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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés
Subject:	CMDI WP 28.05.2024: Agenda Item 2 - Commission Services' assessment on the conditions for use of the DGS bridge – in preparation for the next CMDI trilogue (05.06.2025)

In orange: conditions present in the Commission proposal
In blue: conditions only applicable in the Banking Union

Objective 1: DGS bridge should not replace nor discourage banks' own loss-absorbing capacity	
1) Exclusion of liquidation entities (line 455 BRRD)	**OK to keep** As per COM proposal
2) Only for banks that were earmarked for resolution at least 2 years before failure (line 455a BRRD)	**Should not be kept** Too restrictive and arbitrary, may leave cases without solution. Change in strategy may have been due to circumstances outside bank or RA control (restructuring, financial stability, macro context).
3) Full write down of all MREL, with exception of liabilities that cannot be bailed-in based on Art. 44(3) BRRD up to 2.5% (line 453a BRRD)	**OK to keep but with amendments** Cap of 2.5% should be removed: RAs would already be required to justify exclusions, the cap is arbitrary, would block transactions where buyer wants the entirety of the deposit book for reputational reasons (where deposits are used for MREL)
4) No MREL breaches 8-36 months before failure (MS option in BRRD; mandatory in SRMR) (line 453c BRRD, lines 410e and 410n SRMR)	**Should not be kept** Creates cliff effects, binds the RA with an arbitrary 8-month timeline to trigger resolution if it needs to use the bridge (although breach of MREL is not a sufficient condition for failing or likely to fail), blocks RA in case a breach in the past has been overcome but the bank's situation deteriorates again, not aligned with the timing for the application of the M-MDA rules, not fit for MREL-TEM where there is no buffer stacking on top of it
5) DGS bridge not possible for banks in MREL transitional build-up periods, unless very extraordinary situation of a systemic crisis (lines 455b-455c BRRD)	**Should not be kept** Leaves cases without solution, inconsistent with condition on MREL breach (#4), change in strategy may have been due to circumstances outside RA control, banks in transitional period are the ones targeted by the review (smaller and medium-sized banks changing strategy), creates cliff effects (e.g. if failure occurs in last months of transitional period).
Objective 2: DGS bridge should remain exceptional	
6) DGS bridge allowed in resolution and also in support of Government Financial Stabilisation Tools (lines 453, 454 BRRD)	**OK to keep but with amendments** Only for resolution, as per COM proposal
7) No automaticity: case-by-case decision by the RA (line 442 BRRD)	**OK to keep** As per COM proposal
8) DGS may only be used to protect non-covered deposits where justified (line 442 BRRD)	**OK to keep** As per COM proposal
9) Acquisition and distribution ban (line 445 BRRD)	**OK to keep** As per COM proposal

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10) Clawback mechanism of variable remuneration of managers of the failed bank (line 456a BRRD)	**OK to keep** Avoids moral hazard, applies only after resolution. Technical clarifications will be required
11) Winding up of the residual institution; in case of bridge bank, operations to be terminated as soon as possible (line 453b BRRD)	**OK to keep** In line with BRRD framework
12) [SRMR:] Emergency brake when SRF used up to 17.5% target level via DGS bridge; COM report with legislative proposal to lift cap (lines 412a-412b SRMR)	**Should not be kept** Arbitrary, creates cliff effects, overlaps with existing framework which already contains appropriate decision-making safeguards, legislative procedure not speedy enough in crisis situations to lift the cap, creates uncertainty on ability to counter systemic crises affecting several banks. If kept, should be amended as follows: incremental approach, with a first threshold in terms of aggregate SRF spending over [3] years after which SRB Plenary issues mandatory guidelines for use of BtG + a second higher threshold in terms of aggregate SRF spending over [5] years after which Commission shall provide a report on the DGS bridge with a possible legislative proposal.
13) [SRMR] banks 30-80bn: Council approving the resolution scheme (lines 254a, 255-255e SRMR)	**Should not be kept** Politicises resolution decisions, not sufficiently justified, no criteria given for Council to decide, overlooks COM role in endorsing the scheme, adds complexity to decision making, overlaps and inconsistency with existing framework where Council is involved (no mandatory Council involvement for larger banks, including G-SIIs).
14) [SRMR] banks 30-80bn: Report by SRB and NRA ex post on use of DGS bridge (line 410o SRMR)	**OK to keep**
15) [SRMR] banks EUR 30-80bn: approval from 5 out of 6 permanent board members (line 410o SRMR)	**Should not be kept** No justification for special process for DGS BtG vs other aspects in the resolution decision or other resolution cases requiring a much larger SRF contribution
Objective 3: The scope of banks for which the DGS bridge can be used should be well framed	
16) Only available for transfer strategies with market exit (lines 439 and 442 BRRD)	**OK to keep** As per COM proposal
17) [SRMR:] Distinction between banks below EUR 30bn and banks between EUR 30-80bn (line 410f, 410g SRMR)	**OK to keep but with amendments** Distinction may be kept, but it needs to apply to the entire EU (not just for Banking Union banks).
18) [SRMR:] Available to banks between EUR 30-80bn only in exceptional circumstances (line 410f, 410g SRMR)	**Should not be kept**

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	Too vague, additional conditions already provide for a differentiated treatment, without the need for special justification
19) [SRMR:] Available to banks between EUR 30bn and EUR 80bn only for a period of 10 years (sunset clause) (line 410f SRMR)	**Should not be kept** Arbitrary, cannot know whether the tool will not be needed in 10 years, creates a lot of uncertainty on the effectiveness of the CMDI framework
20) [SRMR:] Available to banks between EUR 30bn and EUR 80bn only where necessary to preserve financial stability and avoid significant adverse effects on the financial system (line 410f SRMR)	**Should not be kept** No need for additional requirements to motivate the decision, remaining safeguards should be sufficient – bank already has positive PIA
21) [SRMR:] Available to banks between EUR 30bn and EUR 80bn only where the deposits exceed 65% TLOF (line 410h SRMR)	**Should not be kept** Creates cliff effects, does not consider volatility of deposits in stress situations, requires constant updating during the resolution weekend, not future proof (if deposits move from banks to capital markets with the development of CMU/SIU), objective to delineate business models is already captured by condition #16)
22) [SRMR:] Available to banks between EUR 30bn and EUR 80bn only where MREL capacity was at least 8% TLOF 12 months before FOLF (line 410i SRMR)	**Should not be kept** Creates cliff effects, not consistent with other elements of the framework (8% MREL only required for banks above 100bn), reopens indirectly BRRD 2 delicate agreement on MREL, creates a 12-month deadline for RAs to rush to resolution once MREL capacity dips below 8% (which might not even be a breach of MREL, and MREL breach is not a condition for failing or likely to fail), requires new reporting to monitor TLOF on a permanent basis.
Objective 4: Ensure prudent use of safety nets (DGS and resolution funds)	
23) DGS contribution capped at difference between assets and deposits and amount for capital neutrality (lines 442-444 BRRD)	**OK to keep** As per COM proposal
24) DGS contribution is capped by the least cost test (line 446 BRRD)	**OK to keep but with amendments** Depends on the final design on the LCT
25) DGS is protected by 'no creditor worse off' (line 447 BRRD)	**OK to keep but with amendments** Depends on the final design on the LCT
26) DGS contribution capped at amount necessary to reach 8% TLOF (line 454 BRRD)	**OK to keep** As per COM proposal
27) Cap on DGS contribution in 62,5% target level (MS option in BRRD, mandatory in SRMR) (line 455d BRRD, line 411a SRMR) [SRMR:] Cap can be lifted by DA in systemic crisis or for DGS contribution after 5% TLOF by SRF (line 411b SRMR)	**Should not be kept** Arbitrary, potentially limiting flexibility in crisis, level playing field issues with different impact in small MS with small DGS target level vs bigger MS, uncertainty around conditions to lift the cap (who assesses existence of systemic crisis), may give DGS authorities a veto power over resolution, allowing cap to be lifted for DGS contribution after SRF

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	contribution inconsistent with goal of preserving DGS means. If kept, the following modifications would be needed: mandatory in all EU, cap can be lifted by DGS designated authority subject to less restrictions than those in the Council text
28) [SRMR] 6.5% TLOF (banks <EUR 30bn) and 8% TLOF (banks EUR 30-80bn) losses absorbed in the 12 months preceding FOLF (line 410d, 410m SRMR)	**Should not be kept** High complexity with concept of historical losses, moving time-window of 12 months requiring extra reporting, impossibility to calculate loss-absorption outside of reference dates for financial statements, duplication with loss-absorption conditions (#29).
29) [SRMR:] Cap on DGS contribution of 2.5% TLOF (banks <EUR 30bn) and 1.25% TLOF (banks EUR 30-80bn) (lines 410b, 410j-410k SRMR)	**OK to keep but with amendments** Cap may be kept but it should be applicable only to banks between EUR 30-80bn, with an increase in caps to [2.5%-3%], and be applicable for the whole EU