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

Subject: CMDI package: working party 09.10.23
Item 5a: Commission services presentation on Use of DGS for preventive and alternative measures (Articles 11 – 11d DGSD)



DGSD

Use of DGS funds for preventive and alternative measures

Council Working Party 9 October 2023

Presentation by Commission services

Agenda

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1. Introduction
2. Preventive measures
3. Alternative measures in insolvency
4. Concluding remarks

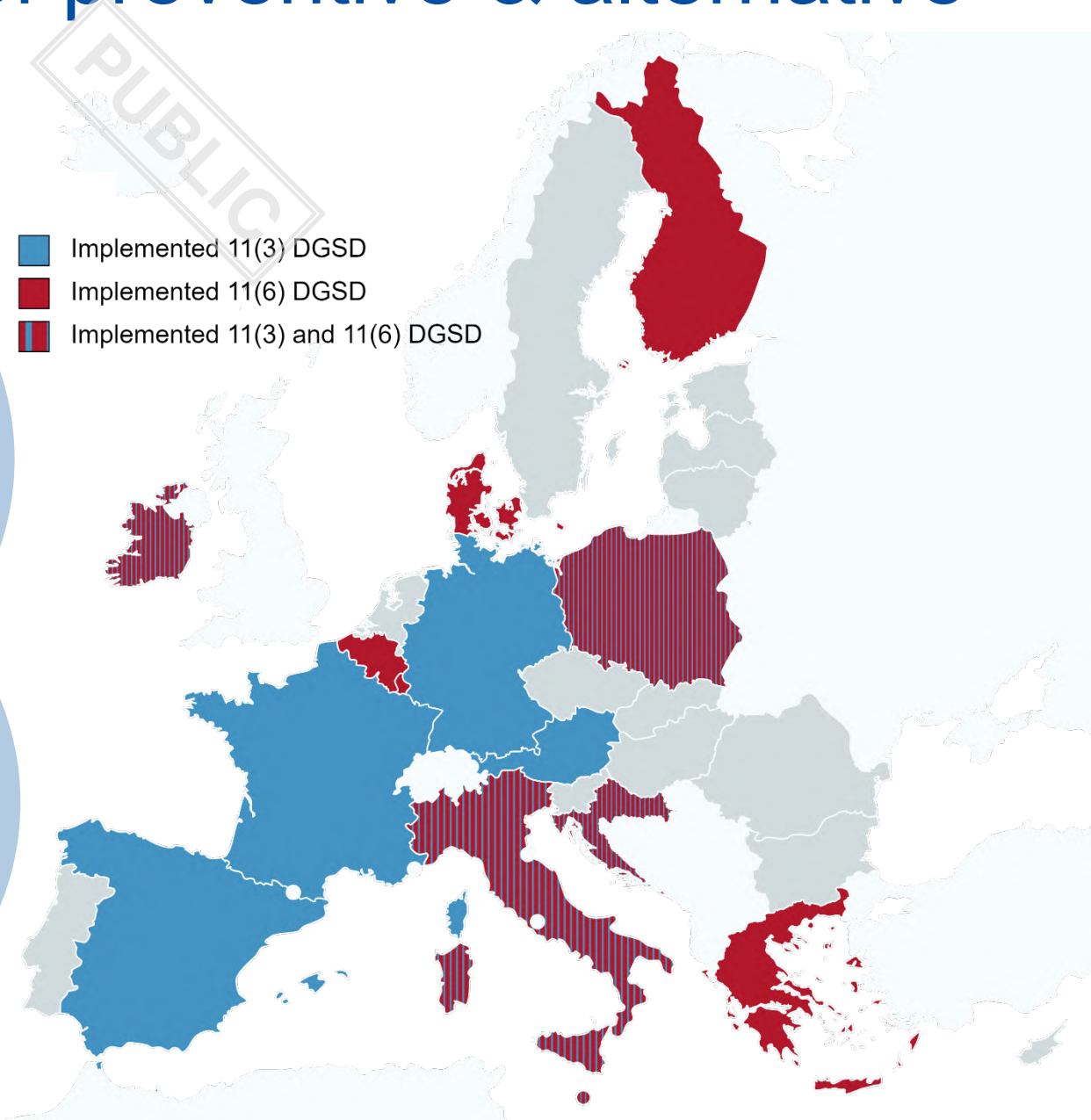
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Introduction

Current implementation of preventive & alternative measures



Only implemented 11(3) DGSD on preventive measures
4 Member States

Implemented 11(3) and 11(6) DGSD
5 Member States

Only implemented 11(6) DGSD on alternative measures in insolvency
5 Member States

Did not implement 11(3) nor 11(6) DGSD
13 Member States

Overview of DGSs

	Name of the DGS	Type of DGS	DGS administered by public or private body	Does the DGS also correspond to the DGSDA?	If not, what is the DGSDA?
Austria	DGS Austria	DGS	Private	No	Austrian Financial Market Authority
	Deposit Guarantee Scheme for the savings bank sector	IPS recognised as DGS	Private		
	Deposit Guarantee Scheme for the Raiffeisen sector	IPS recognised as DGS	Private		
Belgium	Guarantee Fund for Financial Services	DGS	Public	Yes	
Bulgaria	Bulgarian Deposit Insurance Fund	DGS	Public	Yes	
Croatia	Croatian Deposit Insurance Agency	DGS	Public	Yes	
Cyprus	Deposit Guarantee Fund for Banks	DGS	Public	Yes	
Czech Republic	Financial Market Guarantee System	DGS	Public	Yes	
Denmark	Guarantee Fund	DGS	Public	Yes	
Estonia	Guarantee Fund	DGS	Public	Yes	
Finland	Deposit Guarantee Fund	DGS	Public	Yes	
France	Deposit Guarantee and Resolution Fund	DGS	Private	No	Prudential Supervision and Resolution Authority
Germany	Deposit Guarantee Scheme for German Private Banks GmbH	DGS	Private	No	Federal Financial Supervisory Authority
	Protection scheme of the cooperative Banks GmbH	IPS recognised as DGS	Private		
	Protection scheme of the German Savings Banks Association	IPS recognised as DGS	Private		
Greece	Hellenic Deposit and Investment Guarantee Fund (TEKE)	DGS	Private	Yes	Ministry of Finance
Hungary	National Deposit Insurance Fund of Hungary (NDIF)	DGS	Public	Yes	
Ireland	Irish Deposit Guarantee Scheme	DGS	Public	Yes	
Italy	Interbank Deposit Protection Fund	DGS	Private	No	Bank of Italy
	Depositors' Guarantee Fund of Credit Cooperative Banks	DGS	Private		
Latvia	Deposit Guarantee Fund of Latvia	DGS	Public	Yes	
Lithuania	Deposit and Investment Insurance	DGS	Public	Yes	
Luxembourg	Deposit Guarantee Fund Luxembourg	DGS	Private	No	Conseil de protection des déposants et investisseurs
Malta	Depositor Compensation Scheme	DGS	Public	Yes	
Netherlands	Dutch Central Bank, Dutch Deposit Guarantee Scheme	DGS	Public	Yes	
Poland	Bank Guarantee Fund [Banks]	DGS	Public	Yes	
	Bank Guarantee Fund [Credit unions]	DGS	Public	Yes	
Portugal	Deposit Guarantee Fund	DGS	Public	No	Bank of Portugal
Romania	Bank Deposit Guarantee Fund	DGS	Public	Yes	
Slovakia	Deposit Protection Fund	DGS	Public	Yes	
Slovenia	Bank of Slovenia	DGS	Public	Yes	
Spain	Deposit Guarantee Fund of Credit Institutions	DGS	Public	Yes	
Sweden	Swedish National Debt Office	DGS	Public	Yes	

Harmonisation of optional uses of DGS funds

Objectives of harmonisation

- Preserve the possibility for DGSs and IPS/DGS to use DGS funds to finance **preventive measures**.
 - Harmonise rules and safeguards on timing of preventive measures: not too early and not too late
 - Ensure cost-effective use of DGS to finance preventive measures – LCT
 - Ensure commitment of the bank - note with measures the bank engages to undertake
- Keep the possibility for DGS to finance **alternative measures** in the context of winding-up procedures, under certain conditions (LCT, transparent and open marketing arrangements for the assets, rights and liabilities to be transferred)

Reasons for change: further harmonisation of the existing safeguards and the LCT requirement in line with the international standards (Basel/IADI). Ensuring level playing field between private/public DGSs and IPS/DGS. Clarifying the responsibilities and decision-making process by the respective institutions and bodies.

Further references: EBA/OP/2020/02; IA page 228-234

Preventive vs. alternative private sector vs. alternative measures in insolvency

Confusing terminology in the current DGSD text on non-payout DGS interventions:

Preventive measures

- Articles 11(3)
- No more application after FOLF declaration
- Objective: help a bank to ensure or restore its compliance with the prudential requirements in going concern

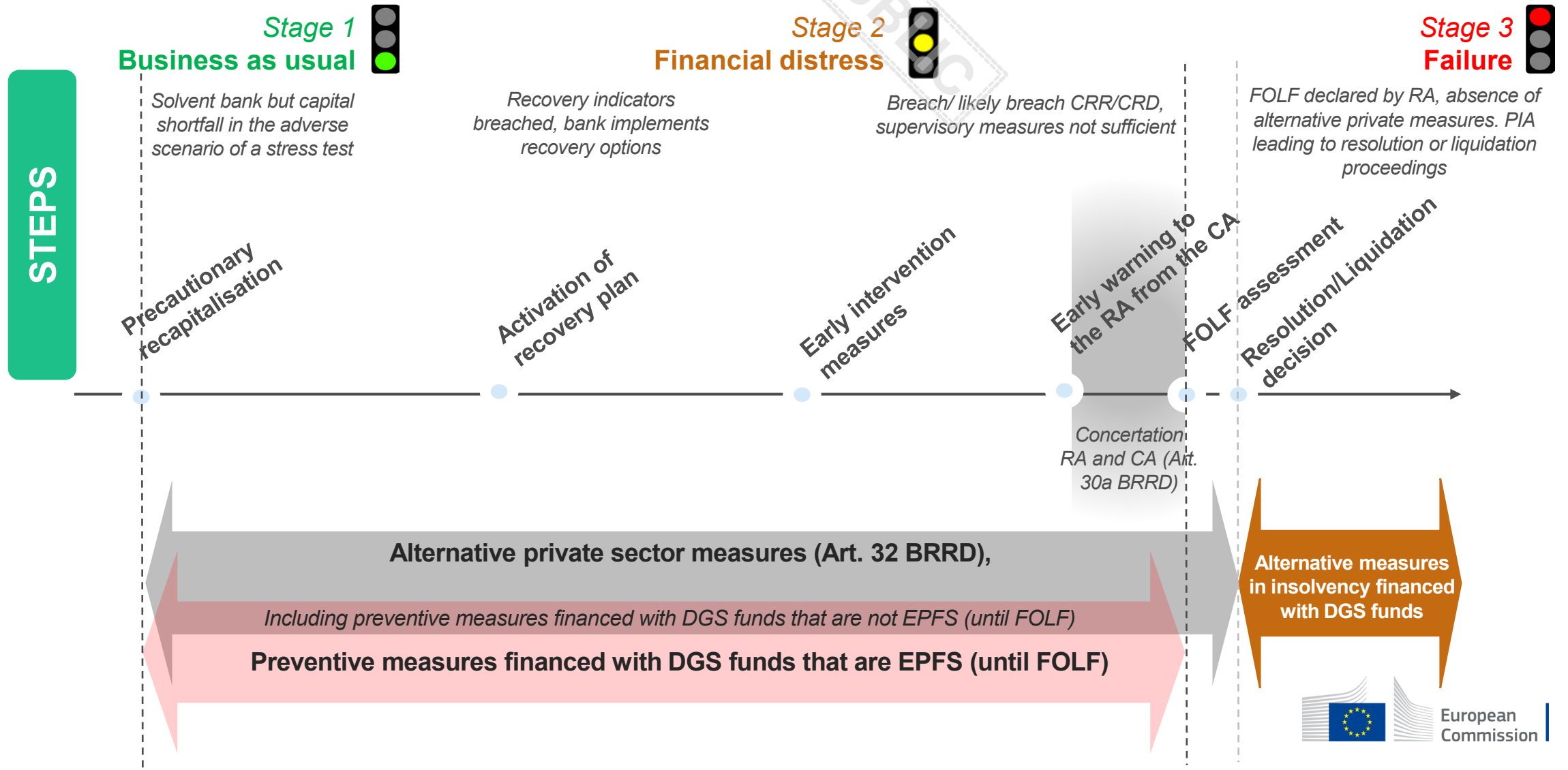
Alternative measures

- Article 11(5)
- Can be used after FOLF declaration in insolvency
- Objective: ensure continuous access to deposits by a transfer of deposits of a bank in gone concern (and avoid payout)

Alternative private sector measures

- Articles 2(1)(29a)and 32 BRRD
- Any kind of "private" source of finance not regulated by BRRD nor DGSD to support the bank
- Objective of reference under BRDD: These measures are considered by the RAs in the assessment of the conditions for resolution

Sequencing of optional uses of DGS funds and alternative private sector measures



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Preventive measures

Scope of application of DGSD rules on preventive measures

In the scope

- DGSs
- Use of funds of IPSs recognised as DGSs collected for DGSD purposes

Outside the scope

- IPSs not recognized as DGSs
- Use of funds of IPSs recognised as DGSs collected for non-DGSD purposes
- Contractual schemes offering additional protection to the coverage level (Art. 1(3) a DGSD)

Preventive measures – safeguards (1/2)*

Current safeguards

- Preventive measures only where no resolution actions have been taken yet
- Cost effective (non-harmonised LCT)
- Appropriate DGS systems and procedures
- Greater risk monitoring and verification rights for DGS
- Extraordinary contributions from banks in case of severe depletion of DGS funds
- Commitment to securing access to covered deposits

New and modified elements (Art. 11(3), 11a, 11b, 11c, 11e DGSD)

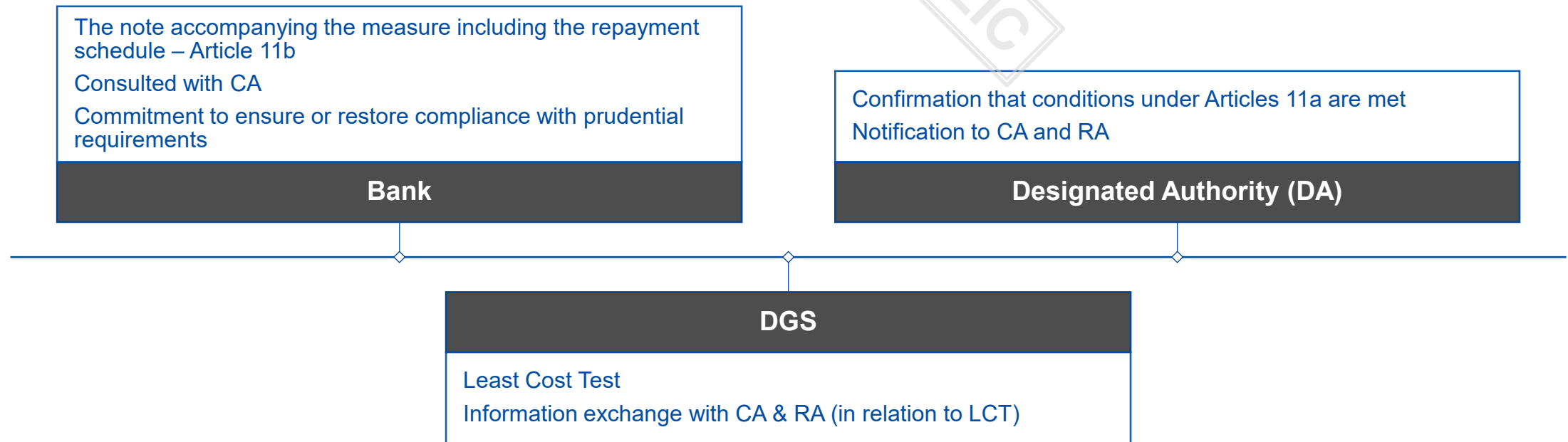
- Preventive measures if none of the circumstances of FOLF are present
- Methodology for LCT
- No more money until previous (set of) measures reimbursed
- Compliance of the credit institution with its obligations under DGSD
- Quantitative cap on the gross amount of preventive measures (not above covered deposits)
- Note accompanying the measure, including a repayment schedule

*for comparison of the current and amended provisions, see the annex

Preventive measures – safeguards (2/2)

- Safeguards ensuring that DGS financial support would prevent failure and payout, thus avoiding 'double payment, including requirements preventing the outflows of funds → Articles 11a(1)(c) and (f), 11b and 11c
- Safeguards related to the timing of preventive measures → Article 11(3)(a)
- Safeguards ensuring that DGS funds are used to ensure access to covered deposits by preventing failure and payout → Article 11a(1)(d) and Article 11e(3)
- Safeguard related to the cost of the measure → Article 11(3)(b) and Article 11(e)
- Safeguards ensuring that DGSs are replenished following the use of their available financial means for preventive measure → Article 11a(1)(e) and 11(4)

Decision-making process



- 1) Preventive measure remains a decision of the DGS. The DA only checks the compliance with DGSD rules, as part of its supervisory function (which is currently the case). See article 4(7).
- 2) No approval of the measure by the competent authority. Only consultation.
- 3) Tercas case – Court judgment (<https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-03/cp210030en.pdf>): "...the appropriate evidence for the purpose of demonstrating the imputability of an aid measure necessarily arises from the circumstances of the case and the context in which that measure was taken,..."

Preventive measures and FOLF triggering

The CMDI ensures that preventive measures qualifying as EPFS does not trigger FOLF:

DG COMP's assessment of State Aid is done on a case-by-case basis and cannot be pre-empted.

Proposal:

- **Modification of the 4th condition for a FOLF determination** (Art. 32.4) BRRD proposal): “extraordinary public financial support is required *except where such support is granted in one of the forms referred to in Article 32c*”
- **Inclusion of preventive measures in the scope of extraordinary public financial support measures that do not trigger FOLF**(Art. 32c BRRD proposal): “*the extraordinary public financial support can take the form of:*
 - *an intervention by a DGS to preserve the financial soundness and long-term viability of the credit institution in compliance with the conditions set out in Articles 11a and 11b of Directive 2014/49/EU, provided that none of the circumstances referred to in Article 32(4) are present;*

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Alternative measures in insolvency

Alternative measures – safeguards

Current safeguards

- Cost effective (non-harmonised LCT)

New elements

- Methodology for LCT(Article 11e)
- [*Alignment of MREL calibration between transfer strategies in resolution and alternative measures in insolvency (art 45ca(2))*]*
- Transparency requirements for marketing process of assets, rights and liabilities which are going to be transferred (Article 11d of DGSD)

*Not for discussion at this CWP

Marketing process for transfers

The CMDI review aims at imposing requirements applicable to alternative measures financed with DGS funds to avoid detrimental effects on competition and the internal market:

Ensure the transparency of the marketing process should an institution be transferred to a buyer as part of an alternative measure in insolvency.

Proposal:

- **Requirements ensuring the transparency of the marketing process in alternative measures (Art. 11d DGSD proposal):** (i) open and transparent marketing process, (ii) no favor nor discrimination between potential purchasers, (iii) absence of any conflict of interest; (iv) objective of maximisation of the sale price for the assets, rights and liabilities concerned.

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Concluding remarks

Concluding remarks

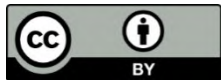
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- In line with the EG Statement, the proposal aims at harmonising the conditions for using DGS funds outside payout in order to ensure « consistent, credible and predictable outcomes of the use of DGS funds »
- The proposal converges practices of DGSs applying preventive measures and does not impair the IPS functioning, without prejudice to their CRR compliance
- Outside preventive measures financed with DGS funds, other measures to prevent the resolution or the wind-down of a bank remain possible (alternative private sector measures)
- The CMDI ensures that preventive measures qualifying as extraordinary public financial support does not trigger FOLF



Thank you

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