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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 - PCY Non Paper - CMDI Reflections in Preparation for the Trilogue on 5 June

CMDI Reflections in Preparation for the Trilogue on 5 June

During the last political trilogue (PT) on 22 May, the co-legislators exchanged views on the key red lines and objectives of the CMDI review. The negotiations are scheduled to continue at the next PT on 5 June.

In light of the discussions held during the previous PT and with a view to preparing for the upcoming one, this paper aims to further explore possible directions for compromise in the following areas. The Presidency outlines approaches that could serve as potential landing zones, where needed.

Main political topics

1. Public interest assessment (PIA)

On the topic of the Public Interest Assessment (PIA), the co-legislators remain divided regarding the proposed EBA mandate to develop Regulatory Technical Standards (RTSs) aimed at harmonising PIA practices. While most Member States — in a spirit of compromise with the European Parliament — do not object to a limited proposal for an EBA report on PIA in the context of resolution planning only (not its application), the Presidency wishes to put forward the following suggestions.

Proposal for a compromise:

Add the following paragraph to the Article 10:

"10. EBA shall contribute to promoting the effective and consistent approach to the public interest assessment, referred to in Article 32 paragraph 5, in the resolution planning by preparing a report on the practices of resolution authorities in this area."

2. Creditor hierarchy (CH) and resolution objectives (ROs)

Although during the last trilogue the European Parliament expressed interest in further exploring the idea of a three-tier creditor hierarchy—placing the DGS, households, and SMEs in the first rank—the Presidency notes that an overwhelming majority of Member States wish to preserve the existing DGS super-preference. In light of this, and considering the Presidency's intention to continue advocating for the DGS super-preference, the following assumptions are proposed as a basis for compromise.

Proposal for a compromise:

a) Keep DGS super-preference (DGS in the first rank of creditor hierarchy; lines 428-429b BRRD);
b) Build on the concept of 3-tier depositor preference with the exceptions for MREL-eligible and subordinated deposits as outlined below;
c) Design second and third creditor hierarchy's ranks in a way that ensures higher protection for selected groups of eligible depositors by higher seniority than other depositors (openness to define the group; initial proposal: households and SMEs as mostly privileged, just after DGS; openness to consider local government units in the same rank; lines 429c-431c BRRD);
d) Separate MREL-eligible deposits, but openness to technical refinements suggested by COM in its paper, provided that the separation of such deposits is preserved (initial proposal to consider: simple general carve-out of MREL-eligible deposits with particular place in the hierarchy to be decided at the national level; lines 431d-431e BRRD);

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e) Address the issue of subordinated deposits (openness to particular solution, as long as the substance of the line 428 BRRD is materially maintained as the Council approach);
f) Keep the resolution objective related to deposits unchanged (line 202 BRRD as in the Council approach).

3. Least cost test (LCT)

While the Commission has been asked to prepare a contribution for the upcoming trilogue outlining possible solutions on the Least Cost Test (LCT) to help bridge the expectations of the co-legislators, the Presidency would, in the same spirit, like to invite Member States at this stage to provide feedback on the following options in this area:

Option 1 (alternative proposal to the current Council and EP approaches)

a) Replace the existing proposals on the LCT with a simplified rule stipulating that DGS intervention must not exceed the amount of covered deposits collected by the institution;

Option 2 (proposal combining the Council's and EP's positions)

a) For all DGS interventions calculate the estimated costs of repaying depositors based on a net basis (consider recoveries, scalar factors and indirect costs) (lines 240-247 DGSD);
b) As regards the recoveries and scalar factor - reflect the uncertainty connected to the estimates (agree on no scalar factor in the calculation of the DGS intervention in resolution; openness to a particular solution as regards the application of scalar factor in other measures provided that uncertainty is reflected; lines 244, 245 DGSD);
c) Use, as proposed by the EP, indirect costs for DGS arising from potential economic and financial instability, including the need to use additional funds to protect depositors and financial stability taking into account potential contagion effects, economic and financial risks and any reputational damages for the banking system, including where relevant, the protection of the joint trademark (lines 244, 252 DGSD);
d) Use, as proposed by the Council, the estimated losses of other (i.e. non-covered) depositors (scope dependent on creditor hierarchy) as a proxy (one of the elements to be included/considered) for indirect costs arising from potential economic and financial instability (lines 240, 244a DGSD);
e) Use BRRD valuations (Art. 36(1) BRRD) only in the context of DGS contribution in resolution (line 244b DGSD);
f) Take into account specificities of IPS-DGS (line 247a DGSD);
g) Reject EBA RTS (lines 248-254 DGSD), since under the current proposal the need for EBA RTS is definitely limited and some level of flexibility should be left for resolution authorities.

While the Presidency supports retaining the LCT and pursuing a compromise that balances the expectations of both the Council and the European Parliament, Option 1 offers the merit of streamlining the framework while safeguarding sufficient flexibility for DGS interventions beyond deposit payouts. It should be noted that other provisions governing DGS interventions would remain applicable and ensure that any potential DGS contribution is assessed in light of the specific economic circumstances of the case. For instance, in the context of resolution, Article 109 of the BRRD sets out how to calculate the DGS contribution when various resolution tools are applied, thereby limiting it to the amount necessary based on the economic conditions of the transaction.

4. Bridge the Gap (BtG)

Differences between the co-legislators regarding the design of the Bridge-the-Gap (BtG) mechanism remain substantial. The European Parliament wishes to further streamline the BtG mechanism, expressing concerns that, under the Council's proposed conditions, banks could be left without a credible resolution option. There is also concern that resolution authorities might be forced to make last-minute adjustments to their crisis management strategies, including resorting to alternative measures. In response, and with the aim of preventing such scenarios, the Commission has prepared a technical assessment of the Council's proposed conditions to help steer the discussion at the upcoming trilogue. Member States are invited to consider the Commission's assessment in this context.

Reflecting on the Commission's assessment, the Presidency is sharing its proposed approach on the BtG conditions and invites Member States to provide their comments ahead of the upcoming trilogue. In formulating this approach, the Presidency has sought to balance Member States' views while constructively addressing the concerns of the European Parliament.

No.	Initial safeguard	Lines	Proposal for the treatment of the safeguard in the compromise	Outcome
1	Pecking order (i.e. setting the order of using industry-funded safety net funds and their level of contribution)	295-298, 298a-b BRRD 320-323a SRMR	As in the Council negotiating mandate (in particular, SRF contribution capped at 5%TLOF)	Kept
2	Full write-down or conversion of all MREL-eligible items, i.e. own funds and liabilities (with the exception for 2,5% of these liabilities)	453a BRRD	Keeping the requirement for full write-down or conversion as in the Council negotiating mandate, but showing openness to remove reference to 2,5% as proposed in the Commission assessment	Modified
3	Clear exit strategy (residual entity is wound up or bridge bank terminated)	453b BRRD	As in the Council negotiating mandate	Kept
4	(Optional) No MREL breach 8-36 months before FOLF determination	BRRD 453c	The requirement regarding the lack of a MREL breach can be rephrased, building onthe EP text BtG is allowed for a bank that has breached its final or intermediate MREL requirement in no more than 2 quarters within 4 years ending 9 months before the determination of FOLTF. The last period before FOLTF can be extended by 3 months if, meanwhile, an early intervention	Modified (based on the EP's approach)

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			measure has been activated by the supervisor Technical breaches - defined in a targeted manner and limited in scope - should not be taken into consideration	
5	No BtG if: - resolution plan changed in the previous 2 years - institution subject to MREL transitional arrangements but exemption to allow BtG in case of systemic crisis	455 455a 455b 455c BRRD	BtG not allowed for liquidation entities The requirement according to which BtG should not be accessible to banks that changed their resolution plan is kept, but for clarity and consistency with the resolution framework the referencing should be changed from years to planning cycles (would need to be defined), updates or reviews BtG allowed for banks under transitional arrangements if MREL intermediate target levels are satisfied	Modified (technical changes)
6	(Optional) DGS contribution not higher than 62,5% of target level	455d BRRD	DGS use capped at a maximum amount of 62,5% of its target level	Kept
7	Clawback mechanism for variable remuneration or discretionary pension benefits of management (Art. 109(2b) BRRD)	456 456a BRRD	As in the Council negotiating mandate	Kept
8	Council right to object to DGS contribution to BtG	255a-255e SRMR	Deleted	Removed
9	DGS contribution cap at 2,5% / 1,25% TLOF (for banks <30bn / >30bn)	410b/ 410k SRMR	DGS cap on TLOF has been deleted for small banks and raised to *[2,5%]* for medium-sized banks. Medium-sized banks: those with total of assets ranging between 30 and 80 bn euro (where relevant, the size caps are applied	Modified

			on a consolidated basis at the level of the banking group – consistent with the concept of top-tier banks already included in BRRD)	
10	Total loss absorption by shareholders and creditors of 6,5% / 8% TLOF over past 12 months (for banks <30bn / >30bn)	410d/ 410m SRMR	Total loss absorption by shareholders and creditors of 6,5% / 8% TLOF over past 12 months is deleted	Removed
11	No MREL breach 8-36 months before FOLF determination (for banks <30bn / >30bn)	410e/ 410n SRMR	The requirement regarding the lack of a MREL breach can be rephrased, building on the EP text BtG is allowed for a bank that has breached its final or intermediate MREL requirement in 2 quarters within 4 years ending 9 months before the determination FOLTF. The last period before FOLTF can be extended by 3 months if, meanwhile, an early intervention measure has been activated by the supervisor Technical breaches - defined in a targeted manner and limited in scope - should not be taken into consideration	Modified (based on the EP's approach)
12	BtG availability only for banks smaller than 30bn	410f SRMR	BtG available for small banks (assets below 30 bn euro) and, under stricter conditions, for medium-sized banks (assets between 30 and 80 bn euro)	Modified
13	BtG Availability for medium-sized banks (>30bn) up to 80bn in exceptional circumstances	410f SMMR	Availability for medium-sized banks only in exceptional circumstances is deleted	Removed
14	Sunset clause (for banks > 30bn)	410g SRMR	BtG is kept as a steady option for medium-sized banks, but under stricter conditions (compared to small banks)	Removed
15	Business model of the institution: Deposit	410h SRMR	Minimum deposit percentage is deleted	Removed

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	funded (for banks > 30bn)			
16	Write down or conversion of at least 8% TLOF 12 months before FOLF determination (for banks >30bn)	410i SRMR	Compliance with 8% TLOF MREL requirement for medium-sized is deleted	Removed
17	Voting rights in the SRB (for banks > 30bn)	410o SRMR	Minimum positive vote by SRB executives for medium-sized is deleted	Removed
18	DGS contribution not higher than 62,5% of target level	411a, 411b SRMR	DGS use capped at a maximum amount of 62,5% of its target level	Kept
19	Emergency brake clause when 17,5% of SRF Target Level used for BtG over 3 years	412a-412b SRMR	The emergency brake mechanism is kept, but the level could be changed to *[20%]*	Kept, but could be subject to changes
Additional provisions cited in Commission's assessment as conditions or safeguards for BtG				
20.	DGS bridge allowed also in support of Government Financial Stabilisation Tools (lines 453, 454 BRRD)	453, 454 BRRD	As in the Council's negotiating mandate (to keep consistency of the provisions)	Kept
21.	No automaticity: case-by-case decision by the RA	442 BRRD	As in the initial Commission's proposal	Kept
22.	DGS may only be used to protect non-covered deposits where justified (i.e. where such deposits are excluded by RA from the write-down or conversion tool)	442 BRRD	As in the initial Commission's proposal	Kept
23.	Acquisition and distribution ban	445 BRRD	As in the initial Commission's proposal	Kept
24.	Report by SRB and NRA ex post on use of DGS bridge	410o SRMR	As in the Council's negotiating mandate	Kept
25.	BtG only available for transfer strategies with market exit	439, 442 BRRD	As in the initial Commission's proposal	Kept
26.	Distinction between banks below 30 bn euro and banks with	410f, 410g SRMR	Distinction kept, but modified as provided in the lines above	Modified

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	assets in the range of 30-80 bn euro			
27.	DGS contribution capped at difference between assets and deposits and amount for capital neutrality	442-444 BRRD	As in the initial Commission's proposal	Kept
28.	DGS contribution is capped by the least cost test	446 BRRD	Dependent on the shape of LCT, but it seems that the Commission's proposal could be kept if losses to non-covered depositors would be included in the indirect costs	Kept (but final wording dependent on the LCT, which is subject to changes)
29.	DGS is protected by 'no creditor worse off'	447 BRRD	Dependent on the shape of LCT, but it seems that the Commission's proposal could be kept if losses to non-covered depositors would be included in the indirect costs	Kept (but final wording dependent on the LCT, which is subject to changes)
30.	DGS contribution capped at amount necessary to reach 8% TLOF	454 BRRD	As in the initial Commission's proposal	Kept

5. Alternative measures (AM)

Works on the alternative measures were delegated to the technical level in the following scope:

a) Conditions for applying alternative measures (lines 235a–235c DGSD) with a view of removing them;
b) Introducing rules on the perimeter of transferred items: DGS should be able to support the transfer of all deposits; transfer of capital and junior debt/claims financed by DGS funds would not be allowed; senior claims could be transferred based on the assessment by DGS;
c) Introducing a cap on the maximum amount of DGS contribution used for alternative measures at the level of covered deposits;
d) Keeping the rules for the framework of the DGS funds' replenishments (preserve status quo in lines 197-199 DGSD).

The main issue to be decided at the political level is whether the implementation of the measures into national legislation should be optional or mandatory. On this matter, the Presidency intends to maintain its position that alternative measures (as well as preventive measures) should remain national options.

However, Member States are also invited to provide feedback on the potential compromise proposed by the Commission during the last trilogue, which assumes mandatory transposition of APM measures, but frames their application at the national level as subject to DGS discretion under specific conditions.

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6. Preventive measures (PM)

As regards PM, no works were delegated to the technical level. MSs are invited however to comment on the following reflections for a possible compromise.

Proposal for a compromise:

a) Keep the preventive measures as optional tool, adjusted to the national specificity of the banking sector (line 193 DGSD);
b) Apply preventive measures as long as resolution or winding-up is not initiated (line 194 DGSD);
c) Keep the definitions (and its application) for the preventive measure note (line 205 as in the Council negotiating mandate) as more substantially adjusted and providing more clarity as regards the process, stages and associated documents;
d) Offer openness to including the following EP's elements:
    i. Additional conditions imposed on the institution, such as more stringent risk monitoring, governance arrangements to facilitate monitoring, verification rights for DGS, and increased reporting to CA (line 207 DGSD as EP's equivalent to the line 213h DGSD);
    ii. Requirement to transfer ownership to the private sector in the case of a capital transfer measure (accept line 213a DGSD, which is similar to line 213 DGSD in the Council version);
    iii. Update of the recovery plan (line 217a DGSD);
    iv. Prevention of the outflow of funds (line 220 DGSD);
    v. Compatibility with the restructuring plan required by the Commission (line 221 DGSD) and alignment with the capital conservation plan (line 218e DGSD).
e) Accept the provision requiring the commitment by the credit institution to maintain access to deposits (line 208 DGSD in the Council version, as it is easier to execute);
f) Offer openness to reconsider the necessity of the following elements from the Council's approach (once the solution for IPS is developed):
    i. Submission of a note by the institution to the DGS and DA, with communication to the CA (line 216 DGSD);
    ii. Content of the note (line 216a DGSD);
    iii. Post-preventive measures plan (lines 221b-221n DGSD).
g) Reject EP's proposal not to allow support if EPFS granted in the last 5 years and has fully complied with the reimbursement schedule or reimbursed any previous EPSF or preventive measure (210 DGSD);
h) Reject EP's proposal for RTS (lines 213b-213g);
i) Reject too stringent framework for the application of preventive measures (lines 213, 218-218g in EP version);
j) Keep the rules for the framework of the DGS funds' replenishments well-balanced (preserve status quo in lines 197-199 DGSD);
k) Ensure the full preservation of the ability of IPSs recognized as DGSs to take preventive measures using their available financial resources and to meet the requirements associated with their mandate and the CRR.

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7. SRB governance

During the previous political trilogue, the Commission proposed, in a spirit of compromise, introducing a "comply or explain" mechanism to ensure that NRAs are more effectively heard within SRB decision-making processes. While the Presidency considers this solution insufficient, Member States are invited to share their views. At the same time, the Presidency proposes further exploring ways to strengthen the role of NRAs in the SRB's strategic resolution planning decision-making process.

Proposal for a compromise:

a) Introduce the rule that the decisions regarding the SRB's policy in the resolution planning stage are taken by the majority of members *[60-75% of votes]* (lines 362a-362i SRMR);
b) Remove the possibility to express a dissenting opinion on the decision of the Board (line 362j SRMR);
c) Accept the EP's role in approving the renewal of board members' mandates for a second term (lines 374–380 SRMR).

8. MREL calibration

The issue will be discussed at the upcoming trilogue. The Presidency proposes to address it as outlined below.

Proposal for a compromise:

a) Delete Art. 45ca (lines: 323-338 BRRD) and Art. 12da (lines: 115-130 SRMR);
b) Open to find common wording for MREL transitional arrangements (347a-349b BRRD) with the following assumptions:
    a. Introduce a general framework for the application of transitional period for MREL requirement, which is applied when the resolution strategy is changed and where material changes in the operation of the institution occur (i.e. merger resulting in the essential increase of the MREL requirement);
    b. Introduce harmonized timelines for the application of transitional periods, e.g. maximum [three] years with the possibility to prolong to [five] years;
    c. Introduce the obligation for resolution authorities to set intermediate target levels to ensure linear build-up of funds.

Secondary political topics

9. Restriction of MREL eligible instruments for retail clients

The Council supports the idea of protecting retail clients, however any changes to the already existing framework should be well justified and lessons from the past experiences should be drawn. Avoidance of introducing additional administrative burden should also be taken into account.

Proposal for a compromise:

a) Reject EP proposal for adding paragraph 6a in the Art. 44a (lines 299a-299i BRRD);
b) Keep the Council proposal for preparing the report (in coordination with ESMA) on the problem (line 300 BRRD).

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10. Extraordinary Public Financial Support (EPFS)

During the 6TH CMDI trilogue on 28th April 2025, the co-legislators agreed to refer the issue to the technical level in order to find potential for compromises, despite remaining differences. The Council is open to create a framework that creates properly designed and incentivised framework for EPFS, but appropriate level of flexibility is needed, since the tools are designed to be applied in the crisis situations and excessive limitations may create financial stability implications.

Proposal for a compromise:

a) Keep the approach that the EPFS can be granted to remedy a serious disturbance in the economy of a Member State or to preserve financial stability (line 233 BRRD as in the Commission/Council approach);
b) Open to consider keeping 2% TREA cap on CET1 injections, but with a waiver for well-justified cases (line 248 BRRD);
c) Open to consider Commission's proposals for the definition of solvency of the institution and the identification of losses (lines 245-246 BRRD).

11. Use of public funds for alternative funding arrangements

The Council's aim is to keep the possibility to temporarily use public funds as alternative funding arrangements for DGSs, while ensuring the fiscal neutrality. Therefore, Council insists on maintaining the possibility to use, for example, credit lines or other equivalent instruments to temporarily finance the use of DGSs (especially for the deposit pay-out) to protect financial stability and depositors. Such financing should however be always paid back from banks' contributions.

Proposal for a compromise:

a) Reject changes of EP to the Art. 10 paragraph 9 and 11 (lines 178a-178b, 181 DGSD);
b) Open to introduce the provision that excludes to possibility for using non-repayable contributions to DGSs from public funds, but allowing temporary, fiscally neutral use of public funds as alternative funding arrangements, paid back from banks' contributions.

12. Time to re-reach target levels of funds

The aim of the Council is to create a framework that allows for a build-up of funds after their partial replenishment, but at the same time it does not create cyclicality risks. It should be also added that Council already agreed to the EP's proposal to regulate the replenishment of funds in case of lower depletion (less than 1/3 of the target level) within two years (with the possibility for the extension by one year). To create symmetric framework, the Council proposes to accept its 6-year timeline for the replenishment of funds in case of bigger depletion (less than 2/3 of the target level).

Proposal for a compromise:

a) Keep EP's proposal for replenishment of DGS funds in case of lower depletion (less than 1/3 of the target level) as agreed during the technical meetings (line 170a DGSD) and only for DGS funds;
b) Keep 6 years in the wording of BRRD/SRMR and DGSD provisions for the replenishment of funds (lines 417 BRRD, 391 SRMR, 170 DGSD).

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13. Use of resolution funds/SRF

The existing provisions constitute an integral part of the political agreement on the "8% TLOF" rule. Member States remain strongly opposed to any scenario where resolution funds might be used to cover institutional losses. In light of this, the Presidency intends to reject any amendments to Article 101(2) BRRD and Article 76(3) SRMR (lines 414-415 BRRD / 403-404 SRMR).

14. Report on liquidity in resolution

During the 6th CMDI trilogue on 28th April 2025, the EP's stressed the importance of addressing the issue of liquidity in resolution and necessity of having public liquidity support in the resolution framework. It was stated also by the EP that although the Treaties allow for liquidity provision by the ECB backed by collateral, this is insufficient and support from the European Stability Mechanism (ESM) would not be adequate.

Proposal for a compromise:

> In the spirit of compromise Council could agree to refer the EP's amendment to the technical level in order to finetune the scope and consider adequate timing of the report (lines 413a-413d SRMR).

15. Use of DGS funds in resolution

The issue of DGS use in resolution is closely linked to the BtG mechanism and its safeguards. The provisions in lines 446-447 of the BRRD were addressed under the Presidency's proposal for BtG safeguards, though they have a broader scope than the BtG mechanism alone. Similarly, line 448 of the BRRD relates to the same topic. The remaining point of concern is the wording of line 440 BRRD, specifically regarding (covered) deposits and how the DGS contribution is treated for NCWO purposes.

Proposal for a compromise:

a) Keep the reference to covered deposits when calculating the contribution of DGS in resolution regardless of LCT shape (line 440 BRRD);
b) As regards the amount of DGS contribution to resolution (line 448 BRRD), keep consistency with the approach for some safeguards in the area of BtG, i.e. adjust the the wording of 448 BRRD to the solution for LCT (it seems that the Commission's proposal could be kept if losses to non-covered depositors would be included in the indirect costs; the same as in case of lines 446-447 BRRD);
c) Show openness to the Commission's and EP's wording for the calculation of DGS contribution in the context of NCWO (line 387 BRRD);
d) Show openness to remove Council proposal for a provision related to the calculation of DGS contribution in the context of NCWO (line 387b BRRD), depending on the final LCT shape.

16. Temporary administrator

The rules for the activity of the temporary administrator have been subject to technical works. However some of the provisions have not been agreed, since the position of the EP and the Council varies significantly. These areas include the scope of administrator's powers and its adjustment (148 BRRD),

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role of the temporary administrator (152a BRRD), frequency of reporting by the administrator (157 BRRD) and the duration of the appointment for the administrator (157a-157b BRRD).

Proposal for a compromise:

a) Show openness to the possibility to adjust administrator's powers as proposed by the EP (line 148 BRRD);
b) Keep the Council's proposal for the role of the temporary administrator in the context of the preparation for the resolution (line 152a BRRD);
c) Show openness for the EP's proposal for an initial report about the temporary administrator's activities (line 157 BRRD);
d) Remove the EP's proposal to limit the duration for the of the appointment for the temporary administrator (157a-157b BRRD) – openness to the EP approach could be shown only in cases where such duration could be prolonged if needed to effectively complete the tasks of the temporary administrator.

17. Transposition and entry into force of directives/regulation

The co-legislators diverge on their approaches to the periods for the transposition or entry into force of the legal acts. While Presidency is supporting swift application of enhanced crisis management framework, it should be respected that especially transposition of directives in MSs takes time. At the same time, the level of technical detail of the package is high and the process of the transposition must be appropriately designed to be ensure achieving the expected outcome.

Proposal for a compromise:

a) Keep, in principle, 24 months for the transposition of the DGSD (line 342 DGSD; deadline the same in all approaches; line 342 DGSD as in the Council approach as technically more accurate);
b) Keep the transitional arrangements for branches joining the DGSs in the Council version as technically more accurate (line 339 DGSD);
c) Propose the 5-year transitional period for the IPSs (as a compromise between EP's 3-year period and the Council's (more or less) 7-year period; line 340 DGSD);
d) To ensure consistency with DGSD (since the provisions create a package that should be applied consistently), keep 24 months for the transposition of the BRRD (line 475 BRRD);
e) To ensure consistency with the rest of the package, apply 24-month period for entry into force and application for the banking union (line 419 SRMR).

Member States are kindly invited to provide comments on the proposed ways forward where they deem necessary.

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