comments): LV Overall, Latvia agrees with the description of the current state of affairs. IE (Comments): IE We broadly agree with the Presidency' summary of MS positions. However, we would note that some MS also want to preserve a functioning, effective system for DGS recovery in cases of insolvency and payout, perhaps by way of maintaining the super-preference of the DGS in the cases of banks which pose no financial stability risk and are always expected to be liquidated. EE

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Questions from the Presidency	MS comments
	(Comments): EE EE: Agree. CY (Comments): CY Agree PT (Comments): PT We believe that the description fairly reflects the current state of affairs. IT (Comments): IT Yes, we broadly agree. For the sake of clarification, the goal shouldn't be widening the scope of resolution per se: a wider scope for resolution should be pursued as long as – all factors being considered, including the costs for both banks and

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Questions from the Presidency	MS comments
	authorities – pursuing the resolution would ensure better results in terms of depositors and financial stability protection, compared to the application of the national insolvency procedures. If this is not the case (as it may easily be in Italy due to our specific insolvency framework), then from our perspective there is no real need to earmark more banks for resolution. EL (Comments): EL EL: We agree with the description of the current state of affairs. LT (Comments): LT LT: we agree with the description. SE (Comments): SE SE: Yes we can agree.

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Questions from the Presidency	MS comments
Q1: Do Member States agree with the proposed way forward?	SI (Comments): SI Yes, we agree. NL (Comments): NL Yes, we can agree with addition of regional level in the PIA. SK (Comments): SK Yes DK (Comments): DK

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Questions from the Presidency	MS comments
	Yes, we can support the Commissions proposal. CZ (Comments): CZ CZ: We do not object to the inclusion of a regional aspect in the form proposed by the EC, as long as the assessment of the regional aspect is entirely at the discretion of the Resolution Authority. FR (Comments): FR We are of the view that the meaning of “regional level” needs to be further defined in the level 1 text, as it is currently too vague. We propose to use the “common classification of territorial units for statistical purposes” (NUTS), as it would allow for the harmonisation of practices of NRAs while avoiding any complexity by relying on a simple and existing concept. In this regard, we would be interested in getting the detailed

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Questions from the Presidency	MS comments
	parametrisation of this criteria used by the SRB in its presentation submitted to the same Working party. However, we would also be opened to define “regional” in a relative way to cater for the variety of MS market sizes. In any case, we are mindful that the definition of the criticality of banks functions needs to be consistent with the other elements of the package (MREL requirements, funding, etc). FI (Comments): FI We support the objective of having more banks dealt within the resolution framework. However, we would prefer not to add regional aspect to the definition. We would prefer looking at other avenues how to expand the scope of resolution, for example with the options presented in the question 5. PL (Comments): PL

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Questions from the Presidency	MS comments
	Yes, we support proposal in this regard. BE (Comments): BE We have no strong views and thus can agree with the proposal of the Presidency to maintain the Commission's proposal. LV (Comments): LV Latvia agrees with the proposed way forward. IE (Comments): IE We can agree with the proposed way forward EE (Comments): EE

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Questions from the Presidency	MS comments
	EE: Agree. CY (Comments): CY Agree PT (Comments): PT As we have already shared in previous written procedures, we very much welcome and support the inclusion of the disruption of the real economy and financial stability at a regional level in the definition of “critical functions”. From our point of view, the issues that have been discussed on the deepening of the definition of “regional level” given the particularities of each Member-State outweigh any potential risks of such assessment not being properly performed by resolution authorities, which may happen as regard as any other definition, so we agree with the proposed way forward of keeping the Commission’s proposal as currently drafted.

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Questions from the Presidency	MS comments
	IT (Comments): IT Yes, we fully support the Presidency way forward. EL (Comments): EL EL: We support keeping the current drafting regarding the amendment of critical function to reflect the impact at regional level as this will allow for the expansion of the scope for the resolution entities to medium size and small banks. LT (Comments): LT LT: we agree. DE (Comments): DE

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Questions from the Presidency	MS comments
	We do not agree with the proposal. Resolution – and therefore possibly the use of the SRF – does not seem to be necessary as long as a function is critical on regional level only. For functions, that are critical only on a regional but not on a national scale, we would in general not expect any problems with substitutability. As such, resolution authorities should not have to consider criticality of functions on a regional scale. At least, it should be a discretionary decision for resolution authorities to apply critical function on a regional level if necessary in exceptional cases. Also, we would prefer further clarification with regard to substitutability. A function should only be regarded as critical on a regional level, if substitutability is limited for this specific region. SE (Comments): SE SE: Yes, we can agree.

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Questions from the Presidency	MS comments
Q2: Do Member States agree with the proposed way forward?	SI (Comments): SI Yes, we agree. NL (Comments): NL Yes, we can agree with the addition to recital 11. However we do think it is important not to overstate the difference in moral hazard risk between public support and industry funds. First of all, both the DGS and the SRF still have public elements, for example the public backstop. Furthermore DGS/SRF money is still ‘other people’s money’ by which all banks have to pay for failing banks and as such comes with the risk of moral hazard. Only MREL really reduces the moral hazard. SK (Comments): SK

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Questions from the Presidency	MS comments
	Yes HU (Comments): HU Yes. DK (Comments): DK We agree. The use of industry funded safety-nets should be preferred, and public funds should be protected. As such, the use of public funds should never be assumed, while MREL should remain the first line of defence. CZ (Comments): CZ CZ: We agree with the amendment to the recital. However, the recital should also be amended in that this change does not alter the principle that

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Questions from the Presidency	MS comments
	losses are primarily borne by shareholders and creditors. At the same time, the recital should include an explicit clarification that it is without prejudice to the possibility for Member States to provide a backstop to the Resolution Fund. FR (Comments): FR We could accept the Commission proposal on article 31(2) point (c) but we think recital 11 proposal should be deleted. We continue to think that differentiating between EPFS from State budget or industry funds is overstated as the consequences in terms of moral hazard for the bank are the same. The recital proposed appears problematic, as it could be interpreted as a way to encourage bailouts by industry funds. FI (Comments): FI No, we do not agree making a differentiation between funds from the budget of a member state and from the industry safety nets. Extraordinary

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Questions from the Presidency	MS comments
	public financial support is always State aid, and State Aid regime does not differentiate between these funds. Such differentiation should not be created here. We do not agree with the proposed recital that funding provided by Member States bears a higher risk of moral hazard. Both options include equal moral hazard risks. The amendment that the presidency has proposed to the recital is not adequate and we think the current wording in the BRRD should be kept here. PL (Comments): PL Yes, we agree. Also we agree that financial support provided by industry-funded safety nets shall not be qualified as extraordinary public financial support. Our understanding of article 31(2)(c) BRRD is that it refers directly to taxpayers money collected in the form of taxes or other obligatory burdens laid on them by governments. BE (Comments): BE We are not opposed to the addition in the recital and thus can agree.

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Questions from the Presidency	MS comments
	LV (Comments): LV Latvia has no objections to the proposed addendum explaining the difference between industry-funded safety nets and extraordinary public financial support. IE (Comments): IE We can support the objective being pursued, however, we would prefer not to use the words “from the budget”, and instead refer to public funds. This might be clarified by removing the reference to “budget” in the Article, but adding more clarity to recital 11 by saying “...EPFS is being provided, for example, through the budget of a Member State...”. EE (Comments): EE

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Questions from the Presidency	MS comments
	EE: Agree. CY (Comments): CY We have no objection with respect to the proposed redrafting of recital 11. However, we consider important to include also in the way forward the revision of the State Aid regime, to differentiate between EPFS originating from State Budget and industry safety nets. PT (Comments): PT We support the Commission's proposal to review the resolution objectives distinguishing external funds between those provided via industry-funded safety nets and those directly from the State. Additionally, we are sensitive to the concerns expressed by some MS and so we do not oppose the proposed way forward, as we believe the new drafting amendment sufficiently assures that the use of public funds (not

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Questions from the Presidency	MS comments
	provided via industry-funded safety nets) is not expected, but yet is possible. However, one concern expressed by some MS (Portugal included) that has not been properly addressed is the fact that depending on national frameworks (other than the resolution framework), industry-funded safety nets may be considered within the State budget perimeter and so, even in those cases, industry-funded safety nets should be preferred over other national funds. For this reason, we believe further clarification on this regard is needed and would again recall our suggestion to amend recital 11, which is as follows: <i>(11) The assessment of whether the resolution of an institution or entity is in the public interest should also reflect, to the extent possible, the difference between, on the one hand, funding provided through industry-funded safety nets (resolution financing arrangements or DGSs) and, on the other hand, funding provided by Member States from taxpayers' money. Funding provided by Member States bears a higher risk of moral</i>

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Questions from the Presidency	MS comments
	hazard and a lower incentive for market discipline. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, resolution authorities should find funding through the resolution financing arrangements or the DGS preferable to funding through an equal amount of resources from the budget of Member States. <u>For these purposes, funds provided by industry-funded safety nets shall not be considered as funds provided from the budget of a Member State.</u> <u>In any case, the differentiation between both public and industry funding should not lead to the conclusion that extraordinary public financial support through the Budget is to be expected after the possible use of industry-funded safety nets.</u> IT (Comments): IT We could support the direction the Presidency is taking, as long as it is clarified that:

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	i) extraordinary public financial supports (EPFSs) provided by a Member State's budget are not excluded from the framework and can still be an option, albeit as a very last resort; ii) as a consequence of i), just because there is an expectation that a Member State's budget might provide EPFS, it does not mean that the alternative procedure that would not involve it should be preferred. Indeed, the resolution authority should always carefully balance the resolution objectives, taking into account the nature and circumstances of each case, with a particular emphasis on the goal of maintaining financial stability. Therefore, we suggest rephrasing the new wording of the recital as follows: “In any case, the differentiation between both public and industry funding should not lead to the conclusion <u>either</u> that extraordinary public financial support through the Budget is to be expected after the possible use of industry-funded safety nets, <u>or that it is excluded in any case.</u>” EL (Comments): EL

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	EL: We agree with the clarification to be added in the recital 11 as proposed by the Presidency and maintain the proposal of the Commission regarding article 31 (2) c. focusing on the need to minimize reliance of financial support provided from the budget of m-s. It might be useful to clarify in the recital that industry-funded safety nets do not constitute extraordinary public financial support. LT (Comments): LT LT: we agree DE (Comments): DE The proposed changes to recital 11 are welcome, but do not alleviate our concerns. We generally welcome a reference that there should be no conclusion that support through the budget is to be expected after the possible use of industry funded safety nets. However, our main concern is that the differentiation between industry funded safety nets and public

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Questions from the Presidency	MS comments
	budgets in Art. 31 would raise the expectation that industry funded safety nets would be easier used and in particular would be used instead of burden sharing by creditors and shareholders. We would like to see a clarification - at least in recital 11 - that this should not lead to the conclusion support from industry funded safety nets is to be expected beyond the objectives of the statutory scope of protection. Also, we disagree with the sentence in recital 11 that funding by member states bears a higher risk of moral hazard than funding from industry funded safety nets. We haven't seen any evidence to back this claim. This sentence should be deleted. SE (Comments): SE SE: Although we agree that tax payer money is the very last resort, we agree with the point made by other Member States that it is also of principle importance that there has been enough burden sharing between

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	the institutions' owners/creditors and external funding. It's important that the text does not give the impression that the use of industry funded safety nets is promoted. In that spirit, the wording "Funding provided by Member States bears a higher risk of moral hazard and a lower incentive for market discipline" should be deleted, as we cannot see that there is rational or evidence to support such an assertion.
Q3: Do Member States agree with the proposed way forward?	SI (Comments): SI No, we prefer not to amend the current BRRD wording, therefore we would not include "while minimising losses for deposit guarantee schemes' because we believe protecting depositors is a primary goal, not minimising DGS losses. NL (Comments): NL

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	Yes, agree not to include minimizing cost to DGS in resolution objectives. SK (Comments): SK We are in favour of option 4.2.1. HU (Comments): HU Yes. DK (Comments): DK While we preferred the Commissions proposal, we can accept the deletion as a compromise. CZ (Comments): CZ

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	CZ: We agree that a goal of minimizing DGS losses should not be added to the list of resolution objectives. FR (Comments): FR Even if we would be able to agree with option 4.2.1 proposed by the Presidency (see below), we reserve our opinion at this stage regarding (the deletion of) the objective of minimizing losses for deposit guarantee schemes. First, we do not understand the argument that the resolution objective of “minimizing losses to DGS” would already be addressed by the Least Cost Test. Indeed, a positive LCT would not imply on its own a positive PIA in the absence of “minimizing losses to the DGS” as a resolution objective. Moreover, it seems that, with the Commission proposal, LCTs will always be positive because of the change of the hierarchy of depositors and/or the

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	inclusion of indirect costs and haircuts in solvency. Under these conditions, and considering the possibility of the SRF intervention via the activation of the “bridge”, we understand that introducing a new resolution objective of “minimizing losses to DGS” would imply a positive PIA for almost all banks. Therefore, we think that the resolution objectives should be further examined in connection with the choices made under other provisions of the package governing the resolutions conditions (MREL requirements, resolution funding, etc). FI (Comments): FI Yes, we agree PL (Comments): PL Yes, as a rule we support the goal of minimising DGS losses. However, financial stability should remain the ultimate goal. Minimization of DGS

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	losses will be ensured by least cost test. So we don't think that minimizing DGS losses should be an indicated directly. BE (Comments): BE We keep supporting the inclusion of ‘minimising losses to DGSs’ in the objectives of the framework. For us, this is a key amendment to unlock the discussions at technical level as to how the objective of protecting covered deposits should be interpreted. Under the current PIA policy defined by the SRB, the objective of protecting covered deposits is assessed as generally met by the mere compliance of MS with the DGSD. This policy stance underestimates the impact of a liquidation on the resources of the DGS, and more precisely tends to neglect the losses borne by the national DGS to actually protect the covered deposits. Within the Banking Union / SRMR context, this is also an example of the need to introduce sufficient checks and balances in the governance of the framework where decisions (including PIA decisions) are made at the European level while the losses are being borne at the national level (DGS). The inclusion of ‘minimising losses to DGSs’ in the level 1 text could ensure that the losses for the DGS are at least also explicitly considered by the SRB when assessing the PIA. We would thus

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	prefer to keep the addition and clarify the objective in a recital. LV (Comments): LV Latvia agrees with the proposed way forward. IE (Comments): IE We support not including the amendment EE (Comments): EE EE: Agree (not to amend the current BRRD wording). CY (Comments): CY Agree

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	PT (Comments): PT We have been supportive of the inclusion of the minimisation of costs to the DGS in the list of resolution objectives. We do not support such amendment grounded on the protection of the industry that finances DGSs, but rather because the use of DGSs in insolvency in the form of a pay-out usually has potentially damaging effects on other resolution objectives, such as financial stability, and imply considerable destruction of value. Also, depositors are better protected when DGS funds are used more efficiently and the losses for those funds are minimised. Furthermore, the potential enlarged participation of the DGS in financing resolution (including, by the bridge-the-gap and the single-tier) warrants that RA better takes into consideration the DGS's position. We deem very relevant that the costs for the DGS are duly safeguarded while assessing

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Questions from the Presidency	MS comments
	best strategies. This is even more accute in light of the fact that the resolution objective to “protect public funds by minimizing reliance on EPFS”, while clearly encompassing all industry-funded safety nets (incl. the DGS), does not consider a disbursement made by the DGS through a payout as it does not qualify as EPFS. Thus, keeping the minimisation of losses to DGSs as a resolution objective would be a much better solution. Also, we would reject arguments being presented that the Least Cost Test is already sufficient to protect the DGS on the grounds that, while the test minimizes DGS exposure in resolution, it has no place in the decision where to go into resolution or not, and, as such, does not protect the DGS from a potential very expensive no-resolution decision. Indeed, forcing an institution into insolvency and triggering a payout, imposing a disproportionate cost on the DGS simply to avoid costs to the RFA, seems unreasonable.

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	Our reflection on these topics clearly leads us to conclude on the need to have a more holistic approach to the cost-efficiency of crisis management solutions in the legal framework and, in particular, a consideration of the costs when no crisis management solution is found/is available (leading to a pay-out) . We are convinced that RAs, when assessing resolution objectives and how would they be met both in resolution and liquidation, should assume a broader perspective on costs for the industry and for the MS budget, if any, and should seek to choose paths that are economically more efficient. That also explains why we support Commission proposals discussed in Q6 below, to which we refer. We understand some MS are sceptical on the amendments to consider the minimization of DGS's costs and on the consideration of all EPFS that can be reasonably be expected, based on which the PRES is proposing to revert said Commission proposals. In this context, we have explored middle ground solutions that seek to address such scepticism while introducing in the framework a sensible and reasonable principle of overall cost-minimization to solve

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	banking crises. In this spirit of compromise, we would suggest to add a new subparagraph in Article 31(2): <u>When assessing the above objectives, the resolution authority shall weight the costs of resolution and normal insolvency proceeding and shall seek to minimize those costs, unless otherwise necessary to achieve the resolution objectives.</u> Naturally, corresponding recitals would have to be adjusted to reflect the underlying rationale of this proposal, something we are ready to work on if the PRES decides to take on board our suggestion. IT (Comments): IT We support the Presidency proposal. We still maintain the view that adding the minimization of losses for the DGS to the other resolution objectives would be unnecessary and create confusion. This is because, as highlighted by several other Member States, such an objective is already incorporated in the least cost test principle, which is meticulously regulated in a

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	dedicated piece of legislation (DGSD). Furthermore, it is impractical to quantify at the moment of the PIA (even, “in execution”) the ultimate losses that the DGS would incur in liquidation/resolution. Additionally, the DGS should be regarded as a tool within the crisis management framework rather than as a general objective or the primary beneficiary of safeguards. Finally, factoring also the protection of DGS in the PIA would make it excessively complex. Indeed, the PIA assessment requires carefully balancing all resolution objectives, where depositors protection and financial stability should – in our view – play a major role; adding the protection of the DGS would force the authority to solve another very difficult trade-off. EL (Comments): EL EL: We support the approach proposed by the Presidency that minimizing the losses of the DGS should not be included as a resolution objective and that the least cost test allows for resolution measures to be applied to

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	relevant entities if the cost is lower in resolution rather than insolvency. LT (Comments): LT LT: we agree DE (Comments): DE We agree with deleting the reference to minimizing losses to DGS. SE (Comments): SE SE: We have difficulty following the reasoning for the deletion of the amendment. Firstly, we cannot see that consideration to costs for the DGS within a LCT can be applied before the bank is put in resolution. Our understanding is that first after this point can costs for the DGS be considered within a LCT, regarding how resolution should be financed

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	(Art. 109 BRRD and Art. 11 DGSD). Further, according to COM communication on state aid rules (2013/C 216/01, p. 63), regular DGS-payouts do not constitute EPFS, and can therefore not be considered within the resolution objective of minimising reliance on EPFS (Art. 31[2][c]). Thus it would seem that the amendment on minimising losses for DGS in Art. 31(2)(d) is necessary as a legal basis for considering costs related to regular DGS pay-outs. It would also seem to us to be an important part of the CMDI review when it comes to providing legal basis for a widened scope of resolution. We would appreciate more information from COM on the legal grounds for taking consideration to DGS costs within a LCT and within the resolution objective of minimising reliance on EPFS.
Q4: Which option do Member States agree more with?	SI (Comments): SI We prefer option: 4.2.1. NL

Presidency questionnaire following working party of 09 October 2023

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	(Comments): NL We prefer option 1, to keep the existing BRRD text. SK (Comments): SK Yes HU (Comments): HU Option 4.2.1. DK (Comments): DK We prefer option 1. There should not be an assumption in the market that [some] uncovered deposits are not bail-inable. This could lead to some institutions taking riskier strategies while offering

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	higher interest rates to achieve cheap funding through deposits while essentially having a higher level of protection of these uncovered deposits based on their market position. CZ (Comments): CZ CZ: We prefer Option 1, i.e. maintaining the current wording of the resolution objective (i.e. <i>to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC</i>) FR (Comments): FR We support the Presidency's proposal, ie option 4.2.1, to return to the current BRRD wording on resolution objective of protecting covered deposits only. FI (Comments): FI We prefer option 4.2.1, keeping the current wording.

Presidency questionnaire following working party of 09 October 2023

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	The option 4.2.2 includes other resolution objectives and would unnecessarily confuse the legislation and relation of these objectives. It would also make the insolvency comparison more difficult – in practice, it would be impossible to evaluate how those objectives would be achieved in insolvency. PL (Comments): PL We prefer option 4.2.2. It seems to us that the regulation leaves room for the discretionary interpretation of the resolution authority depending on the circumstances of specific resolution. However, it would be desirable that the EC communicate in form of notice or EBA Q&A that the amendment to Article 31(2)(d) BRRD does not imposes obligation to protect all depositors in all circumstances. In particular unconditional protection for non-eligible deposits would be unjustified. BE (Comments): BE

Presidency questionnaire following working party of 09 October 2023

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	In our view, and as confirmed by the SRB impact assessment, the Commission's proposal should not be read as implying a full protection of all depositors at all times, instead it should be read in the sense that resolution authorities should try to minimise losses for all depositors. We could therefore support the initial COM proposal. We do however understand from the Presidency's note that the Commission's proposal appears to be subject to different interpretations. We are open to option 4.2.2 even though it may deserve some clarification to avoid misunderstanding and complexity. We could, for example, agree with a wording as follows: - "to fully protect depositors covered by Directive 2014/49/EU while minimising losses for all other depositors" and "to fully protect investors covered by Directive 97/7/EC as well as all other client funds and assets." LV (Comments): LV Latvia agrees with Option 4.2.1: Not to amend the current BRRD wording on resolution objective of deposits. IE

Presidency questionnaire following working party of 09 October 2023

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	(Comments): IE We prefer Option 1 as we would prefer to minimise the likelihood of the text being read as providing an implicit guarantee of protection to all depositors. If it is the goal of the Commission and the presidency to include some form of reference to other depositors without giving an implicit guarantee, a possible change to the objective could read “minimise losses for depositors, in particular by protecting depositors covered by Directive 2014/49/EU”. EE (Comments): EE EE: We agree with (our clear preference is) Option 4.2.1. Option 4.2.2. raises many questions. The protection of a wider range of deposits, including uncovered deposits, for financial stability reasons is covered already. We might understand the objective, but the wording is too

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	open. In addition, in some cases, protection of uncovered deposits is not needed for ensuring financial stability, but the achieving continuity of critical functions includes lending, which is financed by deposits. The question is how to interpret this option in this case. CY (Comments): CY We prefer option 4.2.2 PT (Comments): PT We are supportive of the enlargement of the resolution objectives to protect depositors in a more general way. Indeed, the protection of deposits is paramount for ensuring high level of depositor confidence, a necessary condition for the stability and well-functioning of the banking system, and the economy at large. Also, deposits play a key role in our society and economy, including as a safe asset for households and businesses to perform day-to-day operations, for which there

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	are no real substitutes. Additionally, having the protection of deposits as an objective does not necessarily lead to an absolute protection or guarantee to all depositors. The regime still allows for deposits to be treated differently, when adequate and justified, and there will be some situations where, all the resolution objectives duly considered, it is understood that imposing losses on some depositors does not jeopardise said objectives. For these reasons, we do not follow the criticism that such renewed objective would significantly increase moral hazard or prevent differentiation between depositors. We also see the Commission proposal as giving more substance to a resolution objective that, since BRRD1, is sub-optimal as covered deposits are already protected by the DGS role in resolution (i.e. to absorb losses on behalf of CD) and by the mandatory excluding from bail-in. Therefore, we deem option 4.2.1. is clearly insufficient. Regarding option 4.2.2., we consider it is neither technically nor politically adequate since it expressly introduces an element of necessity and

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	proportionality that none of the other objectives has. Note that even though the other objectives lack such an express reference, necessity and proportionality must always be taken into consideration. Having said this, and after listening to other MS's concerns, we believe alternative middle ground solutions that simultaneously allow to improve the current resolution objective to protect deposits while making clearer that not all deposits are to be safeguarded in all cases are possible. Below we propose a workable solution wherein a larger protection of deposits depends on following the aim of avoiding loss of depositor confidence, while allowing non-covered deposits to take a hit when that aim is not at jeopardy. We keep the reference to the protection of covered deposits as this was important for several MS, even though we believe that it is not strictly necessary. Replace Article 31(2)(d) by: <u>“(d) to avoid loss of depositor’s confidence, including by protecting</u>

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	<u>depositors covered by Directive 2014/49/EU and preventing adverse impacts on other depositors, and to protect investors covered by Directive 97/9/EC.”</u> Naturally, corresponding recitals would have to be adjusted to reflect the underlying rationale of this proposal, something we are ready to work on if the PRES decides to take on board our suggestion. IT (Comments): IT Considering our endorsement of the Commission's text, we favor option 4.2.2. We hold the view that all depositors, under specific circumstances, should be entitled to protection, with the understanding that such protection is granted for sure solely for covered deposits. We believe that the objective of depositor protection should not significantly influence the selection of the most appropriate crisis management procedure, since the treatment of deposits in liquidation and resolution should align. However, we acknowledge the importance of affirming the principle that all

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	depositors, due to their special nature, may warrant protection in certain instances. This principle could not be read as a guarantee of protection. Rather, the revised framework would explicitly state that the protection of uncovered depositors would be subject to the resolution authority's determination that such deposits are discretionarily exempted from bail-in. Lastly, we propose to clarify that: i) protection for covered depositors is <u>always</u> guaranteed, regardless of any evaluation based on the conditions specified in the draft amendment proposed by the PCY; ii) the protection of uncovered depositors is contingent solely upon the implementation of discretionary exclusions as provided for by Article 44(3), BRRD and not upon the conditions specified in the draft amendment proposed by the PCY. EL (Comments): EL EL: We consider that option 4.2.1 reflects the current wording of the

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	BRRD so we are happy with this. However, we consider that resolution objective regarding protection of depositors should be further enhanced. To this end, we could support option 4.2.2 if the text clearly reflects the idea not only that covered deposits should be protected in all cases but also that this protection could be extended to non-covered despositors depending on conditions noted such as contagion and safeguarding depositor confidence in the banking system. LT (Comments): LT LT: we prefer option 4.2.1 DE (Comments): DE We have a strong preference for Option 4.2.1. SE (Comments): SE SE: Regarding deletion of the wording on minimising losses for DGSs, see

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	answer to Q3. Of the proposed alternatives, SE prefers option 4.2.1.
Q5: Which option do Member States agree more with?	SI (Comments): SI We prefer option 5.1 ali 5.2. NL (Comments): NL As a general remark: under the current PIA, the NRA considers “achievement of” the resolution objectives. In the new wording the NRA is being required to consider whether bank failure puts any resolution objective “at any risk”. In our view that is already a change in risk appetite, which expands the scope of the public interest. We are not in favour of option 1 and 2, which keep ‘more effectively’ in the comparison between resolution and insolvency. As is rightly mentioned

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	in the introduction of question 5 in the presidency paper “most MS support at the same time (i) expanding the scope of institutions subject to resolution but (ii) maintaining insolvency as the default option”. In our view by including ‘more effectively’ the burden of proof of resolution against insolvency is reversed, which makes resolution more or less the default option. Furthermore in option 1 and 2 ‘any risk’ to any resolution objective would mean a positive PIA. How does this work? Even if only the protection of depositors covered by the DGSD is a resolution objective, doesn’t that mean that if one of those depositors has deposits exceeding 100,000 euro, he or she is ‘at risk’ and a bank has to go into resolution? Or if DGS-covered depositor loses access to its deposits for a few days? As such we prefer the third option and see it as possibly a good way forward, but as it is currently stated it still sets the bar for positive PIA too

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	low. In the option is stated: “when insolvency likely implies losses on some deposits, it will be highly likely that there is a public interest for resolution”. In our view ‘losses on some’ is not enough justification for public interest, as it implies that deposits should never incur losses in bank failure. The same goes for ‘an impact on financial stability’. Does that mean however small or insignificant the impact, there is public interest? This should at least be a significant adverse impact. SK (Comments): SK All options are ok, we are in favour of option 5.1 and 5.3. HU (Comments): HU Option 5.3. DK

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	(Comments): DK <u>We have a clear preference for option 1.</u> <u>It's our reading that option 3 despite the proposed new recital would not lead to an increased scope when implemented into national law due to replacing "more efficiently" with "the same extent". This would be contradictory to the goal of the CMDI.</u> CZ (Comments): CZ CZ: We prefer Option 3 as we prefer keeping insolvency as the default approach with the possibility for RA to assess the public interest in relevant cases. FR (Comments): FR Regarding the comparison between resolution and national insolvency

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	proceedings (article 32(5) 1st paragraph), we are not in a position to endorse one of the option proposed by the Presidency ; We think they need to be further precised and discussed : First, we would welome all clarification in the text stating explicitly that there is no hierarchy between resolution objectives, as it is currently ambiguous; Then, regarding the different options: - In principle, we are not opposed to considering that a liquidation procedure may be preferred if it achieves the resolution objectives “to the same extent”, but we need to be clear what those liquidation procedures can and cannot be. In particular, we think it should not be a duplication of resolution (for example for transfer strategies) but with less burden sharing. - We are also opened to considering PIA presumptions for certain types of banks that we would have to define precisely in the level 1 text. For example, we would consider that (i) small banks could have a presumption for a negative PIA under certain conditions and

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	(ii) significant institutions could have a presumption for a positive PIA. However, precise quantitative criteria or threshold need to be defined in the level 1 text to deliver predictability ; - We are not sure to understand how the option 5.1 differs from the current practice. We are willing to assess alternative proposals that would combine these principles. FI (Comments): FI We would prefer exploring the option 5.1 and option 5.3 further. However, some changes are needed for both. Also, concerning the option 5.1, it would be useful to have an example of what would be such a case as mentioned in stage b2, where the resolution objectives would be in risk, but they still would be achieved better in insolvency than in resolution. We would also support including to the recitals an assumption that all SI-institutions would be dealt in resolution. PL

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	(Comments): PL The most preferable approach is to keep the wording proposed by the Commission. When it comes to options presented by the Presidency, we think that each of them limits the flexibility in comparison to the Commission proposal. However, in order to satisfy Presidency's request, in our view option 5.1 seems to be the most acceptable. First of all, in our view, this issue should be addressed directly in the Level 1 text, not in recital – for this reason option 5.3 should be rejected. We find option 5.2 as unclear and – in consequence – causing additional legal risk for the RAs. In spite of the fact that option 5.1 introduce 2-stage assessment which is a new element in comparison to the Commission proposal, in our view, it would not influence the current approach significantly as such approach arises already from delegated regulation 2016/1075 (please see Article 23(1)(a) of this regulation). BE (Comments): BE We understand the concerns of other MS but on the other hand we hear

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	that, according to the SRB presentation of the morning, the impact of the Commission's proposal would be limited. On our side we prefer the proposal of the Commission above all the Presidency's proposals because the latter are all too closely aligned with the current approach and such a status quo would not reach the objective of CMDI as defined by the Eurogroup. An alternative option on which we are open to discuss is to have the presumption of positive PIA for all SI as well as the largest LSI. As previously mentioned it seems more efficient to prepare for resolution for these categories of institutions since it is easier to plan for resolution but opt for liquidation once a crisis case occurs than the other way around. LV (Comments): LV Latvia agrees with Option 5.3: Insolvency remains the default approach but qualified for some scenarios for which resolution is likely + reverting to "lesser extent" in the comparison. IE (Comments): IE

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	While the sheir suggested options for Article 32(5) seem interesting, we are not fully supportive of any at present. If we had to choose a “least worst” option, it would be option 3, but we consider the reasoning behind this is unclear as if financial stability or critical functions were at risk under liquidation, then the PIA should be positive anyway. In any case, we remain open to exploring the options more, perhaps with more clarity around Option 2. EE (Comments): EE EE: Estonia is among the Member States willing to maintain insolvency as the default option, which should ensure that, if resolution objectives are not at risk, smaller institutions are wound up under normal insolvency proceedings. We agree with the Presidency on introducing a new wording to give Resolution Authorities flexibility to expand the resolution scope while maintaining the current discretion of resolution authorities to determine the exact scope. We are open to consider options 5.1 ad 5.2 (still analysing). We are open to option 5.2 (still analysing). As option 5.3 does

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	not change much compared to the status quo under current BRRD, we can accept it. CY (Comments): CY We consider that the proposed options need further clarifications. We also consider that additional options should be proposed in line with the discussions that took place in the last working party meeting. PT (Comments): PT We have been supportive of Commission proposal as we deem it clear and straightforward. Also, it is consistent with the political mandate to enlarge the scope of resolution, which is critical framework for authorities to act, in crisis situations, effectively and, most importantly, cost-effectively, compared to liquidation. Such enlargement would be naturally mitigated by RAs keeping in mind

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Questions from the Presidency	MS comments
	that resolution is still a last resort action that involves the exercise of very intrusive public powers. Against this background, we do not see that any of the given options addresses our concerns to the same extent that the Commission's proposal does. Firstly, we do not see the use of presumptions for a negative PIA as beneficial, as it arguably goes against the political mandate of broadening the scope of resolution and, above all, can also reduce some of the flexibility that should be maintained. Secondly, the relation with the methodology of simplified obligations is not positive, as each NRA has its own methodology. In Portugal, for example, there are different kinds of simplified obligations that seek to rank and classify the different institutions and it would not be suitable at all to bring negative PIA closer to the eligibility <i>tout court</i> of simplified obligations. One central issue on the enlargement of the scope of resolution to some

Presidency questionnaire following working party of 09 October 2023

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Questions from the Presidency	MS comments
	additional smaller and mid-sized institutions is the consequences in terms of preparation costs, most notably MREL. We are of course concerned with this, but for us this should be addressed via a more proportionate regime, which the Commission proposal failed to deliver. Indeed, smaller entities cannot participate in financial markets and issue MREL-eligible debt instruments in equivalent way as big institutions. However, we can and should work on a calibration framework targeted for small-and-medium sized banks which impose some additional internal loss absorption capacity above own funds, but without endangering their own viability in going concern. Having said this, and in the spirit of compromise, we are open to explore Option 5.1. if our proposals regarding the resolution objectives provisions, referred in answers to Q3 and Q4, are included in the framework. Otherwise, we believe it will be very difficult to deliver on the EG+ request to broaden resolution.

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Questions from the Presidency	MS comments
	IT (Comments): IT We are in favor of Option 5.3. We acknowledge that the PIA must involve a significant level of discretion to be applied by authorities on a case-by-case basis. Implementing overly stringent procedural constraints could be excessively complex and potentially counterproductive, considering the diversity of relevant jurisdictions which might not be effectively accommodated by a rigid, rule-based PIA. Furthermore, we believe that an appropriate expansion of the resolution framework can be achieved through the amendments made to the notion of critical functions (added reference to the regional level) and to the resolution objectives, as well as by broadening the sources of resolution funding (i.e. DGS intervention in resolution). It is crucial to emphasize that the goals of harmonization and ensuring a level playing field should not be pursued through the PIA. Instead, the focus should be on equipping

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Questions from the Presidency	MS comments
	resolution authorities equally to address crises, while upholding the primary objective of maintaining financial stability. Lastly, we express our support for the presumption that banks under simplified obligations should not be earmarked for resolution. EL (Comments): EL EL: We support primarily option 5.3. as it retains the necessary flexibility for the authorities. Nevertheless, we could go along with option 5.2, if this is the consensus view of the majority. By contrast, we do not support option 5.1. as it creates a staged approach which however could lead to various interpretations between m-s and creates an additional burden on the resolution authority to prove in each stage how it has reached a relevant decision. LT (Comments): LT LT: we would prefer option 5.3

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Questions from the Presidency	MS comments
	DE (Comments): DE Overall, we feel these are sensible and pragmatic options. The best way forward could also lie in a combination of different elements from these options. We have a clear preference for option 5.2. In our view the presumption for insolvency for all banks with simplified obligations would help to increase predictability and transparency of the PIA process. It would also reduce the administrative burden on NRAs and help strengthen proportionality in the framework. In general, we appreciate the clarification in options 5.1 and 5.2 that there is a staged approach to the public interest assessment. It is our understanding, that this staged approach reflects the current approach by

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Questions from the Presidency	MS comments
	our NRA as well as SRB and most other MS. We are also open to have a framing of likely positive cases in a recital, as proposed in option 5.3. This should also include a reference that we would expect all significant institutions to have a positive PIA. We are open to changing the default option as in options 5.1 and 5.2 and consider resolution as a default where resolution objectives are at risk. This would bring added legal certainty and back NRAs to set a positive PIA in fringe cases. However, this comes with two very important caveat. For us this is clearly linked to (1) clarity on the staged approach and (2) deletion of protection of deposits, other than covered deposits, as resolution objective. Otherwise, setting resolution as the default would not be acceptable for us, as this would lead to a very broad expansion of the scope.

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Questions from the Presidency	MS comments
	SE (Comments): SE SE: Generally we don't see that the proposed amendments would imply a notable difference from the current order, which speaks against expanding and complicating the text. This remark pertains especially to option 5.1 and 5.2. SE thus prefers option 5.3. As an option "5.4", we think that the wording could be further simplified without any material difference, by deleting ... <i>and where winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent/more effectively</i>, since it is already stated as a prerequisite "that resolution action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives", i.e. resolution action has already been deemed necessary. It would appear illogical that such an action could be necessary if the resolution objectives could be met to the same extent/more effectively etc through other means.

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Questions from the Presidency	MS comments
Q6: Do Member States agree with the proposed way forward?	SI (Comments): SI Yes we agree. NL (Comments): NL Yes, we can agree. Although we agree with the principle that public support should always lead to a positive PIA; in fact it should only be possible to provide public support for banks with a positive PIA. But we do understand the complexity of including the expectation of public support in the PIA, and thus can agree with not including this. SK (Comments): SK

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Questions from the Presidency	MS comments
	Yes HU (Comments): HU Yes. DK (Comments): DK We can accept the proposed way forward and keeping the current wording of the BRRD. CZ (Comments): CZ CZ: Yes, we can accept the deletion of the text. However, if we understand the amendment to Article 31(2)(c) correctly, the use of public funds should still lead to a positive PIA „(c) to protect public funds by minimising reliance on extraordinary

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Questions from the Presidency	MS comments
	<i>public financial support, in particular when provided from the budget of a Member State; “</i> FR (Comments): FR Regarding the requirement to compare all EPFS that can reasonably be expected to be granted to the institution under resolution or liquidation, we do not understand how there can be a resolution objective that requires to minimise use of EPFS and at the same time an impossibility to assess which EPFS can be reasonably expected under each crisis management method at the time of resolution. FI (Comments): FI No, we do not agree. We support the Commission’s proposal that the resolution authorities should take into consideration any extraordinary public financial support that can reasonably be expected to be granted. If there are difficulties that the resolution authorities currently would not obtain such information, relevant provision concerning information sharing and coordination should be amended accordingly. If the SRB has

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Questions from the Presidency	MS comments
	difficulties to get such information, it could rely on the support of the national resolution authorities to get that information. Also, the expectation of any extraordinary public financial support should always lead to a positive PIA which should be strengthened in the proposal. PL (Comments): PL Yes, we agree. BE (Comments): BE In our view, the existing legal framework indeed already contains the requirement to take all EPFS into account, so we have no strong views on the proposed amendment. As to the stance however that the resolution authorities might not have sufficient certainty of whether and to what extent EPFS will be provided, for instance because it is a political decision, we do see merit in further assessing close coordination between DG COMP and the RAs to ensure the latter have all information available at the moment the (positive or

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	negative) resolution decision is adopted. LV (Comments): LV Latvia agrees with the proposed way forward. IE (Comments): IE We can agree with the proposed way forward EE (Comments): EE EE: Agree. CY (Comments): CY Agree

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	PT (Comments): PT We have been supportive of the Commission's proposal in this regard and do not believe it is accessory, as it broadens the analysis RAs have to undertake in PIA and improves the capacity of the CMDI framework to avoid bailout by taxpayer funds (which is, let's not forget, a resolution objective). It is precisely because the protection of public funds already is a resolution objective that the Commission's amendment is a most welcome clarification and deepening of what should be protected in light of such objective. For this reason, we find the divergent opinions on this issue, especially the ones according to which estimations cannot be calculated, to be extremely worrying, as it means the resolution objective of minimizing the use of public funds is not being duly assessed. Additionally, we believe it should be even clearer which EPFS are we

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	Public talking about. For example, in our opinion, when conducting the PIA and assessing the liquidation counterfactual, the valuation of the costs of paying cover deposits, the assessment if the DGS needs to be financed by the State for such effort and what is the effort to replenish the DGS must necessarily and mandatorily be executed. This element would allow, in our view, the introduction of a perspective of overall cost-efficiency of crisis management solutions, which would also have the DGS's interests at heart (especially in the new context of enlarged participation). Having said this, in the spirit of compromise, we would accept the PRES way forward if our proposals regarding the resolution objectives' provisions, referred in answers to Q3 and Q4, are included in the framework. IT (Comments): IT

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	We agree not to include in the framework the requirement to consider and compare all extraordinary public financial support that can reasonably be expected to be granted. EL (Comments): EL EL: We support the approach proposed by the Presidency not to include the need for the RA to estimate the use of EPFS. In particular, we have seen that the decision for such interventions lies with other authorities or bodies and thus it is not always possible for the RA to assume that there will be provision of such support. Additionally, the current framework already provides for the protection of public funds; thus it makes no sense to create an additional requirement to prove that this has been assessed by the RA. LT (Comments): LT LT: we agree. DE

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	(Comments): DE We could accept the proposal. While we have some sympathy for the intention of the COM proposal, we have severe doubts that a proper consideration of expected state aid is feasible and would lead to meaningful outcomes. SE (Comments): SE SE: We do not see need for changes of the COM proposal, however, all in all, SE can agree with the proposed way forward.
End	End