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**WORKING DOCUMENT**

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| From: | General Secretariat of the Council |
| To: | Working Party on Financial Services and the Banking Union (CMDI)<br>Financial Services Attachés |
| Subject: | CMDI Review package: BRRD proposal - replies from 18 MS |

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***MS replies: LV, EL, LU, IE, PL, PT, IT, AT, DK, CY, SI, NL, FI, RO, CZ, BE, DE, FR***

| **BBRD proposal**<br><br>**Presidency note on resolution objectives and the public interest assessment (WK 9950/2023)** | **Comments** |
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| 1. Introduction and description of the amendments proposed | LU:<br><br>LU fully supports the extension of the scope of resolution and a credible broadening of the PIA. At the same time, we generally consider that the application of PIA is more a question of how it is applied in practice and less of how it is drafted.<br><br>LU agrees with redrafting it in order to ensure that those banks whose failure would pose or be likely to serious risks (cf. resolution objectives) indeed have positive PIA. We are not convinced that there is a general case of "too small for resolution" and consider that any bank could in principle qualify for resolution under certain circumstances.<br><br>**IE:**<br><br>**These Comments should be seen as technical in nature and not our final, politically endorsed position. Irish Officials reserve the right to amend our comments below as the negotiations proceed.**<br><br>PT:<br><br>As we strongly support the enlargement of the scope of resolution, we are generally supportive of broadening the PIA and of other related amendments. Our support to broadening the PIA mainly stems from the fact that we are of the opinion that even institutions that should go to resolution with the current regime are not put under resolution for reasons beyond the strict application of the resolution objectives (clarification of the resolution objectives as proposed by the Commission is adequate in that regard), more |

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| | concretely due to a deficient funding equation.<br><br>As a preliminary comment, we would like to underline that the discussion put forth by the Presidency is mostly about principles, while the most important is implementation/operationalization, mainly by resolution authorities. Please be mindful that the current *status quo* has been enabled by strict interpretation of the PIA in some jurisdictions. It is only normal to assume that narrow interpretations will continue to be applied, which is something we believe should be properly factored in in this discussion.<br><br>The Commission proposal ensures, in our view, that a considerable portion of small and medium-sized banks with traditional business models (i.e. heavily reliant on deposits) may effectively meet conditions for resolution and avoid liquidation proceedings. This also means that some banks will continue to go into liquidation.<br><br>Having said this, the revision of the PIA must be duly framed in the wider context of the CMDI review, in particular amendments to ensure sufficient funding is available where needed and that MREL is properly calibrated for all resolution banks.<br><br>IT:<br><br>We believe that widening the scope for resolution should not be a goal per se. In line with the Eurogroup statement, it should only be pursued as long as access to sufficient funding in resolution is guaranteed and provided that it truly ensures a better protection of financial stability and depositors.<br><br>In turn, this calls for two general considerations: (i) the enlargement requires a wider and |

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| | better use – also in resolution – of the industry-funded safety nets (that can only be achieved by eliminating the DGS super-priority); (ii) banks that – due to their size and business model – are not able to tap the wholesale capital markets should not be subjected to MREL (which would be counterproductive) and therefore should be resolved through national insolvency proceedings and by using DGS efficiently. It follows that resolution should be the preferred option only in case it allows to achieve the resolution objectives in a better way and, most prominently, it better ensures the preservation of financial stability and the protection of depositors.<br><br>Therefore, even though we understand the need for clarification, we should be mindful of not widening the scope for resolution too much: only medium-sized banks, which represent a threat for the financial stability, should fall within the scope of resolution. On the contrary, according to the EC proposal, resolution becomes the default option, and this has never been the goal (neither in the past, nor for the current review).<br><br>**NL:**<br><br>**General remark on resolution objectives, resolution scope and PIA:**<br><br>The expansion of the resolution scope is one of the core elements of the Commission proposal to strengthen the crisis management framework for banks. In our view it is necessary to harmonize essential elements of the crisis management framework such as the PIA to achieve true harmonization and a consistent application of the resolution framework across banking union MS. Therefore we welcome the commission proposals regarding the resolution objectives and the PIA. However, the proposals entail several elements that may have an unintended and undesirable effects: |

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| | - First, although we support an expansion of the scope of resolution, we do not support the scope to include *all* banks, especially for smaller banks national insolvency procedures should remain a viable option.<br><br>• Resolution for *all* banks would not be proportionate for smaller banks and the resolution authorities. This would lead to significant costs for banks, especially for smaller institutions and RAs.<br><br>• On top of the burden of planning, having a resolution strategy comes with MREL requirements. This is very important as resolution entities should have adequate loss-absorption capacity. However, for smaller institutions (<5bn in assets), we think it would be almost impossible to issue sufficient MREL. They might opt to meet the requirements with CET1, further depressing their profitability. In the long term this might have negative effects on the diversity of the banking sector.<br><br>• Additionally, the changes in the PIA would make winding up a bank via national insolvency procedures almost impossible, while this procedure is in some cases the most adequate way to resolve a failing bank, especially when efficient insolvency procedures exist, which is the case in The Netherlands.<br><br>- Second, the proposal regarding the resolution objectives and the PIA in our view implies broadly protecting all deposits on the same level, which is not appropriate and efficient. Echoing the discussion in the CWP, we should analyze where there is a need to strengthen depositor protection and look for targeted solutions.<br><br>- Third, we support the goal of protecting DGS-funds but minimizing losses to the DGS |

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| | should not be a resolution objective on itself. The LCT provides clarity on the costs of the different possibilities on resolving the bank. The costs to the DGS should be considered but should not become the main driver in the choice of the appropriate resolution instrument.<br><br>Moreover, the current wording on the PIA in the Commission proposal seems to be a bit ambiguous which gives room for different interpretations on the application of the PIA and thus the scope of resolution. In order to provide clarity and to pursue harmonization, and for the reasons mentioned above, we see the need to explicitly limit the expansion of the scope of resolution as to not include *all* banks.<br><br>In our view there is a need for clear guidance on the resolution scope and the PIA for the RA. This would mean clearly defining the PIA in the level 1 text, if possible with quantitative indicators. We would also still like to explore ideas around indicative thresholds which would lead to a presumption of a positive PIA.<br><br>BE:<br><br>In general, we support the intention to broaden the scope of the resolution framework to small and especially medium sized institutions.<br><br>In our view, the current framework (followed by adopted policy stances) should be improved in two respects.<br><br>First, the framework should acknowledge more explicitly that all institutions, even the smaller ones, could become systemic under certain circumstances (e.g. when a LSI failure |

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| | occurs during a systemic crisis or when, due to specific circumstances, the failure of a LSI could trigger such a crisis). The consequence of this potential systemic relevance of all institutions is that some, mostly the LSIs, will be subjected to normal insolvency proceedings in case of an idiosyncratic crisis while they could require resolution during a more widespread systemic crisis. Under the current approach, earmarking such smaller institutions as "hybrid" risks to create an excessive administrative burden and cost for them. We consider it important that the framework is made less binary allowing a more progressive approach regarding resolvability and avoiding cliff effects.<br><br>Secondly, it should be acknowledged that it is easier to plan for resolution but opt for liquidation when a crisis case occurs than the other way around. In this sense, all institutions, even medium sized ones, under the remit of the SRB should be presumed to have a positive PIA during the resolution planning phase (this without prejudice to very specific exceptions, e.g. legacy cases). In our view, this could be seen as a mere question of interpretation of the current conditions but, considering the need for changes in existing policy, we do favor an amendment in the wording and are open to discuss the best approach.<br><br>**DE:**<br><br>**On PIA and scope in general**<br><br>Changes to PIA are among the most important elements of the Commission's proposal because several other elements of this package depend on the direction we take here.<br><br>We support a moderate extension of the PIA. To achieve that goal, we see merit in exploring the idea of introducing a presumption for SIs (see our comment on Q9). This would ensure |

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| | that, in general, all significant institutions fall within the scope of resolution. With that we would cover the largest part of the banking sectors' balance sheet in the Banking Union. It would also contribute to covering those banks that are currently deemed to be too small for resolution but too large for liquidation.<br><br>We strongly disagree with the broad extension of the PIA that would result from the COM proposal. Four main reasons:<br><br>1. Liquidation and market exit should remain the primary tool for resolving a failing bank. Application of resolution measures is an infringement of shareholders' and creditors' rights. Resolution should remain a tool primarily for dealing with risks to financial stability. We should not lose this focus.<br><br>2. Earmarking banks for resolution comes with extensive costs for both institutions and authorities (MREL, resolution planning). This is neither proportionate nor practical for small banks that pose no risk to financial stability.<br><br>3. We see no reason to disrupt well-functioning systems. Insolvency works very well in GER and other MS. In addition, we have IPS using preventive measures that work equally well for small banks.<br><br>4. How far we widen PIA predetermines other material and politically difficult questions, in particular funding needs. A moderate extension of the PIA ensures that sufficient MREL is available for all banks in scope which will make the funding debate much easier compared to a broad extension. |

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| | For these reasons, we need to explicitly limit expansion of the PIA to ensure proportionality and that insolvency remains the default solution for small and medium-sized banks.<br><br>**On the proposals discussed in this note**<br><br>At the current stage of our discussion, it seems premature to comment on the individual elements of the proposal. In our view, it is important to first reach a common understanding of what our goal with regard to PIA is.<br><br>Our reading of the explanatory material and the impact assessment is that the Commission's goal is to cover those banks that in the past have been regarded too small for resolution but too large for liquidation. We also understood from the discussion during the CWP on 20 July that many MS support broadening the scope of resolution only to a certain extent.<br><br>However, our reading of the actual COM proposal goes into a very different direction. The combined effect of the changes proposed would most likely lead to a positive PIA for almost all banks. This must be avoided.<br><br>Therefore, we need more clarity on what the proposals mean for the application of PIA in practice and the expected outcome. Important questions to inform our debate are:<br><br>1. How many banks would the Commission expect to have a positive PIA under the proposal? How many SIs and LSIs, which size of institution (e.g. in terms of total assets)?<br><br>2. What would be the reason for a positive PIA (regional critical function, depositor |

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| | protection, etc.)? What would be the outcome if there would only be the extension of critical functions to "regional" level without broadening the resolution objectives or changing Art. 32(5) subpara 1 BRRD?<br><br>3. In which cases has the PIA been carried out in a way that didn't reflect the logic and intention of the legislation (as stated in the explanatory memorandum)? Are the proposed changes intended to cover these cases or do they go further?<br><br>4. In the current framework, what exactly prevents resolution authorities from earmarking more banks for resolution?<br><br>5. How does the proposal ensure that the PIA is extended while keeping the discretion and flexibility to keep banks earmarked for liquidation at the same time?<br><br>6. According to the explanatory memorandum, the proposal keeps insolvency as the default option. How is this aligned with the proposed changes in Art. 32 (5) subpara 1 BRRD (i.e. resolution instead of insolvency as the default when both meet resolution objectives to the same extent)?<br><br>7. How does the proposal ensure that SIs will have a positive PIA?<br><br>8. How does the proposal ensure that it does not unintentionally lead to a positive PIA for those banks for which well-functioning systems exist in liquidation at national level?<br><br>9. How does the proposal increase predictability with respect to whether resolution |

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| | measures will be applied or liquidation procedures?<br><br>10. What would be the amount of additional MREL requirements? What is COM's expectation regarding the ability of banks that switch from a negative to a positive PIA to issue MREL? What MREL shortfalls would be expected (absolute and average)?<br><br>11. What additional costs (adjustment, administrative and other) for SRB, NRAs and industry would you expect from the proposed broadening of the scope of resolution?<br><br>12. In addition to the changes in the PIA, how does the number of banks with a positive PIA depend on potential changes to the creditor hierarchy? What is the difference between the current creditor hierarchy and the proposed hierarchy in terms of banks changing from a negative to a positive PIA?<br><br>13. In addition to the changes in the PIA, how does the number of banks with a positive PIA depend on potential changes to the Least Cost Test for DGS? How does the LCT relate to the resolution objective "protect depositors while minimizing losses for DGS" as proposed in Art. 31 (2) point (d) BRRD?<br><br>We understand that there are qualitative elements that make the impact assessment difficult. Nevertheless, further efforts are needed. We cannot have a serious debate about this key element of the CMDI framework without having any indication of the proposed changes' impact.<br><br>Overall, we need a common understanding of the problem we want to solve here and an open |

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| | debate about the best solutions that at the same time minimize negative side-effects.<br><br>Against this backdrop, we can only contribute preliminary comments in this questionnaire and we reserve further comments for when we have a better understanding of the impact of the proposals.<br><br>FR:<br><br>As a general comment, the public interest assessment is a political topic, very much intertwined with other elements of the review.<br><br>Indeed, the relative scope of resolution and liquidation is intimately linked, on the one hand, to the funding equation in resolution and, on the other hand, to conditionalities of crisis management avenues outside resolution.<br><br>These elements being inter-dependent, they have to be designed in a consistent way.<br><br>Therefore, we also need to have more clarity on the broader parameters of the package - relating to the hierarchy of claims, relative bail-inability of credits, MREL eligibility of their liabilities, DGS funding in resolution, access and contribution to resolution funds and SRF, as they need to be designed in a consistent way in order to achieve resolution objectives and therefore the scope of positive PIA.<br><br>In our view, revision of the current framework should focus on making sure that the PIA is applied consistently across the EU and delivers consistent outcomes for situations that are similar. |

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| | This is why we are skeptical with the proposal about allowing national authorities to invoke "necessity and proportionality" at discretion more than today.<br><br>On the contrary, we would favor exploring ways to increase the harmonization of practices across NRAs. In that regard, we regret that nothing in the Commission's proposal or in the presidency's non-paper touches upon the current divergence of practices across resolution authorities. For instance, we could explore ways to increase the burden of proof on resolution authorities, especially in the case of negative PIAs, to ensure NRAs always choose the procedure that best achieves resolution objectives. We have made some proposals on the matter, for instance a further specification of resolution plans' content as regards the PIA and disclosure requirements on negative PIA decisions. |
| 1.1. Amendments to the resolution objectives | |
| 1.2. Amendments to the comparison between resolution and national insolvency proceedings | |
| 2. Assessment of individual elements of the Commission proposal | |
| 2.1. Introduction of explicit reference to 'national or regional level' in the definition of 'critical functions' (Article 2(1), point (35), of BRRD) | |

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| **Q1. Do Member States agree with the proposed addition of 'regional level' to the definition of 'critical functions'?** | LV:<br><br>We support.<br><br>EL:<br><br>EL: **We support** the amendment of "critical functions" definition, so as to reflect the impact at **regional level.**<br><br>LU:<br><br>LU agrees with this amendment.<br><br>IE:<br><br>We support the aim of revising the definition of critical functions to allow for the protection of financial stability, both at a regional level and in terms of ensuring Resolution Authorities have sufficient flexibility to minimise the contagion effect arising from regional instability.<br><br>PL:<br><br>We support the EC's proposal as it makes Level1 Text more consistent with Article 6(2) it he Commission Delegated Regulation (EU) 2016/778.<br><br>**PT:** |

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| | **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",** which will allow authorities to consider the impact of the discontinuation of certain functions at a regional (and not only national) level.<br><br>In fact, Portugal had a past situation in which an institution eventually subject to resolution, although only the 7th largest institution in total assets, had a strong presence (above 30% of the deposits market share) in Madeira and Azores, two ultra-peripheral islands, where the failing of an institution might entail extremely adverse impacts.<br><br>IT:<br><br>We do agree with the proposal.<br><br>AT:<br><br>We are reluctant towards adding the word "regional level" as proposed by COM.<br><br>We have an open position towards an alignment of the competition and financial market law, an enhanced harmonized understanding amongst Member States.<br><br>DK:<br><br>We prefer a wide PIA and are supportive of the Commission's proposal.<br><br>**CY:** |

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| | **Response for Q1+Q2:**<br><br>**Cyprus is neutral on this aspect as the regionality level does not apply to Cyprus. We do not object to its addition in the definition of 'critical functions'.**<br><br>SI:<br><br>Yes, since "national" remains.<br><br>NL:<br><br>We have no problem with the addition of regional level if and when brought in line with a revised banking communication on state-aid.<br><br>FI:<br><br>We support the objective of having more banks dealt within the resolution framework if the conditions in the legislation are fullfilled. We think the scope of resolution could be expanded already within the current framework by a coherent interpretation of the legislation. But we do not oppose adding "regional level" to the definition of critical functions if that is considered needed in order to expand the scope.<br><br>RO:<br><br>Yes, from a technical point of view we see merits in adding 'regional level' to the definition of 'critical functions'. Moreover, when assessing the relevance of a bank in providing a |

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| | critical function, in addition to the relevance at the national level (according to the current framework) and at the regional level (proposed to be introduced), we see merits in considering also the relevance of the bank for the main economic sectors. Thus, in our opinion, the definition of the critical functions could also be complemented with a reference to the concentration on customers/economic sectors.<br><br>**CZ:**<br><br>**CZ:** Yes, we do not oppose the broadening of the perception of critical functions for greater flexibility for resolution authorities.<br><br>BE:<br><br>Yes.<br><br>**DE:**<br><br>**Further analysis needed.**<br><br>We are sceptical towards the addition of "regional level".<br><br>Resolution should remain focussed on cases where financial stability is at risk and this is usually not the case for banks with only regional effects.<br><br>We also see challenges in operationalising this proposal. From the perspective of the resolution authority, it would be difficult to determine what makes an economic function critical at the regional level. Inter alia, this would require to determine regional market shares |

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| | and the substitutability of economic functions at the regional level.<br><br>FR:<br><br>We support this amendment. |
| **Q2. Do Member States consider that additional framing of the meaning of 'regional level' is necessary or do you prefer to leave the interpretation to the discretion of the resolution authority?** | LV:<br><br>Leave to the discretion of the resolution authority.<br><br>EL:<br><br>EL: We **would not be supportive** of additional framing of the meaning of "regional level" but rather leave this at the discretion of the resolution authority, given that M-S have different ways of defining regions and also that the significance of each region can be defined differently based on different indicators.<br><br>LU:<br><br>LU could support additional framing of the meaning of regional level. The exact notion of this concept will evidently have to be interpreted on a case-by-case basis, but it could be helpful to further frame the discretion in order to ensure that it is applied consistently. The goal should be that regional importance can be assessed in isolation and irrespectively of national considerations. The focus could be on criteria such as a high market share within a certain geographical area even if it does not correspond to a specific, administratively delineated territory (e.g. a territory which spreads over multiple official regions without |

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| | covering any official region entirely could also constitute a region for the purpose of the PIA). The size of a region relative to the total size of a country should not be relevant, provided that a certain materiality threshold is met in absolute terms.<br><br>IE:<br><br>We consider it to be approproiate to allow for Resolution Authority discretion to ensure that various Member State specificities can be appropriately accounted for. However, some additional framing or guidance, perhaps in the recitals, may be valuable in order to ensure clarity and ensure Resolution Authorities can make the decision appropriately.<br><br>We would also see value in adding clarity to better define what constitutes "critical functions" at a regional level. For example, could it be argued that they might comprise a different or more limited set of functions to those at the national or cross-border level?<br><br>PL:<br><br>We strongly oppose any further framing of the meaning of 'regional level'. It should be emphasized that the abovementioned provision of regulation 2016/778 in article 6(2) letter (b) refers not only to 'regional level' but also to 'local level' so if any concise interpretation of 'regional level' is introduced the definition of 'critical function' should be supplemented with reference to 'local level'.<br><br>PT:<br><br>Considering the experience just referred to in the previous answer, we would not favour the |

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| | deepening of the concept of "regional level" only through indicators which require a direct comparison to the national level, such as GDP or number of inhabitants, as the impact of failing might be more related with the seclusion of a particular region or even with other factors that make the replacement of that institution in that region very difficult and/or the impact of its failure more significant.<br><br>IT:<br><br>We would prefer leaving the interpretation to the RA.<br><br>AT:<br><br>Additional framing is needed; the interpretation of "regional level" should not be left to the entire discretion of RAs.<br><br>Clarification is needed, at least with regard to the following aspects:<br><br>1) We would understand "regions" - as proposed by the ECB in the CWP of 20th July, in line with the EUROSTAT-definition – as federal provinces.<br><br>2) Given the differences among Member States on what the "regional level" might be, depending on the size of the Member States and on how the national banking sector is structured, the definition should still allow for enough flexibility of RAs in their assessment of critical functions at regional level. For AT, regional critical functions in federal provinces are of minor importance because of our sectoral banking system and because AT is too small for further regional subdivision. The consideration of regional critical functions should |

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| | therefore be optional and not mandatory in case critical functions at regional level are not an issue at the respective national level.<br><br>3) The conditions, which financial market disturbances on regional level could have effects on critical functions to an extend that access to the SRF could be justifiable, should be clarified. In our view, such effects could only refer to very extensive financial market turbulences and a non-substitutable threatening of critical functions within the same Member State with the risk of possible financial market turbulences in the respective Member State or cross-border.<br><br>4) Problems of small and medium-sized banks caused by structural problems of Member States should not allow an access to the SRF. Prudential arbitrage shall, in general, be prevented.<br><br>5) An excessive burden in terms of data collection and documentation should be avoided.<br><br>DK:<br><br>We strongly support a wide interpretation of the PIA.<br><br>We do support an overall reference to regional level but also understand that this level would be hard to determine. We would not be supportive of introducing limiting factors, such as basing the PIA at regional level on e.g. the number of inhabitant or similar as one size does not fit all. As such, we find that discretion of the interpretation of the PIA should be left to the resolution authority. |

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| | SI:<br><br>Additional regional level can be left to the discretion of the resolution authority, while it does not affect SI, because regarding the size, national level will be applied.<br><br>NL:<br><br>In our view it is necessary to harmonize essential elements of the crisis management framework such as the PIA to achieve true harmonization and a consistent application of the resolution framework across banking union MS. Therefore we strongly support the additional framing and clarity on the PIA in the level 1 text, including, but not limited to, the definition of 'regional level'.<br><br>We do see challenges in operationalising 'regional level' in the PIA. It would be difficult to determine what makes an economic function critical at the regional level. We wonder how the Commission envisions this in the PIA.<br><br>FI:<br><br>We would prefer leaving the interpretation to the resolution authorities.<br><br>RO:<br><br>No, we see preferable at this stage to leave the interpretation of the concept of 'regional level' to the discretion of the resolution authority, considering that its general meaning should be inferred by comparison to the national level and to other regions of each specific |

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| | Member State. It should also be taken into consideration it is difficult to fully harmonise criteria of what regional means considering the particularities of each MS (in terms of the structure of the banking sector, geographic and/or demographic characteristics etc.) and the different degrees of relevance regarding such particularities, from one member state to another.<br><br>**CZ:**<br><br>**CZ:** We would leave the definition for the Member States as they are in the best position to decide the regional impact and a state division into relevant regions. Alternatively, even if the term "*regional level*" is framed, or referenced to any other relevant regulation, we deem it appropriate to leave the choice of granularity at discretion of the resolution authority. E.g. should NUTS levels be the preferred option, the decision on use of NUTS level 1, 2 or 3 should be done by the resolution authority in order to best reflect the national specificities.<br><br>BE:<br><br>No strong views regarding the need for additional framing.<br><br>DE:<br><br>If "regional level" was to remain in the text, a) the problems related to operationalisation would need to be solved and b) "region" would need to be defined (e.g. certain minimum size) to ensure a level playing field.<br><br>FR: |

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| | We would welcome further discussions on possible framing of the meaning of 'regional level' in order to achieve as much consistency in the implementation as possible, as we advocate in our preliminary comment. In our views, the framing of the "regional level" should be defined on the basis of the "common classification of territorial units for statistical purposes" (NUTS).<br><br>Thus, it would:<br><br>- Allow the harmonisation of practices across jurisdictions and consistency of the use of the regional level by NRAs;<br><br>Avoid any complexity, by relying on simple and existing concepts. |
| 2.2. New reference to support provided from 'the budget of a Member State' in the resolution objective of protecting public funds (Article 31(2), point (c), of BRRD) | EL:<br><br>EL: Yes, **we agree** with specifying that public funds relate to funds provided through the M-S budget. |
| **Q3. Do Member States agree that EPFS originating from the budget of a Member State differs from that of the industry-funded safety nets?** | LV:<br><br>We support.<br><br>EL:<br><br>EL: **We agree** that Extraordinary Public Financial Support (EPFS) originating from the |

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| | budget of a M-S differs from the industry-funded safety nets and therefore this should be reflected in the conditions.<br><br>LU:<br><br>LU generally agrees that there is a difference between EPFS originating from the budget and EPFS originating from industry-funded safety nets and that it is preferable to use industry-funded safety nets rather than taxpayer's money. However, it would be even more preferable not to rely too much on industry-funded safety nets either. Accordingly, to the extent that the functioning in practice of such industry-funded safety nets could depend on public guarantees (in the form of national guarantees for DGS credit lines) to cope with the failure of certain specific banks, it has to be ensured that the PIA is positive where it is likely that an industry funded safety net will have to resort to a state-backed credit line. In that sense, the difference from support originating from the budget and support originating from industry-funded safety nets does exist, but it is relativized by the fact that the latter ultimately depends on the former. The priority shall therefore consist in minimizing the reliance on both sources by ensuring that banks build up sufficient MREL buffers in order to be resolvable without being dependent on a DGS intervention.<br><br>IE:<br><br>Our assessment of industry funded safety nets is that they are separate and distinct from EFPS originating from the budget of a Member State. As such, we agree that they are separate, and increasing the clarity of this differentiation may be useful, however, we would propose replacing the wording of "the budget of a Member State" with terminology that is already utilised within the BRRD, such as 'public funds'. |

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| | PL:<br><br>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.<br><br>PT:<br><br>We agree with the distinction between external funds provided via industry-funded safety nets and those coming directly from the State.<br><br>IT:<br><br>We do agree that extraordinary public financial support provided from the budget of a Member State is different from funding provided through the industry-funded safety nets. Even more so, we recall that when the resources are genuinely private (meaning that, they are provided by the industry, even when required by the law) and when they are employed in accordance with the possibilities provided by the framework (including through preventive and alternative measures), they do not qualify as State aid, and therefore they should be employed free from competition concerns. For the sake of clarity, we believe that a greater reliance on the industry-funded safety nets would not hamper the role of the MREL, which would still remain the first line of defence (when banks are indeed able to tap the wholesale capital markets), nor the need for making shareholders and certain creditors bear the cost of the crisis first (as this will always be the case). |

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| | AT:<br><br>Yes, we agree.<br><br>DK:<br><br>We agree that there is a difference, as mentioned in the PRES non-paper; State-Aid rules are mostly tied to competition rather than minimising direct impact on taxpayers.<br><br>It is imperative for DK that we do not weaken the first line of the defense (the 8%) and that the use of public funds is strictly used a last resort. This is underlined by highlighting a preference for industry funded safety nets.<br><br>DK supports the intention of the CMDI, i.e. that resolution strategies and MREL requirements to support the strategies are the way forward also for smaller institutions and at the discretion of the resolution authorities<br><br>CY:<br><br>We agree. These funds differ in substance in their origination and their possible alternative uses (i.e. their opportunity cost). That said, an alignment with State Aid rules should be strived to avoid ambiguity.<br><br>SI:<br><br>Yes, we agree. |

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| | NL:<br><br>In general, funds from the budget of a MS differ from those from industry-funded safety nets. However, we don't quite follow the assessment that funding provided from MS budgets bears a higher risk of moral hazard and a lower incentive for market discipline. From a moral hazard perspective, there seems to be no difference in general between different sources of external funding unless safeguards (such as risk-based contributions to safety nets) are sufficiently strong. In any case, market discipline is best enforced by shareholders and creditors. In case Member State funds are used in the context of a bank failure, this should always recovered from the (national) banking sector over the medium term.<br><br>FI:<br><br>In general, funds from the budget of a Member State can differ somewhat from those from industry-funded safety nets. However, in Finland DGF's funds are technically part of the State budget. Also, it is very likely that costs of the industry-funded safety nets go down to banks' clients, to tax-payers, in that case too. So, in practice there is not much difference.<br><br>RO:<br><br>Yes, we agree that EPFS originating from the budget of a Member State differs from that of the industry-funded safety nets, given the effective source of contributions (the sector that generated the risk to be dealt with) and the purpose for which those resources were calibrated and collected. |

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| | **CZ:**<br><br>**CZ:** Yes, funding provided by safety nets should be considered preferable to taxpayer funding.<br><br>BE:<br><br>Yes.<br><br>DE:<br><br>In general, funds from the budget of a MS differ from those from industry-funded safety nets. However, we don't quite follow the assessment that funding provided from MS budgets bears a higher risk of moral hazard and a lower incentive for market discipline. From a moral hazard perspective, there seems to be no difference in general between different sources of external funding unless safeguards (such as risk-based contributions to safety nets) are sufficiently strong. In any case, market discipline is best enforced by shareholders and creditors.<br><br>FR:<br><br>We disagree with this proposal, all EPFS should be treated the same way, and the distinction should not be defined along this notion of budget of a MS vs. industry funded safety net. Otherwise, this will contribute to unlevel the playing field on arbitrary administrative setup modalities, and to moral hazard whereas one of the main motives for this CMDI review was precisely to reduce the occurrence of such interventions. |

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| | To avoid any legal uncertainty, we would actually support a clarification of the scope of public interventions to be considered under Article 31(2), point (c), of BRRD, to ensure any financing by a DGS using mandatory ex ante contributions under DGSD is included, regardless of its qualification under Article 107 TFEU – with a discussion to be held on the best way to cater for the specificities of IPS that are also recognised as DGS. |
| **Q4. Do Member States agree that such differentiation be reflected in line with the Commission proposal?** | LV:<br><br>We agree.<br><br>EL:<br><br>EL: **We agree** that such differentiation should be reflected. In particular, industry safety nets should be treated in a similar way regardless of whether they could be considered as state aid. These industry safety nets are financed from the industry and thus their identification as state aid due to e.g. governance structure should not lead to different treatment as part of the PIA.<br><br>LU:<br><br>While LU can agree with the proposed amendment, it might not be sufficiently straightforward in order to ensure that the PIA will be positive in all cases where taxpayer's money would be at risk or likely to be at risk. The scope of resolution has to be expanded in order to protect both the budget and industry-funded safety nets. A bank whose failure cannot |

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| | be adequately handled in liquidation has to have a positive PIA and shall be resolvable without depending on a DGS intervention.<br><br>IE:<br><br>While the industry funded safety nets are, in our assessment, distinct from national funds, in the absence of a shared EDIS, the current backstop to the DGS for example, is the national budget.<br><br>As such, it may be helpful to examine this issue in the context not just of the current safety net, but also in terms of the backstop arrangements to the safety nets, and if that may have bearing in terms of the operation of the State Aid rules.<br><br>PL:<br><br>We support the EC's proposal.<br><br>PT:<br><br>While there is no explicit reference to the fact that funds originated directly from the State Budget should be subject to a more stringent protection than funds from industry-funded safety nets, we believe the Commission proposal is a workable solution. Nevertheless, we are open to explore other, more explicit, drafting to clarify that this is the intended interpretation.<br><br>Additionally, we must be aware that, depending on national frameworks, resolution financing mechanism/DGS may be considered to be within the State budget perimeter, so we believe the wording of this particular objective should be clarified, at least in the recitals, to make |

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| | sure that, for such purposes, funds provided by industry-funded safety nets shall not be considered as funds provided from the budget of a Member State.<br><br>IT:<br><br>We could agree with the EC proposal but are open to explore ways to clarify that funds provided by the industry through the safety nets do not qualify as State aids.<br><br>AT:<br><br>References to budgetary implications of MS could be understood in a sense that NRFs or the SRF are not sufficiently powerful and that extraordinary public financial support from the budget of a Member State can be expected. Such indications should therefore be added seldom to prevent expectations from financial market participants and RAs. **Instead, the principle that at least 8% bail-in from creditors shall be ensured, should be brought in the focus of the CMDI-proposal in a more prominent manner. RAs shall be encouraged to enforce that principle in resolution cases. An easening of the resolution decision by way of underlining that government interventions are on-hold anyway shall be no result of the CMDI-review.**<br><br>DK:<br><br>Yes<br><br>CY:<br><br>Yes a distinction should be clear that extraordinary public financial support should first come |

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| | from industry safety nets and not from the state budget. More clarity at Level 1 text is welcome.<br><br>SI:<br><br>Yes, we agree.<br><br>NL:<br><br>We see no need to introduce a hierarchy between different types of State Aid, which are treated the same way under the Union State Aid framework.<br><br>FI:<br><br>No, we do not agree with the proposal to differentiate the funds coming from a MS budget and from industry funded safety nets in the legal text. The current wording of the BRRD should be retained.<br><br>It's not clear why this change is proposed. It looks like the intention is to promote increased use of the industry-funded safety nets. This should not be the goal.<br><br>We would also like to point out that extraordinary public financial support is also connected to the State Aid regime, that is not reviewed at the moment. The State Aid regime does not differentiate between the sources of funding but all extraordinary public support is considered State Aid. Such differentiation should not be created here. |

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| | RO:<br><br>The COM proposal should be further improved to better reflect the difference between the two types of funds.<br><br>Just providing in one of the resolution objectives that the reliance on one of the two distinct types of funds should be 'in particular' minimised does not seem appropriate at all. A more comprehensive review of their regime could at least be explored for reaching the objective of ensuring a clear distinction between them.<br><br>**CZ:**<br><br>**CZ: Yes, funding provided by safety nets should be considered preferable to taxpayer funding.**<br><br>BE:<br><br>Yes.<br><br>DE:<br><br>We do not agree with the proposed differentiation. It's not clear to us what the reason for this change is. It seems to be geared towards increasing use of industry-funded external funds. We don't see this as a goal in itself.<br><br>Overall, we should avoid the impression that this review focusses more on external funding |

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| | and neglects internal funding through bail-in. The concept of bail-in is one of the main lessons learnt from the last financial crisis.<br><br>FR:<br><br>We therefore disagree with the proposal to introduce a hierarchy between different types of EPFS. See detailed answer above. |
| 2.3. Changes to the resolution objective of protecting depositors (Article 31(2), point (d), of BRRD) | |
| 2.3.1. Protecting depositors | |
| **Q5. Do you agree with replacing the reference to 'depositors covered by Directive 2014/49/EU' with a reference to 'depositors' in Article 31(2), point (d)? Please provide reasons for your answer.** | LV:<br><br>We disagree, when expanding, it is necessary to assess how it will be coordinated with the DGSD.<br><br>EL:<br><br>EL: **We support relevant change** as we consider that it does not make sense to differentiate between depositors during the public interest assessment test.<br><br>LU: |

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| | The objective of protecting depositors in general is already largely reflected in the current resolution objectives (notably in the objective of ensuring financial stability and the continuity of critical functions). A false signal of "protecting non-covered deposits", while they indeed remain exposed to losses and bail-inable, has to be avoided. The effect of intentionally removing this reference ex post may furthermore give rise to unnecessary ambiguities.<br><br>IE:<br><br>The proposed wording would seem to suggest that the protection of all depositors is an objective, implying an implicit guarantee of all depositors. While we understand the position put forward by the Commission that a stated objective is not an absolute requirement, we are still of the opinion that the text implies that all deposits are worthy of the same protection.<br><br>The key issues with this proposal relate to:<br><br>(i) Fairness: not all deposits merit the same kind of protection.<br><br>(ii) Overlap with other resolution objectives: the objective of continuity of critical functions already covers the possible financial stability and real economy effects of harming deposits.<br><br>(iii) Expanded resolution scope: the protection of all deposits will expand the resolution scope, which can create costs for institutions.<br><br>Our understanding is that the policy objective being pursued is to specifically protect covered deposits, and that protecting other deposits would be an action taken only where it is |

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| | appropriate. The DGS's primary purpose is to protect depositors and the minimisation of losses in resolution, which is already accounted for and calculated via the harmonised least cost test (LCT).<br><br>PL:<br><br>We agree with the amendment which is a part of the wider concept of increasing access to DGS's funds in resolution including inter alia introduction of single-tier for deposits in the hierarchy of claims. We agree that the general rule of protecting "depositors" serves the stabilisation of the financial system in the event of the threat of the bank insolvency.<br><br>**PT:**<br><br>**We fully support of the enlargement of the relevant resolution objective to protect all depositors and not only covered depositors.**<br><br>Our experience shows that the protection of depositors in Portugal has always been critical, as a rule. Even for our largest institutions, traditional banking activity such as deposit-taking and loans is still dominant. Not only is such traditional banking activity dominant, but the use of deposits for investment is also residual. Therefore, we do not follow the criticism that such renewed objective would significantly increase moral hazard (in fact, in Portugal, deposits are mostly used for payment operations). In addition, we also understand that the overall regime still allows that deposits are treated differently, when adequate and justified.<br><br>IT: |

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| | We agree with such a change. As a matter of fact, this amendment does not imply that all depositors will be protected, in all instances. The protection of uncovered deposits will still be conditional (meaning that certain strict conditions would need to be met before applying the safeguards – e.g. discretionary exclusion from bail-in). Through this amendment, the EC simply recognizes that in some cases even the protection of uncovered depositors is necessary in order to preserve the financial stability.<br><br>**AT:**<br><br>**No, we do not agree**. We support the BRRD-version in force and the safeguarding of those depositors, which are covered by DGSD.<br><br>The focus of DGSD and BRRD (e.g. PIA and the definition of critical functions) should be the 1) prevention of failure with potentially destabilizing effects which are caused by relevant financial market disturbances and the 2) safeguarding of public trust in the functioning of the financial sector. Public interventions should be **necessary** and **proportionate** with regard to these objectives; also with respect to the budgetary implications for banks, DGS and MS.<br><br>In our view, the issue of including the protection of all depositors as a resolution objective cannot be separated from the discussion of the key aspects (i.e. single-tier system, MREL and bail-in eligibility, expansion of the scope of resolution) of the whole CMDI proposal.<br><br>From a technical point of view, it seems to us contradictory, that the proposal intends to protect all depositors while at the same time non-covered deposits still remain bail-inable. In a resolution case, it would be difficult for the resolution authorities to balance the interests at stake, in particular given the enhanced burden of proof that comes with the expanded scope |

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| | of resolution. The result of the expansion would most likely result in an excessive burden of proof for the RAs, either because they have to justify discretionary exclusions (which should be exceptional and could create a problem with the NCWO principle) or because they need to justify why subjecting deposits to bail-in would avoid larger losses for the depositors in case of insolvency.<br><br>DK:<br><br>We support the Commission's proposal.<br><br>CY:<br><br>We support this objective, because the protection of deposits is critical. We agree with the Commission that this objective will be assessed by the resolution authorities, in combination with other resolution objectives including the objectives of ensuring the continuity of critical functions and avoiding significant adverse effects on financial stability. That said, we consider that this reference can be dealt in conjunction with the discussion on General depositor preference or a different compromise solution (i.e. two-tier approach).<br><br>SI:<br><br>In our opinion, non covered non preferred depositors should not have the same level of protection as the covered depositors (covered deposits and non-covered part above 100k).<br><br>**NL:**<br><br>**No**. In our view the proposal would lead to an implicit guarantee for all deposits at the |

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| | expense of covered depositors and the DGS. This would create moral hazard and set the wrong incentives.<br><br>Under the current regime, the resolution objective of protecting financial stability already allows for the protection of depositors where necessary in the interest of financial stability.<br><br>FI:<br><br>No, we strongly disagree.<br><br>The current wording of the Article should be kept. The proposed change would lead to that, implicitly, all deposits would be protected. As discussed in the WP 20th July, we need more analysis and debate about which deposits should be protected from a financial stability perspective. An implicit protection of all deposits would create moral hazard and set the wrong incentives for banks to hold more uncovered deposits which would be detrimental to resolvability.<br><br>**RO:**<br><br>**Disagree.** We deem that DGS mandate and the use of its resources should be focused on the protection of covered depositors for the avoidance of moral hazard. An eventual use of DGS resources in order to protect uncovered deposits should have a temporary character (we have in mind the possibility of recovering the DSG contribution, inclusively by maintaining the super preference) and be limited in value (we have in mind the setting of a maximum contribution, which is not calculated by the LCT rule, and the maintenance of the limited contribution of DGS to 50% of the minimum target level of DGS resources). |

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| | Nevertheless, we are aware that, for the protection of financial stability, when needed, the resolution authority should be able to access a route of systemic risk exemption and in this way to ensure the protection of all deposits; such a change in the framework could provide a better framework for the prevention of contagion during bank crises.<br><br>However, we deem that it would be preferable to regulate such an approach as a distinct mechanism, not to be regulated as a resolution objective per se. To this end, we consider that introducing a distinct provision that would give the RA the prerogative to protect all depositors on financial stability grounds, could be a better option but clearly stating that the RA are in no way expected to protect all depositors in all circumstances and keeping in mind that DGS should not be exposed to unnecessary/disproportionate operational and reputational risks stemming from the use of their resources for other purposes than protecting the eligible depositors. In this vein, it should be explored the need to take into account, for the calculation of contributions to the DGS, the potential use of its resources for the purpose mentioned above.<br><br>Alternatively to the current proposal of the European Commission to extend the usage of DGS resources, we deem that, for medium-sized banks, unblocking the access to the use of the Bank Resolution Fund might no longer be subject to the constraint of reaching the current 8% TLOF threshold for loss-taking by shareholders and other holders of MREL instruments (which, according to the European Commission's analysis it is not suitable for this type of banks), but a lower threshold corresponding to the actual capacity of MREL for this type of banks (in which case there is no longer any requirement of using DGS resources in order to reach the 8% TLOF threshold). |

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| | **CZ:**<br><br>**CZ: No, if the application of bail-in to depositors would threaten financial stability, this situation should be covered by a resolution objective other than general depositor protection. For this reason, the Czech Republic disagrees with this change.**<br><br>BE:<br><br>Yes, we agree with such replacement.<br><br>**DE:**<br><br>**Strongly disagree.**<br><br>We oppose the proposed general protection of all (uncovered) depositors. We need more analysis and debate about which deposits should be protected from a financial stability perspective.<br><br>An implicit guarantee of all deposits or giving the impression that all deposits are protected would create moral hazard and set the wrong incentives. It would reduce the relative cost of uncovered deposits and would incentivize banks to hold more uncovered deposits which would be detrimental to resolvability.<br><br>Under the current regime, the resolution objective of protecting financial stability already allows for the protection of depositors where necessary in the interest of financial stability. (At the same time, to our knowledge, resolution plans do not currently exclude deposits from |

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| | bail-in ex ante, thereby avoiding moral hazard.) There is no need from that perspective to add depositor protection as a resolution objective in itself.<br><br>Furthermore, a general protection of deposits as a resolution objective would lead to a very broad expansion of scope, because this resolution objective would potentially always be at risk in insolvency.<br><br>FR:<br><br>This change is closely linked to the broader issue of the protection of deposits as part of the review.<br><br>As of now, since we are not convinced by the need to opt for a single-tiered general depositor preference in absence of further impact assessment and data that we have requested in our non paper submitted in July, we do not support this change in the current provisions.<br><br>In order to avoid any confusion, we would actually support a correction of the current article 31(2)(d) wording, as "depositors covered by [DGSD]" does not clearly refer to any legal definition in DGSD. We suggest to refer instead to "covered deposits within the meaning of Directive 2014/49/EU". |
| **Q6. Do Member States agree that including depositor protection as a resolution objective does not imply per se that all depositors will be protected? Would Member States like to reinforce this 'protection' or to water-it down?** | LV:<br><br>We agree that including depositor protection as a resolution objective does not imply per se that all depositors will be protected, and we would like to reinforce this 'protection'. The |

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| | EBA could be mandated to develop guidelines to reinforce depositor 'protection'.<br><br>EL:<br><br>EL: **We agree that not all depositors will be protected and that it would allow for the resolution authorities to make a case-by-case judgement**. Based on our experience and the recent US case, depositors cannot necessarily distinguish between covered and uncovered deposits. Moreover, given the role of social media and technology in general, allowing for the bail-in of depositors could amplify potential bank runs and reallocation of deposits during a stress from small and medium-sized banks to larger institutions or to institutions in other countries. **To this end, we would be supportive of reinforcing such protection.** Given also that the current provisions for moratorium are not proposed to be changed – a broader resolution objective of protection of depositors could ease outflows in stresses.<br><br>LU:<br><br>LU agrees that if the reference to "covered by the DGSD" were to be removed (which we do not support), this should not imply that all depositors will be protected. This would however still need to be clarified in order to incentivize market discipline as it is not sufficiently straightforward and the removal could give rise to unnecessary ambiguities.<br><br>IE:<br><br>As above, perhaps altered wording such as "Minimising losses for depositors, in particular by protecting depositors protected by Directive 2014/49/EU", would allow for the Commission's intent, without granting an implicit guarantee, or the impression of an implicit |

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| | guarantee, for all depositors.<br><br>This would ensure that there would not be any scope for confusion or even legal challenges to resolution or insolvency actions which did not offer complete protection for all depositors.<br><br>PL:<br><br>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.<br><br>PT:<br><br>We understand that choosing the protection of deposits as one of the resolution objectives does not necessarily lead to an *absolute* protection in situations when, all the resolution objectives duly considered, it is understood that imposing losses on some depositors does not jeopardise said objectives. In our view, what is paramount is to ensure that the framework is prepared to safeguard uncovered deposits in all situations where that would put financial stability at risk.<br><br>IT:<br><br>See previous comment. We believe no change is necessary but in spirit of compromise we |

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| | could agree in clarifying further that uncovered deposits should be protected when this is necessary and according to the BRRD/DGSD provisions. At the same time, the framework should recognize the special nature and the relevance of deposits and consequently provide that their protection be presumed to be appropriate (even if not guaranteed).<br><br>**AT:**<br><br>**No, we do not agree**. While we agree that, in theory, the objective of protecting depositors remains subject to the assessment by resolution authorities, the implicit protection for all depositors, laid down in the resolution objectives, is evident. This leads to a situation in which it would realistically be difficult to bail-in depositors within the single class of depositors in the single-tier system.<br><br>Furthermore, we consider it problematic that the expansion of the resolution objective could result in an enhanced and, from our point of view, excessive burden of proof for the resolution authorities. In practice, expanding the scope would lead to a significant number of additional banks that would be earmarked for resolution and it would be difficult (if not to say not possible) to bail-in depositors. Therefore, we support clear rules on the bail-in eligibility of deposits also.<br><br>DK:<br><br>We note that not alle depositors should be protected. It’s important to maintain a market mechanism in customers' use of the banks. Financial institutions should not be able to attract a lot of cheap funding by having everything covered and protected by a DGS. They should pay relatively for this cover and customers should always consider how and where they place |

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| | their funds<br><br>In Denmark, we have experience with bailing in deposit and do not see a need to reinforce the protection. We can support the Commissions proposal.<br><br>CY:<br><br>We agree it does not imply full depositor coverage; as a matter of fact, we agree with the Commission that no resolution objective is meant to be met fully/absolutely but only to the extent possible.<br><br>SI:<br><br>Yes. See answer above.<br><br>NL:<br><br>In our view it does imply broadly protecting all deposits, especially in combination with the other measures in the CMDI-package, such as the obligatory general depositor preference. In the Council we need to analyse in more detail where there is a need to strengthen depositor protection and look for targeted solutions, for example by making a distinction between different depositor groups that are eligible for strengthened protection.<br><br>FI:<br><br>No, as stated in our answer to Q5, we see that changing the wording as proposed would exactly lead to the implicit protection of all depositors, which we oppose. As stated above |

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| | and discussed in the WP 20th July, this is a fundamental question of which depositors should be protected and we need more analysis and debate on it.<br><br>RO:<br><br>We disagree with the understanding that including depositor protection as a resolution objective does not imply that all depositors will be protected. We consider that the current COM proposal rather reflects a regime in which the common rule is that depositors are all protected. This technicality (including depositor protection as a resolution objective does not imply per se that all depositors will be protected**)** is only known by the authorities involved in resolution. By amending this resolution objective, the public perception would be different, and all depositors would expect protection, including the bail-inable ones. The failure to meet such expectations may trigger the depositors' loss of confidence in the DGSs, with adverse impact on the financial stability.<br><br>Consequently, in our opinion depositors protection should not be maintained as a resolution objective.<br><br>From a technical point of view, a more clear solution should be envisaged.<br><br>Establishing a regime which ensures that the resolution authority has the option, in exceptional circumstances, to apply resolution in a manner that protects all depositors could be really beneficial (i.e., when needed, the resolution authority should to be able to access a route of systemic risk exemption and in this way to ensure the protection of all deposits; such a change in the framework could provide a better framework for the prevention of contagion during bank crises). |

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| | To this end, we consider that introducing a distinct mechanism that would give the RA the prerogative to protect all depositors on financial stability grounds, could be a better option but clearly stating that the RA are in no way expected to protect all depositors in all circumstances and keeping in mind that DGS should not be exposed to operational and reputational risks stemming from the use of its resources for other purposes than protecting the eligible depositors.<br><br>As we already mentioned at the previous answer, we deem that an eventual use of DGS resources in order to protect uncovered deposits should have a temporary character (we have in mind the possibility of recovering the DSG contribution, inclusively by maintaining the super preference) and be limited in value (we have in mind the setting of a maximum contribution, which is not calculated by the LCT rule, and the maintenance of the limited contribution of DGS to 50% of the minimum target level of DGS resources).<br><br>At the same time it should be explored the need to take into account, for the calculation of contributions to the DGS, the potential use of its resources for the purpose mentioned above (protection of uncovered deposits).<br><br>**CZ:**<br><br>**CZ: Please see the answer to question 5. We consider the existing discretionary powers of the resolution authority to be sufficient.**<br><br>**Furthermore, in our opinion, extending the resolution objective to protection of all depositors could imply (undesirably) that the resolution tools and powers should be in effect applied to all credit institutions, regardless of their activities or risks to financial** |

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| | **stability, as all credit institutions inherently 'take deposits'.**<br><br>BE:<br><br>Yes, we agree. In our reading, the reference to "depositors" does not mean that all depositors should in all cases be fully protected but it allows to take their protection into account as a legitimate objective.<br><br>DE:<br><br>We do not agree. We see a high risk that including depositor protection as a resolution objective (together with other proposed changes) would in practice lead to an implicit guarantee for all deposits. The question is not about protection or watering down but the fundamental question which depositors should be protected from a financial stability perspective. See also the broad support by MS at the CWP on 20 July for discussing this fundamental question.<br><br>FR:<br><br>No. As explained in our non-paper, we are of the view that we should not continue to refer to the catch-all category of "depositors/deposits" when we reflect on the appropriate level of "protection" to be granted but rather use a more granular categorisation so that we can have an informed and precise discussion about the best way to achieve the right balance in terms of protection. |

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| 2.3.2. Minimising losses to DGSs | |
| **Q7. Do Member States agree that minimising DGS losses is a legitimate resolution objective?** | LV:<br><br>We support.<br><br>EL:<br><br>EL: We consider that **this is a legitimate resolution objective**, but we understand that even if this is not added as an objective, the least cost test still allows for resolution measures to be applied to relevant entities if the cost is lower in resolution rather than insolvency.<br><br>LU:<br><br>Yes. This objective is not only legitimate, but important. While this objective mirrors the least cost test and is closely linked to it, it would still be complementary. It would ensure that resolution is indeed used when it allows to minimize losses that the DGS would otherwise incur in liquidation, while the LCT only aims to ensure that the DGS does not pay more in resolution than in liquidation, without encouraging resolution in any way.<br><br>IE:<br><br>While we understand the intention of the points raised by the Commission and consider that there is a degree of value in aiming to minimise DGS losses, we would first see merit in clarifying what is would be considered a “loss” for the DGS? |

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| | Irish, and other MS experience of insolvency is that while it may take a number of years, the recoupment from insolvency can be quite high. For example, in the three ost recent cases of insolvency in Ireland, the DGS recovered between 65%-99% in the first 12 months, and 96%-100% by the conclusion of the insolvency.<br><br>We would want to ensure any changes do not introduce any amount of legal uncertainty or possible challenges. We also consider that the minimisation of DGS losses in resolution is already pursued by the proposed harmonised LCT requirement. Therefore, the amendment should be mindful of the proposed harmonisation of the LCT.<br><br>PL:<br><br>We fully support the goal of minimising DGS losses that should be achieved and, consequently, the direction of the changes.<br><br>**PT:**<br><br>**The inclusion of the minimisation of costs to the DGS in the list of resolution objective is an amendment which will prove itself to be key to the PIA and we very much support it.** This is of particular relevance considering (i) the enhanced role of the DGS in resolution, which might lead DGS to contribute with considerable amounts in resolution, while no changes are made to the SRF access and use restrictions, and (ii) the decision to trigger a pay-out by a national DGS is actually (in most cases) in the hands of a resolution authority not at national level.<br><br>It is in fact important that the costs for DGS are duly safeguarded while the best strategies are |

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| | being assessed by the SRB. Situations should be avoided where, to shield the SRF from some losses, a non-resolution decision is taken, forcing the institution to go into insolvency, despite being disproportionately more costly to the DGS than a resolution would be. This kind of analysis is obviously carried out when all decisions are at national level and the financial responsibility is also at national level, so it is of upmost importance that they are also imposed when the decision-making level is not aligned with all levels of financial responsibility at stake.<br><br>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.<br><br>In our view, the review of this objective is also an important sign of the opening of resolution to cost efficiency and minimisation of funds, which are very important for us while waiting for EDIS and as long as the misalignment between the power to decide and the financial liability subsists within the Banking Union.<br><br>IT:<br><br>While we believe that minimising DGS losses should be a goal within the overall resolution architecture (and, indeed, it is already pursued by the least-cost test), we do not believe it should also become a resolution objective. Minimizing DGS losses should not drive the choice between resolution and national insolvency procedure, because this would distort the framework by placing on the same level the protection of taxpayers' and industry's money. The choice between resolution and NIP should rest especially on the need to preserve the |

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| | financial stability and protecting depositors and not on the goal of protecting the industry from bearing losses.<br><br>Moreover, applying such a provision will prove to be very difficult as the quantification of losses for the DGS could not be done ex-ante without all the necessary information related to the intervention to be carried out.<br><br>**AT:**<br><br>**No, we do not agree.** The minimization of DGS-losses should not be included in the resolution objectives.<br><br>We agree with the concerns expressed in the non-paper that the effect of the inclusion could be a too broad expansion of the resolution scope.<br><br>A resolution objective which shall consider the minimization of losses for DGS' in combination with the amendment introduced in Art 32(5) that national insolvency proceedings (NIP) have to meet the resolution objectives more effectively than resolution proceedings, might lead to a situation where the resolution authority would have to assess already in the resolution planning phase, whether resolution or insolvency would provide for the better result from a purely economic perspective. As, at the planning stage, it might be difficult to definitely rule out that resolution could be more favorable for the DGS, RA will therefore tend to earmark, already in this phase institutions for resolution, irrespective of the size of the balance sheet and/or complexity of the bank ("to be on the safe side"), where currently insolvency-procedures would be assumed. The proposed methodological approach takes away responsibility from RA to a great extend while effecting proportionality |

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| | principles negatively.<br><br>The proportionate approach currently used for small and medium sized banks would be exchanged by a bureaucratic, burdensome and costly treatment for the sake of a methodological approach, which is suitable for some Member States only.<br><br>Besides, access to the SRF and potentially extraordinary financial support from MS-budgets is unburdened unnecessarily.<br><br>Given that being earmarked for resolution has far-reaching consequences for institutions and harms proportionality (e.g. MREL, resolvability, reporting obligations), this provision should be further investigated and discussed. We prefer to stick to the current BRRD/SRMR-text.<br><br>DK:<br><br>Shareholders and creditors should always be the first to bear losses.<br><br>We are supportive of adding more tools to the resolution toolbox, but we also find that an increased use of the assets in the DGS's could create a negative effect in a systemic crisis. Overall, we find that you should never actively plan the use of these assets, as they may create a negative spiral back to the sector if used at the wrong time.<br><br>As such, losses should be minimized to some extent, and we can support adding it as a resolution objective.<br><br>CY: |

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| | In our view, though this may not be considered to be an explicit resolution objective, is indirectly taken into account through the LCT. Hence, it may be removed as a specific resolution objective.<br><br>SI:<br><br>No, in case this objective clashes with other objectives – i. e. financial stability.<br><br>The primary objective of DGS should be a payout as using DGS could lead to material decrease of national deposit guarantee fund and would have to be refunded by contributions by the banks which could impact on the financial stability. The proposed system would be unsustainable in a situation of systemic crisis where we would need to provide these funds at national level, while not being able to access SRF.<br><br>**NL:**<br><br>**No**. Although we support the goal of protecting DGS-funds, minimizing losses to the DGS should not be a resolution objective on itself and we have doubts if this provision has the intended effect.<br><br>The least cost test provides clarity on the costs of the different possibilities on resolving the bank. The outcome should be considered but it should not become the solid driver in the choice of the appropriate resolution instrument. The presence of public interest may justify to choose an instrument (resolution or DGS) that may not be the most efficient one based on the LCT outcome. If one decides minimizing the DGS losses should be a resolution objective the |

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| | LCT will take over the role of the PIA.<br><br>Including minimising DGS losses in the resolution objectives seems to be at odds with many other measures in the CMDI-package, especially removing the super priority of the DGS.<br><br>FI:<br><br>No, we do not agree that minimising DGS lossess is a legitimate resolution objective. The objective of limiting DGS losses is already partly included in the other resolution objectives and losses are also minimized by the least cost test. There is no need to include DGS lossess as a separate objective.<br><br>It should also be clear that the PIA determines the choice between resolution and national insolvency procedure, and the DGS funds are then used in the chosen procedure in a way, and as much it is permitted in the legislation.<br><br>**RO:**<br><br>**Propunere opinie de trasmis la CONS: Disagree.** We do not see this as a resolution objective per se.<br><br>We deem that the objective of extending the use of DGS in resolution should be achieved only while maintaining DGS super-preference. Consequently, minimising DGS losses need not be a resolution objective if super preference and DGS limited contribution to 50% of the minimum target level of its resources, are kept.<br><br>Besides, this principle is already covered by other provisions of BRRD (i.e. art. 31(2) point |

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| | (c)).<br><br>Moreover, we are concerned that including the minimising of DGS losses among the resolution goals might increase the difficulties to put a bank into insolvency, thus expanding excessively the resolution scope. The new CMDI framework maintains and even expands the DGSs' primary mandate – by broadening the protection area to deposits currently non-eligible, i.e client funds' of financial institutions, public authorities – while leaving unchanged the methodology calculation of contributions and the minimum target level, both of them still being grounded on the volume of covered deposits. In the context of employing the DGSs' resources for protection of non-eligible deposits as well, there would be no correlation between the level of DGSs' financial resources and the scope of their usage, with direct impact on the target level and the contributions to be paid by the member credit institutions. Consequently, for the observance of the contribution principle, the methodology for calculating the credit institutions' contributions to DGSs should be adjusted in order to also take into consideration the possible broader usage of the DGS' resources.<br><br>**CZ:**<br><br>**CZ: Yes, however it must be noted that should the protection of DGS resources be explicitly included as resolution objective in BRRD, it could (undesirably) imply that all or majority of the credit institutions are to be dealt with by application of resolution tools and powers instead of liquidation or insolvency (in liquidation / insolvency, the DGS will in practice always pay covered deposits out, whereas this might not be the case in resolution, so the institution will have to be resolved irrespective of its systemic impact, critical functions, etc.).** |

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| | **We in principle oppose the proposal to make application of resolution tools and powers the default option for addressing the institution's failure.**<br><br>BE:<br><br>Yes, we agree.<br><br>DE:<br><br>The objective of limiting DGS losses is already embedded in the current resolution framework thanks to super priority of covered deposits and the current wording of the resolution objective in Article 31(2) point (d). If minimising DGS losses is indeed our goal, it would be adequate to continue protecting DGS means by holding on to super priority. We see no need to explicitly include the goal to minimise losses for DGS.<br><br>FR:<br><br>As a principle, we could agree that minimizing DGS losses is a legitimate resolution objective as it could ensure :<br><br>- The limitation of external support and implicit guarantees to the strict minimum ;<br><br>- The economic efficiency of the resolution process, which should preserve resources of industry-funded safety nets by chosing the least costly options between indemnification (DGS pay-out), preventive / alternative measures and resolution. |

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| | - The harmonization of practices across jurisdiction and preservation of a level playing field between the use of public vs private DGS.<br><br>However, we would like to better understand how this could work in practice since:<br><br>- It might be challenging to determine ex ante which crisis management method will be the least costly for the DGS (resolution vs liquidation)<br><br>- It should be articulated with the least cost test although this LCT is supposed to be performed in the resolution weekend.<br><br>In addition, a recital clarifying in more details the purpose of the introduction of this objective would be welcome. |
| **Q8. What do Member States prefer?** | PL:<br><br>We prefer to leave the objective in the wording proposed by the EC.<br><br>PT:<br><br>Please see our answer to question 7. We do not support any of the approaches proposed.<br><br>DK: |

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| | In regards to a and b, we prefer the Commission proposal – we find that all resolution objectives should be treated equally.<br><br>CY:<br><br>We would prefer option a, however we are open to option b as a compromise solution.<br><br>**NL:**<br><br>**Option A.**<br><br>Our preference is to remove the reference to minimize DGS losses from the resolution objectives. Application of BRRD article 109 with a clear and strict LCT is the appropriate way to minimize the costs to the DGS.<br><br>BE:<br><br>We are open to discuss but are opposed to option b. as the proportionality requirement is already embedded in the framework in a more general way.<br><br>FR:<br><br>In our view, as a rule, resolution objectives should be independent and not ranked vis a vis one another. |

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| **a. Removing the reference to minimise DGS losses from the resolution objectives?** | EL:<br><br>EL: **We could support removing the reference** to minimize DGS losses from resolution objectives.<br><br>LU:<br><br>No.<br><br>IE:<br><br>As above<br><br>PT:<br><br>Please see our answer to question 7 and 8. We do not support undoing this amendment to the resolution objective.<br><br>IT:<br><br>We support the proposal of removing the reference to minimise DGS losses from the resolution objectives.<br><br>**AT:**<br><br>**Yes**. |

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| | SI:<br><br>Yes.<br><br>FI:<br><br>Yes, we prefer option a.<br><br>RO:<br><br>Yes, we prefer removing the respective reference – in our opinion, there are enough provisions in BRRD that achieve the same goal without making the minimisation of DGS losses a resolution objective *per se*.<br><br>As we already explained in the context of Q7, minimising DGS losses should not be a resolution objective if super preference and DGS limited contribution of 50% of the minimum target level of its resources, are kept.<br><br>**DE:**<br><br>**Option a.**<br><br>See comment on Q7.<br><br>In our view, this is more a question of the creditor hierarchy and our discussion about which deposits to protect. |

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| | FR:<br><br>No. See answers above |
| **b. Clarifying that the addition to the resolution objectives can and should be interpreted in light of the other objectives in a proportionate way, and in particular, be balanced with the protection of deposits?** | LV:<br><br>We support b.<br><br>LU:<br><br>Could support.<br><br>PT:<br><br>Please see our answer to question 7 and 8. We do not deems this necessary as resolution objectives "*are of equal significance, and resolution authorities shall balance them as appropriate to the nature and circumstances of each case*" (see Article 31(3)).<br><br>**AT:**<br><br>**No**, adding such reference leads to more ambiguity and new questions as the current regulatory framework already provides for a holistic approach. The protection of deposits is only one of several aspect and not ranking on the same level as the resolution objectives currently mentioned in BRRD/SRMR.<br><br>In general, the issue of including the protection of all depositors as a resolution objective |

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| | cannot be separated from the discussion of the key aspects (i.e. single-tier system, MREL and bail-in eligibility, expansion of the scope of resolution) of the whole CMDI proposal.<br><br>SI:<br><br>Prefer option A.<br><br>FI:<br><br>As mentioned, we support option a. Option b would make the framework more ambigous, unclear, complex and open to various interpretations.<br><br>FR:<br><br>No. See answers above |
| **c. Other alternatives (please specify)?** | LU:<br><br>Stick to the proposal.<br><br>PT:<br><br>Please see our answer to question 7 and 8. No additional amendments are needed in this regard.<br><br>AT: |

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| | More clarity on what financial market stability means for small and medium sized banks is needed. If the reference to the minimization of losses for the DGS were to be included in the resolution objectives, at least a floor / de minimis provision should be introduced to allow the RA to come to the conclusion that banks of a certain size and complexity shall not be earmarked for resolution to enable a more proportionate regime.<br><br>**CZ:**<br><br>**CZ: We are of the opinion that DGS protection should not be the sufficient reason for placing the institution under resolution instead of the winding up in the normal insolvency proceeding, ie. the combination with other resolution objectives should be necessary (e.g. preserving financial stability).**<br><br>FR:<br><br>A recital could clarify this objective, underlying that it will preserve the ability for the DGS to intervene and ensures that, if the public interest assessment is positive, and the resolution is less costly, the case will be dealt with a resolution in line with the purpose of CMDI review to enlarge the scope of resolution. |
| 2.4. Amendments to the comparison between resolution and national insolvency proceedings (Article 32(5), first subparagraph, of BRRD) | |
| **Q9. Do Member States agree with the wording** | LV: |

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| **of Commission proposal?** | We agree, but in our opinion, the comparability of resolution and insolvency procedures leaves room for interpretation. This issue could be addressed in a second-level document of the EBA, which would define the limits of comparison in broad directions, including some qualitative criteria to be guided by.<br><br>EL:<br><br>EL: **We can accept the wording of the Commission proposal**, however, we understand the concerns by some member states and we are **supportive of finding a solution that would work for all M-S.**<br><br>LU:<br><br>LU generally agrees with the proposal.<br><br>However, we can understand the concerns expressed by some MS. From the perspective of formal logic, the confusion may notably arise from the combination of a negative formulation and the comparative form (cf. not more effectively). One option could thus be to re-frame it in a positive way:<br><br>*5. For the purposes of paragraph 1, point (c), a resolution action shall be treated as in the public interest where that resolution action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives referred to in Article 31 and where winding up of the institution under normal insolvency proceedings would* ***~~not~~*** *meet* ***[or be likely to meet]*** *those resolution objectives* ***~~more~~*** ***less*** *effectively* ***[or only to the same extent]***. |

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| | Under the COM proposal, one could indeed interpret that the baseline scenario is resolution and that RAs have to motivate that (and why) resolution would not be more effective in order to justify liquidation, i.e. the object of the justification is liquidation. However, it shall be the other way around so that the focus lies on positively justifying resolution. Under the drafting suggestion, RAs need to justify resolution by proving that (/why) liquidation would not work (or less effectively) and, in the event of doubt, resolution would be favourable and the PIA shall be positive.<br><br>The idea is the same in both cases as the PIA would be positive unless winding up is more effective, but by adopting a positive formulation one would avoid giving impression that resolution is the baseline scenario.<br><br>IE:<br><br>We consider that the proposed wording will likely make it more difficult for Resolution Authorities to demonstrate that insolvency is more effective than resolution. We also consider the higher likelihood of the bank being liquidated could help enforce market discipline.<br><br>As such, we suggest the removal of "better" from the proposal and retaining the current wording.<br><br>PL:<br><br>Yes, we support the modification of the definition of public interest by introducing the principle that resolution action shall be treated as in the public interest where that resolution |

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| | action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives and where winding up of the institution under normal insolvency proceedings would not meet those resolution objectives more effectively.<br><br>PT:<br><br>We welcome the amendments to the comparison between resolution and national insolvency proceedings.<br><br>IT:<br><br>We do not agree with the proposal. This amendment could make the application of the national insolvency procedure a remote possibility (and, in turn, resolution the default option), by imposing to the authorities an excessive burden of proof. We believe that currently the framework already allow to pursue the EC goal (ensuring that resolution can effectively be applied to a vast variety of banks), since in some Member States resolution is already applied widely. Moreover, the new reference to regional level for assessing critical functions will contribute in widening resolution.<br><br>**AT:**<br><br>**No, we do not agree** with the wording of Commission proposal. The proposed wording would make it very difficult to demonstrate that winding up under national law would achieve the resolution objectives more effectively than resolution.<br><br>While it is well understood that the proposal intends to keep insolvency as the default option |

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| | and leaves the PIA decision to the discretion of resolution authorities, a literal reading of the provision could lead to a paradigm shift from insolvency proceedings as the standard case for most failing banks to resolution. As a small country with a large number of banks, Austria would be strongly affected by such a shift, resulting in additional burdens for the RA and banks.<br><br>For small and medium-sized banks, being earmarked for resolution would have the consequence, among other things, that they would have to maintain MREL and prepare fully-fledged resolution plans. That could be a hurdle for smaller banks.<br><br>In Austria, neither resolution objectives nor credit institution specific circumstances are considered in the national normal insolvency law. Therefore, it is hard to imagine when insolvency proceedings could achieve resolution objectives better than resolution. Consequently, the provision also seems to significantly increase the burden of proof for RAs, in particular in relation to small banks.<br><br>DK:<br><br>Yes<br><br>CY:<br><br>In principle we agree, though it the text could be more clear to limit ambiguity.<br><br>SI: |

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| **BBRD proposal**<br><br>**Presidency note on resolution objectives and the public interest assessment (WK 9950/2023)** | **Comments** |
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| | We agree.<br><br>**NL:**<br><br>**No.** Although we support a limited expansion of the scope of resolution, we do not support the scope to include *all* banks, especially for smaller banks national insolvency procedures should remain a viable option. The current wording on the PIA in the Commission proposal seems to be ambiguous which gives room for different interpretations on the application of the PIA and thus the scope of resolution. To ensure consistency, predictability and proportionality, we need to clearly define the PIA in the level 1 text.<br><br>FI:<br><br>We support the objective of having more banks dealt within the resolution framework and that banks of all sizes could be put into resolution if the conditions in the legislation are fullfilled. However, there still is a place and need for national insolvency proceedings and possible pay-out of compensations there. The scope of resolution should not be changed so, that the national insolvency proceedings would not be a real option anymore. Insolvency should remain the default option for a failing bank, especially for the smaller banks.<br><br>The proposed wording (“more effectively”) seems to change the resolution to be the default option over insolvency. It would be in practise very difficult for the resolution authority to come to the decision that liquidation would be more effective than resolution.<br><br>As stated in our answer to Q1, the scope of resolution could be expanded simply by a coherent interpretation of the current legislation. Also, the main reason why the resolution |

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| | framework has currently not been used so much, is that the national insolvency proceedings and the state aid provided there is more appealing than resolution, and aid is too easy to grant there. The most efficient and easiest way to have the resolution used more often would be to amend the current State Aid rules (Banking Communication). If the State Aid rules for banks were reviewed, it would make the resolution framework more appealing and used more often without possibly having the need to alter the PIA-conditions.<br><br>RO:<br><br>Disagree. We support the creation of an explicit legal basis for the preparation of resolution for smaller banks than those that can currently be included in the category of banks that can be resolved by resolution. We deem that this is necessary to manage those specific situations in which the resolution authority will assess that there are or there could be a risk of contagion or of affecting financial stability, if such a credit institution were to be resolved through the usual bankruptcy procedure.<br><br>In order to also take into account the principle of proportionality, i.e. avoiding excessive requirements on the credit institution, the transition of a credit institution from the category of those that can be resolved by liquidation (according to the current regulation of the public interest test - PIT) to that of banks that can be resolved by resolution using a transfer instrument (according to the PIT regulation proposed by the European Commission) needs to be evaluated on a case-by-case basis. The determination of the PIT is independent of the possibility of meeting the new increased MREL requirement, which would be applied to these credit institutions. The MREL requirements could burden very small banks (through costs that affect their profitability and which can be passed on to customers through higher prices of financial services offered) and could also, in the event of non-compliance, be a |

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| | factor for concentration risk. In this context, for credit institutions that cannot meet a possible increased MREL requirement, it will be necessary to restructure the business model (for inclusion in the liquidation strategy without any risk from the financial stability perspective).<br><br>We deem that the expansion of resolution scope should be accompanied by the identification of a functional mechanism for unlocking resolution access to the resources collected from the banking industry, mechanism which ensures the achievement of the following objectives:<br><br>(i) the possibility of the effective use of DGS resources in the resolution, so that if necessary (i.e. not automatically), a possible shortfall of resources can be covered until the 8% TLOF threshold is reached and the unlocking, in this way, of the possibility of using the resources of the banking industry accumulated at the bank resolution fund;<br><br>(ii) protecting the resources from the state budget, by expanding the use of DGS resources to cover the financing needs that could not be covered by MREL and that would have been borne by unsecured creditors, and<br><br>(iii) ensuring an adequate financial capacity of DGS for the fulfillment of its primary responsibility regarding the payment of compensations for guaranteed depositors of credit institutions resolvable by liquidation by ensuring that DGS's contribution is limited (in value) and temporary.<br><br>See also the answer provided at Q5.<br><br>**CZ:** |

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| **BBRD proposal**<br><br>**Presidency note on resolution objectives and the public interest assessment (WK 9950/2023)** | **Comments** |
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| | **CZ: We do not agree with the modification of Article 32(5) BRRD, according to which resolution action should always be taken if liquidation/insolvency proceedings would not achieve a better result in terms of resolution objectives. This change is contrary to the principle that the default solution to a bank failure is to winding up of the institution under normal insolvency proceedings. The proposed change would also lead to disproportionate requirements for justification of resolution authorities' decisions in the event of a negative PIA and the associated litigation risks.**<br><br>BE:<br><br>We support the intention to broaden the scope of the resolution framework to small and especially medium sized institutions and refer to our two main concerns as explained above.<br><br>The Commission's proposed amendment to the comparison between resolution and national insolvency proceedings would make resolution the default option thereby increasing the threshold to motivate a mere liquidation. Although this approach would broaden the scope, there could be unintended consequences for LSIs, i.a. more resources would have to be spent to motivate why liquidation is better for LSIs.<br><br>Taking into account our concerns for medium-sized institutions under the SRB remit, we would prefer the legal framework to provide for a presumption for SIs that the application of the normal liquidation procedure would not meet the objectives to the same extent as resolution, thereby de facto reversing the burden of proof.<br><br>**DE:** |

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| | **Strongly disagree.**<br><br>We strongly disagree with the proposed wording ("more effectively"). This would make resolution instead of liquidation the default option. It would be very difficult for the resolution authority to argue that liquidation is more effective, even with a well-functioning insolvency regime in place. We should maintain the current wording.<br><br>**We see merit in exploring** the idea to introduce a presumption (which wouldn't be considered a hard threshold) for significant institutions that for SIs liquidation would not meet resolution objectives to the same extent as resolution. This would simplify application of the PIA in those cases where it can reasonably be expected that resolution would be the adequate tool. It would also help increase predictability of PIA.<br><br>FR:<br><br>We agree to the Commission proposal. |
| **Q10. If not the case, would Member States agree that it would be sufficient to include clarifications in the necessity and proportionality assessment or would they suggest other alternatives?** | LU:<br><br>LU fully supports the extension of the PIA. While we are open to consider adjustments (cf. draftin suggestion *supra*), the underlying rationale of expanding the scope of resolution has to be maintained. |

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| | IE:<br><br>As above, we consider that the proposed wording will make it more challenging to operationalise an insolvency.<br><br>While we are open to allowing for resolution to be available to more entities, we would suggest that additional clarifications be added to ensure resolution is chosen only when it is necessary and proportionate to do so, allowing for insolvency to remain the default option in the case of the failure of an entity.<br><br>PL:<br><br>N/A (we support current wording of the EC's proposal)<br><br>PT:<br><br>We do not see the need to include clarifications in relation to the "necessity and proportionality assessment". Indeed, such principles should be constructed mindful of the fact that resolution is still a last resort action that involves the exercise of very intrusive public powers.<br><br>IT:<br><br>We believe such a clarification would not be enough. On the contrary, we should maintain the text currently in force (i.e., resolution should be preferred when winding up the institution under normal insolvency proceedings would not meet the resolution objectives to the same |

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| | extent).<br><br>Furthermore, we also believe that when conducting the PIA test:<br><br>(i) RAs should also take into consideration: the liability structure of the bank (prevalence of deposits vs debt instruments), its capacity to access the capital markets for eligible liabilities, and the extent to which the bank relies on the CET1 for complying with the capital requirements. This would provide a more appropriate picture of the appropriateness of applying the resolution procedure – and notably the MREL – to each specific bank;<br><br>(ii) the goals of preserving financial stability and protecting depositors should prevail over those of protecting public funds and ensuring the continuity of the critical functions. Only in this way, the framework would allow to preserve financial stability in all instances, instead of pursuing actions that could – in the end – endagner it and prove more costly for the overall system.<br><br>AT:<br><br>Clarification seems to be a good starting point, depending, of course, on the actual wording of this clarification.<br><br>However, predictability and transparency are key aspects for the resolution regime which is why a clarification on a proportionate assessment is not considered sufficient.<br><br>Therefore, we would suggest additional clarifications, providing the RA with a toolbox that makes it possible to exclude banks from the resolution regime already in the planning phase. |

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| | The current wording of Art. 32(5) BRRD ("to the same extent") should be maintained for the comparison with the result of insolvency proceedings.<br><br>In addition, it could be an option to clarify that if the RA determines that resolution objectives are not considered to be at risk in insolvency, it would not have to justify why insolvency proceedings achieve the resolution objectives more effectively. This idea is somehow also included in the non-paper ("Indeed, if resolution objectives are at risk, resolution authorities must also determine (…)"), but should be made explicit in the legal text.<br><br>DK:<br><br>N/A<br><br>CY:<br><br>We would welcome clarifications in Level 1 text or in the recitals. Alternatively, the EBA could be tasked to prepare technical standards.<br><br>**NL:**<br><br>**No,** that would not be enough.<br><br>In our view there is a need for clear guidance on the resolution scope and the PIA for the RA. This would mean clearly defining the PIA in the level 1 text, if possible with quantitative indicators. We would also still like to explore ideas around indicative thresholds which |

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| | would lead to a presumption of a positive PIA.<br><br>FI:<br><br>It would be better to amend the wording in Art 32(5) and retain the current wording ("same extent")<br><br>RO:<br><br>In principle, we agree with extending the scope of resolution, but more clarity is needed regarding the benchmarks in the PIT assessment on the necessity and proportionality.<br><br>However, we deem that the proposed CMDI might not reduce the risk of reliance on public (taxpayers) funds, as there is a risk that the DGSs' resources could be more quickly depleted due to the extension of their usage without foreseeing a recalibration of the target ratio and available financial resources. Once depleted, the restoration of DGS resources would be more difficult and time-consuming, especially due to the proposed elimination of 'DGS super-preference' in insolvency (which we do not support), and it may even not be sustainable for credit institutions. These reasons significantly increase the risk of DGSs' calling on public funds in the event of a payout or for financing other resolution actions.<br><br>In order to minimise this risk we propose that an eventual use of DGS resources in order to protect uncovered deposits should have a temporary character (we have in mind the possibility of recovering the DSG contribution, inclusively by maintaining the super preference) and be limited in value (we have in mind the setting of a maximum contribution, which is not calculated by the LCT rule, and the maintenance of the limited contribution of |

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| | DGS to 50% of the minimum target level of DGS resources.<br><br>**CZ:**<br><br>**CZ: The requirement of additional justification brings too much complexity into the PIA, which could bring extra legal and litigation risks, which is not desirable. It is preferable to keep the framework applicable and effective. We deem the current wording sufficient as the liquidation should still remain the default option.**<br><br>BE:<br><br>No, a clarification in the necessity and proportionality assessment would not be sufficient.<br><br>DE:<br><br>A clarification in the necessity and proportionality assessment would not be sufficient. We should stick to the current text ("to the same extent").<br><br>FR:<br><br>We are opposed to the proposal to allow national authorities to invoke "necessity and proportionality" at discretion more than today.<br><br>So long as there is leeway left to national resolution authorities to perform the public interest assessment, there could remain diverging practices across jurisdictions, that could eventually affect the level playing field (since a positive PIA comes with MREL requirements on top of own funds) and the predictability of the framework. Indeed, in some MS 100% of institutions |

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| | have a positive PIA, while on average in the Banking Union, only 3% of LSIs have a positive PIA. This can derive either from divergence in the appreciation of resolution objectives by NRAs, or from a stronger weight given to some resolution objectives as compared to others, even though the legislation does not provide for any ranking of objectives. We acknowledge that in principle, there might be cases where NIP can achieve resolution objectives better than resolution proceedings, especially when efficient insolvency procedures exist, but we think this should come with a thorough justification of the most efficient procedure to achieve these objectives. We therefore suggest to include a requirement for resolution authorities to justify the outcome of the PIA against each of the resolution objectives as part of the resolution plan. Additionally, in order to foster convergence and a better understanding of national practices, we suggest to have a disclosure of the rationale behind negative PIA decisions, to understand why a NIP is considered more efficient than resolution when it is, and to serve as a basis for an EBA report on NRA practices as regards the PIA at a later stage. |
| 2.5. Requirement to consider and compare all extraordinary public financial support that can reasonably be expected to be granted to the institution (Article 32(5), second subparagraph, of BRRD) | |
| **Q11. Do Member States agree that resolution authorities can expect and estimate extraordinary public financial support? Should expectation of this support affect the PIA? If your answer to is 'no', please explain if you object in principle or to** | LV:<br><br>We agree. |

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| **the specific way in which the requirement has been formulated in the Commission proposal. If the latter is the case, please specify how this requirement should be incorporated.** | EL:<br><br>EL: **We don't agree that the resolution authority can expect and estimate the use of EPFS**. In particular, even in cases where intervention of DGS in resolution is provided for in national legislation, this is **not an automatic framework but rather a case by case assessment** on the basis of the assessment of conditions at the moment of the relevant decision. In some cases also the decision for such interventions lays to other authorities or bodies (eg the DGS) so it is not clear how such assessment will be made. To this end, **such a requirement in the assessment of the conditions of the PIA could be removed**.<br><br>LU:<br><br>LU broadly agrees. However, it also has to be ensured that in cases where the DGS has to - or is likely to have to - resort to the credit line and thus to EFPS in the form of the state guarantee (even if not called) shall give rise to a positive PIA.<br><br>The issue is that the notion of EPFS is a defined term and refers to state aid, while the provision by the state of a guarantee for a credit line to the DGS does not necessarily meet this definition. By ensuring a positive PIA and earmarking the relevant banks for resolution, the build-up of MREL would allow to reduce the risk for the DGS of having to resort to the credit line and the public guarantee. This is key to effectively protect taxpayer's money.<br><br>IE:<br><br>On considering public financial support, we would advise extreme caution in this regard as it may be difficult, or impossible to estimate any potential EPFS with certainty. It may also be |

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| | politically challenging to be seen to be strengthening the reliance on public finances instead of ensuring there are sufficient industry-funded safety nets in place to prevent the need to resort to public funds.<br><br>The Commission's objective would already seem to be achieved with the objective of protecting public funds.<br><br>PL:<br><br>We suggest cancelling the second subparagraph in paragraph 5 at all, as it overlaps provision of Article 31(2)(c) BRRD which also refers to the minimising of the reliance on extraordinary public financial support.<br><br>In our opinion adding this paragraph will require preparing analysis additional to these that are required based on Article 31(2)(c) BRRD.<br><br>Consequently, it seems that the same requirement is now duplicated.<br><br>This however has its impact when preparing resolution decisions. If such analysis (two separate: one relating to Article 31(2)(c) and one to this provision) are not prepared, then it might be a reason for questioning the justification of resolution actions.<br><br>While Article 31(2)(c) requires "to protect public funds by minimising reliance on extraordinary public financial support", the new provision requires resolution authority to "considers and compares all extraordinary public financial support that can reasonably be expected to be granted to the institution, both in the event of resolution and in the event of |

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| | winding up in accordance with the applicable national law". Although, in essence, these two provisions boil down to the same effect (necessity to minimize the probability and the amount of extraordinary public financial support), different wording may also provoke interpretations that the aim, scope and desired effect of these two provisions should be different.<br><br>That might translate into high level of risk if legal challenge if two separate analysis are not carried out.<br><br>In particular, the geographical dimension of the public interest, the treatment of medium-sized banks, as well as the occurrence of systemic events need to be clarified.<br><br>Within a reasonable time frame by competitors, in less developed regions it is not possible. Consequently liquidation of a bank that is failing or likely to fail within standard insolvency procedure could lead to the financial exclusion of the local society<br><br>We see merit in legal certainty, nevertheless we are of the opinion that each case of a bank failure is different and some flexibility should be possible as well. The discussions on the approach to public interest and possible adjustments in our opinion should take into consideration characteristics of national financial markets, which differ within EU in terms of size, complexity, interconnectedness and number of entities, as well as categories of entities/banks.<br><br>PT:<br><br>We support this Commission proposal. Again, it broadens the analysis resolution |

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| | authorities/SRB have to do in the PIA and will improve the capacity of the CMDI framework to avoid bailout by taxpayer's money.<br><br>The key issue in this regard is how the RA/SRB will decide on the estimation of public funds being used in insolvency. Regarding this issue, we would not agree with any irrebuttable presumption that public funds will be used in a case where the institution goes into insolvency. However, and in alignment with our previous considerations, it is crucial that, according to the information known to the resolution authority (or any other it could reasonably know), the costs in insolvency are duly calculated. Otherwise, several resolution objectives, such as taxpayers' protection and DGS protection, would not be truly attainable.<br><br>IT:<br><br>We do not agree with such a proposal. Carrying out this assessment could be really complex, especially during the resolution planning phase. Even when conducted on a "best effort" basis, it would imply wide, highly hyphotetical analysis, that could make the assessment more difficult and longer. Moreover, RAs would be required to estimate and presume what governments will do, and this could differ widely across Member States and from time to time (for instance, depending on the political party that governs at the time or the country's overall situation).<br><br>**AT:**<br><br>**The expectation of extraordinary public support should not influence the PIA**. We object the strengthening of the government-bank-nexus and excessive facilitation of RA-decisions. Art. 35 Para 5 Subpara 2 BRRD-proposal should be deleted. |

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| | Neither RAs nor banks should or could estimate in advance extraordinary financial support due to the fact that it is on DG COMP and Member States to decide whether extraordinary public support (in line with EU-competition regulations) shall be granted by way of case-by-case-decisions of these institutions.<br><br>This is not only the case for the PIA in the resolution planning phase, but also for the PIA in the resolution execution phase as this point in time is too early to draw conclusions on possible public support.<br><br>In this context, we see a contradiction of this provision with main principles of the current resolution framework. Art. 10 Para 3, Art. 12 Para 1, Art. 15 Para 1 and Art. 16 Para 1 BRRD lay down that RAs shall not assume any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100, any central bank emergency liquidity assistance or central bank liquidity assistance provided under non-standard collateralization, tenor and interest rate terms in resolution plans.<br><br>DK:<br><br>We stress that the use of extraordinary public financial support should be a last resort.<br><br>However, industry funded safety-nets should provide flexibility to the RA and their use of their resolution tools when determining the resolution strategy and approach.<br><br>CY:<br><br>We consider that the resolution authorities would not be in a position to assess at the |

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| | resolution planning stage whether there is State appetite and capacity to provide such support. Hence, the assessment should be restricted at the resolution execution stage.<br><br>SI:<br><br>Yes, to some extent. Extraordinary public financial support should be expected in system wide scenarios. However, accurate estimation could be a problem.<br><br>**NL:**<br><br>**Yes.** In our view it is an inconsistency in the current framework that public financial support can be provided outside of resolution, as this implies a negative PIA and thus no public interest. Therefore we support the suggestion that the expectation of public financial support should lead to a positive PIA, also when determining which entities should be earmarked for resolution.<br><br>However, we do see difficulties in operationalising this, as it will be difficult for RAs to know in advance that public support will be granted. That said, if there are indications public support is a reasonable possibility, RAs should take this into account when performing the PIA.<br><br>FI:<br><br>Yes, we agree that resolution authorities can expect and estimate extraordinary public financial support. If needed, this could be strengthened with provisions according to which the relevant authorites that have the information on possible EPFS and would make the |

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| | decision on it, would have the obligation to submit such information to the NRA.<br><br>The expectation of extraordinary public financial support should definitely affect the PIA.<br><br>According the Commission's explanatory memorandum "if liquidation aid is expected in the insolvency counterfactual, this should lead to a positive PIA outcome (Article 32(5), second subparagraph)". This should be clearly stated in the Article, too.<br><br>RO:<br><br>Disagree. In our opinion, the provision of the second paragraph of Article 32(5) overlaps with the resolution objective provided in Article 31(2) point (c) and this could create problems in implementation.<br><br>We understand that the COM intended by para (5) of Article 32 only to make clear that when liquidation aid is expected in the insolvency counterfactual, this should lead to a positive PIA outcome (see page 14, **6. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL in the COM Explanatory Memorandum for BRRD proposal)**. However, the wording of para (5) go beyond this objective and should be reviewed.<br><br>Moreover, no ex-ante estimation of the extraordinary public financial support can be made in the resolution planning stage, considering the different circumstances and scenarios that may occur at the time when the extraordinary public support will be granted.<br><br>**CZ:** |

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| | **CZ: Yes, however this requirement should be rather limited to the resolution execution stage only.**<br><br>BE:<br><br>In our view, the existing legal framework already contains the requirement to take all EPFS into account but we are not opposed to an explicit clarification. As to the stance 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 see merit in further assessing a close coordination between DG COMP and the RAs to ensure the latter have all information available at the moment the (positive or negative) resolution decision is adopted.<br><br>**DE:**<br><br>**Further analysis needed.**<br><br>We don't have a strong position on this question yet.<br><br>We share the objective of limiting recourse to taxpayer money but see implementation issues. Resolution authorities won't have full information on the extent of extraordinary public financial support in each case. We think it might be possible to find a wording that requires resolution authorities not to ignore information available to them.<br><br>We see the need to further evaluate and clarify this point, including whether and how resolution authorities could actively obtain this information. |

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| | FR:<br><br>Although we have sympathy for the objective of this proposal to restrict further the possibility to circumvent resolution, we are skeptical on the feasibility of this and do not agree with this proposal.<br><br>In practice, performing an ex ante estimation of probable EPFS in both NIP and resolution scenarios would be difficult for resolution authorities and could sometimes lead to biased assessments.<br><br>Nevertheless, instead of performing quantitative estimation, we acknowledge that providing qualitative information relying on past granting of external preventive support should be a strong indicator of a positive PIA.<br><br><u>Additional comment on EPFS from FR:</u><br><br>When assessing questions related to EPFS, ensuring an equal treatment of any use by any DGS of funds stemming from mandatory ex ante contributions is paramount, regardless of the qualification under Article 107 TFEU (cf. our answer to Question 3).<br><br><u>Additional comments on PIA from FR:</u><br><br>When a resolution authority concludes that a resolution action is not in the public interest within the resolution plan, Member States shall ensure that it publishes a summary of its assessment when the resolution plan is adopted and each time it is updated. This summary should allow understanding why national insolvency proceedings were considered more |

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| | efficient than resolution to achieve each of the resolution objectives. |
| | **End** |