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From:	Presidency
To:	Financial Services Attachés
Subject:	CMDI WP of 29/05/24: Presidency's proposed redraft on pecking order and bridge the gap (SRMR)

(24) Article 27 is amended as follows:

(a) paragraph 7 is replaced by the following:

‘7. The Fund may make a contribution as referred to in paragraph 6 only where all of the following conditions are met:

(a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of the total liabilities including own funds of the institution under resolution, measured in accordance with the valuation provided for in Article 20(1) to (15), has been made by shareholders, the holders of relevant capital instruments and other bail-inable liabilities through reduction, write-down, or conversion pursuant to Article 48(1) of Directive 2014/59/EU and Article 21(10) of this Regulation, and by the deposit guarantee scheme pursuant to Article 79 of this Regulation and Article 109 of Directive 2014/59/EU where relevant;

(b) the contribution from the Fund does not exceed 5 % of the total liabilities including own funds of the institution under resolution, measured in accordance with the valuation provided for in Article 20(1) to (15).’;

(b) paragraphs 9 and 10 are replaced by the following:

‘9. ~~The Fund may make a contribution from resources which have been raised through ex-ante contributions as referred to in Article 70 and which have not yet been used, provided that all of the following conditions are met~~ **In extraordinary circumstances, the Board may seek further funding from the deposit guarantee scheme subject to the conditions laid down in the second and third subparagraph, and only after:**

(a) the Fund has made a contribution pursuant to paragraph 6 and the 5 % limit referred to in paragraph 7, point (b), has been reached; **and**

(b) all liabilities, ranking lower than deposits, and not excluded from bail-in pursuant to paragraphs 3 and 5, have been written down or converted in full.

Where Article 109(2b) of Directive 2014/59/EU applies, the Board may seek further funding from the deposit guarantee scheme. The sum of the contribution of the deposit guarantee scheme under this subparagraph and under Article 109(2b) of Directive 2014/59/EU shall not exceed the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU.

The Board may seek further funding from alternative financing sources and the Fund may make a contribution from resources which have been raised through ex-ante contributions as referred to in Article 70 and which have not yet been used. Where Article 109(2b) of Directive 2014/59/EU applies, the Board may only seek further funding from alternative financing sources and the Fund may only make a contribution from resources which have been raised through ex-ante contributions as referred to in Article 70 and which have not yet been used where the sum of the contributions of the deposit guarantee scheme under the second subparagraph and Article 109(2b) of Directive 2014/59/EU has reached the

limit set by the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU.

10. ~~In extraordinary circumstances, as an alternative or in addition to the contribution of the Fund referred to in paragraph 9, where the conditions laid down in paragraph 9 are met, the Board may seek further funding from alternative financing sources.² The sum of the contribution of the deposit guarantee scheme under the first subparagraph and under Article 109(1), first subparagraph, point (b) of Directive 2014/59/EU shall not exceed the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU.~~

~~Where the deposit guarantee scheme contribution amounts to the counterfactual established by Article 11e(1), point (b) of Directive 2014/49/EU and where the conditions laid down in paragraph 9 are met, the Board may seek further funding from alternative financing sources and the resolution financing arrangement may make a contribution from resources which have been raised through ex-ante contributions in accordance with Article 100(6) of Directive 2014/59/EU and Article 103 of Directive 2014/59/EU and which have not yet been used.²~~

(41) Article 79 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following and the following new paragraphs 1a and 3a are added:

‘1. Participating Member States shall ensure that when the Board takes resolution action with respect to a credit institution, provided that such action ensures that depositors continue to have access to their deposits, ~~to prevent depositors from bearing losses,~~ the deposit guarantee scheme to which that credit institution is affiliated shall contribute for the purposes and under the conditions laid down in Article 109 of Directive 2014/59/EU.

1a. The amount of the contribution of the deposit guarantee scheme that counts towards the thresholds laid down in Article 37(10), Article 44(5), point (a) and in Article 44(8), point (a) in accordance with Article 109(2b) of Directive 2014/59/EU

- (i) shall be limited to 2.5% of total liabilities including own funds of the institution or entity; and
- (ii) shall count towards these thresholds only where a contribution to loss absorption and recapitalisation equal to an amount not less than 6.5% of the total liabilities including own funds of the institution under resolution has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities, excluding the contribution of the deposit guarantee scheme, over the 12 months preceding the declaration of the failing or likely to fail, including through write-down, conversion or otherwise.

1b The contribution of the deposit guarantee scheme shall not count towards the thresholds in Article 37(10), Article 44(5), point (a) and in Article 44(8), point (a) in accordance with Article 109(2b) of Directive 2014/59/EU for institutions of which the total value of their assets exceeds EUR 30 billion, except where, in exceptional circumstances,

counting this contribution towards the threshold is necessary to preserve financial stability and avoid significant adverse effects on the financial system, and:

- **the total value of the assets of the institution does not exceed EUR ~~35-75~~ 80 billion; and**
- **the deposits of the institution exceed ~~65%~~ of its total liabilities including own funds; and**
- **the eligible liabilities including own funds counting towards the minimum requirement referred to in Article 45(1) amounted to at least 8% of the total liabilities including own funds twelve months before the determination that the institution or entity is failing or likely to fail.**

In such a case, the amount of the contribution of the deposit guarantee scheme that counts towards the thresholds laid down in Article 37(10), Article 44(5), point (a) and in Article 44(8), point (a) in accordance with Article 109(2b) of Directive 2014/59/EU

- (i) **shall be limited to ~~1.25~~ % of total liabilities including own funds of the institution.**
- (ii) **shall count towards these thresholds only where a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the institution under resolution has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities, with exclusion of the contribution of the deposit guarantee scheme, over the 12 months preceding the declaration of failing or likely to fail, including through write-down, conversion or otherwise.**

For institutions of which the total value of their assets exceeds EUR 30 billion, the exception may only be granted provided that at least 5 out of the 6 members referred to in Article 43, paragraph 1, (a) to (b) agree to apply the exception. In such a case, the national resolution authority of the institution together with the Board shall within three months submit a report to the European Commission and to the Council explaining why the recourse to the exception was necessary and why it could not be prevented through adequate measures taken at the planning stage.

The application of the exception provided for institutions of which the total value of their assets exceeds EUR 30 billion under the third subparagraph of this paragraph shall cease to be possible 10 years after the entry into force of this regulation.

2. The Board shall determine the amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1 after having consulted the deposit guarantee scheme, and where necessary the designated authority within the meaning of Article 2(1), point (18), of Directive 2014/49/EU, on the ~~estimated cost of repaying depositors~~ **counterfactual established under pursuant to Article 11e(1), point (b) of Directive 2014/49/EU and in compliance with the conditions referred to in Article 20 of this Regulation**

The amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1 shall not be greater than an amount equal to ~~85~~ 62,5% of its target level.

In the very extraordinary situation of a systemic crisis or to allow the deposit guarantee schemes' contribution to amount to the counterfactual established by Article 11e(1), point (b) of Directive 2014/49/EU and where Article 27(10) applies, the designated authority may decide, after consulting the designated macro-prudential authority, that the contribution of the deposit guarantee scheme in accordance with paragraph 1 is greater than ~~75~~ 62,5% of its target level.

3. The Board shall notify its decision as referred to in the first subparagraph to the designated authority within the meaning of Article 2(1), point (18), of Directive 2014/49/EU and to the deposit guarantee scheme to which the institution is affiliated. The deposit guarantee scheme shall implement that decision without delay. **:**

3a. The application of Article 109(2b) of Directive 2014/59/EU shall no longer be possible where the contribution of the Fund under Article 109(2b) of Directive 2014/59/EU over a three-year period exceeds ~~20~~ 17,5% of its target level.

In that case, the Commission shall submit a report addressed to the European Parliament and the Council, where it assesses whether the application of Article 109(2b) of Directive 2014/59/EU threatens the capacity of the Fund to discharge its missions as specified in Article 76. The report shall be accompanied, where appropriate, by a legislative proposal allowing the further use of the Fund under the first subparagraph. **:**

(b) in paragraph 5, the second and third subparagraph are deleted;

Article 1a

By [PO – 7 years after entry into force], the Commission shall submit a report to the European Parliament and to the Council analysing the impact of the application of Article 79.1a, and in particular the necessity to maintain the exception provided for in the second subparagraph of Article 79.1a. Where appropriate, that report shall be accompanied by a legislative proposal.