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CMDI WP MEETING OF 25 MARCH 2024
PRESIDENCY'S non-paper on BRRD technical topics
(Agenda item)

Presidency text proposal	**MS comments**
2.1.Article 2(1) and (29a) BRRD 'Definition: alternative private sector measure' Article 2(29a) would be amended as follows: *'(**29a**__**28a**__) 'alternative private sector measure' means any support not qualifying as extraordinary public financial support;'*	FR (MS comments): We can accept this modification. EL (MS comments): *EL: We support maintaining the Commissions' proposal for the inclusion of the definition for alternative private sector measures. We would not mind if the suggested definition is inserted either as 29a or as 28a.* EE (MS comments): **Agree** CY (MS comments): **We agree** BG (MS comments): We agree with the proposed amendment. AT

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	(MS comments): We can support this proposal. DE (MS comments): **Could agree.** SK (MS comments): **No comment.** SI (MS comments): SI: We agree. RO (MS comments): We have doubts that including such definition will bring much clarity unless the COM Communication regarding State aid framework for banks is amended in order to specify which financial support would constitute State aid. Thus, in order to truly bring more clarity, the proposed amendment should be accompanied by the amendment of the COM Communication regarding State aid in a timely manner. Moreover, we consider that this definition shows deficiencies regarding the relation with the central bank facilities (considering that the 'emergency liquidity assistance' is not included in the definition of the 'extraordinary public financial support', according

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	to Article 2(1) points (28) and (29), seems that ELA is considered as 'alternative private sector measure', an assumption with which we do not agree). PT (MS comments): Agree. PL (MS comments): No major comments here. The only doubt for us, in the context of Article 32(1)(b) BRRD, is how the RA shall verify lack of prospects for DGS preventative measure (where available) – is it sufficient to obtain the opinion of deposit insurer or the institution in question should actually apply for such form of support before resolution is triggered. In our view the second approach would not be appropriate and this should be clarified in recitals. **Otherwise this would hamper time efficiency of decision-making process and constitute an obstacle for sufficient resolution measures.** NL (MS comments): We support the clarification of alternative private sector measure. LV

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	(MS comments): We agree with the proposed drafting. IT (MS comments): Please consider an additional technical amendment to the definitions to clarify that in many jurisdictions divestment of a debtor may take place also as a transfer of assets and liabilities (given also that this notion is relevant to perform the PIA). Article 2, point (47), BRRD would be amended as follows: '(47) *'normal insolvency proceedings' means collective insolvency proceedings which entail the partial or total divestment of a debtor**, including through transfer of assets and liabilities or deposit book transfer financed by a deposit guarantee scheme,** and the appointment of a liquidator or an administrator normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal person*;' IE (MS comments): No comment. HR

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	(MS comments): HR: We agree with these amendments.
2.2.Article 16a BRRD / Recital 5 'Estimating CBR in case of prohibition of certain distributions' In Article 16(7) the following would be inserted: '*Where an entity* ***that is part of a resolution group*** *is not subject to the combined buffer requirement on the same basis as the basis on which it is required to comply with the requirements referred to in Articles 45c and 45d, resolution authorities shall apply paragraphs 1 to 6 of this Article on the basis of the estimation of the combined buffer requirement* ***for resolution entities and entities that are not themselves resolution entities respectively*** *calculated in accordance with Commission Delegated Regulation (EU) 2021/1118*. Article 128, fourth paragraph of Directive 2013/36/EU shall apply*.'	FR (MS comments): We can accept this proposal EL (MS comments): *EL: We support the proposed amendment.* EE (MS comments): **Agree** CY (MS comments): **We do not object.** BG (MS comments): We do not oppose the proposed amendments to the text of the Commission's proposal.

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	AT (MS comments): Considering that the revised provision of Article 16a (7) BRRD now also includes *"entities that are not themselves resolution entities"* a reference to Article 45f BRRD should be supplemented. SK (MS comments): **No comment.** SI (MS comments): SI: We agree. RO (MS comments): We agree with PCY proposal. PT (MS comments): We appreciate the drafting clarifications and the fact that the Presidency has explicitly addressed, in the non-paper, the concerns PT has previously expressed.

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	Nevertheless, we still have some legal concerns which we would like to stress at this stage: a) We still find it to be legally risky to have the exercise of an administrative power (the M-MDA restrictions) based on an estimation of a CBR to be determined by the RAs. We understand the arguments on level playing field, but there are a number of differences which emerge from the fact that supervisory perimeters are not the same as resolution perimeter. We fear that what is stated in the non-paper may not hold true: "*Commission did not want to give the resolution authority the power to determine the CBR for macroprudential purposes for entities that are not subject to any of the CBR's elements, but it intended to clarify that the power of the resolution authority to prohibit certain distributions should be applied on the basis of the estimation of the CBR*". The fact is that on the second paragraph of this A. 16a it is stated that this adjusted-CBR shall be included in the MREL decision, so it will be part of an administrative formal act, subject to mandatory disclosure, and binding the institution to a (different) CBR from the one set by the macro-prudential supervisor. In

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	some cases, the institution will be subject only to one CBR (the resolution-CBR or the macro-prudential CBR); in other situations, the institution will be subject to two different CBRs (the resolution-CBR and the macro-prudential-CBR). We would suggest that, at least, the power to impose this "resolution-CBR" applies only when the institution is not subject to any supervisor-CBR at all; **b)** The relationship with Article 128 CRD should still be clarified: Article 128(4) paragraph CRD states that "Institutions shall not use Common Equity Tier 1 capital that is maintained to meet **the combined buffer requirement referred to in point (6) of the first paragraph of this Article to meet the risk-based components of the requirements set out in Articles 92a and 92b of Regulation (EU) No 575/2013 and in Articles 45c and 45d of Directive 2014/59/EU**.". This means that there is no rule determining a double-counting prohibition of CET1 instruments to meet the "resolution-CBR" and the MREL-TREA requirement. PL (MS comments):

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	We can agree with amendment of Article 16a, however the initial wording of paragraph 7 proposed by the EC is also fully acceptable for us. NL (MS comments): We support the suggestion. LV (MS comments): We agree with the proposed drafting. IE (MS comments): Article 3 of Commission Delegated Regulation (EU) 2021/1118 specifies how to calculate the CBR for the resolution entity in different circumstances. It does not currently specify how it would apply to other entities, but Recital 47 indicates that *"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*

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	MREL." We would like to suggest a further drafting amendment addressing the question of the CCyB. **Drafting suggestion:** In Article 16(7) the following would be inserted: '*Where an entity* ***that is part of a resolution group*** *is not subject to the combined buffer requirement on the same basis as the basis on which it is required to comply with the requirements referred to in Articles 45c and 45d, resolution authorities shall apply paragraphs 1 to 6 of this Article on the basis of the estimation of the combined buffer requirement* ***for resolution entities and entities that are not themselves resolution entities respectively*** *calculated in accordance with* ***Article 3 of*** *Commission Delegated Regulation (EU) 2021/1118*.* ***The buffer applicable to the entity in accordance with Article 130 of Directive 2013/36/EU shall be added to that estimation.*** *Article 128, fourth paragraph of Directive 2013/36/EU shall apply*.' HR (MS comments): HR: We agree with these amendments.
2.3.Article 45c (4) BRRD / Recital 47 'EBA mandate for RTS on P2R and CBR estimation extended to internal MREL' The Article 45c, paragraph 4 would be amended as follows:	FR (MS comments): We can accept this proposal EL (MS comments): *EL: We support the proposed amendment.*

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'4. EBA shall develop draft regulatory technical standards specifying the methodology ***to be used by resolution authorities*** *to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement* ***to be used by resolution authorities*** *for:* *(a) resolution entities at the resolution group consolidated level, where the resolution group is not subject to those requirements under Directive 2013/36/EU;* *(b) entities that are not themselves resolution entities, where the entity is not subject to those requirements under Directive 2013/36/EU on the same basis as the requirements referred to in Article 45f of this Directive.* *EBA shall submit those draft regulatory technical standards to the Commission by ... [OP please insert the date = 12 months from the date of entry into force of this amending Directive].* *Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'*	EE (MS comments): **Agree** CY (MS comments): **We do not object.** BG (MS comments): We do not oppose the proposed amendments. AT (MS comments): We can support this proposal. DE (MS comments): **Generally agree.** SK (MS comments): **No comment.** SI (MS comments): SI: We agree. RO

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	(MS comments): We agree with PCY proposal PT (MS comments): Agree, without prejudice to the comments above. PL (MS comments): We can agree with amendment of Article 45c(4) BRRD, which broadens the mandate of the EBA, however the initial wording proposed by the EC is also fully acceptable for us. NL (MS comments): We support the suggestion. LV (MS comments): We agree with the proposed drafting. IE (MS comments): Agree, no comment. HR (MS comments): HR: We agree with these amendments

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Presidency text proposal	**MS comments**
2.4.Article 27 BRRD / Recital 6 'Early intervention measures' Recital 6 would be amended as follows: **Recital 6** *'(6) Early intervention measures were created to enable competent authorities to remedy the deterioration of the financial and economic situation of an institution or entity and to reduce, to the extent possible, the risk and impact of a possible resolution. However, due to a lack of certainty regarding the triggers for application of those early intervention measures and partial overlaps with supervisory measures, early intervention measures have seldom been used. The conditions for the application of those early intervention measures should therefore be simplified and further specified. To dispel uncertainties concerning the conditions and timing for the removal of the management body and the appointment of temporary administrators, those measures should be explicitly identified as early intervention measures and their application should be subject to the same triggers. At the same time, competent authorities should be required to select the appropriate measures to address a specific situation in compliance with the principle of proportionality. To enable*	FR (MS comments): This proposal is a good basis for a compromise and we support most of the additions made by the Presidency. Even if we think that the governance process of the EIM framework could be reinforced in an article in order to ensure a swift and efficient decision adoption process that will best preserve capital and MREL resources, we accept, in a spirit of compromise, the proposal with the integration of this concern in recital 6. However, we still have a one remark with respect to the text: in article 27 paragraph 1 (a) (ii), we think that the notion of a "rapid" deterioration should not be introduced, as a slow deterioration should not forbid the competent authority from adopting EIM ; Also, we wonder whether in point (b) of the same paragraph, the mention of MREL requirement in this part of article 27 would not create overlaps with powers that are already part of the resolution authorities' toolkit to assess and remedy to any MREL shortfall.

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competent authorities to take into account reputational risks or risks related to money laundering or information and communication technology, competent authorities should assess the conditions for application of early intervention measures not only on the basis of quantitative indicators, such as capital or liquidity requirements, level of leverage, non-performing loans or concentration of exposures, but also on the basis of qualitative triggers. ***The decision-making process in relation to early intervention measures should allow for their swift consideration and, if necessary, adoption, in order to avoid any further worsening of the financial and economic situation.*** *'* Article 27 BRRD would be amended as follows: *1. Member States shall ensure that competent authorities may apply early intervention measures where an institution or entity referred to in Article 1(1), points (b), (c) or (d) meets any of the following conditions:* *(a) the institution or entity meets the conditions referred to in Article 102 of Directive 2013/36/EU or in Article 38 of Directive (EU) 2019/2034, or the competent authority has determined that the arrangements, strategies, processes and mechanisms*	FI (MS comments): We support the PCY proposals. But we would also support transferring the EIM to the Capital Requirements Directive instead of the BRRD. EIM has high interrelations with the other supervisory measures. FI (MS comments): We support the PCY proposals. But we would also support transferring the EIM to the Capital Requirements Directive instead of the BRRD. EIM has high interrelations with the other supervisory measures. EL (MS comments): *EL: We can support the amendment for recital 6.* *With regard to changes in article 27, as presented in the column to the left, we would like to note the following:* *a. Condition ii of point a) of par. 1: While we understand that the reference to a rapid and significant deterioration is included in this condition as an example when the CA could take early intervention*

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implemented by the institution or entity and the own funds and liquidity held by that institution or entity do not ensure a sound management and coverage of its risks, and either of the following applies: *(i) the institution or entity has not taken the remedial actions required by the competent authority, including the measures referred to in Article 104 of Directive 2013/36/EU or in Article* ***39*** ***49*** *of Directive (EU) 2019/2034;* *(ii) the competent authority deems that remedial actions other than early intervention measures are insufficient to address the problems due inter alia to a* ***rapid and*** *significant deterioration of the financial condition of the institution or entity;* *(b) the institution or entity infringes or is likely to infringe in the 12 months following the assessment of the competent authority the requirements laid down in Title II of Directive 2014/65/EU, in Articles 3 to 7, Articles 14 to 17, or Articles 24, 25 and 26 of Regulation (EU) No 600/2014* ***or in Articles 45e or 45f of this Directive****.* *[…]*	*measures, we consider that it could undermine the possibility of the supervisor to properly address a deterioration of the situation of the entity if, in particular, it is not rapid, but still significant. To this end, we propose removing the last part of this condition.* *b. Point (b) of par. 1: We consider that the use of early intervention powers for breaches of the MREL does not seem appropriate. Even for a capital breach the supervisor maintains full discretion over the measures it can take and the powers he/she can exercise, allowing for an escalation process. In addition, the MREL requirement is part of the resolvability assessment and there are specific articles in SRMR (articles 10 & 11) to address MREL shortfalls. To this end, we would propose to transfer this part to point a) reflecting that there has been some escalation prior to such a measure. It might be more appropriate in any case to potentially amend article 102 of CRD which provides for the infringement of other prudential requirements. However, if the deletion of the phrase*

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*3. For each of the measures referred to in paragraph 1a, competent authorities shall set a**n implementation** deadline **for completion, which shall be strictly limited to the time necessary to carry out the measure concerned under reasonable conditions. Competent authorities shall conduct an evaluation of the effectiveness of the measure immediately after expiry of the deadline and shall share this evaluation with the relevant resolution authority.*** *4. EBA shall, by … [PO please insert the date = 12 months from the date of entry into force of this amending Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the consistent application of the **triggers conditions** referred to (….) in paragraph 1 of this Article.'*	*"or in Articles 45e or 45f of this Directive" is valid, as depicted in the PR non-paper, we could accept it.* *c. We do not support the addition of the obligation for the CA introduced in par. 3 regarding the assessment of the effectiveness of the measures and the provision of relevant information to the RA given that new article 30a provides a clear framework for the cooperation of the two authorities, covering also the stage of adopting early intervention measures. To this end, it is not clear what the proposed amendment is aiming to achieve and how it fits with the relevant procedure of article 30a.* *Please note that the changes in article 27are different to the ones that were included in the Presidency non-paper.* EE (MS comments): **Agree** CY (MS comments): **We agree** BG

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	(MS comments): We do not oppose the proposed by the Presidency changes in the Early intervention measures regime. AT (MS comments): The suggested removal of the reference to Article 45e and 45f of the BRRD could lead to ambiguities. The consistency of Article 27 and Article 45k BRRD should be ensured. According to Article 45k BRRD, any breach of the minimum requirement for own funds and eligible liabilities referred to in Article 45e or Article 45f shall be addressed by the relevant authorities on the basis of at least one of the following: […] (c) measures referred to in Article 104 of Directive 2013/36/EU; (d) early intervention measures (EIM) in accordance with Article 27. From the explanation on page 4 of the document "WK 4739/2024 INIT", the purpose of the suggested deletion of the reference to Article 45e and 45f seems not entirely clear. If it is the intention of the presidency to remove the competence of the competent

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	authority to address MREL shortfalls on the basis of EIM, Article 45k BRRD (which also includes supervisory measures according to Article 104 of Directive 2013/36/EU) would have to be adapted accordingly. In case of an agreement on a possible removal of powers to address MREL shortfalls also from Article 45k BRRD, it should be evaluated by the European Commission, if additional measures would be required to be taken by the resolution authority to address MREL shortfalls within a shorter period. However, as it was not proposed to delete the possibility to address MREL breaches on the basis of EIM from Article 45k BRRD, the deletion of the reference in Article 27 BRRD could also be understood as a proposal for a clarification that only actual breaches (and not likely breaches) of MREL can be addressed on the basis of EIM. If that is the case, it should be clarified in the suggested amendment of Article 27 BRRD that the competent authority cannot address likely breaches of MREL. In addition, in case of an agreement that the competent authority remains competent to address breaches of MREL, there should be

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	a clarification on the hierarchy between EIM and other measures as referred to in Article 104 of Directive 2013/36/EU. With regards to the update of Article 27(3), we would prefer the previous version. In our view, the new wording seems to be more restrictive and might lead to ambiguities in cases where the effects of the measure are not visible directly after the implementation. Furthermore, as already stated, formal notification and reporting requirements would take a considerable amount of time and would seem therefore overly burdensome in a critical phase of a crisis. DE (MS comments): **We agree in part.** *Please see our comments and proposal further below:*

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	Proposal:

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	Please **include a reference to SREP** (Art. 97 CRD) to make clearer what is meant by "arrangements, strategies, processes and mechanisms implemented by the institution…..". Art. 16 (1)(c) SSMR also contains further clarifications ("based on a determination, in the framework of a supervisory review in accordance with (f) of Art. 4(1)…."). Reasoning: BEL PCY paper explains that the reference is introduced to ensure that the same rules and triggers for early intervention apply within the Banking Union where the SSM Regulation applies, as well as in Member States outside the Banking Union where only the CRD applies and, (ii) to create, within the Banking Union, a clear escalation ladder where the conditions for early intervention measures would correspond to the triggers for supervisory measures, plus "aggravating factors". *To achieve this goal, we suggest* ***to include this requirement in Art. 13 SRMR as well****.* **Agree with deleting the requirement** "**rapid** deterioration of the financial condition of the institution or entity. **Proposal:**

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	However, we also think that the requirement "**significant** deterioration" **should also be deleted**. If the competent authority has determined that remedial actions other than early intervention measures are insufficient to address the problems, early intervention measures should be applicable without further requirements. **<u>Disagree</u>** **with deletion of reference to Art. 45e or 45f BRRD**; Breach of MREL should justify early intervention measures (as set out in 45k (1)(d) BRRD).

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Presidency text proposal	**MS comments**
	SK (MS comments): **We are inclined to delete the reference to Articles 45e and 45f BRRD in paragraph 1 letter b) of Article 27 of the BRRD, while monitoring compliance with MREL does not belong to the competence of the competent authorities and it would cause an overlap of powers.**

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Presidency text proposal	**MS comments**

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Presidency text proposal	**MS comments**

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Presidency text proposal	**MS comments**
	SI (MS comments): SI: We agree.

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Presidency text proposal	**MS comments**
	SI: We agree. RO

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Presidency text proposal	**MS comments**
	(MS comments): We deem appropriate to: - reinstate the trigger threshold, referred to in the current text of Article 27 of the BRRD, which is used to assess whether the institution is likely to breach capital requirements in the near future (the trigger threshold is set at a level of the institution's own funds requirement plus 1.5 percentage points), given that the approach proposed in the "CMDI, PRES CONS" package is discretionary being based solely on qualitative criteria which may lead to a breach of the principle of proportionality as not in all cases the non-implementation of a supervisory measure can be considered as sufficient grounds for early intervention measures; - to introduce a provision according to which reputational risks and/or risks related to money laundering or information and communication technology will be taken into account when assessing the conditions for the application of early intervention measures **either in terms of the potential impact on quantitative indicators** such as capital or liquidity requirements, the level of the leverage ratio (as well as other risks such as those arising from non-performing loans or concentration of exposures) **or from the perspective of qualitative triggers** relating to the risk of

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	withdrawal of the institution's operating licence if no remedial measures are implemented with respect to those risks. PT (MS comments): Please be aware that the Presidency proposal included in this table and the drafting suggestion in the Presidency non-paper of 27 March 2024 do not coincide. We express our agreement to the drafting suggestion foreseen in the Presidency non-paper. PL (MS comments): No major comments here. However one technical issue, namely please note that the provided table uses incorrect formatting - fragments that are deleted in the PCY not are NOT marked as deleted in this table. NL (MS comments): We support the suggestion.

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	LV (MS comments): We agree with the proposed drafting. IE (MS comments): No comments in relation to the amendment to Recital 6. In relation to the amendment to Article 27(1)(a)(ii) – question whether this should be limited to a rapid and significant deterioration. In order to grant flexibility to competent authorities the following could be considered: *(ii) the competent authority deems that remedial actions other than early intervention measures are insufficient to address the problems due inter alia to a **rapid and / or** significant deterioration of the financial condition of the institution or entity;* No other comments in relation to Article 27. HR (MS comments): HR: We agree with these amendments.

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Presidency text proposal	**MS comments**
2.5.Article 29 'Temporary administrator' Article 29(1), subparagraph 4, would be amended as follows: '*Member States shall further ensure that any temporary administrator fulfils the requirements set out in Article 91 (1), (2), and 8* ***2a*** *of Directive 2013/36/EU. The assessment by competent authorities of whether the temporary administrator complies with those requirements shall be an integral part of the decision to appoint that temporary administrator*.' In Article 29(3) point (d) would be inserted: **'** *(d) ensuring compliance of the institution or entity referred to in Article 1(1), points (b), (c) or (d) with any requests pursuant to Article 30a(3), subparagraph 2, Article 30a(4) and (5).***'**	FR (MS comments): We can support the proposal. EL (MS comments): *EL: We can support the proposed amendments.* EE (MS comments): **Agree** CZ (MS comments): **It should be clarified what the purpose of the reference to Article 91(1) CRD actually was and the wording of Article 29(1) BRRD should be adjusted according to that purpose. Article 91(1) CRD6 contains a reference to paragraphs 2 to 6 of that Article and therefore includes a reference to paragraphs 2a and 2b (collective knowledge, skills and experience). Article 91(3) to (6) concern the number of directorships that a member of the management body may hold.** BG (MS comments):

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Presidency text proposal	**MS comments**
	We do not oppose the proposed changes in the provisions regulating the temporary administrator. AT (MS comments): We can agree on the proposed amendment. SI (MS comments): SI: We agree. RO (MS comments): We consider appropriate to mention separately in Article 29 of BRRD the requirements of sufficient good repute and sufficient knowledge, skills and experience necessary for the temporary administrator to carry out his duties because the reference to Article 91 CRD would lead to the conclusion of the need for a full "fit and proper" assessment, which is not an efficient tool to be used in an early intervention situation as it requires a long process to carry out the necessary checks. PT (MS comments):

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Presidency text proposal	**MS comments**
	Please be aware that the Presidency proposal included in this table and the drafting suggestion in the Presidency non-paper of 27 March 2024 do not coincide. We express our agreement to the drafting suggestion foreseen in the Presidency non-paper. For clarity purposes, the drafting foreseen in the Presidency non-paper, which is the drafting we support, is: '*Member States shall further ensure that any temporary administrator fulfils the requirements set out in Article 91 (1), (2), and ~~8~~ **2a** of Directive 2013/36/EU. The assessment by competent authorities of whether the temporary administrator complies with those requirements shall be an integral part of the decision to appoint that temporary administrator'* PL (MS comments): We still analyze this issue and do not have a final position yet. NL (MS comments): We support the suggestion.

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Presidency text proposal	**MS comments**
	LV (MS comments): We agree with the proposed drafting. IT (MS comments): *We suggest avoiding the reference to article 91 CRD. The FAP regime for temporary administrators must take into account their special function and cannot be aligned in all respects to the rules applicable to members of the management body.* *Drafting suggestion:* *Member States shall further ensure that any temporary administrator* ~~*fulfils the requirements set out in Article 91(1), (2) and (8) of Directive 2013/36/EU*~~ ***is at all times of sufficiently good repute, possesses sufficient knowledge, skills and experience to perform his or her duties, and acts with honesty, integrity and independence of mind. The overall composition of the body, where relevant, shall reflect an adequately broad range of experiences. Any temporary administrator shall also commit sufficient time to perform his or her functions in the institution. The assessment by competent authorities of whether***

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	the temporary administrator complies with these requirements shall be an integral part of the decision to appoint that temporary administrator. IE (MS comments): No comment. HR (MS comments): HR: We agree with these amendments.
2.6.Article 37(11) BRRD / Recital 47 'EBA mandate in respect of the general principles of resolution tools' Suggestion to maintain the (relevant part of) Recital 47 and to modify Article 37(11) as follows: *'11. EBA shall monitor the actions and preparation of resolution authorities to ensure an effective implementation of the resolution tools and powers in the event of resolution. EBA shall report to the Commission on the state of play of existing practices 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*	FR (MS comments): We can accept this proposal for article 37. However, we suggest to introduce an amendment to article 37 paragraph 4 in order to make a clearer invitation to resolution authorities to consider the use of several resolution tools together as part of the preferred resolution strategy in order to minimize the destruction of value. We suggest to add to paragraph 4 the following sentence: *'The resolution scheme should consider the combination of resolution tools which is the best suited to achieve resolution objectives.'*

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recommendation set out in that report, where appropriate. The report referred to in the first subparagraph shall cover at least the following: *(a) the arrangements in place to implement the bail-in tool and the level of engagement with financial market infrastructures and third-country authorities, where relevant;* *(b) the arrangements in place to operationalise the use of other resolution tools.* *(c) the level of transparency towards relevant stakeholders regarding the arrangements referred to in points (a) and (b).'*	FI (MS comments): We would support keeping the "monitor the implementation of any recommendation set out in that report, where appropriate". It would be important, that if the EBA recommends certain actions in relation to diverging resolution practices, those recommendations and their progress would be followed and monitored. However, we're also open on the PCY's proposal of deleting the phrase. FI (MS comments): We would support keeping the "monitor the implementation of any recommendation set out in that report, where appropriate". It would be important, that if the EBA recommends certain actions in relation to diverging resolution practices, those recommendations and their progress would be followed and monitored. However, we're also open on the PCY's proposal of deleting the phrase. EL (MS comments):

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	EL: We agree with the proposed amendments as presented in the Presidency non-paper, i.e. to delete the phrase "and monitor the implementation of any recommendation set out in that report, where appropriate", in order to avoid to create additional administrative and reporting burden for the RAs. EE (MS comments): **Agree** CY (MS comments): We support the proposed modification BG (MS comments): The new amendments proposed by the Presidency seem to be going in the right direction. However, we still maintain that any new mandate conferred to EBA should not generate additional administrative and reporting burden for resolution authorities and credit institutions. AT (MS comments): We support the proposed modifications of Article 37 (11) BRRD. DE (MS comments):

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Presidency text proposal	MS comments
	Generally agree SK (MS comments): **We perceive the proposal as another administrative burden, monitoring within the banking union is provided by the SRB.** SI (MS comments): SI: We agree. PT (MS comments): Please be aware that the Presidency proposal included in this table and the drafting suggestion in the Presidency non-paper of 27 March 2024 do not coincide. We express our agreement to the drafting suggestion foreseen in the Presidency non-paper. For clarity purposes, the drafting foreseen in the Presidency non-paper, which is the drafting we support, is: *11. EBA shall monitor the actions and preparation of resolution authorities to ensure an effective implementation of the resolution tools and powers in the event of resolution. EBA shall report to the Commission on the state of play of existing practices and possible divergences across Member States by ... [PO please insert the date*

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	= 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) the arrangements in place to implement the bail-in tool and the level of engagement with financial market infrastructures and third-country authorities, where relevant;* *(b) the arrangements in place to operationalise the use of other resolution tools.* *(c) the level of transparency towards relevant stakeholders regarding the arrangements referred to in points (a) and (b).'* PL (MS comments): With regard to point 2.6, we have no objections to the proposed amendments to Article 37(11) of the BRRD. NL (MS comments): This should be limited to only those strategies the NRA plans for. Suggestion to change the text to:

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Presidency text proposal	**MS comments**
	'11. EBA shall monitor the actions and preparation of resolution authorities ***with respect to the preferred and the back-up resolution strategy of an institution*** *to ensure an effective implementation of the resolution tools and powers in the event of resolution. EBA shall report to the Commission on the state of play of existing practices 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.* (a) It is unclear which FMIs are relevant (Stock exchanges? MTFs? OTFs? SIs? CSDs? CCPs? (Sub-)custodians? Payment agents?) And which third-country authorities are relevant? (CAs? MAs? RAs? Macroprudential authorities? DGSs? MoFs?). Please clarify. LV (MS comments): We agree with the proposed drafting. IE

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Presidency text proposal	**MS comments**
	(MS comments): No comment. HR (MS comments): HR: We agree with these amendments.
2.7.Article 52(1) and (5) BRRD 'Business reorganisation plan' Suggestion to maintain the Commission's proposal.	FR (MS comments): We can agree with this proposal. EL (MS comments): *EL: We support maintaining the Commission's proposal.* EE (MS comments): **Agree** CY (MS comments): We agree. BG (MS comments): We agree with this proposal. AT (MS comments):

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Presidency text proposal	**MS comments**
	We agree on maintaining the Commission's proposal. DE (MS comments): **Generally agree.** SK (MS comments): **No comment.** SI (MS comments): SI: We agree. RO (MS comments): We agree with the COM/PCY proposal. PT (MS comments): Agree. PL (MS comments): We can agree with this approach, we support Commission's proposal. NL

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Presidency text proposal	**MS comments**
	(MS comments): We support the suggestion. IE (MS comments): No comment. HR (MS comments): HR: We support these amendments.
2.8.Article 88(2) BRRD 'Resolution colleges: participation' Amend Article 88 (2) points b) and g) as follows: *'(b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established.* ***Where the subsidiary is an entity referred to in point (b) of Article 1(1), the resolution authority of that subsidiary shall decide whether to participate or not in the resolution college concerned if winding-up of this subsidiary under normal insolvency proceedings is considered credible within the meaning of Article 16(1) and (2). If the resolution authority of such subsidiary considers that a membership in the resolution college is not needed, it should notify the group-level resolution***	FR (MS comments): We understand that the purpose of the suggested addition to point (b) is to allow the RA for a small subsidiary that is a *financial institution* within the meaning of CRR – and not a credit institution or investment firm referred to in point (a) of Article 1(1) BRRD – to opt-out of the resolution college. We can support this objective. Perhaps both conditions and drafting could be streamlined a little bit. Regarding point (g), we agree that the participation of the authority responsible for a DGS should be restricted to cases where the group includes an affiliated credit institution. However,

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Presidency text proposal	MS comments
authority thereof. Upon receiving the notification by the group-level resolution authority, the resolution authority of the subsidiary shall no longer be a member of the resolution college. ***In case of material changes which have the potential to affect the credibility of insolvency proceedings, the resolution authority of such subsidiary shall notify the group-level resolution authority of the need to restore its membership in the resolution college. The group-level resolution authority shall, upon receipt of such notification, invite the concerned resolution authority of the subsidiary to the resolution college."*** *'(g) the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of a resolution college* ***and, where a credit institution referred to in Article 1(2)(d) of Directive 2014/49/EU is part of the group and established in that Member State.***	we are not sure how to interpret the proposed wording with the "and, " before the words "where a credit institution…". Is it to make conditions cumulative or to designate two sets of situations where this participation should be foreseen? ES (): We agree with the proposed drafting, but would like to take the opportunity to go one step further. First, we believe the subsidiary should not only be limited to entities referred in point (b) of article 1 BUT also credit institutions and investment firms. As in the proposed drafting, there should be no automaticity between the credibility of insolvency proceedings and college participation. In other words, it should be a decision of the resolution authority not to participate. (b) … *Where the subsidiary is an entity referred to in point****s*** ***(a) and*** *(b) of Article 1(1), (...)* Second, we consider that the obligation to set up a resolution college in circumstances where such college would not serve as

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Presidency text proposal	**MS comments**
	forum for cooperation and coordination between resolution authorities should be waived. Specifically, if there is a group consisting of a parent financial holding company or a parent mixed financial holding company in one Member State, with the sole purpose of holding the stake of a subsidiary or subsidiaries, which are credit institutions, located in another Member State. In this circumstance, the parent (mixed) financial holding company may have no relevance in terms of resolution, and it is likely that its resolution authority is not concerned about it, thus, resolution colleges might only result in a burden to both home and host authorities. We would include the following clarification (in red): ***"[…] If the resolution authority of such subsidiary considers that a membership in the resolution college is not needed, it should notify the group-level resolution authority thereof. Upon receiving the notification by the group-level resolution authority, the resolution authority of the subsidiary shall no longer be a member of the resolution college. The same should apply where the parent company of the subsidiary is a financial holding company or a mixed financial holding company with the sole***

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Presidency text proposal	MS comments
	purpose of holding the stake and with no relevance for resolution purposes. On the other hand, and in the same vein of the proposed amendment of article 88, referred to resolution colleges, we propose to amend Article 89 (1) and (3), referred to **European** resolution colleges: *(1). Where a third country institution or third country parent undertaking has Union subsidiaries established in two or more Member States, or two or more Union branches that are regarded as significant by two or more Member States, the resolution authorities of Member States where those Union subsidiaries are established or where those significant branches are located shall establish a European resolution college.* ***The resolution authorities of Member States where those subsidiaries or Union branches are established may decide not to participate in the European resolution college concerned if winding-up of this subsidiary under normal insolvency proceedings is considered credible within the meaning of Article 16(1) and (2)..*** ***In case of material changes which have the potential to affect the credibility of insolvency proceedings, the resolution***

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Presidency text proposal	**MS comments**
	<u>authority of such entities may decide to participate in the European resolution college."</u> *(3). […] Where the first subparagraph does not apply, the resolution authority of a Union parent undertaking or a Union subsidiary with the highest value of total on-balance sheet assets held shall chair the European resolution college,* ***<u>unless the winding-up of that subsidiary under normal insolvency proceedings is considered credible within the meaning of Article 16(1) and (2), subject to paragraph 2 of Article 88.</u>*** EL (MS comments): *EL: We support the proposed amendments.* EE (MS comments): **Agree** CY (MS comments): We support. BG

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Presidency text proposal	**MS comments**
	(MS comments): We do not oppose the proposed amendments to the current BRRD text. AT (MS comments): We very much appreciate the proposal to amend Article 88 (2) BRRD to provide clarity on the requirement to establish resolution colleges for cross-border groups with financial institution-subsidiaries. However, in our view, this provision should also efficiently cover cases, in which just financial institution subsidiaries are located in other member states and so far, no resolution colleges have been established. We therefore propose some slight amendments to the proposal to avoid the situation, that the group-level resolution authority has to establish a resolution college which shortly after becomes redundant because the relevant resolution authorities of financial institution subsidiaries notify that they will not participate. *'(b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established. Where the subsidiary is an entity referred to in point (b) of Article 1(1), the resolution authority of that subsidiary shall decide whether to participate* ~~***or not***~~ *in the resolution college concerned if winding-up of this subsidiary under normal insolvency*

Presidency text proposal	**MS comments**
	proceedings is considered credible within the meaning of Article 16(1) and (2). If the resolution authority of such subsidiary considers that a membership in the resolution college is ***~~not~~*** *needed, it should notify the group-level resolution authority thereof. Upon receiving the notification by the group-level resolution authority, the resolution authority of the subsidiary shall* ***~~no longer~~*** ***be invited to become*** *a member of the resolution college.* *In case of material changes which have the potential to affect the credibility of insolvency proceedings, the resolution authority of such subsidiary shall notify the group-level resolution authority of the need to* ***~~restore its membership~~participate*** *in the resolution college. The group-level resolution authority shall, upon receipt of such notification, invite the concerned resolution authority of the subsidiary to the resolution college.* DE (MS comments): **Agree and welcomed with following <u>proposal</u> for amendment:** „‘(b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established. *Where the subsidiary is an entity referred to in point (b) of Article 1(1), the resolution authority of that subsidiary shall decide whether to participate* ***~~or not~~*** *in the resolution college concerned*

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Presidency text proposal	**MS comments**
	if winding-up of this subsidiary under normal insolvency proceedings is considered credible within the meaning of Article 16(1) and (2). If the resolution authority of such subsidiary considers that a membership in the resolution college is ***~~not~~*** *needed, it should notify the group-level resolution authority thereof. Upon receiving the notification by the group-level resolution authority, the resolution authority of the subsidiary shall* ***~~no longer~~*** ***be invited to become*** *a member of the resolution college.* *In case of material changes which have the potential to affect the credibility of insolvency proceedings, the resolution authority of such subsidiary shall notify the group-level resolution authority of the need to* ***~~restore its membership~~*** ***participate*** *in the resolution college. The group-level resolution authority shall, upon receipt of such notification, invite the concerned resolution authority of the subsidiary to the resolution college."*" Reasoning: We should bear in mind that the proposal intends to avoid that NRAs as well as the SRB would have to establish and enlarge (additional) resolution colleges for groups which (only) have cross-border financial institutions in other Member States. Our proposed amendments to the precidency's draft aims to avoid that the group-level resolution authority spends efforts on the establishment of resolution colleges which subsequently prove to

Presidency text proposal	**MS comments**
	be redundant because the relevant resolution authorities of financial institution subsidiaries notify that they will not participate. **Point (g): Agree and welcomed.** SK (MS comments): **No comment.** SI (MS comments): SI: We agree. RO (MS comments): We agree with PCY proposal. PT (MS comments): We can agree with the proposal for article 88(2b), as it concedes more discretion to resolution authorities. PL (MS comments):

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Presidency text proposal	**MS comments**
	We can agree with the amendment as long as this is left to the discretion to the host RA. NL (MS comments): We support the suggestion. LV (MS comments): We agree with the proposed drafting. IE (MS comments): No comment. HR (MS comments): HR: We support these amendments.
2.9.Article 102(3) BRRD 'Deferral of *ex ante* contributions and replenishment' Suggestion to maintain the Commission's proposal.	FR (MS comments): We can accept the Commission proposal in a spirit of compromise. However, we would like to propose that the final amendment considers a scenario where available financial resources have been reduced, but still account for more than 2/3 of the target level. As of now, in our view the framework is not clear about

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Presidency text proposal	**MS comments**
	what should be the replenishment timeline in such a case, and we think we should look for specifying it further in order to avoid (i) a void in replenishment decisions (ii) any litigation that could arise from the lack of clarity/predictability. Moreover, we have some concerns regarding the use of administrative costs as a criterion for deferring ex-ante contributions. While we understand the desire for efficiency, this approach might create unintended discrepancies across member States within and outside the Banking Union. The majority of costs for banks and authorities are fixed, regardless of annual levies. These costs are related to data collection for calculations, IT system maintenance, and staffing. Besides, there's a possibility that additional administrative costs are unevenly distributed across member States inside and outside the Banking Union. As an alternative solution, we propose exploring the idea of an alternative reference value, such as a percentage increase in covered deposits, or coming up with a RTS. FI (MS comments):

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Presidency text proposal	**MS comments**
	We can support the PCY and COM proposal. However, we think it could be useful to frame the deferral of ex ante contributions in the recital 34 a bit more. It should be clear that the RAs can't wait until the available financial means fall, for example, below 2/3 of the target level. But that the deferral of ex ante contributions is possible only if the administrative costs of the collection would be higher than the amount to be collected. FI (MS comments): We can support the PCY and COM proposal. However, we think it could be useful to frame the deferral of ex ante contributions in the recital 34 a bit more. It should be clear that the RAs can't wait until the available financial means fall, for example, below 2/3 of the target level. But that the deferral of ex ante contributions is possible only if the administrative costs of the collection would be higher than the amount to be collected. EL (MS comments): *EL: We support maintaining the Commission's proposal.* EE (MS comments):

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Presidency text proposal	**MS comments**
	Agree CY (MS comments): We agree. BG (MS comments): We agree with the text of the Commission proposal. AT (MS comments): We can agree on that. DE (MS comments): **Agree and welcomed:** The resolution authority is able to defer regular contribution collection in case the costs of the collection process reach an amount that is proportionate to the annual amount to be collected while keeping the capacity of the fund in mind. SK

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Presidency text proposal	**MS comments**
	(MS comments): **No comment.** SI (MS comments): SI: We agree. RO (MS comments): We agree to maintain the Commission's proposal. PT (MS comments): We agree with the Presidency suggestion to maintain the Commission's proposal. PL (MS comments): We would like to clarify the intention of the proposal to insert a paragraph that 'resolution authorities may continue to collect ex ante contributions to match the evolution of covered deposits'. In our opinion, there is no legal doubt that the size of the resolution fund should reflect the volume of covered deposits and as such may need to be increased over time, even after the initial build-up period.

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Presidency text proposal	**MS comments**
	The aim of the proposal was to complement the Commission's proposal from a different perspective. While the Commission's proposal allows for deferral of ex ante contributions where the amount to be collected would be minimal, we would welcome an option to continue raising contributions when the current size of the resolution fund is above the target level – if covered deposits are expected to grow during the year (in case of Poland 9.7% growth in 2023). The aim of this proposal is to avoid annual fluctuations of contributions, as in our view it would be preferable to raise smaller amounts of contributions each year instead of introducing a cycle of not raising contributions one year and resuming them next year. **Our proposal should allow for the contributions to be spread out in time more evenly and increase the predictability for the institutions.** **<u>To sum up – we accept the Commission's proposal, as it is optional, but would prefer if there was a possibility of a different approach.</u>** NL (MS comments): We agree to not add an additional timeframe for replenishment of the fund between 33% and 66%. However, we would be in favour

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Presidency text proposal	**MS comments**
	of adding the possibility to determine a reasonable timeframe if the fund has been replenished less than 1/3, to be able to relieve the burden for stability purposes or when it is foreseen that the SRF support is only temporary. IE (MS comments): No comment. HR (MS comments): HR: We agree with these amendments.
2.10. Article 103(a) BRRD 'IPCs up to 50%' Suggestion to modify Article 103(a) as follows: '3. *The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed* ***[50]*** *% of the total amount of contributions raised in*	FR (MS comments): We think the last sentence at the end of paragraph 3 is a little ambiguous and could be interpreted as bestowing an excessive discretion upon authorities to accept and set the level of IPCs for each bank. We think this was not the intention of the COM proposal but it might require a slight clarification to make sure we continue to have a framework where the use of IPCs is allocated by RAs evenly among institutions requesting them (as recalled under Recital 16 of the Council implementing regulation 2015/81).

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Presidency text proposal	**MS comments**
accordance with this Article. Within that limit, the resolution authority shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.'	On the maximum amount of IPC, we support the COM proposal, although the discussion about new 3a of article 103(b) is more important since it impacts the stock of existing IPCs as opposed to the future new IPCs. FI (MS comments): We do not support raising the level of IPCs from 30 to 50 %. We haven't heard strong justifications for rising the level of IPCs. "Increasing the flexibility of resolution authorities" in defining the funding is not needed here. A higher level could cause also financial stability issues. FI (MS comments): We do not support raising the level of IPCs from 30 to 50 %. We haven't heard strong justifications for rising the level of IPCs. "Increasing the flexibility of resolution authorities" in defining the funding is not needed here. A higher level could cause also financial stability issues.

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Presidency text proposal	**MS comments**
	EL (MS comments): *EL: The IPCs share is preferable to remain in the current levels (30%) considering that the transfer of the committed funds from IPC users, in case IPCs are called, could have pro-cyclical effects on the positions of those institutions and exacerbate potential instability, especially in case of a high concentration of IPCs in a given national market. This is the case when the full amount of the IPCs called would need to be recorded directly in the institutions' profit and loss account.* EE (MS comments): **Agree** CY (MS comments):

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Presidency text proposal	MS comments
	We agree. We would favour 30% as it now stands. BG (MS comments): We do not support any change in the share of irrevocable payment commitments. We believe that this creates situations where the usage of the IPCs may artificially improve the financial statements of the banks that provide them. That is why we prefer to keep the share of irrevocable payment commitments unchanged as per the current text of BRRD. In addition, the amendment proposed by the Commission does not seem to fully take into account the financial impact of situations where the irrevocable payment commitments are claimed simultaneously and in full. AT (MS comments): We would prefer to maintain the current legal text, meaning "IPCs only up to 30 percent". We believe that the annual assessment of the relevant share of IPCs should be taken after a risk-based assessment by the resolution authority.

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Presidency text proposal	**MS comments**
	DE (MS comments): We can agree with the Presidency's way forward. In order to minimise the contributory burden with growing deposit balances and therefore further contribution to the SRF, a balance should be found on the right ratio for IPCs which also takes into account the SRF's ability to generate income (which is not the case with IPC). Furthermore, as stated previously, at least further analysis could be useful on the rationale for increasing the maximum proportion of IPCs from 30% to 50%, and on its impact (incl. potential side effects). We could therefore **agree to a regular assessment** of the risks including financial stability risks. However, such an assessment seems not clear in the text proposed and could be further specified. In addition, the effect of such change proposed by COM also **depends on the accounting treatment** of IPC and is therefore closely linked to the provisions in Article 103(3a) BRRD. SK (MS comments):

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Presidency text proposal	MS comments
	In our opinion, the level achieved for irrevocable payment obligations at the current level is sufficient. SI (MS comments): SI: We agree. RO (MS comments): We do not have a strong disagreement with the proposal, since the inclusion of irrevocable payment commitments is at the discretion of the resolution authority. However, we see no need for such an increase in the allowed maximum IPCs. PT (MS comments): We share the opinion that a political discussion should be held regarding the maximum IPC ratio allowed, considering the potential risks and concerns that a possible increase of it may bring. Therefore, we provide our agreement to the drafting suggestion presented by the Presidency to modify Article 103(a) (in line with the Commission's proposal) without considering, at this stage, the maximum IPC ratio permitted.

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Presidency text proposal	**MS comments**
	PL (MS comments): We agree with the proposal to add an annual assessment of the relevant share of IPCs (it is already practiced in case of Poland). We understand that the upper limit of IPCs will be decided at a later stage, nevertheless we consider the upper level of share of payment commitments of 50% to excessive and we prefer to maintain the current limit of 30 %. The upper limit of 50% will create pressure by the banking sector on resolution authorities to use the maximum allowed level and to provide explanations in case a lower level is used. Moreover, the higher the annual limit of IPCs, the higher the annual amount of contributions (to balance lower investment profits of the resolution authority). NL (MS comments): While recognizing the benefits of using IPCs in the buildup phase, we also note the procyclical effects of having to call IPCs for using the SRF. In addition, IPCs leave room for differences in accounting treatment between banks and does therefore not

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Presidency text proposal	**MS comments**
	contribute to a level playing field. Hence, we are in favour of the lower bound. LV (MS comments): We agree with the proposed drafting. IT (MS comments): *The legislation should clarify the accounting treatment of IPC due to the divergent practices that are currently being adopted by EU banks. In the meanwhile, we recommends to not increase the share of irrevocable payment commitments from 30 % to 50 % of the total amount of institutions' or entities ex ante contributions to the Single Resolution Fund. An increase may raise the risk of overstating institutions' CET1 capital, where certain accounting practices are applied, and, consequently, the need for the NCA to take mitigating supervisory measures.*) IE (MS comments): No comment. HR (MS comments):

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Presidency text proposal	**MS comments**
	HR: We agree with these amendments.
2.11. Article 103(b) BRRD 'Accounting treatment of IPCs' In Article 103 the following paragraph 3a would be inserted: *'3a. The resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article when the use of the resolution financing arrangements is needed pursuant to Article 101.* *Where an entity stops being within the scope of Article 1* ***and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article****, the entity shall pay a contribution in the amount of* ***resolution authority shall call*** *the irrevocable payment commitments made pursuant to paragraph 3 and still due.* ***If the contribution linked to the irrevocable payment commitment is duly paid at first call, the resolution authority shall cancel the commitment and return the collateral.***	FR (MS comments): We can agree to clarifying the currently applicable legal text relating to IPCs, since there seems to be different interpretations. However, we maintain that in our view IPCs refer to contributions to the SRF in the form of commitments materialized contractually and backed by a collateral, which differ from "duly received contributions" (in the sense of article 70 paragraph 4 of regulation n°806/2014). Therefore, IPCs legal nature differs from that of cash contributions, which entails a specific treatment (i.e., cancelling IPCs and returning relating collateral) upon exit of the entity from the scope of SRMR/BRRD. Besides being in our view the result of a past political agreement within the Council, this special treatment of IPCs is expressly provided for in Article 7(3) of the Council implementing regulation (EU) 2015/81 and is consistent with the actual functioning of the SRF, which

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Presidency text proposal	MS comments
If the contribution is not duly paid at first call, the resolution authority shall seize the collateral and cancel the commitment.';	contributions consider the risk it has to cover. Let's just think about the following hypothetical: assuming that all contributing entities were to have their authorization withdrawn and exit the market except one, the Commission's proposal would lead to these entities paying their IPCs in the form of a cash contribution to the SRF when leaving the market, for the benefit of risk coverage of the only entity remaining on the market… This cannot be the right functioning for the system. We are however open to exploring alternative solutions that could address the need to clarify the interpretation of the current framework in case of the market exit of a contributing entity. To that end, an alternative proposal should (1) remain consistent with the specific nature of IPCs, defined as the current framework as an alternative (and limited) modality of contribution to the SRF to cash contribution, (2) addresses the SRB and Commission's concerns regarding financial stability and SRF's resources (3) importantly, preserve the current accounting treatment of IPCs, in line with the objective put forward by the Commission. We propose a targeted clarification whereby banks leaving the scope of SRMR/BRRD, excluding where there it is by way of acquisition of the franchise, would still have their IPCs cancelled

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Presidency text proposal	**MS comments**
	and their collateral returned within a reasonable period of time, but could be subject to an exit fee in case their exit entails that the financial means of the fund drop below the target-level. This fee would be capped by the value of the collateral backing the bank's initial IPC. We stand ready to provide a drafting proposal. EL (MS comments): *EL: The proposed changes in this article are different to the ones proposed in the non-paper circulated last week. We agree with the proposed amendments as per the Presidency non-paper.* EE (MS comments): **Agree** CY (MS comments): Suggestion to redraft (see underlined text below) since it is not clear as drafted:

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Presidency text proposal	**MS comments**
	"*Where an entity stops being within the scope of Article 1* ***and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article****, the entity shall pay a contribution* ***for*** *the amount* ***that the resolution authority shall call*** *the irrevocable payment commitments made pursuant to paragraph 3 and still due."* BG (MS comments): From a legal point of view, if a contribution has been paid in the amount of a said irrevocable payment commitment, there should be a corresponding duty of the resolution authority to cancel the IPC and return the collateral. In this regard we consider that it would be more appropriate this to be regulated. AT (MS comments): We can agree on the proposed amendment. DE (MS comments): There still seems to be **unintended consequences on the impact of** the PCY proposal **on the accounting treatment**. Doubts

Presidency text proposal	**MS comments**
	remain as to which extent the wording meets the purpose "to alleviate the burden" in this respect as described in the PCY non-paper. Further technical work on the accounting effect is needed and how the purpose of IPCs would be met. SK (MS comments): **The proposal seems fair, we cannot evaluate the accounting effects.** SI (MS comments): SI: We agree. RO (MS comments): We do not oppose to the PCY amendment proposal. PT (MS comments): Please be aware that the Presidency proposal included in this table and the drafting suggestion in the Presidency non-paper of 27 March 2024 do not coincide. We express our agreement to the drafting suggestion foreseen in the Presidency non-paper. PL

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Presidency text proposal	**MS comments**
	(MS comments): We agree with the proposal (it is already practiced in case of Poland and implemented into national law). NL (MS comments): Assuming the bold text will be deleted, we are in favour of the proposed change suggested in the Presidency non-paper on BRRD technical topics. LV (MS comments): We agree with the proposed drafting. IT (MS comments): *We strongly disagree with the proposed amendment. We believe that the Commission's text could better promote a higher degree of convergence in the accounting treatment of IPCs, particularly by suggesting that these commitments cannot be accounted for off-balance sheet and should instead impact the profit and loss statement.* IE (MS comments): No comment. HR

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Presidency text proposal	**MS comments**
	(MS comments): HR: We agree with these amendments.
2.12. Article 104(1) BRRD / Recital 36 '*Ex post* contributions' Suggestion to maintain the Commission's proposal.	FR (MS comments): We can accept this proposal. However, we note that the COM proposal reproduces the calibration of ex-post contributions in the initial period. While the initial period approach has merit, we believe there is an opportunity to avoid unnecessary complexity and inconsistencies. Our suggestion is to align these provisions with the DGSD framework for consistency. Since the financial impact of ex-post contributions is similar, this approach creates a unified framework, and to propose a maximum of [x] % of covered deposits per year. For the sake of completeness, we point out that the text proposed by the Commission does not make any express reference to the yearly dimension of the extraordinary contributions' cap. We

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Presidency text proposal	**MS comments**
	kindly ask to clarify whether this is an overlook or a precise choice of the Commission. FI (MS comments): We can support the Commission's and PCY's proposal. However, we would also support replacing the wording "three times 12,5%" in the provisions to "37,5%" which would be a lot clearer. FI (MS comments): We can support the Commission's and PCY's proposal. However, we would also support replacing the wording "three times 12,5%" in the provisions to "37,5%" which would be a lot clearer. EL (MS comments): *EL: We support maintaining the Commission's proposal.* EE (MS comments): **Agree** CY (MS comments):

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Presidency text proposal	**MS comments**
	We agree in principle with the rationale of setting a maximum amount of extraordinary contributions based on the target level but fail to understand how the figure of 3 times 1/8th of the target level has been decided. BG (MS comments): We do not oppose the Commission proposal. AT (MS comments): We can support that proposal. DE (MS comments): **We could partly agree with way forward but see further work seems needed on the national resolution funds.** We can understand the reasoning for the clarification made in Article 104 BRRD to ensure that ex-post contributions can be calculated and raised in the steady state. However, it seems not clear to which extent that limit would be adequate considering the possible circumstances in which they would be raised.

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Presidency text proposal	**MS comments**
	Moreover, it is unclear whether the provisions for the national resolution funds in Banking Union Member States are effective and adequate. These resolution funds are still being built up by small investment firms that are in the scope of the BRRD but not in the SRMR. We see merits in addressing this issue. SK (MS comments): **No comment.** SI (MS comments): SI: We agree. RO (MS comments): We agree to maintain the Commission's proposal. PT (MS comments): We overall agree with the rationale behind the Commission's proposal to set the maximum amount of extraordinary ex post contributions allowed to be called in a year at three times one-eighth (i.e., 3 x 12.5%, or 37.5%) of the target level of the resolution financing arrangement concerned. However, the drafting

Presidency text proposal	**MS comments**
	of the rule as suggested by the Commission ("shall not exceed three times 12,5% of the target level") does not seem in the most straightforward way, therefore we consider it should be revisited. PL (MS comments): We can agree with the proposal, however we believe that it requires clarification with regards to different target levels used by Member States. In case of Poland, there are two target levels of the resolution fund: 1) minimum level of 1.0% subject to rules set in BRRD 2) target level of 1.2% subject to rules set on a national level. In our case it would be rational to set the maximum amount of extraordinary ex-post contributions at three times 12,5% of the national target level (of 1.2%). Is our understanding correct that this approach is permitted, as Article 102 of BRRD states that 'Member States may set target levels in excess of that [1.0%] amount.'. NL (MS comments): We agree with the suggestion to maintain the Commission's proposal. IE

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Presidency text proposal	**MS comments**
	(MS comments): No comment. HR (MS comments): HR: We agree with these amendments.
2.13. Article 96(3) BRRD 'Reference to Chapter III of Title IV' In Article 96(3), first subparagraph, point (b) would be replaced by the following: '*(b) the requirements relating to the application of the resolution tools in Chapter* ***III IV*** *of Title IV.*'	FR (MS comments): We can accept this proposal. EL (MS comments): *EL: We support the proposed amendment by the Presidency replacing the reference to Chapter III with a reference to Chapter IV.* EE (MS comments): **Agree** BG (MS comments): We agree with the amendment of the current text of BRRD as proposed by the Presidency. AT (MS comments):

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Presidency text proposal	**MS comments**
	We can support this amendment. DE (MS comments): **Agree.** SK (MS comments): **No comment.** SI (MS comments): SI: We agree. RO (MS comments): We agree with PCY proposal. PT (MS comments): Please be aware that the Presidency proposal included in this table and the drafting suggestion in the Presidency non-paper of 27 March 2024 do not coincide. We express our agreement to the drafting suggestion foreseen in the Presidency non-paper.

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Presidency text proposal	**MS comments**
	For clarity purposes, the drafting we support, which is included in the Presidency non-paper, is: '*(b) the requirements relating to the application of the resolution tools in Chapter* ***~~III~~ IV*** *of Title IV.'* PL (MS comments): We support the correction. NL (MS comments): We support the suggestion. LV (MS comments): We agree with the proposed drafting. IE (MS comments): There is a mistake in the amended number of Chapter. Reference to Chapter "III" should be removed and Chapter "IV" should be included. If this is the case, also consistent with the non-paper, we agree and have no further comments. HR (MS comments):

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Presidency text proposal	**MS comments**
	HR: We agree with these amendments.
Member States are invited to provide, in writing, their views and/or drafting suggestions on the following provisions of the Commission's proposal. - **Article 45(1) BRRD 'Inclusion of RA determination in compliance to MREL'** - **Article 45b BRRD / Recital 27 'De minimis exemption from certain MREL requirements'** - **Article 45c (3) and (7) BRRD 'MREL Reference to critical 'economic' function'** - **Article 45f (1) BRRD 'MREL'** - **Article 45l BRRD/ Recital 47 'EBA report'** - **Article 47(1) BRRD 'Write-down and conversion'** - **Article 59(3) BRRD 'Write down and conversion EPFS'**	FR (MS comments): We support the inclusion of another BRRD technical amendment in article 45a. Article 45a(2) currently provides that mortgage credit institutions (MCI) are exempted from MREL provided that (i) they would be liquidated under normal insolvency proceedings or with transfer tools (ii) NIP or transfer tools for these institutions ensure that resolution objectives are met and that creditors "*bear losses*". In this case, the MCI shall not be part of the consolidation referred to in Article 45e(1). In our view, these provisions are problematic since they do not account for the specificities of MCIs mainly issuing covered bonds. Indeed, the whole framework of covered bonds ensures that creditors are not expecting to bear losses.

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Presidency text proposal	**MS comments**
- **Article 101(2) BRRD 'Additional rules on use of resolution financing arrangements'** - **Article 111(1) BRRD 'Sanctions'**	More importantly, the exclusion of the consolidation perimeter is not in line with the common practice for liquidation entities that can remain part of consolidated perimeter of groups, would lead to significant complexity for the concerned entities to produce some separate statements for change of perimeter that is not "economic", and can lead to an unwarranted increase of the TREA used in the calculation of group's external MREL (and thus an increase in external MREL), whereas MCIs are simply pass-through vehicles and their deconsolidation should not result in an increase of risks anyways. Therefore, we ask for considering replacing article 45a by the following: *"Notwithstanding Article 45, resolution authorities shall exempt from the requirement laid down in Article 45(1) mortgage credit institutions financed by covered bonds which are not allowed to receive deposits under national law, provided that all of the following conditions are met:* *(a) those institutions* ***would*** *be wound up in national insolvency proceedings, or in other types of proceedings laid down for those institutions and implemented in accordance with Article 38, 40 or 42; and*

Presidency text proposal	**MS comments**
	*(b) the proceedings referred to in point (a), ensure that creditors of those institutions, including holders of covered bonds, where relevant, **would be treated** in a way that meets the resolution objectives.* **[paragraph 2 on deconsolidation is removed]**" Also, we reserve our position on Article 101(2) BRRD 'Additional rules on use of resolution financing arrangements' since it is related to the discussion about the funding equation that is still ongoing. FI (MS comments): Article 59(3): Commission's proposal seems to lead to that write-down or conversion wouldn't be required in any events when EPFS is granted in the forms referred in article 32c, when currently only preventive measures are excluded from the write-down and conversion. This seems to be more than merely a technical adjustments. It is unclear to us, why the conditions for Art 32c

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Presidency text proposal	**MS comments**
	EPFS are loosened. We would prefer keeping the current wording of the art 59(3). Article 101(2): The legislation should be very clear on the fact that the SRF can not be used to absorb losses or recapitalise an institution without the 8% bail-in. The Commission's proposal would leave too much discretion for the SRB and blur the application of 8% rule. The 8 % bail-in condition should apply to all forms of capital support as well as any other use where the SRF suffers losses. '2. ~~Where the resolution authority determines~~ **In the event** that the use of the resolution financing arrangement for the purposes referred to in paragraph 1 of this Article ~~is likely to~~ result**s** in part of the losses of an institution or an entity as referred to in Article 1(1), points (b), (c) or (d), being passed on to the resolution financing arrangement **or such an institution or entity being recapitalised by the resolution financing arrangement**, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.' FI (MS comments):

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Presidency text proposal	**MS comments**
	Article 59(3): Commission's proposal seems to lead to that write-down or conversion wouldn't be required in any events when EPFS is granted in the forms referred in article 32c, when currently only preventive measures are excluded from the write-down and conversion. This seems to be more than merely a technical adjustments. It is unclear to us, why the conditions for Art 32c EPFS are loosened. We would prefer keeping the current wording of the art 59(3). Article 101(2): The legislation should be very clear on the fact that the SRF can not be used to absorb losses or recapitalise an institution without the 8% bail-in. The Commission's proposal would leave too much discretion for the SRB and blur the application of 8% rule. The 8 % bail-in condition should apply to all forms of capital support as well as any other use where the SRF suffers losses. '2. ~~Where the resolution authority determines~~ **In the event** that the use of the resolution financing arrangement for the purposes referred to in paragraph 1 of this Article ~~is likely to~~ result**s** in part of the losses of an institution or an entity as referred to in Article

Presidency text proposal	**MS comments**
	1(1), points (b), (c) or (d), being passed on to the resolution financing arrangement **or such an institution or entity being recapitalised by the resolution financing arrangement**, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.' ES (): **In connection to article 47(1), we suggest a change to article 48(7).** In Article 48.1, points (b) and (c) are replaced by the following: (b) if, and only if, the total reduction pursuant to point (a) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce **all claims from** ~~**the principal amount of**~~ Additional Tier 1 instruments to the extent required and to the extent of their capacity; (c) if, and only if, the total reduction pursuant to points (a) and (b) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce **all claims from** ~~**the principal amount of**~~ Tier 2 instruments to the extent required and to the extent of their capacity;

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Presidency text proposal	**MS comments**
	We believe this necessary to align the sequence of WDC and the insolvency hierarchy. Indeed, article 48.7 of BRRD (added by Directive 2019/879) requires Member States to ensure that *"all claims resulting from own funds items have, in national laws governing normal insolvency proceedings, a lower priority ranking than any claim that does not result from an own funds item".* However, this is not reflected in the sequence of WDC where only the principal amounts are subject to this power, leaving a different treatment for accrued interest from AT1 and T2 instruments in the sequence of WDC and the insolvency hierarchy in accordance with the mentioned art. 48.7 of BRRD. This creates a risk of NCWO. EL (MS comments): *EL: We support maintaining the Commission's proposal.* EE (MS comments): **EE: The final view on Article 101(2) BRRD 'Additional rules on use of resolution financing arrangements' depends on the drafting of Article 44. Moreover, we are not convinced that the**

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Presidency text proposal	MS comments
	first sentence of the Article 101(2) shall be deleted as proposed by the Commission. 8%-bail-in should stay a general condition to use the SRF, and flexibility to the resolution authorities not to apply 8% bail-in when using the SRF funds must be avoided and framed. **On other listed provisions, there are no strong reservations.** BG (MS comments): On Article 45(1) BRRD: We do not oppose the amendments as proposed by the Commission. On Article 45b BRRD: We do not oppose the amendments proposed by the Commission. On Article 45c(3) and (7) BRRD: We agree with the amendments proposed by the Commission. On Article 45f(1), subparagraph 3 BRRD: We do not oppose the amendments proposed by the Commission. On Article 45l BRRD:

Presidency text proposal	**MS comments**
	The amendments of Article 45l(1)(a) BRRD as proposed by the Commission should be deleted if Article 45ca is not approved by the co-legislators. On Article 47(1), point (b)(i) BRRD: We agree with the amendments proposed by the Commission. On Article 59(3) BRRD: We do not oppose the amendments proposed by the Commission. On Article 101(2) BRRD: We agree with the amendments proposed by the Commission. On Article 111(1) BRRD: We agree with the amendments proposed by the Commission. AT (MS comments): We can agree on the amendments to the provisions as stated here. However, in addition to that we would like to add one comment to the proposed amendment of **Art 32(1) (b) BRRD "Failing or likely to fail and alternative private sector measures":** The additional consideration of "the need to implement effectively the resolution strategy" could lead to potential conflicts of interests between competent and resolution authorities and possible support measures by an IPS should not be hampered.

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Presidency text proposal	**MS comments**
	From our point of view this additional consideration should not be applicable to confirmed support measures from an IPS and Art 32 (1) point (b) should be amended accordingly. DE (MS comments): **Agree.** **Could agree.** **Agree.** **Generally agree.** **Agree.** **Agree.** **Disgree.**

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Presidency text proposal	**MS comments**
	The Commission's proposal leads to weaker protection for SRF means. As commented previously, it needs to remain clear that 8%-bail-in is the general condition to use the SRF. This should be applied for all forms of capital support as well as any other use where the SRF suffers losses. We agree to no longer distinct between direct and indirect losses. However, the proposal would lead to the resolution auhtority receiving more latitude not to apply 8% Bail-in when using the SRF. This needs to be further framed to avoid situations where the Fund has been used to cover losses without sufficient bail-in. We prefer a more prudent approach and to keep the existing high level of protection for the SRF use in Art 76(3) SRMR. It should be clearly defined how the Resolution authority assesses the likelihood of losses. In particular regarding liquidity support, further provisions would be needed also reflecting the content of Recital 33 in this respect. Other provisions improving the liquidity mangament could include provision from the ESM Common Backstop (draft guidelines) or additional provisions as higher capital buffers , maturity extensions or ensuring the availablity of collateral.

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Presidency text proposal	**MS comments**
	<u>Proposal for keeping the current level of protection in Art 76(3) SRMR</u>: '2. ~~**Where the resolution authority determines**~~ **In the event** that the use of the resolution financing arrangement for the purposes referred to in paragraph 1 of this Article ~~**is likely to**~~ result**s** in part of the losses of an institution or an entity as referred to in Article 1(1), points (b), (c) or (d), being passed on to the resolution financing arrangement **or such an institution or entity being recapitalised by the resolution financing arrangement**, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.' **Coud agree** (on Article 111(1) BRRD 'Sanctions') SI (MS comments): No comments.

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Presidency text proposal	MS comments
	RO (MS comments): - **Article 45(1) BRRD 'Inclusion of RA determination in compliance to MREL'** We agree with COM proposal. - **Article 45b BRRD / Recital 27 'De minimis exemption from certain MREL requirements'** We agree with COM proposal. - **Article 45c (3) and (7) BRRD 'MREL Reference to critical 'economic' function'** We agree with COM proposal. - **Article 45f (1) BRRD 'MREL'** We agree with COM proposal. - **Article 45l BRRD/ Recital 47 'EBA report'** We agree with COM proposal. - **Article 47(1) BRRD 'Write-down and conversion'**

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Presidency text proposal	**MS comments**
	We propose the following drafting for the title of Article 47 paragraph 1 letter (a) and (b): "Treatment of shareholders in bail-in or write down or conversion of capital instruments **and eligible liabilities"** 1. Member States shall ensure that, when applying the bail-in tool in Article 43(2) or the write down or conversion of capital instruments and eligible liabilities in Article 59, resolution authorities take in respect of shareholders and holders of other instruments of ownership one or both of the following actions: (a) cancel existing shares or other instruments of ownership or transfer them to **converted** creditors; (b) provided that, in accordance to the valuation carried out under Article 36 **or Article 59(10),** the institution ~~under resolution~~ has a positive net value, dilute existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of: (i) relevant capital instruments and eligible liabilities in accordance with Article 59 issued by the institution pursuant to the power referred to in Article 59(2); or (ii) bail-inable liabilities issued by the institution under resolution pursuant to the power referred to in point (f) of Article 63(1). With regard to point (b) of the first subparagraph, the conversion shall be conducted at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership."

Presidency text proposal	**MS comments**
	Comments: The write down and conversion in art. 59 refers not only to capital instruments but also eligible liabilities. The "bailed-in creditor" concept is no defined and should be replaced with a wording that covers both creditors in bail-in or WDCCIEL. - **Article 59(3) BRRD 'Write down and conversion EPFS'** As a general remark, the extension of WDC to relevant eligible liabilities (internal MREL) should be adequately/consistently reflected throughout the amendments to BRRD (by CMDI) to ensure effective implementation of WDC. Moreover, we see merit in conferring the same safeguards/prerogatives for RA when exercising WDCC as with bail-in (this idea is not reflected in BRRD if considering the definition of resolution action, resolution competences and so on which excludes WDC independently of resolution action under 59(1) a) BRRD. We explained in detail the issues we identified in relation to WDC independent of resolution – see the explanatory document attached. - **Article 101(2) BRRD 'Additional rules on use of resolution financing arrangements'** We agree with COM proposal - **Article 111(1) BRRD 'Sanctions'** We agree with COM proposal PT (MS comments):

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Presidency text proposal	**MS comments**
	We agree with the Commission's proposal for these provisions. Regarding article 59, we would suggest the following amendment to the paragraph 1a, even though it was not targeted in the review by the Commission: *1a. The power to write down or convert eligible liabilities independently of resolution action* ***at the level of the concerned institution or entity*** *may be exercised only in relation to eligible liabilities that meet the conditions referred to in point (a) of Article 45f(2) of this Directive, except the condition related to the remaining maturity of liabilities as set out in Article 72c(1) of Regulation (EU) No 575/2013.* In our view, there has been some confusion on the interpretation and implementation this provision, especially in what concerns iMREL. We believe the expression "independently of resolution action" refers to the particular institution which will be object of write down and conversion powers, but such action can occur integrated in a group resolution strategy, where resolution tools and powers are applied to the resolution entities. As such, we think that this "independently of resolution action" can apply in different scenarios.

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Presidency text proposal	**MS comments**
	- When write down and conversion powers are applied at the level of the resolution entity, but no resolution action is applied thereto; - When write down and conversion powers are applied at the level of one or more subsidiaries and no resolution tool is applied to the resolution entity; - Also, when powers of write down of iMREL instruments are exercised at the level of subsidiaries and such write down and conversion is integrated in a group resolution strategy that also includes the application of write down and conversion powers/resolution tools to the resolution entity. PL (MS comments): 45(1) – no objections. **45b(10) – disagree**. Our experiences in resolution evidence that MREL to be fully sufficient shall be subordinated. At this moment BRRD is more prudent in this field that TLAC Term Sheet and this should be kept, in particular taking into consideration that proposed exemption refers to G-SII entities and fished banks. 45c(3) and (7) – no objections. 45f(1) – no objections.

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Presidency text proposal	**MS comments**
	45l – no objections. 111(1) – no objections. NL (MS comments): Article 45(1) BRRD 'Inclusion of RA determination in compliance to MREL': no comments Article 45b BRRD / Recital 27 'De minimis exemption from certain MREL requirements': no comments. Article 45c (3) and (7) BRRD 'MREL Reference to critical 'economic' function': With regards to Article 45c(3(b)(i) and (ii): This article should be amended to incorporate GS ll leverage buffer requirements (Article 92(1a) of Regulation (EU) No 575/2023) and Pillar 2 (Article 104a of Directive 2013/36/EU) leverage requirements.

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Presidency text proposal	MS comments
	With regards to Article 45c(3)(a)(ii) and 45c(3)(b)(ii): This article should be amended to allow NRA's to calibrate MREL at a level sufficient to execute a bank's preferred and variant resolution strategies. Currently, it is only possible to calibrate MREL on the basis of the preferred resolution strategy. We suggest to add 'and variant resolution strategies' after every notion of 'preferred resolution strategy'. Article 45f (1) BRRD 'MREL' : no comments Article 45l BRRD/ Recital 47 'EBA report': No comments Article 47(1) BRRD 'Write-down and conversion' With regards to Article 47(1)(b)(i): NRA's cannot retain or transfer a bank's existing CET1 instruments directly to a purchaser (via the bridge institution or the SoB tool) under the current framework of the BRRD. They have to convert relevant capital instruments first and issue new

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Presidency text proposal	**MS comments**
	CET1 instruments, before being able to transfer these to a purchaser or bridge institution. This can cause legal difficulties for non-EU holders of these instruments. These challenges can be avoided if NRA's are allowed to directly transfer the existing shares of a bank to a purchaser or a bridge institution, without having to convert any capital instruments to new shares. We suggest to add the underlined passages in the text and delete the existing text struck through: 1. Member States shall ensure that, when applying the bail-in tool in Article 43(2) or the write down and conversion powers of relevant capital instruments and eligible liabilities in Article 59, resolution authorities take in respect of shareholders and holders of other instruments of ownership one or both of the following actions: (a) cancel existing shares or other instruments of ownership or transfer them to: (i) ~~bailed in~~ converted creditors; (ii) to the purchaser, when applying the sale of business tool; or (iii) to a bridge institution, when applying the bridge institution tool; Article 59(3) BRRD 'Write down and conversion EPFS':

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Presidency text proposal	MS comments
	Although not included in the list for technical comments, we have a suggestion for article 63, which in our view relates to article 59. The existing second paragraph Article 63 only applies to transfers of instruments/assets/rights. It does not apply to the issue of new securities, such as shares or other instruments of ownership. We suggest a new third subparagraph (to be inserted ahead of the existing third paragraph) to cover the issuance of new securities. The new third paragraph mirrors the existing second paragraph but also seeks to disapply any requirements or formalities, which would ordinarily apply to the issue of new shares or other instruments of ownership: Member States shall also ensure that resolution authorities can exercise the powers under paragraph 3 of Article 60 or paragraph 1, point (i) of this Article irrespective of any restriction on, requirement for consent to, or any other legal requirement or formality otherwise applicable to, the issuance of shares or other instruments of ownership.

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Presidency text proposal	**MS comments**
	Article 101(2) BRRD 'Additional rules on use of resolution financing arrangements': We fear that the current wording of the article gives too much flexibility to allow the use of resolution funds for absorbing losses without first having to meet the 8% TLOF contribution from the bank's own resources. We suggest to add the underlined passages in the text and delete the existing text struck through: '2. Where the resolution authority determines that <u>there is a risk that</u> the use of the resolution financing arrangement for the purposes referred to in paragraph 1 of this Article <u>might</u> ~~is likely to~~ result in part of the losses of an institution or an entity as referred to in Article 1(1), points (b), (c) or (d), being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.'; Article 111(1) BRRD 'Sanctions' No comments.

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Presidency text proposal	MS comments
	IE (MS comments): - **Article 45(1) BRRD 'Inclusion of RA determination in compliance to MREL'** Agree, no comment. - **Article 45b BRRD / Recital 27 'De minimis exemption from certain MREL requirements'** Agree, no comment. - **Article 45c (3) and (7) BRRD 'MREL Reference to critical 'economic' function'** Agree as it broadens scope of such functions. - **Article 45f (1) BRRD 'MREL'** Agree as it addresses Union parent undertakings that are not institutions by including reference to "and second". - **Article 45l BRRD/ Recital 47 'EBA report'** It appears to be a slightly odd wording as Article 45ca is not part of either Article 45e or 45f. We suggest instead:

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Presidency text proposal	**MS comments**
	*'(a) how the requirement for own funds and eligible liabilities set in accordance with Article 45e or Article 45f**, and 45ca,** has been implemented at national level~~,~~ ~~including Article 45ca,~~ and in particular whether there have been divergences in the levels set for comparable entities across Member States;'* Seems reasonable to stop triennial report after two goes. No issue with Recital 47. - **Article 47(1) BRRD 'Write-down and conversion'** Agree, no comment. - **Article 59(3) BRRD 'Write down and conversion EPFS'** Agree, no comment. - **Article 101(2) BRRD 'Additional rules on use of resolution financing arrangements'** Agree, no comment.

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Presidency text proposal	**MS comments**
	- **Article 111(1) BRRD 'Sanctions'** Agree, no comment. HR (MS comments): We support the Commission's proposal for these BRRD amendments.
END	**END**

Council of the European Union
General Secretariat

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés
Subject:	Consolidated comments to the Presidency Questionnaire on BRRD technical topics CMDI, following the WP Meeting of 25 March 2024. Comments from 21 MS