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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés
Subject:	Presidency's non-paper on BRRD technical topics (CMDI 27 February 2024) - comments from 21 MS

CMDI WP MEETING OF 27 FEBRUARY 2024
PRESIDENCY'S non-paper on BRRD technical topics
(Agenda item 5)

Provisions opened for written procedure
Deadline: 12/03/2024 (COB)
WK 3113 2024

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Article 10(8a) and 12(5a) BRRD and Recital 4 'Resolution plans: entities being wound up' In Article 10, paragraph 8a would be inserted: '10(8a). *Resolution authorities, **once they have determined that conditions in point (a) and (b) of Article 32(1) are met,** shall not adopt **a** resolution plan~~s~~ where an institution is **in the process of** being wound up in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.'* In Article 12, paragraph 5a would be inserted: '12(5a). *Resolution authorities, **once they have determined that conditions in point (a) and (b) of Article 32(1) are met**, shall not adopt **a** resolution plan~~s~~ where an entity is **in the process of** being wound up in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.'* Recital 4 would be amended as follows: (4) *'An institution or entity that is being wound up under national law, following a determination that the institution or entity is failing or likely to fail and a conclusion by the resolution authority that its resolution is not in the public interest, is ultimately heading towards market exit. That implies that a plan for actions to be taken **once the failure or likelihood of failure has occurred** ~~**in case of failure**~~ is not **longer** needed, irrespective of whether the competent authority has already withdrawn the authorisation of the institution or entity*	LV (MS comments): We agree with draft proposal. IE (MS comments): *For clarity, in respect of the amendments to Art 10(8)(a) and 12(5)(a), we suggest amending further the wording of the proposed texts (see text in capital letters): "Resolution authorities, "**once they have determined that ONLY THE conditions in point (a) and (b) of Article 32(1) are met".** This may eliminate any doubts as to whether the PIA has/ needs to be carried out.* Moreover, we propose to amend for additional clarity Recital 4 as follows: (4) *'An institution or entity that is being wound up under national law, following a determination that the institution or entity is failing or likely to fail and a conclusion by the resolution authority that its resolution is not in the public interest, is ultimately heading towards market exit. That implies that a plan for actions to be taken **TO RESOLVE AN INSTITUTION OR ENTITY**, **once the failure or likelihood of failure has occurred,** ~~**in case of failure,**~~ is not **longer** needed, irrespective of whether the competent authority has already withdrawn the authorisation of the institution or entity concerned. The same applies for a residual institution under resolution after the transfer of assets, rights and*

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concerned. The same applies for a residual institution under resolution after the transfer of assets, rights and liabilities in the context of a transfer strategy. It is therefore appropriate to specify that in those situations the adoption of resolution plans is not required.	*liabilities in the context of a transfer strategy. It is therefore appropriate to specify that in those situations the adoption of resolution plans is not required.* HR (MS comments): HR: We understand that the institution may end up in the wound up process by either (i) voluntary initiating it (where it was not insolvent beforehand and this was allowed by relevant authorities), (ii) institution was declared FOLFT, there are no alternative measures that would prevent the failure, but the resolution authority decided that the public interest condition was not met and decided to initiate the normal insolvency proceedings, or (iii) sale of business or bridge bank tool with partial transfer was applied and the residual entity that remained is now being would-up. We think that it is not necessary to insert "***once they have determined that conditions in point (a) and (b) of Article 32(1) are met***" because if this was inserted, situation under (i) above might wrongly not be captured. That is, voluntary wind up may be initiated while the institution is not failing (thus RA never determining condition of point (a) of Article 32(1) BRRD). We think resolution authority should also stop developing and adopting resolution plans for such institutions because they are in the process of market exit. On the other hand, situations referred to in points (ii) and (iii) presupposes that these conditions were already determined before the wound up actually began, so the reason to stop adopting plans is not that RA determined these two conditions are met, but the fact that institution is in the process of being wound up. Against this background, we propose that the text is rather simplified in a following way: *"*10(8a) *Resolution authorities shall not adopt a resolution plan where an institution is in the process of being wound up in accordance with the applicable national law."*

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	In terms of Article 12, we think this new paragraph 5a should rather clarify that the group resolution plan would still need to be adopted, but this group resolution plan should not include planning for a group entity that is being wound up. Against this background, we propose that the text is amended as follows: In Article 12, paragraph 1, new fourth subparagraph would be inserted: "*Group resolution plan shall not identify measures for a group entity that is in the process of being wound up in accordance with the applicable national law*". We say fourth because EC already proposed new third subparagraph. It might be also worth exploring whether there is some merit that the authority in charge of such entity may not need to adopt a joint decision because this entity is no longer part of the group resolution plan. It can also be applicable to JD on MREL *mutatis mutandis*. We have not provided drafting suggestion in this regard, as it would be better to have a discussion first and if there is enough interest from MS, this could be also proposed. We do not see the need for the amendment of Recital 4 since it is clear the way it is drafted. FR (MS comments): Art. 10(8a)/art 12(5) and recital 4 : Clarifying the purpose of these provisions in recital 4 should be sufficient. Indeed : - The mention of “pursuant to Article 32b” already includes the condition that entities concerned are those “*in relation to which the resolution authority considers that the conditions in points*

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	(a) and (b) of Article 32(1) are met, but that a resolution action would not be in the public interest". - Article 37(6) refers to the liquidation of a residual entity after the application of resolution transfer tools, which also would only occur when RAs have determined that conditions in point (a) and (b) of Article 32(1) are met. FI (MS comments): We support the proposed amendments. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendments. DK (MS comments): . DE (MS comments): **Generally agree**

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	Recital 4: Could agree with proposed amendment CZ (MS comments): CZ: We have no objections to the proposed clarification. BG (MS comments): We do not oppose the proposed amendments of Article 10(8a), Article 12(5a) BRRD and recital 4. NL (MS comments): Consistent with our previous submissions, entities should be liquidated under normal insolvency proceedings (NIPs), not left to wound up under

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	national law as it is unclear what that really means. It is that flexibility/ambiguity, which leaves the door open to Member States to use state aid and/or avoid resolution. A.37(6) BRRD requires that once a transfer of assets & liabilities has taken place, the failed bank is then to be liquidated. It's not the case that you do a partial transfer from the failed bank and then keep the failed bank in business. It's failed. **Drafting suggestions:** In Article 10, paragraph 8a: '10(8a). *Resolution authorities, once they have determined that conditions in point (a) and (b) of Article 32(1) are met, shall not adopt a resolution plans where an institution is in the process of being wound up* ~~*in accordance with the applicable national law*~~ ***under normal insolvency proceedings*** *pursuant to Article 32b or where Article 37(6) applies.*' In Article 12, paragraph 5a: '12(5a). *Resolution authorities, once they have determined that conditions in point (a) and (b) of Article 32(1) are met, shall not adopt a resolution plans where an entity is in the process of being* ***wound up under normal insolvency proceedings*** ~~*wound up in accordance with the applicable national law*~~ *pursuant to Article 32b or where Article 37(6) applies.*' Recital 4: (4)*'An institution or entity that is being* ***wound up under normal insolvency proceedings*** ~~*wound up under national law*~~*, following a determination that the institution or entity is failing or likely to fail and a conclusion by the resolution authority that its resolution is not in the public interest, is ultimately heading towards market exit. That implies*

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	*that a plan for actions to be taken once the failure or likelihood of failure has occurred is not longer needed, irrespective of whether the competent authority has already withdrawn the authorisation of the institution or entity concerned. The same applies for a residual institution under resolution after the transfer of assets, rights and liabilities in the context of a transfer strategy**, which will subsequently be wound up under normal insolvency proceedings**. It is therefore appropriate to specify that in those situations the adoption of resolution plans is not required.* SI (MS comments): SI: We agree, because it increases the clarity of the provisions. SE (MS comments): **Sweden can accept the changes although Sweden questions the necessity of regulating that there is no need for a recovery plan if the bank has failed.** RO (MS comments): We agree with PCY drafting proposals. However, we bring to your attention the possibility to insert the text of Article 10(8a) and of Article 12(5a) after paragraph 6 of Article 10 (after the provisions regarding drawing up, reviewing and updating the resolution plans), respectively after paragraph 2 of Article 12 (where the general obligation regarding drawing up of a group resolution plan is

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	placed). From the perspective of the steps for drawing up the resolution plans, this would bring more clarity on the logical order of the stages. PT (MS comments): We agree with the suggested amendments to include "in the process of", however, the reference "once they have determinted that conditions in point (a) and (b) of Article 32(1) are met" seems redundant considering the reference to Article 32b and 37(6) in the end of the provision. Furthermore, for clarification purposes, we suggest an additional amendment to article 12, paragraph 5a, wherein we have introduced "group" before "resolution plan where an entity…": '12(5a). *Resolution authorities,* ***once they have determined that conditions in point (a) and (b) of Article 32(1) are met****, shall not adopt* ***a group*** *resolution plan~~s~~ where an entity is* ***in the process of*** *being wound up in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.*' PL (MS comments): It seems that the proposed wording meets the expectations and should be supported. We believe, however, that there are also other types of entities for which the preparation of the resolution plan might not be needed. In our opinion, the necessity to prepare resolution plan for entities in resolution as well as bridge banks should be revised. MT

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	(MS comments): Malta supports the proposed changes to Recital 4 and Articles 10(8a) and 12(5a).
Article 13(1) BRRD 'Resolution reporting' (alignment with ResCo agreement) In Article 13, paragraph 1 would be replaced as follows: 13(1). ***'Union parent undertaking and, to the extent required, each of the group entities, including entities referred to in points (c) and (d) of Article 1(1,) shall report to their resolution authorities the information that may be required in accordance with Article 11.*** ***The resolution authorities that require information under this Article for entities in their remit shall transmit the information they receive to the group-level resolution authority.*** ***The information provided to the EBA shall include all information that is relevant to the role of the EBA in relation to the group resolution plans.***'	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): Taking into account these changes, we think that provisions concerning the start of 4 months periods in terms of JDs need to be also amended to make sure this date can be determined with legal certainty. Therefore, we suggest that paragraph 4 is also amended in a following way: "Those resolution authorities shall make a joint decision within four months of the date of the transmission by the group-level resolution authority of the ***first draft of joint decision*** ~~information referred to in the second subparagraph of paragraph 1~~." FR (MS comments): In order to be able to support this amendment, we would need further justification as to (1) why the current provisions are creating "inefficiencies" (2) what would be the result in terms of reporting

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	process, both inside and outside the BU. For now, we are not in favor of amending article 13(1). FI (MS comments): We support the proposed amendments which, to our acknowledge, corresponds the current EBA reporting. EL (MS comments): EL: We can support the proposed changes. We have one drafting suggestion in order to clarify that the home resolution authority will be the one transmitting the relevant information to the EBA. *Drafting Suggestion:* 13(1). '*Union parent undertaking and, to the extent required, each of the group entities, including entities referred to in points (c) and (d) of Article 1(1,) shall report to their resolution authorities the information that may be required in accordance with Article 11.* *The resolution authorities that require information under this Article for entities in their remit shall transmit the information they receive to the group-level resolution authority.* *The information provided* ***by the home resolution authority*** *to the EBA shall include all information that is relevant to the role of the EBA in relation to the group resolution plans*.' EE (MS comments): We support the amendments. DE

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	(MS comments): **Could agree in general** with the text proposed, but **disagree with deletion of the reference to confidentiality requirements in subparagraph of Article 13(1).** It makes sense to retain the requirement to maintain confidentiality. Furthermore, it is not clear how information is provided to EBA. In addition, it is not clear if and to what extend the group-level authority shall/may forward information to the other resolution authorties (e.g. concerning the union parent undertaking or other subsidiaries). Therefore, we suggest to include a respective provision which might be similar to the current wording of the second subparagraph of Article 13(1) BRRD. CZ (MS comments): CZ: We do not see the alleged shortcomings of the current set-up. The proposed changes will impose costs on both the resolution authorities and the institutions. We also propose to align the changes with the EBA integrated reporting project. BG (MS comments): We agree that the provision should be amended by ensuring that the resolution authorities (RA) to collect and provide the information to the

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	group-level resolution authority (GLRA). However, the responsibility of the GLRA to transmit all collected information to other bodies and authorities, including resolution authorities should also be preserved. NL (MS comments): No comment. SI (MS comments): SI: We agree with the streamlining of the reporting processes. SE (MS comments): **Sweden would like a clarification regarding the case where there is one resolution authority for the group level and another resolution authority for specific entities within the group. Sweden would welcome additional changes in the text articulating that the resolution authorities for specific entities should ask for information only on an entity-level and not on a group-level. For group-level information they have to rely on resolution authorities for the group.** **See proposal in bold:** *13(1). 'Union parent undertaking and, to the extent required, each of the group entities, including entities referred to in points (c) and (d) of Article 1(1,) shall report to their resolution authorities the information that may be required in accordance with Article 11.*

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	The resolution authorities that require information under this Article for entities in their remit shall transmit the information they receive to the group-level resolution authority. ***The resolution authorities shall only require information under this Article concerning resolution entities under its remit.*** *The information provided to the EBA shall include all information that is relevant to the role of the EBA in relation to the group resolution plans.'* RO (MS comments): Considering that it is a topic that has raised many practical problems, we consider that it would be beneficial to be provided a non-paper by the PCY in which all related aspects and implications are explained in detail, so that we can make sure that the proposed wording covers the intended mechanism. In principle, we agree with the EBA proposal on the revision of the legal base for resolution reporting, but we consider that more clarity and certainty in terms of credit institutions obligations (individual, consolidated and sub-consolidated resolution reports and considering the resolution strategy – SPE or MPE), as well as in terms of resolution authorities – EBA reporting obligations (it must be established what each authority is responsible for) is needed. In addition, we deem necessary to be considered also the SGAT ongoing reporting project. PT

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	(MS comments): We agree. PL (MS comments): In general we support the proposed approach. However, we would like to notice that this approach should be used only in relation to information required from entities in accordance with regulation 2018/1624. We are opposed to the reversion of information flow between GLRA and NRAs when it comes to the additonal information prepared by entities on the request of GLRA because of additional administarive burdens it would create for national authorities. The proposed amendment would make NRAs responsible for verification of correctedness of data reported by subsidiaries whereas currently this – to a significant extend – is made by parent undertakings. Moreover this would create "Chinese whispers" between GLRA – NRA – subsidiaries where GLRA needs to clarify something. Last but not least in some MS, like in Poland, national authorities cannot ask domestic entities to provide insformation in English and this would create additional burden relating to translations put on NRAs. MT (MS comments): Malta suggests the retention of the confidentiality requirements as indicated in the current wording of Article 13(1). Moreover, Malta seeks clarification as to whether there will be an obligation to transmit the information to the resolution authorities of the jurisdication in which relevant significant branches are located as well as to the relevant national competent authorities (NCAs).

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	Lastly, Malta suggests that the third subparagraph of the newly proposed Article 13(1) is redrafted to make it clear which of the national resolution authority (NRA) (that is group level RA or entity level RA) is obliged to transmit the information to the European Banking Authority (EBA) since the current wording is merely assuming that the information will be submitted to the EBA.

Article 15(5) BRRD / Recital 47 'EBA mandate: internal policies for and implementation of resolvability assessments' in Article 15, paragraph 5 would be added: *'15(5). EBA shall monitor the* ***progress on resolvability of institutions that are not part of a group and of groups*** ~~*drawing up of internal policies for and implementation of the resolvability assessments of institutions or groups provided for in this Article and in Article 16 by resolution authorities.*~~ *EBA shall report to the Commission on the* ***progress made by institutions that are not part of a group and by groups for achieving or maintaining resolvability***, ~~*existing practices*~~ *on resolvability assessments and possible divergences across Member States by … [PO please insert the date = 2 years after the date of entry into force of this Directive]* ~~*and monitor the implementation of any recommendation set out in that report, where appropriate.*~~ *The report referred to in the first subparagraph shall cover at least the following:* *(a)* ***an assessment of the actions requested by resolution authorities and the work undertaken by institutions that are not part of a group and by groups to increase or maintain their resolvability*** ~~*an assessment of the methodologies developed by resolution authorities to carry out resolvability assessments, including the identification of areas of possible divergence across Member States*~~*;* *(b) an assessment of the testing capabilities required by resolution authorities to ensure an effective implementation of the resolution strategy;* *(c) the level of transparency towards relevant stakeholders of the methodologies developed by resolution authorities to perform resolvability assessments and their outcome.';* Recital 47 would be modified accordingly: (47). *'In view of the role of EBA in furthering the convergence of authorities' practices, EBA should monitor and report on the* ~~***design and***~~ *implementation of the resolvability assessments of institutions and groups and on the actions and preparations of resolution*	LV (MS comments): We agree with draft proposal. IT (MS comments): The mandate for the EBA to monitor instituions' progress on resolvability continues to be too wide. Moreover, the wording of the Commission proposal seems to be more in line with the EBA mandate. Therefore, we suggest to keep unchanged the wording of the first subparagraph of article 15, par. 5. In addition, we suggest to reword lett c) of the second subparapragh of Art.15, par. 5 as follows: *c) the level of transparency towards relevant stakeholders of the methodologies developed by resolution authorities to perform resolvability assessments* ~~*and their outcome*~~*.';* Indeed, we believe that providing disclosure about the methodologies developed by resolution authorities to perform resolvability assessments would already lead to an adequate level of transparency to relevant stakeholders. Therefore, providing information also on the outcome of the resolvability assessments could represent an excessive level of disclosure IE (MS comments): On the wording of Article 15, paragraph 5, we would suggest additional clarity on a couple of points:

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authorities to ensure an effective implementation of the resolution tools and powers. In those reports, EBA should also assess the level of transparency of the measures taken by resolution authorities towards relevant external stakeholders and the extent of their contribution to resolution preparedness and institutions' resolvability. EBA should furthermore report on the measures adopted by Member States for the protection of retail investors in what concern debt instruments that are eligible for the MREL pursuant to Directive 2014/59/EU, comparing and assessing any potential impact on cross-border operations. The scope of existing regulatory technical standards on the estimation of the additional own funds requirements and the combined buffer requirement for resolution entities should be expanded to include entities that have not been identified as resolution entities, where those requirements have not been set on the same basis as the MREL. In the annual report on MREL, EBA should also assess the policy implementation by resolution authorities of the new rules for the calibration of the MREL for transfer strategies. In the context of EBA's tasks of contributing to ensure a coherent and coordinated crisis management and resolution regime in the Union, EBA should coordinate and oversee crisis simulation exercises. Those simulations should cover the coordination and cooperation between competent authorities, resolution authorities and DGSs during the deterioration of the financial situation of institutions and entities, testing the application of the toolbox in recovery and resolution planning, early intervention, and resolution in a holistic manner. Those exercises should consider in particular the cross-border dimension in the interaction between the relevant authorities and the application of the available tools and powers. Where relevant, the crisis simulation exercises should also capture the adoption and implementation of resolution schemes within the Banking Union, pursuant to Regulation (EU) No 806/2014.'	*'15(5). EBA shall monitor the* ***progress on resolvability of institutions that are not part of a group and of groups*** ~~*drawing up of internal policies for and implementation of the resolvability assessments of institutions or groups provided for in this Article and in Article 16 by resolution authorities.*~~ *EBA shall report to the Commission on the* ***progress made by institutions that are not part of a group and by groups for achieving or maintaining resolvability,*** 1. Need to clarify the scope of banks being referred to here. By **"*groups*"** we presume the intention is group parent entities reporting on a consolidated level basis. Under Article 2 point 16 group is defined as "parent undertaking and its subsidiaries", a more general definition that doesn't necessarily lead to the same meaning. 2. The second point we would like to draw attention to concerns **"Achieving resolvability".** This wording implies that whereby a bank may fully meet all of the expectations set by the resolution authority (RA) and by undertaking all actions requested of it by the RA that it would be deemed "resolvable". This may not be the case. Resolvability assessments are performed at a point in time, and it is therefore difficult to state that a bank is "resolvable" as it may not meet the criteria at all times. Perhaps a reframing to **"high/low levels of resolvability"** is preferable. (Note: One component of the SRB resolvability assessment methodology which is being recalibrated relates to the levels of progress within the resolvability assessment framework, with one of those levels currently being defined as "full progress" with compliance. The SRB is refining this approach so that IRTs could assess a bank as technically meeting the minimum requirements under the EfB but not yet achieving "best practice" and therefore not considered to be fully progressed.) HR (MS comments): HR: We support these amendments.

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	FR (MS comments): We are not in favor of such amendment and we would like to keep the Commission proposal. We see merit in giving the EBA the mandate to evaluate different national resolution practices as regards the publication of resolvability assessment in order to foster transparence and harmonize practices, but we don't think it would be justified to go beyond that. FI (MS comments): We think it would be important that the internal policies and methodologies for resolvability assessments and implementation of the assessments would be monitored and, in the long term, best practices and a harmonized approach sought. It would be useful and important to have information on the diverging practices across MSs. Thus, we would prefer the original COM proposal. However, we could support also the PCY proposal here. ES (MS comments): In Recital (47), we suggest limiting EBA's role in coordination and oversee of crisis simulation cases to EU cross-border exercises, to allow SRB coordinate targeted jurisdictional/Significant entities specific exercises and NRAs to coordinate their LSIs exercises. Therefore we suggest including "Union wide" as included in new article 128a: *"[…]In the context of EBA's tasks of contributing to ensure a coherent and coordinated crisis management and resolution*

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	*regime in the Union, EBA should, coordinate and oversee **Union-wide** crisis simulation exercises. […]"* EL (MS comments): EL: The amendment deviates significantly from the pursued objectives under the EBA mandate initially proposed by the Commission. In our view, it is important to ensure homogeneity among resolution authorities when it comes to assessing progress against resolvability dimensions, testing capabilities and level of transparency. As soon as the policies and processes adopted by resolution authorities is a common denominator, the EBA could assess the progress of credit institutions. In this context, we would prefer the drafting proposed by the Commission. EE (MS comments): Open to support. DE (MS comments): **Generally could agree with further adjustments.** We note on the COM proposal that it could also be useful to look into resolvability assessments and their methodology allowing to gain insight into existing methodologies. Aspects, that could be changed: ▪ The right balance between the administrative effort for the participants and the intended outcome of the EBA-monitoring should be ensured.

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	▪ The resolvability of groups is regulated by Art. 16 BRRD. Insofar, the monitoring of groups should be regulated by Art. 16 BRRD. Therefore, the words '*and of groups'* should be deleted in Aricle 15 (5) (and a new Article 16 (5) should be added, see below). ➔ Proposal: in Article 16, paragraph 5 should be added: '***Article 15(5) shall apply accordingly***.' CZ (MS comments): CZ: We welcome the Presidency's suggestion that the EBA should be more concerned with assessing progress on eligibility. However, we consider provisions (a) to (c) being inconsistent with this goal as they imply that the EBA should be concerned with assessing the activities required by NRAs, the testing capabilities required by NRAs and the level of tranparency of NRAs' methodologies for assessing eligibility. This continues to leave the EBA free to evaluate the internal policies of individual NRAs rather than progress on eligibility. We therefore suggest that the relevant text should be limited to transparency in relation to the outcome of the eligibility assessment. BG (MS comments):

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	We have reservations on including new mandates conferred to EBA that generate additional administrative and reporting burden for resolution authorities and credit institutions. The right balance should be struck between the tasks of EBA and the potential risk of overburdening resolution authorities with additional duties (i.e. to provide regular and/or ad-hoc reporting, etc.). AT (MS comments): AT: **Technical input:** In general, we support the idea to narrow down the monitoring mandate of EBA in order to mitigate additional burdens for NRAs. However, the changes made to Art. 15(5) BRRD seem to shift the focus of the monitoring mandate which is not fully clear now. While the original wording of the proposal is considered to focus on the **resolution authorities' approach to implementing resolvability assessments**, the changes made put the focus on the **banks' progress on resolvability**. In substance, we do not oppose this change, but it should be emphasised that, from our perspective, this would be a different monitoring exercise and we see it as questionable whether the burden on the NRAs can thereby be avoided. In addition, it does not seem consistent to delete the reference to the "assessment of the methodologies developed by the resolution authorities to carry out resolvability assessments" in Art. 15(5) (a) BRRD, but to leave the wording of Art. 15(5) (c) BRRD ("level of transparency (…) *of the methodologies developed by resolution authorities* to perform resolvability assessments") as it is. Similarly, recital 47 still includes a reference to a report on the "implementation of the resolvability assessments", while it is suggested

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	to delete the reference to the implementation of the resolvability assessments in Art. 15(1) BRRD. NL (MS comments): The resolvability of a bank is an ongoing process which will never be finished given banks are dynamic, evolving commercial entities. EBA needn't monitor, nor runs simulation exercises for, banks, which aren't going to be resolved via the use of resolution tools.On MREL for transfer tools, the new BRRD provisions don't actually set any "*rules*", they just tell resolution authorities (RAs) to consider certain factors when setting MREL. If there is meant to be new "*rules*" about setting MREL for transfer strategies, the new BRRD provisions should clearly prescribe what those "*rules*" are. **Drafting suggestions:** In Article 15, paragraph 5: *'15(5). EBA shall monitor the progress* ***made in improving and ensuring*** *resolvability of ~~institutions~~* ***resolution entities*** *that are not part of a* ***resolution*** *group and of* ***resolution*** *groups. EBA shall report to the Commission on the progress made by* ***resolution entities*** *that are not part of a* ***resolution*** *group and by* ***resolution*** *groups ~~for~~* ***towards*** *achieving or maintaining resolvability, on resolvability assessments and possible divergences across Member States by … [PO please insert the date = 2 years after the date of entry into force of this Directive].* *The report referred to in the first subparagraph shall cover at least the following:* *(a) an assessment of the actions requested by resolution authorities and the work undertaken by ~~institutions~~* ***resolution entities*** *that*

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	*are not part of a **resolution** group and by **resolution** groups to increase or maintain their resolvability.* In recital 47: (47). *'In view of the role of EBA in furthering the convergence of authorities' practices, EBA should monitor and report on the implementation of the resolvability assessments of ~~institutions~~ **resolution entities** and **resolution** groups and on the actions and preparations of resolution authorities to ensure an effective implementation of the resolution tools and powers. In those reports, EBA should also assess the level of transparency of the measures taken by resolution authorities towards relevant external stakeholders and the extent of their contribution to resolution preparedness and ~~institutions~~ '**resolution entities'** resolvability. EBA should furthermore report on the measures adopted by Member States for the protection of retail investors in what concern debt instruments that are eligible for the MREL pursuant to Directive 2014/59/EU, comparing and assessing any potential impact on cross-border operations. The scope of existing regulatory technical standards on the estimation of the additional own funds requirements and the combined buffer requirement for resolution entities should be expanded to include entities that have not been identified as resolution entities, ~~where those~~ **whose own funds** requirements have not been set on the same basis as the MREL. In the annual report on MREL, EBA should also assess the policy implementation by resolution authorities of the new ~~rules for~~ **Articles concerning** the calibration of the MREL for transfer strategies. In the context of EBA's tasks of contributing to ensure a coherent and coordinated crisis management and resolution regime in the Union, EBA should coordinate and oversee crisis simulation exercises. Those simulations should cover the*

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	coordination and cooperation between competent authorities, resolution authorities and DGSs during the deterioration of the financial situation of ~~institutions~~ ***resolution entities*** *and ~~entities~~* ***resolution groups****, testing the application of the toolbox in recovery and resolution planning, early intervention, and resolution in a holistic manner. Those exercises should consider in particular the cross-border dimension in the interaction between the relevant authorities and the application of the available tools and powers. Where relevant, the crisis simulation exercises should also capture the adoption and implementation of resolution schemes within the Banking Union, pursuant to Regulation (EU) No 806/2014.'* SI (MS comments): SI: We agree with the comprimised text to narrow down the EBA mandate to monitoring of the progress since this activity does not lead to additional requirements to NRA and to increased involvment to internal policy.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI: We agree. SE (MS comments): **Sweden supports the purpose of the changes in narrowing the mandate of EBA. However, to assure a resonable work load for the EBA, Sweden may see a need to revert to all EBA mandates and discuss them holitisically at a later stage** RO (MS comments): We request the deletion of paragraph 5. We do not see the proportionality of imposing these new requirements. We also do not see any merit in imposing this EBA monitoring mechanism, which additionally burdens the resolution authorities.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	The European Resolution Examination Programme (EREP), which aims at shaping resolution authorities` work priorities and respective practices, is another process which would take place simultaneously with this proposed monitoring mechanism. PT (MS comments): We agree. PL (MS comments): While we do not object the harmonizing role of EBA, the Article suggests that the institution directly monitoring the resolvability of institutions is EBA. This, however, is and should be the task of national resolution authorities. **Consequently, we do not support the idea of transfering the responsibility for resolvability monitring to EBA.** MT (MS comments): Malta supports the proposed changes to Recital 47 and Article 15(5).

Article 18(2) BRRD: EBA involvement in substantive impediments procedure Article 18(2) would be amended as follows: 18(2). '*The group-level resolution authority, in cooperation with the consolidating supervisor* ~~***and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010***~~*, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which shall provide it to the subsidiaries within their remit, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group, and also in relation to resolution groups where a group is composed of more than one resolution group. The report shall consider the impact on the group's business model and recommend any proportionate and targeted measures that, in the view of the group-level resolution authority, are necessary or appropriate to remove those impediments.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this amendments. FR (MS comments): We can agree. FI (MS comments): We support the proposed amendment. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendment. DE (MS comments): **Could agree**. It seems to make sense in streamlining the process of preparing and submitting the report.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	CZ (MS comments): CZ: We have no objection to the proposed deletion of the reference to EBA in Article 18(2) BRRD. BG (MS comments): We do not oppose the proposed amendment in the first subparagraph of Article 18(2) BRRD. We are unsure whether the Presidency intends to delete the second subparagraph of Article 18(2) BRRD with this proposal. NL (MS comments): No comment. SI (MS comments): SI: We agree. SE (MS comments): **OK** RO (MS comments): We agree with PCY proposal.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	PT (MS comments): We agree as we understand that cooperation with EBA pursuant to Article 25, always applies. PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Article 18(2).

Article 32a BRRD 'Conditions for resolution: cooperatives' Suggestion to maintain the Commission's proposal of Article 32a: '*32a. Member States shall ensure that resolution authorities may take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group where the central body and all credit institutions permanently affiliated to it, or the resolution group to which they belong, comply as a whole with the conditions established in Article 32(1).'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: No views as this is not applicable in Croatia. FR (MS comments): This provision is very relevant for our Member State given that a significant part of our banking system is organised in the form of mutual groups with a central body and affiliates. We agree with the principle of this provision in the Commission's proposal, which is to ensure that the FOLTF and PIA assessments, and also the power to take resolution action, are fit for purpose within the specific context of the solidarity mechanism that exits in the cooperative groups. But we need some targeted redrafting to secure it from a legal point of view in our jurisdiction. Indeed, in the case of France, the scope of the aforementionned assessment and actions need to be that of all entities permanently affiliated to the central body, and not only the ones that are credit institutions, in order to align with the scope of the solidarity mechanism. Drafting suggestion: *Member States shall ensure that resolution authorities may take a resolution action in relation to a central body and all ~~credit institutions permanently affiliated~~ **its permanent affiliates** that are part of the same resolution group where the central body and all ~~credit institutions~~*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	*~~permanently affiliated~~ **its permanent affiliates** ~~to it~~, or the resolution group to which they belong, comply as a whole with the conditions established in Article 32(1).* FI (MS comments): We support the PCY's approach. ES (MS comments): We suggest to add the following: **For credit institutions permanently affiliated to a central body benefitting from a waiver under Article 10 of Regulation 575/2013, the assessment of the condition referred to in article 32.1, point (a) shall be made at the same level at which requirements are set by the competent authority.** **Explanation:** In the case of credit institutions permanently affiliated to a central body benefitting from a waiver under Article 10 of Regulation 575/2013, since there are no prudential or liquidity requirements at individual level, the assessment might only be carried out at the consolidated level. This would cover a gap in the current framework on how to carry out this assessment at the indvidual level. EL (MS comments): EL: We support maintaining the Commission's proposal of Article 32a related to cooperatives.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	EE (MS comments): We support the Commission's proposal. DE (MS comments): **Could agree.** BG (MS comments): We do not oppose the Commission proposal to include Article 32a BRRD. NL (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	No comment. SI (MS comments): SI: We agree with the modification of Article 32a and b. SE (MS comments): **OK** RO (MS comments): Since the amendments proposed by COM do not change the substance of the current provision, we agree with the text. PT (MS comments): We are supportive of the COM's proposal, therefore we agree with the PCY proposal. PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Article 32a.

Article 32b BRRD 'Proceedings in respect of institutions and entities that are not subject to resolution action' Suggested modifications to Article 32b: *'32b 1. Member States shall ensure that, when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), the relevant national administrative or judicial authority has the power to initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.* ***This shall not preclude the possibility for the implementation, where appropriate, of existing voluntary winding-up procedures.'*** *2. Member States shall ensure that an institution or entity referred to in Article 1(1), points (b), (c) or (d), which is wound up in an orderly manner in accordance with the applicable national law,* ***including in a voluntary winding-up procedure, in the circumstances referred to in paragraph 1****, exits the market or terminates its banking activities within a reasonable timeframe****. Member States shall ensure that, under the applicable winding-up procedures, the activities of the entity are performed with a clear objective of terminating those activities while avoiding destruction of value unless necessary to achieve the termination objective.*** ~~*3. Member States shall ensure that when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions in Article 32(1), points (a) and (b), but not the condition in Article 32(1), point (c), the determination that the institution or entity is failing or likely to fail pursuant to Article 32(1), point (a) is a condition for the withdrawal of the authorisation by the competent authority pursuant to Article 18 of Directive 2013/36/EU.*~~. *4. Member States shall ensure that the withdrawal of the authorisation of the institution or entity referred to in Article 1(1), points (b), (c) or (d)* ***under the conditions of Article 18, point (g), of Directive 2013/36/EU*** *is a sufficient condition for a relevant national administrative or judicial authority to be able to initiate without delay*	LV (MS comments): We agree with draft proposal. IT (MS comments): We suggest specifying that voluntary winding-up procedures may represent a valid option only where such procedures are timely implemented. Drafing suggestion (highlighted in red): *'32b 1. Member States shall ensure that, when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), the relevant national administrative or judicial authority has the power to initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.* ***This shall not preclude the possibility for the implementation, where timely and appropriate, of existing voluntary winding-up procedures.*** IE (MS comments): We would propose the minor change below (in capitals) to para. 2. A voluntary winding-up is not contemplated in our national framework. *2. Member States shall ensure that an institution or entity referred to in Article 1(1), points (b), (c) or (d), which is wound up in an orderly manner in accordance with the applicable national law,* ***including, WHERE APPLICABLE, in a voluntary winding-up procedure, in***

Selected topics with drafting proposal	MS comments
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the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.' Suggestion to keep the Commission's text of Recitals 13-16: *'(13) When a failing institution or entity is not put in resolution, it should be wound down in accordance with the procedures available under national law. Such procedures may vary substantially from one Member State to the other. While it is appropriate to allow sufficient flexibility to use the existing national procedures, certain aspects should be clarified to ensure that the institutions or entities concerned exit the market.* *(14) It should be ensured that the relevant national administrative or judicial authority swiftly initiates a procedure under national law when an institution or entity is considered failing or likely to fail and is not put in resolution. Where voluntary liquidation of the institution or entity upon a decision of shareholders is available under national law, such option should remain available. However, it should be ensured that, in absence of swift action from the shareholders, the relevant national administrative or judicial authority takes action.* *(15) It should also be laid down that the final outcome of such procedures is the exit of the failing institution or entity from the market or the termination of its banking activities. Depending on the national law, that objective can be achieved in different ways, which may include the sale of the institution or entity or parts of it, sale of specific assets or liabilities, a gradual wind down or the termination of its banking activities, including payments and deposit-taking, with a view to selling its assets gradually to repay the affected creditors. However, to enhance the predictability of the procedures, that outcome should be reached within a reasonable timeframe.* *(16) Competent authorities should be empowered to withdraw the authorisation of an institution or entity solely on the basis of the fact that the institution or entity is failing or likely to fail and is not put in resolution. Competent authorities should be able to withdraw the authorisation to support the objective of winding up the institution or*	***the circumstances referred to in paragraph 1**, exits the market or terminates its banking activities within a reasonable–timeframe**. Member States shall ensure that, under the applicable winding-up procedures, the activities of the entity are performed with a clear objective of terminating those activities while avoiding destruction of value unless necessary to achieve the termination objective.*** HR (MS comments): HR: We support this amendments. FR (MS comments): Paragraphs 1-2 : While we could accept the proposed changes in a spirit of compromise, we still think it would be appropriate to regulate more in the level 1 text the definition of market exit and termination of banking activities including limited operations, deposit-taking, activities and forbiding accepting new customers (paragraph 2). In this regard, the following constraints should be considered : (a) the issuance of new liabilities should be limited to refinancing needs of existing assets and should not expand the date of maturity of the overall portfolio; (b) the restructuring of existing assets and liabilities should not extend their maturity beyond the longest-dated assets in the portfolio; (c) should the procedure allow deposit taking, the institution should be able to accept new deposits only from legacy clients.

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Drafting proposed by the presidency	
entity in accordance with national law, particularly in cases where the available procedures under national law cannot be initiated at the moment the institution or entity is determined to be failing or likely to fail, including the cases where the institution or entity is not yet balance sheet insolvent. To further ensure that the objective of winding up the institution or entity can be achieved, Member States should ensure that the withdrawal of the authorisation by the competent authority is also included among the possible conditions to initiate at least one of the procedures available under national law and applicable to institutions or entities that are failing or likely to fail but are not put in resolution.'	Paragraph 3 : We support the goal of ensuring consistency with the most recent banking package, regarding the withdrawal of authorisation following a FOLTF declaration and negative PIA, under CRD. However, we should keep in mind that the 3th paragraph would also have applied to entities that are not authorised under CRD. Article 18, point (g) of CRD would not be a complete replacement following the deletion of this paragraph, as the two provisions have different scopes. Paragraph 4 : We see no obvious value added in the proposed addition to the wording of the 4th paragraph – winding-up procedures should be available for a credit institution irrespective of the grounds for a withdrawal. Moreover, the proposed addition (reference to Article 18 CRD) would restrict the scope of the provision to credit institutions authorised under CRD – even though the COM proposal also cover certain investment firms, financial institutions within the meaning of CRR, regulated holdings etc. FI (MS comments): We support the objective to try to close any loopholes that would leave a bank that is failing or likely to fail (FOLTF) but not in the public interest to be put into resolution, alive. However, in order to have this provision to have full efect, it should be stated that the national administrative or judicial authority ***shall*** initiate the procedure to wind up the institution. Otherwise it would again leave it up to the discretion of the national authorities if the insitution is wind up or not. In paragraph 2 we do not support the addition stating that the winding-up procedure should avoid destruction of value. This is a matter of national insolvency laws and also already taken into account in those procedures. In many countries banks can be

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	wound up similarly as other companies according to the national legislation. Specific conditions just for banks in insolvency procedurees should be avoided. If a reference to the avoiding destruction of value is kept, it should be moved to the recitals from the article. Regarding paragaph 4, we do not support the amendment referring the Art 18 of the CRD. The withdrawal of the licence, no matter why it is done, should be a sufficient condition to initiate the winding up procedure. We agree that there is no need for the paragraph (3) anymore now that the possibility to withdraw a licence is in the CRD. But it should be clear, that a procedure to wind up the institution can be commenced in all cases where the insitution has lost its licence and not just only when the institution is FOLTF but there's not public interest to put it in resolution. We suggest amending the article as follows: *'32b 1. Member States shall ensure that, when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), the relevant national administrative or judicial authority* ~~***has the power to***~~ ***shall*** *initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.* ***This shall not preclude the possibility for the implementation, where appropriate, of existing voluntary winding-up procedures.'*** *2. Member States shall ensure that an institution or entity referred to in Article 1(1), points (b), (c) or (d), which is wound up in an orderly manner in accordance with the applicable national law,* ***including in a voluntary winding-up procedure, in the circumstances referred to in paragraph 1****, exits the market or terminates its banking activities within a reasonable–timeframe****. Member States shall ensure that, under the applicable winding-up procedures, the***

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	activities of the entity are performed with a clear objective of terminating those activities ~~while avoiding destruction of value unless necessary to achieve the termination objective~~. *4. Member States shall ensure that the withdrawal of the authorisation of the institution or entity referred to in Article 1(1), points (b), (c) or (d) ~~under the conditions of Article 18, point (g), of Directive 2013/36/EU~~ is a sufficient condition for a relevant national administrative or judicial authority to be able to initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.'* EL (MS comments): EL: We do not support the presidency changes on this article for par. 1 and 2 as: a. It is not clear how voluntary winding up procedures could work if the credit institution is already meeting the FOLTF conditions. The idea of voluntary winding up should be possible only to the extent that the credit institution continues to meet the requirements set in CRD and CRR given that no specific exclusion exists regarding the supervisory requirements for credit institutions under voluntary wind up. b. The proposed amendment in par. 2 allowing the entity to continue the provision of activities with the objective to avoid destruction of value could lead to limbo cases indefinitely. Especially for the deposit taking activity, the entity should not take any new deposits but should have a plan to repay deposits as it is winding up its assets. To this end, given that there is no harmonized framework for the voluntary winding up of credit institutions, we consider that it is

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	premature to include such a reference considering that the amendments could lead to institutions not being forced to exit even if they have been assessed as FOLTF allowing them to continue operations for unspecified time as per the amendments of the second paragraph. As part of on-going supervision, we have seen credit institutions that have applied for voluntary winding up, however, these institutions are fully compliant with the CRD/CRR requirements. We could support, in line with the ECB proposal, to include the request of such plans by the competent authority as part of the early intervention phase (amendment of art. 27 par. 1a of BRRD) or by including an EBA mandate to develop guidelines for the voluntary winding up of institutions as part of recovery planning (article 5 of BRRD). EL: On Recitals 13-16, we can support maintaining the Commission's text EE (MS comments): We support most of the amendments with additional suggestions as follows:

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	'32b 1. Member States shall ensure that, when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), the relevant national administrative or judicial authority ~~***has the power to***~~ ***shall*** *initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.* ***This shall not preclude the possibility for the implementation, where appropriate, of existing voluntary winding-up procedures.'*** *2. Member States shall ensure that an institution or entity referred to in Article 1(1), points (b), (c) or (d), which is wound up in an orderly manner in accordance with the applicable national law,* ***including in a voluntary winding-up procedure, in the circumstances referred to in paragraph 1****, exits the market or terminates its banking activities within a reasonable–timeframe****. Member States shall ensure that, under the applicable winding-up procedures, the activities of the entity are performed with a clear objective of terminating those activities while avoiding destruction of value unless necessary to achieve the termination objective.*** *4. Member States shall ensure that the withdrawal of the authorisation of the institution or entity referred to in Article 1(1), points (b), (c) or (d)* ~~***under the conditions of Article 18, point (g), of Directive 2013/36/EU***~~ *is a sufficient*

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	condition for a relevant national administrative or judicial authority to be able to initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.' DE (MS comments): **Agree.**

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	CZ (MS comments): CZ: We welcome the removal of duplication of rules for withdrawing the authorisation of credit institutions declared as FOLF in para 3, which contributes to clarification of the relationship with Article 18 CRD. We suggest the following amendment of the last sentence of para 2: *Member States shall ensure that, under the applicable winding-up procedures, the activities of the entity are performed with a clear objective of terminating those* ***banking*** *activities while avoiding destruction of value unless necessary to achieve the termination objective.* BG (MS comments): In general, we believe that the wording proposed by the Presidency seems to be addressing some of the specifities of the different national legal systems. NL (MS comments):

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	Reiterate our previous comments. All Member States should be required to use NIPs, not other options which leave the door open to the use of state aid and/or avoidance of resolution. Expanding the options to include voluntary procedures seems to provide more opportunities to avoid resolution. Our reading of A.32b BRRD was to require Member States to amend the triggers for NIPs so that they did enable banks, which do not meet the public interest threshold, to be put into NIPs i.e. the trigger should be the bank is FOLTF. This is what we did in NL and could be an option for other member states as well. It is not the role of resolution authorities to preserve/maximise value for creditors. In NIPs, it is the role of the liquidator to act in the best interests of creditors via those NIPs **Drafting suggestions:** In Article 32b: *'32b 1. Member States shall ensure that, when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), the relevant national administrative or judicial authority has the power to initiate without delay the procedure to wind up the institution or entity* ~~*in an orderly manner in accordance with the applicable national law*~~ ***via normal insolvency proceedings****. This shall not preclude the possibility for the* ***voluntary*** ~~*implementation*~~ ***commencement****, where appropriate, of* ~~*existing voluntary winding up procedures*~~ ***normal insolvency proceedings****.'* *2. Member States shall ensure that an institution or entity referred to in Article 1(1), points (b), (c) or (d), which is wound* ~~*up in an orderly*~~

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	~~*manner in accordance with the applicable national law*~~ ***via normal insolvency proceedings***, *including* ~~*in*~~ ***via the*** *voluntary* ~~*winding up procedure*~~ ***commencement of normal insolvency proceedings***, *in the circumstances referred to in paragraph 1, exits the market or terminates its banking activities within a reasonable timeframe.* ~~*Member States shall ensure that, under the applicable winding up procedures, the activities of the entity are performed with a clear objective of terminating those activities while avoiding destruction of value unless necessary to achieve the termination objective.*~~ *4. Member States shall ensure that the withdrawal of the authorisation of the institution or entity referred to in Article 1(1), points (b), (c) or (d) under the conditions of Article 18, point (g), of Directive 2013/36/EU is a sufficient condition for a relevant national administrative or judicial authority to be able to initiate without delay the procedure to wind up the institution or entity* ~~*in an orderly manner in accordance with the applicable national law*~~ ***via normal insolvency proceedings****.'* In recitals 13-16: *'(13) When a failing institution or entity is not put in resolution, it should be wound* ~~*down in accordance with the procedures available under national law*~~ ***up via normal insolvency proceedings.*** ~~*Such procedures may vary substantially from one Member State to the other. While it is appropriate to allow sufficient flexibility to use the existing national procedures, certain aspects should be clarified to ensure that the institutions or entities concerned exit the market.*~~ *(14) It should be ensured that the relevant national administrative or judicial authority swiftly initiates* ~~*a procedure under national law*~~ ***normal insolvency proceedings*** *when an institution or entity is considered failing or likely to fail and is not put in resolution. Where voluntary* ~~*liquidation*~~ ***commencement of the normal insolvency***

Selected topics with drafting proposal	MS comments
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	proceedings *of the institution or entity upon a decision of shareholders is available under national law, such option should remain available. However, it should be ensured that, in absence of swift action from the shareholders, the relevant national administrative or judicial authority takes action* ***to commence normal insolvency proceedings****.* *~~(15) It should also be laid down that the final outcome of such procedures is the exit of the failing institution or entity from the market or the termination of its banking activities. Depending on the national law, that objective can be achieved in different ways, which may include the sale of the institution or entity or parts of it, sale of specific assets or liabilities, a gradual wind down or the termination of its banking activities, including payments and deposit taking, with a view to selling its assets gradually to repay the affected creditors. However, to enhance the predictability of the procedures, that outcome should be reached within a reasonable timeframe.~~* *(16) Competent authorities should be empowered to withdraw the authorisation of an institution or entity solely on the basis of the fact that the institution or entity is failing or likely to fail and is not put in resolution. Competent authorities should be able to withdraw the authorisation to support the objective of winding up the institution or entity ~~in accordance with national law~~* ***via normal insolvency proceedings****~~, particularly in cases where the available procedures under national law cannot be initiated at the moment the institution or entity is determined to be failing or likely to fail, including the cases where the institution or entity is not yet balance sheet insolvent~~. To further ensure that the objective of winding up the institution or entity can be achieved, Member States should ensure that the withdrawal of the authorisation by the competent authority is also included among the possible conditions to initiate ~~at least one of the procedures available under national law and applicable~~* ***normal insolvency proceedings in respect of*** *~~to~~ institutions or entities that are failing or likely to fail but are not put in resolution.'*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI (MS comments):

Selected topics with drafting proposal	MS comments
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	SI: We agree with the existing recitals. SE (MS comments): **In general, we can accept these amendments. However, we are sceptical and suggest to not include the new last sentence in p. 2. In our view, the added value of that sentence can be questioned. While it is important that the institution/entity can be wound up in an orderly manner, we should avoid getting into specifics regarding the winding-up procedures which are regulated by national law. As mentioned in recital 13, such procedures may vary substantially from one Member State to the other. More precise writings on the procedure could also seemingly be less well aligned with other EU-law, e.g. Article 5 of the Covered Bonds Directive, which prohibits acceleration of certain activities towards termination, i.e. acceleration of payment obligations attached to covered bonds. We would prefer to delete this sentence. Otherwise, as a second hand option, we suggest to delete the last part of the sentence *"…unless necessary to achieve the termination objective"*, in order to retain necessary flexibility for the national procedures.** RO

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	(MS comments): In our opinion, the use of the word "initiate" is misleading given that it is not very clear whether it is about (i) the notification of the relevant national administrative or judicial authority/introduction of the request *or* (ii) the decision to open the procedure to wind up the institution in an orderly manner. Moreover, considering that at the EU level the concept of voluntary winding-up is neither defined nor harmonized, we do not support the amendment proposed in art. 32b para.1 and 2 regarding the provision of an express reference to voluntary winding-up procedures, as it may create difficulties in the transposition process. The reference in Recital 14 to the availability of such procedures should be sufficient. PT (MS comments): We were supportive of the COM's proposal, as we agree with making FOLTF plus Negative PIA a sufficient condition for the withdrawal of authorization. This is, indeed, essential to ensure market exit, namely when the relevant national administrative or judicial authority, while having the power to initiate NIP, does not do it. Authorization withdrawal does become the way to ensure this objective at EU level and that there are no limbo situations. However, given the new point (g) in Article 18 CRD, we can accept paragraph 3's deletion as far as it addressed a preexisting redundancy.

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	Furthermore, we also agree with the introduction, by the Presidency, of an explicit reference to voluntary winding up. PL (MS comments): Support MT (MS comments): With respect to Article 32b(1), Malta seeks clarification on the reasoning behind the word "existing". With respect to Article 32b(2): Malta suggests the following wording (marked in red): "*2. Member States shall ensure that an institution or entity referred to in Article 1(1), points (b), (c) or (d), which is wound up in an orderly manner in accordance with the applicable national law,* ***including in a voluntary winding-up procedure, in the circumstances referred to in paragraph 1****, exits the market or terminates its banking activities within a reasonable–timeframe.* ***Member States shall ensure that, under the applicable winding-up procedures, the activities of the respective institution or entity are performed with a clear objective of terminating those activities while avoiding destruction of value unless necessary to achieve the termination objective.***"

Selected topics with drafting proposal	MS comments
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	With respect to Article 32b(3), Malta does not support the deletion of Article 32b(3) in light of the fact that although Article 18 of Capital Requirements Directive (CRD) VI lists failing or likely to fail (FOLTF) as one of the grounds for withdrawal of a bank licence, the said trigger must be linked also to the fact that the entity in question does not meet the conditions of Article 32(1), point (c) – rather than just stop at fulfilling Article 32(1), point (a). If the public interest assessment (PIA) is positive, then the banking licence is still required for the purposes of resolution (especially if the bail-in tool had to be used). Therefore, Malta does not support the conclusion made by the Presidency that this provision has become redundant as a result of the amendment to Article 18 as introduced by the CRD VI. With respect to Article 32b(4), Malta supports the proposed changes. Malta supports Recitals 13 to 16.

Article 33(2) BRRD / Recital 21 'Conditions for resolution with regard to financial institutions and holding companies' (Keep COM text) Suggestion to keep Article 33(2) as proposed by the Commission: *'33(2). Member States shall ensure that resolution authorities take a resolution action in relation to an entity referred to in Article 1(1), points (c) or (d), when that entity meets the conditions laid down in Article 32(1).* *For those purposes, an entity referred to in Article 1(1), points (c) or (d), shall be deemed to be failing or likely to fail in any of the following circumstances:* *(a) the entity meets one or more of the conditions laid down in Article 32(4), points (b), (c) or (d);* *(b) the entity infringes materially or there are objective elements that show that the entity will, in the near future, infringe materially the applicable requirements laid down in Regulation (EU) No 575/2013 or in Directive 2013/36/EU.';* Suggestion not to amend Article 33(4) BRRD Suggestion to keep Recital 21 as proposed by the Commission: *'(21) To cover material infringements of prudential requirements, it is necessary to further specify the conditions for determining that holding companies are failing or likely to fail. An infringement of those requirements by a holding company should be material where the type and extent of such infringement is comparable with an infringement that, if committed by a credit institution, would have justified the withdrawal of the authorisation by the competent authority in accordance with Article 18 of Directive 2013/36/EU.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. EE (MS comments): Open to support. DE (MS comments): **Article 33(2): Agree.** **Recital 21: Agree.**

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Disagree with the suggestion not to amend Article 33(4) BRRD. We have already proposed a drafting for amendments of Art 33(4) BRRD in our general written comments on the BRRD in June 2023. Crisis simulation exercises have shown that the application of Article 33(4) of the BRRD involves considerable legal uncertainties since the meaning of some conditions is unclear. - The condition that '*assets and liabilities referred to in point (b) are such that their failure threatens an institution or the resolution group as a whole*' should be deleted, because it is unclear what this exactly means. - The same applies to the condition that the resolution action with regard to the entity is necessary *'either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole*'. - In addition, the condition that resolution action with regard to the entity is necessary *'for the resolution of those subsidiaries'* seems inconsistent since the resolution action is not applied to the subsidiaries but to the entity referred to in point (c) or (d) of Article 1(1) of the BRRD. Therefore, these conditions should be replaced and the provision should be amended with regard to the wording of Article 32(5) of the BRRD. We propose the following wording to clarify the conditions of Art 33(4) BRRD: *"Subject to paragraph 3 of this Article and notwithstanding the fact that an entity referred to in point (c) or (d) of Article 1(1) does not meet the conditions laid down in Article 32(1), resolution authorities may take resolution action with regard to an entity referred to in point (c) or (d) of Article 1(1) where all of the following conditions are fulfilled:* (a) the entity is a resolution entity; (b) one or more of the subsidiaries of the entity that are institutions~~, *but not resolution entities,*~~ comply with the conditions laid down in ***point (a) and (b) of*** Article 32(1); (c) ~~assets and liabilities of the subsidiaries referred to in point (b) are such that the failure of those subsidiaries threatens the resolution group as a whole, and~~

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	resolution action with regard to the entity ***referred to in point (c) or (d) of Article 1(1)*** is necessary ***for the achievement of and is proportionate to one or more of the resolution objectives referred to in Article 31*** ~~either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.~~ ***; and*** *(d)* ***a winding up of the subsidiary or the subsidiaries referred to in point (b) under normal insolvency proceedings would not meet those resolution objectives more effectively.*** **Reasoning:** The resolution authorities may, notwithstanding the fact that an entity referred to in point (c) or (d) of Article 1(1) of the BRRD does not meet the conditions established in Article 32(1) of the BRRD, decide on a resolution action with regard to that entity referred to in point (c) or (d) of Article 1(1) of the BRRD where one or more of its subsidiaries which are institutions comply with the conditions laid down in point (a) and (b) of Article 32(1) of the BRRD. CZ (MS comments): CZ: We agree to maintain the Commission's proposal. BG (MS comments): We do not oppose the Presidency proposal to keep the provision of Article 33(2) BRRD and recital 21 as proposed by the Commission. NL (MS comments): No comment

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI (MS comments): SI: We agree to retain the original Commission's proposals SE (MS comments): **OK** RO (MS comments): We agree to maintain the COM proposal. PT

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): We agree with maintaining the COM's proposal. PL (MS comments): Support MT (MS comments): Malta supports the Commission's proposed changes to recital 21 and Article 33(2).

Article 35 BRRD 'Special management' Suggestion to amend Article 35(1) as follows: *'Article 35(1). Member States shall ensure that resolution authorities may appoint ~~a~~ **one or more** special manager**s** to replace or to work with the management body of the institution under resolution or the bridge institution. Resolution authorities shall make public the appointment of ~~a~~ **the** special manager. Member States shall further ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.* *Article 91 of Directive 2013/36/EU shall not apply to the appointment of special managers.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): Agree with this approach, which is consistent with our ability to appoint one or more liquidators in insolvency proceedings. To note – "**one or more** special manager**s**" is mentioned. Minor change required to the below to make special manager plural: *"Resolution authorities shall make public the appointment of ~~a~~ **the** special manager**(s).** Member States shall further ensure that the special manager**(s)** ha**ve~~s~~** the qualifications,…"* HR (MS comments): HR: We support this. FR (MS comments): We can accept this drafting. FI (MS comments): We support the PCY's amendments. ES (MS comments): On article 35(2). Although according to paragraph 3 of this Article 35, the special manager shall have the "statutory duty to take all the measures necessary to promote the resolution objectives referred to in Article

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	31 and implement resolution actions according to the decision of the resolution authority", we do not see the reason of deleting in paragraph 2 the reference to the control of the resolution authority. In our view, this reference simply reinforces the idea that the special manager shall always exercise its powers following the instructions of the resolution authority as its agent who will always act under its control. Proposed drafting on 35(2): *'The special manager shall have all the powers of the shareholders and the management body of the institution under resolution or the bridge institution.* ***under the control of the resolution authority****'*. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendments. DE (MS comments): **Agree and welcomed.**

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Please note that Art 91(1) CRD VI already seems to contain an exception: *"[…] as regards special managers appointed by resolution authorities under Article 35 (1) of the Directive 2014/59/EU […]"* CZ (MS comments): CZ: We agree with proposed changes. BG (MS comments): We support the newly proposed changes by the Presidency in Article 35(1) BRRD. NL (MS comments): Agree with the ability to appoint more than one Special Manager. The bigger issue is that currently, resoluton authorities may only appoint a Special Manager to one entity (i.e. the resolution entity) out of the entire resolution group. It would very much assist with implementing the business reorganisation plan, among with other resolution tasks, if Special Managers could be appointed to subsidiaries in the same resolution group as the institution under resolution. This also provides for alignment with A.23 SRMR, fifth paragraph, last sentence. Please see the suggested amendment to that effect. Consequential amendments might be required in the remainder of A.35 BRRD or elsewhere in the BRRD.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Drafting suggestion: In Article 35(1): *'Article 35(1). Member States shall ensure that resolution authorities may appoint a one or more special managers to replace or to work with the management body of the institution under resolution* ***, of entities within the same resolution group as the institution under resolution,*** *or* ***of*** ~~*the*~~ ***a*** *bridge institution. Resolution authorities shall make public the appointment of* ~~*a the*~~ ***any*** *special manager. Member States shall further ensure that* ~~*the*~~ ***a*** *special manager has the qualifications, ability and knowledge required to carry out his or her functions.* *Article 91 of Directive 2013/36/EU shall not apply to the appointment of special managers.'* SI (MS comments): SI: We agree. SE (MS comments): **OK** RO (MS comments): We do not understand how would paragraph 2 of Article 35 be applied if a special manager is appointed to work (and not to replace) with the management body of the institution under resolution or the bridge institution (the newly added assumption by COM proposal). We consider

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	that more clarity should be provided on the extent of the responsibilities of the old management body after the appointment of the special manager(s) *to work with* it. PT (MS comments): We welcome the PCY's amendments. PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Article 35.

Article 40 BRRD 'bridge institution tool' Article 40(1) would be modified as follows: *'40(1). In order to give effect to the bridge institution tool and having regard to the need* ~~***to maintain critical functions in the bridge institution or***~~ *to pursue any of the resolution objectives, Member States shall ensure that resolution authorities have the power to transfer to a bridge institution all of the following:* *(a) shares or other instruments of ownership issued by one or more institutions under resolution;* *(b) all or any assets, rights or liabilities of one or more institutions under resolution.* *Subject to Article 85, the transfer referred to in the first subparagraph may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.'* Article 40(2) would be modified as follows: *'40(2). The bridge institution shall be a legal person that meets all of the following requirements:* *(a) it is wholly or partially owned by one or more public authorities which may include the resolution authority or the resolution financing arrangement and is controlled by the resolution authority;* *(b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution* ~~***with a view to maintaining access to critical functions***~~ *and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1).* *The application of the bail-in tool for the purpose referred to in Article 43(2), point (b), shall not interfere with the ability of the resolution authority to control the bridge institution. Where the application of the bail-in tool allows for the capital of the bridge institution to be fully provided through the conversion of bail-inable liabilities into shares or other types of capital instruments, the*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We accept this drafting proposed by the Presidency. FI (MS comments): We support the PCY's amendments. However, in the non-paper an important issue was raised that the bridge instutition should be able to commence its activity prior to the formal approval of its license request. As response, the PCY stated that this would be already possible under Article 41(1), second subparagraph (stating that the bridge institution "may" be established and authorised without complying with CRD for a shorter period of time). However, that paragraph states only that the bridge insitution can be authorized without complying with the CRD. Thus, it seems that the institution would still need *some type* of authorization, yet probably somehow a simpler and more restrictive authorization for a shorter period. This authorization could still take a long time and probably would not happen in the resolution weekend which hampers the usability

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
*requirement that the bridge institution is wholly or partially owned by one or more public authorities may be waived, **without prejudice to the control to be exercised by the resolution authority.'***	of the whole bridge institution tool. We support that there would be an explicit provision added about the possibility to commence the bridge institutions activities without (any type of) authorization until the licence request has been formally approved.
Suggested modifications to Article 41(2):	ES (MS comments):
*'41(2). Subject to any restrictions imposed in accordance with Union or national competition rules, the management of the bridge institution shall operate the bridge institution with a view to maintaining access to critical functions, **where relevant,** and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1), its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in paragraph 4 of this Article or, where applicable, paragraph 6 of this Article.'*	Suggestion to include some of the changes applicable to the bridge institution, to the Asset management company For ex: in Article 42.(2), we suggest to add a second subparagraph: **Where the capital of the asset management vehicle is fully provided through the conversion of bail-inable liabilities into shares or other types of capital instruments, the requirement that the asset management vehicle is wholly or partially owned by one or more public authorities may be waived.** EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendments. DE (MS comments): **Agree and welcomed.**

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	CZ (MS comments): CZ: We don't object the proposed changes. BG (MS comments): We believe that the reference to maintaining critical functions should be kept as this clarifies that shares or assets and liabilities are transferred for the specific purpose of preserving critical functions by establishing a bridge institution. Therefore, we propose to keep the Commission's text of Article 40(1) and Article 40(2) subparagraph 1, point (b). We support the proposal of the Presidency to add clarification "***without prejudice to the control to be exercised by the resolution authority.***" at the end of subparagraph 2 of Article 40(2) and Article 41 (2). NL (MS comments): We hesitate removing the qualification 'to maintain the critical function' to the use of the BI tool. Original thought is that BIs should only be established if the failed bank's critical functions are transferred to the BI. For example, should resolution authorities be able to set up a BI to house only non-critical assets/liabilities of the failed bank? The inclusion of the "*where relevant*" wording in A.41(2) does suggest the scope of the BI tool is being expanded to encompass scenarios where no critical functions are transferred to the BI tool. At the recent IMF/FSB workshop on transfer tools (January 2024, Washington DC), it was concluded that the BI tool is the resolution tool

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	of absolute last resort. In that case, we doubt whether we should be making the use of the BI tool less conditional. **Drafting suggestions:** In Article 40(1): *'40(1). In order to give effect to the bridge institution tool and having regard to the need* ***to maintain the critical functions of*** ~~*in*~~ ***the*** ~~*bridge*~~ ***institution under resolution and*** *to pursue any of the* ***other*** *resolution objectives, Member States shall ensure that resolution authorities have the power to transfer to a bridge institution* ***any or*** *all of the following:* In Article 40(2): *(b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to maintaining access to* ***the*** *critical functions* ***of the institution under resolution*** *and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1).* *The application of the bail-in tool for the purpose referred to in Article 43(2), point (b), shall not interfere with the ability of the resolution authority to control the bridge institution. Where the application of the bail-in tool allows for the capital of the bridge institution to be fully provided through the conversion of bail-inable liabilities into shares or other types of capital instruments, the requirement that the bridge institution is wholly or partially owned by one or more public authorities may be waived, without prejudice to the* ***requirement that*** *control* ***of the bridge institution is*** *to be exercised by the resolution authority.'*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	To Article 41(2): *'41(2). Subject to any restrictions imposed in accordance with Union or national competition rules, the management of the bridge institution shall operate the bridge institution with a view to maintaining access to critical functions, ~~where relevant,~~ and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1), its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in paragraph 4 of this Article or, where applicable, paragraph 6 of this Article.'* SI (MS comments): SI: We agree.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI: We agree. SI: We agree. SE (MS comments): **OK** RO (MS comments): We agree with PCY proposals.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Moreover, we consider that, from an operational perspective and considering the time constraints in a crisis situation, it is better to explicitly clarify that a simplified process for setting up a bridge credit institution in resolution is allowed. For this purpose, an explicit temporary exception in BRRD from the general credit institutions licensing framework in CRD for a bridge credit institution should be provided (not from the licensing conditions, but from the requirement to obtain authorisation before commencing their activities). Additionally, to bring more clarity with respect to the authorisation requirements for bridge credit institutions and consequently support the application of this resolution tool, it would be useful if the EBA develops guidelines for the assessment of the applications for authorisation as a bridge credit institution as well as technical standards on the documentation to be provided for such purposes. PT (MS comments): We welcome the elimination to the reference to critical functions, since we believe it was redundant since it is already within the scope of resolution objectives. Furthermore, we agree with the explicit reference to the control of the resolution authority even where the bail-in is applied together with the bridge institution tool. Nevertheless, we would like restate our previous comments concerning paragraph 2 of Article 40 as per the Commission's proposal, which states "*Where the application of the bail-in tool allows for the capital of the bridge institution to be fully provided through the conversion of bail-inable liabilities into shares or other types of capital instruments, the requirement that the bridge*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	institution is wholly or partially owned by one or more public authorities may be waived". This reference should be deleted. Indeed, this is not a minor amendment, and it impacts the logic of the functioning of a bridge bank. We fail to see how a bridge institution that is fully privately owned would be compatible with the remaining rules requiring the bridge bank to be of a temporary nature and required to be sold or liquidated. PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Article 40(1). Malta does not support the proposed deletion in point (b) of the first subparagraph of Article 40(2) since the main scope of the Bridge Institution Tool is to maintain access to the critical functions. Malta therefore proposes the following wording (marked in red). "*40(2). The bridge institution shall be a legal person that meets all of the following requirements:*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(a) it is wholly or partially owned by one or more public authorities which may include the resolution authority or the resolution financing arrangement and is controlled by the resolution authority; *(b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution* ***with a view to maintaining access to critical functions, where relevant*** *and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1).*" Malta supports the proposed change to the second subparagraph of Article 40(2).

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Lastly, Malta supports the proposed modification to Article 41(2).

Article 44a BRRD (EBA mandate in the scope of bail-in tool) In Article 44a, paragraph 8 would be added: *'44a(8). By … [PO please insert the date = 24 months after the date of entry into force of this Directive], EBA, **in coordination with ESMA,** shall report to the Commission on the application of this Article. That report shall compare the measures adopted by the Member States to comply with this Article, analyse their effectiveness in protecting retail investors and assess their impact on cross-border operations'*	LV (MS comments): We agree with draft proposal. IE (MS comments): IE have a number of measures in place to satisfy the requirements and would welcome comparison analysis across the BU. We assume the report to the Commission would be published or shared with NRAs. Feedback on this point would be appreciated HR (MS comments): HR: We support this. FR (MS comments): We accept this suggestion. FI (MS comments): We support the PCY's amendment. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendment. DE

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): **Agree.** CZ (MS comments): CZ: The cooperation with ESMA could be burdensome due to possible taxonomy and procedural differences. Benefits of the joint report should be discussed further. BG (MS comments): We support the amendment in Article 44a(8) BRRD proposed by the Presidency. NL (MS comments): No comment. SI (MS comments): SI: We agree. SE (MS comments): **OK** RO (MS comments): We agree with PCY proposal.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	PT (MS comments): We agree. PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Article 44a.

Article 63(2) BRRD / Recital 32a - Resolution powers: exemption from the qualifying holding assessment by the competent authority Suggestion to keep the Commission's text of Article 63(2), point a) *'63(2).Member States shall take all necessary measures to ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities are not subject to any of the following requirements that would otherwise apply by virtue of national law or contract or otherwise* *(a) subject to Article 3(6) and Article 85(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution and the competent authorities for the purposes of Articles 22 to 27 of Directive 2013/36/EU;'* *(b) prior to the exercise of the power, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.* *In particular, Member States shall ensure that resolution authorities can exercise the powers under this Article irrespective of any restriction on, or requirement for consent for, transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.* *Point (b) of the first subparagraph is without prejudice to the requirements laid down in Articles 81 and 83 and any notification requirements under the Union State aid framework.;* Suggestion to add new Recital 32a: *'**(Recital 32a) When applying resolution tools and exercising resolution powers, resolution authorities should generally not be subject to requirements to obtain approval or consent from any person. In particular, resolution authorities should not be subject to an assessment of an acquisition of a qualifying holding by the competent authority when exercising control over the institution under resolution..**'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can agree with the suggested modification. FI (MS comments): We support the PCY's amendments. ES (MS comments): In connection with recital 32a, we highlight that there are other instances where resolution authorities should be exempted from lengthy procedures in order to make resolution as fast and, thus, effective as possible. This is the case of tender procedures. We suggest to add the following text to the proposal. The following Article 127 is inserted:

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	'Article 127 **Amendment to Directive 2014/24/EU** **In Article 10 a new point (k) is added:** **'Services needed for the preparation and execution of the resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council.** Justification: Resolution authorities need to be prepared to act in the event of abrupt crises, under severe time constraints, as illustrated in past crises. In order to ensure the preparation for a potential resolution, it is necessary to contract independent valuers as well as legal and financial advisors and, where applicable, special managers. Consequently, to enable the resolution authority to prepare timely for a potential resolution of an entity, the contracting procedure needs to be extremely swift. However, the tendering procedures under national laws transposing Directive 2014/24/EU on public procurement may be excessively lengthy and thus ill-suited for a resolution scenario. In this respect, we have also seen that resolution authorities have divergent interpretations of whether those contracts fall within the scope of national laws transposing Directive 2014/24/EU and,

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	more specifically, whether they meet any of the exclusion criteria provided in accordance with its articles 7 to 12. In order to ensure that the public procurements to contract the services needed for a effective preparation of a resolution can be carried out within the timelines demanded by a crisis situation and also with a view to establish a level-playing field, we would suggest amending Directive 2014/24/EU by adding to its Article 10 an additional exclusion for the service contracts needed for the preparation and execution of resolution actions by resolution authorities in accordance with Directive 2014/59/EU. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendments. DE (MS comments): Article 63(2): **Generally agree, additional revision necessary**. We generally agree with the intended clarification that resolution authorities shall be excempted from a qualifying holding assessment when applying resolution tools and exercising resolution powers. However, we also see risks. The assessment of acquisition of a qualifying holding relates to continuing authorisations. Hence, the acquirer has to fulfil all requirements not only when acquiring the institution but permanently. Therefore, we see a risk that the competent authority may withdraw the authorization after the acquisition for

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	reasons based on facts that already existed at the time of the acquisition and did not preclude the acquisition due to the facilitation provided in the proposal. This would merely postpone the decision. However, due to such a postponement, an acquirer would not have any legal certainty in this regard. We therefore see a risk that such potential legal uncertainties could deter potential bidders from acquiring an institution under resolution. However, such risk would be avoided if the facilitation introduced by the proposal would also apply to the period after the acquisition, so that the authorization may not be withdrawn if the legal basis for withdrawal would relate to facts that already existed at the time of acquisition. Such a clarification should be added to the proposal. Otherwise, we would propose facilitate the assessment procedure in order to ensure that all relevant information can be obtained within a tight timeframe. Recital 32a: **Could agree.** CZ (MS comments): CZ: We agree to maintain the Commission's proposal together with the addition of the new recital. BG (MS comments): We agree with the proposal to keep the Commission's text of Article 63(2) BRRD and the addition of Recital 32a.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	NL (MS comments): The exemption from the qualifying holding assessment should be expanded to cover also regulated entities in the resolution group, not just the resolution entity (i.e. institution under resolution). A "qualifying holding" means a direct holding (i.e. the resolution entity") or an indirect holding (i.e. subsidiary institutions of the resolution entity). This means not only credit institutions but any regulated financial entity within scope of CRDV, Solvency II, MiFID II and PSD2 as entities within large banking groups hold authorisations granted under each of these Directives. The exemption should cover both RAs and Special Managers (who have the powers of the general meeting of shareholders). For the Dutch bail-in mechanism, the exemption needs to also cover the foundation (Stichting) incorporated by the NRA, which holds the resolved bank's new CET1 instruments until they are finally distributed to bailed-in creditors and the foundation (Stichting) incorporated by the NRA for the application of the bridge institution tool. Hence the exemption should also cover entities established by a resolution authority as part of its application of a resolution tool. Please see the suggested wording in drafting suggestions below to also cover Special Managers and entities established by a resolution authority as part of its application of a resolution tool: **Drafting suggestions:** To Article 63(2):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	63(2) Member States shall take all necessary measures to ensure that, when applying the resolution tools and exercising the resolution powers, ***no*** *resolution authorities are* ~~*not*~~ ***to be*** *subject to any of the following requirements that would otherwise apply by virtue of national law or contract or otherwise* ***(a)*** *subject to Article 3(6) and Article 85(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution and the competent authorities of the* ***institution under resolution or any other entity of the resolution group of the institution under resolution*** *for the purposes of* ***any of*** *Articles 22 to 27 of Directive 2013/36/EU****, Articles [XX] to [XX] of Directive 2009/138/EC, Articles [XX] to [XX] of Directive 2014/65/EU or Articles [XX] to [XX] of Directive 2015/2366/EU;'*** *(c* **) Member States shall take all necessary measures to ensure that, when applying the resolution tools and exercising the resolution powers, no special manager appointed under Article 35 nor entity established by a resolution authority as part of its application of a resolution tool are to be subject to any requirements to obtain approval or consent from competent authorities of the institution under resolution or any other entity of the resolution group of the institution under resolution for the purposes of any of Articles 22 to 27 of Directive 2013/36/EU, Articles [XX] to [XX] of Directive 2009/138/EC, Articles [XX] to [XX] of Directive 2014/65/EU or Articles [XX] to [XX] of Directive 2015/2366/EU;'** In recital 32a:

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	'(Recital 32a) When applying resolution tools and exercising resolution powers, ***no*** *resolution authorities should generally* ~~not~~ ***to be*** *subject to requirements to obtain approval or consent from any person. In particular, resolution* ***authorities, special managers appointed by resolution authorities and entities established by resolution authorities when applying a resolution tool*** *should not be subject to an assessment of an acquisition of a qualifying holding by the competent authorit****ies*** ~~*when exercising control over the institution under resolution.*~~ SI (MS comments): SI: We agree to retain the Comission's proposal.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI: We agree. SE (MS comments): **OK** RO (MS comments): Neither the Explanatory Memorandum nor the recitals of the CMDI Proposal disclose the reasoning behind the amendment of Art. 63(2)(a) with respect to the exemption from the qualifying holding assessment by the competent authority. The clarification proposed by the PCY in Recital 32a of the Directive would not remove existing concerns that the addition in Art. 63(2)(a) is not consistent with Article 63(1)(m) or, as the case may be, with Article 38 (8) and (9) or Article 47 (4) and (5) of BRRD. Further clarifications are necessary. In this regard we deem that, besides the addition of the recital, the text of the relevant provisions should also be reviewed. In addition, not related to the text of Article 63(2) but on the same topic of the RA powers, we propose to be inserted a specific provision expressly stating that the exercise by the RA of the power to reduce/convert, either as part of the bail-in instrument or **independently WDCCIEL**, is exempted from ordinary corporate rules applicable to

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	companies generally as well as to listed companies. In particular the provision should clearly reflect that when RA exercising such power: - no requirement to obtain the decisions of the relevant corporate bodies that would ordinarily be applicable in case of a reduction and increase of share capital or debt conversion on company rules/law applies; - the ordinary rules of debt conversion do not apply; - the existing shareholders do not have any preference rights. Reference to *eligible liabilities* in scope of WDCCIEL should be included. PT (MS comments): We agree. PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Recital 32a and Article 63(2).

Articles 88(6a) BRRD / Recital 33 'Resolution colleges: significant branches in other Member States' Suggestion to keep the Commission's proposal to insert Article 88, paragraph 6a: 88(6a). *'To facilitate the tasks referred to in Articles 10(1), 15(1) and 17(1) and to exchange any relevant information, the resolution authority of an institution with significant branches in other Member States shall establish and chair a resolution college.* *The resolution authority of the institution referred to in the first subparagraph shall decide which authorities participate in a meeting or in an activity of the resolution college, taking into account the relevance of the activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned and the tasks referred to in the first subparagraph.* *The resolution authority of the institution referred to in the first subparagraph shall keep all members of the resolution college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The resolution authority of the institution referred to in the first subparagraph shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.'* Suggestion to keep the Commission's text of Recital 33: *'(33) To facilitate resolution planning, the assessment of resolvability and the exercise of the power to address or remove impediments to resolvability as well as to foster information exchange, the resolution authority of an institution with significant branches in other Member States should establish and chair a resolution college.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can accept to keep the Commission's proposal. FI (MS comments): We support the PCY's approach. ES (MS comments): If we are understanding correctly this new paragraph, its aim is to state clear that in a situation where there are only resolution authorities of significant branches, it is also mandatory to establish a resolution college. In these cases, the value added of the resolution college is more limited and its functioning could be more flexible, for instance enabling the use of written procedures or less frequency of meetings *'6a. To facilitate the tasks referred to in Articles 10(1), 15(1) and 17(1) and to exchange any relevant information, the resolution authority of an institution with significant branches in other*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Member States shall establish and chair a resolution college with the authorities of these Member States. ***The operational functioning of the resolution college shall be subject to the principle of proportionality***. EL (MS comments): EL: We can support maintaining the Commission's proposal for Article 88(6a) and recital 33. EE (MS comments): We support the Commission's proposal. DK (MS comments): We can support the text as it stands. In terms of the proposal to include third country supervisory authorities in the resolution colleges, we find that the supervisory authorities could add relevant information to the resolution colleges and therefore should be able to be observers even when they are placed in third countries. Resolution authorities can invite third country supervisory authorities to meetings at their discretion and this already gives a valuable option to engage with the third country supervisory

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	authorities, so the proposal to include them as observers is just an extension in this regard. DE (MS comments): **Disagree.** The following subparagraph shall be added after the third subparagraph of Article 88(6a): ***"The regulatory technical standard on the operational functioning of resolution colleges referred to in paragraph 7 shall not apply to resolution colleges established under this paragraph whereby the chair may decide to apply certain provisions mutatis mutandis."*** The Commission`s proposal refers to tasks (i.e. resolution planning in Article 10(1) and measures on impediments to resolvability in Article 17(1)) with respect to which the rules on the operational functioning of resolution colleges in Articles 50 et seq. CDR 2016/1075 provide for rather complex procedures leading to joint decisions. Where – as in the case of resolution colleges pursuant to paragraph 6a – no joint decisions are required, the rules in Articles 50 et seq. CDR 2016/1075 are certainly too complex and, thus, inappropriate. Therefore, it should be clarified that those rules shall not apply directly to resolution colleges pursuant to paragraph 6a whereby the chair of the resolution college shall be allowed to apply certain provisions of Article 50 et seq. CDR 2016/1075 rather than to invent new procedures. From a practical perspective, it would be interesting to understand what actual cases have been thought of here. Further, the following subparagraph shall be added at the end of Article 88(6a): ***"This paragraph 6a shall also apply to a group comprising of instititions or parent undertakings exclusively in the same Member State with significant branches in other Member States."***

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	The scenario described in EBA Q&A 2022_6594 differs from the one in the Commission`s proposal insofar as it does not refer to a single institution (as – to our understanding – does the Commission`s proposal) but to a group comprising institutions or parent undertakings (all domiciled in one Member State). However, both scenarios are identical insofar as the resolution colleges to be established comprise only one voting member (from the home Member State) and one or more other resolution authorities without voting rights from Member States with significant branches. Thus, the same rules shall apply in both scenarios. Further, we would like to reiterate that Germany supports **amendments to Article 88 (2)(b) and 88(2)(g) BRRD** as proposed by Austria. CZ (MS comments): CZ: We agree to maintain the Commission's proposal. BG (MS comments): We do not oppose the Commission's text of Article 88(6a) BRRD and Recital 33. However, we would prefer that the resolution authority of the institution should be able to decide on a case-by-case basis whether to form the resolution college envisaged in the newly proposed Article 88(6a) BRRD.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	In addition, the present wording implies that the institution should have more than one branches in order to be established a resoltuion college. It is useful to be clarified the number of branches. Drafting suggestion for the first subparagraph of Article 88(6a): 88(6a). *'To facilitate the tasks referred to in Articles 10(1), 15(1) and 17(1) and to exchange any relevant information, the resolution authority of an institution with **one or more** significant branches in other Member States shall establish and chair a resolution college.* *resolution authority of an institution with **one or more** significant branches in other Member States should establish and chair a resolution college* NL (MS comments): Following the Credit Suisse experience, where the SEC (US markets regulator) was not originally a member of the Crisis Management Group (**CMG**, akin to a resolution college) but belatedly joined to advise on securities law issues arising from the potential resolution of Credit Suisse, there is discussion at FSB level about expanding the scope of authorities eligible to join/participate in CMGs/colleges. The EU could also expand the list of eligible authorities in A.88(2) BRRD to include market authorities (**MAs**) of Member States, in which an institution has issued relevant capital instruments or eligible liabilities

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	or which hosts a regulated market on which an institution's relevant capital instruments or eligible liabilities is admitted to trading. ESMA could also be included given its operation of SARIS, which will be utilised by EU MAs in resolution scenarios. A.88(3) BRRD could also be expanded to include relevant third-country market authorities. No comment on the proposed A.88(6a), nor Recital (33). SI (MS comments): SI: We agree.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI: We agree. SE (MS comments): **OK** RO (MS comments): We consider necessary to be clarified the obligations of the national resolution authorities and the mechanism of decision taking. PT (MS comments): We agree. PL (MS comments): **We do not support the amendment in its current shape.** There should be an option to waive the requirement to establish a resolution college where resolution authorities from Member States where a significant branches operate (RAs for branches). For this reason we would welcome a proposal assuming that as a rule there is no such obligation put on relevant resolution authority unless any RA for branch ask for this. Moreover where the plan for an institution with significant branches provides that the preffered strategy for the institution is liquidation within standard insolvency procedure there is no justification for establishment of resolution college as reimbursement of covered deposits is the sole responsibility of deposit insurers and the financial

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	burdens relating to pay-out are paid by the DGS appropriate for the institution with significant branches. MT (MS comments): Malta supports the proposed changes to Recital 33 and Article 88(6a).

Articles 91 and 92 BRRD 'Group resolution involving a subsidiary of the group' Suggestion to amend Article 91(1): *'91(1). Where a resolution authority decides that an institution or any entity as referred to in Article 1(1), points (b), (c) or (d), that is a subsidiary in a group, meets the conditions referred to in* ***Article 32(1), points (a) and (b), or the conditions referred to in Article 33(4), points (a) and (b), as applicable,*** ~~*Article 32 or 33*~~*, that authority shall notify without delay to the group-level resolution authority, if different, to the consolidating supervisor and to the members of the resolution college for the group in question the following information:* *(a) the decision that the institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions referred to in Article 32(1), points (a) and (b),* ~~*or in Article 33(1) or (2) as applicable,*~~ *or the conditions referred to in Article 33(4)****, point (a) and (b), as applicable*** *;* *(b) the outcome of the assessment of the condition referred to in Article 32(1), point (c)* ***and Article 33(4), point (c);*** *(c) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or that entity.'* *The information referred to in the first subparagraph may be included in the notifications communicated pursuant to Article 81(3) to the addressees referred to in the first subparagraph of this paragraph.'* Suggestion to modify Article 92(1) as follows: *'92(1). Where a group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 32 or 33 it shall notify the information referred to in points (a),* ***(b)*** *and (****c~~b~~****) of Article 91(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question. The resolution actions or insolvency measures for the purposes of point (****c~~b~~****) of Article 91(1) may include the implementation of a group resolution scheme drawn*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can accept the proposed change FI (MS comments): To us it's a bit unclear why in the first paragraph reference is made only to points (a) and (b) of the Article 32 and 33 and not also to the point (c). Especially since according to the proposed point (b) of the Article, the RA has to notify also the outcome of the PI-assessment (point c). It seems that it would be clearer to refer in the first paragraph to articles 32 and 33 in whole. EL (MS comments): EL: We can support the presidency proposal. Please note that if the current proposal is adopted, then in article 91 par. 3-5, the relevant references to article 91 (b) to (c) should be amended accordingly. We would also like to draw your attention on the need to change the reference included in article 92 (1) point (a) on point b as this should read point c. *Drafting Suggestion:*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
up in accordance with Article 91(6) in any of the following circumstances: *(a) resolution actions or other measures at parent level notified in accordance with point (b) of Article 91(1) make it likely that the conditions laid down in Article 32 or 33 would be fulfilled in relation to a group entity in another Member State;* *(b) resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;* *(c) one or more subsidiaries meet the conditions referred to in Article 32 or 33 according to a determination by the resolution authorities responsible for those subsidiaries; or* *(d) resolution actions or other measures at group level will benefit the subsidiaries of the group in a way which makes a group resolution scheme appropriate.'*	*92(1). Where a group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 32 or 33 it shall notify the information referred to in points (a), **(b)** and (~~c~~**b**) of Article 91(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question. The resolution actions or insolvency measures for the purposes of point (~~c~~**b**) of Article 91(1) may include the implementation of a group resolution scheme drawn up in accordance with Article 91(6) in any of the following circumstances:* *(a) resolution actions or other measures at parent level notified in accordance with point **(c)** ~~(b)~~ of Article 91(1) make it likely that the conditions laid down in Article 32 or 33 would be fulfilled in relation to a group entity in another Member State;* EE (MS comments): We support the amendments, but clarification is needed why in the first paragraph reference is limited only to some points of the Articles 32 and 33 and not to Articles 32 and 33 in whole. DE (MS comments): **Partially agree with further amendments.** We propose the following amendments: 1. Article 9**2**(1): Replace the words "*referred to in Article 32 or 33*" by the words "***referred to in Article 32(1), points (a) and (b), or the conditions referred to in Article 33(4), as applicable***".

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	The amendments in the first sentence of Article 91(1) clarify that notification requirements shall apply as soon as an entity is failing or likely to fail and no alternative measures are to be expected. A positive PIA is not required and this makes perfect sense as the PIA is linked to the discussion on the resolution strategy in the resolution college (e.g. with respect to which entity shall resolution actions be taken). However, the same applies if – as governed by Article 9**2**(1) – a Union parent undertaking fails or is likely to fail and no alternative measures are to be expected. 2. Article 91**(4)** shall be amended as follows: "*4. If the group-level resolution authority~~, after consulting the other members of the resolution college,~~ assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1 of this Article, would make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State* ***and that a group resolution scheme is required,*** *the group-level resolution authority shall no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme and submit it to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the notification referred to in paragraph 1 of this Article. A prior dialogue and consultation of the members of the resolution college as referred to in paragraphs 2 and 3 of this Article is not mandatory.*" We agree to the precidency`s argument that a discussion on the need for a group resolution scheme shall occur if the group-level resolution authority intends not to propose one. This is provided for by Article 91(3) which should remain unchanged. However, a discussion on the need for a group resolution scheme shall not be required if the group-level resolution authority intends to propose one anyway. Article 91**(4)** needs to be amended accordingly as it currently provides for this additional step without any substantial added value. This

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	additional step is very time-consuming, in particular as Articles 97 to 101 of Commission Delegated Regulation 2016/1075 design it as a lengthy two-step process of dialogue and (written) consultation. Further, the current wording of Article 91(4) causes some discrepancy to Article 92(3) of the BRRD, which allows (in line with the suggested amendments to Article 91(4)) the proposal of a group resolution scheme without prior consultation on its need. As correctly stated by the Presidency in its non-paper: If the group-level resolution authority proposes a group resolution scheme, each of the other resolution authorities will be able to stop it by denying its consent to the corresponding joint decision. In this scenario, the additional process of dialogue and consultation on the need of group resolution scheme may be an unnecessary formality during a time-sensitive process at the resolution weekend, in particular from the perspective of a resolution authority responsible for a subsidiary that intends to take its own resolution actions. CZ (MS comments): CZ: The Presidency remarks in the explanation that they accommodate the request to replace the wording "subsidiary of a group" with "subsidiary of a resolution entity", though the draft text provided reads "subsidiary in a group" and has no bold font. We have no objections to the modified cross-references. BG (MS comments): We do not oppose the amendments proposed by the Presidency in the Commission's text as the new wording in Articles 91 and 92 BRRD is more precise and provides more clarity.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	However, we have a drafting suggestion for point (a) of Article 92(1): *(a) resolution actions or other measures at parent level notified in accordance with point (~~b~~ **c**) of Article 91(1) make it likely that the conditions laid down in Article 32 or 33 would be fulfilled in relation to a group entity in another Member State;* NL

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): Query whether resolution college membership should correspond to the resolution group. For example, should the resolution authority of the subsidiary, which is not in the resolution group, participate in taking joint decisions, such as adopting a resolution scheme for the resolution group? Perhaps such resolution authorities should participate as observers, rather than members, of the resolution college. This is relevant for EU banking groups with MPE resolution strategies. Won't the "Union parent undertaking" always be a resolution entity? If it meets the "conditions of Article 32" does that not mean there is a public interest to resolve the entity? If a Union parent undertaking is not a resolution entity, shouldn't the group-level resolution authority be the resolution authority of the resolution entity? Is there is a need for a resolution college for a banking group, which is to be resolved by way of NIPs? Is it conceivable that NIPs will "*stabilise the situation*"? Can there be "*other measures*" in a group resolution scheme, which are not, by definition, resolution actions? May NIPs be part of a resolution scheme? By definition, that would seem to be impossible. These provisions need to be rethought now that we have incorporated the concepts of resolution entity and resolution groups throughout the BRRD. **Drafting suggestion** In Article 91(1):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(b) the outcome of the assessment of the condition referred to in Article 32(1), point (c) ~~*and*~~ ***or*** *Article 33(4), point (c);* SI (MS comments): SI: We agree. SI: We agree. SE

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): **OK** RO (MS comments): We agree with PCY proposals.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	We agree with amendments made to reflect the introduction of the new letter b) in article 91 para. (1), but, since article 91 (1) has only three letters, we deem that is not necessary to stipulate each of these letters. We herein provide a drafting proposal: *92(1). Where a group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 32 or 33 it shall notify* ***all*** *the information referred to* ~~*in points (a), (b) and (cb) of*~~ *in Article 91(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question. The resolution actions or insolvency measures for the purposes of point (****c~~b~~****) of Article 91(1) may include the implementation of a group resolution scheme drawn up in accordance with Article 91(6) in any of the following circumstances:* PT (MS comments): We agree. PL (MS comments): As we understood from the paper WK 3113/2024 INIT one of the goals of this amendment is to replace the term "subsidiary in a group" with "subsidiary of a resolution entity" but we do not see how it is reflected in the proposed wording. Moreover it seems that this provision shoud apply

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	only to subsidiaries that are not resolution entities themselves, i.e. in SPE only. MT (MS comments): Malta supports the proposed changes to Articles 91 and 92.

Article 84a BRRD 'Exchange of information with centralised automated mechanisms (AML)' Suggestion to add a new Article 84a 'Information held by a centralised automated mechanism': ***'84a. 1. Member States shall ensure that the authorities operating the centralised automated mechanisms established by Article 32a of Directive (EU) 2015/849 of the European Parliament and of the Council shall provide resolution authorities, upon their request, with information related to the number of customers for which an entity as referred to in Article 1(1) is the only or principal banking partner.*** ***2. Member States shall ensure that resolution authorities shall request the information referred to in paragraph 1 only on a case-by-case basis and where necessary for the purpose of performing their tasks under this Directive and national law.'***	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can accept this modification FI (MS comments): It would be very useful to have information on the number of customers for which an entity is the only or principal banking partner. This information would be useful not only to resolution authorities when performing their tasks, but also to deposit guarantee schemes when preparing for a possible pay-out (how many customers have accounts in other banks to which the deposit guarantee compensation could be paid). Also, this information would be useful to resolution authorities not only in a time of crisis on case-by-case -basis, but also in resolution planning when evaluating the institution's critical functions. However, we have concerns whether the information described in the article can be easily obtained from the centralised automated mechanisms. Our understanding is that, the technical solutions varies and if the mechanism is based on hub with interfaces to institutions' database, one can draw only individual information, one person's information at a time from the database. Thus it possibly could require changes to the database to obtain this type of compiled set of information on all the

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	bank's customers and whether the bank is their only bank. These alterations to the automated mechanisms would then create administrative and IT development costs to both authorities and institutions. We suggest exploring whether this information can be in practise easily obtained from the centralised automated mechanisms. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the objective but have concerns whether the information described could be easily obtained in practice. DE (MS comments): **Could agree.** The principle of proportionality should be ensured. Minimum requirements, that should be added in paragraph 2: *'Member States shall ensure that resolution authorities shall request the information referred to in paragraph 1 only on a case-by-case basis and where necessary* ***and proportionate*** *for the purpose of performing their tasks under this Directive and national law.'* CZ (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	CZ: We propose to clarify what a principal banking partner is to find out if it's even possible to get such information from the centralised automated mechanisms, and eventually to delete this reference to keep the proposed task feasible. BG (MS comments): We support the inclusion of the new Article 84a proposed by the Presidency. NL (MS comments): No comment. SI (MS comments): SI: Yes, we agree. SE (MS comments): **OK** RO (MS comments): We consider that there is a lack of clarity in the phrase "*on a case-by-case basis and where necessary"* in terms of timing and justification of the request of information. In addition, from our analyses we are not convinced that the data reported under Directive (EU) 2015/849 are sufficient to conclude that an entity is the principal banking partner of customers (information regarding the account balances at the date of the request, the operations that take place through the respective accounts, whether the accounts are used etc.).

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	PT (MS comments): We welcome this drafting proposal. PL (MS comments): Support MT (MS comments): While Malta does not object to the indirect access by the NRA to the centralised bank account register, it is important to keep in mind that data obtained from such register may not always provide a complete picture of the actual account population. By way of example, data and information in relation to fixed term accounts and accounts not identifiable by the International Bank Account Number (IBAN) is not reported to the bank account register. With that said, Malta wishes to also bring to the discussion the possible reference within Article 84a (as well as Article 30a of the Single Resolution Mechanism Regulation (SRMR)) to the single access point which will be brought about by the 6th Anti-Money Laundering Directive (AMLD) as a result of the interconnection of bank account registers. Perhaps, an exercise may be undertaken as part of the working party discussions to evaluate the tasks of the resolution authority (as well as the Single Resolution Board (SRB)) under the proposed regulations to determine whether bank account information from registers set-up in other EU Member States would be required, and if so, to reflect this within the relevant articles.

Article 97 BRRD: information-sharing rules with third-country authorities Suggestion to replace Article 97(4) by the following: *'97(4). Resolution authorities shall conclude non-binding cooperation arrangements with the relevant third-country authorities referred to in paragraph 2 where appropriate. Those arrangements shall be in line with EBA framework arrangement.* *Competent authorities shall conclude non-binding cooperation arrangements with the relevant third-country authorities referred to in paragraph 2 where appropriate. Those arrangements shall be in line with EBA framework arrangement and shall ensure that the information disclosed to the third-country authorities is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of Directive 2013/36/EU are complied with.'* ***This Article shall not prevent Member States or their competent authorities from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.'***	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can accept the suggested modification. FI (MS comments): We support the PCY's amendments. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendment. DE (MS comments): **Generally agree.** . CZ

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): CZ: As the removal of the second subpara was unintentional, we support its reintroduction. BG (MS comments): We support the proposed re-inclusion of the third subparagraph of Article 97(4) in order to fix a technical omission by the Commission.. We assume that the cooperation agreements to be concluded by competent authorities are with regard to their powers under BRRD. NL (MS comments): No comment. SI (MS comments): SI: We agree. SE (MS comments): **OK** RO (MS comments): We agree with PCY proposal. PT

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): We agree. PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Article 97(4).

Article 98 BRRD: Exchange of confidential information	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can accept the proposed change. FI (MS comments): We support the PCY's amendments. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendments. DK (MS comments): It could be useful to add a mandate for EBA and the Commission to ensure more coverage of equivalence assessments of third
Article 98(1) would be replaced by the following: *'98(1) Member States shall ensure that resolution authorities and competent ministries exchange confidential information~~, including recovery plans,~~ with relevant third-country authorities only if all of the following conditions are met:* *(a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 84.* *In so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable Union and national data protection law.* *(b) the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under this Directive and, subject to point (a) of this paragraph, is not used for any other purposes.'*	
In Article 98(1) a second and third subparagraph would be added: *Member States shall ensure that competent authorities exchange confidential information, **including recovery plans,** with relevant third country authorities only if the following conditions are met:* *(a) in relation to recovery and resolution-related information, the conditions set out in the first subparagraph;* *(b) in relation to other information available to the competent authorities, the conditions set out in Article 55 of Directive 2013/36/EU.* *For the purposes of the second subparagraph, recovery and resolution-related information shall include all information directly related to the tasks of competent authorities under this Directive, in particular recovery planning and recovery plans, early intervention measures and exchanges with resolution authorities regarding resolution planning, resolution plans and resolution action.'*	

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	country resolution regimes and confidentiality rules to support this work across authorities. DE (MS comments): **Could agree.** CZ (MS comments): CZ: We agree with the deletion of the reference to recovery plans in the first subpara of Article 98(1) and adding them in the second subpara as it is regulating the competent authorities duties. BG (MS comments): We support the amendments to the Commission's text proposed by the Presidency. NL (MS comments): No comment on Presidency amendments. Below a drafting suggestion to include provisions to allow sharing information with international bodies. Previously suggested by NL as a new Article 88a for the SRMR (copied from existing EU legislation). **Drafting suggestion:**

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	In Article 98, new Articles 98(4)-(6) would be added: ***4. Notwithstanding Article 84, resolution authorities may, subject to the conditions set out in paragraphs 5 and 6 of this Article, transmit or share confidential information with the following:*** ***(a) the European Court of Auditors, for the purpose of its audit function;*** ***(b) the International Monetary Fund and the World Bank, for the purposes of assessments for the Financial Sector Assessment Program;*** ***(c) the Bank for International Settlements, for the purposes of quantitative impact studies;*** ***(d) the Financial Stability Board, for the purposes of its surveillance function.*** ***5. Resolution authorities may only share confidential information following an explicit request by the relevant body, where at least the following conditions are met:*** ***(a) the request is duly justified in light of the specific tasks performed by the requesting body in accordance with its statutory mandate;*** ***(b) the request is sufficiently precise as to the nature, scope, and format of the required information, and the means of its disclosure or transmission;*** ***c) the requested information is strictly necessary for the performance of the specific tasks of the requesting body and does not go beyond the statutory tasks conferred on the requesting body;*** ***(d) the information is transmitted or disclosed exclusively to the persons directly involved in the performance of the specific task;***

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(e) the persons having access to the information are subject to professional secrecy requirements at least equivalent to those referred to in Article 84. ***6. To the extent that the disclosure of confidential information involves processing of personal data, any processing of personal data by the requesting body shall comply with the requirements laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council.*** SI (MS comments): SI: We agree. SI: We agree. SE

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): **OK. We understand that the reference to Article 55 of Directive 2013/36/EU in the second subparagraph point b implies that a cooperation agreement is a prerequisite for the exchange of "other information". If this would be an incorrect reading we would be thankful for information on the intended implication of the amendment.** RO (MS comments): We agree with PCY proposal. PT (MS comments): We agree. PL (MS comments): Support

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	MT (MS comments): Malta supports the proposed changes to Article 98(1). With respect to Article 98(1) second and third subparagraph, whilst Malta supports the clarification proposed by the Presidency, Malta is still concerned with respect to the wording "…*and exchanges with resolution authorities regarding resolution planning, resolution plans and resolution action.*" (third subparagraph). Malta suggests that this wording is amended to the effect that prior consent is obtained from the respective NRA, prior to the NCA sharing resolution plans with other Authorities.

Article 128a BRRD / Recital 47: EBA mandate for crisis management simulations Suggestion to amend Article 128a as follows: *'128a. 1. EBA shall coordinate regular Union-wide exercises to test the application of this Directive, Regulation (EU) No 806/2014 and Directive 2014/49/EU in cross-border situations on* ~~*all of*~~ *the following aspects:* *(a) cooperation of the competent authorities during recovery planning;* *(b) cooperation among resolution authorities and competent authorities before the failure and during the resolution of financial institutions, including in the implementation of resolution schemes adopted pursuant to Article 18 of Regulation (EU) No 806/2014.* *2. EBA shall produce a report setting out the key findings and conclusions of the exercises. The report shall be made public.'* Suggestion to amend Recital 47: cfr. draft proposal on p. 3	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can accept the proposed modification FI (MS comments): We support the PCY's amendments. EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We support the amendments. DK (MS comments):

	We support that EBA initiates crisis simulation exercises, however, finds that it would be useful if the work of EBA in this regard focuses on supplementing the existing (national and crossborder) exercises initiated by the authorities DE (MS comments): **Could agree.** CZ (MS comments): CZ: We consider the proposed modification to be less limiting than the Commission's proposal. Please note that the term "financial institution" used here is a different entity from "institution" as used in the BRRD. BG (MS comments): It needs to be ensured that this new mandate will not generate additional administrative burden for resolution authorities and credit institutions. The right balance should be struck between the tasks of EBA and the potential risk of overburdening resolution authorities with additional tasks. NL (MS comments): **Drafting suggestion:** In Article 128a

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	'128a. 1. EBA shall coordinate regular Union-wide exercises to test the application of this Directive, Regulation (EU) No 806/2014 and Directive 2014/49/EU in cross-border situations ~~on~~ ***including*** *the following aspects:* SI (MS comments): SI: We agree. SE (MS comments): **OK** RO (MS comments): We agree with PCY proposal. PT (MS comments): We agree. PL (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Neutral position MT (MS comments): Malta supports the proposed changes to Article 128a(1).

Cooperation of tax authorities with financial supervisors and resolution authorities Suggestion to introduce a new Recital (XX) in BRRD: *'(XX)* ***Notwithstanding current secrecy rules applicable, information exchange between resolution authorities and tax authorities should be improved. Such exchanges should be in line with national law, and, where the information originates in another Member State, it should only be disclosed with the express agreement of the relevant authority which has disclosed it.'*** In Article 84 BRRD a new paragraph 6a would be added: *'84(6a)* ***. This Article shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States. Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority which has disclosed it.'*** In Article 90 BRRD a new paragraph 5 would be added: *'90(5).* ***Article 84 shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States. Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority which has disclosed it.'***	LV (MS comments): We agree with draft proposal. IE (MS comments): No comment. HR (MS comments): HR: We support this. FR (MS comments): We can accept the proposed modification. FI (MS comments): We support the PCY's proposal and improving information exchange between tax authorities and resolution authorities. However, the condition on getting an express agreement from the authority of another MS for the disclosure, if the information has come from an another MS, is in contradiction to our Act on the openess of Government Activities. We should promote openness and sharing of information. If a resolution authority or the tax authority has obtained relevant infromation originating from another MS, it should be able to share this information according to the BRRD/SRMR and its national law governing information sharing to other (national) authorities. New conditions and barriers that could hamper the exchange of information should not be created. *'(XX)* ***Notwithstanding current secrecy rules applicable, information exchange between resolution authorities and tax authorities should be improved. Such exchanges should be in line with national law, ~~and, where the information originates in another~~***

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	~~***Member State, it should only be disclosed with the express agreement of the relevant authority which has disclosed it.'***~~ *'84(6a)**. This Article shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States.*** ~~***Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority which has disclosed it.'***~~ *'90(5). **Article 84 shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States.*** ~~***Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority which has disclosed it.'***~~ EL (MS comments): EL: We can support the proposed changes. EE (MS comments): Open to support. DE (MS comments): **Agree.** BG

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): We support the new provisions on cooperation of tax authorities with financial supervisors and resolution authorities as proposed by the Presidency. AT (MS comments): AT: We do not have any principal problems with the direction and purpose of this proposal. However, from a technical perspective, the proposal for a new Art. 90 (5) is **fully redundant** to the content of the proposed Art. 84 (6a). **We therefore suggest to delete the proposed Art. 90 (5) from the proposal**, as the newly proposed Art. 84 (6a) and the proposed recital are absolutely sufficient to reach the intended goal. Introducing both provisions would be confusing and not accurate from a legal point of view. Moreover, **Art. 90 BRRD** is not dealing with rules of confidentiality, instead, it stipulates rules for the **mandatory exchange of information between authorities in case of cross-border resolution**. Art. 90 is thus definitely not the right place to enable information exchange between resolution authorities and tax authorities in the same Member State. We appreciate that the wording of the proposed recital and Art. 84 (6a) are consistent with the wording of the recently adopted new subparagraph of Art. 56 CRD (CRD VI) and recital 25 of the CRD VI, which are covering the same issue. NL (MS comments): **Drafting suggestion:**

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	In new recital XX Suggestion to introduce a new Recital (XX) in BRRD: *'(XX) Notwithstanding current secrecy rules applicable* ***in Member States or third countries****, information exchange between resolution authorities and tax authorities should be improved. Such exchanges should be in line with national law, and, where the information originates in another Member State, it should only be disclosed with the express agreement of the relevant authority which has disclosed it.'* In Article 84 BRRD a new paragraph 6a would be added: *'84(6a). This Article shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of* ***that*** *Member State~~s~~. Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority which has disclosed it.'* In Article 90 BRRD a new paragraph 5 would be added: *'90(5). Article 84 shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of* ***that*** *Member State~~s~~. Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority which has disclosed it.'* SI (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI: We agree. SI: We agree. SI: We agree. SE (MS comments): **The final text should be in line with the lawyer-linguist changes made in CRD in the Banking package** RO (MS comments): We agree with PCY proposals. PT (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Taking into account the recent introductions to the CRD, AIFMD and IRRD of rules regarding the cooperation with tax authorities, we do not oppose with the introduction of a new recital XX and the new paragraph 6a in article 84 BRRD. However, we think slights ammendmens are necessary to reflect the wording of CRD which was recently stabilized by the lawyer-linguists' revision. Therefore we have replaced "should be in line" with "should be in accordance", in the Recital; and have replaced, in Article 84(6a), "to the extent that such exchange is stipulated by national laws of the Member States" with "in accordance with national law". We have, however, reservations regarding the need of amending article 90, as it already contains a remission to article 84 and therefore all exclusions to the secrecy duty that are in place through article 84 are applicable to article 90. We therefore suggest deleting 90(5). *'(XX)* ***Notwithstanding current secrecy rules applicable, information exchange between resolution authorities and tax authorities should be improved. Such exchanges should be in accordance ~~line~~ with national law, and, where the information originates in another Member State, it should only be disclosed with the express agreement of the relevant authority which has disclosed it.'*** *'84(6a)****. This Article shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State, in accordance with national law, ~~to the extent that such exchange is stipulated by national laws of Member States~~. Where the ~~this~~ information originates in another Member State, it shall only be exchanged ~~disclosed~~ with the express agreement of the relevant authority which has disclosed it.'***

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	~~*90(5). Article 84 shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States. Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority which has disclosed it.'*~~ PL (MS comments): Support MT (MS comments): Malta supports the proposed changes to Recital (XX) and Articles 84(6a) and 90(5).
Selected topics based on the Commission's proposal	LV (MS comments): **MS comments** IT (MS comments): **MS comments** IE (MS comments): **MS comments** HR (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	MS comments FR (MS comments): **MS comments** FI (MS comments): **MS comments** ES (MS comments): **MS comments** EL (MS comments): **MS comments** EE (MS comments): **MS comments** DK (MS comments): **MS comments** DE (MS comments): **MS comments** CZ

Selected topics with drafting proposal	**MS comments**
Drafting proposed by the presidency	
	(MS comments): **MS comments** BG (MS comments): **MS comments** AT (MS comments): **MS comments** NL (MS comments): **MS comments** SI (MS comments): **MS comments** SE (MS comments): **MS comments** RO (MS comments): **MS comments** PT (MS comments): **MS comments**

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	PL (MS comments): **MS comments** MT (MS comments): **MS comments**
<u>Article 2(1) (83d), (83e), (93a) BRRD</u> In the CMDI proposal amending BRRD, the following points (83d), (83e) and (93a) are inserted: *(83d) 'non-EU G-SII' means a non-EU G-SII as defined in Article 4(1), point (134), of Regulation (EU) No 575/2013;* *(83e) 'G-SII entity' means a G-SII entity as defined in Article 4(1), point (136), of Regulation (EU) No 575/2013;* *(93a) 'deposit' means, for the purposes of Articles 108 and 109, deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. FR (MS comments): We reserve our position on the definition of deposits as it will ultimately have to reflect the landing zone, that is yet to be defined, on funding and possible distinctions between deposits for the purposes of bail-in, transfer with DGS/SRF contributions, MREL, ranks in liquidation, etc. EL (MS comments): EL: We can support the proposed changes. DE (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Disagree with the proposal to insert point (93a): "Given the different meanings of deposits in supervisory reporting and accounting we do not agree that this is purely technical amendment. Should be jointly discussed with creditor hierarchy". CZ (MS comments): CZ: We agree with the proposed amendments. BG (MS comments): We agree with the amendments in Article 2(1) (83d), (83e) and (93a) BRRD proposed by the Commission. NL (MS comments): No comment SI (MS comments): SI: We agree. RO

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): We agree with the introduction of this new definitions. However, as regards point (93a), we consider necessary to be reassessed whether the reference to Article 108 and 109 BRRD is mandatory and appropriate considering that the provisions regarding the creditors' hierarchy are currently under revision, and also taking into consideration that the notion is also used in other articles in BRRD. PT (MS comments): Regarding point (93a), we fail to understand the reasoning behind the limitation of the application of this concept to these two articles (108 and 109). In particular, this limitation is not consistent with the way that the concepts of depositor, covered deposit and eligible deposit (which are part of the concept of deposit foreseen in the DGSD) are developed within the BRRD, without any limitation regarding their application. Therefore, we suggest that this inconsistency is eliminated or better explained and suggest the following amendment: '*(93a) 'deposit' means**~~, for the purposes of Articles 108 and 109,~~** deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;'*. PL (MS comments): Support MT (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Malta supports the proposed changes. With respect to the definition of "deposit" Malta has one minor grammatical suggestion (marked in red): '(93a) 'deposit' means, for the purposes of Articles 108 and 109, a deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;';
Article 5(2), (3), (4) BRRD In the CMDI proposal, in Article 5 of BRRD, paragraphs 2, 3 and 4 are replaced by the following: *2. Competent authorities shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business, or its financial situation, which could have a material effect on, or necessitates a material change to, the recovery plan. Competent authorities may require institutions to update their recovery plans more frequently.* *In the absence of changes referred to in the first subparagraph in 12 months following the latest annual update of the recovery plan, the competent authorities may exceptionally waive, until the subsequent 12-month period, the obligation to update the recovery plan.* *3. Recovery plans shall not assume any access to or receipt of any of the following:* *(a) extraordinary public financial support;* *(b) central bank emergency liquidity assistance;* *(c) central bank liquidity assistance provided under non-standard collateralisation, tenor or interest rate terms.* *4. Recovery plans shall include, where applicable, an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities not excluded from the scope of the recovery plan pursuant to paragraph 3 and identify those assets which would be expected to qualify as collateral.*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We would like to see clarification on rationale behind deleting these paragraphs i.e. abolishing RTBH in this process and curtailing CA options when dealing with RP below requested level of quality. Before requiring an institution to resubmit a recovery plan the competent authority shall give the institution the opportunity to state its opinion on that requirement. Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan. FR (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	In paragraph 3, we think that recovery plans shall not assume any form of external support, and DGS preventive measures that do not fall under the scope of Article 32c should be included as well here, in order to preserve the level playing field, with the addition of the following line: *(d) support from a deposit guarantee scheme taking the form of a preventive measure as defined in Article 11(3) of Directive 2014/49/UE.* DGS preventive interventions must not be expected as part of recovery planning, which should not create an expectation of external funding. We do not see a rationale for applying that rule differently depending on how the DGS is qualified under EU competition law (EPFS or not). More discussions may be required to clarify this issue. EL (MS comments): EL: With regard to par. 2, we consider that the proposed exception to update a recovery plan goes in the right direction in terms of proportionality. However, in order to minimise the administrative burden for competent authorities we consider that the procedure should start upon the credit institutions' request/initiative at an adequate time before the annual scheduled submission of recovery plans and the competent authorities should provide their confirmation of accepting such request. *Drafting suggestion*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	In the absence of changes referred to in the first subparagraph in 12 months following the latest annual update of the recovery plan, ~~the competent authorities may exceptionally waive~~ **credit institutions may be exempted from the obligation to update the recovery plan**, until the subsequent 12-month period,~~the obligation to update the recovery plan~~ **upon their justified request to the competent authoriy**. **This request should be addressed to the competent authority at least two months before the date in which the annual submission of recovery plans takes place.** **The competent authority should in a timely manner provide credit institutions with its confirmation.** With regard to paragraph 3, we propose the deletion of point (c). The ECB collateral framework incorporates temporary (non-standard) collateral types/assets for the last 10 – 12 years which are used in many jursidictions by a number of credit institutions in order to obtain funding. It appears contradictory to have unencumbered HQLAs (LCR nominator) and not to allow banks to use them in the recovery plans in estimating the liquidity ORC and at the same time to accept retained covered bonds or credit claims as a recovery option. The same also holds for ECB eligible non-HQLA which are in a temporary eligibility status for a long time not related to a specific targeted longer-term refinancing operation. This might harm the transmission of the monetary policy in some MS or result in unnecessary liquidity ORC shortfalls. *Drafting suggestion* *Recovery plans shall not assume any access to or receipt of any of the following:* *(a) extraordinary public financial support;* *(b) central bank emergency liquidity assistance;*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	~~*(c) central bank liquidity assistance provided under non standard collateralisation, tenor or interest rate terms.*~~ DE (MS comments): **Generally agree.** CZ (MS comments): CZ: We agree with the proposed changes. BG (MS comments): We think that the amendments proposed by the Commission in Article 5(2),(3) and (4) are not purely technical. That is why a further analysis and discussions need to be held with the national competent authorities and ECB as these provisions are closely related to powers of competent authorities. NL (MS comments): **Drafting suggestion:** In Article 5, paragraph 2: *2. Competent authorities shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	organisational structure of the institution, its business, or its financial situation, which could have a material effect on, or necessitates a material change to, the recovery plan. Competent authorities may require institutions to update their recovery plans more frequently. *In the absence of changes referred to in the first subparagraph* ***with****in* ***the*** *12 months following the latest annual update of the recovery plan,* ~~*the*~~ *competent authorities may exceptionally waive, until the subsequent 12-month period, the obligation to update the recovery plan.* SI (MS comments): SI: We agree. RO (MS comments): We agree with the new paragraph which gives to the competent authority the possibility to exceptionally wave an institution from the obligation to update the recovery plan when there are no material changes. This will reduce the administrative burden on institutions. However, according to the explanatory memorandum – "Other provisions", the competent authority may grant the waiver also in relation to "parts of the recovery plan". In this sense we have the following drafting proposal: *In the absence of changes referred to in the first subparagraph in 12 months following the latest annual update of the recovery plan, the competent authorities may exceptionally waive, until the subsequent 12-month period, the obligation to update the* ***whole*** *recovery plan* ***or parts of it.***

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	We agree to add the two cases provided at letter b) and c) regarding central bank assistance, on the list of those sources of funding that should not be taken into consideration when the recovery plan is drafted. PT (MS comments): Regarding article 5(2), we recommend clarifying which parts of the plan could be waived from yearly update. Additionally, the 'exceptionally' is not always clear and therefore to ensure some harmonization EBA should be mandated to draft GL to ensure that this waiver is applied consistently between competent authorities and the 'exceptionality' is not the rule. PL (MS comments): Neutral position MT (MS comments): Malta supports the proposed changes.

Article 6(5) BRRD In Article 6, paragraph 5 is replaced by the following: *'5. Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and shall require the institution to submit, within 3 months, extendable with the authorities' approval by 1 month, a revised plan demonstrating how those deficiencies or impediments are addressed.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. FR (MS comments): We can agree with the COM proposal. FI (MS comments): Current second and third paragraphs should be retained in the article. *'5. Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and shall require the institution to submit, within 3 months, extendable with the authorities' approval by 1 month, a revised plan demonstrating how those deficiencies or impediments are addressed.'* *Before requiring an institution to resubmit a recovery plan the competent authority shall give the institution the opportunity to state its opinion on that requirement.* *Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.* EL (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	EL: We consider that the second and third subparagraph of article 6 (5) should be maintained. To this end the title should be read as a replacement of the first subparagraph only. *Drafting suggestion* *in Article 6, **first subparagraph of paragraph** 5 is replaced by the following:* EE (MS comments): We support the replacement of the first subparagraph and retainment of second and third subparagraph in paragraph 5 of the of Article 6, ***Before requiring an institution to resubmit a recovery plan the competent authority shall give the institution the opportunity to state its opinion on that requirement.*** ***Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.*** DE (MS comments): **Agree** with the extension of the deadline to 3 months. We do not understand, why the opportunity for the institution to state its opinion on this requirement has been deleted. In our view, it is required as general principle of administrative law to provide the institution a right to be heard.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	CZ (MS comments): CZ: No objections. BG (MS comments): We think that the amendments proposed by the Commission in Article 6(5) are not purely technical. That is why a further analysis and discussions need to be held with the national competent authorities and ECB as these provisions are closely related to powers of competent authorities. We would like a clarification whether the Commission has decided to delete the second and third subparagraphs of Article 6(5) BRRD on purpose. NL (MS comments): No comment SI (MS comments): SI: We agree. RO (MS comments): We agree but we deem that the current provisions of para (5) which gives the institutions the right to express their opinion regarding the CA

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	requirement should be maintained. Consequently, we deem that the second and third subparagraphs of para. 5 should be reintroduced: '5. Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and shall require the institution to submit, within 3 months, extendable with the authorities' approval by 1 month, a revised plan demonstrating how those deficiencies or impediments are addressed.' **Before requiring an institution to resubmit a recovery plan the competent authority shall give the institution the opportunity to state its opinion on that requirement.** **Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.** PT (MS comments): We believe only the first subparagraph of article 6(5) should be replaced. The actual paragraph 5 has 2 additional subparagraphs: • Before requiring an institution to resubmit a recovery plan the competent authority shall give the institution the opportunity to state its opinion on that requirement.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	• Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan. We do not understand why these two subparagraph should be eliminated and so do not support it. PL (MS comments): Support MT (MS comments): Malta supports the proposed change.

Article 8(2) BRRD In Article 8(2), the third subparagraph is replaced by the following: *'EBA may, at the request of a competent authority, assist the competent authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Agree.** CZ (MS comments): CZ: No objections. BG (MS comments): We agree with the technical amendment of the third subparagraph of Article 8(2) BRRD. NL (MS comments): No comment SI (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI: We agree. RO (MS comments): We agree with COM proposal. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): Neutral position MT (MS comments): Malta supports the proposed change.

Article 12 (1), (5a) BRRD Article 12 is amended as follows: (a) in paragraph 1, the following third subparagraph is added: *'The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by resolution authorities if such approach does not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.'* (b) the following paragraph 5a is inserted: *'5a. Resolution authorities shall not adopt resolution plans where an entity is being wound up in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): **Please see our comment regarding paragraph 5a above** In addition, we believe this provision should be reinforced in the following way: "*The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by resolution authorities if such approach does not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.* ***For the avoidance of doubt, simplified approach shall not be applied on the institution that has been designated as an O-SII by the respective authority."*** FR (MS comments): We can agree with the COM proposal. However, please refer to our comment on PCY proposals on *Article 10(8a) and 12(5a) BRRD and Recital 4 'Resolution plans: entities being wound up*. FI (MS comments): Reference to the group resolution strategy isn't very clear. We would propose including the subsidiary's role as preserving economic and

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	operational continuity of the group after the resolution to be one thing to take into account when determining a possible simplified approach. *'The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by resolution authorities if such approach does not negatively affect the resolvability of the group taking into account the size of the subsidiary, its risk profile, the absence of critical functions,* ~~***and***~~ *the group resolution strategy* ***and its role in preserving economic and operational continuity of the group after the resolution****.';* EL (MS comments): EL: We can support the proposed changes. EE (MS comments): We suggest change Article 12 (1), (5a) as follows: *(a) 'The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by resolution authorities if such approach does not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy* ***and its role in preserving economic and operational continuity of the group after the resolution****.'* *(b) '5a. Resolution authorities,* ***once they have determined that conditions in point (a) and (b) of Article 32(1) are met****, shall not adopt* ***a*** *resolution plan*~~*s*~~ *where an entity is* ***in the process of*** *being wound up in*

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.' DE (MS comments): **Generally agree.** BG (MS comments): The proposed amendments in Article 12(1) are not purely technical. The possibility of applying "simplified approach" with regard to certain subsidiaries (as identified in Article 12(1) BRRD) seems to be a proportionate measure. However, it is unclear what the aforementioned "simplified approach" would exactly entail. This clarification would help us further analyse this provision. We do not oppose the proposed amendments of Article 12(5a) BRRD. NL (MS comments): No objection to the idea behind this new paragraph 5a.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	As stated in the previous comments, we should be consistent that a failed bank is either resolved via resolution or NIPs, nothing else. Similarly, if a subsidiary of the resolution is not transferred to a purchaser or bridge institution (i.e. it remains a subsidiary of the residual institution), it will, by necessity, end up in NIPs under Article 37(6). If the RA for that subsidiary does not want the subsidiary to enter NIPs, it should make the subsidiary a resolution entity in its own right. **Drafting suggestion:** In Article 12, paragraph 5a: *'5a. Resolution authorities shall not adopt* ***group*** *resolution plans****, which plan for*** ~~*where a*~~***ny*** ~~*n entity*~~ ***member of the resolution group to*** ~~*is being*~~ ***be*** *wound up* ~~*in accordance with the applicable national law*~~ ***under normal insolvency proceedings*** *pursuant to Article 32b* ~~*or where Article 37(6) applies*~~*.'* SI (MS comments): SI: We agree. RO (MS comments): We propose the following drafting for Article 12 (1): 'The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by **the** resolution authority~~ies~~ **of the subsidiary** if such approach does not

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.' Comments: The proposed amendment is necessary in order to clarify that the decision to apply the simplified approach provided for in this paragraph may be adopted only by the resolution authority of the subsidiary and not by the group level resolution authority or jointly. Moreover, it is necessary to clarify the difference, if any, in the wording of this paragraph and of Article 4 ("simplified approach" versus "simplified obligations"). If no conceptual difference was intended, the terminology should be aligned. We agree with the clarifying provision provided at Article 12 (5a), with the proposed amendments mentioned in section 2.1 of the *Presidency non-paper on some BRRD technical topics*. PT (MS comments): For clarification purposes, we suggest paragraph 5a to be amended as follows: '*5a. Resolution authorities shall not adopt* ***group*** *resolution plans where an entity is being wound up in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies*.'. PL

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): Support MT (MS comments): Malta seeks clarification as to the extent and parameters of the term "simplified approach" as mentioned in Article 12(1) third subparagraph. Malta supports the new addition.

Article 13(4) BRRD In Article 13(4), the fourth subparagraph is replaced by the following: *'EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: please also see our suggestion for paragraph 3 above. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Agree.** CZ (MS comments): CZ: No objections. BG (MS comments): We agree with the technical amendment of the fourth subparagraph of Article 13(4) BRRD. NL (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	No comment SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposal. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): Support MT (MS comments): Malta supports the proposed change.

Article 17(4) BRRD In Article 17(4), the following third subparagraph is added: *'If the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability, the resolution authority shall take a decision, after consulting the competent authority. That decision shall indicate that the measures proposed effectively reduce or remove the impediments to resolvability and require the entity to implement the measures proposed.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We suggest to add a reference to deadline. *'If the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability, the resolution authority shall take a decision, after consulting the competent authority. That decision shall indicate that the measures proposed effectively reduce or remove the impediments to resolvability and require the entity to implement the measures proposed within the time limit specified by the resolution authority.'* FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): The resolution authorities should not in any case be obliged to require the entity via administrative act to implement the measures proposed due the following reasons: ▪ In general, for reasons of procedural economy it seems to be sufficient that the resolution authority accepts the measures proposed.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	▪ Resolution authorities should have the discretion (on a case by case basis) whether to require the entity to implement the measures proposed. Therefore, we would suggest the following amendment to the text: '*If the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability, the resolution authority shall take a decision, after consulting the competent authority. That decision shall indicate that the measures proposed effectively reduce or remove the impediments to resolvability* ***and that they have been accepted by the resolution authority in accordance with paragraph 3. The member states shall ensure that the resolution authorities may*** *require the entity to implement the measures proposed*.' CZ (MS comments): CZ: The institution should be able to implement the measure in the first phase without an administrative procedure and decision by the NRAs, which could be used only in case of insufficient implementation of the measure. BG (MS comments): The proposed amendments in Article 17(4) are not purely technical. We believe that at the stage discussed in the provision of Article 17(4) the resolution authority would only be able to assess the measures proposed by the entity as potentially adequate but it cannot definitively conclude that the measures proposed effectively reduce or remove the impediments to resolvability.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	AT (MS comments): AT: **Technical input:** We suggest to include Art. 17(4) third subparagraph in Art. 17(3), as a fifth subparagraph. This is because the subparagraph addresses measures proposed by the entity concerned. The assessment of these measures is, however, regulated in Article 17(3) and not Article 17(4). The drafting suggestion would be as follows: "*In Article 17(3), the following fifth subparagraph is added:* *'If the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability, the resolution authority shall take a decision, after consulting the competent authority. That decision shall indicate that the measures proposed effectively reduce or remove the impediments to resolvability and require the entity to implement the measures proposed.'"* **In addition**, we would like to highlight two other issues that we consider important for the practical application of Article 17 BRRD: 1) Art. 17(5) BRRD provides for an **exhaustive list of measures** that can be applied by the resolution authority in case it determines that there is a substantive impediment to the resolvability of the bank *("(...) to take any of the following measures")*. However, the measures included are not suitable for all possible substantive impediments that the resolution authority might determine (e.g. the problem of financial and operational interconnectedness within cooperative structures). In order to facilitate the application of the framework for addressing substantive impediments, we suggest proposing an amendment to Art. 17(5) BRRD, either by a comprehensive revision of the list of measures included or by amending the wording in a way so as to provide for a demonstrative list of measures (which would also be consistent with the approach taken for early intervention measures in Art. 27(1) BRRD).

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Art. 17(5) BRRD could, for example, be framed as follows: *"For the purposes of paragraph 4, resolution authorities shall at least have the power to take any of the following measures: (...)"* The **procedure** stipulated in Art. 17(1) and (3) BRRD **deviates** from the approach taken in Art. 10(7) and (9) SRMR. According to Art. 10 (7) SRMR, the resolution authority, in the report analysing the substantive impediment(s) to resolvability, would also have to include a recommendation on "targeted measures" that seem necessary and proportionate to remove the impediments. By contrast, this requirement to include such recommendation is not laid down in the corresponding Art. 17(1) BRRD. In order to avoid different approaches of resolution authorities in the substantive impediment procedure, we consider it important to align these procedural provisions. From our perspective, it seems more practical to remove the requirement of a recommendation on targeted measures from the SRMR. This would allow the bank to come up more flexibly with a wider range of possible measures in its proposal to address the impediment. In addition, it should also be emphasised that the SRB currently interprets Art. 10(7) SRMR in a way that would only allow the resolution authority to recommend measures as included in Art. 10(11) SRMR. As already mentioned in 1), given the exhaustive list of measures, the resolution authority would be very limited in determining the measures it can recommend to the bank. NL (MS comments): No comment

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposal which stipulate what is happening when the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): Support MT (MS comments): Malta supports the proposed addition.

Article 18(4), (9) BRRD Article 18 is amended as follows: (a) paragraph 4 is replaced by the following: *'4. The group-level resolution authority shall communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch. The group-level resolution authority and the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of substantive impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all Member States where the group operates.'* (b) paragraph 9 is replaced by the following: *'9. In the absence of a joint decision on the taking of any measures referred to in Article 17(5), point (g), (h) or (k), EBA may, upon the request of a resolution authority in accordance with paragraphs 6, 6a or 7 of this Article, assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Generally agree.** BG (MS comments): We agree with the amendments in Article 18(4) and (9) BRRD proposed by the Commission. NL (MS comments): Again, these provisions need to be revised to incorporate the concepts of resolution entity and resolution groups. The GLRA should presumably be the RA for the resolution entity.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Also again, should RAs for subsidiaries, which are not part of the resolution group, participate in joint decision-making for the resolution group? SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposals having in mind that group-level resolution authority is only one. We agree with adding the reference to para.6a, which provides the possibility for resolution authority to refer a matter to EBA.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): We do not recognize any difference comparing to the binding wording of paragraph 4 MT (MS comments): Malta supports the proposed changes.

Article. 32 (1), (2) BRRD Article 32 is amended as follows: (a) paragraphs 1 and 2 are replaced by the following: *'1. Member States shall ensure that resolution authorities take a resolution action in relation to an institution if resolution authorities determine, upon receiving a communication pursuant to in paragraph 2 or on their own initiative pursuant to the procedure laid down in paragraph 2, that all of the following conditions are met:* *(a) the institution is failing or is likely to fail;* *(b) having regard to the timing, the need to implement effectively the resolution strategy and other relevant circumstances, there is no reasonable prospect that any alternative private sector measure including measures by an IPS, supervisory action, early intervention measures, or write down or conversion of relevant capital instruments and eligible liabilities as referred to in Article 59(2) taken in respect of the institution would prevent the failure of the institution within a reasonable timeframe;* *(c) a resolution action is in the public interest pursuant to paragraph 5.* *2. Member States shall ensure that the competent authority makes an assessment of the condition referred to in paragraph 1, point (a), after having consulted the resolution authority.* *Member States may provide that, in addition to the competent authority, the assessment of the condition referred to in paragraph 1, point (a), can be made by the resolution authority, after consulting the competent authority, where resolution authorities under national law have the necessary tools for making such an assessment including, in particular, adequate access to the relevant information. In such a case, Member States shall ensure that the competent authority provides the resolution authority without delay with any relevant information that the latter requests to perform its assessment, before or after being informed by the resolution authority of its intention to make that assessment.* *The assessment of the condition referred to in paragraph 1, point (b), shall be made by the resolution authority in close cooperation with the competent authority. The competent authority shall, without delay, provide the resolution authority with any relevant information that the resolution authority requests to inform its assessment. The competent authority may*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: With regard to par. 2 last subparagraph, we consider that the competent authority assesses if there are alternative measures available as part of the FOLTF assessement. In that respect it should be obligatory for the CA to inform the RA that it considers that point (b) is to be met. <u>*Drafting proposal*</u> *The assessment of the condition referred to in paragraph 1, point (b), shall be made by the resolution authority in close cooperation with the competent authority. The competent authority shall, without delay, provide the resolution authority with any relevant information that the resolution authority requests to inform its assessment. The competent authority* ~~***may***~~ *also inform**s** the resolution authority that it considers the condition laid down in the paragraph 1, point (b), to be met.';* DK (MS comments): As some of the measures are more suitable for the competent authority to access and as the competencies vary between authorities in Member States, we suggest

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
also inform the resolution authority that it considers the condition laid down in the paragraph 1, point (b), to be met.'	making the provision more neutral in order to provide more flexibility towards the national resolution arrangements between authorities. *The assessment of the condition referred to in paragraph 1, point (b), shall be made ~~by the resolution authority~~ in close cooperation ~~with~~* ***between*** *the competent authority and* ***the resolution authority****. The competent authority shall, without delay, provide the resolution authority with any relevant information that the resolution authority requests to inform its assessment. The competent authority may also inform the resolution authority that it considers the condition laid down in the paragraph 1, point (b), to be met.'* DE (MS comments): Ad 1.: **Agree** Resolution authorities should be able to determine that resolution action is necessary on their own initiative. Ad 1. (b): **Disagree**. Private sector solutions are always preferable. We should not limit the timeframe to successfully implement alternative private sector measures. We propose the following amendments to the text: (b) having regard to the timing, ~~the need to implement effectively the resolution strategy~~ and other relevant circumstances, there is **notwithstanding point (a) of this paragraph,** no reasonable prospect

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	that any alternative private sector measure including measures by an IPS, supervisory action, early intervention measures, or write down or conversion of relevant capital instruments and eligible liabilities as referred to in Article 59(2) taken in respect of the institution would prevent the failure of the institution within a reasonable timeframe; Ad 2: A**gree.** CZ (MS comments): CZ: The fulfilment of the condition of Article 32(1)(b) BRRD should be primarily the responsibility of the NCA, as its activities and responsibilities are at the going-concern level and it is therefore more likely that the NCA will have greater insight into what private sector measures are available at any given time. In addition, should the failure of an institution be averted by (any) transaction with a private acquirer, it is the NCA's role to assess whether such a transaction is acceptable from the perspective of the NCA's ongoing supervisory exercise. The NRA's activities and responsibilities are primarily concerned with the application of resolution tools and related powers, therefore, for the purpose of assessing whether this condition is met, the NRA may be more likely to act as a consultant in relation to the WDCI. BG (MS comments): In our view the proposed amendments of Article 32(1) and (2) are not technical.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Some clarifications on the rationale behind the amendments in Article 32(1) and (2) would support further analysis on this provision.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	NL (MS comments): We don't see any difference in this text from what was proposed in the original CMDI proposal from the Commission. Perhaps the Presidency could confirm what changes it is proposing. SI (MS comments): SI: We agree. RO (MS comments): Comments on the Preamble of Article 32(1): The proposed mechanism can be improved for more clarity, especially in the situation where the option laid down in the second subparagraph of paragraph 2 is kept. It is necessary to be clarified how the CA and RA assessments of the condition referred to in paragraph 1, point (a), are correlated, having in mind that no specific methodology is provided for the CA assessment (and also after consulting the RA), while the RA determination is supported by the valuation provided in Article 36(4)(a). Moreover, should the RA opinion be expressed only after performing the valuation provided in Article 36(4)(a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion are met? In addition, it is necessary to clarify the rationale for the amendment in the introductory sentence of paragraph 1. In the context of the provisions of Article 36(4)(a), is a mechanism under which the RA determination is based only on the CA assessment considered acceptable?

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Comments on Article 32(2) first subparagraph: Which authority is responsible for the decision regarding the condition referred to in paragraph 1, point (a)? In our opinion, the provisions of this article can be read in at least two ways: 1. the CA makes an assessment of the condition referred to in paragraph 1, point (a), after having consulted the resolution authority, but the decision rests within the RA; 2. the CA makes an assessment of the condition referred to in paragraph 1, point (a), after having consulted the resolution authority, makes a decision and the RA ascertain the fulfilment of that condition as a result of the adoption of the decision by the CA. Considering the above, it is necessary to clarify the way in which the amendment should be read. We understand from the current text that the FOLTF decision is made based on the CA assessment, but is conditioned by the RA decision. Is this the envisaged outcome? It is very important to clarify the relation between the FOLTF assessment carried out by the CA and the RA, including from the perspective of the temporal sequence. The RA opinion should be substantiated based on the valuation provided in Article 36(4)(a) even if it is provisional or the AR gives an opinion based on the information it has at the time of the CA consultation and later on, when the V1 valuation report is available, informs the CA if it is not confirmed. Comments on Article 32(2) second subparagraph: In our understanding, according to paragraph (1) and (2), the CA makes a prudential assessment for the purpose of FOLTF, but the determination that all of the following conditions for resolution are met (including FOLTF) is made by the RA (based on the CA assessment, as well as the accounting valuation provided in Article 36(4) letter a)). What is the circumstance intended to be regulated within this article by using the

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	phrase 'in addition to the competent authority'. Can MS provide that this prudential assessment of FOLTF can also be done by the RA? What is the nature of the valuation made by the CA if the MS decides to exercise this option? Do both options from paragraph 2 (subparagraph 1 and 2) should be applied together or are they alternatives? Comments on Article 32(2) third subparagraph: What was meant by 'The competent authority may also inform the resolution authority that it considers the condition laid down in the paragraph 1, point (b), to be met.'? Does it mean that the RA no longer performs an official consultation? Was this the purpose for adding this provision? PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): The assessment of the condition referred to in paragraph 1, point (b), shall be made by the resolution authority in close cooperation with the competent authority. The competent authority shall, without delay, provide the resolution authority with any relevant information that the resolution authority requests to inform its assessment. The competent authority, while informing about fulfilment of condition laid down in the paragraph 1, point (a) may shall also inform the resolution authority if that it considers the condition laid down in the paragraph 1, point (b), to be met.';

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	We propose to strengthen the role of the supervisory authority in stating the fulfilment of the condition set in point b). In our opinion it is reasonable that the supervisory authority, taking into account its supervisory competences and available data, when providing information about the condition referred to in point a) (i.e. FOLTF), also provides the opinion on fulfilment of condition set in point b) including the information on lack of any possible alternative actions to bankruptcy/resolution being within the scope of its competences. It will improve the timing of the process and its efficiency. MT (MS comments): Malta supports the proposed changes.

Article 42(5) BRRD In Article 42(5), point (b) is replaced by the following: *'(b) such a transfer is necessary to ensure the proper functioning of the institution under resolution, the bridge institution or the asset management vehicle itself; or'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We fail to see the merit of inserting "asset management vehicle itself" in terms of reasoning why this transfer is needed. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Agreed and welcomed.** . CZ (MS comments): CZ: No objections. BG (MS comments): We agree with the amendment of Article 42(5), point (b) BRRD proposed by the Commission.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	NL (MS comments): No comment SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposal. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): Neutral position MT (MS comments): Malta supports the proposed change.

Article 45d(1) BRRD In Article 45d(1), the introductory wording is replaced by the following: *'The requirement referred to in Article 45(1) for a resolution entity that is a G-SII entity shall consist of the following:'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Generally agree.** CZ (MS comments): CZ: No objections. BG (MS comments): We agree with the amendment of Article 45d(1) BRRD proposed by the Commission.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	NL (MS comments): No comment SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposal. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): Neutral position MT (MS comments): Malta supports the proposed change.

Article 45m(4) BRRD In Article 45m, paragraph 4 is replaced by the following: *'4. The requirements referred to in Article 45b(4) and (7) and in Article 45c(5) and (6), as applicable, shall not apply within the three-year period following the date on which the resolution entity or the group of which the resolution entity is part has been identified as a G-SII or a non-EU G-SII, or the resolution entity starts to be in the situation referred to in Article 45c(5) or (6).'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Generally agree.** CZ (MS comments): CZ: No objections. BG (MS comments): We agree with the amendment of Article 45m(4) BRRD proposed by the Commission. NL (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	No comment SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposal. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): **In our opinion, the term "G-SII" should be substituted by the term "G-SII entity"** MT (MS comments): Malta supports the proposed change.

Article 71a(3) BRRD Article 71a(3) is replaced by the following: *'3. Paragraph 1 shall apply to any financial contract which complies with all of the following:* *(a) the contract creates a new obligation, or materially amends an existing obligation after the entry into force of the provisions adopted at national level to transpose this Article;'* *(b) the contract provides for the exercise of one or more termination rights or rights to enforce security interests to which Article 33a, 68, 69, 70 or 71 would apply if the financial contract were governed by the laws of a Member State.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Agree.** CZ (MS comments): CZ: No objections. BG (MS comments): We agree with the amendment of Article 71a(3) BRRD proposed by the Commission. NL

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	(MS comments): Again, we don't see any difference in this text from what was proposed in the original CMDI proposal from the Commission. Perhaps the Presidency could confirm what changes it is proposing. SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposal. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): No comments at this stage MT (MS comments): Malta supports the proposed change.

Article 128 BRRD Article 128 is amended as follows: (a) the title is replaced by the following: '*Cooperation and information exchange among institutions and authorities';* (b) the following paragraph is added: *'The resolution authorities, competent authorities, the EBA, the Single Resolution Board, the ECB and other members of the European System of Central Banks shall provide the Commission, upon its request and within the specified timeframe, with any information necessary for the performance of its tasks related to policy development, including the carrying out of impact assessments, the preparation of legislative proposals, and the participation in the legislative process. The Commission and the Commission staff shall be subject to the requirements of professional secrecy laid down in Article 88 of Regulation (EU) No 806/2014 of the European Parliament and of the Council* with regard to the information received.'*	LV (MS comments): We agree with draft proposal. IE (MS comments): No comments. HR (MS comments): HR: We support this. FR (MS comments): We can agree with the COM proposal. EL (MS comments): EL: We can support the proposed changes. DE (MS comments): **Disagree.** Clarification and restriction is needed. This competence seems very broad, in particular with regard to the principle of proportionality, the principle of data minimisation, the principle of legality etc. It is not clear which information could be requested by the Commission. This should be specified. We are not convinced that such a broad provision is necessary to enable Commission to perform its tasks in policy development. Minimum requirements, that should be added: ▪ The responsibilities which arise from the provisions in the BRRD and SRMR must be reflected.

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	▪ The competent ministry of the resolution authority or of the competent authority should be involved (due to its responsibility for political issues). ▪ The authorities may provide the information concerned upon request of the Commission (instead of ‚shall provide'). ▪ The request of the Commission should to be carefully justified. ▪ The answer should be provided within a reasonable timeframe. ▪ The information concerned must be necessary and proportionate (in the sense of appropriate) for the performance of the commission's tasks. **Compromise proposal:** *'The resolution authorities* ***or*** *competent authorities* ***in coordination with its competent ministries****, the EBA, the Single Resolution Board, the ECB and other* ***central bank*** *members of the European System of Central Banks* ~~*shall*~~ ***may*** *provide the Commission, upon its request* ~~*and within*~~***, with*** *the* ~~*specified timeframe*~~ ***relevant*** *information* ~~*necessary for*~~ ***with respect to significant institutions, which are essential to fulfill*** ~~*the performance of its*~~ ***Comminssion's*** *tasks related to policy development, including the carrying out of impact assessments, the preparation of legislative proposals, and the participation in the legislative process****. The information request has to be proportionate, carefully justified, and provided within a reasonable timeframe.*** *The Commission and the Commission staff shall be subject to the requirements of professional secrecy laid down in Article 88 of Regulation (EU) No 806/2014 of the European Parliament and of the Council* with regard to the information received.'* CZ (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	CZ: We generally support the broadening of information exchange, although it would be appropriate to include limiting elements in this provision; in particular, the Commission should be able to request only strictly necessary information from the NRA/NCA that is not primarily obtainable from EU institutions/authorities. BG (MS comments): It needs to be ensured that this new obligation of resolution authorities will not generate additional administrative burden to them and to credit institutions. AT (MS comments): AT: **We absolutely oppose the introduction of this new provision.** National authorities of Member States and national Central Banks should not be obliged to provide the Commission with information. Instead, support to the Commission by the ESAs, which are in a permanent exchange with national authorities, must be sufficient for this purpose. Moreover, the Commission may ask all stakeholders to provide information on a voluntary basis, as this is currently already the case. Additionally, the proposed provision is drafted extremely vaguely, would result in considerable additional costs for national authorities and Central Banks (who would bear these costs? The Commission?) and would create an absolutely unintended precedent for (the preparation of) new legislative proposals of the Commission in other areas of financial services legislation. **We could thus not accept this proposal.** NL (MS comments):

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	Again, we don't see any difference in this text from what was proposed in the original CMDI proposal from the Commission. Perhaps the Presidency could confirm what changes it is proposing. Institutions aren't mentioned in any of the operative provisions of this Article. **Drafting proposal** In the title of Article 128 '*Cooperation and information exchange among ~~institutions and~~ authorities'* SI (MS comments): SI: We agree. RO (MS comments): We agree with COM proposal. PT (MS comments): We agree with the original Commission Proposal drafting. PL (MS comments): Neutral position

Selected topics with drafting proposal	MS comments
Drafting proposed by the presidency	
	MT (MS comments): Malta supports the proposed changes.