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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés
Subject:	CMDI – WP Meeting on 7 June - Presentation of a Presidency proposal and alternative proposal put forward by some Member States related to governance and IPC

Presentation of a presidency proposal and alternative proposal put forward by some Member States related to governance and IPC

Governance	
<u>PRESIDENCY PROPOSAL</u>	<u>ALTERNATIVE PROPOSAL PUT FORWARD BY SOME MEMBER STATES</u>
<p>In Article 50(1), the following point is added:</p> <p><u>(r) be consulted by the Board in its executive session before the adoption of guidelines, general instructions, guidance notes or any public document defining resolution practices and resolution planning methodologies.</u></p> <p>In Article 50(2), the following third subparagraph is added</p> <p><u>For the purpose of point (r) of paragraph 1, the following shall apply:</u></p> <p><u>(i) Following the consultation, the Board in its executive session shall analyse the views expressed during this consultation and, where these views are not taken into account, explain in a reasoned written statement why it deviates from them;</u></p> <p><u>(ii) the Board in its executive session shall adopt the guidelines, general instructions, guidance notes or any public documents only where a simple majority of the members as referred to in Article 43(1) of this Regulation express their support;</u></p> <p><u>(iii) by exception, the Board in its executive session may adopt a public document defining resolution planning methodologies</u></p>	<p>(31) in Article 50(1), point (n) is replaced by the following: is amended as follows:</p> <p>[...]</p> <p><u>(b) the following point (r) is added:</u></p> <p><u>(r) ensure that national resolution authorities are consulted on the guidelines, general instructions, guidance notes and all other documents of a general nature referring to practices, policies or methodologies on the application of this Regulation within the Single Resolution Mechanism. In this context, national resolution authorities should be provided adequate consultation periods and processes allowing for input during the drafting stage. The Executive Session shall take into consideration the views expressed by the national resolution authorities during this consultation. In the event that a final document deviates from the views expressed by the national resolution authorities, the Executive Session shall provide the national resolution authorities with a document including a detailed reasoned explanation for each deviation from the views provided by the national resolution authorities.</u></p>

relating to the application of Articles 12 to 12k of this Regulation in absence of a simple majority of the members as referred to in Article 43(1), except where a qualified majority of two thirds of the members as referred to in Article 43(1), point (c) of this Regulation, within 10 working days from the submission of the reasoned written statement, expresses a dissenting opinion on the decision of the Board in its executive session on the ground that it may have severe implications for the proper functioning of the Single Resolution Mechanism.

The following recital is added

The proposed modifications in the tasks of the plenary session of the Board aim at clarifying the role of the plenary session in the appointment of the accounting officer and the internal auditor, in the adoption of guidelines, general instructions, guidance notes, or any public document defining resolution practices and resolution planning methodologies and in the definition of rules for organising industry consultations on these guidelines, general instructions, guidance notes, or public document defining resolution practices and resolution planning methodologies. While the proposed modifications generally constitute a clarification of the existing practices, the role of the plenary session in the adoption of the guidelines, general instructions or guidance notes should be further assessed in the context of the review of the state of the Banking Union in order to ensure a sufficiently inclusive governance of the SRM, as well as its integrity and efficiency.

PUBLIC

The following two new recitals are added:

(new recital 1)

The need for the systematic consultation of the national resolution authorities on all relevant documents to be adopted by the Board, that are of general nature and regard the application of this Regulation within the SRM, should be clarified. This clarification is meant at ensuring a closer involvement of the national resolution authorities in the decision-making processes of the SRM also on such documents, where they would not fall into the categories of the guidance notes, guidelines and general instructions to the national resolution authorities. This would further enhance the existing framework that organises the practical arrangements for the cooperation between the Board and the national resolution authorities, while maintaining the effectiveness of the processes. It would be without prejudice to the rest of the content of that existing framework, and in particular it would not change anything to the rules that may be provided therein for the final approval of a given document, including where such rules may provide for the prior approval by a majority of the Plenary Session before a given document can be adopted by the Board in its Executive Session. As a result, this clarification cannot be read as allowing for any reduction in the powers of the Plenary Session under the existing framework.

(new recital 2)

It is expected that on top of the periodic reviews of this Regulation, the Commission will perform a specific in-depth review of the decision-making processes within the SRM in due time, in parallel with the holistic review of the Banking union

developments in all its dimensions. Such specific review should assess in particular the quality of the cooperation between the Board and the national resolution authorities, and the appropriateness of the governance of the Board, having regard to the respective competencies of the Plenary and Executive Sessions. In doing so, it should take into consideration the need for the appropriate participation of the national resolution authorities in order to reach a consistent, inclusive and harmonised application of this Regulation within the SRM. It should also take into consideration the importance of ensuring that the process remains efficient, prompt and sufficiently flexible to pursue the Board's mission in an effective manner.

IPC

PRESIDENCY PROPOSAL

ALTERNATIVE PROPOSAL PUT FORWARD BY SOME MEMBER STATES

BRRD

(35) Irrevocable payment commitments are one of the components of the available financial means of resolution financing arrangements. It is therefore necessary to specify the circumstances in which those payment commitments may be called ~~and the applicable procedure when terminating the commitments in case an institution or entity ceases to be subject to the obligation to pay contributions to a resolution financing arrangement.~~ In addition, to provide more transparency and certainty with respect to the share of irrevocable payment commitments in the total amount of *ex ante* contributions to be raised, resolution authorities should determine such share on an annual basis, subject to the applicable limits.

BRRD

(35) Irrevocable payment commitments are one of the components of the available financial means of resolution financing arrangements. Therefore, recourse to irrevocable payment commitments should in no manner affect the financial capacity of the resolution financing arrangements. As such, where an entity stops being within the scope of this Directive, the irrevocable payment commitments are cancelled without being called and collateral backing these commitments is returned, only to the extent that this does not result in a depletion of the resolution financing arrangements' available financial means below the target level of the resolution financing arrangement. It is therefore necessary to specify the circumstances in which those payment commitments may be called ~~and the applicable procedure when terminating the commitments in case an institution or entity ceases to be subject to the obligation to pay contributions to a resolution financing arrangement.~~ In addition, to provide more transparency and certainty with respect to the share of irrevocable payment commitments in the total amount of *ex ante* contributions to be raised, resolution authorities

(53) Article 103 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed ~~50~~ 30 % of the total amount of contributions raised in accordance with this Article. Within that limit, the resolution authority shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.'

b) the following paragraph 3a is inserted:

'3a. The resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article when the use of the resolution financing arrangements is needed pursuant to Article 101.

~~Where an entity stops being within the scope of Article 1 and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article, the resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 and still due. If the contribution linked to the irrevocable payment commitment is duly paid at first call, the resolution authority shall cancel the commitment and return the collateral. If the contribution is not duly paid at first call, the resolution authority shall seize the collateral and cancel the commitment.²~~

should determine such share on an annual basis, subject to the applicable limits.

53) Article 103 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). An institution may exchange collateral on a quarterly basis, provided that the replacement is suitable, and will be entitled to the income from the collateral provided. The share of irrevocable payment commitments shall not exceed ~~50~~ 30 % of the total amount of contributions raised in accordance with this Article. Within that limit, the resolution authority shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.'

~~b) the following paragraph 3a is inserted:~~

~~'3a. The resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article when the use of the resolution financing arrangements is needed pursuant to Article 101.~~

~~Where an entity stops being within the scope of Article 1 and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article, the resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 and still due. If the contribution linked to the irrevocable payment commitment is duly paid at first call, the resolution authority shall cancel the commitment and return the collateral. If the contribution is not duly paid at first call, the resolution authority shall seize the collateral and cancel the commitment.²~~

SRMR

(38) Irrevocable payment commitments are one of the components of the available financial means of the Single Resolution Fund. It is therefore necessary to specify the circumstances in which those payment commitments may be called, ~~and the applicable procedure when terminating the commitments in case an institution or entity ceases to be subject to the obligation to pay contributions to the Single Resolution Fund.~~ In addition, to provide more transparency and certainty with respect to the share of irrevocable payment commitments in the total amount of ex ante contributions to be raised, the Board should determine such share on an annual basis, subject to the applicable limits.

(37) Article 70 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in Article 76(1). The share of those irrevocable payment commitments shall not exceed ~~50~~ **30** % of the total amount of contributions raised in accordance with this Article. Within that limit, the Board shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.'

SRMR

(38) Irrevocable payment commitments are one of the components of the available financial means of the Single Resolution Fund. ~~It is therefore necessary to specify the circumstances in which those payment commitments may be called, and the applicable procedure when terminating the commitments in case an institution or entity ceases to be subject to the obligation to pay contributions to the Single Resolution Fund.~~ Therefore, recourse to irrevocable payment commitments should in no manner affect the financial capacity of the Fund. As such, where an entity stops being within the scope of this Regulation, the irrevocable payment commitments are cancelled without being called and collateral backing these commitments is returned, only to the extent that this does not result in a depletion of the Fund's available financial means below the target level of the Fund. In addition, to provide more transparency and certainty with respect to the share of irrevocable payment commitments in the total amount of ex ante contributions to be raised, the Board should determine such share on an annual basis, subject to the applicable limits.

(37) Article 70 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in Article 76(1). An institution may exchange collateral on a quarterly basis, provided that the replacement is suitable, and will be entitled to the income from the collateral provided. The share of those irrevocable payment commitments shall not exceed ~~50~~ **30** % of the total amount of contributions raised in accordance with this Article. Within that limit, the Board shall determine annually the share

(b) the following paragraph 3a is inserted:

'3a. The Board shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article when the use of the Fund is needed pursuant to Article 76.

Where an institution or entity stops being within the scope of Article 2 ~~and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article, the institution or entity shall pay a contribution in the amount of~~ Board shall call the irrevocable payment commitments made pursuant to paragraph 3 and still due. ~~If the contribution linked to the irrevocable payment commitment is duly paid at first call, the Board shall cancel the commitment and return the collateral. If the contribution is not duly paid at first call, the Board shall seize the collateral and cancel the commitment.'~~

of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.';

~~(b) the following paragraph 3a is inserted:~~

~~'3a. The Board shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article when the use of the resolution financing arrangements is needed pursuant to Article 76.~~

~~Where an entity stops being within the scope of Article 2 and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article, the Board shall call the irrevocable payment commitments made pursuant to paragraph 3 and still due. If the contribution linked to the irrevocable payment commitment is duly paid at first call, the Board shall cancel the commitment and return the collateral. If the contribution is not duly paid at first call, the Board shall seize the collateral and cancel the commitment.'~~