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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 17.06.2025: Presidency non-paper - CMDI Compromise Deliberations Ahead of the Political Trilogue on 25 June

CMDI Compromise Deliberations Ahead of the Political Trilogue on 25 June – For Consideration at the Council Working Party Meeting on 17 June

During the last political trilogue (PT) on 5 June, the co-legislators identified key areas and potential directions for a political compromise on CMDI. While some points were provisionally agreed upon, others require further work to reach consensus, as outlined in the flash note prepared after the trilogue.

Building on the discussions from the previous PT and ahead of the upcoming one, this paper aims to explore possible compromise options that could serve as potential landing zones.

Main political items

1. Public interest assessment (PIA)

The topic of PIA was not discussed during the last political trilogue. Still, the remaining issue is the EBA mandate to develop Regulatory Technical Standards (RTSs) aimed at harmonising PIA practices. The Presidency suggests — in a spirit of compromise with the European Parliament —a limited proposal for an EBA report on PIA in the context of resolution planning only (not its application). The proposed drafting in this regard is presented in the Annex 1.

2. Creditor hierarchy (CH), resolution objectives and least cost test (LCT)

During the last political trilogue, the European Parliament — while maintaining its position on the creditor hierarchy — offered a compromise: it would accept a structure with the DGS at the top and a three-tier depositor preference, with exceptions for MREL-eligible and subordinated deposits, in exchange for the Council largely acknowledging the EP's position on SRB governance.

Following this, the Commission services prepared a technical note (circulated to delegations on 13 June), containing concrete drafting proposals. The Presidency positively assesses the direction of the Commission's proposal and recommends that Member States support it.

The agreement on DGS super-preference is linked to Option 1 for the LCT design outlined in the note prepared by the Commission ahead of the previous political trilogue, under which the DGS contribution may not exceed the amount of covered deposits.

In the Presidency's view, this solution is acceptable — provided it is made clear that the existing provisions governing the calculation of DGS contributions to other measures (such as in resolution, as well as alternative and preventive measures) continue to apply. This is essential to avoid any misinterpretation that the LCT would automatically permit DGS contributions up to the full amount of covered deposits. A corresponding drafting proposal is set out in Annex 2.

3. Bridge the Gap (BtG)

During the last political trilogue, the European Parliament, in response to the Presidency's suggestion of a recalibrated approach to BtG safeguards, strongly reiterated the need for a credible solution for small and medium-sized banks that may be unable to meet the 8% burden-sharing requirement. While reaffirming its commitment to enhancing resolvability — including through robust MREL capacity — the EP emphasised the importance of avoiding scenarios where banks are left without a viable resolution strategy, resulting in last-minute changes.

Following discussions between the EP and the Presidency, the Commission prepared a technical note circulated to delegations on 13 June, outlining a possible landing zone for the Bridge-the-Gap (BtG) safeguards. The Presidency acknowledges the Commission's efforts to identify a workable compromise. However, while remaining committed to reaching a viable agreement with the European Parliament, the Presidency, reflecting the views of the Council, wishes to pursue a more prudent and robust approach to the design of the Bridge the Gap (BtG) tool.

In particular, the use of BtG should be restricted to banks that have been earmarked for resolution at least two years prior to failure (noting that further technical work is needed to determine whether the reference should be to years, reviews, updates, or planning cycles). Accordingly, safeguard no. 2 should be retained.

Quantitative safeguards should also be set at more conservative levels. Specifically, safeguard no. 27 should be maintained, while safeguards no. 22 and 29 should be recalibrated more restrictively.

Member States are invited to share their final red lines on the set of BtG conditions and their detailed parameters, with a view to shaping a balanced and acceptable compromise with the European Parliament.

4. Optional transposition of alternative measures (AM) and preventive measures (PM)

At this stage, the key outstanding issue regarding Alternative Measures (AM) is whether their transposition into national legal frameworks should remain optional.

The Presidency continues to advocate for maintaining this optionality, including for Preventive Measures (PM), recognising it as a red line for most Member States—reasons for which were detailed in the non-paper shared two trilogues ago.

However, as the European Parliament insists on mandatory transposition of both AM and PM, the Commission proposed a compromise during the last political trilogue: a conditional mandatory transposition, as outlined in Annex 3. Member States are invited to share their final views and comments on this proposal.

5. SRB governance

In line with the Council's negotiating mandate, the Presidency has consistently advocated for strengthening the role of national resolution authorities (NRAs) in the adoption of SRB policies, methodologies, and guidelines.

However, during the last political trilogue—as outlined in the flash note—the European Parliament once again rejected the Presidency's proposals. The EP maintains that expanding the scope of the SRB Plenary Session's tasks could undermine the Board's effectiveness and has remained firm despite the Presidency's arguments.

Aware of the strong and divergent views among Member States on this issue, and recognizing the EP's firm stance as well as its offer to retain the DGS super-preference, the Presidency—after careful consideration—recommends leaning towards the EP's position. This approach offers a promising basis for reaching a broad political agreement on the CMDI package principles.

Member States are invited to support this suggested compromise solution, based on the EP's mandate and the Commission's proposed assumptions (see Annex 4).

In other areas regarding SRB governance, the Presidency proposes the following approach:

- Vice-Chair voting rights (lines 360a-360b SRMR): keep Council's additions in lines 360a-360b, which complement the lines 359-360;
- Publication of policies, guidelines etc. (lines 360c-360g SRMR): accept the EP's proposal after technical refinements to exclude the interpretation that all (also internal like instructions for NRAs) SRB's documents should be published be published;
- New task of the Plenary Session of the SRB: industry consultations (line 362e SRMR): could be open to remove the provision;
- Term of office and appointment and reappointment of Board members (lines 374-375, 377a, 378-380 SRMR): keep Council's approach for lines 374-375 SRMR as a medium ground between Commission's and EP's positions, remove line 377a and keep lines 378-378 as in the Commission's/Council approach.

6. MREL calibration

The issue was delegated to technical works to be developed based on the proposal outlined in the Presidency's paper presented for previous Council's meeting and will be discussed during the incoming technical trilogues.

Secondary political items

7. Restriction of MREL eligible instruments for retail clients

During the last PT the Presidency reiterated reluctance to accept EP's proposal, since it adds additional complexity, is impracticable to implement and, thus, will not support the protection of retail clients. The EP reiterated the need to implement measures to increase the level of protection, e.g. in the form of penalties for wrongdoing in this area. The Presidency proposes to agree, as a landing zone, to add appropriate provision addressing the proposal from the EP (Annex 5) instead of additional requirements proposed by the EP in lines 299-299i. Additionally, the Commission proposed to keep the current requirement for the report preparation (in cooperation with ESMA) in this area and add the recital (as in the COM's document shared with MSs on 13 June).

8. EBA mandates and numerical items

Apart from the EBA mandate in the area of PIA, the co-legislators propose to delegate to the EBA the preparation of the additional level 2 or level 3 acts. In principle, the Presidency proposes to reduce the number of such delegations, in light of simplification and limiting the administrative burdens. Some of EBA mandates, in light of the potential compromise, seem to be no longer justified.

Moreover, the list of numerical items, where the positions of co-legislators differ, was identified at the last PT.

The Commission has proposed landing zones for the issues mentioned above, in line with the mandate given during the last political trilogue. These compromise solutions can be found separately in the two tables listed to the annex of the agenda of the last trilogue. Member States are invited to provide their comments.

Annex 1: PIA – mandate for EBA

Recital (X)

EBA should contribute to promoting an effective and consistent approach among resolution authorities regarding the approaches used to determine, for the purpose of drafting resolution plans and group resolution plans, whether resolution action would be in the public interest. EBA should prepare a report that will be based on the EBA's stocktake of the policies developed by resolution authorities and used in the resolution planning stage.

Article 10

[…]

10. By [OP please insert the date = [3] years after the transposition date of this amending Directive], EBA shall publish a report on the internal policies and practices of resolution authorities to decide, when drawing up resolution plans or group resolution plans, whether a resolution action would be in the public interest pursuant to Article 32(5).

Annex 2: Drafting for LCT

Proposal for the drafting of Article 11e:

Article 11e

Least cost test

1. When considering the use of DGS funds for the measures referred to in Article 11(2), (3) or (5), Member States shall ensure that DGSs make a comparison of the following:

(a) the amount used by the DGS to finance the measures referred to in Article 11 (2), (3) or (5);

(b) the **amount of covered deposits at the credit institution**.

2. Member States shall ensure that the amount of the DGS intervention referred to in paragraph 1 point (a) does not exceed the amount referred to in paragraph 1 point (b).

3. The amount of DGS contribution shall not be higher than the amount resulting from the application of the conditions laid down in Article 109(1) of Directive 2014/59/EU , Article 11(3) or Article 11(5).

In the BRRD there are multiple provisions referencing to the Article 11e DGSD. Therefore, the following lines would need to be revised accordingly: 298 (depending on how we resolve the point on the pecking order); 387, 387b, 440 and 446.

Lines 447 and 448 BRRD can be removed since the transfer strategies including non-covered deposits there is no NCWO calculation nor a need to calculate the LCT (since the rule is that the amount of the DGS contribution is the difference between transferred liabilities and assets and this amount should not be higher than the covered deposits).

Annex 3: Optionality of AM and PM – as presented in the annex to the flash note from the previous trilogue.

COM proposal for a compromise on implementation of preventive and alternative measures

- For both preventive and alternative measures there are 2 sets of conditions:
  - Those related to the rules of operation, capacities and powers of the DGS/other authorities to implement preventive or alternative measures
  - Those related to the specific case where DGS funds need to be used
- Where the conditions related to the procedural rules, capacity and powers of the DGS or other authorities to apply the relevant measures are not met, MSs should not allow DGS to use their funds for those measures.
- In fact, the EP text obliges MSs to ensure that DGS funds are used for alternative and preventive measures only where those conditions are met but does not require MSs to set such rules or powers. We could work on those conditions to give re-assurance to MSs that their DGS would not be able nor obliged to apply preventive or alternative measures unless there are legal and practical grounds for the prudent implementation of such measures.

Possible drafting:

On preventive measures

Limit Article 11(3) to strong conditions for allowing DGS to implement PM in the first place (i.e. conditions related to DGS ability to implement such measures) and move all conditions related to the specific case and the relevant bank to Article11a.

(use the current Article 11(3)(b) and move here and combine conditions currently under Article 11a(1)(c) and Article 11a(2))

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Line 193 4CT DGSD - Article 11(3)

3. Member States ~~may~~**shall** allow **a** DGS~~s~~ to use the available financial means for preventive measures ~~as referred to in~~ **under the conditions of** Article**s** 11a**, 11b [and 11e]** ~~for the benefit~~**in order to prevent the failure** of a credit institution where ~~all of the following applies~~ **according to the relevant statutory or contractual rules the DGS has appropriate governance structure, monitoring powers, systems and decision-making procedures that are appropriate for selecting and implementing preventive measures and monitoring affiliated risks.**

[the reference to Article 11e will be maintained or deleted if LCT condition remains for all measures and is formulated with reference to the gross amount, amend 11e accordingly to ensure that it does not only outlines the methodology, but sets up a requirement]

The first subparagraph is without prejudice to the existing national institutional arrangements and powers of the competent authority and the resolution authority.

……..

Line 204 4CT DGSD - Article 11a(1)

1. **Where a DGS meets the requirements under Article 11(3),** Member States shall ensure that DGSs **may** use the available financial means for the preventive measures referred to in Article 11(3), provided that all of the following conditions are met:

[……conditions related to the specific case]

On alternative measures

Line 200 4CT DGSD – Article 11(5)

~~Where a credit institution is wound up in accordance with Article 32b of Directive 2014/59/EU in order to exit the market or terminate its banking activity,~~ **Where the resolution authority has determined that** a credit institution **meets the conditions laid down in Article 32(1), point (a) and (b), but not the condition laid down in Article 32(1), point (c) of Directive 2014/59/EU and** is **to be** wound up in accordance with Article 32b of ~~Directive 2014/59/EU~~ **the same directive** in order to exit the market or terminate its banking activity, Member States ~~may~~**shall** allow DGSs to use the available financial means for alternative measures to preserve the access of depositors to their deposits, including the transfer of assets and liabilities and a deposit book transfer, ~~provided that the DGS confirms that the cost~~ **where national rules governing winding-up procedures provide for powers of the DGS or the relevant national authorities to apply or control the application of such measures and** ~~all~~ ~~of~~ **under** the ~~measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11c of this Directive and that all the conditions laid down in Article 11d of this Directive are met.';~~ **following conditions** ~~are met~~**:**

……

Annex 4: Assumptions for the solution in the area of SRB governance (inclusion of NRAs in the adoption of SRB's policy documents)

- The possible compromise could consist of a mandatory consultation process between the Executive and the Plenary on policy instruments adopted by the SRB which would ensure that due consideration would be given to national authorities' views.
- The scope - which policy instruments the procedure should apply to - would be largely based on the Parliament text, i.e. rather broad, but the final legal text should ensure that the instruments in scope are clearly identifiable to minimise the risk of disagreements on scope.
    - The Executive Session will present a draft policy to the Plenary. The Plenary will ensure that national resolution authorities are consulted on the draft policy.
    - The Executive will assess the comments received and provide its assessment of the comments to the Plenary for discussion.
    - After the discussion, the Executive will decide on the final version of the policy after due consideration of all the comments received.
- The Executive will provide appropriate justification to the Plenary for the final policy choices made.

Annex 5: Restriction of MREL eligible instruments for retail clients

	COM	EP	Council	Proposal for drafting compromise
299	(28) in Article 44a, the following paragraph 8 is added:	(28) ~~*in*~~ Article 44a~~*, the following paragraph 8 is added*~~ ***is amended as follows***:	(28) in Article 44a, the following paragraph 8 is added:	(28) in Article 44a, the following paragraph 8 is added:
299a		***(a) the following paragraphs are inserted:***		(57) in Article 111(1), the following points (e) **and (f) are** added: **(e) failure to comply with the requirements set out in Article 44a** '(**f**) failure to comply with the minimum requirement for own funds and eligible liabilities referred to in Article 45e or 45f.';

Lines 299b-299i would be deleted.