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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 - Compromise Deliberations on Preventive Measures Ahead of the Political Trilogue on 25 June



CMDI Compromise Deliberations on Preventive Measures 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 discussed preventive measures (PM) and the treatment of Institutional Protection Schemes (IPs) recognized as DGSs.

Regarding preventive measures, the European Parliament expressed appreciation for the Council's efforts to find common ground and signalled acceptance of parts of the Council's proposal, as reflected in the flash note. However, divergences remain — in particular, concerning the latest acceptable moment for DGS intervention and the conditions attached to such support (e.g. the extent of reliance on previously received support or the amount of covered capital shortfall).

As for IPs, both co-legislators demonstrated interest in further exploring the landing zone developed by the Commission, centred on a lending mechanism based on the concept of funds' separation. The European Parliament, however, advocated for formal implementation of such separation.

In light of these discussions, and with a view to identifying a balanced way forward, the Presidency puts forward the following landing zone proposal encompassing both preventive measures and IPs. Delegations are invited to provide comments on the drafting presented below.

Article 11

Use of funds

[line 193 – Council version]

3. Member States may allow DGSs to use the available financial means for preventive measures as referred to in Article 11a in order to prevent the failure of a credit institution where all of the following applies:

[line 194 – Council version or new wording to find an operationally robust solution; FOLTF itself is not a separate administrative decision and therefore EP version might be difficult to implement in practice]

Option 1: *(a) the resolution authority has not taken any resolution action under Article 32 of Directive 2014/59/EU or any winding-up procedure has not been initiated;*

Option 2: *(a) the DGS has not received the communication referred to in Article 81(3) of Directive 2014/59/EU (from the competent authority or the resolution authority that the conditions referred to in points (a) and (b) of Article 32(1) are met);*

[line 195 – deleted]

[line 196 – EP version]

(b) all of the conditions laid down in Articles 11a and 11b are met.



[line 197 – Council version after technical refinement agreed during technical meeting]

4. *Where available financial means ~~are~~ have been used for preventive measures as referred to in Article 11a, the affiliated credit institutions shall immediately provide the DGS with the means used for such measures, where necessary in the form of extraordinary contributions, where any of the following applies:*

[line 198 – EP version]

(a) the need to repay depositors or to intervene in resolution arises and the available financial means of the DGS amount to less than two-thirds of the target level;

[line 199 – Council version]

(b) the available financial means of the DGS fall below 25 % of the target level.

Article 11a

Preventive measures

[line 204 – Council version]

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

[line 205 – Council version]

(a) the request of a credit institution for the financing of such preventive measures is accompanied by a preventive measures note containing measures as referred to in Article 11b;

[line 206 – modified EP version – consistency of wording ensured]

(b) the credit institution has consulted the competent authority on the measures envisaged in the preventive measures note referred to in Article 11b;

[line 207 – EP version]

(c) the use of preventive measures by the DGS is linked to conditions imposed on the supported credit institution, involving at least more stringent risk monitoring of the credit institution, accompanied by governance arrangements that facilitate such monitoring, greater verification rights for the DGS and more frequent reporting to the competent authorities;

[line 208 – Council version considering EP change]

(d) the use of the preventive measures by the DGS is conditional upon the credit institution's obligation to secure effective access to covered deposits;

[line 209 – Commission version]

(e) the affiliated credit institutions are able to pay the extraordinary contributions in accordance with Article 11(4);



[line 210 – modified EP version: the condition that EPFS was not granted in the last 5 years removed as arbitrary, also the effectiveness of preventive measures is not contingent on having received EPFS in the past five years]

f) if applicable, the credit institution complies with its obligations under this Directive has fully complied with the reimbursement schedule or reimbursed any previous extraordinary public financial support or preventive measure;

[line 210a – EP version with modifications acceptable provided that the second part – 'unless it endangers financial stability' – is retained. The term 'disruption' was replaced with 'endangering' as the latter can be assessed ex ante, whereas 'disruption' may be more difficult to verify in advance.]

(fa) the preventive measures are not used to offset losses that the credit institution or entity has incurred or is likely to incur in the near future, unless it endangers the financial stability.

[line 211 – Commission version]

2. Member States shall ensure that DGSs have monitoring systems and decision-making procedures in place that are appropriate for selecting and implementing preventive measures and monitoring affiliated risks.

[line 212 – Commission version]

3. Member States shall ensure that DGSs may implement preventive measures only where the designated authority has confirmed that all the conditions laid down in paragraph 1 have been met. The designated authority shall notify the competent authority and the resolution authority.

[lines 212a-212b deleted]

[line 213 – The EP version, with a technical refinement to also cover liability guarantees, which could be considered as an equivalent to a pure capital injection]

4. Member States shall ensure that the DGS uses its available financial means for capital support measures, including recapitalisations, asset impairment measures and asset or liability guarantees, only where the conditions under Article 11b are met.

[line 213a – EP version, as equivalent to the Council version of line 213]

Member States shall ensure that the DGS transfers its holdings of shares or other capital instruments in the supported credit institution as soon as commercial and financial circumstances allow.

[line 213b – EP version, but with guidelines rather than RTS]

4a. EBA shall develop guidelines to specify the following:

[line 213c – EP version]

(a) the conditions referred to in paragraph 1, point (c);

[line 213d – EP version, but with underlined changes]

(b) the monitoring systems and decision-making procedures that DGSs are to have in place in accordance with paragraph 2, and taking into account existing practices of DGSs that are IPS as referred to in Article 1(2), point (c),

[line 213e – EP version]

(c) taking into account the requirements set out in Article 11b, the modalities of cooperation between the resolution authorities, the designated authorities and the competent authorities under paragraphs 1 and 3 of this Article.

[lines 213f-213h – deleted]

[lines 215 – Council version]

Article 11b

Preventive measures note accompanying the request for preventive measures

[line 216 – EP version]

1. Member States shall ensure that credit institutions which request a DGS to finance preventive measures in accordance with Article 11(3) present to the competent authority a preventive measures note with measures that those credit institutions commit to undertake to secure compliance with the applicable supervisory requirements in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013.

[line 216a – deleted]

[line 217 – EP version]

2. The note referred to in paragraph 1 shall set out actions to mitigate the risk of deterioration of the financial soundness and strengthen the credit institution's capital and liquidity position.

[line 217a – EP version, although technically it should rather be included in BRRD]

2a. Where the financial means of a DGS are used for preventive measures in accordance with Article 11(3) of this Directive, the competent authority shall require the beneficiary credit institution to update, as applicable, the recovery plan as defined in Article 2(1), point (32), of Directive 2014/59/EU or the group recovery plan as defined in Article 2(1), point (33), of that Directive. The competent authority shall direct the supported credit institution to implement the measures referred to in Article 6(6), third subparagraph, of Directive 2014/59/EU where the conditions under Article 6(6) of that Directive are met.

[line 218 – modified EP version: word “current” removed in reference to capital shortfall]

3. Member States shall ensure that in the event of a capital support measure under paragraph 1, the available financial means of a DGS covers only the capital shortfall on the basis of the following elements, as evidenced in the note:



[line 218a – modified EP version: word “initial” removed in reference to capital shortfall]

a) the capital shortfall as identified in a Union stress test, asset quality review or equivalent exercise, or during the supervisory review and evaluation process, as confirmed by the competent authority;

[line 218b – modified EP version: six months changed to nine months]

(b) capital-raising measures to be implemented within nine months of submission of the business reorganisation plan;

[line 218c – EP version]

(c) safeguards preventing outflows of funds, including the measures referred to in paragraph 5;

[line 218d – EP version]

(d) where appropriate, contributions by shareholders and subordinated debt holders of the supported credit institution.

[line 218e – EP version]

When determining the capital shortfall, the DGS may also take into account any forward-looking capital adequacy assessment, including the capital conservation plan referred to in Article 142 of Directive 2013/36/EU.

[line 218f – removed]

[line 218g – EP version]

When determining the capital shortfall, DGS shall notify the competent authority.

[line 219 – EP version]

4. Member States shall ensure the note referred to in paragraph 1 provides for an exit strategy from the preventive measures, including a clearly specified repayment schedule by the credit institution of any repayable funds received as part of the preventive measures. That information shall not be disclosed until one year after concluding the exit strategy or the implementation of the remediation plan or the conclusion of the assessment under Article 11c(3)

[line 220 – EP version]

5. Member States shall ensure that no dividends, share buy-backs or variable remuneration are paid out and no irrevocable commitment to pay out dividends, share buy-backs or variable remuneration is undertaken by the supported credit institution. The competent authority may exceptionally partially restrict that prohibition where the credit institution establishes to the satisfaction of the competent authority that it is legally bound to pay out the dividends. Member States shall ensure that the restrictions under this paragraph remain in place until the supported credit institution has reimbursed the DGS with the same amount used for the preventive measures.



[new line – this provision is considered necessary to ensure clarity, in line with the Council’s compromise proposal]

Where the Union State aid framework is applicable, Member States shall ensure that the measures envisaged in the note referred to in paragraph 1 are aligned with the restructuring plan that the credit institution is required to submit to the Commission under that framework.

[line 220a – EP version, notion of “business reorganization plan” should be considered as BRRD already uses such a notion in the context of the application of bail-in]

5a. Member States shall ensure that within six months of the provision of the initial financial support, the beneficiary credit institution submits a business reorganisation plan to the competent authority. Where the competent authority is not satisfied that the business reorganisation plan is credible and feasible to secure long-term viability, any further financial support to the credit institution concerned shall be suspended, and the competent authority shall implement appropriate measures to ensure that long-term viability is secured.

[line 220b – deleted]

[line 221 – EP version]

6. Member States shall ensure that the measures envisaged in the business reorganisation plan referred to in paragraph 5a are compatible with the restructuring plan of the credit institution that is required by the Commission, in accordance with the Union State aid framework.

[line 221a – EP version]

6a. The competent authority shall provide the business reorganisation plan to the resolution authority. The resolution authority may examine the business reorganisation plan with a view to identifying any actions which might adversely impact the resolvability of the institution and may make recommendations to the competent authority with regard to those matters. The resolution authority shall communicate its assessment and recommendations within the timeframe set by the competent authority.

[lines 221b-221c – deleted]

[line 221d – Council version]

The competent authority may extend the period in paragraph 5a, up to a maximum of eight months after the preventive measures have been granted.

[lines 221e-221n – deleted]

Article 11c

Remediation plan

[line 224 – EP version]

1. Member States shall ensure that where the credit institution fails to fulfil the commitments outlined in the note referred to in Article 11b(1), or the business reorganisation



plan referred to in Article 11b(5a), first subparagraph, or fails to repay the amount contributed under the preventive measures at maturity or to comply with the exit strategy under Article 11b(4), the DGS informs the designated authority thereof without delay.

[line 224a – Council version with the addition involving a resolution authority]

1a. Member States shall ensure that, where the credit institution does not comply with its reimbursement obligations, the designated authority or the DGS informs the competent authority and resolution authority thereof without delay.

[line 225 – EP version]

2. In the situation referred to in paragraph 1 and 1a, Member States shall ensure that the competent authority requests the credit institution to submit a one-time remediation plan to the designated authority and the DGS describing the steps the credit institution will take to secure compliance with supervisory requirements, to ensure its long term viability and to repay the due amount contributed by the DGS to the preventive measure, as well as the associated timeframe. The designated authority and the DGS shall consult the competent authority as regards the measures envisaged in the remediation plan.

[lines 225a-225b – deleted]

[line 226 – EP version]

3. Where the competent authority is not satisfied that the remediation plan is credible or feasible or where the credit institutions fails to comply with the remediation plan, the DGS shall not grant any further preventive measures to that credit institution and the relevant authorities shall carry out an assessment of whether the institution is failing or is likely to fail, in accordance with Article 32 of Directive 2014/59/EU.

[line 227 – modified EP version]

By ... [OP – please insert the date 36 months after the date of entry into force of this Directive] the EBA shall issue guidelines setting elements of the business reorganisation plan accompanying the preventive measures referred to in Article 11b(3) to (5a) and the remediation plan referred to in paragraph 1 of this Article.

[line 340 – Council version]

To adequately reflect the particularities of IPSs recognised as DGSs, the following provisions would apply:

1) New accompanying Recital in DGSD

To further account for the specificities of IPS recognised as DGS and strengthen their effectiveness, Article 12a shall enhance the possibility for a DGS to provide a loan or otherwise make available the funds regulated by this directive to the financial means for the purpose of fulfilling the objectives of Art. 113 (7) CRR. This shall be possible in cases where the provided means are required to supplement the



other means to ensure the liquidity and solvency to avoid bankruptcy of an affiliated institution and be subject to the condition that repayment to the DGS within 7 days if needed is a credible prospect.

2) New Article 12a in DGSD

Use of the available financial means of IPS recognised as DGS under Article 113(7), point (b) of Regulation (EU) No 575/2013

1. Member States may allow IPS referred to in Article 1(2), point (c) to lend or otherwise make available their available financial means referred to in Article 10(1) to any other funds of that IPS referred to in Article 113(7), point (b) of Regulation (EU) No 575/2013, provided that the following conditions are met:

- the provided means are required to ensure the liquidity and solvency to avoid bankruptcy of an affiliated institution;*
- there is no immediate need for the DGS to use the available financial means referred to in Article 10(1) to repay depositors of its member institutions or to intervene in resolution of its member institutions;*
- the total amount lent does not exceed 75 % of the DGS target level;*
- the provided means must be repaid within six years.*

Member States shall ensure that if a DGS has provided means in accordance with the first subparagraph and the need to repay depositors of its member institutions or to intervene in resolution arises, the means are repaid upon request within a period not exceeding the period referred to in Article 8(1).

3) Article 10(2) DGSD (line 168 of the 4CT) based on Council text, but with underlined changes

When determining whether the DGS has reached that target level, Member States shall only take into account available financial means directly contributed by, or recovered from, members to the DGS, net of administrative fees and charges. Those available financial means shall include investment income derived from funds contributed by members to the DGS and funds recovered by the DGS against its claims deriving from its interventions, but shall exclude repayments not claimed by eligible depositors during payout procedures and any debt liabilities due by the DGS. An outstanding loan claim to another DGS under Article 12 or an outstanding loan claim or means otherwise made available under Article 12a shall be included.

4) IPS related points in the BRRD:

[Line 182 – based on the COM text but with underlined changes]

b) an overview of the measures under consideration which would prevent the failure of the institution or entity within a reasonable timeframe, their expected impact on the institution or entity as regards the circumstances referred to in Article 32(4) and the expected timeframe for the implementation of those measures.

[Line 182a – suggestion to move the text to Recital 8 (line 18), based on the Council proposal, so that it reads as follows, with changes resulting from the above underlined]

(8) It is necessary to ensure timely action and early coordination between the competent authority and the resolution authority, when an institution or entity is still a going concern, but where there is a material risk that the institution or entity may fail. The competent authority should therefore notify the resolution authority as early as possible of such risk. That notification should contain the reasons for the competent authority's assessment and a non-exhaustive overview of the alternative private sector measures, supervisory action or early intervention measures that are available to prevent the failure of the institution or entity within a reasonable timeframe. Such early notification should not affect any alternative private sector measure, including measures by an IPS, that would prevent the failure or the likely failure of the institution within a reasonable timeframe or prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the competent authority to the resolution authority of a material risk that an institution or entity is failing or likely to fail or the end of the defined timeframe for the implementation of the measures to address such material risk of failure of the institution or entity should not be a condition for, nor otherwise necessarily imply, a subsequent determination that an institution or entity is actually failing or likely to fail.

Moreover, if at a later stage the institution or entity is assessed to be failing or likely to fail and there are no alternative solutions to prevent such failure within a reasonable timeframe, the resolution authority has to take a decision whether to take resolution action. In such a case, the timeliness of the decision to apply resolution action to an institution or entity can be fundamental to the successful implementation of the resolution strategy, in particular because an earlier intervention in the institution or entity can contribute to ensuring sufficient levels of loss absorption capacity and liquidity to execute that strategy. It is therefore appropriate to enable the resolution authority to assess, in close cooperation with the competent authority, what constitutes a reasonable timeframe to implement alternative measures to avoid the failure of the institution or entity. To ensure a timely outcome and to enable the resolution authority to prepare properly for the potential resolution of the institution or entity, the resolution authority and the competent authority should meet regularly.

[Line 191a – the Council text is considered preferable due to its greater clarity]

Where, in the exercise of the power referred to in the first subparagraph, the resolution authority decides to directly market to potential purchasers, it shall have due regard to the circumstances of the case, in particular any preventive measures that may potentially be taken by a deposit guarantee scheme or IPS, and to the potential impact of the exercise of that power on the entity's overall position.

[A new subparagraph in Article 32 BRRD – collecting information from IPS prior to FOLF and when assessing condition (b)]

[X] When assessing the conditions referred to in paragraph 1, points (a) and (b), the competent authority or the resolution authority shall seek the latest available information from the DGS, or, where relevant, from the IPS of which the institution is a member, that would be relevant for such assessment, including whether the DGS or IPS can prevent the failure.