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**From:** General Secretariat of the Council

**To:** Working Party on Financial Services and the Banking Union (CMDI)  
Financial Services Attachés

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**Subject:** CMDI WP 17.06.2025: Commission non-paper - Technical note on creditor hierarchy

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## Technical note on creditor hierarchy

### I. Solutions discussed in the 5 June trilogue

- The general depositor preference is retained, with the exception of MREL deposits.
- The tiering of preferred deposits would be made as follows:
  - First tier: DGS and covered deposits (i.e., DGS super-preference is retained).
  - Second tier: non-covered deposits of households, SMEs and non-sophisticated public authorities which will now also benefit from DGS protection.
  - Third tier: non-covered deposits of large corporates, excluded deposits of financial institutions and central and state governments.
- Outside of the general depositor preference: deposits used for MREL (contractual earmarking, not held by retail clients, excluded from DGS protection), targeted subordinated deposits.

### II. Suggested drafting for creditor hierarchy

#### Depositor creditor hierarchy

#### Article 108 BRRD

#### Ranking in insolvency hierarchy

1. Member States shall ensure that in their national laws governing normal insolvency proceedings:

(a) the following have the same priority ranking, which is higher than the ranking provided for under point (b):

(i) covered deposits;

(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

(b) the following have the same priority ranking, which is higher than the ranking provided for in point (c):

(i) that part of eligible deposits from natural persons, micro, small and medium-sized enterprises and from public authorities which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(ii) deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises and from public authorities were they not made through branches located outside the Union of institutions established within the Union;

(c) deposits not mentioned in points (a) and (b) have the same priority ranking, which is higher than the ranking provided for the claims of ordinary unsecured creditors.

The deposits referred to in Article 5(1), points (b), (c), (f), (k) and (l) of Directive 2014/49/EU shall not be included in points (a), (b) and (c) of the first subparagraph of this paragraph and shall not have a priority ranking higher than the ranking provided for the claims of ordinary unsecured creditors.

Notes:

- *The reference to 'eligible deposits' at the start of point (b)(i) above ensures that the deposits of state and central governments would not be included in the second tier (as they are excluded from DGS repayment and are thus not eligible deposits).*
- *The deposits excluded from the general depositor preference, as per the 2<sup>nd</sup> subparagraph above, are the following:*
  - *Own funds (Article 5(1)(b) DGSD);*
  - *Deposits connected to convictions on money laundering and terrorism financing (Article 5(1)(c) DGSD);*
  - *Deposits the holder of which has never been identified (Article 5(1)(f) DGSD);*
  - *Debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes (Article 5(1)(k) DGSD);*
  - *Deposits taken for MREL purposes (Article 5(1)(l) DGSD). BRRD will simply indicate that these deposits cannot be preferred, and otherwise will be silent on where exactly they should rank within the creditor hierarchy. The ranking will not be dependent on the resolution authority's decision on whether to allow the bank to use deposits in MREL (if options 1 or 2 for RA overview below are retained). The reference to the original maturity in the proposed Article 45b(1a), point (b), means that deposits that have fallen below 1-year residual maturity, while no longer eligible for MREL, would still be excluded from the general depositor preference and from the DGS eligibility. This can be further spelled out in a recital.*

## Conditions for use of deposits in MREL

### Article 45b BRRD

#### Eligible liabilities for resolution entities

(new) 1a. The deposits that meet all the conditions of the first subparagraph of paragraph 1 shall only be included in the amount of own funds and eligible liabilities where all of the following conditions are met:

- (a) the deposits are not held by natural persons and micro, small and medium-sized enterprises;
- (b) the deposits are term deposits with an original maturity of at least one year and do not confer upon its owner a right to early reimbursement, including when the early reimbursement is subject to the payment of a penalty;
- (c) the relevant contractual documentation explicitly refers to:
  - (i) the institution's intention to include the deposits in the amount of own funds and eligible liabilities;
  - (ii) the exclusion of the deposits from any repayment by a deposit guarantee scheme pursuant to Article 5(1)(l) of Directive 2014/49/EU;

*[option 1 for RA overview: absence of prohibition by the RA]* (d) the resolution authority has not taken a decision preventing the entity concerned from including deposits in the amount of own funds and eligible liabilities.

*[option 2 for RA overview: explicit authorisation by the RA]* (d) the resolution authority has previously authorised the inclusion of deposits in the amount of own funds and eligible liabilities of the entity concerned.

*[option 3 for RA overview: monitoring only] amendments to Section C of the BRRD annex and Article 17(5) BRRD:*

**Section C of the Annex to BRRD** (new matter to consider when assessing resolvability)

(17a) the extent to which the institution includes deposits as referred to in Article 45b(1a) in the amount of own funds and eligible liabilities;

**Article 17(5) BRRD** (new power to remove or address impediments to resolvability)

(jb) require an institution or entity referred to in Article 1(1), points (b), (c) or (d), to replace the deposits referred to in Article 45b(1a) with other eligible liabilities to meet the requirements of Article 45e or Article 45f;

*Notes:*

- *In Article 45b(1a), point (a), it is necessary to explicitly exclude natural persons and SMEs because the exclusion of Article 72a CRR only applies to eligible deposits, and these deposits will no longer be eligible. For the sake of alignment with the CRR exclusion, it is proposed that local authorities are not barred from holding these deposits.*
- *Three different options are presented to allow the resolution authority to have a say on the use of deposits for MREL by the banks under its remit:*
  - *Under option 1, the use of deposits in MREL is by default allowed, unless the resolution authority has taken a decision preventing it for a specific bank;*
  - *Under option 2, the use of deposits in MREL is by default not allowed, unless the resolution authority has previously authorised a concrete bank to do so;*
  - *Under option 3, the use of deposits in MREL is by default allowed if conditions (a) to (c) are met, but the resolution authority is expected to monitor the use of deposits in MREL through reporting (already captured by the existing ITS on MREL reporting) and assess their impact on resolvability. Where this is found to be a substantive impediment to resolvability, resolution authorities are given a dedicated power to request the bank to replace those deposits with other eligible liabilities.*
  - *In case options 1 or 2 are retained, an additional provision will be required to provide explicit power for the resolution authority's decision or assessment (inc for the SRB in the SRMR).*
- *Similar wording would need to be replicated in the mirror provisions of SRMR.*

## Exclusion of deposits used in MREL for DGS repayment

### Article 5 DGSD

#### Eligibility of deposits

1. The following shall be excluded from any repayment by a DGS:

(...)

(1) deposits meeting the conditions referred to in Article 45b(1a), points (a) to (c), of Directive 2014/59/EU.

Notes:

- *This ensures that deposits used for MREL and issued under the new conditions provided above are excluded from DGSD protection.*
- *The grandfathered MREL deposits issued under previous rules would continue being eligible for DGS repayment.*

## Grandfathering clause of existing deposits used for MREL

### (new) Article 128c

#### Grandfathering of deposits included in the amount of own funds and eligible liabilities

By way of derogation from Article 45b(1a), deposits entered into prior to [OP please insert the date = 1 day after the transposition date of this amending Directive] that meet the conditions of Article 45b(1), first subparagraph, shall be included in the amount of own funds and eligible liabilities at the latest until [OP please insert the date = [1] year after the transposition date of this amending Directive].

Notes:

- *This provision is necessary to ensure sufficient time for banks to replace their existing deposits used for MREL purposes with new deposits meeting the new eligibility conditions (or other types of eligible liabilities).*
- *The grandfathered deposits would continue being eligible for DGS protection (where they are not otherwise excluded from repayment under Article 5 DGSD), because the amendments proposed to Article 5 DGSD make reference to the deposits issued in compliance with the new eligibility conditions of Article 45b(1a) BRRD. For this same reason, the grandfathered deposits would not be excluded from the general depositor preference – hence the need for a short grandfathering period (essentially two and a half years, if we start counting from the date of entry into force of the amending directive and assuming that the transposition deadline will be 18 months).*
- *Similar wording would need to be replicated in SRMR.*

## Additional technical adjustments to reflect new rules on deposits in MREL

### Article 2(1)(71b) BRRD (definition of subordinated eligible instruments)

(71b) ‘subordinated eligible instruments’ means instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than paragraphs (3) to (5) of Article 72b of that Regulation **and, where applicable, in Article 45b(1a) of this Directive**;

### Article 45c(2a), 2<sup>nd</sup> subpara, point (b) (eligibility conditions for liquidation entities subject to MREL)

2a. (...) Where the resolution authority determines the requirement referred to in Article 45(1), the liquidation entity shall meet that requirement by using one or more of the following:

(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, with the exception of Article 72b(2), points (b) and (d), of that Regulation **and, where applicable, in Article 45b(1a) of this Directive**;

### Article 45f BRRD (eligibility conditions for internal MREL)

2. The requirement referred to in Article 45(1) for entities referred to in paragraph 1 of this Article shall be met using one or more of the following:

(a) liabilities:

(ii) that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for points (b), (c), (k), (l) and (m) of Article 72b(2) and Article 72b(3) to (5) of that Regulation, **and, where applicable, in Article 45b(1a) of this Directive**;

#### Notes:

- *These adjustments are necessary to ensure that only the deposits meeting the new eligibility conditions of Article 45b(1a) BRRD can count towards the subordinated MREL requirement, the MREL of liquidation entities and internal MREL (respectively). In absence of these changes, the new eligibility conditions would not apply under those provisions and banks would be able to use deposits for MREL under the existing conditions (e.g. without a reference to MREL eligibility in the contractual clauses).*
- *Similar wording would need to be replicated in the mirror provisions of SRMR.*