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WORKING DOCUMENT

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

Subject:	Financing arrangement - Presidency Non-Paper
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Financing arrangement

Background

The topic of securing some form of financing arrangement for resolution purposes was discussed at the last three working parties both under the French and Czech Presidency. In this non-paper the Presidency would like to summarise the comments and present a possible draft of Articles and related recital for further consideration.

Many Member States acknowledge that the financing is needed to ensure effective resolution process, but due to the very different insurance markets across the EU the concrete solution should be left to the Member States. Member States were generally in favour of extending the IRRD proposal to include a general obligation to set up some form of national arrangement for external resolution financing. Most of the Member States who supported the need to incorporate this obligation into the Directive were in favour of the Home country principle. This principle should ensure that there is no double burden imposed on undertakings from whom the possible contributions are raised. National financial arrangements shall assist in the financing of the resolution of insurance and reinsurance undertakings located in territory of the relevant Member State including the situation, where the undertaking under resolution operates within the Union under the right of establishment (operating through branches) or the freedom to provide services.

In the case of cross border group resolution the national financing arrangement of the home Member State of each affected group entity should contribute to the financing of the group resolution. The contribution of each national financing arrangement should be set out in the financial plan which is part of the resolution scheme and is approved by a joint decision according to Articles 70 and 71 IRRD.

As regards the purposes for which a resolution financing arrangement should be used, the minimum harmonisation is essential for the majority of Member States. Providing safeguards against a breach of the NCWO-principle (Article 55) was considered as the



most important reason for setting-up financing arrangement. The Presidency therefore proposes that the payment of compensation to shareholders or creditors in accordance with Article 55 should be the only mandatory use of resolution financing arrangement. However, Member States are given the flexibility to determine other purposes for which a resolution financing arrangement may be used. Their use shall be subject to the principles set out in Articles 18 and 22 IRRD.

Proposal

New Article X

(1) Member States shall establish national arrangement for external financing to ensure that the resolution authority has at its disposal sufficient funds for the intended use of this arrangement for the resolution of an insurance or reinsurance undertaking or a group. Member States may establish financing arrangement through mandatory contributions, provided that they are imposed only on insurance or reinsurance undertakings authorised in the Member State that imposes these financial requirements and to Union branches located in that Member State.

(2) The funds referred to in paragraph 1 shall be used to pay compensation to shareholders or creditors in accordance with Article 55 and may be used in particular to finance other costs associated with the use of resolution tools. The financing arrangement shall be used only for the achievement of the resolution objectives set out in Article 18 and in accordance with the principles set out in Article 22.

(3) Member States shall notify the Commission of the established financial arrangement.

(4) Where the undertaking under resolution operates within the Union under the right of establishment or the freedom to provide services, the financing arrangement of the Member State in which the undertaking is authorised shall be used to pay compensation to shareholders or creditors in accordance with Article 55.

New article XX



(1) Member States shall ensure that, in the case of a cross-border group resolution, the national financing arrangement of the home Member State of each entity referred to in Article 1(1) that is part of the group concerned contributes to the financing of the group resolution in accordance with this Article.

(2) The group-level resolution authority shall propose the amount that each of the national financing arrangement of the Member States where affected group entities are located is required to contribute to the financing of the group resolution according to the financing plan that is part of the group resolution scheme provided for in Articles 70 and 71.

(3) Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall in particular have regard to the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of supervisory authorities in the Member State of that resolution financing arrangement.

New recital:

"(.....) Financing arrangements should be set up in each Member State to ensure effective resolution. Acknowledging the diversity in insurance markets, it is essential to give Member States the flexibility to decide the form of external financing of such an arrangement, such as ex ante or ex post contributions or combination thereof. A Member State should have the possibility to impose a contribution obligation only to insurance and reinsurance undertakings authorised in that Member State and to Union branches located in its territory. "

Questions to the Member States:

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| <p>Q1. Do Member States agree with the proposed Articles and the accompanying recital? If not, how should this be amended?</p> <p>Q2. Would you add any other text to the proposal? Please suggest the content.</p> |
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