



Council of the European Union
General Secretariat

**Interinstitutional files:
2023/0112 (COD)**

Brussels, 04 September 2024

WK 10910/2024 INIT

LIMITE

**EF
ECOFIN
CODEC**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés

Subject:	Consolidation PCY Q on BRRD technical topics - ddl 6 May 2024. Replies from 15 MS
----------	---

WK 10910/2024 INIT

LIMITE

EN

WP MEETING OF 26 APRIL
PRESIDENCY'S non-paper on BRRD technical topics (WK 6191/2024)

Presidency text proposal	MS comments
2.1 Alignment of Article 37(6) BRRD and Article 22(5) SRMR a) Article 37(6) BRRD would be amended as follows: <i>“Where ~~only~~ the resolution tools referred to in paragraph 3, point (a) or (b) ~~of paragraph 3 of this Article are used~~ <u>independently or in combination with other resolution tools</u>, ~~and they are used~~ to transfer only part of the assets, rights or liabilities of the institution under resolution, ~~the~~ <u>any</u> residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) from ~~which remaining after the transfer of~~ the assets, rights or liabilities ~~have been transferred, and the application of other resolution tools, where relevant, shall be wound up under normal insolvency proceedings~~ <u>in an orderly manner in accordance with the applicable national law.</u></i> <u>The first subparagraph shall be without prejudice to the application of the resolution tool referred to in paragraph 3, point (d), for the purpose of Article 43(2), point (a), in combination with other resolution tools.”</u> b) Article 22(5) SRMR would mirror the amendments, which would result in an amendment of the Article as follows: <i>“Where the resolution tools referred to in paragraph 2, point (a) or (b) ~~of paragraph 2 of this Article are used~~ <u>independently or in combination with other resolution tools</u> to transfer only part of the assets, rights or liabilities of the institution under resolution, ~~the~~ <u>any</u> residual entity ~~referred to in Article 2 from which remaining after the transfer of~~ the assets, rights or liabilities, ~~and the application of other resolution tools, where relevant, have been transferred, shall be wound up under normal insolvency~~</i>	IE (MS comments): No comments on proposal (a) or (b) FI (MS comments): We agree. AT (MS comments): We support the drafting suggestions as proposed by PRES aimed at aligning Art. 37(6) BRRD and Art. 22(5) SRMR. In the context of a possible amendment of Art. 37(6) BRRD, we would also like to point out that the wording of Art. 37(6) BRRD in the German version of the BRRD deviates from the other language versions. While the English version of the provision refers to the “resolution tools referred to in point (a) and (b) of paragraph 3 of this Article” and, thus, to the sale of business and the bridge institution tool, the German version mentions “die in Absatz 3 Buchstaben a, b oder c dieses Artikels genannten Abwicklungsinstrumente” which includes the asset separation tool as stipulated in Art. 37(6)(c) BRRD. If Art. 37(6) BRRD were to be amended, this would be an opportunity to also correct the German version of the Article. EL (MS comments): EL: We can support the proposed changes. HR (MS comments):

Presidency text proposal	MS comments
~~proceedings~~ <u>in an orderly manner in accordance with the applicable national law.</u> <u>The first subparagraph shall be without prejudice to the application of the resolution tool referred to in paragraph 2, point (d) for the purpose of Article 27(1), point (a) in combination with other resolution tools.”</u>	HR: We do not understand deletion of the words "institution or" between the words "residual" and "referred" and we would like to keep it. At the moment the resolution tool is applied the subject is still an institution until the wound up is commenced. This is important from the perspective of RA in order to have control over such institution. Therefore we propose that the text reads as follow: <i>Where ~~only~~ the resolution tools referred to in <u>paragraph 3, point (a) or (b) of paragraph 3 of this Article</u> are used <u>independently or in combination with other resolution tools</u>, ~~and they are used~~ to transfer only part of the assets, rights or liabilities of the institution under resolution, ~~the~~ <u>any</u> residual institution or entity referred to in Article 1(1), point (b), (c) or (d) ~~of from which~~ <u>remaining after the transfer of</u> the assets, rights or liabilities ~~have been transferred~~, <u>and the application of other resolution tools, where relevant</u>, shall be wound up ~~under normal insolvency proceedings~~ <u>in an orderly manner in accordance with the applicable national law.</u></i> DE (MS comments): Agree with proposal for the following adjustments. We propose to amend the second subparagraph as follows: <i>“The first subparagraph shall be without prejudice to the application of the resolution tool referred to in paragraph 3, point (d), for the purpose of Article 43(2), point (a), <u>and the application of the resolution tools in paragraph 3, points (a) and (b) to transfer shares or other instruments of ownership issued by an institution under resolution, each</u> in combination with <u>the</u></i>

Presidency text proposal	MS comments
	<u><i>application of the resolution tools in paragraph 3, point (a) and (b) to transfer part of the assets, rights or liabilities of the institution under resolution ~~other resolution tools~~.</i></u> We propose that Article 22(5) of the SRMR needs to be amended accordingly. The scope of application of Article 37(6) of the BRRD and Article 22(5) of the SRMR shall be limited to scenarios in which only a residual entity remains after a transfer of parts of the assets, rights or liabilities, i.e. it shall be possible to transfer, for example, a non-performing loan portfolio to one purchaser and conduct a share deal to a bridge institution or another purchaser. The proposed amendment aims to clarify this purpose. RO (MS comments): We agree with PCY drafting proposal but we deem necessary to keep in the text also the paragraph referring to the reasonable timeframe considering any need for that institution to provide services or support pursuant to Article 65 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution is necessary to achieve the resolution objectives or comply with the resolution principles. In addition, we consider useful to introduce a reference to Article 38(6), Article 40(7) and Article 42(10) according to which resolution authorities may transfer assets, rights or liabilities back from the purchaser (in case of sale of business)/bridge institution/the asset management vehicle to the institution under resolution provided that the conditions laid down in those specific articles are met. Drafting proposal:

Presidency text proposal	MS comments
	<i>~~“Where only the resolution tools referred to in paragraph 3, point (a) or (b) of paragraph 3 of this Article are used independently or in combination with other resolution tools, and they are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the any residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) from which remaining after the transfer of the assets, rights or liabilities have been transferred, and the application of other resolution tools, where relevant, shall be wound up under normal insolvency proceedings in an orderly manner in accordance with the applicable national law. Such winding up shall be done within a reasonable timeframe, having regard to any need for that institution or entity referred to in point (b), (c) or (d) of Article 1(1) to provide services or support pursuant to Article 65 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) is necessary to achieve the resolution objectives or comply with the principles referred to in Article 34.~~</i> <i>The first subparagraph shall be without prejudice to the application of the resolution tool referred to in paragraph 3, point (d), for the purpose of Article 43(2), point (a), in combination with other resolution tools <u>and to the application of the provisions of Article 38(6), Article 40(7) and Article 42(10).</u>”</i> BG (MS comments): We agree with the rationale that Article 37(6) BRRD and Article 22(5) SRMR should be construed in the same way. We also support the amendment that specifies that the residual entity could be wound up in accordance with the available procedures under the applicable national law as well as the second subparagraph proposed by the Presidency.

Presidency text proposal	MS comments
	However, we would also prefer to keep the current text of Article 37(6), first paragraph, second sentence and to add respective text in Article 22(5) SRMR. SI (MS comments): SI: We agree. PT (MS comments): We believe that where the resolution action envisages the application of transfer tools as its main component, whether alone or in combination with other tools, and that results in a residual entity being kept, this residual entity shall be wound up under NIP, while still allowing the possibility to not follow this procedure in the cases where the transfer tool was not the main component of the resolution action. Given that, the clarification and alignment of these provisions should ensure that NRAs have the legal grounds to apply NIP to the residual entity and allow the possibility of not following this procedure when the resolution action does not envisage a transfer tool as its main component, in order to achieve a framework that allows the implementation of resolution strategies that better allow the fulfilment of resolution objectives in real cases. We think the drafting that is now proposed is enough to address this issue, so it has our support, although some interpretation questions may still remain on what can be considered a “residual entity”. NL (MS comments):

Presidency text proposal	MS comments
	Article 37(6) BRRD Article 37(6) BRRD and Article 22(5) SRMR refer to situations after the moment of Failing or Likely to Fail (FOLTF). After this moment, there are indisputably two options: insolvency or resolution. In this regard, there should be no room between the two options. Similarly, it should not be possible that there is room between the FOLTF moment and the trigger for normal insolvency proceedings. In conclusion, we urge to reinstate the reference to “<i>normal insolvency proceedings</i>” and delete reference to “<i>in an orderly manner in accordance with applicable national law</i>”. We support the inclusion of the second subparagraph but suggest the drafting be tightened to bring it into line with the scenario described in the Presidency non-paper to ensure it only applies to an “<i>institution under resolution</i>” i.e. an institution to which the bail-in tool is applied: <u>The first subparagraph shall be without prejudice to the application of the resolution tool referred to in paragraph 3, point (d) to an institution under resolution, for the purpose of Article 43(2), point (a), in combination with other resolution tools.”</u> Article 22(5) SRMR Same comments as for Article 37(6) BRRD. LV (MS comments):

Presidency text proposal	MS comments
	We agree the two provisions (Article 37(6) BRRD and Article 22(5) SRMR) should be interpreted the same way. We agree with these amendments.
2.2 Article 30a and Recital 8 BRRD ‘Preparation for resolution’ (including the link with Article 13c SRMR) Article 30a(1) BRRD would be amended as follows: <i>‘1. Member States shall ensure that competent authorities notify the resolution authorities without delay of any of the following:</i> <i>(a) any of the measures referred to in Article 104(1) of Directive 2013/36/EU <u>or in Article 39(2) of Directive (EU) 2019/2034</u> they require an institution or an entity referred to in Article 1(1), points (b), (c) or (d), of this Directive to take ;</i> <i>(b) ~~where supervisory activity shows that~~ <u>the assessment by the competent authority that</u> the conditions laid down in Article 27(1) of this Directive are met in relation to an institution or entity referred to in Article 1(1), points (b), (c) or (d), of this Directive, ~~the assessment that those conditions are met,~~ irrespective of any early intervention measure;</i> <i>(c) the application of any of the early intervention measures referred to in Article 27.</i> <i>Competent authorities shall closely monitor, in cooperation with the resolution authorities, the situation of the institution or entity and their compliance with the measures referred to in the first subparagraph, point (a), that aim to address a deterioration in the situation of that institution or entity</i>	IE (MS comments): No comment on amendment of 30a (1) (2) (3) (4) (5) (6) (7) (8) No further comment (a) and (b) for article 13 (c) SRMR (c) Non Paper commentary ‘Article 13c(5) SRMR provides the Board the power to request the entity concerned to put in place a digital platform, but it also provides for an additional power requiring the relevant national resolution authority to draft a preliminary resolution scheme for the entity concerned (Article 13c(5) point b) SRMR)’. Further clarification should be sought in relation to any timeframe envisaged, particularly to relating to the ‘preliminary resolution scheme’. HU (MS comments): Regarding Article 30a (4) we do not consider as relevant to include the proposed subparagraph in the provision since its content can be derived from other

Presidency text proposal	MS comments
<i>and with the early intervention measures referred to in the first subparagraph, point (c).</i> Article 30a(2) BRRD would be amended as follows: 2. Competent authorities shall notify resolution authorities as early as possible where they consider that there is a material risk that one or more of the circumstances in Article 32(4) would apply in relation to an institution or an entity referred to Article 1(1), points (b), (c) or (d). That notification shall contain: (a) the reasons for the notification; (b) an overview of ~~the~~ potential measures which would prevent the failure of the institution or entity within a reasonable timeframe, their expected impact on the institution or entity as regards the circumstances referred to in Article 32(4) and the expected timeframe for the implementation of those measures. <i>After having received the notification referred to in the first subparagraph, resolution authorities shall assess, in close cooperation with competent authorities, what constitutes a reasonable timeframe for the purposes of the assessment of the condition referred to in Article 32(1), point (b), taking into account the speed of the deterioration of the conditions of the institution or entity referred to in Article 1(1), points (b), (c) or (d), the need to implement effectively the resolution strategy and any other relevant considerations. Resolution authorities shall communicate that assessment to competent authorities as early as possible.</i> <i>Following the notification referred to in the first subparagraph, competent authorities and resolution authorities shall, in close cooperation, monitor the situation of the institution or entity referred to in Article 1(1), points (b), (c) or (d), the implementation of ~~the any~~ relevant measures within their expected timeframe and any other relevant developments. For that purpose, resolution authorities and competent authorities shall meet regularly, <u>with a frequency set by resolution authorities considering the circumstances of the case.</u></i>	provisions of BRRD such as the second subparagraph of Article 31 (2): ‘<i>When pursuing the above objectives, the resolution authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.</i>’ ~~<i>Where, in the use of the power referred to in the first subparagraph, the resolution authority decides to directly market to potential purchasers, it shall have due regard to the circumstances of the case and to the potential impact of the exercise of that power on the entity's overall position.</i>~~ FI (MS comments): We support the PCY proposals and that similar amendments would be made to SRMR Art 13c. We support that all the references to notifications to Commission would be deleted from the Art 13c SRMR (Art 13c(1) second paragraph, (2) fourth paragraph and (7)). There is no reason why the Commission would need such information. CZ (MS comments): CZ: We would prefer following wording of para 2, as this assessment is taking place prior to the FOLTF assessment (as stated in PRES non-paper): <i>“the competent authority ~~resolution authorities~~ shall assess, ~~in close cooperation~~ after consultation with resolution competent authorities, what constitutes a reasonable timeframe[...], “</i>

Presidency text proposal	MS comments
~~Competent authorities and resolution authorities~~ shall provide each other with any relevant information without delay Article 30a(3) BRRD would be amended as follows: <i>3. Competent authorities shall provide resolution authorities with all the information requested by resolution authorities necessary for all of the following:</i> <i>(a) updating the resolution plan and preparing for the possible resolution of the institution or entity referred to in Article 1(1), points (b), (c) or (d);</i> <i>(b) carrying out the valuation referred to in Article 36.</i> <i>Where such information is not already available to competent authorities, resolution authorities and competent authorities shall cooperate and coordinate to obtain that information. For that purpose, competent and resolution authorities shall have the power to require the institution or entity referred to in Article 1(1), points (b), (c) or (d), to provide such information, including through on-site inspections, and to provide each other with that information ~~to resolution authorities~~.</i> Articles 30a(4) and 30a(5) BRRD would be amended as follows: <i>4. The powers of resolution authorities shall include the power to market to potential purchasers, or make arrangements for such marketing, the institution or entity referred to in Article 1(1), points (b), (c) or (d), to potential purchasers, or require the institution or entity to do so, for the following purposes:</i> <i>(a) to prepare for the resolution of that institution or entity, subject to the conditions laid down in Article 39(2) and the confidentiality provisions laid down in Article 84;</i>	AT (MS comments): General remarks We support that the cooperation between supervisory and resolution authorities should be enhanced and the timely FOLTF determination should be ensured. However, we believe that the current draft still creates a potentially too formalistic and thus time-consuming procedure, which might not fully meet these objectives. Previous crises and the dry runs conducted have shown that notification requirements take a considerable amount of time. Authorities should be able to use their scarce resources to work on the case and not be overburdened with notification tasks. In practice, within the Austrian FMA as integrated authority the exchange between B VI (resolution authority) and B I (competent authority) takes place on an internal and very efficient basis. Formal notification requirements therefore represent an additional administrative burden and tie up resources that would be better invested elsewhere in a crisis situation. We notice that the comments regarding the term “material risk” have been mentioned. However, for the sake of legal clarity it should be determined, what is to be understood under the term “material risk” in this Article. Art 30a (1) BRRD The changes to Art 30a(1)(b) BRRD constitute an improvement to the previous text, since only assessments, that have already been conducted by the competent authority, have to be notified to the resolution authority and no additional assessments are necessary. Art 30a (2) BRRD Albeit the inclusion of the word “potential” is a slight improvement, the notification requirements imposed in Art 30a (2)(b) BRRD still seem too comprehensive since the requirement to notify “potential measures” implies that the competent authority has to provide details on a variety of potential measures that could prevent the failure. Such a detailed assessment can be extremely time-consuming and, in most cases, hardly possible without consulting the national macroprudential authority. From our perspective, it makes more sense to provide for a more focused overview and to give

Presidency text proposal	MS comments
(b) to inform the assessment by the resolution authority of the condition referred to in Article 32(1), point (b). <u>Where, in the use of the power referred to in the first subparagraph, the resolution authority decides to directly market to potential purchasers, it shall have due regard to the circumstances of the case and to the potential impact of the exercise of that power on the entity's overall position.</u> 5. For the purposes of the paragraph 4, resolution authorities shall have the power to request the institution or entity referred to in Article 1(1), points (b), (c) or (d), to put in place a digital platform for sharing the information that is necessary for the marketing of that institution or entity with potential purchasers or with advisors and valuers engaged by the resolution authority. <u>In such case, Article 84, paragraph 1, point e) shall apply.</u> Article 30a(6) BRRD would be amended as follows: 6. The <u>prior notification by the competent authority in accordance with the first subparagraph of paragraph 1 of this Article</u> ~~determination that the conditions laid down in Article 27(1) are met and the prior adoption of early intervention measures~~ shall not be <u>a</u> necessary conditions for resolution authorities to prepare for the resolution of the institution or entity referred to in Article 1(1), points (b), (c) or (d), or to exercise the power referred to in the paragraphs 4 and 5 of this Article. Articles 30a(7) and 30a(8) would be amended as follows: 7. Resolution authorities shall inform competent authorities of any action taken pursuant to paragraphs ~~4 and 3~~ <u>to</u> 5 without delay. 8. Member States shall ensure that competent authorities and resolution authorities closely cooperate: (a) when considering taking the measures referred to in paragraph 1, first subparagraph, point (a) of this Article, that aim to address a	the competent authority a greater degree of flexibility, particularly in situations when the competent authority might already have a concrete measure in mind that it intends to take. Against this background, we would suggest the following wording of Art 30a(2)(b) BRRD: (b) <u>where relevant, a focused</u> overview of ~~the~~ <u>potential</u> measures which would prevent the failure of the institution or entity within a reasonable timeframe, their expected impact on the institution or entity as regards the circumstances referred to in Article 32(4) and the expected timeframe for the implementation of those measures. The amendments above could ensure that the competent authority would only have to prepare the overview in case it considers several measures to be suitable for the relevant deterioration of the situation (“where relevant”). If there are several measures that need to be considered, the term “focused” would be an additional indication that the overview does not need to entail all potential measures that might be envisaged by the competent authority. Furthermore, it is questionable if the resolution authority is in the position to assess a reasonable timeframe for a measure set by the supervisory authority to prevent a failure in going concern (as stated in Art 30a [2] BRRD). The assessment of the reasonable timeframe could constitute an administrative burden and result in a long decision-making-procedure with regards to early intervention measures. Furthermore, it should be clarified, what impact the assessment of the resolution authority has on the choice of early intervention measures and the imposed timeframe. We welcome the clarification in recital 8, that the end of the defined timeframe for the implementation of the measures should not be a condition for, nor otherwise necessarily imply, a subsequent determination that an institution is FOLTF. We welcome the deletion in Art 30a (2) BRRD regarding the frequency of the meetings. <u>Art 30a (7) and (8) BRRD</u> We welcome the reference to paragraphs 3 to 5 in Article 30a (7) and (8).

Presidency text proposal	MS comments
<i>deterioration in the situation of an institution or entity referred to in Article 1(1), points (b), (c) or (d), as well as the measures referred to in paragraph 1, first subparagraph, point (c) of this Article;</i> <i>(b) when considering taking any of the actions referred to in paragraphs 4 and 3 to 5;</i> <i>(c) during the implementation of the actions referred to in points (a) and (b) of this subparagraph.</i> <i>Competent authorities and resolution authorities shall ensure that those measures and actions are consistent, coordinated and effective.’;</i> Recital 8 would be replaced by the following: <i>(8) It is necessary to ensure timely action and early coordination between the competent authority and the resolution authority, when an institution or entity is still a going concern, but where there is a material risk that the institution or entity may fail. The competent authority should therefore notify the resolution authority as early as possible of such risk. That notification should contain the reasons for the competent authority’s assessment and ~~a~~ <u>a non-exhaustive</u> overview of the alternative private sector measures, supervisory action or early intervention measures that are available to prevent the failure of the institution or entity within a reasonable timeframe. Such early notification should not prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the competent authority to the resolution authority of a material risk that an institution or entity is failing or likely to fail <u>or the end of the defined timeframe for the implementation of the measures to address such material risk of failure of the institution or entity</u> should not be a condition for, <u>nor otherwise necessarily imply</u>, a subsequent determination that an institution or entity is actually failing or likely to fail. Moreover, if at a later stage the institution or entity is assessed to be failing or likely to fail and there are no alternative solutions to prevent such failure within a reasonable timeframe, the resolution authority has to take a decision whether to take resolution action. In such a case, the timeliness of the decision to apply resolution action</i>	EL (MS comments): EL: We can support the drafting suggestions for article 30a par. 1, 2, 4, 5, 6, of BRRD. We do not support the drafting suggestions for article 30a par. 3, 7 and 8. We consider that this article relates to the preparation of the two authorities at early stages of stress with regard to a specific institution. We consider that it is the CA that should be leading the engagement with the institution, as a request by the RA at early stages might not be appropriate. To this end we do not support similar amendment proposed for article 13c (3) of the SRMR. We can support changes to recital 8. HR (MS comments): HR: We support the proposed amendments and also express support for deleting point b) of Article 13c(5) SRMR since it should be duty of the Board to draft preliminary resolution scheme in line with the cooperation framework of the SRM. DE (MS comments): Generally agree with proposal for following adjustments: We propose to add the following words at the end of point (a) of Article 30a(1): <i>“or take with respect to an institution or an entity referred to in Article 1(1), points (b), (c) or (d), of this Directive”</i>

Presidency text proposal	MS comments
<i>to an institution or entity can be fundamental to the successful implementation of the resolution strategy, in particular because an earlier intervention in the institution or entity can contribute to ensuring sufficient levels of loss absorption capacity and liquidity to execute that strategy. It is therefore appropriate to enable the resolution authority to assess, in close cooperation with the competent authority, what constitutes a reasonable timeframe to implement alternative measures to avoid the failure of the institution or entity. To ensure a timely outcome and to enable the resolution authority to prepare properly for the potential resolution of the institution or entity, the resolution authority and the competent authority should meet regularly, and the resolution authority should decide on frequency of those meetings considering the circumstances of the case.</i> Link with Article 13c SRMR: a) the same drafting proposals in Article 30a BRRD would be transposed to Article 13c SRMR, in addition the Presidency suggests to add the following modifications to Article 13c SRMR: b) Article 13c(3), last subparagraph SRMR would be amended as follows: <i>“[...] For that purpose, the ECB, <u>the Board</u> and the national competent authorities shall have the power to require [...]”</i> c) Proposal to delete point b) of Article 13c(5) SRMR	As indicated in the presidency’s non-paper, Article 104(1) of Directive 2013/36/EU does contain provisions (such as points e, l, j, k) allowing the competent authority to take direct action. Those direct actions are not covered by the current wording “they require an institution ... to take”. We propose to amend Article 30a(5) as follows: 5. For the purposes of ~~the~~ paragraphs <u>3 and 4</u>, resolution authorities shall have the power to request the institution or entity referred to in Article 1(1), points (b), (c) or (d), to put in place a digital platform for sharing the information ~~that is necessary for the marketing of that institution or entity with potential purchasers or with advisors and valuers engaged by the resolution authority~~ with persons referred to in Article 84(1) which shall apply in such a case. ~~In such case, Article 84, paragraph 1, point e) shall apply.~~ <u>Reasoning:</u> The proposed wording may be read as limiting the use of a digital platform to preparations for a sale of business strategy (argumentum e contrario: If the BRRD explicitly allows for a digital platform in this specific situation, the resolution authority cannot request information sharing via a digital platform in other situations). Thus, with respect to the preparation of all other resolution strategies, the proposed wording could worsen the possibilities for efficient information sharing.

Presidency text proposal	MS comments
	As regards the possibilities for sharing information via a digital platform, we see no valid reason to distinguish between the preparation of a sale of business strategy and the preparation of all other strategies. We should bear in mind that resolution authorities will – simultaneously to a sale of business – have to prepare a fall-back strategy as the possibilities for a sale of business depend on whether there is a purchaser willing to give its consent. However, while the resolution authority can rely on efficient information sharing via a digital platform to a potential purchaser and its advisors as well as the valuer engaged by the resolution authority, it could not use the digital platform for information sharing to, for example, other resolution authorities (e.g. those responsible for subsidiaries), the resolution authority’s advisors, the bridge institution (to be involved in the fall-back option) or a (preliminary) special administrator. In addition, we see some inconsistencies in the proposed wording: Information sharing via the digital platform shall be possible to potential purchasers and its advisors or valuers engaged by the resolution authority. However, it is not clear (i) why the valuers of the potential purchasers are excluded and (ii) why the potential purchasers are explicitly bound by secrecy obligations referred to in Article 84(1) but not the potential purchaser’s advisors or valuers engaged by the resolution authority (i.e. why reference to Article 84(1) point (e) only and not to point (f) ?). RO (MS comments): As a general remark on Article 30a, although we highly appreciate the introduction of an early coordination mechanism between the competent authority and the resolution authority, we consider that some improvements are necessary. The mechanism provided for in Article 30a should be clearly applicable also in case of

Presidency text proposal	MS comments
	resolution groups where the competent authority receives the information provided in paragraph 1 pursuant to Article 30 (from the consolidating supervisor), so that the information reaches all resolution authorities of the subsidiaries that could be affected. In addition, at the group level, more details may be needed regarding the cooperation mechanism and each authority should know its specific duties in this process. We agree with PCY drafting proposal on Article 30a(1) As regards initial COM proposal on para.(2), the extended notification obligations for the competent authority potentially create a too formalistic procedure that is overly burdensome and time-consuming for the competent authority. We agree with PCY drafting proposal on letter (b) of the first subparagraph in Article 30a(2) Within this cooperation mechanism between RA and CA, both authorities monitor the credit institution's degree of fulfillment of the imposed measures (art. 30a (1) subpara.2, art. 30a (2) subpara.(3)). In our opinion, the monitoring and evaluation of the fulfillment of the imposed measures should remain within the remit of the CA (being a going concern entity) and it will inform the AR or may consult with the AR. Drafting proposal: <i>Following the notification referred to in the first subparagraph, competent authorities ~~and resolution authorities shall, in close cooperation,~~ monitor the situation of the institution or entity referred to in Article 1(1), points (b), (c) or (d), the implementation of the any relevant measures within their expected timeframe and any other relevant developments. For that purpose, resolution authorities and competent authorities shall meet regularly and shall provide each other with any relevant information without delay</i> <i>In order to do this monitoring competent authorities shall cooperate closely with resolution authorities.</i>

Presidency text proposal	MS comments
	Moreover, regarding the third subparagraph, we consider necessary to be emphasizes in the text the fact that, if necessary, any of the authorities can request (an) additional meeting(s). We generally agree with PCY drafting proposal on Article 30a(3). Both, competent and resolution authority should have the power to request information directly. However, regarding letter (b) of the first subparagraph, in the context of the early stage of the preparation for resolution, we consider that a provision should be added within this article regarding the possibility of the resolution authority to initiate the valuation referred to in Article 36 through an independent valuator. We have in mind that the valuation is an expensive procedure and with embedded risk and we see merits in providing within BRRD the appropriate grounds for the resolution authority also to start the necessary procedures to identify a potential buyer, including for the request of external assistance for the marketing process (consultants, legal advisers etc.). We generally agree with PCY drafting proposal on Article 30a(5) and with the inclusion of the second subparagraph in Article 30a(4). However, in our opinion, the wording of these provisions could generate unintended consequences - it can be understood that the provision of Article 30a obliges the RA to go through all these measures regardless of the resolution strategy that could be applied. The power to (1) market the institution to potential purchasers or make arrangements for such marketing, or require the institution to do so (Article 30a(4)) and to (2) request the institution to put in place a digital platform for sharing the information that is necessary for the marketing of that institution with potential purchasers or with advisors and valuers engaged by the resolution authority (Article 30a(5)) should be at the discretion of the resolution authorities depending on the resolution strategy (SPE/MPE strategy and the resolution instrument) and the applicable circumstances. Moreover, those powers have a recovery nature. Moreover, we deem that RA should consult with CA about the potential purchasers having in mind the subsequent evaluation of the CA from a “fit and proper” perspective.

Presidency text proposal	MS comments
	We agree with PCY drafting proposal on Article 30a(6). We agree with PCY drafting proposal on Article 30a(7) and Article 30a(8) considering the amendment proposed in Article 30a(3). We agree that Recital 8 should be modified in accordance with the changes that will be agreed for Article 30a. In this context, we recall our position on Article 30a(2), as stated above. BG (MS comments): In general, we support more detailed provisions that regulate the cooperation between competent authorities and resolution authorities at the preparatory stage of resolution. We believe this will provide more flexibility for the resolution authorities to prepare for resolution at an earlier stage. On Article 30a BRRD: We support the most of the amendments in the Commission's drafting of Article 30a and Recital 8 BRRD and Article 13c SRMR as proposed by the Presidency. We have strong concerns on Presidency proposal regarding Article 30a (3) BRRD and Article 13c(3) SRMR. Our understanding is that according to the second sentence of paragraph 3 (Commission's version) competent authority shall collect the necessary information and share it with resolution authority. At this stage it is not necessary to assign the resolution authority with an additional role to collect information which is predominately prudential information and to conduct an on-site inspections. In addition, ambiguity would be created in these cases, hence it will be

Presidency text proposal	MS comments
	not clear competent or resolution authority or eventually ECB or SRB shall seek information from the entity, whether this will be done at the same time by both authorities and whether additional arrangements between the authorities will be necessary. All this complicates the procedure and does not contribute to smooth preparation. SI (MS comments): SI: We agree. PT (MS comments): We thank the Presidency for considering our suggestions and for incorporating most of them. We agree with all of the amendments, however, we would prefer to maintain article 13c(5)SRMR and to include an additional paragraph containing the same reference to article 84(1)(e) as in BRRD: <i>“In such case, Article 84, paragraph 1, point e) shall apply.”</i> Regarding the last subparagraph of article 30a(2), we would prefer to keep the sentence “with a frequency set by resolution authorities considering the circumstances of the case”, as proposed by the Commission. NL (MS comments): No comments LV (MS comments):

Presidency text proposal	MS comments
	We have no objection to the proposed drafting. IT (MS comments): As for paragraph 2, we do not have any objection to the proposed integrations in the first subparagraph, letter b) and in the last subparagraph. However, we reiterate the integration in the second subparagraph in order to provide more clarity, while keeping flexibility, on the possibility to reassess – depending on the circumstances of each case – what constitutes a “reasonable timeframe” for implementing alternative private measures. Indeed, the conditions for implementing such measures could change rapidly. Consequently, we believe that some flexibility should be granted to the resolution authority in assessing this very delicate issue. . <i>After having received the notification referred to in the first subparagraph, resolution authorities shall assess, in close cooperation with competent authorities, what constitutes a reasonable timeframe for the purposes of the assessment of the condition referred to in Article 32(1), point (b), taking into account the speed of the deterioration of the conditions of the institution or entity referred to in Article 1(1), points (b), (c) or (d), the need to implement effectively the resolution strategy and any other relevant considerations. Resolution authorities shall communicate that assessment to competent authorities as early as possible. The timeframe may be reassessed on a continuous basis depending on the circumstances of each case.</i>

Presidency text proposal	MS comments
	As for the forth paragraph of art. 30(a), while taking note of the arguments provided by the PYC for not accomodating Banca d'Italia proposal, we continue to see the attribution to the Resolution Authority of the marketing power, and mainly of the power to contact directly potential purchasers, in the run-up phase (so before the notification of a material risk of FOLTF) as problematic. We would prefer the competent authority to have the power to request the bank to contact potential purchaser as an early intervention measure. Indeed, we deem it useful to have this power available in advance and not only as a measure to be adopted by the resolution authority in the context of preparation for resolution. Drafting suggestion: new letter g) of Article 27, paragraph 1a and new paragraph 5a of Article 30a: “(g) the requirement for the management body to contact potential purchasers and to put in place a digital platform for sharing the information that is necessary for the marketing of the institution or entity referred to in Article 1(1), points (b), (c) or (d) with potential purchasers or with advisors and valuers also in order to prepare for the resolution of that institution or entity, subject to the conditions laid down in Article 39(2) and the confidentiality provisions laid down in Article 84.”;

Presidency text proposal	MS comments
	“5a. Where the competent authority has already exercised its power under Article 27, paragraph 1a, letter g), the competent authority and the resolution authority shall closely cooperate”. Could you clarify the final version of the paragraph? Would it be the following? <i>Where such information is not already available to the ECB or the national competent authorities, the Board and the ECB and such national competent authorities shall cooperate and coordinate to obtain that information. For that purpose, the ECB, the Board and the national competent authorities shall have the power to require the entity to provide such information, including through on-site inspections, and to provide that information to the Board.</i>
2.3 Article 63(1) points (m) and (n) / Recital 32 BRRD ‘Resolution powers: qualifying holding and market abuse regulation’ a) Suggestion to maintain the Commission’s drafting for Article 63(1), point (m) BRRD. b) Suggestion to delete the Commission’s drafting for Article 63(1), point (n) BRRD	IE (MS comments): No comments on a,b,c, or d. FI (MS comments): We support the PCY proposal. CZ (MS comments):

Presidency text proposal	MS comments
~~‘(n) the power to make requests pursuant to Article 17(5) of Regulation (EU) No 596/2014 on behalf of the institution under resolution.~~ and to introduce point (g) in Article 64(1) BRRD as follows: <u>‘(g) to decide on behalf of the institution under resolution to delay disclosure to the public of inside information pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014 and make the notification referred to in Article 17(6) of Regulation (EU) No 596/2014 on behalf of the institution under resolution.’</u> c) Suggestion to introduce a new paragraph 5a in Article 30a BRRD; <u>‘5a. Member States shall ensure that, when exercising the powers under paragraphs 4 and 5 of this Article or carrying out a valuation in accordance with Article 36, resolution authorities have the power to require the institution or entity referred to in Article 1(1), points (b), (c) or (d), to delay disclosure to the public of inside information pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014 and make the notification referred to in Article 17(6) of Regulation (EU) No 596/2014.’</u> d) Recital 32 would be replaced by the following: <u>‘(32) There are interactions between the resolution framework and the market abuse framework. In particular, while actions taken <u>in resolution or</u> in preparation for resolution ~~are susceptible of qualifying~~ <u>may qualify</u> as inside information under Regulation (EU) No 596/2014 of the European Parliament and of the Council, their premature disclosure risks jeopardising the resolution process. <u>Where such actions are intermediate steps in a protracted process, Regulation (EU) No 596/2014 does not require immediate disclosure. In other cases,</u> ~~institutions under resolution~~ <u>are able to take steps to address that issue by requesting a delay<u>ing</u> in the disclosure of inside information <u>to the</u></u></u>	CZ: In a similar vein, it would probably be appropriate to take into account the ongoing revision of the directive on the screening of foreign investments (COM/2024/23 final) and the related requirement for the assessment of a foreign transaction. AT (MS comments): Should the resolution authorities be permitted to decide on behalf of the institution under resolution whether to delay disclosure to the public of inside information, it must still apply the relevant conditions set out in Article 17(5) (a) to (c) of Regulation (EU) No 596/2014. We have some concerns that the resolution authorities might in practice encounter some difficulties in assessing the condition set out in lit. c), namely that “<i>the confidentiality of that information can be ensured</i>”. Furthermore, it is worth noting, that even if the resolution authority “decides” on behalf of the institutions to delay disclosure to the public of inside information in accordance with Article 17(5), the market authority still has to consent. Otherwise, the institution has to disclose the inside information immediately. EL (MS comments): EL: We can support the proposed changes. HR (MS comments): HR: We support the proposed amendments DE (MS comments):

Presidency text proposal	MS comments
<i><u>public pursuant to</u> ~~under~~ Article 17(4) or (5) of Regulation (EU) No 596/2014. However, the right incentives might not always be present at the time of <u>resolution or preparing for resolution in order for the institution or entity</u> ~~under resolution~~ to take the initiative to make <u>for</u> such a <u>delay</u> request. To avoid such situations, resolution authorities should have the power to ~~directly request~~ <u>require an institution or entity, when preparing for resolution, to a</u> delay ~~in~~ the disclosure of inside information <u>to the public</u> pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014 <u>and notify its intention to delay disclosure pursuant to Article 17(6) of Regulation (EU) No 596/2014 where such delay requires the consent of the competent market authority. For</u> ~~on~~ <u>behalf of an institutions under resolution, resolution authorities should have the power to take decisions on delaying disclosure and making the relevant notifications on behalf of the institution under resolution.</u></i>	Re a): In line with our <u>proposal below</u> for amending Article 38 on Qualifying Holdings Procedures, Art. 63(1) point m would be deleted as editorial adjustment resulting from the changes in Art. 38 (provision would no longer be needed). Re b): Generally agree and welcome, but we propose adjustment on the following issue: As Article 17(4) and (5) of Regulation (EU) No 596/2014 refer to a delay on the institution's "own responsibility", we see the risk of a conflict with the provisions of Regulation (EU) No 596/2014 and related legal uncertainties. We, therefore, suggest to reflect as well the resolution authorities' powers in the provisions of Regulation (EU) No 596/2014. <u>Proposal:</u> We suggest to evaluate the possibility of granting the resolution authorities the power to decide on a delay instead of the competent market authority. This, however, would necessarily have to be reflected in Regulation (EU) No 596/2014. <u>Reasoning:</u> The requirement of consent by the competent market authority bears the risk of high coordination work and potential conflicts of interest (transparency vs protection of resolution objectives) in a crisis situation. Further, the resolution authority is bound by the requirements of professional secrecy.

Presidency text proposal	MS comments
	If the institution's duty to disclose the information in the cases of Article 17(7) of Regulation (EU) No 596/2014 shall remain unaffected, we see the risk that the institution discloses the information without the resolution authority's consent and knowledge. We, therefore, would appreciate a (re)evaluation whether Article 17(7) could be suspended in case of a delay initiated by the resolution authority or at least an obligation of the institution to inform the resolution authority before disclosure on the grounds of Article 17(7). <u>Additional proposal on Qualifying Holdings Procedures:</u> Article 38(1) subparagraph 2 should be amended as follows: <i>"Subject to paragraphs 8 ~~and 9~~ of this Article and to Article 85, the transfer referred to in the first subparagraph shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser, and without complying with any procedural requirements under company or securities law other than those included in Article 39."</i> Article 38(8) should be amended as follows: <i>"By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, from the requirement to inform the competent authorities in Article 26 of Directive 2013/36/EU, from Article 10(3), Article 11(1) and (2) and Articles 12 and 13 of Directive 2014/65/EU and from the requirement to give a notice in Article 11(3) of that Directive, where a transfer of shares or other instruments of ownership by virtue of an application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution of a kind referred to in Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, ~~the competent authority of that institution shall~~</i>

Presidency text proposal	MS comments
	~~carry out the assessment required under those Articles in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives the~~ <u>Member States shall ensure that the following facilitations shall apply:</u> a) <u>By way of derogation from Article 22(1) and Article 23(4) of Directive 2013/36/EU, the resolution authority may, at its discretion, exempt the notifying party from the obligation to submit all or specific information, including any form requirements that might be applicable, specified in the list published by the Member States in accordance with Article 23(4) of Directive 2013/36/EU. When approaching potential bidders, the resolution authority may provide the notifying party with a list of specific information including specific documents that the notifying party is required to submit in order to assess the sound and prudent management of the acquirer and its suitability and the financial soundness of the acquisition.</u> b) <u>By way of derogation from Article 22(1) of Directive 2013/36/EU, if the notifying party is not able to submit required documents to the resolution authority in a timely manner or if questions arise in connection with submitted documents, the resolution authority may offer the notifying party to provide missing information by means of an oral discussion between the notifying party and the resolution authority of which a written protocol shall be kept.</u> c) <u>By way of derogation from Article 22(2) of Directive 2013/36/EU, the resolution authority is not obliged to acknowledge receipt of notification and no period applies within which the resolution authority must have completed its assessment.</u> d) <u>By way of derogation from Article 22(5) and Article 22(6) of Directive 2013/36/EU, the issuance of the order or instrument by which the resolution action is taken shall be deemed as the decision not to oppose the acquisition and as approval within the meaning of Article 22(6) of Directive 2013/36/EU.</u> e) <u>After issuance of the order or instrument by which the resolution action is taken, the institution including its qualifying holders shall be subject to the supervision by the competent authority in accordance with Directive 2013/36/EU. Competent authorities may not use their powers under Directive 2013/36/EU based solely on</u>

Presidency text proposal	MS comments
	<u>facts that were disclosed by the acquirer in accordance with point (b) provided that these facts were disclosed accurately and to the full extent.</u> f) <u>The resolution authority cannot be held liable for its decision to exclude certain documents or information from its assessment pursuant to point (a)."</u> Article 38(9) should be deleted. Article 47(5) should be amended as follows: <i>"If the competent authority of that institution has not completed the assessment required under paragraph 4 on the date of application of the bail-in tool or the conversion of capital instruments, ~~Article 38(9) shall apply to any acquisition of or increase in a qualifying holding by an acquirer resulting from the application of the bail-in tool or the conversion of capital instruments.~~ Member States shall ensure that the following provisions shall apply:</i> <i>a) the acquisition of or increase in a qualifying holding in that institution by the application of the bail-in tool or the conversion of capital instruments shall have immediate legal effect;</i> <i>b) during the assessment period and during any divestment period provided by point (f), the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended and vested solely in the resolution authority, which shall have no obligation to exercise any such voting rights and which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;</i> <i>c) during the assessment period and during any divestment period provided by point (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67 and 68 of Directive 2013/36/EU shall not apply to such a transfer of shares or other instruments of ownership;</i> <i>d) promptly upon completion of the assessment by the competent authority, the competent authority shall notify the resolution</i>

Presidency text proposal	MS comments
	<i>authority and the acquirer in writing of whether the competent authority approves or, in accordance with Article 22(5) of Directive 2013/36/EU, opposes such a transfer of shares or other instruments of ownership to the acquirer;</i> <i>e) if the competent authority approves such a transfer of shares or other instruments of ownership to the acquirer, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt by the resolution authority and the acquirer of such an approval notice from the competent authority;</i> <i>f) if the competent authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then:</i> <i>i. the voting rights attached to such shares or other instruments of ownership as provided by point (b) shall remain in full force and effect;</i> <i>ii. the resolution authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions; and</i> <i>iii. if the acquirer does not complete such a divestment within the divestment period established by the resolution authority, then the competent authority, with the consent of the resolution authority, may impose on the acquirer penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67, and 68 of Directive 2013/36/EU.”</i> <u>Reasoning:</u> The proposal aims at improving the qualifying holdings procedure while ensuring at the same time that the resolution objectives will be achieved. It therefore transfers the competence for a qualifying holding assessment in the phase of resolution on the resolution authority and allows for the resolution authority to concentrate on the vital

Presidency text proposal	MS comments
	aspects of the qualifying holdings assessment which will be deemed completed with the issuance of the order or instrument by which the resolution action is taken. The reason behind that proposal is that experience from dry runs shows that the suspension of voting rights is likely to have serious adverse effects on the practical application of the sale of business tool which could effectively jeopardize the resolution: Potential bidders could shy away from an offer to acquire the institution under resolution, as they might not be able to make use of their voting rights for an undetermined period of time, even though massive structural reforms could be necessary from an economic point of view in order to integrate the institution under resolution into the acquirer's business structure. Qualifying holdings procedures normally take months to complete, especially due to complex and detailed documentation requirements. The proposal abandons the specific legal consequence of the suspension of voting rights and opts for an uncompromising evolution of the BRRD's principle that the qualifying holdings procedure must not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives. In order to achieve that goal, for the time of the resolution, the powers regarding the qualifying holdings procedure should lie with the resolution authority, in order to deploy synergies with assessments that are already being carried out during the bidder selection process and to slim down the process as a whole. When carrying out its assessment, the resolution authority should not be tied to strict formal requirements regarding documentation but should – in line with the character of resolution action as a fast track procedure – be able to use flexible sources of information. Dry run experience does not suggest similar amendments regarding the bail-in tool. RO (MS comments): We agree to maintain the Commission's proposal (point a) We agree with PCY drafting proposal (point b)

Presidency text proposal	MS comments
	We agree with PCY drafting proposal (point c) We agree with PCY drafting proposal (point d) BG (MS comments): a) We do not oppose the Presidency suggestion to keep the Commission's drafting for Article 63(1), point (m) BRRD. b) We do not oppose the Presidency suggestion to delete the Commission's drafting for Article 63(1), point (n) BRRD and to introduce point (g) in Article 64(1) BRRD as proposed by the Presidency. c) We support the Presidency suggestion for introduction of a new paragraph 5a in Article 30a BRRD. d) We support the newly proposed changes by the Presidency in Recital 32. SI (MS comments): SI: We would support suggestion b) PT (MS comments):

Presidency text proposal	MS comments
	PT was the one Member-State that suggested to modify article 63(1) in order to clarify that the listed resolution powers can also play a supporting role and we still believe such clarification should be made. We agree with the other suggestions and strongly support that some amendments are introduced envisaging the application of the Market Abuse Regulation. We are still concerned that in A.30a/5a the suggestion is not sufficient to, firstly, set aside any kind of responsibility for the management of the institution in not disclosing and, secondly, to eliminate any risk of Market Authorities discretion in accepting or not such delay disclosure, so we would propose the following: c) Suggestion to introduce a new paragraph 5a in Article 30a BRRD; <i>‘5a. Member States shall ensure that, when exercising the powers under paragraphs 4 and 5 of this Article or carrying out a valuation in accordance with Article 36, resolution authorities have the power to require the institution or entity referred to in Article 1(1), points (b), (c) or (d), to delay disclosure to the public of inside information pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014 and make the notification referred to in Article 17(6) of Regulation (EU) No 596/2014. The management of the institution should not be held liable for delaying such disclosure upon a request made by the resolution authority, pursuant to this paragraph.’</i> NL (MS comments):

Presidency text proposal	MS comments
	Article 63(1)(m) Expand to cover time-limits applicable to qualifying holding procedures under Solvency II, PSD2 and MiFID2. NL banking groups (and presumably those of other Member States) include entities subject to those directives. Solvency II: article 58, Mifid II: article 12, PSD2; article 6 Article 63(1)(n) Support Presidency proposal to delete. Article 64(1)(g) For ensuring or restoring market confidence in a resolution scenario, it seems that disclosure should be transparent instead of allowing (NRA's to request) delayed disclosure to the public. More transparency also enhances the likelihood resolution action succeeds in achieving its objectives. Article 30a(5a) For ensuring or restoring market confidence in a resolution scenario, it seems that disclosure should be transparent instead of allowing (NRA's to request) delayed disclosure to the public. More transparency also enhances the likelihood resolution action succeeds in achieving its objectives. Recital 32

Presidency text proposal	MS comments
	See earlier comments. LV (MS comments): We have no objection to the proposed drafting.

2.4 Article 127 BRRD ‘Resolution powers: exemption from tender procedures’

The following Article 127 BRRD would be inserted:

‘Article 127 ‘Amendment to Directive 2014/24/EU’

In Article 10 a new point (k) is added:

‘Services needed for the preparation and execution of the resolution tools and powers provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council.’

IE

(MS comments):

No comments

FI

(MS comments):

We agree.

EL

(MS comments):

EL: We can support the proposed changes.

HR

(MS comments):

HR: We support the proposed amendments and we would like to point out that such similar exclusion is already in our national framework.

DE

(MS comments):

Generally agree with additional proposal:

We would prefer to add also Title V (Cross-border Group Resolution) and Title VI (Relation with third countries) of Directive 2014/59/EU. Reasoning: There may also be a need for (legal) advice in cross-border situations or in the context of recognition of third-country resolution proceedings.

Additional proposal:

Presidency text proposal	MS comments
	<i>'Services needed for the preparation and execution of the resolution tools and powers provided for in Title IV, V or VI of Directive 2014/59/EU of the European Parliament and of the Council.'</i> RO (MS comments): Considering the need to be prepared to act swiftly in the event of crisis situations in order to ensure a timely and effective resolution, we agree with PCY proposal to amend Directive 2014/24/EU on public procurement by adding an additional exclusion for the service contracts needed for the preparation and execution of resolution actions by resolution authorities in accordance with the BRRD. However, to ensure consistency with the terminology used in the BRRD, we propose to adjust the COM text as follows: Services needed for the preparation and ~~execution~~ application of the resolution tools ~~and~~ or exercise of the resolution powers provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council. BG (MS comments): We welcome the Presidency proposal to clearly regulate an exemption from the EU public procurement framework for the resolution authorities for the purposes of preparation and execution of the resolution tools and powers. SI (MS comments): SI: We agree. PT

Presidency text proposal	MS comments
	(MS comments): We fully agree. NL (MS comments): 2.4 Article 127 BRRD. No comment LV (MS comments): We agree with the proposed drafting.

2.5 Aligning three mandates for ITS with CRR3

a) Suggestion to modify Article 4(11) BRRD as follows:

*'11. EBA shall develop draft implementing technical standards to specify **the methods and arrangements for delivery of the information to be reported, the frequency and submission deadlines** ~~uniform formats, templates and definitions~~ **and shall develop IT solutions, including, reporting templates, data standards, formats and instructions**, for the identification and transmission of information by competent authorities and resolution authorities to EBA for the purposes of paragraph 7, subject to the principle of proportionality.'*

b) Suggestion to modify Article 11(3) BRRD as follows:

*'3. EBA shall develop draft implementing technical standards to specify **the methods and arrangements for delivery of the information to be reported, the frequency and submission deadlines** ~~procedures and a minimum set of standard forms~~ **and shall develop IT solutions, including reporting templates, data standards, formats and instructions** ~~templates~~ for the provision of information under this Article.'*

c) Suggestion to modify Article 45j(2) BRRD as follows:

*'2. EBA shall develop draft implementing technical standards to specify **the methods and arrangements for delivery of the information to be reported, the frequency and submission deadlines** **and shall develop IT solutions, including, reporting templates, data standards, formats and instructions** ~~uniform reporting templates, instructions and methodology on how to use those templates, frequency and dates of reporting, definitions and IT solutions~~, for the identification and transmission of information by resolution authorities, in coordination with competent authorities, to EBA for the purposes of paragraph 1.'*

IE

(MS comments):

No comments

FI

(MS comments):

We agree

EL

(MS comments):

EL: We can support the proposed changes.

HR

(MS comments):

HR: We support the proposed amendments.

DE

(MS comments):

Generally agree

There seems to be a slightly different wording in CRR3 (e.g. for Art. 430(7) CRR), is there a specific reason?

RO

(MS comments):

We agree with PCY drafting proposal but we deem that the expression "IT solution" is too general and it should be replaced with a more explicit description of what is intended to be covered by the above mention expression or a definition should be provided.

BG

Presidency text proposal	MS comments
	(MS comments): We support the amendments in Article 4(11), 11(3) and 45j(2) BRRD as proposed by the Presidency aiming to align the respective mandates for ITS with CRR3. SI (MS comments): SI: We agree. NL (MS comments): No comment. LV (MS comments): We agree with the proposed drafting.
3. Selected topics based on the Commission's proposal Member States are invited to provide, in writing, their views and/or drafting suggestions on the following provisions of the Commission's proposal. - Article 33a(8) (1) BRRD 'Moratoria Notification' - Article 33a (9) (2) / Recital 22 BRRD 'Moratoria Daily allowance' - Article 55 BRRD 'Contractual recognition of bail-in'	IE (MS comments): No comments FI (MS comments):

Presidency text proposal	MS comments
- Article 91(7), second subparagraph BRRD ‘EBA assistance in reaching a joint decision’ - Article 92(3) BRRD ‘EBA assistance in reaching a joint decision’ - Article 2 of the Directive amending BRRD ‘Transposition’	Article 55(1)(b): The reference to Article 108 (creditor hierarchy) has to be aligned with the final outcome of the creditor hierarchy discussions. <u>Article 2 of the Directive amending the BRRD ‘Transposition’</u> We would suggest expanding the transposition deadline to 36 months. The CMDI package is an extensive package of legislation that needs careful implementation. For smaller member states it is extremely burdensome when at the same time implementation work is ongoing, negotiations of new versions of legislation is ongoing and Commission is conducting its transposition checks on previous transpositions (along with other responsibilities and national duties that the experts have). In smaller member states same experts handle negotiations on more than one file and do also the transpositions. Member States should have adequate time to implement the legislation. That would contribute to higher quality legislation, better and more precise transposition and reduce also Commission’s needs to initiate transposition checks, pilot procedures and possible infringement procedures. EL (MS comments): EL: We can support the Commission’s proposal for articles included in the list. HR (MS comments): HR: We support COM proposal DE (MS comments): To Article 33a(9) (2): Partially agree, but following change is needed: We propose the following amendment:

Presidency text proposal	MS comments
	<i>~~By way of derogation from the first subparagraph,~~ Member States shall ensure that where such powers <u>pursuant paragraph 1</u> are exercised in respect of eligible deposits and those deposits are not considered unavailable for the purposes of Directive 2014/49/EU, depositors have access to an appropriate daily amount from those deposits.</i> <u>Reasoning:</u> A derogation from the first subparagraph should be avoided. Such regulation in the BRRD, which also affects supervisory moratoria according to national law, would not be prudent for systematic reasons. To Article 55: Disagree We reject the proposal on Article 55 paragraph 1 point b: As long as deposits remain bail-inable in general, there should also be an obligation to include bail-in clauses. If the likelihood of bail-in of (currently) preferred deposits is increased with the proposal due to changes in the Creditor Hierarchy, one could also argue that even deposits from natural persons and SMEs should have contractual bail-in clauses. RO (MS comments):

Presidency text proposal	MS comments
	Article 33a(8) (1) BRRD ‘Moratoria Notification’ - We agree with COM proposal. As a general remark it should be the resolution authority’s competence and responsibility to decide about duration of the moratorium as every case can be very different. It should be also decided by the resolution authority whether to apply the moratorium or not. Article 33a (9) (2) / Recital 22 BRRD ‘Moratoria Daily allowance’ - We agree with COM proposal. However, the measure should not be automatic, leaving the possibility to take into account the circumstances of each individual case when deciding to give access to an appropriate daily amount to depositors in case their deposits are inaccessible due to a suspension of payments. Article 55 BRRD ‘Contractual recognition of bail-in’ - We agree with COM proposal. Article 91(7), second subparagraph BRRD ‘EBA assistance in reaching a joint decision’ - We agree with COM proposal. Article 92(3) BRRD ‘EBA assistance in reaching a joint decision’ - We agree with COM proposal. Article 2 of the Directive amending BRRD ‘Transposition’ – We propose a 24 months transposition deadline as it is also provided by the proposal for amending DGSD. Enough time should be preserved for the transposition of the final package BG (MS comments): We have no comments and drafting suggestions at this stage. We reserve the right to comments at a later stage, particularly in case of amendment to the Commission’s draft proposal as a result of the WP discussions.

Presidency text proposal	MS comments
	SI (MS comments): SI: We agree. PT (MS comments): We do not have any suggestions for these provisions, as we agree with their drafting as proposed by the Commission. NL (MS comments): Article 33a(8) No comment Article 33a(9) No comment Article 55(1)(b) The final drafting will need to reflect how the Council settles the issue of creditor hierarchy. Article 55(2) fifth and sixth subparagraph No comment Article 91(7) No comment

Presidency text proposal	MS comments
	Article 92(3) No comment Article 2 No comment IT (MS comments): As for art. 33a(9) (2), we deem that the possibility to ensure that depositors have access to an appropriate daily amount from their deposits in case of payment suspension should be considered as a national discretion, in line also with art. 33a (3). Moreover, the measure should not be automatic, leaving the possibility to take into account the circumstances of each individual case when deciding to give access to an appropriate daily amount to depositors in case their deposits are inaccessible due to a suspension of payments. In the light of the above, we suggest the following wording: <i>‘By way of derogation from the first subparagraph, Member States ~~shall~~ may provide ensure that where such powers are exercised in respect of eligible deposits and those deposits are not considered unavailable for the purposes of Directive 2014/49/EU, depositors have access to an appropriate daily amount from those deposits having regard to the circumstances of each case.’.</i>

Presidency text proposal	MS comments
END	END