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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés
N° Cion doc.:	ST 8483 2023 INIT
Subject:	CMDI Review: DGSD COM proposal - comments from 23 MS

Commission Proposal	Drafting Suggestions MS Comments
2023/0115 (COD) **Proposal for a** **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** **amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency** (Text with EEA relevance	SI: (Comments): General comment: Art 8c – problematic also from the point of view of AML regulations. Comments below EL: (Comments): **EL GENERAL REMARK**: Our main comment is in line with the impact assessment of the E. Commission and the views of the ECB, namely that the proposed changes in the legislation would be most effective in parallel with a European DGS structure, i.e. EDIS. The proposed framework burdens the national DGS with considerable additional liquidity requirements, which, coupled with removing the caps on DGS contribution in resolution (currently up to 50% of target level) and maintaining the applicable target level (0,8%) and fund replenishment period (6 years), may have a negative effect on DGS's credibility and overburden its member banks. **Under EDIS, as presented in the impact assessment, the positive effects of the proposed revisions on the crisis management framework would be multiple, while the completion of the Banking Union would be achieved.** FR: (Comments): General comment: Given the short time that has been allowed to submit comments, we would ask that our comments are considered preliminary, as we are still assessing certain elements. Also, we have not made comments on recitals, given the fact that they should reflect the content of the main provisions, hence be adapted once articles have been modified. We will therefore contribute at a later stage on recitals.

	On substance, we want to stress the following: - We consider this CMDI review in the context of the prepration of a future EDIS. This perspective informs all the policy choices that are reflected in our comments. - In particular, we support harmonizing several national options in DGSD, in the perspective of EDIS. - Likewise, we support clarifying and reinforcing conditionalities applying to preventive and alternative measures in order (i) to preserve a level playing field while paving the way for EDIS; and (ii) to reduce room for arbitrage by ensuring that economically equivalent interventions are treated equally (preventive recapitalization / preventive measures ; transfer strategies in resolution and in insolvency). As regards preventive measures, we are mindful that this can affect the functionning of IPSs as regards their voluntary and statutory missions, and are ready to explore means to cater for their specificities. SK: (Comments): General comment: Our comments are still preliminary, we reserve the right to provide futher comments as we proceed. We in general support the objectives of the proposal and welcome majority of the changes. We also in general support the broadening of the scope of resolution, but on the other hand we are still rather sceptical on the broadening of the use of DGSs and changes to the DGS super-preference. We have in the past always advocated that the use of DGSs should be limited to their payout function. IE: (Comments): Please note, all comments are preliminary in nature and have focused on policy points, rather than a detailed technical analysis of the precise wording of each provision. As the negotiations develop, we may provide updated or adjusted comments.

	General Comment on CMDI Framework Proposals Ireland has always supported the goal of completing the Banking Union and we understand that a strengthened and improved CMDI framework is an important step towards that goal. Many of the suggested changes across the proposals are common-sense, practical evolutions of the current framework which add clarity and improve the functioning of our frameworks. However, we have concerns that there may be some gaps in the proposals, as it is clear that some financial entities, due to their size or business model will always be liquidated. It would be inappropriate, or perhaps impossible, to seek to extend the resolution regime to each and every entity in the Union. Instead, it may be more appropriate to focus on the needs and specific challenges presented by those smaller banks which are deemed to have such importance that they cannot be liquidated without prejudicing financial stability. This would have the benefit of maintaining the viability of payout for those entities for which which the only viable path is liquidation. We would suggest that clear consideration be given to the treatment of entities which will not be resolved, and for which the best outcome in a failure event is liquidation. For these entities, it may be necessary to preserve the viability of the DGS's Payout function, by seeking to minimise the impact of a change to the Creditor Hierarchy. This could also exempt such entities from an excessive burden of resolution planning if it is logical for them to proceed through normal insolvency processes. It may be possible to work within the current framework, for example: by adjusting the operation of the Least Cost Test, to preserve the super-preference of the DGS in insolvency, but still achieve the end-goal of extending the prospect of resolution to appropriate banks. By removing the ranking of deposits, we may create a situation in which an implicit guarantee for all deposits is instituted, encouraging moral hazard and a lack of diligence

	on the part of sophisticated deposit-holders. We would advise caution and consideration in this regard. We also consider that there may be wider implications to the proposed removal of the DGSs "super-priority", which may impact on the credibility of the DGS to fulfil its primary mission of protecting unsophisticated depositors. The DGS has been successfully invoked a number of times in Ireland, and has completed the payout process smoothly. The removal of the super-priority may prejudice the effectiveness of a proven system, and we would advocate caution, to ensure there is a clear optimisation of the DGS and an improvement in outcomes for depositors. These proposals, including the adjustments to the Public Interest Assessment, could provide an opportunity to clarify the intended treatment of banks upon a Failing or Likely to Fail determination, providing transparency that banks with an ex-ante presumption of resolution will go through resolution. This may bolster market confidence in the stability and predictability of the resolution regime. We are conscious that the third pillar of the Banking Union, EDIS, is still to be agreed. While we do not know what precise form an EDIS will take, we should ensure that any system we put in place through this adjustment of the CMDI Framework will not prejudice the development and operation of a fully-fledged EDIS. Finally, we note that a significant amount of the data used in the Impact Assessment was from end-2019. While we understand the difficulty of seeking to always use the most up-to-date information, we are concerned that this data predates the impact of the pandemic, Russia's war in Ukraine and the current period of high inflation. As such, we feel the data used in the Impact Assessment may be missing some important context, and more recent data could make for a stronger position when it comes to receiving political approval for a final, agreed text. HR:

	(Comments): Our comments present the preliminary position regarding the CMDI package proposal. We welcome and support objectives of the CMDI package proposals which are protection of financial stability, depositors and taxpayers' money. One of the objective of the CMDI package proposal is to preserve financial stability, which implies the expansion of the resolution scope to those credit institutions that are not necessarily "too big to fail", but whose failure may cause systemic risks. We would like to note that in Croatia we were deeply aware of the possible problems that failure of small or medium sized banks might cause therefore the National Resolution Authority, created the "Scheme for the Resolution of Small Banks" (and received EC approval for it) in 2017. It is important to ensure that proposed changes to the EU legislative framework achieve such a goal, without jeopardizing or undermining the existing system that ensures financial stability and has proven its effectiveness in the past decade many times. We are really cautious about the proposal to eliminate the LCT as a criteria for making a decision on resolution financing, as well as the proposal for disregarding upper limit up to which the Deposit Insurance Fund can financially support the resolution. Such proposal leads to the increase of resolution fund means and deposit insurance funds could be directly threaten in such scenario. Deposit insurance funds must be available at the national level at any time, in case if the resolution of a credit institution fails. The abolition of Deposit Insurance System preferential status in bankruptcy proceedings is another important concern because proposal represents significant refund reduction of funds to Deposit Insurance Fund from the bankruptcy or liquidation estate. Deposit Insurance System is structured, in terms of its powers as well as methods and sources of financing, as an extremely important element of the stability of the Deposit Insurance System itself, and any threat to its stability means threat to its efficiency and financial stability. We strongly believe that increasing the efficiency of one system should not be built at the expense of another, already proven efficient system.

	CZ: (Comments): We generally support the harmonisation of the deposit insurance framework and the reduction of the differences in the level of protection between Member States and welcome the Commission's efforts to clarify the current legislation. EE: (Comments): All the comments are preliminary and under scrutiny reservation. Where specific comments are not provided, we are open/can support the proposal based on the current assessment. **General comments:** Estonia supports the strengthening of the crisis management and deposit guarantee framework of banks to prevent problems in the banking sector and maintain financial stability, protect taxpayers and depositors, and support the real economy, should problems arise in the banking sector. We support a well-functioning and robust resolution framework, which principles are implemented also in the case of bank problems and crises. When changing the ranking of claims and facilitating the use of the deposit guarantee schemes in resolution, insolvency and preventive measures, a more sensible balance must be found so that the trust of depositors remains high, while the taxpayer's money is better protected and the expectations of the bank's various creditors are in line with reality in a crisis. The burden on the national deposit guarantee fund and public resources (taxpayers) must remain controllable and reasonable also after the reform, especially as a result of facilitating the use of deposit guarantee schemes in crises (resolution and preventive measures) and harmonising protection of temporary high balances. During the reform of the framework, it is necessary to take into account the lessons of recent cases as nowadays bank runs can happen almost instantly. The impact of the digital society on the spread of problems and the resulting challenges are a few examples of factors influencing the efficiency of solutions to be used.

	DGSD-specific concerns identified so far: • The main responsibility in the case of bank failure should remain with the shareholders and creditors of a bank. Therefore, we are cautious about bridging the gap with deposit guarantee scheme funds and watering down the 8% bail-in requirement for access to the Single Resolution Fund. • The use of the deposit guarantee scheme funds to protect all deposits should be much more limited as proposed. • The super-priority of covered deposits should remain. Concerning the proposed general depositor preference and the provisions enabling the deposit guarantee scheme to fund the transfer of all deposits of a bank in resolution, more targeted amendments strictly needed for broader depositor protection must be proceeded (instead of broadly protecting all deposits). DK: (Comments): Overall we support the objective of the proposal. NL: (Comments): Our comments are preliminary. ********** General remark on the BRRD/SRMR/DGSD: We support the general goal of strengthening the crisis management framework for banks in the EU. In particular we support the objective of ensuring financial stability and protecting taxpayers from losses. As such we welcome the proposal by the European Commission, although we do have a number of fundamental concerns. In general we can support the route chosen by the Commission, in line with the Eurogroup statement of June 2022, to broaden the scope of resolution in order to achieve

	a more consistent and harmonized approach for resolving failing banks in the EU. The proposal would lead to a expansion of the resolution scope by making three changes to the PIA. The combined effect is that resolution becomes more or less the default option. Although we support an expansion of the scope of resolution, there is in our view no rationale to resolve *all* banks via resolution. Resolution for *all* banks would not be proportional for smaller banks and the resolution authorities. Furthermore, it would make winding up a bank via national insolvency procedures almost impossible, while this procedure is in some cases the most adequate way to resolve a failing banke , especially when efficient insolvency procedures exist, which is the case in The Netherlands. As such, we see the need to explicitly limit the expansion of the scope of resolution as to not include *all* banks. To prevent ambiguity and to ensure consistency, predictability and proportionality, we need to clearly define the PIA in the level 1 text. We see merit in defining thresholds above which banks will be resolved via the resolution framework. This could deliver transparency and predictability for the PIA, and by result the scope of resolution across member states, which is needed to achieve true harmonization and a consistent application of the resolution framework. Moreover, it is necessary in our view to harmonize essential elements of the crisis management framework such as the above-mentioned PIA, the LCT, the failing or likely to fail decision and the conditions for precautionary, preventive and alternative measures. Therefore we welcome the Commission proposals on these elements, although we still see of ambiguity in the text (e.g. 'in accordance with the national laws'). We are of the opinion that we should ensure a unified application of the before-mentioned elements through stating those very clearly in the level 1 text. We can in principle support the route chosen by the Commission to improve the application of resolution to ensure that the framework will actually be used, such as measures to enhance the application of transfer tools in resolution. On the one hand, the proposed routes to use the DGS in resolution will help make resolution more efficient. On this we support that strict conditions are set, with limits to the used of DGS funds and conditions of, among others, optimal loss absorption and market exit. On the other hand, stricter state aid rules should set the incentives right so there is no tendency for national

	authorities to incline towards such national proceedings. For us support for providing such flexibility in the framework is conditional on a review of the state aid framework with the CMDI review, in order to achieve a consistent framework. As such we urge the Commission to provide clarity on the review of the state aid framework in parallel with the CMDI negotiations. There are crucial elements in the proposed package of which we are, however, very critical, including the proposed general depositor preference and the removal of the superpriority of the DGS, and the provisions enabling the DGS to fund the transfer of all deposits of an institution in resolution. The proposed single tier creditor hierarchy can have significant adverse effects, also on SIs. The proposal would lead to an implicit guarantee for all deposits and would create moral hazard and set the wrong incentives. In particular, this will negatively affect the rating and pricing of senior unsecured debt, which will increase the cost of funding for banks. On top of that this would lower the relative costs of uncovered deposits and thus incentivize banks to hold more uncovered deposits. This could have detrimental effects on stability and resolvability of banks. It would also increase the burden on the DGS fund and cast doubt on their ability to fulfil their primary function of ensuring payout of covered deposits. The general depositor preference would also threaten the functioning system of insolvency and depositor payout for small banks. This is a proven system in the Netherlands and many other MS, which is reliant on the super priority of covered deposits.Instead of broadly protecting *all* deposits, we should analyse in more detail where there is a need to strengthen depositor protection and look for targeted solutions. A better alternative would, for instance, be a retail depositor preference: retail eligible deposits and covered deposits then rank equally, so that they can easily be transferred as a whole. Furthermore we are critical of the proposed 'DGS-bridge' to access SRF funding. To be clear, we are not *a priori* opposed to the DGS bridge, as we support the goal of minimizing the chance on the need for extraordinary public financial support through strengthening burden-sharing by private shareholders and creditors as a first line of defence and industry funded safety nets as a second. However, this DGS-bridge facilitates the need for additional funding, which is needed because of the broadened scope of

	creditors that need to be protected in case of a bank failure. As mentioned above, we are not convinced of the need for (the proposed amount of) additional funding, as we are critical of additional protection for *all* depositors. We think we should also explore alternative more targeted solutions to strengthen depositor protection. Moreover, we vouch for consistency between the protection and the bail-inability of deposits. In case there were to become a DGS-bridge, we strongly support that the DGS-bridge to the SRF can only be used for institutions that were designated as resolution entities and made the necessary preparations such as building up MREL and preparing resolution plans. Furthermore, we support that the bridge function can only be used under strict conditions; e.g. only for market exit. We do not support the removal of the cap for the amount which the DGS can contribute in resolution of 50% of the target level. We can have a discussion on a limit to the amount of DGS funds that a resolution authority may deploy (in relation to DGSD Article 11), but there needs to be a cap to make sure the fund remains sufficient to fulfil its primary function of ensuring payout of covered deposits and preserve financial stability. Finally, amendments to article 79 of the SRMR enable the SRB to decide on the use of national DGS funds in resolution, without consent of the DGS. SRB decision-making on the use of DGS funds can have substantial negative effects. Therefore we propose that the SRB's access to DGS funds without consent of the national DGS should be limited. The Commission presents its CMDI-proposals as one package which is internally consistent and emphasizes that 'cherry-picking' only certain elements out of the proposal provides no viable alternative way forward. We agee with the Commission that the outcome of the negotiations needs to be a consistent package, in particular in the sense that the funding availability and the need for funding in resolution are matched. However, we support exploring other options beyond the status quo and the Commission's proposal that could offer a coherent and consistent outcome and stay open to exploring potential options for this purpose. FI: (Comments): The proposal is still under parliamentary scrutiny. Thus, our comments are preliminary.

	We reserve the right to amend our comments or provide further comments. At this point we do not comment the recitals since they naturally reflect the amendments to the Articles and will most likely change during the negotiations. We reserve right to comment them as the negotiations proceed. **General Remarks:** We support the proposals' objectives of protecting financial stability, depositors, taxpayers from losses resulting from bank failures and providing a level playing field across the EU. However, we have concerns as stated in our comments to the BRRD and SRMR table on the proportionality of the proposed changes and weather they contribute achieving these goals. We support creating a harmonized least cost test for all the situations where the DGS is used. The test should be based on fair, objective and transparent calculations and on credible assumptions. It should not favor one option over another. The DGS's primary function is, and should be also in the future, to be used to repay depositors, as stated in article 11(1). This should be clearly respected. The capacity of the DGS to be able to pay compensations should be secured. We support harmonizing preventive measures and setting clear and strict conditions for that use. However, to certain extent, preventive measures are to be considered incompatible with other tools in the CMDI framework, given that the objective of the framework is to allow for orderly failure of distressed institutions, thus inducing market discipline and providing incentives for private solutions to prevent bank failure, rather than using statutory tools for that purpose. It should also be noted that if preventive measures are available, it can mean that DGS funds are used on more than once for the benefit of the same institution – that is, for preventive measures and later if the institutions has failed anyway, in the insolvency proceedings or in resolution. DGS preventive measures should only be available for private and voluntary systems and applied clearly before the threshold for application of EIM powers by relevant authorities. We are ready to explore means to cater for specificities possibly needed for IPSs. Particularly in the EDIS context, it would not be feasible to allow the use of mutualized funds for preventive measures.

	PT: (Comments): We would like to assert at this early stage a general scrutiny reservation, as we are still assessing internally some elements of the proposal. As another general comment, we would like to say that, while we would prefer to be working in a more comprehensive legislative package that included EDIS, the review of the DGSD, following the work undertaken by the EBA, is welcomed. DE: (Comments): Disclaimer: Comments are preliminary. We reserve the right to provide further comments as we continue with the negotiations when and where new insights might arise. **General Remarks:** We welcome that the COM has published its proposal for the CMDI review. We fully support the goal of strengthening the crisis management framework and fully share the objectives of promoting financial stability and protecting taxpayers from losses resulting from bank failures. We look forward to working together to achieve these goals. That being said, we have strong doubts that the proposals are the best way to reach these goals and that they are adequate, necessary and proportionate. The proposals would lead to a very far-reaching redesign of the existing system that would weaken the existing system and come with significant negative side-effects. The proposals also do not fully respect the Eurogroup's mandate of last year, in particular in relation to the functioning of Institutional Protection Schemes. Before delving into technical details, we see a need to fundamentally discuss the Commission's underlying assumptions, assessment and general approach. There are many other options beyond the status quo and the Commission's proposal. We should strive to find the best option to reach the aforementioned goals and strengthen the crisis management framework while minimising negative side effects. For this reason, we

	should be open to exploring potential options for this purpose. We are not convinced that the resolution regime has not delivered on its objectives. In particular, the limited use of the resolution regime so far is not a sign of a flawed system. The resolution framework was meant to overcome the problem of failing banks that could not go into insolvency because of risks to financial stability. The role of the resolution framework is to provide solutions for these banks that don't involve public bail-outs. In our view, the resolution framework broadly meets this objective. Commission has identified a certain group of institutions where the resolution framework in its current setup does not fully deliver on its promise. These banks are aptly described as too small for resolution but too big for liquidation. We agree with the assessment that there is room for improvement in this regard. However, the proposed text does not focus on solving this specific issue. Instead, it aims at a far-reaching redesign of the current framework, completely redefining the role and objectives of the resolution framework. We therefore have strong doubts that this is the most appropriate approach. Instead, we should focus on finding effective solutions for concrete problems while preserving tried and tested structures, including well-functioning national systems that protect financial stability, taxpayers and depositors. In particular we have the following concerns: • We are very critical of the proposed expansion of the scope of resolution to the majority of small banks. • We need to maintain the principle of primary responsibility of shareholders and creditors of an institution to bear the costs of resolution. For that reason, we are critical of the proposed "bridge the gap" to access the Single Resolution Fund. • We need to maintain well-functioning national systems. This includes functioning systems of insolvency for small banks as well as the need to preserve the functioning of the IPS. • We should not use the DGS funds to protect all deposits and maintain the super priority of covered deposits. This being said, we have the following broader remarks on the DGSD proposal: We are highly critical of the proposed treatment of **IPS preventive measures**. At the core

	of the IPS mandate lies the promise to support its member institutions when needed. This promise makes the use of preventive measures existential for IPS. It also shows that IPS are inherently different from other DGS. However, the current proposal fails to acknowledge this specificity of IPS. Instead, the proposal significantly restricts the ability of an IPS to support their member institutions and thus restricts the functioning of IPS. Such restrictions on the use of DGS funds for IPS preventive measures cast doubts on the ability of IPS to fulfil that promise. This is also not in line with the agreement laid down in the EG+ statement from June 2022 that a functioning framework for IPS preventive measures must be maintained. As a solution we propose specific rules for IPS preventive measures. With regard to the more technical part of the **DGSD**, we welcome that the Commission is taking up many of the recommendations developed by the European Banking Authority in its five opinions. However, we are critical of some aspects, in particular with regard to the protection of deposits by public authorities and investment firms (Art. 5) or the extended provisions regarding the information sheet for depositors (Art. 16). We also have further questions, in particular concerning the provisions around client funds. In summary, we very much welcome that we are now working on the crisis management framework. However, for successful negotiations, we need to be clear about what problems we actually want to solve and what targeted, efficient solutions look like. Proven systems should be preserved, whereas open issues in the crisis framework need to be addressed. We are of the opinion that there are plenty of other options beyond both the status quo and the Commission's proposal. We are looking forward to exploring these options further during our negotiations. LT: (Comments): LT: Preliminary comments. General remark: In general, we support the aim of the CMDI package to broaden the resolution scope by including small and medium sized banks. As recent bank failures in the US have shown, the failure of even relatively smaller banks, especially amid uncertainty in the financial

	sector and the economy, can have disproportionately large negative consequences. The possibility to apply resolution actions to such banks would allow to preserve the continuity of important financial services, the trust of depositors, and prevent the spread of panic in the markets. However, we are not convinced that combination of measures proposed is optimal, because in addition they may also have some unproportional negative side-effects. We are rather cautious regarding the elimination of DGS super priority in creditor hierarchy as it could significantly weaken national DGSs primary function and lead to higher DGS losses in ordinary insolvency cases. However, we support changes in the DGSD proposal regarding the enhancement of the cooperation between DGSs in cross border cases, also amendments aimed to optimise the operational capacities of DGSs and to reduce their administrative burden, harmonization of the use of DGS funds to finance alternative measures in insolvency procedures. AT: (Comments): **Comments by Austria:** **General remarks:** We would like to thank the Presidency for the opportunity to comment on the BRRD-proposal. We would like to emphasize that we are still in the course of analysing (certain elements of) the proposal and coordinating our final positions on the national level. **Our comments below are therefore of preliminary nature and not intended to be exhaustive**. We support the intention to strengthen the current crisis management framework and welcome the start of the discussions. The CMDI-proposal is a close-knit network of amendments. Some of them are appreciated (see 1), some of them are highly related to the supervisory framework for banks and need further revisions to establish an economically, prudent, effective and stability-oriented approach in the passage between the supervisory or early intervention and the insolvency or resolution framework (see 2), and some of them raise fundamental questions to whether and how they could enable solutions which are sufficiently

	balanced, helpful and efficient (see 3). Unfortunately, some aspects of the CMDI do not fully respect the Eurogroup's mandate of last year. 1) We highly appreciate a multitude of amendments, proposed in the CMDI-review as they will enhance the legal certainty, efficiency and suitability of the common practice of authorities, Deposit Guarantee Schemes (DGS) and credit institutions as well as the robustness of the system. We aim for a more efficient and effective crisis management framework for banks, consisting of an effective supervisory and resolution framework which ensures the fire power of national DGS, lowers administrative burden and costs for authorities, DGS' and institutions and ensures a level playing field between different market participants (institutions, groups and IPS). 2) We see a need for thorough discussions on aspects which relate to the transition phase between the phase of common supervisory and economic practise and the turning-point where early intervention measures shall be taken or FOLTF decisions have to be taken. The distinctions of the phases and instruments remain unclear in certain areas. In addition, proportionality has to be ensured when preventive measures are financed by DGS. While we support an efficient and practicable exchange of information between competent, designated and resolution authorities, overly burdensome procedures and tasks for authorities and banks are seen critical in particular if the added value is not clear. Well-functioning practises such as IPS-interventions should not be hampered. 3) The core component of the CMDI-package consists of a closely-interrelated concept determined by the general preference and single-tier-system for deposits and a widened public interest assessment. While we understand the concept and the intention, we are not yet convinced that such far reaching intrusion in effective, functioning insolvency and deposit guarantee schemes are justified with regard to the objectives to be achieved. While we support the better coordination of financial services and competition law, progress in aligning national insolvency laws and the extension of RAs' toolbox in a harmonized manner, we are worried about the potential impact of pari passu and general preference, as proposed in the CMDI review, on the efficiency and economic capacity of the AT-DGS' and the banking sector. Currently, we do not see these changes as sufficiently balanced and in line with general resolution objectives. Additional information and model calculations of concrete scenarios other than provided by the

	impact assessment are needed to address the trade-off between the aim to provide funding for the use of certain resolution tools in specific cases and the need to preserve the firepower of the DGS to protect covered deposit, which shall remain the core task of the DGS. Nevertheless, we are open to discuss ways to improve the crisis management framework along the following principles: • Well-functioning national insolvency regimes, capable DGS which maintain their fire power and a robust banking sector and financial market infrastructure perceiving their tasks for the economy also in times of crisis shall be preserved. • Deficiencies of the supervisory and resolution framework should be addressed by targeted measures taking into account changes to the supervisory and resolution framework already implemented or agreed upon. • The primary responsibility of shareholders and creditors for failing banks shall be enforced, the state-bank-nexus be capped. The loss absorption capacity of shareholders and creditors of an institution shall be fully used in case of failure. • The effective use of the resolution framework especially in situations of systemic relevance shall be encouraged. • The application of transfer tools by RAs shall be eased if duly justified and in line with strict safeguards if more than internal funding is required. • MREL has to remain the first line of defense - DGS-funds should be available for the financing of resolution strategies only in specific cases after strictest bail-in and with safeguards that shall not be watered down by vague terms. • DGS should constantly be in a position to fulfil its primary function (delivering in the pay-out-case) in line with the general objectives of the framework (ensuring confidence in the credit sector; preventing bank-runs by protecting covered deposits). • Ways to address liquidity shortfalls should be addressed specifically. In cases where temporary shortfall leads to deterioration and liquidity support could prevent banks‘ insolvencies, liquidity provided by DGS „at arms lengths“ could be considered as a solution. • Undue additional administrative burden shall be prevented and efficient, effective procedures implemented.

	• All depositors shall have access to transparent, up-to-date-information by way of an Electronic Deposit Insurance Estimator (EDIE), giving an accurate deposit insurance calculation in an advisory manner (see https://edie.fdic.gov/calculator.html) instead of new administrative burden caused by updated information to be provided regularly by banks. • Art. 88(2)(b) BRRD shall be amended to improve the functioning of resolution colleges. BG: (Comments): ***Disclaimer:*** **The comments provided below are preliminary and might be subject to changes following thourough analysis and further development of the discussions on the CMDI package. We reserve the right to propose drafting suggestions at a later stage.** LU: (Comments): General comments: LU does not support the proposal to cover client funds in the scope of deposit protection. The protection of client funds shall be addressed in sectoral regulations by ensuring that the safeguarding (and their solvency) requirements are effective. EMI, PI or IF shall be incentivized to undertake due diligence checks in order to deal with the risks that the credit institution where the EMI, PI or IF has deposited the funds could fail. Considering that CMDI aims at expanding the scope of bank resolution, a credible extension of resolution shall allow to protect depositors (and thus also client funds) on a general basis. The circumstance that a given credit institution holds deposits from several or a large EMI, PI or IF shall therefore be examined in the context of the PIA/MREL decisions LU moreover does not support the proposal of setting out the methodology of the least cost test via EBA RTS and the elimination of the super-priority (cf. BRRD). **Comments provided so far are to be considered as preliminary, and may be complemented once further examinations have been undertaken.**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,	
Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee[1],	
Having regard to the opinion of the Committee of the Regions[2],	
Having regard to the opinion of the European Central Bank[3],	
Acting in accordance with the ordinary legislative procedure,	
Whereas:	LU: (Comments): As regards the recitals, LU expresses a general scrutiny reservation pending the discussion and finalisation of the articles.
(1) In accordance with Article 19(5) and (6) of Directive 2014/49/EU of the European Parliament and of the Council[4], the Commission has reviewed the application and the scope of that Directive and concluded that the objective of protection of depositors in the Union through the establishment of deposit guarantee schemes (DGSs) has mostly been met. However, the Commission also concluded that there is a need to address the	SI: (Comments): SI does not support the increased feasibility of using DGS in resolution regarding our structure of banking system. SI does not support using DGS for preventive, resolution or alternative measure or any other than payout proceedings. Using DGS for resolution purposes or alternative measures could lead to material and fast

1 OJ C , , p. .
2 OJ C , , p. .
3 OJ C , , p. .
4 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (OJ L 173, 12.6.2014, p. 149).

remaining gaps in depositor protection and to enhance the functioning of DGSs, while harmonising rules for DGSs interventions other than payout proceedings.	decrease of the national deposit guarantee fund. In the event of loss absorbing, this would be a non-refundable use of the fund's assets and would have to be refunded by contributions by the banks, thereby indirectly transferring the bank's loss in resolution to the entire banking sector and may impact on the financial stability. The proposed system would be unsustainable in a situation of systemic crisis where we would need to provide these funds at national level, while not being able to access SRF. And it can loose the depositors' confidence in DGS.
(2) The failure to comply with the obligations to pay contributions to DGSs or to provide information to depositors and DGSs could undermine the objective of depositor protection. DGSs, or where relevant, designated authorities can apply pecuniary sanctions for late payment of contributions. It is important to improve coordination between DGSs, designated and competent authorities to take enforcement actions against a credit institution that does not comply with its obligations. Although the application of supervisory and enforcement measures by the competent authorities against credit institutions is regulated under national laws and Directive 2013/36/EU of the European Parliament and of the Council[5], it is necessary to ensure that designated authorities inform the competent authorities in time about any infringement of obligations of credit institutions under deposit protection rules.	PT: (Drafting): (…) under national laws and Directive 2013/36/EU of the European Parliament and of the Council[6], it is necessary to ensure that **DGSs, or where relevant,** designated authorities inform the competent authorities in time about any infringement of obligations of credit institutions under deposit protection rules. PT: (Comments): Our suggestion aims to ensure coeherence with the possibility of DGSs monitoring the non-compliance, and applying pecuniary sanctions, as well as consistency with Article 4(4). AT: (Drafting): (2) The failure to comply with the obligations to pay contributions to DGSs or to

[5] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

[6] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

	provide information to depositors and DGSs could undermine the objective of depositor protection. **~~DGSs, or where relevant, designated~~ Competent** authorities can apply pecuniary sanctions for late payment of contributions. It is important to improve coordination between DGSs, designated and competent authorities to take enforcement actions against a credit institution that does not comply with its obligations. **~~Although the application of~~ The** supervisory and enforcement measures by the competent authorities against credit institutions **~~is~~** regulated under national laws and Directive 2013/36/EU of the European Parliament and of the Council[7] **should in future also be applicable in cases where institutions do not compy with requirements of this Directive. ~~i~~I**t is necessary to ensure that **~~designated authorities~~ DGSs** inform the competent authorities in time about any infringement of obligations of credit institutions under deposit protection rules. AT: (Comments): A part of the wording used in this Recital ("*DGSs, or where relevant, designated authorities can apply pecuniary sanctions for late payment of contributions.*") is not accurate and not consistent with Art. 4 (4) of the proposal as, there, it is the "competent authority" of the institution which is in charge of imposing fines or other supervisory measures to member institutions. This should be clarified. Moreover, Art. 4 (4) of the proposal obviously aims at extending the supervisory powers of the "competent authority" according to Art. 64 (1) CRD to cases of non-compliance by institutions with requirements of the DGSD. If this is really the intention of the Commission's proposal, this should be clarified here as well. Lastly, according to Art. 4 (4) of the proposal, the DGSs (and not the "designated

[7] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

	authorities", as stated in this recital) shall inform the "competent authorities" in case of non-compliance to the institutions with their obligations. This should be reflected correctly.
(3) To support further convergence of DGSs' practices and assist DGSs in testing their resilience, the European Banking Authority (EBA) should issue guidelines on the performing of stress tests of DGS' systems.	
(4) Pursuant to Article 5(1), point (d), of Directive 2014/49/EU, deposits of certain financial institutions, including investment firms are excluded from coverage by the DGS. However, the funds that those financial institutions receive from their clients and that they deposit in a credit institution on behalf of their clients, in the exercise of the services they offer, should be protected subject to certain conditions.	**IT:** **(Comments):** It would be better clarifying the scope of this provision. For instance, does it cover also the liquidity deposited by pension funds and asset management companies/funds? PT: (Comments): We support the clarification of the DGSD in relation to the protection of client funds held by non-bank financial institutions.
(5) The range of depositors that are currently protected through repayment by a DGS is motivated by the wish to protect non-professional investors, while professional investors are deemed not to need such protection. For that reason, public authorities have been excluded from coverage. However, most public authorities (which in some Member States include schools and hospitals) cannot be considered to be professional investors. It is therefore necessary to ensure that deposits of all non-professional investors, including public authorities, can benefit from the protection offered by a DGS.	**IT:** **(Comments):** See comment to Art. 5. PT: (Comments): We agree with the proposed changes to the DGSD regarding the protection of deposits of public authorities. AT: (Drafting): ~~(5) The range of depositors that are currently protected through repayment by a DGS~~

	~~is motivated by the wish to protect non-professional investors, while professional investors are deemed not to need such protection. For that reason, public authorities have been excluded from coverage. However, most public authorities (which in some Member States include schools and hospitals) cannot be considered to be professional investors. It is therefore necessary to ensure that deposits of all non-professional investors, including public authorities, can benefit from the protection offered by a DGS.~~ AT: (Comments): We oppose the inclusion of public authorities in the scope of depositor protection. Such an inclusion would not be in line with one of the most essential reasons of depositor protection, namely to to prevent bank runs. Public authorities are not assumed to cause bank runs, thus they do not have to be protected by the DGSD.
(6) Deposits resulting from certain events, including real estate transactions relating to private residential properties or the payout of certain insurance benefits, can temporarily lead to large deposits. For that reason, Article 6(2) of Directive 2014/49/EU currently obliges Member States to ensure that deposits resulting from those events are protected above EUR 100 000 for at least 3 months, but for no longer than 12 months from the moment the amount has been credited or from the moment when such deposits become legally transferable. To harmonise depositor protection in the Union and to reduce the administrative complexity and legal uncertainty related to the scope of protection of such deposits, it is necessary to align their protection to at least EUR 500 000 for a harmonised duration of 6 months, in addition to the coverage level of EUR 100 000.	DK: (Drafting): (6) Deposits resulting from certain events, including real estate transactions relating to private residential properties or the payout of certain insurance benefits, can temporarily lead to large deposits. For that reason, Article 6(2) of Directive 2014/49/EU currently obliges Member States to ensure that deposits resulting from those events are protected above EUR 100 000 for at least 3 months, but for no longer than 12 months from the moment the amount has been credited or from the moment when such deposits become legally transferable. To harmonise depositor protection in the Union and to reduce the administrative complexity and legal uncertainty related to the scope of protection of such deposits, it is necessary to align their protection to at least EUR 500 000 for a harmonised duration of **a minimum of** 6 months, in addition to the coverage level of EUR 100 000. DK: (Comments): We suggest a minor amendment to the recital alongside the given article in order to to

	clarify that harmonisation continues to be a minimum harmonisation requirement. PT: (Comments): We are still assessing the adequacy of this proposal, and will come back at a later stage with a final position.
(7) During a real estate transaction, the funds can transit through different accounts prior to the actual settlement of the transaction. Therefore, to protect depositors going through real estate transactions in a homogenous manner, protection of temporary high balances should apply to the proceeds of a sale as well as to the funds deposited for a purchase of a private residential property in the short-term.	DK: (Comments): As an overall comment we have experienced som issues in regards to development projects, where the buyer commits to buy an apartment at a real estate project, but where the monetary transaction itself takes place three years after the agreement has been signed. As such, the funds that are targeted towards the real estate transaction will only covered for 12 months of the three year waiting time. We find that the goal should be to provide *minimum harmonisation* of temporary high balances, whereto Member States may introduce a higher period of time for certain temporary high balances. AT: (Comments): Regarding the wording **"purchase [...] in the short-term"** there should be clear rules about the proof required for legitimising a claim (e.g. a signed notarised purchase contract or pre-contract etc.). The vague term "(in the) short-term" should also also be defined more precisely, in order to prevent any legal uncertainties.
(8) To ensure timely disbursement of the amount to be repaid by a DGS, and to simplify the administrative and calculation rules, the discretion to take into account due	AT: (Drafting):

liabilities when calculating the repayable amount should be removed.	~~(8) To ensure timely disbursement of the amount to be repaid by a DGS, and to simplify the administrative and calculation rules, the discretion to take into account due liabilities when calculating the repayable amount should be removed.~~ AT: (Comments): We oppose the deletion of the MS option to take into account liabilites of the depositor when calculation the repayable amount. Where an offsetting position exists under the respective legal regulations under national law, the removal of the discretion is considered as not being objectively justified. Removing the discretion could lead to individual depositors being afforded preferential treatment to the detriment of the DGSs that have reimbursed such offsetable amounts, and which consequently suffer potential disadvantages in the ranking of their creditors. LU: (Drafting): **~~(8) To ensure timely disbursement of the amount to be repaid by a DGS, and to simplify the administrative and calculation rules, the discretion to take into account due liabilities when calculating the repayable amount should be removed.~~** LU: (Comments): To be deleted. Please also refer to our comments to article 7(5).
(9) It is necessary to optimise the operational capacities of DGSs and to reduce their administrative burden. For that reason, it should be established that when it comes to the identification of depositors that are entitled to deposits in beneficiary accounts or the assessment of whether depositors are eligible for temporary high balances safeguards, it remains the depositors' and account holders' responsibility to demonstrate, by their own means, their entitlement.	DK: (Comments): Please see comment to Article 7a on the burden of proof in regards to client funds deposits. It should be clear, that it is also the depositors' responsibility to demonstrate that the conditions of Article 8b are met.

(10) Certain deposits may be subject to a longer repayment period because they require DGSs to verify the claim for repayment. To harmonise the rules across the Union, the period for repayment should be limited to 20 working days after the reception of relevant documentation.	PT: (Drafting):
(11) The administrative cost related to the repayment of small amounts on dormant accounts can outweigh the benefits for the depositor. It is therefore necessary to specify that DGSs should not be obliged to take active steps to repay deposits held in such accounts below certain thresholds that should be set at national level. The right of depositors to claim such amount should, however, be preserved. In addition, where the same depositor also has other active accounts, DGSs should include that amount in the calculation of the amount to be reimbursed.	AT: (Comments): We welcome this proposal.
(12) DGSs have diverse methods to repay depositors, ranging from cash payouts to electronic transfers. However, to ensure the traceability of the repayment process from DGSs and to stay in line with the objectives of the Union framework on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, depositor reimbursements via credit transfers should be the default payout method when reimbursement exceeds the amount of EUR 10 000.	AT: (Comments): We welcome this proposal.
(13) Financial institutions are excluded from deposit protection. However, certain financial institutions, including e-money institutions, payment institutions and investment firms, also deposit the funds received from their clients in bank accounts, often on a temporary basis, to comply with safeguarding obligations in line with sectorial legislation,	DK: (Comments): Please see comment to Article 7a on the burden of proof in regards to client funds deposits. It should be clear, that it is also the depositors' responsibility to demonstrate that the conditions of Article 8b are met, including identification of clients and the funds due

including Directive 2009/110/EC of the European Parliament and of the Council[8], Directive (EU) 2015/2366 of the European Parliament and of the Council[9] and Directive 2014/65/EU of the European Parliament and of the Council[10]. Considering the growing role of those financial institutions, DGSs should protect such deposits under the condition that those clients are identified or identifiable.	each individual client. AT: (Comments): We do not support a further extension of the scope by other financial market participants. LU: (Comments): LU is opposed to including financial institutions in the scope of the DGSD, as it would lead to protecting funds (which are <u>not</u> deposits according to sectoral legislation) at the same level as deposits. It would notably give rise to operational complexity and create asymmetries, and thus an unlevel playing field, between the different safeguarding requirements that financial institutions under PSD are subject to (i.e. assets deposited in a separate account in a credit institution (and thus subject to DGSD) would be treated differently than assets invested in secure, liquid low-risk assets, or funds covered by an insurance policy. Such an approach could lead to unintended, and undesired consequences (e.g. banks unwilling to accept fund deposits from financial instiutions because of higher DGS-related costs, and other knock-on effects such as the classification as covered deposits and their non-inclusion in the base amount for the purpose of calculating SRF contributions).
(14) Clients of financial institutions do not always know which credit institution the financial institution has chosen to deposit their funds. DGSs should therefore not aggregate such deposits with a deposit that the same clients might have in the	PT: (Comments): On the proposal to allow to DGS to pay directly to the account holder, instead of the

[8] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

[9] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

[10] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

same credit institution where the financial institution has placed their deposits. Credit institutions may not know the clients entitled to the sum held in the client accounts, or be able to check and record individual data of those clients. Depending on the type and business model of the financial institution, there might be circumstances, where reimbursing the client directly could endanger the account holder. Therefore, DGSs should be allowed to reimburse amounts to a client account opened by the account holder in another credit institution for the benefit of each client when certain criteria are met. To avoid the risk of double payment in those situations, any claims clients have in relation to sums held on their behalf by the account holder should be reduced by the amount reimbursed by the DGS to those clients directly. The EBA should therefore develop draft regulatory technical standards to specify the technical details related to the identification of clients for the purpose of repayment, the criteria for repayment to the account holder for the benefit of each client or to the client directly, and the rules to avoid multiple claims for payouts to the same beneficiary.	beneficiary/absolutely entitled depositor, we are still assessing it and will come back at a later stage. AT: (Comments): We do not support this amendment.
(15) When reimbursing depositors, DGSs may encounter situations that give rise to money laundering concerns. DGS should therefore withhold the payout to a depositor when notified that a financial intelligence unit has suspended a bank or payment account in accordance with the applicable anti-money laundering rules.	AT: (Comments): We welcome this amendment.
(16) Article 9 of Directive 2014/49/EU provides that where a DGS makes payments in the context of resolution proceedings, the DGS should have a claim against the credit institution concerned for an amount equal to its payments and	SI: (Comments): We have a general reservation on the use of DGSs for any other purpose than protection of covered deposits. Use of DGS funds for any other reason than this, is in our view a

that claim should rank *pari passu* with covered deposits. That provision does not distinguish between a DGS's contribution when an open-bank bail-in tool is used, and DGS's contribution to the financing of a transfer strategy (sale of business or bridge institution tool) followed by liquidation of the residual entity. To ensure clarity and legal certainty with respect to the existence and amount of a DGS's claim in different scenarios, it is necessary to specify that when the DGS contributes to support the application of the sale of business tool or of the bridge institution tool, or alternative measures, whereby a set of assets, rights and liabilities, including deposits, of the credit institution are transferred to a recipient, that DGS should have a claim against the residual entity in its subsequent winding-up proceedings under national law. To ensure that the shareholders and creditors of the credit institution left behind in the residual entity effectively absorb the losses of that credit institution and improve the possibility of repayments in insolvency to the DGS, the DGS claim should have the same ranking as the depositors' claim. In case the open bank bail-in tool is applied (i.e., the credit institution continues its operations), the DGS contributes in the amount by which covered deposits would have been written down or converted to absorb the losses in that credit institution, had covered deposits been included within the scope of bail-in. Therefore, the DGS's contribution should not result in a claim against the institution under resolution as it would eliminate the purpose of the DGS's contribution.	deviation of the main purpose of the DGS funds, and raises question of the general protection of deposits, which in our view should not be the case, since it could cause some moral hazard and market discipline issues. According to BRRD Art 44 – covered deposits are excluded from bail in and should as such can not bare any losses SI does not support the amendment of depositor hierarchy and aims to preserve current provisions. Current regulation also retains a level of market discipline and prevents moral hazard. In our view, in respect of Article 76 of SRMR SRF and DGS should be pari passu. AT: (Comments): While we support the better coordination of financial services and competition law, progress in aligning national insolvency laws and the extension of RAs' toolbox in a harmonized manner, we are worried about the potential impact of pari passu and general preference, as proposed in the CMDI, on the efficiency and economic capacity of the AT-DGS and banking sector. Currently, we do not see these changes as sufficiently balanced and in line with general resolution objectives. In any case, DGS-contributions should be satisfied preferentially ahead of all other deposits/depositors in the event of a resolution or - where preventive measures have been applied previously- in the event of an insolvency. LU: (Comments): The purpose of the minimum bail-in of 8% is to protect public funds and to minimize the reliance on industry-funded safety nets. However, industry-funded safety nets, i.e. the DGS and the SRF, shall not be played off against each other by using the DGS resources to absorb losses in order to protect the SRF resources. The DGS shall intervene in the

	most efficient manner. The minimum bail-in of 8% TLOF should not prejudge on how the DGS shall intervene when covered deposits are hit before reaching 8%. A DGS contribution in the case of an open bank bail-in strategy could in principle also follow other purposes than absorbing losses (e.g. temporary support in the form of guarantees or liquidity provision). A claim could thus be justified – or even be necessary in order to comply with the LCT – in certain cases. In the event where the bail-in tool is combined with the sale of business tool, the question of whether the DGS contribution gives rise to a claim at least for the part of the intervention funding the transfer could also be clarified.
(17) To ensure convergence of DGS practices and legal certainty for depositors to claim their deposits, and to avoid operational hurdles for DGSs, it is important to set an adequately long period within which depositors can claim the repayment of their deposits, in those cases where the DGS has not repaid depositors within the deadlines laid down in Article 8 of Directive 2014/49/EU in the case of a payout.	LU: (Comments): cf. comments under article 9(3). Amendments to the recital are necessary to allow for the fact that the period within which depositors can claim a repayment should in principle be aligned with the time period within which creditors have to file their claim in the context of insolvency proceedings.
(18) Pursuant to Article 10(2) of Directive 2014/49/EU, Member States are to ensure that by 3 July 2024, the available financial means of a DGS reach a target level of 0,8 % of the amount of the covered deposits of its members. To objectively assess whether DGSs fulfil that requirement, a clear reference period should be set to determine the amount of covered deposits and DGSs' available financial means.	
(19) To ensure the resilience of DGSs, their funds should derive from stable and irrevocable contributions. Certain sources of DGS financing, including loans and expected recoveries, are too contingent to be accounted as contributions to reach the DGS' target level. To harmonise DGSs'	SI: (Comments): See comment to paragraph (1). NL:

conditions for the fulfilment of their target level and to ensure that DGSs' available financial means are financed by contributions from the industry, funds that qualify to reach the target level should be distinguished from funds that are considered as complementary sources of financing. Outflows of DGS funds, including foreseeable loan repayments, can be planned and factored in regular contributions from DGS members, and should therefore not lead to a decrease of the available financial means below the target level. It is therefore necessary to specify that, after the target level has been reached for the first time, only a shortfall in DGS' available financial means caused by a DGS intervention (payout, or preventive, resolution or alternative measures) should trigger a six-year replenishment period. To ensure consistent application, the EBA should develop draft regulatory technical standards specifying the methodology for the calculation of the target level by the DGSs.	(Comments): Clarifying question: How does this highlighted part relate to Article 10? Article 10 seems to provide different regimes for replenishment of the fund, depending on the type of DGS intervention. PT: (Comments): We welcome the proposed changes. There is merit in clarifying that the DGSs' target level should be reached only through mandatory contributions from the DGSs' member institutions. This is an important element for the level playing field but also having EDIS in mind. Indeed, it is of utmost importance to ensure that the cost of financing the depositor protection is borne by the credit institutions themselves and in an equal footing across the Union. This is also a key element to align incentives. AT: (Comments): This element enhances legal certainty and is therefore supported. LU: (Comments): Amendements necessary to reflect comments to article 10
(20) The available financial means of a DGS should be immediately usable to face sudden events of payout or other interventions. In view of various practices across the Union, it is appropriate to lay down requirements for DGSs' funds investment strategy to mitigate any negative impact on the ability of a DGS to fulfil its mandate. Where a DGS is not competent to set the investment strategy, the authority, or body or entity in the Member State that is responsible for setting the investment strategy should, when setting that investment strategy, also respect the principles regarding diversification	SI: (Comments): See comment to paragraph (1).

and investments in low-risk assets. To preserve full operational independence and flexibility of the DGS in terms of access to its funds, where DGS funds are deposited with the treasury, those funds should be earmarked and placed on a segregated account.	
(21) The option to raise the available financial means of a DGS through mandatory contributions paid by member institutions to existing schemes of mandatory contributions established by a Member State to cover the costs related to systemic risk has never been used and should therefore be removed.	AT: (Comments): We welcome this amendment.
(22) It is necessary to enhance depositor protection, while avoiding the need for a fire sale of the assets of a DGS and limiting possible negative pro-cyclical effects over the banking industry caused by the collection of extraordinary contributions. DGSs should therefore be allowed to use alternative funding arrangements that enable them to obtain at any time short-term funding from sources other than contributions, including before using their available financial means and funds collected through extraordinary contributions. Because credit institutions should primarily bear the cost and responsibility for financing DGSs, alternative funding arrangements from public funds should only be used as a last resort.	PT: (Comments): We agree that DGSs should enjoy more flexibility in terms of deciding in which order they can use their funding sources because this is undoubtedly the best way of ensuring that DGSs are able to obtain funding when due and it also enables DGSs to make decisions according to the specific needs of a concrete situation, while taking into account financial stability concerns. BE: (Drafting): We propose to delete this amendment BE: (Comments): Fire sales can be avoided by falling back on repo's for example or to have a cash investment policy. Moreover, the current text already provides a cap on ex post contributions (to avoid procyclic effects) and the obligation to take into account the economic cycle. The need for this flexibility thus lacks evidence.

	In any case we are convinced that the use of alternative funding arrangements should in general only be used as a last resort (because the institutions should be obliged to build up AFM and thereby ensure a level playing field across the member states). Should the extraordinary contributions not be directly available (which is a real risk), one must ensure the possibility to use public alternative funding arrangements (while in parallel the ex post contributions are collected to reimburse the alternative funding as soon as possible). Finally, making a distinction between private and public alternative financial means unnecessarily creates an unlevel playing field. AT: (Drafting): (22) It is necessary to enhance depositor protection, while avoiding the need for a fire sale of the assets of a DGS and limiting possible negative pro-cyclical effects over the banking industry caused by the collection of extraordinary contributions. **Member States should therefore have the option to allow its** DGSs ~~**should therefore be allowed**~~ to use alternative funding arrangements that enable them to obtain at any time short-term funding from sources other than contributions, including before using their available financial means and funds collected through extraordinary contributions. Because credit institutions should primarily bear the cost and responsibility for financing DGSs, alternative funding arrangements from public funds should only be used as a last resort. AT: (Comments): In principal, we welcome more flexibility in the financing cascade in the context of payout events. However, we advocate that the question whether such a more flexible financing structure should be introduced at all and if yes, how the concrete calibration of such a more flexible financing cascade should look like should be decided by the Member States, i.e. Member States should have the possibility to not allow at all or allow only the use of specific (but not all existing) types of "alternative funding arrangements" before using their available financial means and extraordinary contributions.

	For further comments on this topic, please see our comments to Art. 10 (11) of the proposal.
(23) To ensure adequately diversified investment of DGS funds and convergent practices, the EBA should issue guidelines to provide DGSs with guidance in that respect.	
(24) While the primary role of DGSs is the repayment of covered depositors, interventions outside payout can prove more cost-effective for DGSs and ensure uninterrupted access to deposits by facilitating transfer strategies. DGSs may be required to contribute to the resolution of credit institutions. In addition, in some Member States, DGSs may finance preventive measures to restore the long-term viability of credit institutions, or alternative measures in insolvency. While such preventive and alternative measures can significantly improve the protection of deposits, it is necessary to subject such measures to adequate safeguards, including in the form of a harmonised least cost test, to ensure a level playing field and the effectiveness and cost-efficiency of such measures. Such safeguards should only apply to interventions financed with the DGS's available financial means regulated under this Directive.	SI: (Comments): Please refer to our comment to paragraph (1). Please refer also to our comments under #16. The use of DGS should be limited to the covered deposits (pay outs and/or alternative measures aimed to insure investors' access to funds. PT: (Comments): AT: (Comments): If a DGS shall contribute to resolution, the resolution authority's access to the available financial means should be limited to the lowest possible extent to ensure that the DGS keeps its firepower for the pay-out of covered deposits. LU: (Comments): While it is true that the requirement for the DGS to intervene is dependent on objective data and the LCT, the wording "DGS may be required to contribute to the resolution" is inappropriate as it gives the impression that the DGS has no independent decision-making powers.

	LU moreover supports a general review of governance arrangements and the allocation of responsibilities between resolution and DGS authorities. DGS should be able to prefer a pay-out over a transfer as proposed by the NRA (at least where the realization of the transfer would to a large extent depend on the DGS contribution). DGS or local RAs shall for instance be able to request MREL add-ons.
(25) Measures to prevent failure of a credit institution through sufficiently early interventions can play an effective role in the continuum of crisis management tools to maintain depositor confidence and financial stability. Those measures can take various forms - capital support measures through own funds instruments (including Common Equity Tier 1 instruments) or other capital instruments, guarantees, or loans. DGSs have had heterogeneous recourse to those measures. To ensure the continuum of crisis management tools and recourse to preventive measures in a manner consistent with the resolution framework and the state aid rules, it is necessary to specify the timing and conditions for their application. Preventive measures are not appropriate for the absorption of incurred losses when the credit institution is already failing or likely to fail and should be used early to prevent deterioration of the financial situation of the bank. Designated authorities should therefore verify whether the conditions for such DGS intervention have been fulfilled. Finally, those conditions for the use of DGS available financial means should be without prejudice to the assessment by the competent authority of whether an IPS fulfils the criteria laid down in Article 113(7)	SI: (Comments): We do not support the use of DGS in the early intervention phase. Please refer to comments raised at #16. Please refer also to our comment to paragraph (1). NL: (Comments): We support reference to consistency with state aid framework. The same conditions should apply. See also comment at Article 11a. PT: (Drafting): (25) Measures to prevent failure of a credit institution through sufficiently early interventions can play an effective role in the continuum of crisis management tools to maintain depositor confidence and financial stability. Those measures can take various forms - capital support measures through own funds instruments (including Common Equity Tier 1 instruments) or other capital instruments, guarantees, or loans. DGSs have had heterogeneous recourse to those measures. To ensure the continuum of crisis management tools and recourse to preventive measures in a manner consistent with the

of Regulation (EU) No 575/2013 of the European Parliament and of the Council[11].	resolution framework and the state aid rules, it is necessary to specify the timing and conditions for their application. Preventive measures are not appropriate for the absorption of incurred losses when the credit institution is already failing or likely to fail and should be used early to prevent deterioration of the financial situation of the bank **and to secure its financial soundness and long-term viability**. **Competent** ~~**Designated**~~ authorities should therefore **confirm that the circumstances for failing or likely to fail are not met** and that ~~**verify whether the conditions for**~~ **preventive measures** ~~**such DGS intervention have been**~~ **are needed** ~~**fulfilled**~~ **to secure the financial soundness and long-term viability of the credit institution**. **DGSs, or where relevant, designated authorities should then verify that the conditions for using DGSs' available financial means in the context of preventive measures are met.** Finally, those conditions for the use of DGS available financial means should be without prejudice to the assessment by the competent authority of whether an IPS fulfils the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[12]. PT: (Comments): Changes proposed here seek to align with our proposals in the relevant enacting provisions. Thus, we refer to our comments in Article 11(3), 11a and 11b. In particular, we believe that it is necessary to ensure that preventive measures aim at "secure financial soundness and long-term viability of the institution" (as also required by Article 32c(1)(b) BRRD). AT: (Comments):

[11] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[12] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

	We would urge for further aligning the concept „early interventions/ preventative measues“ in DGSD and BRRD/SRMR with CRD VI.
(26) To ensure that preventive measures achieve their objective, credit institutions should be required to prepare a note outlining the measures that they commit to undertake. The preparation of such note should not be too burdensome and time-consuming for the credit institution to ensure the possibility for the DGS to intervene early enough. Therefore, the note accompanying preventive measures should take the form of a sufficiently short explanatory document. Such note should contain all elements which aim at preventing the outflow of funds and strengthening the capital and liquidity position of the credit institution, enabling the credit institution to comply with all the relevant prudential and other regulatory requirements on a forward-looking basis. Such note should therefore contain capital raising measures, including rules on the issuance of rights, the voluntary conversion of subordinated debt instruments, liability management exercises, capital generating sales of assets, the securitisation of portfolios, and earnings retention, including dividend bans and bans on the acquisition of stakes in undertakings. For the same reason, during the implementation of the measures envisaged in the note, credit institutions should also strengthen their liquidity positions and refrain from aggressive commercial practices, and from the repurchasing of own shares or call hybrid capital instruments. Such note should also contain an exit strategy for any support measures received. Competent authorities are best positioned to be consulted on the relevance and credibility of the measures envisaged in the note. To ensure that the designated authorities of the DGS that is	SI: (Comments): Please refer to comments raised at #25 Please refer also to our comment to paragraph (1). CY: (Comments): We feel that this preamble is longer and more detailed than necessary. EL: (Drafting): EL: (26) To ensure that preventive measures achieve their objective, credit institutions should be required to prepare a note outlining the measures that they commit to undertake. The preparation of such note should not be too burdensome and time-consuming for the credit institution to ensure the possibility for the DGS to intervene early enough. Therefore, the note accompanying preventive measures should take the form of a sufficiently short explanatory document. Such note should contain all elements which aim at preventing the outflow of funds and strengthening the capital and liquidity position of the credit institution, enabling the credit institution to comply with all the relevant prudential and other regulatory requirements on a forward-looking basis. Such note should therefore contain capital raising measures, including rules on the issuance of rights, the voluntary conversion of subordinated debt instruments, liability management exercises, capital generating sales of assets, the securitisation of portfolios, and earnings retention, including dividend bans and bans on the acquisition of stakes in undertakings. For the same reason, during the implementation of the measures envisaged in the note, credit institutions should also strengthen their liquidity positions and refrain from aggressive commercial practices, and from the repurchasing of own shares or call hybrid

requested to finance a preventive measure by the credit institution can assess that all the conditions for preventive measures are fulfilled, the competent authorities should cooperate with the designated authorities. To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a note.	capital instruments. Such note should also contain an exit strategy for any support measures received. **Such note should be compatible with any capital plan the institution has submitted to the competent authority as well as the recovery plan tht the instiution submits as per articles 5 and 7 of Directive 2014/59/EU.** Competent authorities are best positioned to be consulted on the relevance and credibility of the measures envisaged in the note. To ensure that the designated authorities of the DGS that is requested to finance a preventive measure by the credit institution can assess that all the conditions for preventive measures are fulfilled, the competent authorities should cooperate with the designated authorities. To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a note. EL: (Comments): EL: It would be helpful to link this note with the capital plan if the institution has submitted one to the competent authority as well as the recovery plan. To this end we propose a relevant amendment. **IT:** **(Drafting):** (26) To ensure that preventive measures achieve their objective, credit institutions should be required to prepare a note outlining the measures that they commit to undertake. The preparation of such note should not be too burdensome and time-consuming for the credit institution to ensure the possibility for the DGS to intervene early enough. Therefore, the note accompanying preventive measures should take the form of a sufficiently short explanatory document. Such note should contain all elements which aim at preventing the outflow of funds and strengthening the capital and liquidity position of the credit institution, enabling the credit institution to comply with all the relevant prudential and other regulatory requirements on a forward-looking basis. Such note should therefore contain capital raising measures, including rules on the issuance of rights, the voluntary conversion of subordinated debt instruments, liability management

	exercises, capital generating sales of assets, the securitisation of portfolios, and earnings retention, including dividend bans and bans on the acquisition of stakes in undertakings. For the same reason, during the implementation of the measures envisaged in the note, credit institutions should also strengthen their liquidity positions and refrain from aggressive commercial practices, and from the repurchasing of own shares or call hybrid capital instruments. Such note should also contain an exit strategy for any support measures received. Competent authorities are best positioned to be consulted on the relevance and credibility of the measures envisaged in the note. To ensure that the designated authorities of the DGS that is requested to finance a preventive measure by the credit institution can assess that ~~**all**~~ the conditions for preventive measures are fulfilled, the competent authorities should cooperate with the designated authorities. To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a note. **IT:** **(Comments):** The reference to "all" the conditions could be misleading as in Article 11a (3) the reference is only to the conditions listed in paragraph 1 of the same Article. NL: (Comments): The condition of preparing the note outlining the measures that will be undertaken by the credit institution should not be taken lightly, as this recital may suggest. PT: (Drafting): (26) To ensure that preventive measures achieve their objective, credit institutions should be required to prepare a note outlining the measures that they commit to undertake. The preparation of such note should not be too burdensome and time-consuming for the credit institution to ensure the possibility for the DGS to intervene

	early enough. Therefore, the note accompanying preventive measures should take the form of a sufficiently short explanatory document. Such note should contain all elements which aim at preventing the outflow of funds and strengthening the capital and liquidity position of the credit institution, enabling the credit institution to comply with all the relevant prudential and other regulatory requirements on a forward-looking basis. Such note should therefore contain capital raising measures, including rules on the issuance of rights, the voluntary conversion of subordinated debt instruments, liability management exercises, capital generating sales of assets, the securitisation of portfolios, and earnings retention, including dividend bans and bans on the acquisition of stakes in undertakings. For the same reason, during the implementation of the measures envisaged in the note, credit institutions should also strengthen their liquidity positions and refrain from aggressive commercial practices, and from the repurchasing of own shares or call hybrid capital instruments. Such note should also contain an exit strategy for any support measures received. Competent authorities are best positioned to **assess** ~~**be consulted on**~~ the relevance and credibility of the measures envisaged in the note **and so they should approve the measures beforehand**. To ensure that **DGSs, or where relevant,** ~~**the**~~ designated authorities ~~**of the DGS that is requested required to finance a preventive measure by the credit institution, upon request of the credit institution,**~~ can assess that all the conditions for **the use of the DGSs' available financial means in the context of** preventive measures are fulfilled, the competent authorities should cooperate with the designated authorities. To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a note. PT: (Comments): Changes proposed here seek to align with our proposals in the relevant enacting provisions. Thus, we refer to our comments above and in Article 11(3), 11a and 11b. Regarding the note with the measures, we consider that the CA is better placed in many cases to assess the adequacy of the measures proposed. Also, it is important to ensure that contributions raised in accordance with the DGSD are used when actually needed.

	Therefore, the CA should approve the measures included in the plan. AT: (Comments): In the case of private sector interventions (i.e. Mergers&aquisitions, change in management, shift of stakeholders), including those of Institutional Protection Schemes (IPS), further improvements are absolutely necessary to enable a proper interaction between CRD VI and BRRD/SRMR, to prevent undue administrative burden and strengthen a prudentially and economically efficient, risk- and stability-oriented approach as well as to respect the Eurogroup-statement. We would urge for further aligning the concept „early interventions/ preventative measues“ in DGSD and BRRD/SRMR with CRD VI.
(27) To ensure that credit institutions receiving support from DGSs in the form of preventive measures deliver on their commitments, competent authorities should request a remediation plan from credit institutions that failed to fulfil their commitments. Where a competent authority is of the opinion that the measures in the remediation plan are not capable of achieving the credit institution's long-term viability, the DGS should not provide any further preventive support to the credit institution. To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a remediation plan.	SI: (Comments): Please refer to our comment to paragraph (1). PT: (Drafting): (27) To ensure that credit institutions receiving support from DGSs in the form of preventive measures deliver on their commitments, competent authorities should request **and approve** a remediation plan from credit institutions that failed to fulfil their commitments **or to repay the amount contributed under the preventive measures.** Where a competent authority is of the opinion that the measures in the remediation plan are not capable of achieving the credit institution's long-term viability, the DGS should not provide any further preventive support to the credit institution **and the relevant authorities should carry out an assessment on whether the institution is failing or is likely to fail, in accordance with Article 32 of Directive 2014/59/EU. The same consequences should apply in cases where the credit institution fails to comply with the remediation plan or fails to repay the preventive measures.** To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a remediation plan.

	PT: (Comments): Changes proposed here aim to align with our proposals in the relevant enacting provisions. Thus, we refer to our comments above and in Article 11(3), 11a and 11b. In particular, and similarly to what we propose regarding the note, we consider that the remediation plan should also be approved by the CA. Moreover, since preventive measures have the risk of creating "zombie banks", we think it is essential that a similar outcome applies in cases of precautionary recapitalisation and preventive measures where the limitations/measures imposed in the context of the application of such (preventive) measures are not met. Also to ensure coherence between both regimes, the precautionary recapitalisation framework should equally be changed in order to align it, where adequate, with the preventive measures regime, allowing institutions, at least, to present a remediation plan and only if such remediation plan is not considered credible, or is not complied with by institutions, authorities should move to the FOLTF assessment. AT: (Comments): In the case of private sector interventions (i.e. Mergers&aquisitions, change in

	management, shift of stakeholders), including those of Institutional Protection Schemes (IPS), further improvements are absolutely necessary to enable a proper interaction between CRD VI and BRRD/SRMR, to prevent undue administrative burden and strengthen a prudentially and economically efficient, risk- and stability-oriented approach as well as to respect the Eurogroup-statement. We would urge for further aligning the concept „early interventions/ preventative measues“ in DGSD and BRRD/SRMR with CRD VI. From a technical point of view, we would also see the need for an information of the designated authority – at least by way of access to a commonly used data-base.
(28) To avoid detrimental effects on competition and on the internal market, it is necessary to lay down that in the case of alternative measures in insolvency, relevant bodies representing a credit institution in the context of national insolvency proceedings (liquidator, receiver, administrator or other) should make arrangements for the marketing of the business of the credit institution or part of it in an open, transparent and non-discriminatory process, while aiming to maximise, as far as possible, the sale price. The credit institution or any intermediary acting on behalf of the credit institution should apply rules that are adequate for the marketing of assets, rights and liabilities that are to be transferred to potential purchasers. In any event, the use of State resources should remain subject to the relevant State aid rules under the Treaty, where applicable.	**IT:** **(Drafting):** (28) To avoid detrimental effects on competition and on the internal market, it is necessary to lay down that in the case of alternative measures in insolvency, relevant bodies representing a credit institution ~~**in the context of national insolvency proceedings**~~ (liquidator, receiver, administrator or other) **or the relevant national authority** should make arrangements for the marketing of the business of the credit institution or part of it in an open, transparent and non-discriminatory process, while aiming to maximise, as far as possible, the sale price. The credit institution or any intermediary acting on behalf of the credit institution **or the relevant national authority** should apply rules that are adequate for the marketing of assets, rights and liabilities that are to be transferred to potential purchasers. In any event, the use of State resources should remain subject to the relevant State aid rules under the Treaty, where applicable. **IT:** **(Comments):** We understand that the marketing could be performed also by the temporary administrator. However, the reference to the “*context of national insolvency proceeding*” could be misleading in this regard. In order to avoid misunderstandings, this expression should be deleted. With the aim to take into account all the possible specificities of the national insolvency

	proceedings, the task of the marketing should be allocated also to a national authority (e.g. the authority in charge for the NIP). AT: (Comments): In the case of "usual" private sector solutions an alignment with CRD VI is needed.
(29) Since the main aim of DGSs is to protect covered deposits, DGSs should only be allowed to finance interventions other than payouts where such interventions are cheaper than payouts. Experience with the application of that rule ('least cost test') has revealed several shortcomings as the current framework does not detail how to determine the cost of those interventions nor the cost of the payout. To ensure a consistent application of the least cost test across the Union, it is necessary to specify the calculation of those costs. At the same time, it is necessary to avoid excessively stringent conditions that would effectively disable the use of DGS funds for other interventions than payout. When carrying out the least cost assessment, DGSs should first verify that the cost to finance the selected measure is lower than the cost of reimbursement of covered deposits. The methodology for the least cost assessment should take into account the time value of money.	SI: (Comments): Please refer to our comment to paragraph (1). PT: (Drafting): (29) Since the main aim of DGSs is to protect covered deposits, DGSs should only be allowed to finance interventions other than payouts where such interventions are cheaper than payouts **and are able to ensure, in a more effective way, the depositors' access to their deposits.** Experience with the application of that rule ('least cost test') has revealed several shortcomings as the current framework does not detail how to determine the cost of those interventions nor the cost of the payout. To ensure a consistent application of the least cost test across the Union, it is necessary to specify the calculation of those costs. At the same time, it is necessary to avoid excessively stringent conditions that would effectively disable the use of DGS funds for other interventions than payout. When carrying out the least cost assessment, DGSs should first verify that the cost to finance the selected measure is lower than the cost of reimbursement of covered deposits. The methodology for the least cost assessment should take into account the time value of money. PT: (Comments): We think that the guiding principle here should not be purely cost-based but also what intervention ensures a more effective protection of the confidence of depositors. The LCT

	can and should be the quantitative limit of the intervention but it should not be a standalone guiding principle of such intervention. The effective protection of depositors' confidence would be more aligned with DGSs' mandates and the principles of this Directive. AT: (Comments): The LCT is an important safeguard to avoid depletion of the DGS. It is of utmost political importance that this safeguard shall not be watered down by vague terms. LU: (Drafting): (29) Since the main aim of DGSs is to protect covered deposits, DGSs should only be allowed to finance interventions other than payouts where such interventions are cheaper than payouts. Experience with the application of that rule ('least cost test') has revealed several shortcomings as the current framework does not detail how to determine the cost of those interventions nor the cost of the payout. To ensure a consistent application of the least cost test across the Union, it is necessary to specify the calculation of those costs. ~~**At the same time, it is necessary to avoid excessively stringent conditions that would effectively disable the use of DGS funds for other interventions than payout.**~~ When carrying out the least cost assessment, DGSs should first verify that the cost to finance the selected measure is lower than the cost of reimbursement of covered deposits. The methodology for the least cost assessment should take into account the time value of money. LU: (Comments): The least cost test has to be objective, robust and credible. The reference to the goal of avoiding "excessively stringent conditions that would effectively disable the use of DGS funds for other interventions than payout" is not appropriate. Interventions other than a payout shall only be allowed when they are more cost-efficient for the DGS. This can

	only be achieved on the basis of a consistent LCT and the need for consistency (and not the aim of not being "excessively stringent", i.e. somewhat permissive) has to be reflected in the recital.
(30) Liquidation can be a lengthy process whose efficiency depends on national judicial efficiency, insolvency regimes, individual bank features, and the circumstances of the failure. For DGS interventions as part of alternative measures, the least cost test should rely on the valuation of the assets and liabilities of the credit institution, laid down in Article 36(1) of Directive 2014/59/EU, and the estimate laid down in Article 36(8) of that Directive. However, the precise evaluation of liquidation recoveries can be challenging in the context of the least cost test for preventive measures, which supposedly happen long before any foreseeable liquidation. Therefore, the counterfactual for the least cost test for preventive measures should be adjusted accordingly, and in any case, the expected recoveries should be limited to a reasonable amount based on recoveries in past payout events.	SI: (Comments): Please refer also to our comment to paragraph (1). CY: (Comments): "…the expected recoveries should be limited to a reasonable amount based on recoveries in past payout events." If the DGS super preference ranking changes, how can this work for the upcoming cases since the recovery amount of "past cases" has been received based on this super preference ranking? Perhaps define how many past cases will be considered and give more guidance.. **IT:** **(Drafting):** (30) Liquidation can be a lengthy process whose efficiency depends on national judicial efficiency, insolvency regimes, individual bank features, and the circumstances of the failure. ~~**For DGS interventions as part of alternative measures, the least cost test should rely on the valuation of the assets and liabilities of the credit institution, laid down in Article 36(1) of Directive 2014/59/EU, and the estimate laid down in Article 36(8) of that Directive. However,**~~ **T**~~**t**~~he precise evaluation of liquidation recoveries can be challenging in the context of the least cost test for preventive measures, which supposedly happen long before any foreseeable liquidation. Therefore, the counterfactual for the least cost test for preventive measures should be adjusted accordingly, and in any case, the expected recoveries should be limited to a reasonable amount based on recoveries in past payout events. **IT:**

	(Comments): Please see the comment related to Article 11e(2)(b). LU: (Comments): The precise evaluation of liquidation recoveries at a stage where the bank is still solvent (cf. condition for preventive measures) is not only "challenging", but impossible. Indeed, in the context of preventive measures, not only the liquidation proceeds are hypothetical, but the quantification of the (supposed) losses triggering the liquidation are based on a hypothetical assumption as well. The wording of the recitals regarding the use of preventive measures has to be rationalized.
(31) The designated authorities should estimate the cost of the measure for the DGS, including after the repayment of a loan, a capital injection or the use of a guarantee, net of expected earnings, operational expenses, and potential losses, against a counterfactual based on a hypothetical final loss at the end of the insolvency proceedings, which should take into account recoveries from the DGS as part of a bank's liquidation proceedings. To give a fair and more comprehensive picture of the actual cost of depositors' repayment, the estimation of the loss incurred due to the reimbursement of covered deposits should include costs indirectly related to the reimbursement of depositors. Such costs should include the cost of replenishment of the DGS and the cost that the DGS might bear due to the recourse to alternative financing. To ensure consistent application of the least cost test, the EBA should develop draft regulatory technical standards on the methodology to calculate the cost of different DGS interventions. To ensure consistency of the methodology for the least cost assessment with the DGS statutory or contractual mandate as regards preventive	SI: (Comments): Please refer also to our comment to paragraph (1). **IT:** **(Drafting):** (31) The ~~**designated authorities**~~ **DGSs** should estimate the cost of the measure ~~**for the DGS**~~, including after the repayment of a loan, a capital injection or the use of a guarantee, net of expected earnings, operational expenses, and potential losses, against a counterfactual based on a hypothetical final loss at the end of the insolvency proceedings, which should take into account recoveries from the DGS as part of a bank's liquidation proceedings. To give a fair and more comprehensive picture of the actual cost of depositors' repayment, the estimation of the loss incurred due to the reimbursement of covered deposits should include costs indirectly related to the reimbursement of depositors. Such costs should include the cost of replenishment of the DGS**,** ~~**and**~~ the cost that the DGS might bear due to the recourse to alternative financing**, the additional cost of funding for the banking system and the impact on the weaker banks**. To ensure consistent application of the least cost test, the EBA should develop ~~**draft regulatory technical standards**~~ **guidelines** on the methodology to calculate the cost of different DGS interventions. To ensure consistency of the methodology for the least cost

measures, the EBA should, when developing those draft regulatory technical standards, take into account the relevance of preventive measures in the methodology for the calculation of the payout counterfactual.	assessment with the DGS statutory or contractual mandate as regards preventive measures, the EBA should, when developing those ~~**draft regulatory technical standards**~~ **guidelines**, take into account the relevance of preventive measures in the methodology for the calculation of the payout counterfactual. **IT:** **(Comments):** The DGS, not the designated authority, should be in charge for the calculation of the least cost; this allocation of the task is consistent with the relevant Articles of the Directive. With reference to the indirect costs, a comprehensive assessment of the cost of the reimbursement must include also the increase in the cost of funding of the banking system (e.g. additional risk premium on bond issues) and the risk of contagion on other weak member banks. These two aspects represent reasonable effects of a payout and relevant components in the calculation. With regard to the EBA product on the methodology to calculate the cost of different DGS interventions, the use of guidelines instead of RTS is more appropriate in order to take into account the peculiarities of the national systems (e.g. national judicial efficiency, insolvency regimes, individual bank features). NL: (Comments): NL clarification: what is meant with 'indirectly'. The elements of expected earnings, operational expenses and potential losses should be further substantiated in this Article 11e to ensure a harmonized application of the LCT (level 1). PT: (Drafting): (31) The ~~**designated authorities**~~ **DGS** should estimate the cost of the measure ~~for the DGS~~, including after the repayment of a loan, a capital injection or the use of a guarantee,

	net of expected earnings (…) PT: (Comments): To align with Article 11e(1). AT: (Comments): The LCT is an important safeguard to avoid depletion of the DGS. It is of utmost political importance that this safeguard shall not be watered down by vague terms. Indirect costs should only consist of costs that are borne by the DGS and banks. It is of high relevance for us, that the understanding of "indirect costs" is not expanded further. The clarification in Rec. 31 should therefore also be added in the respective article and further clarifications added which clarify that e.g. social, welfare, financial stability-related assumptions are not understood by the term "indirect costs". LU: (Comments): Interventions other than payouts also entail indirect costs and operational expenses. Likewise, the need to replenish the DGS will also arise, and thus trigger costs, in the context of non-payout interventions. This has to be better reflected in the recital and in the Article.
(32) To enhance harmonised protection of depositors and specify respective responsibilities across the Union, the DGS of the home Member State should ensure the payout to depositors located in Member States where the credit institutions that are a member of the DGS take deposits and other repayable funds by offering deposit services on cross-border basis without establishment in the host Member State.	AT: (Comments): We consider this amendment to be reasonable.

To facilitate the payout operations and provision of information to depositors, the DGS of the host Member State should be allowed to operate as a point of contact for depositors at credit institutions that exercise the freedom to provide services.	
(33) The cooperation between DGSs across the Union is vital to ensure fast and cost-efficient depositors' repayment where credit institutions conduct banking service through branches in other Member States. In view of technological advancements that promote the use of cross-border transfers and remote identification, the DGS of the home Member State should be allowed to make the repayments directly to depositors at branches located in another Member State, provided that the administrative burden and costs are lower than if the repayment would be carried out by the DGS of the host Member State. That flexibility should complement the current cooperation mechanism, requiring the DGS of the host Member State to repay depositors in branches on behalf of the DGS of the home Member State. To preserve depositor confidence in both host and home Member States, EBA should issue guidelines to assist the DGSs in such cooperation, *inter alia* by suggesting a list of conditions under which a DGS of the home Member State could decide to reimburse depositors at branches located in the host Member State.	PT: (Drafting):
(34) Credit institutions may change affiliation to a DGS because they move their headquarters to another Member State or convert their subsidiary into a branch or *vice versa*. Article 14(3) of Directive 2014/49/EU requires that the contributions of that credit institution paid during the 12 months preceding the transfer are transferred to the other DGS in proportion to	**IT:** **(Drafting):** (34) Credit institutions may change affiliation to a DGS because they move their headquarters to another Member State or convert their subsidiary into a branch or *vice versa*. Article 14(3) of Directive 2014/49/EU requires that the contributions of that credit

the amount of covered deposits transferred. To ensure that the transfer of contributions to the receiving DGS is not dependent on divergent national rules regarding invoicing or actual date of payment of contributions, the DGS of origin should calculate the amount to be transferred on the basis of contributions due rather than contributions paid.	institution paid during the 12 months preceding the transfer are transferred to the other DGS in proportion to the amount of covered deposits transferred. To ensure that the transfer of contributions to the receiving DGS is **adequate to the transferred risks ~~not dependent on divergent national rules regarding invoicing or actual date of payment of contributions~~**, the DGS of origin should calculate the amount to be transferred **reflecting the additional potential liabilities borne by the receiving DGS as a result of the transfer, taking into account the impact of the transfer on the financial situation of both DGSs relative to the risks they cover. ~~on the basis of contributions due rather than contributions paid~~**. **The EBA shall develop draft regulatory technical standards specifying the methodology for the calculation of the amount to be transferred to ensure a neutral impact of the transfer on the financial situation of both DGSs relative to the risks they cover.** **IT:** **(Comments):** In the case of a credit institution changing its DGS affiliation, this will lead to a funding surplus in the DGS of origin as the risks covered by this DGS are reduced while its financial means remain very similar. On the other hand, in the receiving DGS, a funding gap arises as the transferred resources are not commensurate with the transferred risks. This gap must be filled by the transferring credit institution or all members of the receiving DGS. The current deposit insurance framework treats the DGS of origin favourably at the expense of the transferring credit institution and/or the members of the receiving DGS. PT: (Drafting): (34) Credit institutions may change affiliation to a DGS because they move their headquarters to another Member State or convert their subsidiary into a branch or *vice versa*. Article 14(3) of Directive 2014/49/EU requires that the contributions of that credit institution paid during the 12 months preceding the transfer are transferred to the other

	DGS in proportion to the amount of covered deposits transferred. To ensure that the transfer of contributions to the receiving DGS is not dependent on divergent national rules regarding invoicing or actual date of payment of contributions, the DGS of origin should calculate the amount to be transferred on the basis of contributions due rather than contributions paid. **The EBA should develop draft regulatory technical standards on the methodology to calculate the amount of contributions to be transferred.** PT: (Comments): We would like to express our concern about maintaining the current rule, even with the proposed changes, since it does not address the fundamental issue of the risks transferred when a credit institution changes affiliation to a DGS. We would support an EBA mandate to develop a methodology for calculating the amount of contributions to be transferred in a way that better reflects the risk for the receiving DGS, passed on subsequently to its members. This methodology should, in particular, consider the increase of the covered deposits in the receiving DGS, the contributions paid in the previous years by the credit institution that changed affiliation, its risk profile and the previous use of DGS' funds. In addition, there is a topic that deserves further reflection and discussion, regarding the potential for regulatory arbitrage by credit institutions which might be inclined to change affiliation or restructure the group to avoid paying contributions following the use of DGS's funds. Please see also our drafting suggestion on Article 14(3). AT: (Drafting): (34) Credit institutions may change affiliation to a DGS **within the same Member State or** because they move their headquarters to another Member State or convert their subsidiary into a branch or *vice versa*. Article 14(3) of Directive 2014/49/EU requires that the contributions of that credit institution paid during the 12 months preceding the transfer are transferred to the other DGS in proportion to the amount of covered deposits

	transferred. To ensure that the transfer of contributions to the receiving DGS is **fully harmonised and** not dependent on divergent national rules regarding invoicing or actual date of payment of contributions, the DGS of origin should calculate the amount to be transferred on the basis of contributions due rather than contributions paid. AT: (Comments): In some Member States, not only one but several DGSs exist. Consequently, the suggested amendments are necessary to cover as well cases where a credit institution changes affiliation to a DGS **within the same Member State** (i.e. cases which do not include any cross-border aspects). Moreover, further assessment is needed from our side regarding the appropriateness of the proposed calculation method for the amount of funds to be transferred. LU: (Drafting): (34) Credit institutions may change affiliation to a DGS because they move their headquarters to another Member State or convert their subsidiary into a branch or *vice versa*. Article 14(3) of Directive 2014/49/EU requires that the contributions of that credit institution paid during the 12 months preceding the transfer are transferred to the other DGS ~~**in proportion to the amount of covered deposits transferred**~~. To ensure that the transfer of contributions to the receiving DGS is not dependent on divergent national rules regarding invoicing or actual date of payment of contributions, the DGS of origin should calculate the amount to be transferred on the basis of contributions due rather than contributions paid. LU: (Comments): Factual correction. Reference to "in proportion to the amount of covered deposits transferred" to be deleted.

	Indeed, the situation described in recital 34 corresponds to the (current) provisions of Article 14(3), subparagraph 1, which – in contrast to Article 14(3), subparagraph 2 – does not make reference to "in proportion to the amount of covered deposits transferred".
(35) It is necessary to ensure equal protection of depositors across the Union that cannot be fully guaranteed by an equivalence assessment regime of depositor protection in third countries. For that reason, branches in the Union of a credit institution that has its head office in a third country should join a DGS in the Member State where they perform their deposit-taking activity. That requirement would also ensure consistency with Directives 2013/36/EU and 2014/59/EU that aim to introduce a more robust prudential and resolution frameworks for third country groups providing banking services in the Union. Conversely, it should be avoided that DGSs are exposed to the economic and financial risks of third countries. Deposits in branches established in third countries by Union credit institutions should therefore not be protected.	AT: (Comments): We question the requirement that EU-DGS would have to include depositors of branches in the Union of a credit institution that has its head office in a third country in all cases. Such a requirement would expose EU DGS to the economic and financial risks of third countries because the head office in the third country is not subject to EU supervision, thus failures of such head offices could not be prevented or avoided by EU authorities. In contrast to that, deposits in branches established in third countries by Union credit institutions are – from a legal point of view – deposits at the Union credit institution. The Union credit institution is obviously subject to EU supervision, and the branch in the third country could only fail if the EU credit institions fails as a whole (a branch is not a legal entity of its own but legally dependant on the EU credit institution) It is thus not understandable why such deposits should by default not be protected but only with a specific case by case approval by the designated authority. The explanation provided in this recital for the amendments ("*Conversely, it should be avoided that DGSs are exposed to the economic and financial risks of third countries. Deposits in branches established in third countries by Union credit institutions should therefore not be protected.*") describe exactly the opposite of the consequences which such amendments would have in practice. LU: (Comments): Recital to be amended. LU favours a DGS regime for TCBs based on the existing equivalence mechanism.

	Morover, the last sentence of the recital does not reflect the conditionality in the article 15a ("*except where, subject to the approval of the designated authority, those DGSs raise corresponding contributions from the credit institutions concerned*").
(36) Standardised and regular information disclosure enhances awareness of depositors about deposit protection. To align disclosure requirements with technological developments, those requirements should take into account the new digital communication channels whereby credit institutions interact with depositors. Depositors should obtain clear and homogeneous information that explains their deposit protection, while limiting the related administrative burden for credit institutions or DGSs. The EBA should be mandated to develop draft implementing technical standards to specify, on the one hand, the content and format of the depositor information sheet to communicate to depositors on annual basis and, on the other hand, the template information that either DGSs or credit institutions are required to communicate to depositors in specific situations, including mergers of credit institutions, determination that deposits are unavailable, or repayment of client funds deposits.	AT: (Comments): This approach seems to us quite old-fashioned. In our view, there are better ways to achieve better informed customers, i.e. digitalized information channels. All depositors shall have access to transparent, up-to-date-information by way of an Electronic Deposit Insurance Estimator (EDIE), giving an accurate deposit insurance calculation in an advisory manner (see https://edie.fdic.gov/calculator.html) instead of administrative burden caused by such information sheet.
(37) The merger of a credit institution or the conversion of subsidiary into branch or *vice versa* might affect the key features of depositor protection. To avoid adverse impacts on depositors that would have deposits in both merging banks and whose claim to deposit coverage would be reduced because of changes to DGS affiliation, all depositors should be informed about such changes and should have the right to withdraw their funds without incurring a penalty up to an amount equal to the lost coverage of deposits.	CZ: (Drafting): (37) The merger of a credit institution or the conversion of subsidiary into branch or *vice versa* might affect the key features of depositor protection. To avoid adverse impacts on depositors that would have deposits in both merging banks ~~and whose claim to deposit coverage would be reduced because of changes to DGS affiliation~~, all depositors should be informed about such changes and should have the right to withdraw their funds without incurring a penalty ~~up to an~~ **in the** amount **at least** equal to the lost coverage of

	deposits. **This is without prejudice to more extensive rights which depositors may have under national law.** CZ: (Comments): We agree that the adverse impact should be avoided. The cause of the adverse impact on the depositor may not stem only from the fact that the deposit protection is lower in a different DGS. It may also stem from a single fact that the credit institution does not have a headquarter in the same Member State as the depositor. Therefore, this amendment and requirement should be clearly framed as a minimum harmonization. AT: (Comments): Please align DGSD with CRD VI. See comment to Rec. 36. Such information should be replaced by modern, digital ways of information.
(38) To preserve financial stability, avoid contagion and enable depositors to exercise their rights to claim deposits when applicable, designated authorities, DGSs and credit institutions concerned should inform depositors about deposits becoming unavailable.	AT: (Comments): See comment to Rec. 36.
(39) To increase transparency for depositors and to promote financial robustness and trust among DGSs when fulfilling their mandate, the current reporting requirements should be improved. Building on the current requirements that enable DGSs to request all necessary information from their member institutions to prepare for payout, DGSs should also be able to request information necessary to prepare for a payout in the context of cross border cooperation. Upon the request from a	SI: (Comments): Please refer to our comment to paragraph (1). EL: (Drafting): EL: (39) To increase transparency for depositors and to promote financial robustness and trust among DGSs when fulfilling their mandate, the current reporting

DGS, member institutions should be required to provide general information about any material cross-border business in other Member States. Likewise, in order to provide the EBA with the suitable range of information on the evolution of the DGSs' available financial means and on the use of those means, Member States should ensure that DGSs inform the EBA on a yearly basis of the amount of covered deposits and available financial means, and notify the EBA about the circumstances that led to the use of DGS funds either for payouts or other measures. Finally, to reflect the strengthened role of DGSs in the bank crisis management which aims to facilitate the use of DGS funds in resolution, DGSs should have the right to receive the summary of resolution plans of credit institutions to increase their general preparedness to make the funds available.	requirements should be improved. Building on the current requirements that enable DGSs to request all necessary information from their member institutions to prepare for payout, DGSs should also be able to request information necessary to prepare for a payout in the context of cross border cooperation. Upon the request from a DGS, member institutions should be required to provide general information about any material cross-border business in other Member States. Likewise, in order to provide the EBA with the suitable range of information on the evolution of the DGSs' available financial means and on the use of those means, Member States should ensure that DGSs inform the EBA on a yearly basis of the amount of covered deposits and available financial means, and notify the EBA about the circumstances that led to the use of DGS funds either for payouts or other measures. Finally, to reflect the strengthened role of DGSs in the bank crisis management which aims to facilitate the use of DGS funds in resolution, DGSs should have the right to receive the summary of resolution plans of credit institutions **whose strategy is bail-in or transfer of assets and whose liability structure might lead to the use of DGS funds** to increase their general preparedness to make the funds available. EL: (Comments): EL: While we share the need for the DGS to receive information that will facilitate the financing of resolution measures,we would propose to limit the information that the DGS will receive for the institutions' resolution plans only to those plans whose strategy is bail-in or transfer of assets and their liability structure suggests that there might be a case for funding from the DGS. This is important as the resolution plans contain highly sensitive information and DGS decision making bodies consist of other institutions. PT: (Drafting): (…) DGSs should have the right to receive the summary of **the key elements of the** resolution plans of credit institutions to increase their general preparedness to make the funds available.

	PT: (Comments): To clarify that the summary to be shared by the resolution authorities with the DGSs is the same provided under Article 10(7)(a) of the BRRD. LU: (Comments): The use of DGS funds for payouts or other measures is not exclusively in the hands of DGS authorities. In this sense, it does not appear consistent to oblige DGS to inform the EBA about such circumstances.
(40) Technical standards in financial services should facilitate consistent harmonisation and adequate protection of depositors across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust the EBA with the development of draft regulatory and implementing technical standards which do not involve policy choices, for adoption by the Commission.	
(41) The Commission should, where provided for in this Directive, adopt draft regulatory technical standards developed by the EBA by means of delegated acts pursuant to Article 290 TFEU, in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[13] to specify the following: (a) the technical details related to the identification of clients of financial institutions for payout of client funds deposits, the criteria for repayment to the account holder for the benefit of each client or to the client directly, and the rules to avoid multiple claims for	AT: (Comments): The core elements of the methodology of the least cost test should be laid down in the Level 1-act.

[13] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

payouts to the same beneficiary; (b) the methodology for the least cost test, and (c) the methodology for the calculation of available financial means qualifying for the target level.	
(42) The Commission should, where provided for in this Directive, adopt draft implementing technical standards developed by EBA by means of implementing acts pursuant to Article 291 TFEU, in accordance with Article 15 of Regulation (EU) No 1093/2010 to specify: (a) the content and format of the depositor information sheet, the template for information that either DGSs or credit institutions should communicate to depositors; (b) the procedures to be followed when providing information by credit institutions to their DGS, and by DGSs and designated authorities to EBA, and the templates for providing that information.	
(43) Directive 2014/49/EU should therefore be amended accordingly.	
(44) To allow branches of credit institutions having their head offices outside the Union that are not members of a DGS established in the Union to join a Union DGS, those branches should be given a sufficient period to take the necessary steps to comply with that requirement.	
(45) Directive 2014/49/EU allows Member States to recognise an IPS as a DGS if it fulfils the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 and complies with Directive 2014/49/EU. To take into account the specific business model of those IPSs, in particular the relevance of preventive measures at the core of their mandate, it is appropriate to provide for the possibility of Member States to allow IPSs to adapt to the new safeguards for the application of preventive measures within a 6-year period. This possibly	IE: (Comments): Regarding the treatment of IPS-affiliated entities, in general, we would support staying aligned to the Eurogroup mandate to maintain a level playing field, and so we would be reluctant to agree a system whereby these IPS entities are structurally separated within the CMDI framework. Instead, we would support working within the proposal to make targeted changes which would ensure the inclusion of IPS entities in the framework, while still preserving the possibility for preventive actions to be taken where certain

longer compliance period takes into account the timeline for the build-up of a segregated fund for IPS purposes other than deposit insurance as agreed between the European Central Bank, the national competent authority and the relevant IPSs.	conditions are met, if there is a legitimate case made that the current wording creates meaningful and substantive difficulties for IPS entities. DE: (Drafting): (45) Directive 2014/49/EU allows Member States to recognise an IPS as a DGS if it fulfils the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 and complies with Directive 2014/49/EU. To take into account the specific business model of those IPSs, in particular the relevance of preventive measures at the core of their mandate, IPS should be subject to different conditions and safeguards for taking preventive measures than DGS that are not IPS, in order to preserve the functioning of the IPS. These specific conditions make sure that there is no material, practical or legal impediment to the IPS fulfilling its commitment and that the IPS is able to grant support necessary under its commitment from funds readily available to it. In addition, it is appropriate to provide for the possibility of Member States to allow IPSs to adapt to the new safeguards for the application of preventive measures within a 10 -year period. DE: (Comments): The build-up of additional funds does not fall under the remit of this Directive. The reference should be deleted. Furthermore, as stated in the beginning of the Recital, an IPS can be recognised as DGS. That recognition implies the use of the available funds for both payout of depositors and financing of preventive measures. Restricting the use of a large part of the available means of an IPS would effectively reduce its ability to provide prompt support to its members when needed and thus impairs its functioning. Relying only on the additional IPS funds - as the Recital suggests - would not only contradict with the recognition of an IPS as DGS, but it would severely increase the costs of maintaining an IPS. AT: (Comments):

	It should be clarified that in cases where IPS have already established separate funds for CRR- and DGSD-purposes, only the DGS-fund can be used for resolution.
(46) To allow DGSs and designated authorities to build up the necessary operational capacity to apply the new rules on the use of preventive measures, it is appropriate to provide for a deferred application of those new rules.	SI: (Comments): Please refer also to our comment to paragraph (1).
(47) Since the objectives of this Directive, namely to ensure uniform protection of depositors in the Union, cannot be sufficiently achieved by the Member States due to the risks that diverging national approaches might entail for the integrity of the single market but can rather, by amending rules that are already laid down at Union level, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,	
HAVE ADOPTED THIS DIRECTIVE:	
Article 1	
Amendments to Directive 2014/49/EU	
Directive 2014/49/EU is amended as follows:	
(1) Article 1 is amended as follows:	
(a) paragraph 1 is replaced by the following:	
'1. This Directive lays down rules and procedures relating to the establishment and the functioning of deposit guarantee schemes (DGSs), the coverage and repayment of deposits, and the use of DGS funds for measures that aim to ensure the access of depositors to their deposits.';	SI: (Comments): Please refer to our comment to paragraph (1). IE: (Comments):

	Support this text as it makes it clear that alternative or preventive measures have the purpose of ensuring continued access to deposits. However, regarding the use of DGS beyond payout, it may be more appropriate to clarify that the alternative measures are not mandatory DE: (Drafting): 1. This Directive lays down rules and procedures relating to the establishment and the functioning of deposit guarantee schemes (DGSs), the coverage and repayment of deposits, and the use of DGS funds for ~~-~~**purposes other than the repayment of depositors** ~~measures that aim to ensure the access of depositors to their deposits~~. DE: (Comments): To avoid confusion. AT: (Drafting): '1. This Directive lays down rules and procedures relating to the establishment and the functioning of deposit guarantee schemes (DGSs), the coverage and repayment of deposits, and the use of DGS funds for **purposes other than the repayment of depositors**; ~~measures that aim to ensure the access of depositors to their deposits.';~~ AT: (Comments): To further clarify the meaning of this paragraph.
(b) in paragraph 2, point (d) is replaced by the following:	AT: (Drafting): ~~(b) in paragraph 2, point (d) is replaced by the following:~~

'(d) credit institutions, and branches of credit institutions that have their head office outside the Union, that are affiliated to the schemes referred to in points (a), (b) or (c) of this paragraph.';	DE: (Comments): Could agree. No change with regard to the content. AT: (Drafting): ~~'(d) credit institutions, and branches of credit institutions that have their head office outside the Union, that are affiliated to the schemes referred to in points (a), (b) or (c) of this paragraph.';~~ AT: (Comments): We question widening the scope and introducing the requirement that EU-DGS would have to include depositors of branches in the Union of a credit institution that has its head office in a third country in all cases. Such a requirement would expose EU DGS to the economic and financial risks of third countries because the head office in the third country is not subject to EU supervision, thus EU supervisory authorities could not address negative developments of such head offices in third countries and failures of such head offices could not be prevented by actions of EU supervisory authorities. The proposed amendment should thus be deleted.
(2) in Article 2, paragraph 1 is amended as follows:	
(a) in point (3), the introductory wording is replaced by the following:	
'(3) 'deposit' means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions habitually carried out by credit institutions in the course of their business, and which a credit	CZ: (Comments):

institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:';	The rationale of this amendment should be explained in the recital. Please note that given lack of a definition of a "deposit" in the CRD/CRR, the definition in the DGSD may be applied *per analogiam* with consequences beyond deposit protection. Please note that a definition of a deposit is crucial for the assessment of what constitutes an illegal banking activity (see Articles 9(1) and 66(1)(a) CRD). NL: (Comments): No objections against this amendment because it is in line with ECJ ruling, see EBA Opinion on Eligibility, p.56. FI: (Drafting): '(3) 'deposit' means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions ~~habitually~~ carried out by credit institutions in the course of their business, and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:'; FI: (Comments): It's unclear what added value the phrase "habitually carried out by credit insitutions in the course of their business" brings to this definition. There seems to be unnecessary repetition in this point (normal banking transactions – habitually) DE: (Comments): Could agree. No significant change with regard to the content.

	LU: (Comments): It would be important to further clarify whether/to what extent structured deposits are covered when they are economically equivalent to bonds or derivatives. The term "habitually" is very vague and gives rise to legal risk.
(b) in point (13), the introductory wording is replaced by the following:	
'(13) 'payment commitment' means an irrevocable, fully collateralised obligation of a credit institution to pay a DGS a monetary amount when called by that DGS, and where the collateral:	PL: (Drafting): 'payment commitment' means an irrevocable, fully collateralised obligation of a credit institution to pay a DGS a monetary amount when called by that DGS or <u>is due to that DGS under specified conditions</u>, and where the collateral: PL: (Comments): Referring to the new definition of payment commitments, we would like to stress that the need of DGSs to call on the credit institution to fulfil the obligation resulting from the commitments concerned is questionable. In our opinion such a requirement will lead to imposing additional obligations on DGSs and consequently may delay the pay-out. For example, in Polish legislation the deadline for transferring funds equivalent to payment commitments to the Bank Guarantee Fund (DGS) is a maximum 2 business days from the date of occurrence of the relevant condition (e.g. suspention of a bank's operations by the competent authority). In such case any calling from the DGS is not necessary. We propose to redraft the definition. NL: (Comments): No objections against this amendment because it is in line with EBA Opinion on Funding,

	p.7. PT: (Comments): DE: (Comments): Question for COM: What implication does adding "irrevocable" have?
(c) the following points (19) to (23) are added:	
(19) 'resolution authority' means a resolution authority as defined in Article 2, point (18) of Directive 2014/59/EU;	DE: (Comments): Agree.
(20) 'client funds deposits' means funds that account holders that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 deposit in the course of their business with a credit institution for the account of their clients;	CY: (Comments): Client funds can be accounts of entities other than financial institutions, e.g. accounting firms, legal firms… see also comment re article 8b. Better application and clarification of the new DGSD Article 8b as we consider that the intention is to protect such deposits. FR: (Drafting): (20) 'client funds deposits' means funds that account holders, **including** ~~that are~~ financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013, deposit in the course of their business with a credit institution for the account of their clients; FR:

	(Comments): We agree that financial institutions are the most numerous depositors that deposit in the course of their business with a credit institution for the account of their clients. Nevertheless, credit institution can also deposit funds for the account of their clients, and not for their own account. These funds should also fit it the "client funds deposits" definition (in line with recommandation 1 of EBA opinion on the treatment of client funds under DGSD). We also identify other kind of depositors that deposit funds on the behalf of their client : lawyers, real estate agents, solicitors, travel agents etc. Similarly to financial institution, these regulated professions are most of the time required by law to open dedicated accounts with credit institutions to be sure these funds are not mixed with the funds for their own account. Consequently, and in line with recommandation 3 of EBA opinion on the treatment of client funds under DGSD, we believe that the clarification for benefiary accounts should apply to all kind of client funds deposits, as long as (i) the depositors deposit funds for the account of their clients and (ii) is subject to clear safeguarding requirement to avoid the mix of funds. SK: (Comments): We welcome this change as it has been discussed for a long time and it is important to harmonize the practice in the EU. We are considering a possible widening of the scope of client funds deposits for example for other beneficiary accounts that have to be maintained under national law – eg. notary, but most importantly for accounts held by apartment building managers in the name of the individual apartment owners, where the account is held for the whole building, but each apartment owner deposits a certain amount for repairs etc. These statutory deposits can be relativelly high and we do not deem art. 7(3) as sufficient as these depositors should be protected individually with a separate limit. HR:

	(Comments): We support EC's proposal on extending the scope of deposit insurance by protecting deposits of certain financial institutions – investment firms which are excluded from coverage by the national DGS, but not the funds that those financial institutions receive from their clients and which they deposit in a credit institution in the name and on behalf of their clients, primary for the purpose of securities trading. Such funds should be protected under certain conditions and included in deposit insurance premium calculation. It is necessary to have a clearly defined separation of financial institutions' clients' assets (trustee account) from the investment firms' assets (transaction account) which are excluded from of the Deposit Insurance System. NL: (Comments): In general, we support the improvements made regarding client funds. However, there are some concerns with some of the wording in the articles, see comments on the relevant articles further on. It seems that with these proposed amendments a distinction between 'client funds' and other type of beneficiary accounts has been created. At the moment, it creates an unequal treatment between the two types of accounts, because the provisions in the relevant Articles are not aligned. FI: (Drafting): (20) 'client funds deposits' means funds that account holders ~~**that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013**~~ deposit in the course of their business with a credit institution for the account of their clients; FI: (Comments): In general, we support the amendments concerning the protection of client funds. However, the proposed wording seems to be unnecessary narrow. The client funds'

	protection shouldn't be limited only to funds held by financial institutions. Client funds are also held by other actors (e.g. attorneys, real-estate agends, notaries, landlords) and all these situations should be included here. All client funds should be equally protected. PT: (Drafting): (20) 'client funds deposits' means funds that account holders that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 deposit in the course of their business with a credit institution **<u>on behalf and</u>** for the account of their clients; PT: (Comments): We suggest inserting the reference "on behalf" in the definition of 'client funds deposits' to further clarify that only funds deposited on behalf and for the account of clients, for the purpose of segregation, are protected. DE: (Drafting): (20) 'client funds deposits' means funds that account holders **~~that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013~~** deposit in the course of their business with a credit institution for the account of their clients; DE: (Comments): In principle, the regulation of the protection of client funds in escrow accounts is welcomed. However, it is questionable why the protection is limited to funds held by financial institutions. Client funds are also held in escrow accounts outside the financial industry and are no less worthy of protection there. Question to COM: What is rationale for this?

	LU: (Comments): LU is opposed to including financial institutions in the scope of the DGSD, as it would lead to protecting funds (which are not deposits according to sectoral legislation) at the same level as deposits. It would notably create asymmetries, and thus an unlevel playing field, between the different safeguarding requirements that financial institutions under PSD are subject to (ie. assets deposited in a separate account in a credit institution (and thus subject to DGSD) would be treated differently than assets invested in secure, liquid low-risk assets, or funds covered by an insurance policy. Such an approach could lead to unintended, and undesired consequences (e.g. banks unwilling to accept fund deposits from financial instiutions because of higher DGS-related costs).
(21) 'Union State aid framework' means the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;	DE: (Comments): Agree.
(22) 'money laundering' means money laundering as defined in Article 2, point (1) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] *';	DE: (Comments): Agree.
(23) 'terrorist financing' means terrorist financing as defined in Article 2, point (2) [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. **';	DE: (Comments): Agree.
(d) paragraph 3 is replaced by the following:	
'3. Shares in Irish building societies, apart from those of a capital nature covered by Article 5(1), point (b), shall be treated as deposits.';	DE: (Comments):

	Could agree.
* [Please insert full reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].	DE: (Comments): Could agree.
** [Please insert full reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final.	DE: (Comments): Could agree.
(3) Article 4 is amended as follows:	**IT:** **(Drafting):** (3) Article 4 is amended as follows: **(a) the following third subparagraph is added to Article 4(2):** **'Member States shall ensure that an institutional protection scheme that is recognised as a deposit guarantee scheme in accordance with this paragraph shall segregate the available financial means within the meaning of Article 10(1) from the funding arrangements collected with a view to exercise its purposes as referred to in Article 113(7) of Regulation (EU) No 575/2013.';** **IT:** **(Comments):** In order to harmonise the conditions for accessing the funds collected under the DGSD, thus ensuring a level-playing field across the Union, we recommend that IPSs recognised as DGSs segregate the financial resources raised for the purpose of protecting covered deposits under the DGSD from the funds collected for IPS purposes.
(a) paragraph 4 is replaced by the following:	PL: (Comments):

	We agree that an exclusion of an institution from the DGS should be preceded by the withdrawal of the banking license at the discretion of the supervisory authority ("competent authority"), and only this should result in the exclusion of unlicensed institutions (automatically) from the DGSs.
'4. Members States shall ensure that where a credit institution does not comply with its obligations as a member of a DGS, that DGS shall immediately notify the competent authority of that credit institution thereof. Member States shall ensure that the competent authority, in cooperation with that DGS, uses the supervisory powers laid down in Directive 2013/36/EU, and promptly takes all measures to ensure that the credit institution concerned complies with its obligations, including where necessary by imposing administrative penalties and other administrative measures in accordance with the national laws adopted in addition to the implementation of provisions of Title VII, Chapter 1, Section IV, of Directive 2013/36/EU.';	NL: (Comments): No objections against this amendment. Please note that in the Netherlands (and possible in other Member States) the role of prudential supervisor and DGS authority are both allocated to DNB. PT: (Drafting): 4. Members States shall ensure that where a credit institution does not comply with its obligations as a member of a DGS, that DGS**, or where relevant, the designated authority** shall immediately notify the competent authority of that credit institution thereof. Member States shall ensure that the competent authority, in cooperation with that DGS**, or where relevant, the designated authority**, uses the supervisory powers laid down in Directive 2013/36/EU, and promptly takes all measures to ensure that the credit institution concerned complies with its obligations, including where necessary by imposing administrative penalties and other administrative measures in accordance with the national laws adopted in addition to the implementation of provisions of Title VII, Chapter 1, Section IV, of Directive 2013/36/EU.'; PT: (Comments): Rewording is required to ensure consistency with Recital 2 and to allow us to take into account different circumstances in Member States. DE: (Comments):

	Need further evaluation AT: (Comments): The meaning of this paragraph is not clear: Shall the competent authority use the supervisory powers of the CRD (including the sanctioning powers described in Title VII, Chapter 1, Section IV, of Directive 2013/36/EU) in case a member institution does not comply with its obligations ("*use the supervisory powers laid down in Directive 2013/36/EU*") or should the competent authority in such cases only apply the actual "supervisory powers" described in Art. 64 (1) CRD on the one hand (i.e. Art. 18, 102, 104 and 105 CRD) and separate "DGSD-specific" administrative penalities on the other hand ("*imposing administrative penalties and other administrative measures in accordance with the national laws adopted **in addition** to the implementation of provisions of Title VII, Chapter 1, Section IV, of Directive 2013/36/EU*")? Clarification of this drafting is needed. Please see also our comments to recital 2 above.
(b) the following paragraph 4a is inserted:	
'4a. Members States shall ensure that where a credit institution fails to pay the contributions referred to in Article 10 and Article 11(4) within the timeframe specified by the DGS, that DGS shall, for the period of the delay, charge statutory interest rate on the amount due.';	EL: (Drafting): EL: '4a. Members States shall ensure that where a credit institution fails to pay the contributions referred to in Article 10 and Article 11(4) within the timeframe specified by the DGS, that DGS shall, for the period of the delay, **after consultation with the competent autority,** charge **non-negative** statutory interest rate on the amount due.'; EL: (Comments): EL: We are also of the view that a high level definition of the statutory interest rate should be included, as well as a calculation method pointing that the imposed statutory interest rate cannot be negative. In addition, the imposition should be done in consultation

	with the competent authorities with the purpose of avoiding measures that could harm the (recovery) course of the credit institution. NL: (Comments): No objections against this amendment. PT: (Drafting): '4a. Members States shall ensure that where a credit institution fails to pay the contributions referred to in Article 10 and Article 11(4) within the timeframe specified by the DGS, that DGS**, or where relevant, the designated authority** shall, for the period of the delay, charge statutory interest rate on the amount due.'; PT: (Comments): Rewording is required to ensure consistency with Recital 2 and to allow us to take into account different circumstances in Member States. DE: (Comments): Could agree. AT: (Comments): We welcome this amendment.
(c) paragraphs 5 and 6 are replaced by the following:	
'5. Member States shall ensure that the DGS informs the designated authority where the measures referred to in paragraphs 4 and 4a fail to restore compliance by the credit	PL: (Comments):

institution. Member States shall ensure that the designated authority assesses whether the institution still fulfils the conditions for a continued membership of the DGS and inform the competent authority of the outcome of that assessment.	In principle, we agree with the solution provided for in the amended Article 4(5), according to which the exclusion (based on the decision of DGS) of a credit institution from the scheme is declined if the institution does not fulfil its obligations towards the DGS and granting of that competence to the supervisory authority. However, we have doubts about the obligation of the DGS or its governing body to assess whether, after taking appropriate disciplinary measures (as defined in the new Article 4(4) and (4a)) aimed at restoring compliance with the obligations of a credit institution, the credit institution still fulfils the conditions for membership of the DGS. In our opinion, such a solution is not recommended for two reasons. First, it leaves a significant part of the burden of responsibility for the decision taken on the DGS or its governing body (when the decision is taken by the supervisory authority). Second, the proposed provision does not lay down any criteria or guidance needed to conduct such an assessment. In our opinion, in the conditions of decision-making by the supervisory authority, the role of the DGS and its managing body should be limited to stating and informing the competent authority of the non-compliance of the credit institution with its obligations, despite the application of the measures set out in Article 4(4) and (4a). LV: (Drafting): ‘5. Member States shall ensure that the DGS informs the designated authority **and the competent authority** where the measures referred to in paragraphs 4 and 4a fail to restore compliance by the credit institution. Member States shall ensure that the designated authority assesses whether the institution still fulfils the conditions for a continued membership of the DGS and inform the competent authority of the outcome of that assessment. NL: (Comments): No objections against this amendment.

	DE: (Comments): Could agree. AT: (Comments): The content of this paragraph is not clear. Why should the "designated authority" assesses whether the institution "*still fulfils the conditions for a continued membership of the DGS*" and inform the "competent authority" thereof when the "competent authority" already knows of the continuous non-compliance with the DGSD of the member institution (as informed by the DGS) and has already imposed supervisory measures on the institution to restore compliance in accordance with the proposed Art. 4 (4)? Which criteria would be the basis for such an assessment by the "designated authority"?
6. Member States shall ensure that where the competent authority decides to withdraw the authorisation in accordance with Article 18 of Directive 2013/36/EU, the credit institution ceases to be a member of the DGS. Member States shall ensure that deposits held on the date on which a credit institution ceased to be a member of the DGS continue to be covered by that DGS.';	NL: (Comments): No objections against this amendment. The last sentence of this provision is crucial. DE: (Comments): Possibly add that credit institution shall immediately provide the DGS with an SCV related to the effective date of the withdrawal of the banking authorization.
(d) paragraph 8 is deleted;	SI: (Comments): We propose to keep it. It gives as legal basis for stress testing. DE: (Comments): Could agree.

(e) the following paragraph 13 is added:	
'13. By… [OP – please add 36 months after entry into force], the EBA shall develop guidelines on the scope, contents and procedures of the stress tests referred to in paragraph 10.';	NL: (Comments): No objections against this amendment, EBA GL are already existing, but might have to be amended. DE: (Comments): There already exists a GL on stress testing. Reference to this should be sufficient including provision for regular updates.
(4) Article 5 is amended as follows:	
(a) paragraph 1 is amended as follows:	
(i) the introductory wording is replaced by the following:	FR: (Drafting): ~~(i) the introductory wording is replaced by the following:~~ FR: (Comments): Technical – no change to current DGSD AT: (Drafting): ~~(i) the introductory wording is replaced by the following:~~ LU: (Comments): This sentence did not change. No modification is necessary.

'1. The following shall be excluded from any repayment by a DGS:'	FR: (Drafting): ~~'1. The following shall be excluded from any repayment by a DGS:'~~ FR: (Comments): Technical – no change to current DGSD SK: (Comments): Not sure where the change is AT: (Drafting): ~~'1. The following shall be excluded from any repayment by a DGS:'~~ AT: (Comments): We do not see a difference compared to the wording which is currently in force. Why is a replacement of the introductory wording necessary? LU: (Comments): This sentence did not change. No modification is necessary.
(ii) point (c) is replaced by the following:	
'(c) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering and terrorist financing;';	FR: (Drafting):

	'(c) deposits arising out of transactions ~~in connection with~~ **for** which there has been a criminal conviction for money laundering and terrorist financing;'; FR: (Comments): Technical – to clarify which deposits are not eligible. FR: (Drafting suggestion): **(iii) point (d) is replaced by the following:** **'(d) deposits made by financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013 on their own behalf and for their own account'** FR: (Comment): We suggest to clarify in point (d) of art5(1) that only deposits made by financial institutions on their own behalf and for their own account are excluded from coverage, in line with the proposed article 8b. It would also harmonise the wording between point (a) and point (d) of article 5(1). NL: (Comments): The current wording ('deposits arising out of transactions […]') leaves room for interpretation which needs to be resolved. It is currently unclear if : (a) all deposits should be excluded in case a depositor is convicted for money laundering, or (b) only the deposit on which money was laundered and a convinction has taken place. It is very difficult to retrieve such information within 7 working days. Credit institutions don't have such information, which means that DGSs have to cooperate with authorities such as the public prosecutor, or (c) only the amount equal to the transaction in connection with which there has been a

	criminal conviction for money laundering and terrorist financing should be excluded. No objections against the amendment to also include terrorist financing. DE: (Comments): Could agree. AT: (Comments): We welcome this amendment.
(iii) point (e) is deleted;	SK: (Comments): Since this para is an exclusion from the repayment shouldn't point (d) be amended so that it captures only deposits by financial institutions on their own behalf and for their own account that do not fall under the coverage of client funds deposit? HU: (Comments): We do not agree with the deletion of point (e). NL: (Comments): NL Question: what is the rationale behind this deletion? FI: (Comments): Why is this point deleted? PT: (Drafting):

	‘(d) **subject to Article 8b of this Directive,** deposits **made** by financial institutions as defined in ~~**point (26) of**~~ **Article 4(1), point (26),** of Regulation (EU) No 575/2013 **on their own behalf and for their own account**;’; PT: (Comments): We suggest amending Article 5(1)(d) of the DGSD in order to ensure consistency between the latter and Article 5(1)(a) of the DGSD, as well as to provide further clarity on the distinction between the own liquidity of the entity placing a deposit, and the funds placed on behalf of clients. DE: (Comments): We understand the rationale for deletion is to not interfere with the provision of client fund deposits. In our preliminary assessment a complete deletion of point (e) is in our view however not necessary for this purpose. AT: (Comments): We understand that this deletion was done because the exclusion of „investment firms“ from the repayment is already ensured as “investment firms” are covered by the definiton of „financial institutions” and thus excluded from repayment according to Art. 5 (1) (d) DGSD. Could this interpretation be confirmed by the Commission? BG: (Drafting): (iii) point (e) should be preserved. (e) deposits by investment firms as defined in point (1) of Article 4(1) of Directive 2004/39/EC;

	BG: (Comments): We believe that the inclusion of client funds deposits by investment firms (as defined in point (1) of Article 4(1) of Directive 2004/39/EC) in the scope of the coverage, including their guarantee above the total amount of the guarantee of 100 thousand euros, primarily increases the risk of fraud, as it leads to exceeding the guarantee for one entity. In addition, the coverage of client funds deposits of investment firms contradicts the basic principle for exclusion from the scope of the coverage of financial institutions and other legal entities that professionally manage funds.
(iv) point (f) is replaced by the following:	
'(f) deposits the holder of which has never been identified pursuant to Article 16 of Regulation (EU) …. [please insert short reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], where those deposits have become unavailable, except where a holder requests payout and proves that the lack of identification was not caused by his or her action;';	FR: (Drafting): '(f) deposits the holder of which has never been identified pursuant to Article 16 of Regulation (EU) …. [please insert short reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], where those deposits have become unavailable, except where a holder requests payout and proves that the lack of ~~identification~~ **verification of his or her identity** was not caused by his or her action**. In this case, his or her identity should be verified before the payout**;'; FR: (Comments): Technical clarification to ensure that reimbursement is done to the entitled depositor. The reimbursement of deposits should always be done to an identified depositor or a depositor of which the identity can be verified. PL: (Comments): In our opinion, the solution presented in Article 5(1)(f), which assumes that a depositor must prove that the lack of identification was not caused by his action, is questionable.

	First, we have reservations about the content of that provision, according to which the burden of proving a fact lies with the depositor. Please note, the depositor does not initiate the verification process and has no influence on its proceedings. Second, there is a question of how the depositor can prove that the credit institution has not identified him when he is not even obligated to know that it is necessary to do so. Third, the provision should cover the possibility of conducting such proof by the credit institution (which, e.g. certifies that the lack of identification in the SCV file did not occur and it can be documented on paper). IE: (Drafting): '(f) deposits**,** the holder of which has never been identified… '(f) deposits ~~the holder~~ of which **the holder** has never been identified… IE: (Comments): Drafting perhaps unclear, would consider revision along either of the suggested lines NL: (Comments): No objections against this amendment, is in line with EBA Opinion on Eligibility, p.5. DE: (Drafting): '(f) deposits **of which** the holder ~~**of which**~~ has never been identified pursuant to Article 16 of Regulation (EU)
(v) point (j) is deleted;	FR: (Drafting): (v) point (j) is ~~deleted;~~ **replaced by the following:**

	'(j) deposits by central and regional governments' FR: (Comments): We agree that the treatment of "public authorities" should be clarified, noting that (i) there is no clear definition of "public authorities" within the DGSD and (ii) the low number of MS having transposed the possibility of including in the scope of coverage small public authorities (as per article 5(2)). We agree with the overall objective to include in coverage some public sector entities that are not sophisticated depositors (school, hospital, some local services etc.). We suggest to clarifiy that central/regional governments should remain excluded from coverage. This would lower the risk to put part of the burden of sovereign risk on DGS. PL: (Comments): We support the proposal to delete Article 5(1)(j) given the fact that the intention is to extend the protection to the deposits of public authorities, in particular in the field of funds of non-professional investors as entities of local governments. Nevertheless, we are concerned that covering public authorities will also lead to the protection for deposits of the State Treasury (i.e. a legal person representing the State as the owner of its assets). For example, in Poland, the State Treasury owns organisational units of the state such as: central authority (voivodship tier), forest inspectorates, army, police, common courts or, tax offices. It should be noted that one coverage level for such units is materially irrelevant for the State Treasury. In addition, organisational problems related to the collection of guaranteed funds due to the State Treasury are possible. To sum up, in our opinion, the simple deletion of point (j) results in covering also deposits of the State Treasury, while in our opinion the protection is desirable mostly in case of local authorities and their organisational units. SK: (Comments):

	We would be open to consider a higher coverage level for these. IE: (Comments): May need consideration as the definition of Government Entities may differ across MS **IT:** **(Comments):** While we understand the reasons for the deletion, it would be useful clarifying (for instance in a recital) which public authorities will be covered and that nonetheless, the coverage is always €100.000. CZ: (Comments): We strongly support the extension of coverage to all public authorities and not to differentiate among them on the basis of their budgets. If large corporates benefit from a coverage a municipality shall not be treated worse than a large corporate. This approach will significantly simplify the whole process and in the case of municipalities reduce administrative costs associated with the obligation to prove that the budget condition is met. NL: (Comments): No objections against this amendment. FI: (Comments): We would like to see more analysis on why it is considered needed to include public authorities' deposits into the scope of deposit guarantee protection and what would it mean in practice. The Commission could provide further impact analysis how this would affect the SRF's target level and how different member states interpret what consitutes a

	"public authority" in this sense. We are not convinced that public authorities' deposits need this protection. The whole deposit guarantee framework has been built to improve consumer confidence in financial stability throughout the internal market and to avoid bank runs among other things. In minimum, the definition of public authority should be harmonised in the article 2. PT: (Comments): We fully support the inclusion of all public authorities in DGS coverage, though many of our public authorities operate under accounts centralized at our national Debt Management Office (and do not have deposits placed with credit institutions). More importantly, we believe this amendment is essential to allow effective implementation of principles of decentralization/deconcentration/autonomy within Public Administration. Also, please see our comment on Recital 5. DE: (Comments): Disagree. Neither is the scope of protection (€100,000) of the DGSD sufficient for them, nor is it in our view appropriate, since government entities are generally considered to be less worthy of protection and the idea of consumer protection and the avoidance of a "bank run" cannot be invoked as a basic principle for deposit insurance for public entities in the same way as for private depositors. AT: (Drafting): **~~(v) point (j) is deleted;~~** AT: (Comments):

	We oppose this deletion and thus, the inclusion of public authorities in the scope of depositor protection. Such an inclusion would not be in line with one of the most essential reasons of depositor protection, namely the prevention of bank runs. Public authorities are not assumed to cause bank runs, thus they do not have to be protected by the DGSD. LU: (Comments): LU prefers to keep a national discretion. The rationale behind deleting the exclusion of public authorities from DGS repayments remains unclear, in particular in light of the fact that public authorities should have sufficient risk management and due diligence capacities to manage their deposits in a diversified manner. Rather than deleting the exclusion of public authorities from DGS repayments, the current exclusion should remain subject to a national discretion.
(b) paragraph 2 is replaced by the following:	
'2. By way of derogation from paragraph 1, point (i), Member States may decide that deposits held by personal pension schemes and occupational pension schemes of small or medium-sized enterprises are included up to the coverage level laid down in Article 6(1).';	CY: (Comments): In Cyprus many provident funds of organisations that are not engaged in an economic activity (e.g. public entities/ non-profit organisations etc) are excluded from coverage, irrespective of whether they satisfy the three quantitative criteria of SMEs as stated in the EC Recommendation 2003/361/EC. Taking into consideration the proposal of the EC to also cover deposits of public authorities (Article 5(1) removal of point (j)), it is suggested that the coverage of deposits of provident funds is extended to provident funds of organisations with no economic activity (e.g. public entities/ non-profit organisations etc) that nonetheless satisfy the three quantitative criteria. We consider that this is very important, in order to ensure a level playing field, an equal level of protection for depositors and fulfilment of the intention of the Regulator which is to protect individuals' savings in provident funds of all SMEs meeting the the three quantitative criteria mentioned above.

	NL: (Comments): No objections against this amendment. DE: (Comments): Could agree.
(5) Article 6 is amended as follows:	LT: (Comments): LT: It is not clear from the current amended text whether the minimum amount of EUR 500,000 applies to all the cases referred to in Article 6(2) cumulatively or on a case-by-case basis. It is also suggested that the provisions of Article 6(2)(a) of the DGSD, as amended, should be clarified to make it clear whether the deposit insurance applies to one or to all the depositor's residential immovable property.
(a) paragraph 2 is amended as follows:	
(i) the introductory wording is replaced by the following:	
'In addition to paragraph 1, Member States shall ensure that the following deposits are protected as a minimum to an amount of EUR 500 000 for 6 months after that amount has been credited or from the moment when such deposits become legally transferable';	PL: (Drafting): 'In addition to paragraph 1, Member States shall ensure that the following deposits are protected as a minimum to an amount of EUR 500 000 <u>for 3 months</u> after that amount has been credited or from the moment when such deposits become legally transferable'; PL: (Comments): We can agree with the proposed harmonization of temporary higher amount, however we propose that such protection should be valid for 3 months. In our opinion that such period

	is sufficiently long for the depositor to decide how to manage THB. SK: (Comments): We understand the need to harmonize THBs, however we are a but sceptical whether 6 months are sufficient in case of more complicated or sensitive situations such inheritance proceedings. One year seems to be more flexible, we would rather prefer strengthening the burden of proof. IE: (Comments): Support this provision CZ: (Comments): We are open to discuss the introduction of a harmonised minimum protection limit for THB. However, we would prefer to set the limit at a lower level with the discretion of a Member State to increase this level. We also have some reservation about the proposed 6-month protection period. The 3-month period currently applied in the Czech Republic is a sufficient period for its purpose and allows the depositor to react and split the deposit between accounts held with more than one bank and thus keep the deposit protection. EE: (Comments): Scrutiny reservation. The harmonisation may prove overly burdensome for small deposit guarantee schemes. Impact analysis needed. HU: (Comments): We believe that increasing the minimum amount to this high (5x covered deposit) is too

	much, we would propose this to be EUR 200 000 (in Hungary the current amount is EUR 50 000). We should take into consideration the average level of deposits. DK: (Drafting): In addition to paragraph 1, Member States shall ensure that the following deposits are protected as a minimum to an amount of EUR 500 000 for **a minimum** 6 months after that amount has been credited or from the moment when such deposits become legally transferable'; DK: (Comments): See comment to recital (6). NL: (Comments): No objections against this amendment, we support the harmonization of the protection of THBs. PT: (Comments): We are still assessing the adequacy of this proposal, and will come back at a later stage with a final position. DE: (Comments): Could agree. LT: (Comments):

	LT: The wording should be clarified as it is not clear from the current text whether the minimum amount of EUR 500 000 applies to all cases taken together or on a case-by-case basis.
(ii) point (a) is replaced by the following:	
'(a) deposits resulting from real estate transactions relating to private residential properties and deposits intended for such transactions, provided that those transactions are concluded in the short term by a natural person, and provided that that natural person can provide documents proving such transaction;';	CY: (Comments): "provided that those transactions are concluded in the short term by a natural person" is a bit vague regarding "short terrm" EL: (Drafting): EL: '(a) deposits resulting from real estate transactions relating to private residential properties ~~and deposits intended for such transactions~~, provided that those transactions are concluded in the short term by a natural person, and provided that that natural person can provide documents proving such transaction;'; EL: (Comments): EL: Although in principle, the coverage of deposits intented for real estate transactions is reasonable and fair, in practice it will be challenging, despite the provision that the burden of proof falls on the depositor. FR: (Drafting): '(a) deposits resulting from real estate transactions relating to private residential properties ~~and deposits intended for such transactions~~, ~~provided that those transactions are concluded in the short term by a natural person, and~~ provided that ~~that natural person~~ **the depositor** can provide documents proving such transaction;

	<u>(b) deposits intended for real estate transactions relating to private residential properties, provided the depositor can provide documents proving such transaction is intended to be concluded in the next six months</u>'; FR: (Comments): We suggest technical clarification to ensure that: - If the real estate transactions has occurred before the unavailability of deposits, the funds are covered up to 6 months after the amount has been credited. - If the real estate transaction has not yet occurred, the funds are covered up to 6 months before the date the transaction is planned. In addition, we suggest to delete the reference to "natural person", as households can also buy their private residential property though a dedicated moral person. PL: (Comments): In our opinion, highly questionable is the new wording of Article 6(2)(a) referring to a higher coverage limit of deposits resulting from real estate transactions relating to properties and deposits intended for such transactions. The term "*deposits intended for such transactions*" is a major concern. It is easy to imagine the abuse of this solution in such a way that a depositor with a large deposit (exceeding the coverage level of EUR 100 000) upon the suspension of the bank's activity signed a contract for the purchase of any residential property (even taking out a loan). Upon finalising it a depositor indicates that the funds accumulated in the bank were intended to finance that purchase. As a result, such funds will be covered by a higher coverage level. Moreover, the term "*in the short time*" is not clear. It seems that the above concerns could be allayed if a DGS can require a document from a given depositor (confirming future transactions) dated prior to the guarantee condition is fulfilled. DK:

	(Drafting): '(a) deposits resulting from real estate transactions relating to private residential properties and deposits intended for such transactions, provided that those transactions are concluded in the short term by a natural person, and provided that that natural person can provide documents proving such transaction; **in the case of deposits intended for real estate transactions the deposit is protected for a time period of minimum 6 months prior to the moment when the transaction is due'** DK: (Comments): In regards to deposits related to real estate transactions we support the amendment further elaborating this provision. It is still, however, a bit unclear how the provision applies to *deposits intended* for real estate transactions, i.e. when is a deposit intended for a real estate transaction and from what point in time does the protection apply. These types of deposits are more difficult to identify than deposits *resulting* from a real estate transaction. According to the wording of the provision it applies for a period of 6 months from the time when the deposit is credited. When it comes to deposits consisting of savings for a real estate purchase the point in time when funds are credited to an account will often vary. Perhaps it should be considered having a different starting point for the application of this particular protection for deposits *intended* for real estate transactions, for example a point in time related to the purchase date of the piece of real estate. We have provided a wording suggestion, but it is just meant as an example to show how the provision could be more clear as to its application. NL: (Comments): we support the addition. Clarifying question: are only deposits newly credited covered by the addition or also existing savings? In case of the latter the introductory wording needs to be amended to reflect this matter as well.

	FI: (Comments): We support the objective to include also the deposits intented for real estate transactions. However, the text is a bit ambiguous. It could be amended to be more precise by including a specific timeframe instead of "concluded in the short term". Or by adding a reference to a purchase offer that has been accepted. DE: (Comments): Could agree. AT: (Comments): Regarding **purchase in the short-term,** clear rules should be made about what documented proof shall be sufficient to legitimise the claim. (e.g. a signed notarised purchase contract or pre-contract etc.) The vague term "(in the) short-term" should also also be defined more precisely, in order to prevent against any legal uncertainties. BG: (Drafting): '(a) deposits resulting from real estate transactions relating to private residential properties ~~and deposits intended for such transactions, provided that those transactions are concluded in the short term~~ by a natural person, and provided that that natural person can provide documents proving such transaction;' BG: (Comments): The inclusion of accounts that are related to "intent to engage in real estate transactions" (ie second proposal for "deposits resulting from real estate transactions related to private residential property and deposits intended for such transactions") would lead to an

	increase in the risks associated with the provision of incorrect information by guaranteed depositors, including fraud. LU: (Drafting): '(a) deposits resulting from real estate transactions relating to private residential properties**, as a principal residence or rented out,** and deposits intended for such transactions, provided that those transactions are concluded in the short term by a natural person, and provided that that natural person can provide documents proving such transaction;'; LU: (Comments): It is important to clarify that the deposits resulting from such transactions are covered irrespectively of whether the relevant private residential property serves as a principal residence for the depositor or not. This is currently implicit. Alternatively, one could add "irrespectively of whether the depositor occupies the property himself or not" at the end.
(b) the following paragraph 2a is inserted:	PL: (Comments): Paragraph 2 is not clear. First of all, we do not understand how to calculate in such situation guarantee funds under the conditions of overlapping accounts (e.g. funds accumulated in the savings account and beneficiary account). For example, in one credit institution, the sum in the savings account amounted to EUR 80 000, and EUR 700 000 is held in the beneficiary account. Then, there is a question: in the event of deposits being unavailable, the depositor will receive the total guarantee funds amounted to EUR 80 000 + 500 000 or EUR 100 000 + 500 000?
'2a. Member States shall ensure that the coverage level laid	

down in paragraph 2 supplements the coverage level laid down in paragraph 1.'	IE: (Comments): This clarification is useful NL: (Comments): No objections against this amendment, is in line with EBA Opinion on Payouts, p.9. PT: (Comments): DE: (Comments): Agree and welcome. Compensation of temporary high balances are added to 100.000 Euro i.e. the coverage amount would be up to 600.000 Euro in total. The proposal provides clarity as many MS differently transposed the DGSD.
(6) Article 7 is amended as follows:	SK: (Comments): Please see our comment to art. 2(20). Alternatively we could also consider amending art. 7(3) so that in case of beneficiary accounts these have an additional complementary coverage level to that one in art. 6(1) – similarly to art. 8b(2).
(a) paragraph 5 is deleted;	LV: (Drafting): ~~(a) paragraph 5 is deleted;~~ LV:

	(Comments): We would like to note that in situations where the DGS reimburses interest on deposits to depositors which has been accrued, but has not been credited or debited (Article 7 paragraph 7) it would be grounded that the liabilities of the depositor to the credit institution are taken into account when calculating the repayable amount. EBA could be mandated to develop guidelines to harmonise the calculation. SK: (Comments): We understand the will to harmonize this due to the diverging use, but on the other hand we deemed this as a usefull tool to reduce the hit of a DGS. AT: (Drafting): ~~(a) paragraph 5 is deleted;~~ AT: (Comments): We do not support this deletion. Where an offsetting position exists under the respective legal regulations under national law, the removal of the discretion is considered as not being objectively justified. By removing the discretion this could lead to individual depositors being afforded preferential treatment to the detriment of the DGS that has reimbursed such offsetable amounts, and which consequently suffer potential disadvantages in the ranking of their creditors. BG: (Drafting): (a) paragraph 5 should be preserved. Member States may decide that the liabilities of the depositor to the credit institution are taken into account when calculating the repayable amount where they have fallen due on

	or before the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or when a judicial authority makes a ruling as referred to in point (8)(b) of Article 2(1) to the extent the set-off is possible under the statutory and contractual provisions governing the contract between the credit institution and the depositor. BG: (Comments): The provision is not mandatory for EU member states, while at the same time giving the possibility to deduct debts already owed, resp. facilitates their collection. LU: (Comments): LU is opposed tothe proposed deletion of the MS option. Indeed, the rationale behind this deletion is not clear. Taking into account "due liabilities" when calculating the "repayable amount" may actually allow to avoid further complications as a full reimbursement without taking into account the depositor's due debts would ultimately require the depositor to pay back the "excess funds" received in the context of insolvency proceedings, and hence further lengthen and complicate liquidation proceedings.
(b) paragraph 7 is replaced by the following:	
'7. Member States shall ensure that the DGS reimburses interest on deposits which has accrued until, but has not been credited or debited at, the date on which a relevant administrative authority makes a determination as referred to in Article 2(1), point (8)(a), or a judicial authority makes a ruling as referred to in Article 2(1), point (8)(b). The coverage level laid down in Article 6(1) or, in the circumstances referred to in Article 6(2), the coverage level laid down in that paragraph, shall not be exceeded.';	PL: (Comments): In our opinion, paragraph 7 is not fully understandable in relation to the negative interest rate. It is not clear whether it is about repayment of negative interest, i.e. the balance of the account which is the basis for calculating the guaranteed funds will be reduced by the negative interest (which we consider to be correct).

	CZ: (Comments): According to the explanatory memorandum, paragraph 7 is amended to take into account situations where the interest rate is negative. Firstly, this amendment should be included in a special Article in the recital. Secondly, this recital should clearly state that this amendment is without prejudice to national law which may disallow negative interest rates altogether. Finally, it should be considered if the proposed amendment is in line with the EBA Opinion on elements of the definition of credit institution under Article 4(1), point 1, letter (a) of Regulation (EU) No 575/2013 and on aspects of the scope of the authorisation (EBA/OP/2020/15). According to paragraph 11 of this Opinion, a typical element of the deposit is that the repayment of the principal is unconditional. However, this notion is hardly compatible with the possibility to impose negative interest rate on deposits proposed in the commented Article of the DGSD review. NL: (Comments): No objections against this amendment. DE: (Comments): Agree.
(7) the following Article 7a is inserted:	
'Article 7a	
Burden of proof for deposit eligibility and entitlement	
Member States shall ensure that in the cases referred to in Article 6(2) and Article 7(3) a depositor or, where appropriate, an account holder, proves either that the deposits concerned meet the conditions of Article 6(2), or the entitlement to the deposits in the circumstances referred to in Article 7(3).';	PL: (Comments): It seems there is a lack of consistency with Article 8(3), which indicates that depositor also proves cases mentioned in Article 8b.

	SK: (Comments): We understand and welcome this clarification, but we are of the view that THBs could be notified ex-ante in order to be protected and even beneficiary account could be to some extent. This would be important to capture these deposits into the calculation of contributions to the DGS and in case of THBs it would help avoiding tendentious behavior during a payout. DK: (Drafting): Member States shall ensure that in the cases referred to in Article 6(2) and Article 7(3) **and Article 8b** a depositor or, where appropriate, an account holder, proves either that the deposits concerned meet the conditions of Article 6(2), or the entitlement to the deposits in the circumstances referred to in Article 7(3)**, or the conditions for the recognition as a client funds deposit in Article 8b(1).';** DK: (Comments): We assume that this provision also covers client funds deposits. I.e. that the burden of proof for the fulfilment of the conditions set forth in Article 8b(1)(a-c) rests on the financial institution and/or its clients. In our opinion it is important in order to achieve a harmonized approach regarding the new Article 8 b that the directive also sets forth how the DGS is to apply the provision: Is it sufficient that the financial institution supply a list of clients in order to achieve repayment? Or is a DGS expected to accept the information given by the failed bank in regards to segregated accounts? Or does the financial institution have to prove that the account was a segregated account in the sense that the institution met segregation requirements and prove the absolute entitlement of its clients? Based on the fact that the total amount to be repaid may very likely be high in cases regarding client funds deposits and based on our previous cases regarding coverage of

	client funds we support an approach requiring the institution to prove that the funds in the account meet the conditions for being covered as client funds deposits. This should – and is in our experience – doable for insitutions who live up to their safeguarding requirements, where client funds at all times are registered and kept separate from other funds. However, it is not so for those institutions that do not – and who therefore are not covered by Article 8b. We have added a wording suggesting based on the notion that Article 8b is not also covered by Article 7(3). NL: (Drafting): Member States shall ensure that in the cases referred to in Article 6(2),Article 7(3) and Article 8b a depositor or, where appropriate, an account holder, proves either that the deposits concerned meet the conditions of Article 6(2), or the entitlement to the deposits in the circumstances referred to in Article 7(3).'; NL: (Comments): In general, we support this amendment. We believe client funds (Article 8b) should be in scope and mentioned in this provision. FI: (Comments): We support that the account holders could give the required information straight to the DGS. However, it could be needed that the DGS could also give instructions beforehand to these account holders on what information and how they should report the needed information at the time of the pay-out. PT: (Comments):

	DE: (Comments): Agree. AT: (Comments): We support the intention to further clarify the burden of proof requirements in the specific circumstances mentioned here.
(8) Article 8 is amended as follows:	FR: (Drafting): **<u>(aa) paragraph 2 is deleted</u>** FR: (Comments): This paragraph is related to measure related to transitional period until 31 Decembre 2023.
(a) paragraph 3 is replaced by the following:	
'3. By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, which shall not exceed 20 working days from the date on which those DGSs received the complete documentation they requested from a depositor to examine the claims and verify that the conditions for repayment are met.';	SI: (Comments): N.B. would prefer to keep the existing 3 months FR: (Drafting): '3. By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, **<u>or resulting from temporary situations,</u>** which shall not exceed 20 working days from the date on which those DGSs received the complete documentation they

	requested from a depositor to examine the claims and verify that the conditions for repayment are met.'; PL: (Comments): The proposed wording of paragraph 3 does not cover the situation of receiving documents by an account holder as in Article 7a. CZ: (Comments): The proposed repayment period of 20 working days after the date on which the DGS receives all information to make the repayment seems sufficient to us. However, from our point of view, it should be considered whether the proposal should also introduce a deadline for the depositor for submitting documents to prove the claim for repayment. The aim is to avoid cases where, in the absence of any limitation, depositors could prove their claim for repayment throughout the pay-out period, which may prolong the repayment process and increase administrative costs for DGS. HU: (Drafting): '3. By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, which shall not exceed 20 working days from the date on which those DGSs received the complete documentation they requested from a depositor or from the financial institution to examine the claims and verify that the conditions for repayment are met.'; HU: (Comments): In some cases the DGS receives the documentation from the financial institution.

	NL: (Drafting): '3. By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, which shall not exceed 60 working days from the date on which those DGSs received the complete documentation they requested from a depositor or account holder to examine the claims and verify that the conditions for repayment are met.'; NL: (Comments): in general we support the amendment of Article 8(3) by including a specific timeframe. However, based on recent pay-out situation in practice (Amsterdam Trade Bank) we believe 20 days is too challenging for more complex cases (such as cross-border situations). We think that a period of 60 days is more realistic. Futhermore, we suggest to add 'or account holder' for beneficiary accounts and client funds. PT: (Drafting): '3. By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, which shall not exceed 20 working days from the date on which those DGSs received the complete documentation they requested from a depositor **or, where appropriate, an account holder,** to examine the claims and verify that the conditions for repayment are met.'; PT: (Comments): Our suggestion is in line with the provision on the burden of proof laid down in Article 7a.

	DE: (Comments): Agree. BE: (Drafting): '3. By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, which shall not exceed 20 working days from the date on which the complete documentation requested from a depositor to examine the claims and verify that the conditions for repayment are met, is received.'; BE: (Comments): We suggest to delete the explicit reference to the reception by the DGS as starting point for the 20 days. For Member States where a judicial insolvency system is in place, it will sometimes be the curator/ liquidator that needs to investigate the claims. As such, with the proposed wording the new deadline for the depositor will be respected once his documentation is completed. AT: (Comments): We support this clarification.
(b) paragraph 5 is amended as follows:	FR: (Drafting): **<u>(ba) paragraph 4 is deleted</u>** FR: (Comments):

	This paragraph is related to measure related to transitional period until 31 Decembre 2023.
(i) point (c) is replaced by the following:	
'(c) by way of derogation from paragraph 9, there has been no transaction relating to the deposit during the last 24 months (the account is dormant), except where a depositor also has deposits on another account that is not dormant';	CZ: (Comments): See our comment regarding dormant accounts on paragraph 9. If the provision is kept, we suggest to clarify what "no transaction" means. Is it relating to the transaction initiated by a client only, or also to bank transaction (e.g. crediting of interests, debiting of account fee)? HU: (Drafting): '(c) ~~by way of derogation from paragraph 9,~~ there has been no transaction relating to the deposit during the last 24 months (the account is dormant), except where a depositor also has deposits on another account that is not dormant' HU: (Comments): See changes in paragraph 9 NL: (Drafting): '(c) by way of derogation from paragraph 9, there has been no transaction relating to the deposit during the last 24 months (the account is dormant), except where a depositor also has deposits on another account with the same credit institution that is not dormant'; NL: (Comments):

	No objections against this amendment. We have a suggestion for clarification. DE: (Comments): Agree.
(ii) point (d) is deleted;	DE: (Comments): Agree.
(c) paragraph 8 is deleted;	DE: (Comments): Agree.
(d) paragraph 9 is replaced by the following:	
'9. Member States shall ensure that where there has been no transaction relating to the deposit during the last 24 months, DGSs may set a threshold concerning the administrative costs that would be incurred by those DGSs in making such a repayment. DGSs shall not be obliged to take active steps to repay depositors below that threshold. Member States shall ensure that DGSs repay depositors below that threshold where so requested by those depositors.';	LV: (Drafting): '9. Member States shall ensure that where there has been no transaction relating to the deposit during the last 24 months, DGSs may set a threshold concerning the administrative costs that would be incurred by those DGSs in making such a repayment. DGSs shall not be obliged to take active steps to repay depositors below that threshold. ~~Member States shall ensure that DGSs repay depositors below that threshold where so requested by those depositors.~~'; LV: (Comments):

	We suggest to delete the the last sentence of wording of Article 8, paragraph 9 as administration of the repayments of the guaranteed compensation causes the administrative costs and it is not grounded to ensure the repayment below set threshold. CZ: (Comments): In our view, the basic idea of deposit insurance is that deposits are protected and it is not relevant whether the account is actively used. Moreover, taking into account the administrative costs related to the dormant account test, it seems easier for the DGS to include such deposits in the payout list. Therefore, we would prefer to remove this provision. In any case it is at least important to us to keep the interpretation confirmed by the Commission in Q&A for DGS Transposition Workshop that Article 8(9) does not prohibit the DGS from repaying these amounts, where it would in fact cost more to exclude them. HU: (Drafting): '9. Member States shall ensure ~~that where there has been no transaction relating to the deposit during the last 24 months~~ DGSs may set a threshold concerning the administrative costs that would be incurred by those DGSs in making such a repayment. DGSs shall not be obliged to take active steps to repay depositors below that threshold. Member States shall ensure that DGSs repay depositors below that threshold where so requested by those depositors.'; HU: (Comments): The de minimis rule is helpful, but this should be a general rule and not restricted to dormant account, since there is a safeguard anyway if depositors take active steps. NL:

	(Comments): No objections against this amendment, we support the wording '<u>may</u> set a threshold'. FI: (Comments): We are hesitant if it really is needed to ensure that depositors of inactive accounts could request payment of their deposits that fall below the threshold of adminsitrative costs. It would be clearer that either they are always compensated or not. DE: (Comments): Could agree. Useful clarification. AT: (Comments): We consider that as an useful amendment.
(9) the following Articles 8a, 8b and 8c are inserted:	 FR: (Drafting): ~~'9. Member States shall ensure that where there has been no transaction relating to the deposit during the last 24 months, DGSs may set a threshold concerning the administrative costs that would be incurred by those DGSs in making such a repayment. DGSs shall not be obliged to take active steps to repay depositors below that threshold. Member States shall ensure that DGSs repay depositors below that threshold where so requested by those depositors.';~~ FR: (Comments): The possibility for the DGS to not take active steps in the repayment of depositors is not acceptable to us. "Dormant" accounts are often those of the most vulnerable depositors

	and saving administrative costs for the DGS should not come at the expense of consumer protection.
'Article 8a	
Repayment of deposits exceeding EUR 10 000	
Member States shall ensure that when amounts to be reimbursed exceed EUR 10 000, DGSs shall reimburse depositors via credit transfers as defined in Article 2, point (20), of Directive 2014/92/EU of the European Parliament and of the Council*.	SK: (Comments): No strong views, but why was this definition of credit trasnfer chosen instead of the definition in PSD2? We are still considering whether maybe an escape clause in case of major financial stability concers would not be warranted. DE: (Comments): Could agree.
'Article 8b	FR: (Drafting): Member States shall ensure that when amounts to be reimbursed exceed EUR 10 000, DGSs shall reimburse depositors via **cheques or** credit transfers as defined in Article 2, point (20), of Directive 2014/92/EU of the European Parliament and of the Council*. FR: (Comments): We suggest to include the possibility for DGS to reimburse depositors by cheque, as it would ease adminsitrative steps for depositors in the process of opening an account in a new bank. IE:

	(Comments): Further clarification in this article may be beneficial to clarify what the scope of protection is intended to be. For example, where a depositor's own funds and their 'client funds' are held in the same institution, is it intended that they receive €200k of coverage? (or more in the case of multiple client accounts at the same institutions) This may have implications on the target level of the DGS BG: (Drafting): *Article 8b should be deleted.*
Coverage of client funds deposits	SK: (Comments): We welcome this clarification CZ: (Comments): We welcome the harmonisation of the regime for deposits of non-bank financial institutions deposited on behalf and for the account of their clients. However, the proposal lacks a similar harmonised regime for deposits in beneficiary accounts held by notaries, attorneys or real estate agencies because even in these cases situations often arise when it is difficult to determine the person who is absolutely entitled to the deposits in beneficiary accounts at a given moment. We would suggest to introduce such a harmonise regime. FI: (Comments): As mentioned in our comment on Article 2, point 20, all client funds should be equally protected, not just client funds held by account holders that are financial institutions.

	PT: (Comments): Please see our comment on Recital 4. LT: (Comments): **LT:** The new Article 8b of the DGSD essentially aims to make deposit insurance applicable to customers of financial institutions (not just credit institutions). These provisions broaden the scope of the deposit insurance and propose to cover the activities of professional financial market participants, which is fundamentally at odds with the essence of deposit insurance - deposit insurance is designed to protect the clients (depositors) of participants in a deposit guarantee scheme, to prevent the bank-runs and safeguard the financial stability. We are still assessing this amendment, but in our preliminary view, it would be useful to consider the possibility to establish a legal mechanism whereby professional financial market participants whose clients would be covered by deposit insurance would contribute to the funding of the Deposit Guarantee Scheme. LU: (Comments): LU does not support including financial institutions in the scope of the DGSD, as it would lead to protecting funds (which are not deposits according to sectoral legislation) at the same level as deposits. It would notably create asymmetries, and thus an unlevel playing field, between the different safeguarding requirements that financial institutions under PSD are subject to (ie. assets deposited in a separate account in a credit institution (and thus subject to DGSD) would be treated differently than assets invested in secure, liquid low-risk assets, or funds covered by an insurance policy. Such an approach could lead to unintended, and undesired consequences. In the broader context of the debate of whom to protect in the event of a bank failure, it is generally proposed to distinguish between professional depositors (who are able to

	examine the risks regarding the solvency of banks) and retail deposits. Financial institutions should play a role when it comes to instilling market discipline. Otherwise the risks of moral hazard are exacerbated as EMI, PI or IFs could choose banks which offer the most attractive conditions, without however being exposed at the risks which render these highers returns possible. Moreover, considering that CMDI aims at expanding the scope of bank resolution, a credible extension of resolution shall allow to protect depositors (and thus also client funds) on a general basis. The circumstance that a given credit institution holds deposits from several or a large EMI, PI or IF shall therefore be examined in the context of the PIA/MREL decisions, while a general protection of deposits held by EMI, PI or IF is not warranted. The fact that these deposits are held on behalf of retail customers does not justify their coverage by the DGS.
1. Member States shall ensure that client funds deposits are covered by the DGSs where all of the following applies:	CY: (Comments): It is suggested that Article 8b provides coverage for client funds held by other regulated professionals as well (e.g. lawyers, accountants, real estate agents, insurance firms etc) who under related professional rules are required to maintain client funds segregated to their own. DK: (Comments): Please see our comments to Article 7a on the burden of proof in regards to client funds deposits. We highly suggest making it clear, that the burden of proof for the conditions set forth in Article 8b(1)(a-c) rests on the financial institution. We highly recommend providing the DGS's with a clear legal base for requiring necessary documentation/proof from the financial institution. NL: (Comments):

	No objections against this amendment. DE: (Comments): Could agree. BG: (Comments): We believe that the including of client funds deposits in the scope of the coverage, including their guarantee above the total amount of the guarantee of 100 thousand euros, primarily increases the risk of fraud, as it leads to exceeding the guarantee for one entity. In addition, the coverage of client funds deposits of investment firms contradicts the basic principle for exclusion from the scope of the coverage of financial institutions and other legal entities that professionally manage funds.
(a) such deposits are placed on behalf and for the account of clients who are eligible for protection in accordance with Article 5(1);	
(b) such deposits are made to segregate client funds in compliance with safeguarding requirements laid down in Union law regulating the activities of the entities referred to in Article 5(1), point (d);	SK: (Comments): As mentioned in our comment in Art. 2(20) we could imagine widening this beyond financial institutions to any deposits that have a statutory basis - eg. notary, but most importantly for accounts held by apartment building managers in the name of the individual apartment owners.
(c) the clients referred to in point (a) are identified or identifiable prior to the date on which a relevant administrative authority makes a determination as referred to in Article 2(1), point (8)(a) or a judicial authority makes a ruling as referred to in Article 2(1), point (8)(b).	FR: (Drafting): (b) such deposits ~~are made to segregate client funds in compliance~~ **are placed on any type of account necessary to meet the** safeguarding requirements laid down in Union law regulating the activities of the entities referred to in Article 5(1), point (d);

	FR: (Comments): We believe that not only client funds placed in segregated beneficiary account should be DGS protected, but also clients funds placed in any type of account necessary to meet the safeguarding requirement according to the operational process of the failed credit institution and to the extent that the funds are operationally attributable to an ultimate identifiable client Furthermore, the proposal should take into account temporary situations (where funds are received by the institution but not entirely affected to the relevant account) as that might not be segregated accounts. Indeed, before reaching their final destination on a segregated account, client funds might be placed in a "transactional account" (in France : "compte d'attente", "compte d'affectation" etc) for a limited time period that might not be segregated accounts. We believe that these funds should also be protected. PL: (Comments): It is not clear whether Article 5(1)(f) is applicable in this case. NL: (Drafting): (c) the clients referred to in point (a) are identified or identifiable prior to or on the date on which a relevant administrative authority makes a determination as referred to in Article 2(1), point (8)(a) or a judicial authority makes a ruling as referred to in Article 2(1), point (8)(b). NL: (Comments): No objections against this amendment. We suggest a clarifying addition to add 'or on' after 'prior to'. In this way we also cover transactions that are in the process of settlement

	(in other words, pipeline).
2. Member States shall ensure that the coverage level referred to in Article 6(1) applies to each of the clients that meet the conditions laid down in paragraph 1, point (c), of this Article. By way of derogation from Article 7(1), when determining the repayable amount for an individual client, the DGS shall not take into account the aggregate fund deposits placed by that client with the same credit institution.	PL: (Comments): The paragraph is not clear as to the method of calculating the coverage level. For example, if a depositor in one credit institution possesses several deposits in different accounts held for different financial institutions, under the proposed Article 2(1)(20), the coverage level is calculated globally in respect of all accounts of financial institutions, or for each account separately (i.e. the depositor will be entitled to a multiple coverage level of EUR 100 000 beyond the basic limit specified in Art. 6(1))? SK: (Comments): Support HR: (Comments): Clarification needed. We understand that individual clients´ funds are covered over the limit of protection per depositor (in case if depositor is a client of credit institution and is a client of investment firm at the same time). Such proposal can be subject of possible abuse, so it is important to find solution to avoid moral hazard. CZ: (Comments): The wording of this provision should be clarified. It is not clear whether the limit for segregated client deposits applies to client deposits in each individual institution or to all institutions included in Article 5(1), point (d).

	NL: (Comments): No objections against this amendment. However, we have a question, should a similar provision be included for all beneficary accounts, as referred to in Article 7(3)? It makes sense that client funds and other types of beneficiary accounts are treated equally in this respect. DE: (Comments): Rationale behind the proposal is unclear. Should be clarified by Commission. AT: (Comments): We would need more information by the Commission on the intention of the second sentence of this provision *("By way of derogation [...]"*).
3. Member States shall ensure that DGSs repay covered deposits either to the account holder for the benefit of each client, or to the client directly.	SK: (Comments): Support DK: (Comments): We greatly support the notion that the DGS is left with a choice in regards to repayment. There will be situations, where it is very impractical to repay directly to the clients (for example in situations with a very large number of clients) or where a direct repayment medles with the contractual relations between the financial institution and the individual clients. However, there may also be situations, where repayment to the financial institution is unadvisable, for example in situations where fraud or AML is a concern. NL: (Comments):

	No objections against this amendment. PT: (Comments): On the proposal to allow to DGS to pay directly to the account holder, instead of the beneficiary/absolutely entitled depositor, we are still assessing it and will come back at a later stage. AT: (Drafting): 3. Member States shall ensure that DGSs, **after coordination with the account holder and the clients**, repay covered deposits either to the account holder for the benefit of each client, or to the client directly. AT: (Comments): This additional wording would clarify that the DGS should coordinate with the account holder and its clients on a case-by-case basis to determine to whom the covered deposits should be repayed.
4. The EBA shall develop draft regulatory technical standards to specify:	
(a) the technical details related to the identification of clients for the repayment in accordance with Article 8;	FR: (Comments): To take into account all national law specifities, EBA shall develop guidelines as a first step. Indeed, where the account holder is a payment institution or e-money institution, national law already foresee specific protective measures for their clients to ensure that clients' claims on payment/e-money institution are better treated than ordinary claims should the payment/e-money institution be in insolvency.

	Thus, in our national law, we believe that the only case where DGSs need to repay deposits directly to final clients is where the account holder is already in insolvency proceeding at the time the credit institution fails. PL: (Comments): In point (a) the reference to Article 8 is questionable. It seems that reference should be to Article 8b. NL: (Comments): No objections against this amendment. Preferably, EBA also takes into account the other types of beneficiary accounts (Article 7(3)). PT: (Drafting): (a) the technical details related to the identification of clients for the repayment in accordance with Article 8**b**; PT: (Comments): Our suggestion aims to clarify that the EBA is mandated to develop draft regulatory technical standards for the identification of the financial institutions' clients. DE: (Comments): Agree.
(b) the criteria under, and the circumstances in which the repayment is to be made to the account holder for the benefit of each client or to the client directly;	PL: (Comments): The provision seems to contradict the proposed paragraph 3 of this Article, as it indicates that it is up to the Member States to decide whether the repayment is to be made to the

	account holder for the benefit of each client, or to the client directly. PT: (Comments): As stated on our comment on paragraph 3, we are still assessing the adequacy of this proposal, and will come back at a later stage with a final position. Nevertheless, we would like to raise one doubt on whether this provision means that Member States are obliged to ensure that DGSs repay covered deposits to the account holder or to the client directly according to the application of the criteria in the RTS (as opposed to ensure that DGSs repay covered deposits either to the account holder or to the client directly on the basis of their compliance with provisions laid down at national level transposing Article 8b(3) DGSD) or can still the national law establish that payment is always doen to the client. DE: (Comments): Agree.
(c) the rules to avoid multiple claims for payouts to the same beneficiary.	PL: (Comments): It seems that the provision is contrary to the general assumption of the proposed Article 8b, which assumes the creation of multiple coverage levels for one depositor in one credit institution. Probably the provision was intended to avoid multiple payments of the same claim – then it needs to be redrafted. DE: (Comments): Agree.
When developing those draft regulatory technical standards, EBA shall take into account all of the following:	

(a) the specificities of the business model of the different types of financial institutions referred to in Article 5(1), point (d);	DE: (Comments): Agree.
(b) the specific requirements of the applicable Union law regulating the activities of the financial institutions referred to in Article 5(1), point (d), for the treatment of client funds.	FR: (Drafting): (a) the specificities of the business model of the different types of financial institutions referred to in Article 5(1), point (d) **and the objective of preserving their activity;** FR: (Comments): Suggestion to avoid unnecessary destruction of value due to the fact that the financial institutions loses its clients as a consequence of the payout DE: (Comments): Agree.
The EBA shall submit those draft regulatory technical standards to the Commission by … [OP – please insert the date= 12 months after the date of entry into force of this Directive].	FR: (Drafting): **(c) the specificities of national and Union law ensuring client's claims are better treated than ordinary claims, where the account holder is subject to insolvency proceeding.** FR: (Comments): Where the account holder is a payment institution or e-money institution, French national law already foresee specific protective measures for their clients to ensure that clients'

	claims on payment/e-money institution are better treated than ordinary claims should the payment/e-money institution be in insolvency. DE: (Comments): Could agree. Timeline is very tight.
Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	DE: (Comments): Could agree.
Article 8c	
Suspension of repayments in case of concerns about money laundering or terrorist financing	SI: (Comments): **We do not support this provision, and suggest to be removed. Banks have to follow the AML requirements on a daily basis, and se no need to add this activity to the already complex and time limited process as the CD pay-out. (We perform yearly tests with banks, where they have to report the amounts witheld for different reason including AML issues)** SK: (Comments): We support the principles of this article, it or any amendments should not lead to a situation where the DGS and its designated authority would be obliged to conduct any sort of due diligence of depositors. It should only act accordingly if it is notified by another authority. CZ:

	(Comments): We can accept the proposed approach. It is important that the DGS is not required to carry out any risk assessment in relation to money laundering and terrorist financing. NL: (Comments): Given the complexity of this cases and the timelines we strongly suggest that the requirements in these provisions are taken into account in the guidelines that will be issued by the AMLA (AMLD 6 proposal, article 48(6)), and/or that EBA receives a mandate to create guidelines on the cooperation between DGSs/DGSDAs and relevant AML authorities to ensure efficient cooperation and information exchange. Information exchange on money laundering and terrorist financing in case of cross border activities can be very difficult in practice, both in going as in gone concern. This suggested wording does not address this issue. As mentioned above (Article 5(1)(c)), the current wording ('deposits arising out of transactions') leaves room for interpretation, which needs to be resolved, see comment related to the amendment of this paragraph. DE: (Comments): Need further evaluation AT: (Comments): We need more time to evaluate this new Article in detail.
1. Member States shall ensure that the designated authority informs the DGS within 24 hours from the moment the designated authority received the information referred to in Article 48(4) of [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] about the outcome of the	SI: (Comments): SI does not support additional procedures in respect of AML because the additional requirements and communication with national authority designated for AML would increase complexity and put pressure on timing of pay-out. Bank have already established the procedures in accordance with the Anty-Money Laudering Directive thus we think the

customer due diligence measures referred to in Article 15(4) of Regulation (EU) …. [please insert short reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. Member States shall ensure that the information exchanged between the designated authority and the DGS is limited to the information that is strictly necessary for the exercise of the DGS' tasks and responsibilities under this Directive and that such exchange of information respects the requirements laid down in Directive 96/9/EC of the European Parliament and of the Council**.	provision would not increase efficiency but would be rather time consuming. HU: (Comments): The designated authority does not have the information on the outcome of the the customer due delligence measures. And we understand there are some debates in the discussion of this part of AML directive. This subparagraph should be clarified. NL: (Comments): we are concerned about the timelines. How does this process and the 24 hour period relate tot the 7 working days pay-out requirement? AT: (Comments): As the negotiations on the AML Regulation are not finalised yet, we are currently not able to properly assess this provision and comment on it.
2. Member States shall ensure that DGSs suspend the repayment referred to in Article 8(1) where a depositor or any person entitled to sums held in his or her account has been charged with an offence arising out of, or in relation to, money laundering or terrorist financing, pending the judgment of the court.	SI: (Comments): See comment to paragraph 8c (1). FR: (Comments): Coordination – we understand this article refers to Article 15(4) of AMLR proposal made by the Commission. However, this article does not exist in the Council compromise. In due time, references to AMLR articles in the DGSD should be updated in order to reflect the final agreement on this regulation. CZ: (Drafting):

	"Member States shall ensure that DGSs **without undue delay** suspend the repayment…" CZ: (Comments): The provision should be clarified taking into account that DGSs are not able to ensure immediate suspension of the repayment if a process of repayment has been already iniciated. That would have been theoretically possible only in a situation when DGS provides the repayment by itself (e.g. when no payout bank is involved).
3. Member States shall ensure that DGSs suspend the repayment referred to in Article 8(1) for the same duration as laid down in Article 20 of [please insert short reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] where they are notified by the Financial Intelligence Unit referred to in Article 32 of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] that that Unit has decided to suspend a transaction or to withhold consent to proceed with such a transaction, or to suspend a bank or a payment account in accordance with Article 20(1) or (2) of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final].	SI: (Comments): See comment to paragraph 8c (1). NL: (Comments): we understand and support the intention. However, the text should be revised. Please check current wording and references as they may not be completely correct. For example, with the current wording it is unclear: 1) At which moment in the process the FIU needs to inform the DGS, and how does this relate to the pay-out period of 7 working days? Should a DGS suspend the entire repayment or only an amount equal to the transaction suspended by the FIU? AT: (Drafting): 3. Member States shall ensure that DGSs suspend the repayment referred to in Article 8(1) for the same duration as laid down in Article 20 of [please insert short reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] where they **~~are~~ or, <u>before its deposits became unavailable, the credit institution, were</u>** notified by the Financial Intelligence Unit referred to in Article 32 of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering

	Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] that that Unit has decided to suspend a transaction or to withhold consent to proceed with such a transaction, or to suspend a bank or a payment account in accordance with Article 20(1) or (2) of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final]. AT: (Comments): Usually, such notifications are done by the FIU to the credit institution. After deposits became unavailable, further transactions with such deposits are not possible anymore. It should be clarified here that the instructions given to the credit institution by the FIU before the deposits became unavailable remain applicable in the same way to the DGSs. This should be reflected in the wording.
4. Member States shall ensure that DGSs are not held liable for any measures taken in accordance with the instructions of the Financial Intelligence Unit. DGSs shall use any information received from the Financial Intelligence Unit for the purposes of this Directive only.	SI: (Comments): See comment to paragraph 8c (1). NL: (Comments): No objections against this amendment.
* Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).	
** Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).’;	
(10) in Article 9, paragraphs 2 and 3 are replaced by the	

following:	
'2. Without prejudice to rights they may have under national law, DGSs that make payments under guarantee within a national framework shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to the DGSs payments made to depositors. DGSs that make a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b), of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5) of this Directive, shall have a claim against the residual credit institution for any loss incurred as a result of any contributions made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer made pursuant to Article 11(5) of this Directive in connection to losses which depositors otherwise would have borne. That claim shall rank at the same level as deposits under national law governing normal insolvency proceedings.	SI: (Comments): We have some reservations on the use of DGS for other purposes outside covered deposits (pay out or alterntive measures). Please refer to comments under the recital #16. Please reffer also to our comment to paragraph 8c (1). LV: (Drafting): '2. Without prejudice to rights they may have under national law, DGSs that make payments under guarantee within a national framework shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to the DGSs payments made to depositors. DGSs that make a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b), of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5) of this Directive, shall have a claim against the residual credit institution for any loss incurred as a result of any contributions made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer made pursuant to Article 11(5) of this Directive in connection to losses which depositors otherwise would have borne. ~~That claim shall rank at the same level as deposits under national law governing normal insolvency proceedings.~~ LV: (Comments): Latvia does not support that claim shall rank at the same level as deposits under national law governing normal insolvency. This proposal will create challenges for the DGS by increasing losses and reducing recoveries, as well as reducing of DGS stability, fundraising, will cause problems with alternative fundraising. It should be noted that the DGS are primarily funded by banks themselves. Taking into account this consideration, as well as a higher presumed usage of the DGS in countries

	with small banks, the primary burden will fall on largest banks (as they are the primary contributors to the DGSs), resulting in O-SII banks bearing the highest pressure due to their size. Moreover, the efficiency of the liquidation proceedings at the national level (considering that there are still small banks with a liquidation strategy) will be impacted by this situation. The wording should be reviewed in close connection with the wording of Article 108 of BRRD as Latvia does not agree and does not support the changes of ranking of deposits in insolvency hierarchy. SK: (Comments): We are still rather sceptical on the changes to the ranking of DGS claims within the whole package. **IT:** **(Drafting):** '2. Without prejudice to rights they may have under national law, DGSs that make payments under guarantee within a national framework shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to the DGSs payments made to depositors. DGSs that make a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b), of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5) of this Directive, shall have a claim against the residual credit institution for ~~**any loss incurred as a result of**~~ any **such** contributions ~~**made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer made pursuant to Article 11(5) of this Directive in connection to losses which depositors otherwise would have borne**~~. That claim shall rank at the same level as deposits under national law governing normal insolvency proceedings. **IT:**

	(Comments): The provision on the calculation of the claim of the DGS in case of resolution and alternative interventions is not clear. The claim should be equal to the contributions made in the proceedings. Moreover, the meaning of "loss incurred as a result of any contributions made" is not clear; in our understanding the loss incurred may be only known at the end of the winding up proceeding as the contribution made is netted of the claim which is satisfied. Finally the reference to "in connection to losses which depositors otherwise would have borne" is not always appropriate for alternative interventions and interventions in resolution because these are generally not subject to this ceiling. HU: (Comments): Scrutiny reservation. NL: (Comments): We do not support removing the superpreference of the DGS. Please refer to BRRD for our comments on changes to the superpriority of the DGS and the creditor hierarchy. Among other concerns, the \suggested changes may significantly increase the costs for the DGS. FI: (Comments): We do not support the general depositor preference and removing superpreference of the DGS. Please refer to our comments in the BRRD table concerning these topics. Removing the superpreference of the DGS would increase the use of DGS funds and possibly endanger the capacity of the DGS to be able to pay compensations to the depositors. Increased use of the DGS would lead to the need to replenish it more often and lead to additional costs also to the banking industry. It is unclear what the reference "in connection to losses which depositors otherwise would

	have borne" would mean in practise and how that interacts with the ranking of claims. PT: (Drafting): '2. Without prejudice to rights they may have under national law, DGSs that make payments under guarantee within a national framework shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to the DGSs payments made to depositors. DGSs that make a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b), of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5) of this Directive, shall have a claim against the residual credit institution for any loss incurred as a result of any contributions made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer made pursuant to Article 11(5) of this Directive ~~**in connection to losses which depositors otherwise would have borne**~~. That claim shall rank at the same level as under national law governing normal insolvency proceedings. PT: (Comments): We have a doubt on whether the segment "*in connection to losses which depositors otherwise would have borne*" is stricly necessary. In fact, confronting this with new drafting of Article 109 on the new bridge-the-gap function or the compensation of the value of assets vs. liabilities in tranfer strategies, we wonder whether this sentence intends to limit the claim only to the amounts needed to put DGS absorbing losses in lieu of depositors or any loss the DGS may suffer in the context of that intervention. In addition, and as also referred in Article 108(8) of the BRRD, while we understand the super-priority proposed for the resolution financing arrangaments' claims, **we disagree with a blanket priority of the resolution financing arrangement over DGS**. Indeed, we should carefully assess whether RFA claims emerging from replacing credits junior to deposits should rank higher than the DGS. We will come back at a later stage with concrete proposals in this regard.

	LT: (Comments): LT: This provision refers to the Article 109 of Directive 2014/59/EU and the amendments to Article 109 of Directive 2014/59/EU. See the comments regarding these changes in the table on Directive 2014/59/EU. Also, it is not clear, what does "loss" in this provision mean. For legal clarity, this term should be defined or changed to "payment/contribution that DGS had made/paid". LU: (Comments): LU is opposed to abandoning the superpriority of the DGS for the sole purpose of facilitiating a positive LCT in order to liberate DGS funds to fund a transfer. Rather, building up sufficient MREL should be the first line of defense.
3. Member States shall ensure that depositors whose deposits have not been repaid or acknowledged by the DGS by deadlines laid down in Article 8(1) and (3) can claim the repayment of their deposits within a period of 5 years.';	CY: (Comments): It is suggested that Article 9(3) provides the discretion to each Member State for deciding on the period during which a depositor not repaid could claim repayment, with a maximum period of 5 years. This suggestion is made on the basis that an extension of the period to claim deposits not repaid to 5 years, could imply that the liquidation process of the credit institution may be delayed until the period of 5 years elapsed. We consider that a period of 5 years is rather long and MS should be allowed to adjust this accordingly, taking into consideration the country and the effect on liquidation proceedings. FR:

	(Drafting): 2. Without prejudice to rights they may have under national law, DGSs that make payments under guarantee within a national framework shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to the DGSs payments made to depositors. DGSs that make a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b), of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5) of this Directive, shall have a claim against the residual credit institution ~~for any loss incurred~~ as a result of any contributions made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer made pursuant to Article 11(5) of this Directive in connection to losses which depositors otherwise would have borne. That claim shall rank at the same level as deposits under national law governing normal insolvency proceedings. FR: (Comments): Technical - Mentionning the “loss” for the DGS already takes into account the recovery expected during the insolvency proceedings, which does not make sense since the goal is to create a “gross” claim to be included as part of claimants within insolvency proceedings. The claim should therefore be equal to the contribution made by the DGS, and the net loss determined at the end of insolvency proceedings. SK: (Comments): No strong views, we understand the need to harmonize this. However, we currently have 3 years, this could obviously prolong the closure of a payout case. CZ: (Drafting): 3. Member States shall ensure that depositors whose deposits have not been repaid or

	acknowledged by the DGS by deadlines laid down in Article 8(1) and (3) can claim the repayment of their deposits within a period of ~~5~~ **3** years.'; CZ: (Comments): From our perspective, the proposed 5-year period for repayment of covered deposits is unreasonably long, the standard limitation period is 3 years. We believe that a 3-year period is enough for the protection and preservation of depositors' rights. According to our experience, the majority of pay-outs are collected by the depositors within the first weeks of the pay-out period. The proposed 5-year period would mean a significant administrative and financial burden for DGS, as this means keeping client records all the time and ensuring an active deposit payout system. NL: (Drafting): 3. Member States shall ensure that depositors whose deposits have not been repaid or acknowledged by the DGS by deadlines laid down in Article 8(1) and (3) can claim the repayment of their deposits within a period of 5 years from the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or a judicial authority makes a ruling as referred to in point (8)(b) of Article 2(1); NL: (Comments): we support this amendment. We have however a suggestion for further clarification. The text should clarify from which moment the 5 year period starts. FI: (Comments):

	We support this amendment. However, it could be further clarified from which moment the counting of period of 5 years starts. PT: (Comments): We understand the need for convergence e some aspects of deposit guarantee, and we are certainly open to that. In this particular respect, however, we have in Portugal a period of 20 years (general rule) which makes the proposal of 5 years a potentially excessive reduction. We are still scrutinizing this aspect, and will come back at a later stage. LU: (Drafting): 3. Member States shall ensure that depositors whose deposits have not been repaid or acknowledged by the DGS by deadlines laid down in Article 8(1) and (3) can claim the repayment of their deposits within a period of 5 years. **Member States may reduce this period down to the time period within which creditors have to file their claim in the context of insolvency proceedings** '; LU: (Comments): LU could agree to setting the time limit whereby depositors can claim the repayment of their deposits to a maximum of 5 years. Nevertheless, this is a matter which is closely intertwined with national insolvency law. The proposed provisions shall hence be complemented to allow Member States to align the 5 year time limit with the "limit for filing claims with the court in a liquidation procedure". Indeed, issues currently arise whereby depositors can claim reimbursement from the DGS, without having filed a claim with the court. Consequently, the DGS cannot subrogate into the rights of the depositor. Unless the DGS obtains a claim that is independent of the depositor's claim, it is necessary to limit the period for payouts to the

	period for filing claims with the court, in order to ensure that the DGS can file its claim with the court. It is hence necessary to allow for an adaptation of the period within which depositors can claim a repayment, which should in principle be aligned with the time period within which creditors have to file their claim in the context of insolvency proceedings.
(11) Article 10 is amended as follows:	BE: (Drafting):
(a) paragraph 2, is amended as follows:	BE: (Drafting): 'Member States shall ensure that, by 3 July 2024, the available financial means of a DGS shall at least reach a target level of [significantly higher figure]% of the amount of the covered deposits of its members.' BE: (Comments): The consequence of the significantly increased usages of DGS funds result in a bigger scope and in consequence a higher risk. Additionally, given the abolishment of the super preference, the costs for the DGS's will rise. To compensate for this, the discussion regarding the target level should to be reopened.
(i) after the first subparagraph, the following subparagraphs are inserted:	
'For the calculation of the target level referred to in the first subparagraph, the reference period shall be between 31 December preceding the date by which the target level is to be reached and that date.	DE: (Comments): Need for clarification. Unclear.
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, but shall exclude repayments not claimed by eligible depositors during payout procedures, and loans between DGSs.’;	PL: (Comments): In our opinion, in case of DGSs that are also resolution authorities, there are very limited possibilities for the relevant allocation of administrative costs, or investment income earned by such an institution for each of the two functions performed: ie. concerning protection of guaranteed funds and resolution, ultimately causing arbitrariness of decisions of such allocation. The allocation is made at the moment of distribution of profit for the accounting year. Thus, taking the above into account, as well as the Art. 100(2) BRRD, which provides that a one entity may combine both abovementioned functions, it is advisable that the authorities of such an institution can decide on the method of profit distribution in such a case, which would consequently mean, in such a situation, the exclusion of the proposed provisions of Article 10(2) in case of DGSs that are simultaneously resolution authorities. SK: (Comments): We welcome the clarification FI: (Comments): Also the funds recovered from the bankruptcy estate, when deposit guarantee compensations has been paid, should be taken into account in the available financial means. Those would not fall into the category of “recovered from members to the DGS”. PT: (Drafting): Those available financial means shall include investment income derived from funds contributed by members to the DGS, but shall exclude repayments not claimed by eligible depositors during payout procedures, and loans**, including** between DGSs PT:

	(Comments): We are very supportive of these clarifications. Also, in order to clarify that no loan should count towards the AFM (and therefore towards reaching the target level), we suggest a small edition of the text. Please see our comment on Recital 19. DE: (Comments): Agree. Clarification, that repayments not claimed by eligible depositors during payout procedures do not count towards the target level. BE: (Drafting): 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, but shall exclude loans between DGSs.'; BE: (Comments): The EBA opted to exclude the unclaimed deposits as these unclaimed repayments do not affect the level of funds at the disposition of the DGS for further interventions until they are claimed and disbursed. This number could potentially be adjusted and is difficult to quantify – for example when awaiting the results of a court case to know who is the ultimate beneficiary/beneficiaries. Given the above, we propose to delete the reference to repayments not claimed by eligible depositors LU: (Drafting):

	When determining whether the DGS has reached that target level, Member States shall only take into account **all available** financial means ~~**directly contributed by, or recovered from, members to the DGS**~~, net of administrative fees and charges**, that will not be used to reimburse loans falling due in the next 12 months**. ~~**Those available financial means shall include investment income derived from funds contributed by members to the DGS, but shall exclude repayments not claimed by eligible depositors during payout procedures, and loans between DGSs.';**~~ LU: (Comments): LU does not agree with the proposed provison. The requirement that available funds must be contributed directly by, or recovered from DGS members is economically not sound, does not improve depositor protection, violates the principle of "fungibility of assets", and it is incompatible with generally accepted accounting rules. A DGS that inherits or obtains the necessary funds from other sources is not worse off than a DGS that has raised contributions. The break of the fungibility of assets leads to paradoxical situations where the *sequence by which a loan is taken and a repayment* is made becomes important: - first the loan, then pay-out/other intervention: available financial means would be "preserved". - first pay-out/other intervention, then loan: available financial means would be lost, and DGS would need to replenish its available financial means within 6 years. In both situations, the DGS's balance sheet is however identical.
(ii) the third subparagraph is replaced by the following:	FR: (Drafting): 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, but shall exclude repayments not claimed by eligible depositors during payout procedures, and ~~loans between DGSs~~ **any debt liabilities due by the DGS, including loans from other DGSs and alternative funding arragement referred to in Article 10(9).** **An outstanding loan to another DGS under Article 12 shall be treated as an asset of the DGS which provided the loan and may be counted towards that DGS's target level.**'; FR: (Comments): The treatment of loans between DGSs as regard the target level should be the same of for loans between resolution funds in BRRD. We agree that the available financial means that count toward the target level shall be limited to funds stemming from contributions, and exclude all borrowings (or debt liabilities) made by the DGS, consistently with the EBA Guidelines on available financial means. We suggest to clarify the proposal on this point. However, loans made to another DGS shall still count toward the target level (as long as the the loan is financed by fund stemming from contributions). This treatment would ensure consistency with the current treatment of loans between resolution funds (see article 106(6) BRRD) and foster loans between DGSs. Keeping the current proposal would push DGSs to avoid lending to other DGS, at some point depriving art. 12 DGSD of any effects, while going backward regarding the objective of liquidity support between DGSs.
'Where, after the target level referred to in the first subparagraph has been reached for the first time and the available financial means, following a disbursement of DGS's funds in accordance with Article 8(1), and Article 11(2), (3), and (5), have been reduced to less than two-thirds of the target level, DGSs shall set the regular contribution at a level	SI: (Comments): See comment to paragraph (1). PL: (Comments):

allowing for the target level to be reached within 6 years.’;	According to the current wording of second subparagraph: ‘Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again.’ This implies that DGSs shall stop raising contributions after the target level has been reached and resume contributions after the DGS resources fall below the target level. In this context, taking into account the rapid growth of covered deposits (for example in case of Poland average annual growth of 8% in the last 10 years) this may cause that a DGS will need to stop collecting contributions every second year and then resume the collection of contributions the following year. This in turn may lead to fluctuations of contributions. The proposed new subparagraph, which allows the DGSs to continue to raise contributions in order to reflect the expected evolution of the aggregate covered deposits of member institutions, should allow for the contributions to be spread out in time more evenly. FI: (Comments): The 6 year deadline should be applied also to situations where the amount of covered deposits rise and due to that available financial means fall below 2/3. Also, it should be added to the legislation that if a new institution joins the DGS (or moves from one MS to another), it should pay a joining fee to the DGF within 6 years. This would cover the rising of covered deposits and it would not fall on the other institutions of the DGS to pay. Also, it should be clarified how the DGS is replenished if the available financial means have been reduced, but still count for more than two thirds of the target level. PT: (Drafting): ‘Where, after the target level referred to in the first subparagraph has been reached for the

	first time and the available financial means, following a disbursement of DGS's funds in accordance with Article 8~~(1)~~, and Article 11(2), (3), and (5), have been reduced to less than two-thirds of the target level, DGSs shall set the regular contribution at a level allowing for the target level to be reached within 6 years.'; PT: (Comments): We believe reference should be made to Article 8, and not to Article 8(1), as under Article 11(1). DE: (Comments): Agree. BE: (Drafting): We propose to delete this amendment BE: (Comments): We see no need to include a reference to a disbursement. The natural devaluation of the DGS funds or the results of bad investments should continue to trigger the need to refill the funds Currently, Member States diverge in the choice to keep the funds at a 0.8% as some will cease contribution which will naturally result in a shrinking fund. This amendment will therefore enlarge the already playing non harmonisation and cause unlevel playing field issues.
(b) paragraph 3 is replaced by the following:	FR: (Drafting): Where, after the target level referred to in the first subparagraph has been reached for the

	first time and the available financial means, following a disbursement of DGS's funds in accordance with Article 8(1), and Article 11(2), (3), and (5) have been reduced to less than two-thirds of the target level, DGSs shall set the regular contribution at a level allowing for the target level to be reached within 6 years. **When available financial means have been reduced following a disbursement of DGS's funds in accordance with Article 8(1), and Article 11(2), (3), and (5), but still account for more than two thirds of the target level, DGSs shall set the regular contribution at a level allowing for the target level to be reached within [one year].';** FR: (Comments): We welcome the clarification that the 6 years period opens only after a DGS intervention, should the available financial means have been reduced to less than two-third of the target level. However, the proposal does not clarify the case where the available financial means have been reduced, but still acount for more than two thirds of the target level. To be consistent with art 10(1) that states DGSs shall raise contributions at least annually, this para should clarifiy that available financial means should be replenished, either the following year or within a reasonable timeframe that should be enshrined in the level 1 text to avoid a void in replenishment decisions, as well as a cliff effect around 2/3 of the target level..
'3. The available financial means that the DGS takes into account to reach the target level referred to in paragraph 2 may include payment commitments. The total share of such payment commitments shall not exceed 30 % of the total amount of available financial means raised in accordance with paragraph 2.	SI: (Comments): See comment to paragraph (1). NL: (Comments): No objections against this amendment. PT: (Drafting):

	DE: (Comments): Agree.
The EBA shall issue guidelines on payment commitments laying down criteria for the admissibility of those commitments;'	DE: (Comments): Agree.
(c) paragraph 4 is deleted;	SK: (Comments): Taking into account the currently proposed setting of the CMDI package and the change of role of the DGSs we would propose to consider abandoning art. 10(6) as well. **IT:** **(Drafting):** (c) paragraph**s** 4 **and 6** ~~is~~**are** deleted; **IT:** **(Comments):** The possibility to lower the target level of the DGS to 0,5% of covered deposits justified by a banking system mainly composed of large banks subject to resolution an not to liquidation is no longer valid as the DGS funding will now be used also in resolution. DE: (Comments): Agree. Provision is not used by any MS.

	BE: (Drafting): (d) paragraph 6 last paragraph, is amended as follows: That reduced target level shall not be lower than [significantly higher figure] % of covered deposits. BE: (Comments): As mentioned. The extension of the scope should result in a higher target level and subsequently a higher minimum target level to ensure the robustness and believability of the DGS's
(d) paragraph 7 is replaced by the following:	
'7. Member State shall ensure that DGSs, designated authorities, or competent authorities set the investment strategy for the available financial means of DGSs, and that that investment strategy complies with the principle of diversification and investments in low-risk assets.';	PT: (Comments): DE: (Comments): Agree.
(e) the following paragraph 7a is inserted:	
'7a. Member States shall ensure that DGSs may place all or part of their available financial means with their national central bank or national treasury, provided that those available financial means are kept on a segregated account and that they are readily available for use by the DGS in accordance with Articles 11 and 12.';	SI: (Comments): See comment to paragraph (1). SK: (Comments): Support DE:

	(Comments): Agree. AT: (Drafting): ~~'7a. Member States shall ensure that DGSs may place all or part of their available financial means with their national central bank or national treasury, provided that those available financial means are kept on a segregated account and that they are readily available for use by the DGS in accordance with Articles 11 and 12.';~~ AT: (Comments): We do not agree with the introduction of this provision. We do not think that it would be feasible in practice. The DGSs in Austria are all organised as private entities. **National Ministries of Finance** usually do not offer accounts to privately organised entities and we do not think that the DGSD should now oblige national MoFs to perform this specific new task. We also miss a proper reasoning and impact assessment on this newly proposed requirement. As far as **national central banks** are concerned, we are not sure if they could be obliged by EU Directives (and, conseqently, national law transposing this EU Directives) to provide accounts to certain private entites. In this context, it would be beneficial to invite the ECB to explain whether such obligations for national central banks would be in line with the independence of the ECB and the National Central banks (statute of the ESCB and the ECB).
(f) paragraph 10 is deleted;	
(g) the following paragraphs 11, 12 and 13 are added:	SK: (Drafting): (g) the following paragraphs ~~11~~**9**, ~~12~~ **10** and ~~13~~ **11** are added:

	SK: (Comments): Para 4 and 10 are deleted
'11. Member States shall ensure that in the context of the measures referred to in Article 11(1), (2), (3) and (5), DGSs may use the funds originating from the alternative funding arrangements referred to in Article 10(9) which are not financed through public funds, before using the available financial means and before collecting the extraordinary contributions referred to in Article 10(8). Member States shall ensure that DGSs use alternative funding arrangements financed through public funds only as a last resort.	SI: (Comments): See comment to paragraph (1). IE: (Comments): Clarity would be appreciated around what constitutes a 'last resort' HU: (Comments): To arrange the use of alternative funding takes times, we would like to clarify that the wording here does not exclude the use of a short term funding (bridge loan) from public sources. NL: (Comments): No objections against this amendment, the wording '<u>may</u> use' is crucial. We strongly support the last sentence ('member States shall ensure that DGSs use alternative funding arrangements financed through public funds only as a last resort'). FI: (Comments): We are critical on this amendment since the BRRD and DGSD proposals would increase significantly the use of the DGSs and thus also increase their funding needs. The measures for which the DGS can be used should be calibrated in a way that they can be done with the available financial means. This paragraph also seems to be in contradiction to Article 11 (2), (3) and (5). According to those articles, DGSs could use only available financial means for measures specified in

	those articles. PT: (Drafting): '11. Member States shall ensure that in the context of the **repayment of deposits in accordance with Article 8 and of the** measures referred to in Article 11~~(1),~~ (2), (3) and (5), DGSs may use the funds originating from the alternative funding arrangements referred to in Article 10(9) which are not financed through public funds, before using the available financial means and before collecting the extraordinary contributions referred to in Article 10(8). Member States shall ensure that DGSs use alternative funding arrangements financed through public funds only as a last resort. PT: (Comments): We agree that DGSs should enjoy more flexibility in terms of deciding in which order they can use their funding sources because this is undoubtedly the best way of ensuring that DGSs can obtain funding when due and it also enables DGSs to make decisions according to the specific needs of a concrete situation while taking into account financial stability concerns. In all articles addressing the repayment of deposits reference is made to Article 8. This article uses the term "measures" which is not typically used in the DGSD to describe a repayment of deposits and mentions Article 11(1). Therefore, it may not be entirely clear if this article is applicable in case of a payout. Our suggestion aims to clarify this issue. DE: (Comments): While we welcome that clarification in general, the precise circumstances that would qualify for a last-resort-scenario should be further specified. In particular, it should be specified that DGSs should seek funding through borrowings on the market before using public funds. Should the potential use of public financed funds be mentioned at all?

	BE: (Drafting): We propose to delete this amendment BE: (Comments): The use of alternative funding arrangements should in general only be used as a last resort. In any case, the extraordinary contributions should be activated to reimburse the alternative funding as soon as possible. However, ex-post contributions are not always possible to be collected in seven working days. Alternative funding then can serve as a solution. Making a distinction between private and public alternative financial means, then creates an unlevel playing field. AT: (Drafting): '11. Member States **may allow** ~~**shall ensure**~~ that in the context of the measures referred to in Article 11(1), ~~**(2), (3) and (5)**~~, DGSs may use the funds originating from the alternative funding arrangements referred to in Article 10(9) which are not financed through public funds, before using the available financial means and before collecting the extraordinary contributions referred to in Article 10(8). Member States shall ensure that DGSs use alternative funding arrangements financed **or guaranteed** through public funds only as a last resort. AT: (Comments): From our perspective, the whole financing cascade (i.e. "available financial means", "extraordinary contribution" and "alternative funding arrangements") should only be available for actual payout cases according to Art. 11 (1) DGSD, whereas for all other purposes (Art. 11 (2), (3) and (5) DGSD), only the "available finacial means" described in Art. 10 (1) to (3) DGSD should be available.

	Moreover, it should only be an option for Member States to allow its DGSs to apply a more flexible financing cascade, but not an obligation. Finally, we would propose as another option to evaluate whether certain types of repurchase agreements would be feasible to restore short-term liquitdity for the fund. BG: (Drafting): '11. Member States shall ensure that in the context of the measures referred to in Article 11(1), (2), (3) and (5), DGSs may use the funds originating from the alternative funding arrangements referred to in Article 10(9) which are not financed through public funds, before using the available financial means and before collecting the extraordinary contributions referred to in Article 10(8 Member States shall ensure that DGSs use alternative funding arrangements financed through public funds only as a last resort.). Notwithstanding, if there is a risk for financial stability and in the context of the measures referred only to in Artice 11(1) DGSs may use alternative funding arrangements financed through public funds as short-term (up to one year) bridge financing, before using the available financial means and before collecting the extraordinary contributions referred to in Article 10 (8). BG: (Comments): The provision of Art. 10, paragraph 11, referring to the exclusion of the possibility of taking public funds from the public sector in parallel with the other alternative funding arrangements referred to in Article 10(9) of financing the deficit of the DGS, creates prerequisites for the significant risks to ensure depositors access to their covered deposits within 7 working days. Moreover, we are concerned that, in small and illiquid financial markets, the provision of DGS funds only for the purpose of payout of covered deposits in the event of a credit institution's failure by alternative financing arrangements other than short-term public funding would be a serious problem in practice. In this regard, we propose to leave the possibility for the DGS to use a short-term (up to 1

	year) loan only for the purpose of payout of covered deposits in the event of a failure of a credit institution, granted at market conditions, and to be repaid by raising extraordinary contributions from the banking sector or by finding other forms of alternative financing from the DGS, before the DGS resources are exhausted and the extraordinary contributions are collected. The proposed amendment to Art. 10, paragraph 11, provides an opportunity for DGDs to receive short-term financing from the public sector alongside other forms of deficit financing, which would ensure an opportunity to start payment within the specified terms, as well as refunding taxpayers' funds in the short term. We still analisying the possibility to use a public support for preventive measures and would like to put a scrutiny reservation on that point. LU: (Comments): LU has doubts regarding the view that a "public loan" must not be used before available financial means or extraordinary contributions: the funding source does not matter to depositors, and if the loan complies with State aid rules, it will not result in an undue advantage for the banks at the expense of the tax payer.
12. The EBA shall develop draft regulatory technical standards to specify:	FI: (Comments): We are not conviced there is need for EBA RTS on these points, taking into account the proposed amendments in Article 2 govern details related to the available financial means. AT: (Comments): We expressly welcome an RTS on this issue. LU: (Drafting): ~~**12. The EBA shall develop draft regulatory technical standards to specify:**~~

	LU: (Comments): LU does not agree to the inclusion of the proposed RTS. All financial means shall qualify for reaching the target level. Cf comments regarding article 10(2).
(a) the methodology for the calculation of available financial means qualifying for the target level referred to in paragraph 2, including the delineation of the available financial means of DGSs and the categories of available financial means that derive from contributed funds;	FR: (Drafting): ~~12. The EBA shall develop draft regulatory technical standards to specify:~~ FR: (Comments): The methodology to calculate the available financial means that count towards the target level is important to (i) determine whether DGSs shall levy new contributions or not and (ii) ensure DGSs are sufficiently ex ante funded, consistently with the purpose of the whole directive. Hence, this methodology is an essential element of the legislative act as per article 290 TFEU, and cannot be delegated. Compared to the current DGSD, the proposal includes several clarifications: - "available financial means" are defined in article 2, there is no need to mandate the EBA to "delineate" them; - The proposed paragraph 2 already states that available financial means that derive from contributed funds are the only one counting towards the target level (and we propose to clarify that debt does not count toward the target level); - The proposed paragraph 2 also clarifies the process to reach the target level after a DGS has used available financial means. Should these clarifications be insufficient, the directive itself should be further clarified, without delegating essential elements to the EBA. DE: (Comments): Agree.

	LU: (Drafting): ~~**(a) the methodology for the calculation of available financial means qualifying for the target level referred to in paragraph 2, including the delineation of the available financial means of DGSs and the categories of available financial means that derive from contributed funds;**~~ LU: (Comments): Cf above.
(b) the details of the process to reach the target level referred to in paragraph 2 after a DGS has used available financial means in accordance with Article 11.	SI: (Comments): See comment to paragraph (1). FR: (Drafting): ~~(a) the methodology for the calculation of available financial means qualifying for the target level referred to in paragraph 2, including the delineation of the available financial means of DGSs and the categories of available financial means that derive from contributed funds;~~ PT: (Drafting): (b) the details of the process to reach the target level referred to in paragraph 2 after a DGS has used available financial means in accordance with Article **8 and** Article 11**(2), (3), and (5)**. PT: (Comments): Our suggestion aims to bring Article 10(12)(b) into line with Article 10(2)(third

	subparagraph). DE: (Comments): It should also be clarified how to deal with minor shortfalls of the target level. E.g. when the covered deposits raise und hence the target level falls mathematically below 0.8%. LU: (Drafting): ~~**(b) the details of the process to reach the target level referred to in paragraph 2 after a DGS has used available financial means in accordance with Article 11.**~~ LU: (Comments): Cf above.
EBA shall submit those draft regulatory technical standards to the Commission by … [OP – please insert the date = 24 months after the date of entry into force of this Directive].	FR: (Drafting): ~~(b) the details of the process to reach the target level referred to in paragraph 2 after a DGS has used available financial means in accordance with Article 11.~~ DE: (Comments): Could agree. LU: (Drafting): ~~**EBA shall submit those draft regulatory technical standards to the Commission by … [OP – please insert the date = 24 months after the date of entry into force of this Directive].**~~

	LU: (Comments): Cf above.
Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	FR: (Drafting): ~~EBA shall submit those draft regulatory technical standards to the Commission by … [OP – please insert the date = 24 months after the date of entry into force of this Directive].~~ DE: (Comments): Could agree. LU: (Drafting): **~~Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~** LU: (Comments): Cf above.
13. By… [OP – please insert the date = 24 months after the date of entry into force of this Directive] The EBA shall develop guidelines to assists DGSs with the diversification of their available financial means and on how DGSs could invest in low-risk assets applicable to the available financial means of DGSs.’;	FR: (Drafting): ~~Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~ DE:

	(Comments): Could agree.
(12) Article 11 is replaced by the following:	FR: (Drafting): 13. By… [OP – please insert the date = 24 months after the date of entry into force of this Directive] The EBA shall develop guidelines to assists DGSs with the diversification of their available financial means and on how DGSs could invest in low-risk assets applicable to the available financial means of DGSs.'; EE: (Comments): Scrutiny reservation on the amendments to Articles 11 and new Articles 11a to 11e. The primary role of the DGS should remain to ensure the payout of covered deposits. The use of deposit guarantee scheme funds to finance alternative measures in the liquidation process should not be harmonized.
'*Article 11*	SI: (Comments): We have a general reservation on the use of DGS funds. Please refer to our comments under the recital #16. Please see also comment to paragraph (1). PT: (Comments): The newly redrafted Article 11 and the novel provisions found in new Articles 11a to 11e point to an expanded framework applicable to preventive and alternative measures. Some aspects of the new regime do raise some doubts, however. In particular, we believe that there is a lack of clarity on the role of each stakeholder involved in these measures (resolution authority, competent authority, designated authority and DGS).

	Our proposals below will try to introduce clarity and consistency in this matter of roles and responsibilities of each stakeholder involved. DE: (Comments): General remarks: At the core of the IPS mandate lies the promise to support its member institutions whenever needed. This promise makes preventive measures existantial for IPS. It also shows that IPS are inherently different from other DGS. However, the current proposal fails to acknowledge the IPS mandate as a liability arrangement which encompasses protecting its member institutions and in particular ensures their liquidity and solvency to avoid bankruptcy where necessary (Art. 113 (7) of the CRR). Instead, the proposal restricts the ability of an IPS to support their member institutions and thus restricts the functioning of IPS. Such restrictions on the use of DGS funds for IPS preventive measures cast doubt about the ability of IPS to fulfil that promise. This could have repercussions on ECB/CA assessment of Art. 113 (7) CRR. We therefore suggest that the Council position on the Commission proposal reflects the agreement laid down EG+ statement from June 2022 that a functioning framework for IPS preventive measures must be maintained. In our view, this requires a specific regime for IPS preventive measures. Such a specific regime would take into account the fact that IPS and DGS are different in nature as IPS have a different mandate and have to fulfil a broad range of additional requirements. Therefore, specific provisions for IPSs when using DGS funds for preventive measures are needed.
Use of funds	
1. Member States shall ensure that DGSs use the available financial means referred to in Article 10 primarily to repay depositors in accordance with Article 8 without prejudice to	SI: (Comments): We have a general reservation on the use of DGS funds. Please refer to our comments

the use of additional financial means collected by DGSs for the fulfilment of mandates other than depositor protection under this Directive.	under the recital #16. Please see also comment to paragraph (1). PL: (Drafting): "Member States shall ensure that DGSs use the available financial means referred to in Article 10 primarily to repay depositors in accordance with Article 8 without prejudice to the use of additional ~~financial means collected by~~ DGSs **funds dedicated** for the fulfilment of mandates other than depositor protection under this Directive." PL: (Comments): 1) In the case of DGSs that are simultaneously resolution authorities (hereinafter: "entity"), then based on the current legislation, there is no way not to reimburse savings belonging to depositors, regardless of the fact that funds at the disposal of the entity are related to resolution and funds for deposits guarantee have already been fully used. Due to the fact that this is related to funds, but not financial means we propose the new wording; 2) In such a construction of the proposed provision of paragraph 1 of Article 11, there would be a need to bear the costs of additional financing related to the disbursement of guaranteed funds to depositors while at the same time the entity would have free funds for resolution. The proposed amendment permits to avoid this problem; 3) The proposed provision of Article 11(1) would be in contradiction to the provisions of Directive 2014/59/EU, which stipulates that a one entity can combine both functions: 1) DGS and 2) resolution authority. The proposed provisions in practice mean that these functions cannot be combined. IE: (Comments): Agree that this should be preserved, as the primary function of the DGS, especially with regards to entities which cannot be resolved, is to protect depositors, in particular unsophisticated depositors.

	In this regard, the IMF's opinion is against the use of DGS funds to prevent failure outside of liquidation or resolution. NL: (Comments): This paragrah needs further clarification. What is exactly meant by and the purpose of "without prejudice to the use of additional financial means… for the fulfilment of mandates other than depositor protection". FI: (Drafting): 1. Member States shall ensure that DGSs use the available financial means referred to in Article ~~10~~ **2 (1) point 12** primarily to repay depositors in accordance with Article 8 ~~without prejudice to the use of additional financial means collected by DGSs for the fulfilment of mandates other than depositor protection under this Directive.~~ FI: (Comments): Definition of available financial means is in Article 2 and reference should be made there rather than to Article 10. This paragrah also needs other further clarification. What is exactly the purpose of the following phrase "without prejudice to the use of additional financial means collected by DGSs for the fulfilment of mandates other than depositor protection" and what type of situations it would cover? PT: (Drafting):

	PT: (Comments): We understand that the last part of paragraph 1 ("without prejudice to the use of additional financial means collected by DGSs for the fulfillment of mandates other than depositor protection under this Directive") is intended to deal with IPS mandates or DGS who have coverages beyond the one foreseen in the DGSD. However, we wonder whether this should be made more explicit here or in the recitals, to ensure there are no doubts about what it means. Furthermore, we consider that the concept of "additional financial means" which is being introduced here for the first time, should be clarified, at least in the recitals. In fact, clarity on whether "additional financial means" correspond to available financial means above the target level or something else is needed. AT: (Drafting): 1. Member States shall ensure that DGSs use the ~~**available**~~ financial means referred to in Article 10 primarily to repay depositors in accordance with Article 8 without prejudice to the use of additional financial means collected by DGSs for the fulfilment of mandates other than depositor protection under this Directive. AT: (Comments): From a technical point of view, it should be clarified here that the entire financing cascade (i.e. "available financial means", "extraordinary contribution" and "alternative funding arrangements") is availabe for a DGS for the repayment of depositors and not only the "available financial means" as described in Art. 10 (1) to (3) DGSD. This wording would also be in line with the wording as it is currently in force. BG: (Drafting):

	BG: (Comments): In general, we have reservations about the broader use of the DGSs funds for the purpose of resolution of credit institutions and going beyond the DGSs main goal which is protecting of the covered deposits. From our point of view such broader use of the DGSs funds does not promote the prevention of the market discipline and departs to a large extent of the principle that the shareholders and the creditors of a failing or likely to fail credit institution mainly bear the losses. In the context of the current proposal, we find it appropriate to provide additional guarantees that the DGSs funds will be used explicitly for protection of the covered deposits by providing their separate management from the funds necessary for preventive and alternative measures, other than public support. Furthermore, we consider that the EU legal framework should leave to Member States' discretion to regulate at national level the organisation, the management and the realization of the broader use of the DGSs outside of payout of covered deposits, including in the context of resolution. Such an approach will be consistent with the approach in the current legal framework which leaves it to the Member States to designate at national level the authorities which perform the functions of DGSs and the functions of resolution authorities as well central banks, separate authorities etc.
2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on the results of the least cost test referred to in Article 11e of this Directive.	SI: (Comments): We have a general reservation on the use of DGS funds. Please refer to our comments under the recital #16. We do not support the proposal which gives RA authority over DGS. This goes against the three-pilar framework of the Banking union, as it limits the autonomy of the DGS to RA. EL: (Drafting):

	EL: 2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on the results of the least cost test referred to in Article 11e of this Directive. **Resolution authorities may request the DGS to provide information on the calculation of the least cost test.** EL: (Comments): EL: We propose to add a sentence in order to clarify that resolution authorities may ask DGS to provide the information that is used for the calculation of the least cost in accordance with Article 11e. FR: (Comments): Strong support to maintaining the term "additional", since raising funds on top of the target level is the best way to ensure that DGS funds are protected for their use in fullt harmonized interventions (payout and resolution). SK: (Drafting): 2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on **that amount and** the results of the least cost test referred to in Article 11e of this Directive. SK:

	(Comments): The resolution authority should co-decide together witht the DGS or at least consult the DGS on the amount that the DGS is to contribute and on the least cost test. IE: (Drafting): 2. Member States shall ensure that DGSs **may** use the available… IE: (Comments): This drafting may be at odds with the preceding paragraph. It may be clearer to use the suggested drafting which makes it clear that the alternative uses are not mandatory in all cases. HR: (Comments): We see a need to discuss the proposal to eliminate LCT as a criteria for making a decision on resolution financing as well as the proposal for disregarding upper limit up to which the Deposit Insurance Fund can financially support the resolution. We have concerns that it could lead to the increase of resolution fund means and deposit insurance funds would be directly endangered in such scenario (deposit insurance funds must be available at the national level at any time, in case if the resolution of a credit institution fails). The main DGS role should not be neglected. Also, SRF is supposed to be the first if the resolution case appears. The DGS fund can be secondarily used and only up to the limit already proscibed. Only in such scenario clients and their financial means can be protected and the main purpose of DGS is fullfiled. EE: (Drafting): 2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU.

	Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on the results of the least cost test referred to in Article 11e of this Directive **and on the financial capacity which the DGS needs to maintain for its primary function as referred to in pararaph 1.** NL: (Comments): We support the consultation with the DGS. In our view, this is a minimum requirement. The proposal for the BRRD suggests to delete Article 109(5) second and third subparagraph. As mentioned in the BRRD Article 109, we suggest to include in Article 11 a limit to the amount of DGS funds that a resolution authority may deploy in resolution (Article 109(5) BRRD). FI: (Drafting): "2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on the results of the least cost test referred to in Article 11e of this Directive **and on the financial capacity which the DGS needs to maintain for its primary function as referred to in pararaph 1.** " FI: (Comments): This paragraph seems to be in contradiction to Article 10(11) in relation to which funds can be used. See our comment there. The resolution authority should also consult the DGS on its capacity to maintain its pay-out function in addition to consulting on the least cost test. The payout function is and

	should be the primary function of the DGS as stated in paragraph 1. Also, as mentioned in our comments in the BRRD table, we oppose the proposal in Article 109 BRRD of using the DGS funds to bridge the gap to access SRF. PT: (Drafting): 2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on the results of the least cost test referred to in Article 11e of this Directive. **Member States shall ensure that DGSs respond, without delay, to such consultation.** PT: (Comments): Up until this CMDI review, the role of DGS in resolution was narrow, mostly due to the superpriority of covered deposits. This meant that recourse to the DGS was only expected in very rare and potentially special cases. In the revised CMDI framework, however, the intervention of the DGS is set to occur much sooner and in greater amounts. This changes the landscape DGS operates in and justifies different governance arrangements (departing from the current automatic DGS contribution in resolution). Within the Banking Union where funding and decision-making are not always occurring at the same level, governance arrangements should provide national authorities with adequate decision-making powers to use national funds. This is something that will not be sufficiently addressed by having DGSs consulted by the SRB on the LCT and notified of the SRB's decision. We should strive for an adequate balance between control and liability at the Banking Union level. Against this background, we consider the issue warrants further reflection and discussion

	and we will come back to it at a later stage. In addition, this provision fails to regulate the task of DGSs. Indeed, while the DGSD and the BRRD require resolution authorities to consult DGSs, there should also exist a provision requiring the DGSs to answer the consultation with all relevant information in a timely manner. We have made a proposal to that effect. DE: (Drafting): 2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on the results of the least cost test referred to in Article 11e of this Directive **and on the financial capacity which the DGS needs to maintain for its primary function as referred to in pararaph 1.** DE: (Comments): When DGS are consulted on the LCT, they should also be consulted on their financial capacity which would still be needed for possible payouts. Firstly, this wold ensure a better governance where a decision by the SRB would not trigger a quasi-automated payment by the national DGS. Secondly, behind the background of the deletion of the 50% cap for DGS contributions to resolution, such a provision ensures that the DGS still maintains a certain capacity to fullfill its main function. LT: (Comments): LT: It should be added that when DGS is consulted on the results of the LTC, it should also be consulted on the financial capacity that DGS needs to maintain for its primary function as referred to in pararaph 1.

	BE: (Comments): Could the Commission clarify how this is expected to work for SPE groups? BG: (Comments): As regards the introduction of the least cost test for the purpose of making a decision whether to use DGS funds for resolution, we find it useful only as informative but not as decisive factor. Other guarantees and limits should be provided in order to ensure a minimum level of participation of DGSs. It is also appropriate for the resolution authority to be able to take into account other circumstances in the event of a serious disturbance in the economy, for the purpose of safeguarding financial stability or where the public interest so requires. The introduction of such a test should not impede or aggravate from a procedural point of view the resolution authorities decision-making process or limit their ability to act as effectively as possible in order to achive the resolution objectives to the best extent possible. Member States should be given the possibility to assess the conditions for participation of the scheme or fund concerned, including the degree of applicability of the LCT. In this case, there will be no need to change the hierarchy of creditors. LU: (Comments): LU supports a general review of governance arrangements and the allocation of responsibilities between resolution and DGS authorities. DGS should be able to prefer a pay-out over a transfer as proposed by the NRA (at least where the realization of the transfer would to a large extent depend on the DGS contribution). DGS or local RAs shall for instance be able to request MREL add-ons.
3. Member States may allow DGSs to use the available financial means for preventive measures as referred to in Article 11a for the benefit of a credit institution where all of	SI: (Comments): See comment to paragraph (1).

the following applies:	PL: (Comments): We support the use of funds accumulated in DGSs for the purposes of preventive measures (applied at the request of an entity that is not deemed to be failing or likely to fail). SK: (Comments): Important to keep this a national option. NL: (Comments): we support the conditional nature of this privision. FI: (Drafting): 3. Member States may allow DGSs to use the available financial means for preventive measures as referred to in Article 11a ~~for the benefit of a credit institution~~ **in order to prevent the failure of a credit institution** where all of the following applies: FI: (Comments): Preventive measures should be available only in order to prevent the failure of a credit insititution, not for the benefit of it. The proposed amendment would broaden the possibility to use preventive measures in a way that isn't justifiable. PT: (Comments): Please see our comment on Recital 25.

	DE: (Comments): AT: (Comments): We support this element for reasons of financial market stability, irrespective of whether an IPS/DGS or a DGS is affected. Nevertheless, the concept of "preventive measures" has to be further aligned with CRD VI, especially with regard to notification requirement and the risk-based approach implemented. Furthermore, it has to be ensured that DGS keep their fire power also after such intervention. BG: (Comments): As far as the use of DGSs funds for preventive measures remain discrertionary, we do not object to the further specification of this kind of intervention, the conditions and criteria for their use (under the proposed Articles 11a – 11c and 11e), including introduction of least cost test in this regard. Nevertheless we retain our position that the introduction of a (parallel) regime for reorganisation of institutions, separate from the resolution regime does not contribute to avoiding fragmented and ambiguous application of the resolution framework.
(a) none of the circumstances referred to in Article 32(4) of Directive 2014/59/EU are present;	**IT:** **(Drafting):** (a) ~~**none of the circumstances referred to in Article 32(4) of Directive 2014/59/EU are present**~~ **the credit institution has been not declared to be failing or likely to fail pursuant to point (a) of Article 32(1) of Directive 2014/59/EU**; **IT:** **(Comments):**

	For the sake of legal certainty, we suggest clarifying the provision referring to an authority's decision. PT: (Drafting): (a) **<u>the competent authority has confirmed that</u>** none of the circumstances referred to in Article 32(4) of Directive 2014/59/EU are present; PT: (Comments): We believe that a clarification on who should confirm that the circumstances of the FOLTF are not present is most needed. Considering the role and tasks entrusted/to be entrusted to the CA in relation to preventive measures, we consider that this confirmation can be given by the CA, without prejudice to the competences of resolution authorities to perform the FOLTF assessments. In any case, we do not support entrusting this task to the DGS itself and believe that DA may not be well equipped to do this assessment.
(b) the DGS has confirmed that the cost of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e;	SI: (Comments): See comment to paragraph (1).
(c) all of the conditions laid down in Articles 11a and 11b are met.	SI: (Comments): See comment to paragraph (1). FI: (Drafting): c) all of the conditions laid down in Articles 11a and 11b and **in Article 32c of the BRRD** are met**.** FI:

	(Comments): It should be clarified that conditions stated in the Article 32c BRRD (including 32c(2)) should also be fulfilled in order to be able to use preventive measures.
4. Where available financial means are 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:	SI: (Comments): See comment to paragraph (1). SK: (Drafting): 4. Where available financial means are **to be** 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: NL: (Comments): no objection to this amendment. We support the conditional nature of this provision. Clarifying question: in what form should credit institutions immediately contribute if not via extraordinary contributions? PT: (Drafting): 4. Where available financial means are 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: PT: (Comments): Taking into account the sources of financing of DGSs refered to in Article 10, we fail to identify another way of replenishing the DGSs' available financial means with the funds

	used for preventive measures. Also, our suggestion brings Article 11(4) into line with Article 11a(1)(e). DE: (Drafting): DE: (Comments): We could agree with para 4. LU: (Drafting): ~~**4. Where available financial means are 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:**~~
(a) the need to repay depositors arises and the available financial means of the DGS amount to less than two-thirds of the target level;	PT: (Drafting): (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; PT: (Comments): Alongside the repayment of deposits, intervention in resolution is mandatory for DGSs as such mandate is provided under level 1 texts, so it should be also included in here. LU: (Drafting): ~~**(a) the need to repay depositors arises and the available financial means of the**~~

	~~DGS amount to less than two-thirds of the target level;~~
(b) the available financial means of the DGS fall below 25 % of the target level.	FI: (Drafting): (b) the available financial means of the DGS fall below ~~25 %~~ **two thirds** of the target level. FI: (Comments): DGS should be primarily used for payout and resolution and it should be secured that the DGS always has ability to perform these. Use for preventive measures should not risk the possibility to do payout and thus the threshold of 25% is too low. PT: (Drafting): (b) the available financial means of the DGS fall below **one fourth** ~~**25 %**~~ of the target level. PT: (Comments): We suggest to use the same unit of measure as in Article 10(2)(third subparagraph) and in Article 11(4)(a). LU: (Drafting): **~~(b) the available financial means of the DGS fall below 25 % of the target level.~~**
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, Member States may allow DGSs to use the available financial means for alternative	FR: (Drafting): (b) the available financial means of the DGS fall below ~~25~~ **75** % of the target level.

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 of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e of this Directive and that all the conditions laid down in Article 11d of this Directive are met.’;	FR: (Comments): Funds of the DGS should be primarily used for its harmonized uses (payout and resolution), hence be better protected through the use of additional funds or ex post contributions for other uses. SK: (Comments): Important to keep this a national option. NL: (Comments): Like the MS option in paragraph 4, this MS option should also include a further cap or further conditions in relation to the amount of ‘available financial means’ that can be used for alternative measures. Just the LCT is not sufficient. PT: (Drafting): 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, Member States may 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, **where all of the following applies: ~~provided that~~ (a)** the DGS **has confirmed ~~confirms~~** that the cost of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e of this Directive**; ~~and that~~ (b)** all **of** the conditions laid down in Article 11d of this Directive are met .’; PT: (Comments): Our suggestion aims to bring Article 11(5) into line with Article 11(3).

	In addition, in our opinion, it is not up to the DGS to confirm that conditions foreseen in Article 11d are met or to monitor the compliance with such article, and the Commission proposal could lead to such interpretation. DE: (Comments): Could agree. BE: (Drafting): 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, Member States may allow, and if so should enable 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 of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e of this Directive and that all the conditions laid down in Article 11d of this Directive are met.'; BE: (Comments): When these measures are allowed to be used, Member States should make sure the legal framework the DGS operates in does not make it impossible to implement these measures. Otherwise, this creates an unlevel playing field in using less destructive measures than payout. In the same vein, the Commission should ensure that the state aid regulation allows all DGS's to implement these measures.
(13) the following Articles 11a to 11e are inserted:	
'Article 11a	
Preventive measures	SI:

	(Comments): **We do not support this proposal in general. In our understanding it goes beyond the principle role of the DGS.** IE: (Comments): Welcome the effort to harmonise the measures, but want to clarify how the measures are to be operationalised, and what the safeguards should be FI: (Comments): To certain extent, DGS preventive measures are to be considered incompatible with other tools in the CMDI framework, given that the objective of the framework is to allow for orderly failure of distressed institutions, thus inducing market discipline and providing incentives for private solutions to prevent bank failure, rather than using statutory tools for that purpose. It should also be noted that if preventive measures are available it can mean that DGS funds are used on more than once for the benefit of the same institution – that is, for preventive measures and later if the institutions has failed anyway, in the insolvency proceedings or in resolution. DGS preventive measures should only be available for private and voluntary systems and applied clearly before the threshold for application of EIM powers by relevant authorities. We are ready to explore means to cater for specificities possibly needed for IPS. AT: (Comments): We would urge for further aligning the concept „early intervention/ preventative measues“ in DGSD and BRRD/SRMR with CRD VI. We support this option for reasons of financial market stability, irrespective of whether an IPS/DGS or a DGS is affected. Nevertheless, ist shall be ensured that DGS keep its fire power also after such intervention.

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:	SI: (Comments): See comment to paragraph (1). FR: (Comments): Preventive forms of support should be treated on an equal footing to preserve the level playing field, whether they be received from public funds or from a private DGS. We therefore support aligning conditions with those of Article 32c BRRD and ensuring that the core principles of the State Aid framework are enshrined in level 1 in DGSD. We are mindful that this can affect the functionning of IPSs as regards their voluntary and statutory missions, and are ready to explore means to cater for their specificities. NL: (Comments): we support the conditional nature of the use of DGS funds for preventive measures. It is important to harmonize the MS options and also to include compliance with the state aid framework in these conditions (e.g. solvent institutions, precautionary and temporary nature, measures not used to offset losses) FI: (Drafting): 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 **the conditions laid down in Article 32c of the BRRD and** all of the following conditions are met: FI: (Comments): It should be clarified that conditions stated in the Article 32c BRRD (including also

	32c(2)) should also be fulfilled in order to be able to use preventive measures. It's important that the conditions are in line with the state aid framework and conditions. PT: (Comments): We support the development of the framework for the DGS to apply preventive measures (PM), as counterpoint to ensure that the use of such measures does not trigger FOLTF (when qualifying for State Aid). On a general note, we would highlight that we consider it to be important to keep consistency between the PM and precautionary recapitalization tools, since they both use public funds, from industry-funded safety net and direct State intervention, respectively. While these two types of public funds do not warrant the exact same level of protection (something that is also being made clear in resolution objectives), they should not be too far apart. However, we believe the current proposal is not sufficient to ensure the necessary consistency and so we are proposing some amendments to both frameworks to tackle this issue. Furthermore, we consider that the use of DGS in preventive measures should be configured in such a fashion that it avoids creating non-viable ("zombie") banks, i.e. institutions that are kept barely "alive" through such measures, but which are not viable on the long term. The imposition of some conditions to avoid such an outcome would be most desirable. On the other hand, we are also concerned that, without stricter requirements, contributions raised in accordance with the DGSD, which are primarily to be used to repay deposits (or intervene in resolution) and should only be used, otherwise, when the access to deposits may be endangered, may be used when there is not even a severe financial distress, to support institutions that actually do not need it. Finally, it is important that the amendments now introduced in the DGSD: (i) clarify the role of competent authorities, designated authorities, and DGSs in preventive measures; and (ii) are consistent with the functioning of the DGS and their responsibilities in the other type of interventions.

	AT: (Comments): Further clarifications (e.g. time period) would be helpful to clarify that a particular preventive measure is related to the use of DGS-funds. LU: (Comments): Further reflection is needed on the necessity of maintaining the preventive measures and the application of the state aid framework in this context.
(a) the request of a credit institution for the financing of such preventive measures is accompanied by a note containing measures as referred to in Article 11b;	SI: (Comments): See comment to paragraph (1). EL: (Drafting): EL: (a) the request of a credit institution to **the DGS** for the financing of such preventive measures is accompanied by a note containing measures as referred to in Article 11b; EL: (Comments): EL: Alignment with Article 11b(1) in which it is explicitly mentioned that the request is made to the DGS.
(b) the credit institution has consulted the competent authority on the measures envisaged in the note referred to in Article 11b;	SI: (Comments): See comment to paragraph (1).

	FR: (Drafting): (a) the request of a credit institution for the financing of such preventive measures is accompanied by a ~~note~~ **restructuring plan to ensure or restore long-term viability and compliance with the supervisory requirements applicable to the institution concerned in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013,** containing measures as referred to in Article 11b **and approved by the competent authority**; PT: (Drafting): (b) ~~**the credit institution has consulted**~~ the competent authority **has approved** ~~**on**~~ the measures envisaged in the note referred to in Article **11b and confirmed that the measures are necessary to secure the financial soundness and the long-term viability of the credit institution**; PT: (Comments): We consider that a more significant and clear role for the CA is needed in the context of preventive measures. Indeed, this provision and Article 11b arevague in what concerns the input of the CA, which needs to have a clear role**. In our view, the CA is better placed to assess financial status of the institutions and thus the need and adequacy of the preventive measures.** Therefore, such authority should approve the preventive measures proposed by the credit institutions and be involved in a way that implies the CA to reflect on whether such measures are credible or not. Furthermore, although we agree that the requirement in point (f) below is key to ensure the adequate use of contributions raised by DGSs and to avoid unwarranted "zombie banks", we are very concerned with the exclusion of the requirement that the preventive measure must be necessary to secure the financial soundness and long-term viability of the institution. Please note this is only placed in the BRRD context (in Article 32c(1)(b).

	Actually, the current drafting seems to allow interventions when there is not even a severe financial distress to support institutions that do not need it, which has to be avoided. Consequently, we consider the CA should, together with the note, confirm the preventive measure is needed to achieve those goals. Also, we would underline that most DGS might not have sufficient supervisory expertise to access the adequacy of the measures being proposed and so the CA is the authority best placed to that purpose. Please also see our comment to Article 11a(1) and Recital 25. AT: (Comments): This paragraph needs further clarification otherwise it poses legal risks for the competent authority and thus Member States. It should be clarified, to what extent the competent authority shall assess the note and what legal quality the consultation shall have.
(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 and greater verification rights for the DGS;	SI: (Comments): See comment to paragraph (1). FR: (Drafting): ~~(b) the credit institution has consulted the competent authority on the measures envisaged in the note referred to in Article 11b;~~ PT: (Drafting): (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 and greater verification rights for the DGS**, or where relevant, the designated authority;** PT:

	(Comments): Please delete "by the DGS" as it is not needed. Then, please add the possibility for the DA to have greater verification rights instead of the DGS (for cases where this is relevant at national level). AT: (Comments): For clarification purposes it would be desirable to define the terms "risk monitoring" and "greater verification rights for the DGS" more precisely. To do so, a mandate would need to be conferred on EBA for them to be able to issue Guidelines on this matter.
(d) the use of the preventive measures by the DGS is conditional upon the credit institution's commitments to secure access to covered deposits;	SI: (Comments): See comment to paragraph (1). FI: (Drafting): (d) the use of the preventive measures by the DGS is conditional upon ~~the credit institution's commitments to secure access~~ **depositors' effective** access to covered deposits; FI: (Comments): Depositors' access to covered deposits should be the leading condition, not the credit institution's commitment to secure access to those. PT: (Drafting): (d) the use of the preventive measures ~~**by the DGS**~~ is conditional upon the credit institution's commitments to secure access to covered deposits; PT:

	(Comments): Please delete "by the DGS" as it is not needed.
(e) the affiliated credit institutions are able to pay the extraordinary contributions in accordance with Article 11(4);	SI: (Comments): See comment to paragraph (1). FR: (Drafting): (d) the use of the preventive measures by the DGS is conditional upon the ~~credit institution's commitments to secure~~ **depositors' effective** access to covered deposits; FR: (Comments): Suggestion to ensure that depositors can access their covered deposits in any circumstance. FI: (Drafting): (e) the affiliated credit institutions are able to pay the extraordinary contributions in accordance with Article 11(4) **and the ability to pay is confirmed in the assessment of the competent authority;** FI: (Comments): The ability to pay extraordinary contributions should be evaluated and confirmed by the competent authority, as currently in the DGSD.

	LU: (Drafting): (e) **<u>such preventive measure would not give rise to</u>** ~~**the affiliated credit institutions are able to pay the**~~ extraordinary contributions in accordance with Article 11(4); LU: (Comments): Should the article be maintained, a further limitation shall be contemplated. The funding of preventive measures shall not rely on extraordinary contributions at all. In other words, preventive measures shall not be available if it depends on raising extraordinary contributions.
(f) the credit institution complies with its obligations under this Directive and has fully reimbursed any previous preventive measure.	SI: (Comments): See comment to paragraph (1). **<u>IT:</u>** **<u>(Drafting):</u>** (f) the credit institution complies with its obligations under this Directive ~~**and has fully reimbursed any previous preventive measure**~~. **<u>IT:</u>** **<u>(Comments):</u>** We have some concerns on the impacts of this provision. Indeed, it may impede the execution of a preventive intervention also when this is appropriate for the crisis management; e.g. the least cost is verified and the bank has not yet "reimbursed [the] (…) previous preventive measure" just because the payment is not yet fallen due. FI:

	(Drafting): (f) the credit institution complies with its obligations under this Directive **and has not received any preventive measure for the last 10 years**~~and has fully reimbursed any previous preventive measure.~~ FI: (Comments): Preventive measures should be available only exceptionally. It is essential to introduce a rule limiting the number of preventive measures that each bank can receive, through the application of the "one time, last time" principle.
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.	SI: (Comments): See comment to paragraph (1). FR: (Drafting): (f) the credit institution complies with its obligations under this Directive**, has not already been subject to a preventive measure in the past,** and has fully reimbursed any **other** previous **extraordinary financial support received in the last 10 years**~~preventive measure~~**;** FR: (Drafting suggestion): **(g) The envisaged amount of support does not exceed 50% of the deposit guarantee schemes' available financial means.** **(h) the measures are confined to solvent institutions or entities, as confirmed by the competent authority;** **(i) the measures are of a precautionary and temporary nature and are based on a pre-defined exit strategy approved by the competent authority, including a clearly specified termination date, sale date or repayment schedule for any of the measures**

	provided; **(j) the measures are not used to offset losses that the institution or entity has incurred or is likely to incur in the near future.** **For the purposes of this paragraph, point (h), an institution or entity shall be deemed to be solvent where the competent authority has concluded that no breach has occurred, or is likely to occur in the 12 following months, of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under Union or national law.** **For the purposes of this paragraph, point (j), the relevant competent authority shall quantify the losses that the institution or entity has incurred or is likely to incur. That quantification shall be based, as a minimum, on asset quality reviews conducted by the European Central Bank, EBA or national authorities, or, where appropriate, on on-site inspections conducted by the competent authority. Where such exercizes cannot be undertaken in due time, the competent authority can base its evaluation on the institution or entity's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards, as confirmed by an independent external auditor. The competent authority should make its best efforts to ensure that the quantification is based on the market value of the institution or entity's assets, liabilities and off-balance sheet items.** **If the evaluation is based on the institution or entity's balance sheet, the support measures granted to the institution or entity shall encompass a clawback mechanism based on an ex-post quantification of losses at the time the support was granted, conducted by the competet authority.** CZ: (Comments): It is not clear how such monitoring system shoud be set up and what it should include. In particular, the level of detail of the "selection and implementation of preventive

	measures" activity should be better explained. The EBA guidelines could be useful in this respect. PT: (Drafting): 2. Member States shall ensure that DGSs**, <u>or where relevant, designated authorities,</u>** have monitoring systems and decision-making procedures in place that are appropriate for selecting and implementing preventive measures and monitoring affiliated risks. PT: (Comments): Please add the possibility for the DA to be the entity required to comply with these new requirements instead of the DGS (for cases where this is relevant at national level).
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.	SI: (Comments): See comment to paragraph (1). FI: (Comments): As in the current Article 11(4) DGSD, It should also be added that the preventive measures can not be implemented if the competent authority considers the conditions for early intervention measure under Article 27(1) of Directive 2014/59/EU to be met. Also, both the resolution authority and competent authority should be consulted before the DGS implements preventive measures.
4. Member States shall ensure that the DGS which uses its available financial means for capital support measures transfers its holdings of shares or other capital instruments in the supported credit institution to the private sector as soon as commercial and financial circumstances allow.	SI: (Comments): See comment to paragraph (1). SK: (Comments):

	Shouldn't this lead to the recovery of some of the funds?
'Article 11b	SI: (Comments): **We do not support this proposal in general. In our understanding it goes beyond the principle role of the DGS.** IE: (Comments): There may be scope to enhance the role of the Competent Authority in assessing the credibility of the note
Note accompanying preventive measures	NL: (Comments): The condition of the accompanying "note" is important and should not be taken lightly (as implied in recital 26). In addition to this, it needs to be ensured that the DGS is properly remunerated for preventive measures and that the concept of private loss sharing by shareholders and other creditors applies here as well. FI: (Comments): In addition to this note, it needs to be ensured that the DGS is fully and in a timely manner remunerated for preventive measures. The shareholders and other creditors should also contribute to the loss-sharing. AT: (Comments): Please align the concept "preventive measures" with CRD I-V, which includes already i.e. notification and approval procedures. The distinction between CRD I-V and Art. 11b seems to be artificial. Alignment is of additional importance to fulfil the Eurogroup

	statement in relation to IPS. BG: (Comments): Our understanding is that this provision will be obligatory for these Member States that use a discrretion provided under Article 11 (3). LU: (Comments): It needs to be clarified how this note would need to be articulated with a bank's recovery plan.
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 for consultation a note with measures that those credit institutions commit to undertake to ensure or restore compliance with the supervisory requirements applicable to the credit institution concerned and that are laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013.	SI: (Comments): See comment to paragraph (1). EL: (Drafting): EL: 1. Member States shall ensure that credit institutions which request a DGS to finance preventive measures in accordance with Article 11(3), **within the previous fifteen working days to the request,** present to the competent authority for consultation a note with measures that those credit institutions commit to undertake to ensure or restore compliance with the supervisory requirements applicable to the credit institution concerned and that are laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013. **The competent authority may require changes to the note which should be taken into account by the credit insitution.** EL: (Comments): EL: Since the note is presented to the competent authority for consultation, we are of the

	opinion that it should be specified that this happens prior to the request to DGS. Moreover, the Direcitve should clearly provide that competent authorities may require changes to that note and that these changes should be addressed by the credit insitution. FR: (Drafting): ~~**Note**~~ **Restructuring plan accompanying preventive measures** PT: (Drafting): 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 for **approval** ~~**consultation**~~ a note with measures that those credit institutions commit to undertake to ensure or restore compliance with the supervisory requirements applicable to the credit institution concerned and that are laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013. PT: (Comments): Please see our comment above in Article 11a(1)(b). We consider the CA should approve the note accompanying preventive measures. AT: (Comments): Please clarify, if a decision, assessment or statement of the competent authority is necessary or if the presentation is merely for information. The competent authority has to be consulted on the note. In our view, the sake of legal clarity, the powers and duties of the competent authorities should be specified.
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	SI: (Comments): See comment to paragraph (1).

position.	FR: (Drafting): 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 for **approval a restructuring plan to ensure or restore long-term viability and compliance with supervisory requirements applicable to the institution concerned in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013** ~~consultation a note with measures that those credit institutions commit to undertake to ensure or restore compliance with the supervisory requirements applicable to the credit institution concerned and that are laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013~~.
3. Member States shall ensure that in the event of a capital support measure, the note referred to in paragraph 1 identifies all capital raising measures that can be implemented, including safeguards preventing outflows of funds, a forward-looking capital adequacy assessment, and a subsequent determination of the capital shortfall that the DGS has to cover.	SI: (Comments): See comment to paragraph (1). FR: (Drafting): 2. The **restructuring plan** ~~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.
4. Member States shall ensure that in the event of a liquidity support measure, the note referred to in paragraph 1 provides for a clearly specified repayment schedule by the credit institution of any funds received as part of the preventive measures.	SI: (Comments): See comment to paragraph (1). FR: (Drafting): 3. Member States shall ensure that in the event of a capital support measure, the **restructuring plan** ~~note~~ referred to in paragraph 1 identifies all capital raising measures that can be implemented, including safeguards preventing outflows of funds, a forward-

	looking capital adequacy assessment, and a subsequent determination of the capital shortfall that the DGS has to cover. SK: (Comments): Shouldn't this be mirrored in art. 11a in a more normative manner that these funds should be repaid by the credit institution?
5. Where relevant, Member States shall ensure that the measures envisaged in the note referred to in paragraph 1 are aligned with the capital conservation plan referred to in Article 142 of Directive 2013/36/EU.	SI: (Comments): See comment to paragraph (1). EL: (Drafting): EL: 5. Where relevant, Member States shall ensure that the measures envisaged in the note referred to in paragraph 1 are aligned with the capital conservation plan referred to in Article 142 of Directive 2013/36/EU **and the recovery plan referred to in Articles 5 and 7 of Directive 2014/59/EU.** EL: (Comments): EL: We would propose adding a reference also to the recovery plan of the institution as this should entail actions that the institution should take for restoring both its capital and liquidity position. FR: (Drafting): 4. Member States shall ensure that in the event of a liquidity support measure, the **restructuring plan** ~~note~~ referred to in paragraph 1 provides for a clearly specified repayment schedule by the credit institution of any funds received as part of the

	preventive measures.
6. 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.	SI: (Comments): See comment to paragraph (1). FR: (Drafting): 5. Where relevant, Member States shall ensure that the measures envisaged in the **restructuring plan** ~~note~~ referred to in paragraph 1 are aligned with the capital conservation plan referred to in Article 142 of Directive 2013/36/EU. FR: (Drafting suggestion): **6. It shall be ensured that the deposit guarantee scheme is properly remunerated for the preventive measure and that the beneficiary credit institution, its shareholders, its creditors or the business group to which it belongs, contribute significantly to the restructuring or liquidation costs from their own resources. Preventive measures to support liquidity provision shall be temporary, shall not be used to absorb losses and shall not become capital support. Proper remuneration shall be paid to the deposit guarantee scheme for the preventive measures granted to support liquidity provision.** PT: (Drafting): **7. The competent authority shall provide the note to the resolution authority. The resolution authority may examine the note with a view to identifying any actions which may adversely impact the resolvability of the institution and 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.**

	PT: (Comments): Given the fact that preventive measures and measures proposed by institutions in this note may be similar to recovery/corrective measures, we consider that RAs should be consulted in the exact same terms they are consulted by CA on recovery plans, in accordance with Article 6(4) of the BRRD. The timeframe for such consultation should be set by the CA.
'*Article 11c*	SI: (Comments): **We do not support this proposal in general. In our understanding it goes beyond the principle role of the DGS.** FR: (Drafting): 6. Where the Union State aid framework is applicable, Member States shall ensure that the measures envisaged in the **restructuring plan** ~~note~~ referred to in paragraph 1 are ~~aligned~~ **compatible** with the restructuring plan that the credit institution is required to submit to the Commission under that framework. FR: (Drafting suggestion): **7. The competent auhtority shall have two weeks to approve the restructuring plan. When the competent auhtority deems the restructuring plan unsatisfactory, the envisaged preventive measure cannot be undertaken.**
Remediation plan	IE: (Comments): Clarification would be welcomed on the time limits for reimbursement of these funds,

	with potential for extension if deemed relevant and necessary. CZ: (Comments): If the credit institution fails to repay the amount contributed under the preventive measures, the next steps should be aligned with the conditions for precautionary recapitalisation under Article 32c(2)(6) of the BRRD.
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 fails to repay the amount contributed under the preventive measures at maturity, the DGS informs the competent authority thereof without delay.	SI: (Comments): See comment to paragraph (1). PT: (Drafting): 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 fails to repay the amount contributed under the preventive measures at maturity, the DGS**, <u>or where relevant, the designated authority,</u>** informs the competent authority **<u>and the resolution authority</u>** thereof without delay. PT: (Comments): We consider to be adequate to reinforce notification duties. AT: (Drafting): 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 fails to repay the amount contributed under the preventive measures at maturity, the DGS informs the competent authority *and the designated authority* thereof without delay.

	AT: (Comments): It shall be clarified that the DGS has to inform the designated authority also without delay.
2. In the situation referred to in paragraph 1, Member States shall ensure that the competent authority requests the credit institution to submit a remediation plan describing the steps the credit institution will take to ensure or restore 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.	SI: (Comments): See comment to paragraph (1). FR: (Drafting): 1. Member States shall ensure that where the credit institution fails to fulfil the commitments outlined in the **restructuring plan** ~~note~~ referred to in Article 11b(1), or fails to repay the amount contributed under the preventive measures at maturity, the DGS informs the competent authority thereof without delay. PT: (Drafting): 2. In the situation referred to in paragraph 1, Member States shall ensure that the competent authority requests the credit institution to submit **for approval** a remediation plan describing the steps the credit institution will take to ensure or restore 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. **Article 11b(7) shall also apply.** PT: (Comments): In light of our comment to Article 11a(1)(b) requiring the CA to approve the measures contained in the note, we believe that a CA role is even more important when the original plan included in the note is not complied with. Therefore, we consider that the CA should be responsible for approving the remediation plan. Also, we add the same requirement to consulta RA on the remediation plan.

	AT: (Comments): For the sake of legal clarity, the criteria and the scope of the assesment of the competent authority shall be specified.
3. Where the competent authority is not satisfied that the remediation plan is credible or feasible, the DGS shall not grant any further preventive measures to that credit institution.	SI: (Comments): See comment to paragraph (1). NL: (Comments): Further enforcement measures should be considered for the DGS or the competent authority in this respect (either by including them here or in another regulation), in the event the remediation plan is not complied with. This would be fair in order to protect the stability of the DGS and the position of other affiliated credit institutions. FI: (Comments): In all cases, preventive measure should be granted only once to the same credit insitution, as stated in our comment in Art 11a(1)(f). Also further enforcement measures should be included for the DGS and/or the Competent Authority, if the institution fails to comply with the remedition plan (e.g. FOLTF). PT: (Drafting): 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 foreseen in Article 11c(1) or fails to repay the amount contributed under the preventive measures at maturity,** 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. PT: (Comments): If the remediation plan is not credible, it is essential that the DGSD provides for any type of consequence. The current drafting only provides that no more preventive measures could be extended to the institution, which seems to add no value on top of what is already in Article 11a(1)(f). A better solution would be to propel relevant authorities to perform the FOLTF assessment. This is critical do avoid the aforementioned so-called "zombie banks". We do not propose any new-automatic trigger for the FOLTF declaration (as this legislative proposal determines for the precautionary recap), but rather a trigger to perform the assessment in accordance with the conditions established in Article 32 BRRD. The same consequences should apply if the credit institution fails (again) to comply with the remediation plan or to give back the support received. Such amends will foster consistency with precautionary recapitalization tool. DE: (Comments): . AT: (Drafting): Where the competent authority is not satisfied that the remediation plan is credible or feasible, the DGS shall not grant any further preventive measures to that credit institution. *The competent authorities shall notify the designated authorites about these circumstances.*
4. By … [OP – please insert the date = 42 months after the date of entry into force of this Directive] the EBA shall issue guidelines setting elements of the note accompanying the	SI: (Comments): See comment to paragraph (1).

preventive measures referred to in Article 11b(1) and the remediation plan referred to in paragraph 1 of this Article.	FR: (Drafting): 3. Where the competent authority is not satisfied that the remediation plan is credible or feasible, the **institution shall be deemed failing or likely to fail.** ~~DGS shall not grant any further preventive measures to that credit institution.~~ DE: (Comments): Disagree (see comment to Art. 11(b)
'Article 11d	SI: (Comments): **We do not support this proposal in general. In our understanding it goes beyond the principle role of the DGS.** FR: (Drafting): 4. By … [OP – please insert the date = **24** ~~42~~ months after the date of entry into force of this Directive] the EBA shall issue guidelines setting elements of the **restructuring plan** ~~note~~ accompanying the preventive measures referred to in Article 11b(1) and the remediation plan referred to in paragraph 1 of this Article. IE: (Comments): Support this as a competitive process supports a level playing field
Transparency of marketing process in alternative measures	AT: (Comments): This provision needs further considerations. Please align the concept with CRD I-V. We doubt that such concept is aprropriate within

	groups or IPS. Furthermore we see the risk of delay if too complicated processes are set-up.
1. Where Member States allow the use of DGS funds for the alternative measures referred to in Article 11(5), they shall ensure that when DGSs finance such measures the credit institutions market, or make arrangements for the marketing of, the assets, rights and liabilities those credit institutions intend to transfer. Without prejudice to the Union State aid framework, such marketing shall comply with all of the following:	SI: (Comments): See comment to paragraph (1). **IT:** **(Drafting):** 1. Where Member States allow the use of DGS funds for the alternative measures referred to in Article 11(5), they shall ensure that when DGSs finance such measures ~~**the credit institutions**~~ **a** market**ing**, or ~~**make**~~ arrangements for the marketing **should be performed having regard to** ~~**of,**~~ the assets, rights and liabilities **the** ~~**those**~~ credit institutions intend to transfer. Without prejudice to the Union State aid framework, such marketing shall comply with all of the following: **IT:** **(Comments):** The reference to "all" the conditions could be misleading as in Article 11a (3) the reference is only to the conditions listed in paragraph 1 of the same Article. FI: (Comments): We agree with the objective to harmonize the marketing proceedings and having it in line with the process in the BRRD. However, it should be taken into account, that in this paragraph the sales/ marketing process is handled in the national insolvency proceeding, (e.g. by the bancruptcy estate). They are governed by the national bacruptcy legislation. Even though we are in favor of these conditions, there could be a need to rephrase these in order to be able to take the national legislation and insolvency proceedings properly into account. DE:

	(Comments): Could agree BG: (Comments): As far as the use of DGSs funds for alternative measures remain discrertionary, we do not object to the further specification of this kind of intervention, the conditions and criteria for its use (under the proposed Articles 11d – 11e), including introduction of least cost test in this regard. Nevertheless we retain our position that the introduction of a (parallel) regime for reorganisation of institutions, separate from the resolution regime does not contribute to avoiding fragmented and ambiguous application of the resolution framework. LU: (Comments): While LU supports an efficient price discovery mechanism, it is questionable to what extent a *credit institution* that is in the process of being wound up will – on its own – be able to market or make arrangements for the marketing of a transfer. Furthermore, the decision-making powers of judicial authorities/the liquidator in some MS have to be taken into account to enable an efficient marketing of assets in practice.
(a) the marketing is open and transparent and does not misrepresent the assets, rights and liabilities that are to be transferred;	FI: (Comments):
(b) the marketing does not favour, nor discriminate between, potential purchasers and does not confer any advantages on a potential purchaser;	
(c) the marketing is free from any conflict of interest;	DE:

	(Comments): Need further analysis. How would this be applied in practice?
(d) the marketing takes account of the need to implement a rapid solution taking into account the deadline laid down in Article 3(2), second subparagraph, for the determination referred to in Article 2(1), point (8)(a);	
(e) the marketing aims at maximising, as much as possible, the sale price for the assets, rights and liabilities concerned.	
‘*Article 11e*	FR: (Drafting): **Article 11da** **Support granted to portfolio transfers in alternative measures** FR: (Comments): DGS capacity to support transfer strategies shall not be greater in insolvency than in resolution, in accordance with the resolution objective to preserve its funds, applicable both in resolution and in insolvency. We also consider that the place of alternative measures in the toolbox is contingent upon the relative scope of resolution vs liquidation. FR: (Drafting suggestion): **'1. Member States shall ensure that, where the deposit guarantee scheme is used in accordance with article 11(5) with respect to a credit institution, and provided that such action ensures that natural persons and micro, small and medium-sized enterprises continue to have access to their deposits, to prevent them from bearing losses the deposit guarantee scheme to which that credit institution is affiliated shall contribute the following amounts:**

	FR: (Drafting suggestion): **(i) the amount necessary to cover the difference between the value of the [covered deposits] and of the liabilities with the same or a higher priority ranking than [eligible deposits from natural persons and micro, small and medium-sized enterprises] and the value of the assets of the institution under resolution which are to be transferred to a recipient; and** FR: (Comment): This provision should be aligned on the mirroring provision of Article 109 BRRD. The exact maximum seniority of liabilities to be included in the scope of the transfer would therefore depend on the outcome of the negotiation as regards DGS funding in resolution. FR: (Drafting suggestion): **(ii) where relevant, an amount necessary to ensure the capital neutrality of the recipient following the transfer.** FR: (Drafting suggestion): **2. Member States shall ensure that the available financial means used in accordance with article 11(5) does not exceed 25% of DGS target level pursuant to Article 10. Should the amount needed from the DGS be greater than 25% of its target level, the affiliated credit institutions shall immediately provide the DGS with the means needed to finance the remaining part, where necessary in the form of extraordinary contributions.**

	FR: (Comment): In order to protect available financial means of the DGS and thus ensure that DGS would be able to perform a payout in case needed, we support reintroducing a cap in term of use of available financial means (25%, as for preventive measures). This is coherent with the overarching principle that AFM should be primarily used for payout and interventions in resolution. However, such cap should not limit the DGS capacity to interveine for such meaures. Should the contribution needed be greater than this cap, ex post contributions should be levied to finance the residual part of the intervention. IE: (Comments): Concerning the Least Cost Test, we are exploring alternative options to allow the DGSs to contribute to resolution actions, while still allowing an appropriate recovery of DGS funding from an insolvency. This may involve an adjustment of the LCT, and we may submit further comments in the coming weeks, or during the negotiations, if a legal path forward can be found. However, regarding the current wording, we are open to the inclusion of certain indirect costs, but want to ensure only those costs which are relevant are included. We would also support full harmonisation of the factors included in the computation of the counterfactual.
Least cost test	FR: (Comments): The methodology to calculate the least cost test is an essential element of the CMDI package, as its result will be a key element into ensuring on one hand the capability of DGS to intervene in resolution, in preventive and alternative measurse, and also to ensure DGSs will not be oversollicitated. Consequently, the principles of the LCT are essential

	elements of the legislation as per article 290 TFEU, and cannot be delegated. The current proposal is too vague regarding the key principles and delegates to the EBA elements that are essential in order to depict a clear view on how the costs of repayments and interventions should be calculated. To comply with article 290 TFEU, the proposal must describe further how to calculate those costs. The interplay with article 9 DGSD (claim against DGSs) should also be clarified. CZ: (Comments): We support the proposed harmonisation of the least cost test. However, we are of the view that only direct costs should be included in the calculation. FI: (Comments): The least cost test should be based on fair, objective and transparent calculations and on credible assumptions. It should not favor one option over another, however, keeping in mind that the DGSs' primary function is to repay the depositors (art 11(1)). Indirect costs should not be included in the calculations. DE: (Comments): The application of Art. 11e to IPS preventive measures is not acceptable. In order to keep the IPS fully operational/flexible the restrictions should include derogations for IPS or at least keeping a reference to the costs for fulfilling its statutory or contractual mandate as we have proposed under Art 11(3) a above. We don't see any reasoning that this important provision in the current DGSD has been deleted. In its proposed form, the LCT fails to recognise the mandate of IPSs to ensure liquidity and solvency of its member institutions which contradicts with Art. 113 (6), (7). The test does not take into account the consequences of not fulfilling the IPS' mandate, for example for the recognition as an IPS, for the member institutions as a group using the

	same brand and ultimately for financial stability. If Art. 11e is not applied to IPS preventive measures, it would be generally acceptable. AT: (Comments): We encourage to discuss all consequences of the current wording to prevent unintended effects. The following problems have to be solved at least to make the concept sufficiently consistent: 1) The scope is too broad. Not all deposits shall be protected but covered deposits to ensure an approach which is in line with the general objective of the crisis management framework. 2) A positive outcome of the LCT ("minimizing the losses for DGS") should not, by itself, be sufficient for a positive PIA ate resolution procedures. In any case, a situation, potentially causing a thread to financial market stability (i.e. relevant systemic risk or a risk that critical functions are affected), has also to be present. 3) The current text leads to an inefficient situation as LCTs have to be undertaken for all banks already in a very early stage (going-concern/resolution planning) thus leading to undue administrative costs and burden for many banks, the DGS and RAs. The scope of institutions currently earmarked for resolution should not be extended extensively. 4) The contribution of the DGS in the case resolution shall be minimized, this implies strict bail in, since MREL has to remain the first line of defense. 5) This having said, we want to conclude by clarifying that we support additional flexibility for RAs and the use of DGS-funds if such flexibility realistically enables a more efficient and ressource-saving outcome thus proving to be effective with a view to ensuring the liquidation of the entity concerned and the fire-power of the DGS concerned.
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:	SI: (Comments): See comment to paragraph (1).

	CZ: (Comments): The proposal imposes demanding requirements on DGS to set up a complex process for evaluating estimated costs of financing measures referred to in Article 11(2), (3) or (5). Therefore, Member States should have the discretion to delegate the obligation to carry out the least cost test to a resolution or designated authority. Such an approach would also make sense in the light of the proposed Article 30a BRRD strengthening the cooperation between the competent and the resolution authority. Moreover, the valuation under Article 36 BRRD is used for the purposes of carrying out the least cost test.
(a) the estimated cost for the DGS to finance the measures referred to in Article 11 (2), (3) or (5);	SI: (Comments): See comment to paragraph (1).
(b) the estimated cost of repaying depositors in accordance with Article 8(1).	PT: (Drafting): (b) the estimated cost of repaying depositors in accordance with Article 8~~(1)~~. PT: (Comments): We believe reference should be made to Article 8, and not to Article 8(1), as under Article 11(1). AT: (Comments): Please narrow down the scope to “covered deposits”.
2. For the comparison referred to in paragraph 1, the following shall apply:	
(a) for the estimation of the costs referred to in paragraph 1, point (a), the DGS shall take into account the expected	SK: (Comments):

earnings, operational expenses and potential losses related to the measure;	It should also take into account the cost for art. 11(4), the replenishment of the DGS that is to be borne by credit institutions that are members of the DGS and the potential additional cost of funding for the DGS. NL: (Comments): The elements of expected earnings, operational expenses and potential losses should be further substantiated in this Article 11e to ensure a harmonized application of the LCT. FI: (Drafting): a) for the estimation of the costs referred to in paragraph 1, point (a), the DGS shall take into account the expected earnings, operational expenses, ~~and~~ potential losses related to the measure, **the cost for the replenishment of the DGS that is to be borne by credit institutions that are members of the DGS, and the potential additional cost of funding for the DGS.** FI: (Comments): Expected earnings, operational expenses and potential losses should be further specified here. The cost for the replenishment of the DGS and the potential additional cost of funding for the DGS should be included in the estimation, too, if indirect costs are included in the calculation. For example, if the DGS funds are used for preventive measures or other measures, the DGS has to be replenished in the meantime anyway and that could cause potentially funding costs for the DGS, the same way as using the DGS for payout. There is no reason why these costs are taken into account in point c, but not here, even though the funding costs could be the same. The least cost test should be based on fair, objective and transparent calculations.

	LU: (Comments): The cost for the replenishment of the DGS, referred to under in paragraph 2, letter c), will also rise under paragraph 1, letter a), and it is not clear why this is not mentioned in the present letter.
(b) for the measures referred to in Article 11(2) and (5), the DGS shall base its estimation of the cost of repaying depositors, as referred to in paragraph 1, point (b), on the valuation of the credit institution's assets and liabilities referred to in Article 36(1) of Directive 2014/59/EU and the estimate referred to in Article 36(8) of that Directive;	SI: (Comments): See comment to paragraph (1). FR: (Drafting): (a) for the estimation of the costs referred to in paragraph 1, point (a), ~~the DGS shall take into account the expected earnings, operational expenses and potential losses related to the measure~~ **shall be estimated as the difference between:** **(i) the sum of the amount disbursed by the DGS to finance the measure, the administrative costs of levying ex post contributions pursuant to Article 10(8) should such contributions be needed to finance the measure, and the costs of mobilizing alternative funding arrangements pursuant to Article 10(9) should these arrangements be mobilised; and** **(ii) the expected recoveries on the claim held by the DGS pursuant article 9(2).**; FR: (Comments): The methodology for the calculation of the estimated cost for the DGS to finance resolution /preventive /alternative measures should be further substantiated in the level 1 text in order to not delegate essential elements to the EBA. The "expected earnings, operational expenses and potential losses" should be further substantiated. We understand this cost should be calculated as: - The amount disbursed by the DGS, (which cannot be higher than the amount of covered

deposit) plus, eventually, some direct costs such as administrative costs of levying ex-post contributions if needed, and costs of mobilizing alternative funding arrangements.

- Minus the expected recoveries based on the claim described in article 9 (should the DGS be entitled to such claim, which is not the case in open-bank resolution).

The fact this is ambiguous in the current proposal show that there is a strong need for clarification in the level 1 text, and a mandate to EBA is not satisfactory.

IT:
(Drafting):
~~**(b) for the measures referred to in Article 11(2) and (5), the DGS shall base its estimation of the cost of repaying depositors, as referred to in paragraph 1, point (b), on the valuation of the credit institution's assets and liabilities referred to in Article 36(1) of Directive 2014/59/EU and the estimate referred to in Article 36(8) of that Directive;**~~

IT:
(Comments):
The reference to Article 36 of the BRRD is not appropriate for the purposes of the least cost. Indeed:
i) with reference to resolution, the valutation is performed for the purposes of resolution and as a basis for the decisions of the NRA. With regard to the intervention of the DGS, the valuation can be used with the aim to determine the maximum amount of the mentioned intervention and not the effective contribution of the DGS. The effective amount of the intervention will finally depend on the support required by the buyer. Indeed, even if subject to this ceiling, the amount of the intervention must be determined only by the DGS who is the sole responsible for the calculation of the least cost. On the contrary the proposed provision would imply that an entity which is not the DGS would perform the least cost test in contrast with the allocation of duties provided for in the framework;
ii) with regard to the alternative measures, the same considerations above in point i) are

	valid. In addition, it is worth mentioning that the reference to Article 36 in this case is also not applicable at all as it refers to resolution and not to the national insolvency proceeding. PT: (Drafting): (b) for the measures referred to in Article 11(2) ~~**and (5)**~~, the DGS shall base its estimation of the cost of repaying depositors, as referred to in paragraph 1, point (b), on the valuation of the credit institution's assets and liabilities referred to in Article 36(1) of Directive 2014/59/EU and the estimate referred to in Article 36(8) of that Directive; PT: (Comments): We are not sure how Article 36 of the BRRD would apply in the context of an alternative measure (to which Article 11(5) refers to).
(c) for the measures referred to in Article 11(2), (3) and (5), when estimating the cost of repaying depositors, as referred to in paragraph 1, point (b), the DGS shall take into account the expected ratio of recoveries, the cost for the replenishment of the DGS that is to be borne by credit institutions that are members of the DGS, and the potential additional cost of funding for the DGS;	SI: (Comments): See comment to paragraph (1). **IT:** **(Drafting):** (c) for the measures referred to in Article 11(2), (3) and (5), when estimating the cost of repaying depositors, as referred to in paragraph 1, point (b), the DGS shall take into account the expected ratio of recoveries **and any indirect costs**, **including** the cost for the replenishment of the DGS that is to be borne by credit institutions that are members of the DGS, ~~**and**~~ the potential additional cost**s** of funding for the DGS **and for the banking system and the impact on the weaker banks**; **IT:** **(Comments):** The DGS, not the designated authority, should be in charge for the calculation of the least

	cost; this allocation of the task is consistent with the relevant Articles of the Directive. With reference to the indirect costs, a comprehensive assessment of the cost of the reimbursement must include also the increase in the cost of funding of the banking system (e.g. additional risk premium on bond issues) and the risk of contagion on other weak member banks. These two aspects represent reasonable effects of a payout and relevant components in the calculation. NL: (Comments): The elements of expected ratio of recoveries, the cost for the replenishment of the DGS that is to be borne by credit institutions that are members of the DGS, and the potential additional cost of funding for the DGS should be further substantiated in this Article 11e to ensure a harmonized application of the LCT. FI: (Comments): Indirect costs should not be included in the calculations. At the minimum, the cost for the replenishment of the DGS should be further specified here. AT: (Comments): Indirect costs should only consist of costs that are borne by the DGS and banks. Indirect costs which are difficult to assess and estimate, e.g. social, welfare, financial stability, should be explicitly excluded to limt leeway. LU: (Comments): The cost for the replenishment of the DGS will also need to be borne under alternative measures, i.e. under paragraph 1, point a). It is not clear why there is a reference to “as referred to in paragraph 1, point (b)” and not to paragraph 1, point (a), while the “measures referred to in Article 11(2), (3) and (5)” are listed in paragraph 1, point (a).

	The cost for the replenishment of the DGS will arise in both cases.
(d) for the measures referred to in Article 11(3), when estimating the cost of repaying depositors, the DGS shall multiply the estimated ratio of recoveries calculated in accordance with the methodology referred to in paragraph 5, point b, by 85 %.	SI: (Comments): Please elaborate what is the logic behing the calculated ratio of 85%, by pred-determining the recovery ratio it creates unlevel playfield when calculating the LCT. The assumptions used for both scenarios should be aligned. In SI we didn't have payout cases, based on the information from other MS the recoveries from recent cases were 100% EL: (Drafting): EL: (d) for the measures referred to in Article 11(3), when estimating the cost of repaying depositors, the DGS shall multiply the estimated ratio of recoveries calculated in accordance with the methodology referred to in paragraph 5, point b, by **a percentage that will be calculated on the basis of a methodology set by the EBA**~~85 %~~. EL: (Comments): EL: We consider that the setting of a recovery rate in the Level 1 text is not appropriate as the recovery ratio could differ significantly depending on the assets of the institution concerned as well as the secondary market or the valuation assumptions used. To this end, we would propose removing this rate and providing the ability to the EBA to come up with different ratios depending on the balance sheet structure and potentially on the m-s where the credit institution operates. FR: (Drafting): (c) ~~for the measures referred to in Article 11(2), (3) and (5), when estimating~~ the cost of repaying depositors, as referred to in paragraph 1, point (b), ~~the DGS shall take into account the expected ratio of recoveries, the cost for the replenishment of the DGS that is~~

	~~to be borne by credit institutions that are members of the DGS, and the potential additional cost of funding for the DGS;~~ **shall be estimated as the difference between:** **(i) the sum of the estimated amount to be paid to depositors, the administrative costs linked to the process of repayment that are not covered by annual contributions, the administrative costs of levying ex post contributions pursuant to Article 10(8) should such contributions be needed to repay the depositors, and the costs of mobilizing alternative funding arrangements pursuant to Article 10(9) should these arrangements be mobilised; and** **(ii) the expected recoveries on the claim held by the DGS pursuant article 9(2). The recovery rate on this claim should not be lower than 50%.** FR: (Comments): The methodology for the calculation of the estimated cost of repaying depositors should be further substantiated in the level 1 text in order to not delegate essential elements to the EBA. It should be clear that the cost of repaying depositors is equal to the difference between : - The amount to be paid to depositors (plus, eventually, some direct costs). The "cost for the replenishment of the DGS" and the "potential additional costs for the DGS" are unclear and thus delegate essential elements of the legislation. We propose to clarify that the cost to repay depositor includes administrative costs linked to the process of repayment (that are not covered by annual contributions), administrative costs of levying ex-post contributions if needed, and costs of mobilizing alternative funding arrangements. The amount of expected recoveries on the claim held by the DGS subrogating the depositor. The level 1 text should better frame the recovery ratio. We introduce a lower bound based on the recovery rates used in the EBA CfA, subject to further reflection, in particular regarding past experiences of payout in several MS.

	SK: (Comments): We fail to understand the rationale behind this and what is the evidence behind this particular number. Why should the expected ratio of recoveries be further reduced when on the other hand the proposal does not take into account any likelihood that the preventive measures may fail and end up in a payout measure. FI: (Drafting): [delete] FI: (Comments): There is no economical and justified reason to apply this coefficient to preventive measures. The least cost test should be based on fair, objective and transparent calculations and on credible assumptions and not intetionally favor one option over another. DE: (Comments): BG: (Drafting): point (d) should be deleted form DGSD; BG: (Comments): In general, this provision artificially inflates the LCT result. This provision should not be in the DGSD, it is better to be laid down in the EBA technical standards for LTC.

	LU: (Comments): This artificial reduction of the recovery rate in liquidation tilts the least cost test in favour of the preventive measure, and increases the burden for member banks in favour of non-covered creditors. It is not clear why the estimation of the recovery shall be lower in the case of a still solvent bank. One may even expect the contrary in order to prudently limit the amount of the intervention.
3. Member States shall ensure that the amount used to finance the resolution of credit institutions, as referred to in Article 11(2), for the preventive measures referred to in Article 11(3), or for the alternative measures referred to in Article 11(5), does not exceed the amount of covered deposits at the credit institution.	SI: (Comments): See comment to paragraph (1). FR: (Drafting): ~~(d) for the measures referred to in Article 11(3), when estimating the cost of repaying depositors, the DGS shall multiply the estimated ratio of recoveries calculated in accordance with the methodology referred to in paragraph 5, point b, by 85 %.~~ FR: (Comments): We do not see the rationale for such discount. The cost of repaying depositors should be estimated as the cost of reimbursing the covered deposits, minus the expected recoveries for the DGS. NL: (Drafting): 3. Member States shall ensure that the gross amount used to finance the resolution of credit institutions, as referred to in Article 11(2), for the preventive measures referred to in Article 11(3), or for the alternative measures referred to in Article 11(5), does not exceed the amount of covered deposits at the credit institution.

	NL: (Comments): We suggest to include the word "gross" for clarification. PT: (Comments): We support this limit that ensures the DGS is indeed intervening under a least cost principle. DE: (Comments): LU: (Comments):
4. Member States shall ensure that the competent and resolution authorities provide the DGS with all information necessary for the comparison referred to in paragraph 1. Member States shall ensure that the resolution authority provides the DGS with the estimated cost of the DGS contribution to resolution of a credit institution as referred to in Article 11(2).	SI: (Comments): See comment to paragraph (1). PT: (Drafting): 4. Member States shall ensure that the competent and resolution authorities provide the DGS with all information necessary for the comparison referred to in paragraph 1. Member States shall ensure that the resolution authority provides the DGS with the **amount** ~~**estimated cost**~~ of the DGS contribution to resolution of a credit institution as referred to in Article 11(2). PT:

	(Comments): We consider that there is some lack of clarity on what should RAs provide to DGS and how the interlinkages of V2 and V3 with the LCT will work. In fact, for the DGS to calculate the LCT, it will need the V2 and V3 performed by the resolution authority/Independent valuer. However, there are "costs" of the DGS that should be sole responsibility of DGSs to calculate. DE: (Comments): **Clarification needed.** Might not be feasible in practice.
5. The EBA shall develop draft regulatory technical standards to specify:	FR: (Drafting): **4a. As soon as possible after performing alternative measures, Member States shall ensure that deposit guarantee schemes publish a summary of the core elements of the calculation made as per this Article. It shall notably comprise the net recovery rate derived from the estimated cost of repaying depositors for the deposit guarantee scheme and a broad justification of the related underlying assumptions.** FR: (Comments): In order to foster convergence and ensure that the LCT is appropriately applied, it is important to better understand the practice of different DGSs when implementing it. We therefore suggest that the most important information about the LCT be published ex post. LV: (Comments): When institution is subject to the resolution, as referred to in Article 11(2), for the preventive measures referred to in Article 11(3), or for the alternative measures referred to in Article 11(5) can vary significantly in terms of its financial conditions and the extent of its decline, relying solely on a scaling factor might not sufficiently consider the unique

	aspects of these measures. We suggest expanding the estimation of the costs and include additional expenses (secondary costs) and the broader impact on the financial system caused by potential contagion (quantitative assessment). EBA could potentially tackle this problem more effectively by incorporating it into their proposed draft regulatory technical standard. SK: (Comments): We call for more clarity in the lvl1 text and leave less details to the EBA RTS. IE: (Comments): We consider it may be inappropriate for the EBA to be given such broad powers to develop LCT standards **IT:** **(Drafting):** 5. The EBA shall develop ~~**draft regulatory technical standards**~~ **guidelines** to specify: **IT:** **(Comments):** The use of guidelines instead of RTS is more appropriate in order to take into account the peculiarities of the national systems (e.g. national judicial efficiency, insolvency regimes, individual bank features). HR: (Comments): Elements regarding the calculation of the estimated cost should be more precise. FI: (Comments):

	The delegation of power to the EBA and Commission seems very broad in this case, since these methodologies and calculations affect greatly to the use of the DGSs. These items should be specified in level 1 text. PT: (Drafting): 5. The EBA**, taking into account the regulatory technical standards developed in accordance with Article 36(15) of Directive 2014/59/EU and adopted pursuant to Article 36(16) thereof,** shall develop draft regulatory technical standards to specify: PT: (Comments): Please consider our comment immediately above. DE: (Comments): EBA is given a lot of power as it could materially impact the LCT. It should be discussed whether this is appropriate and how this mandate could be better framed. LU: (Drafting): ~~**5. The EBA shall develop draft regulatory technical standards to specify:**~~ LU: (Comments): These concepts will need to be specified in level 1.
(a) the methodology for the calculation of the estimated cost referred to in paragraph 1, point (a), which shall take into account the specific features of the measure concerned;	FI: (Comments): Expected earnings, operational expenses and potential losses should be further specified

	in article 11e(1)(a) as stated above. The calculation should be based on fair, objective and transparent calculations and on credible assumptions. Indirect costs should not be taken into account in the calculation. We do not think there's a need to take into account the "specific features of the measure concerned" in the calculation. At least we would like to have more information what features and how they would be taken into account. LU: (Drafting): ~~**(a) the methodology for the calculation of the estimated cost referred to in paragraph 1, point (a), which shall take into account the specific features of the measure concerned;**~~
(b) the methodology for the calculation of the estimated cost of repaying depositors referred to in paragraph 1, point (b), including the estimated ratio of recoveries referred to in paragraph 2, point (c);	EL: (Drafting): EL: (b)the methodology for the calculation of the estimated cost of repaying depositors referred to in paragraph 1, point (b), including the estimated ratio of recoveries referred to in paragraph 2, point (c) **and point (d)**; EL: (Comments): EL: As per the above mentioned proposal. SK: (Comments): The estimated ratio of recoveries, should take into account relevant data and should not take into account data from general insolvency proceedings. LU: (Drafting): ~~**(b) the methodology for the calculation of the estimated cost of repaying depositors referred to in paragraph 1, point (b), including the estimated ratio of**~~

	~~recoveries referred to in paragraph 2, point (c);~~
(c) the way to account, in the methodologies referred to in points (a), (b) and (c), where relevant, for the change of value of money due to potential accrued earnings over time.	LU: (Drafting): **~~(c) the way to account, in the methodologies referred to in points (a), (b) and (c), where relevant, for the change of value of money due to potential accrued earnings over time.~~**
For the calculation of the estimated cost of repaying depositors as referred to in paragraph 1, point (b), in the case of preventive measures, the methodology referred to in point (b) shall take into account the importance of preventive measures for the statutory or contractual mandate of the DGS, including IPS referred to in Article 1(2), point (c).	SI: (Comments): See comment to paragraph (1). NL: (Comments): Non-compliance with statutory or contractual mandates can lead to liability anyways, so why include it in this directive? FI: (Comments): This criteria seems to be added to intentionally favor the possibility to use preventive measures which is not appropriate. The calculation should be based on fair, objective and transparent calculations and on credible assumptions. It is unclear how the importance of preventive measures for the statutory or contractual mandate of the DGSs would be taken into account and what that means in practice. LU: (Drafting): **~~For the calculation of the estimated cost of repaying depositors as referred to in paragraph 1, point (b), in the case of preventive measures, the methodology referred to in point (b) shall take into account the importance of preventive measures for the statutory or contractual mandate of the DGS, including IPS referred to in Article~~**

	~~1(2), point (c).~~
The EBA shall submit those draft regulatory technical standards to the Commission by …[OP – please insert the date= 12 months after the date of entry into force of this Directive].	FR: (Drafting): ~~For the calculation of the estimated cost of repaying depositors as referred to in paragraph 1, point (b), in the case of preventive measures, the methodology referred to in point (b) shall take into account the importance of preventive measures for the statutory or contractual mandate of the DGS, including IPS referred to in Article 1(2), point (c).~~ FR: (Comments): This does not reflect any cost related to insolvency proceedings. We are mindful that this can affect the functionning of IPSs as regards their voluntary and statutory missions, and are ready to explore means to cater for their specificities. **IT:** **(Drafting):** **~~The EBA shall submit those draft regulatory technical standards to the Commission by …[OP – please insert the date= 12 months after the date of entry into force of this Directive].~~** **IT:** **(Comments):** See previous comment. DE: (Comments): Timeframe is very tight. Consider extension. LU: (Drafting):

	~~The EBA shall submit those draft regulatory technical standards to the Commission by …[OP – please insert the date= 12 months after the date of entry into force of this Directive].~~
Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;	**IT:** **(Drafting):** **~~Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;~~** DE: (Drafting): **(13a) Add new Article 11f** **Preventive Measures by IPS:** **1. By way of derogation from Article 11 (3) and Articles 11a to 11e, Member States may allow an IPS falling under Article 1(2)(c) to use the available financial means for measures in order to prevent the failure of a credit institution provided that the following conditions are met:** **(a) the resolution authority has not taken any resolution action under Article 32 of Directive 2014/59/EU;** **(b) the IPS has appropriate systems and procedures in place for selecting and implementing alternative measures and monitoring affiliated risks;** **(c) the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the IPS;** **(d) the use of the measures by the IPS is linked to conditions imposed on the credit institution that is being supported, involving at least more stringent risk monitoring and greater verification rights for the IPS;**

	(e) the use of the measures by the IPS is linked to commitments by the credit institution being supported with a view to securing access to covered deposits; **(f) the ability of the affiliated credit institutions to pay the extraordinary contributions in accordance with paragraph 5 of this Article is confirmed in the assessment of the competent authority.** **(g) the credit institution requesting financing of the preventive measures shall be obliged to present a plan to ensure or restore compliance of the credit institution with the supervisory requirements set forth in Directive 2013/36/EU and Regulation (EU) No. 575/2013 in accordance with the conditions laid down in the statutory rules of the IPS as approved by the competent authority in accordance with Art. 113(7) of Regulation (EU) No. 575/2013.** **(h) the competent authority has been consulted by the IPS on the preventive measures and the conditions imposed on the supported credit institution;** **2. Member States shall ensure that IPSs have monitoring systems and decision-making procedures in place that are appropriate for selecting and implementing preventive measures and monitoring affiliated risks.** **3. Such preventive measures carried out by an IPS shall not lead to the determination that the credit institution is failing or is likely to fail in the sense of Article 32 (1) of Directive 2014/59/EU or Art. 18 (1) of Regulation (EU) 806/2014.** DE: (Comments): At the core of the IPS mandate lies the promise to support its member institutions whenever needed. This promise makes preventive measures existantial for IPS which differs from pure DGS. However, the current proposal fails to acknowledge the IPS mandate as a liability arrangement which encompasses protecting its member institutions and in particular

	ensures their liquidity and solvency to avoid bankruptcy where necessary (Art. 113 (7) of the CRR). Instead, the proposal restricts the ability of an IPS to support their member institutions and thus restricts the functioning of IPS. Such restrictions on the use of DGS funds for IPS preventive measures cast doubt about the ability of IPS to fulfil that promise. This could have repercussions on ECB/CA assessment of Art. 113 (7) CRR. We therefore suggest that the Council position on the Commission proposal reflects the agreement laid down EG+ statement from June 2022 that a functioning framework for IPS preventive measures must be maintained. In our view, the cleanest solution for this would be a specific regime for IPS preventive measures. Such a a specific regime would take into account the fact that IPS and DGS are different in nature as IPS have a different mandate and have to fulfil a broad range of additional requirements. Therefore, specific provisions for IPSs when using DGS funds for preventive measures are needed. The proposed specific regime is to be inserted as a new Article 11 (f). It builds on the current wording of Art. 11 (3) DGSD and add elements of the COM proposal (Art. 11f para. 1 lit. g, and h and para. 2) where and in a way that does not significantly restrict the ability of IPS to support its member institutions. The proposed para 3 intends to clarify and ensure that added conditions in Art. 11f DGSD do not lead to IPS measures triggering a FOLF decision. LU: (Drafting): ~~**Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';**~~
(14) Article 14 is amended as follows:	
(a) paragraph 1 is replaced by the following:	
'1. Member States shall ensure that DGSs cover the depositors at branches set up by their member credit institutions in other	PL: (Comments):

Member States and depositors located in Member States where their member credit institutions exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU.’;	It is not clear for us to use the phrase “depositors located in Member States”. We suspect that the intention is to refer to depositors who use cross-border services in other Member States, but not that they are currently residing there. SK: (Drafting): ‘1. Member States shall ensure that DGSs cover the depositors at branches set up by their member credit institutions in other Member States and depositors **at their member credit institutions exercising the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU** **where these depositors are** located in **a different** Member State~~s where their member credit institutions exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU~~.’; SK: (Comments): We understand the intention, but the original wording states that it would cover all the depositors located in those MS. DE: (Comments): Could agree. AT: (Comments): We consider that to be a clarification only as all depositors mentioned in this paragraph are direct clients of the credit institution which is member of the “home Member State DGS”. Therefore it could only be the “home Member State DGS” which is in charge of coverage. LU: (Drafting):

	'1. Member States shall ensure that DGSs cover the depositors at branches set up by their member credit institutions in other Member States and ~~**depositors located in Member States**~~ where their member credit institutions exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU.'; LU: (Comments): The DGSD does not contain an exclusion of depositors based on their country of residence or nationality.
(b) in paragraph 2, the following subparagraph is added:	
'By way of derogation from the first subparagraph, Member States shall ensure that a DGS of the home Member State may decide to repay depositors at branches directly where all of the following applies:	SK: (Comments): We disagree with this approach. Even in EDIS negotiations the national DGSs were considered to be the main point of contact for depositors. This provision could harm the credibility of the whole framework. CZ: (Comments): The possibility of a home DGS to reimburse depositors of branches in host Member States directly should be subject to the prior consent of the host DGS. NL: (Comments): we support the flexibility that is created here. DE: (Comments): Could agree.

	AT: (Comments): We expressly welcome this amendment, since this may be less costly for the DGS in the home Member State.
(i) the administrative burden and cost of such repayment is lower than the repayment by a DGS of the host Member State;	NL: (Drafting): (i) the administrative burden and cost of such repayment is not significantly higher than the repayment by a DGS of the host Member State; NL: (Comments): we suggest alternative wording to prioritize smooth repayment of depositors instead of costs. Clarifying question: these calculations need to be made very quickly, taking into account the short pay-out time that the host MS is bound to. How do we facilitate the host MS in this respect? DE: (Comments): Could agree.
(ii) the DGS of the home Member State ensures that the depositors are not worse off than where the reimbursement would have been conducted in accordance with the first subparagraph.’;	NL: (Comments): NL question: How should this be assessed? Is it more about timely payment or operational convenience? DE: (Comments): Could agree.

(c) the following paragraphs 2a and 2b are inserted:	
'2a. Member States shall ensure that a DGS of a host Member State may, subject to an agreement with a DGS of a home Member State, act as the point of contact for depositors at credit institutions that exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU, and shall be compensated for the costs incurred.	SI: (Comments): We have some reservation on this provision, due to the fact the the procedures are still governed by national laws, and it is diffcult if not imposiblle to access the scope of this operations.. FI: (Comments): We are in favor of this amendment. In addition to this, there is also need to enchance co-operation and information sharing between home and host DGS in passporting situations. "Passporting host-DGS" should have right to at least information on the number of depositors, amount of covered deposits and possible relevant changes to these. PT: (Drafting): '2a. Member States shall ensure that a DGS of a host Member State may~~, subject to an agreement with a DGS of a home Member State~~, act as the point of contact for depositors at credit institutions that exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU, and shall be compensated **by the DGS of the home Member State** for the costs incurred. PT: (Comments): We suggest to delete the reference to an agreement to avoid a repetition of the provision laid down in Article 14(2b) and to bring Article 14(2a) into line with Article 14(2). Also, we suggest adding an explicit reference to the responsability of the DGS of the home Member State to compensate the DGS of the host Member State. DE: (Comments):

	Could agree.
2b. In the cases referred to in paragraphs 2 and 2a, Member States shall ensure that the DGS of the home Member State and the DGS of the host Member State concerned have an agreement in place on the payout terms and conditions, including on the compensation of any costs incurred, the contact point for depositors, the timeline and the payment method.'; (d) paragraph 3 is replaced by the following:	PT: (Comments): DE: (Comments): Could agree.
'3. Member States shall ensure that where a credit institution ceases to be member of a DGS and joins a DGS of another Member State, or if some of the credit institution's activities are transferred to a DGS of another Member State, the DGS of origin shall transfer to the receiving DGS the contributions due for the last 12 months preceding the change of DGS membership, with the exception of the extraordinary contributions referred to in Article 10(8).';	PL: (Comments): In our opinion, paragraph 3 is not clear. The wording of the paragraph indicates that, if some of the credit institution's activities (organisationally seprerated) are transferred to a DGS of another MS (e.g. branches of credit institutions of MS converted into subsidiaries) the DGS of origin shall transfer to the receiving DGS the contribution due for the last 12 months preceding the change of DGS membership. It is not logical, as this branch is only an organizational part of the credit institution. The provision lacks proportionality of the transferred contributions to the part of the transferred activity, as it is mentioned in Recital 34. LV: (Comments): We support this proposal. Additionally we would like to note that it does not address the issue in those cases where contributions to the deposit guarantee system have been reached whether a specific amount should be anyway transferred to DGS of another Member State where a credit institution ceases to be member of a DGS and joins a DGS of another Member State. It should be further reviewed in context of home/host DGS

	issue. SK: (Comments): We understand the clarification, however we are deeply concerned with the potential reopening of this provision and we will strictly oppose going beyond this timeframe. It should be take into account in case the credit insituotion benefited from any use of funds under art. 11 and failed to repay these. Also extraordinary contributions under art. 11(4) should be exempted. IE: (Comments): It may be approprate to consider th possibility for DGSs to transfer more than the preceeding 12 months of contributions, subject to conditions. **IT:** **(Drafting):** '3. Member States shall ensure that where a credit institution ceases to be member of a DGS and joins a DGS of another Member State, or if some of the credit institution's activities are transferred to a DGS of another Member State, the DGS of origin shall transfer to the receiving DGS **an amount that reflects the additional potential liabilities borne by the receiving DGS as a result of the transfer, taking into account the impact of the transfer on the financial situation of both DGSs relative to the risks they cover.** ~~**the contributions due for the last 12 months preceding the change of DGS membership, with the exception of the extraordinary contributions referred to in Article 10(8).**~~ **The EBA shall develop draft regulatory technical standards specifying the methodology for the calculation of the amount to be transferred to ensure a neutral impact of the transfer on the financial situation of both DGSs relative to the risks they cover.** **The EBA shall submit those draft regulatory technical standards to the Commission**

	by … ’; **IT:** **(Comments):** In the case of a credit institution changing its DGS affiliation, this will lead to a funding surplus in the DGS of origin as the risks covered by this DGS are reduced while its financial means remain very similar. On the other hand, in the receiving DGS, a funding gap arises as the transferred resources are not commensurate with the transferred risks. This gap must be filled by the transferring credit institution or all members of the receiving DGS. The current deposit insurance framework treats the DGS of origin favourably at the expense of the transferring credit institution and/or the members of the receiving DGS. CZ: (Comments): We support the approach proposed by the Commission and welcome that the proposal does not increase the amount of contributions to be transferred. NL: (Comments): This amendment does not tackle all the current issues with transfer of contributions. The limit of 12 months does not work in practice, because DGSs have different contribution cycles and because after 2024, it is likely that DGSs will not raise regular contributions anymore. This paragraph should be revisited. Can the Commission give an explanation about the options that they considered on this subject matter? PT: (Drafting): ‘3. Member States shall ensure that where a credit institution ceases to be member of a DGS and joins a DGS of another Member State, or if some of the credit institution’s

	activities are transferred to a DGS of another Member State, the DGS of origin shall transfer to the receiving DGS **an amount of** the contributions due **by such credit institution**~~for the last 12 months preceding the change of DGS membership~~, with the exception of the extraordinary contributions referred to in Article 10(8).~~';~~ **The EBA shall develop draft regulatory technical standards to specify the methodology for the calculation of the amount of contributions referred to in the first subparagraph, which shall, in particular, take into account the increase of the covered deposits in the receiving DGS, the contributions paid by the credit institution in the previous years, with the exception of the extraordinary contributions referred to in Article 10(8), the previous use of funds referred to in Article 11 and the risk profile of the credit institution.';** PT: (Comments): We would like to express our concern about maintaining the current rule, even with the proposed changes, since it does not address the fundamental issue of the risks transferred when a credit institution changes affiliation to a DGS. We would support an EBA mandate to develop a methodology for calculating the amount of contributions to be transferred in a way that better reflects the risk for the receiving DGS, passed on subsequently to its members. This methodology should, in particular, consider the increase of the covered deposits in the receiving DGS, the contributions paid in the previous years by the credit institution that changed affiliation, its risk profile and the previous use of DGS' funds. In addition, there is a topic that deserves further reflection and discussion, regarding the potential for regulatory arbitrage by credit institutions which might be inclined to change affiliation or restructure the group to avoid paying contributions following the use of DGS's funds. DE: (Comments): We would be open to discuss possible further changes so that institutions can transfer

	more than the contributions of the last 12 months preceding the change of DGS membership.^ Fuerthermore, it remains unclear how such a contribution is to be determined. EBA guidelines could help to clarify how the "amount due" is to be calculated (maybe as addition to the GL on contributions). AT: (Drafting): '3. Member States shall ensure that where a credit institution ceases to be member of a DGS and joins ~~**a**~~ **another** DGS ~~**of another Member State**~~, or if some of the credit institution's activities are transferred to ~~**a**~~ **another** DGS ~~of another Member State~~, the DGS of origin shall transfer to the receiving DGS the contributions due for the last 12 months preceding the change of DGS membership, with the exception of the extraordinary contributions referred to in Article 10(8).'; AT: (Comments): In some Member States, not only one, but several DGSs exist. Consequently, the suggested amendments are necessary to ensure that this provision also covers cases where a credit institution changes affiliation to a DGS **within the same Member State** (i.e. cases which do not include any cross-border aspects). As a second point, we are still assessing whether the proposed calculation method of the funds to be transferred seems to be appropriate. BG: (Comments): We have a reservation on this provision. For us this element is not part of the achived political agreement for review of the CMDI framework in short term and is not in line with the June 2022 Eurogroup statement on the future of the Banking union. This

	provision is clearly a part of market integration measures and should not be discussed here. LU: (Comments): The rationale behind the new reference to "contributions due" is not clear. In any case, this Article shall only be subject to targeted modifications. Changes shall only be adopted to the extent necessary in order to clarify the computation of the amount to be transferred, without overhauling the underlying principle of the Article.
(e) the following paragraph 3a is inserted:	
'3a. For the purposes of paragraph 3, Member States shall ensure that the DGS of origin transfers the amount referred to in that paragraph within 1 month from the change of DGS membership.';	PL: (Comments): The transfer of contributions from the DGS of origin to the new DGS to which the credit institution joins may take place only after the DGS of origin received an application from the new DGS (with an indication of the account number to which the transfer to be made). Therefore, the term "*from the change of DGS membership*" does not seem to be appropriate. Without the active participation of the new DGS, the origin system is unable to transfer required contributions. SK: (Comments): We are ok with setting a timeframe, but one month may be too short. DE: (Comments): Could agree.
(f) the following paragraph 9 is added:	
'9. The EBA shall issue guidelines on how the EBA sees the respective roles of home and host DGSs as referred to in	SK:

paragraph 2, first subparagraph, and containing a list of circumstances and conditions under which a DGS of the home Member State should be able to decide to reimburse depositors at branches located in another Member State as laid down paragraph 2, third subparagraph.’;	(Comments): Please see our comment to para 2. PT: (Drafting): ‘9. The EBA shall issue guidelines on how the EBA sees the respective roles of **the DGS of the** home and host **Member States ~~DGSs~~** as referred to in paragraph 2, first subparagraph, and containing a list of circumstances and conditions under which a DGS of the home Member State should be able to decide to reimburse depositors at branches located in another Member State as laid down paragraph 2, third subparagraph.’; PT: (Comments): We suggest to always use the same wording when refering to the DGS of the home and host Member States. DE: (Comments): Could agree.
(15) Article 15 is replaced by the following:	
‘*Article 15*	IE: (Comments): Can support the inclusion of third country branches
Branches of credit institutions that are established in third countries	
Member States shall require branches of credit institutions that have their head office outside the Union to join a DGS within their territory before they allow such branches to take eligible deposits in those Member States.’;	CZ:

	(Comments): We strongly support an obligatory participation of all third country branches in the national DGS. DE: (Comments): Agree. AT: (Drafting): Member States ~~shall~~ **may** require branches of credit institutions that have their head office outside the Union to join a DGS within their territory before they allow such branches to take eligible deposits in those Member States.'; AT: (Comments): We question the requirement that EU-DGS would have to include depositors of branches in the Union of a credit institution that has its head office in a third country in all cases. Such a requirement would expose EU DGS to the economic and financial risks of third countries because the head office in the third country is not subject to EU supervision, thus failures of such head offices could not be prevented or avoided by EU authorities. In contrast to that, deposits in branches established in third countries by Union credit institutions are – from a legal point of view – deposits at the Union credit institution. The Union credit institution is obviously subject to EU supervision, and the branch in the third country could only fail if the EU credit institions fails as a whole (a branch is not a legal entity of its own but legally dependant on the EU credit institution) It is thus not understandable why such deposits should by default not be protected but only with a specific case by case approval by the designated authority. The explanation for the amendments provided in recital 35 ("*Conversely, it should be avoided that DGSs are exposed to the economic and financial risks of third countries.*

	Deposits in branches established in third countries by Union credit institutions should therefore not be protected.") describe exactly the opposite of the consequences which such amendments would have in practice. LU: (Comments): We do not agree with the proposed inclusion of a mandatory TCB DGS affiliation and support maintaining the current - and more porportionate - approach whereby TCBs must join the local DGS only if the DGS of their home country does not offer an equivalent guarantee to its clients.
(16) the following Article 15a is inserted:	AT: (Drafting): ~~(16) the following Article 15a is inserted:~~
'*Article 15a*	
Member credit institutions that have branches in third countries	AT: (Drafting): ~~**Member credit institutions that have branches in third countries**~~
Member States shall ensure that DGSs do not cover depositors at branches that have been set up in third countries by their member credit institutions, except where, subject to the approval of the designated authority, those DGSs raise corresponding contributions from the credit institutions concerned.';	PL: (Comments): In our opinion, the new Article 15a relating to possible guarantees in branches of member credit institutions set up in third countries needs to be clarified. We understand that the intention is to cover deposits in branches of credit institutions in third countries, provided that these institutions participate in the financing of the guarantee scheme. But, the method for the approval of the designated authority and the grounds for its adoption is unclear. NL:

	(Comments): we support this amendment. PT: (Drafting): Member States shall ensure that DGSs do not cover depositors at branches that have been set up in third countries by their member credit institutions, except where, subject to the approval of the designated authority, those DGSs raise corresponding contributions from the credit institutions concerned.'; **The EBA shall issue guidelines specifying the circumstances in which designated authorities should approve the coverage of depositors at branches that have been set up in third countries by DGSs' member credit institutions.** PT: (Comments): In order to ensure proper harmonization across the EU, the decisions made by the DA under this article should, at least, be framed according to criteria established in EBA Guidelines regarding the cases where DA should approve the coverage of such deposits (and the ones it should not). DE: (Comments): Agree. AT: (Drafting): ~~Member States shall ensure that DGSs do not cover depositors at branches that have been set up in third countries by their member credit institutions, except where, subject to the approval of the designated authority, those DGSs raise corresponding contributions from the credit institutions concerned.';~~

	AT: (Comments): We question the requirement that EU-DGS would have to include depositors of branches in the Union of a credit institution that has its head office in a third country in all cases. Such a requirement would expose EU DGS to the economic and financial risks of third countries because the head office in the third country is not subject to EU supervision, thus failures of such head offices could not be prevented or avoided by EU authorities. **In contrast to that, deposits in branches established in third countries by Union credit institutions are – from a legal point of view – deposits at the Union credit institution; as a consquence, DGSs must of course raise corresponding contributions by from the EU credit institutions for deposits in branches established in third countries.** The Union credit institution is obviously subject to EU supervision, and the branch in the third country could only fail if the EU credit institions fails as a whole (a branch is not a legal entity of its own but legally dependant on the EU credit institution) **It is thus not understandable why such deposits should by default not be protected but only with a specific case by case approval for the DGS by the designated authority.** The explanation provided in this recital for the amendments ("*Conversely, it should be avoided that DGSs are exposed to the economic and financial risks of third countries. Deposits in branches established in third countries by Union credit institutions should therefore not be protected.*") describe exactly the opposite of the consequences which such amendments would have in practice. Consequently, the newly proposed Art. 15a is not needed from our perspective and should be deleted. LU: (Comments): It is not clear what exactly is meant by "corresponding contributions".

(17) Article 16 is amended as follows:	
(a) paragraph 1 is replaced by the following:	FI: (Comments): The proposed paragraphs 1-4 are too detailed for level 1 legislation. It would be enough to state in the DGSD that institutions have obligation to give depositors the information sheet but the detailed information of the sheet could be left to EBA to specify.
'1. Member States shall ensure that credit institutions provide actual and intending depositors with the information those depositors need to identify the DGSs of which the credit institution and its branches are members within the Union. Credit institutions shall provide that information in the form of an information sheet prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX of the European Parliament and of the Council [ESAP Regulation]***.	DE: (Comments): Could agree.
*** Regulation (EU) XX/XXX of the European Parliament and of the Council of dd mm jj establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability.';	FR: (Drafting): '1. Member States shall ensure that credit institutions provide actual and intending depositors with the information those depositors need to identify the DGS~~s~~ of which the credit institution ~~and its branches are members within the Union~~ **is a member**. Credit institutions shall provide that information in the form of an information sheet prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX of the European Parliament and of the Council [ESAP Regulation]***. FR: (Comments): Branches of credit institutions are not member of DGSs. Only credit institutions are.

	DE: (Comments): Could agree.
(b) the following paragraph 1a is inserted:	
'1a. Member States shall ensure that the information sheet referred to in paragraph 1 contains all of the following:	
(i) basic information about the protection of deposits;	
(ii) contact details of the credit institution as a first point of contact for information on the content of the information sheet;	DE: (Comments): Could agree.
(iii) coverage level for deposits as referred to in Article 6(1) and 6(2) in EUR or, where relevant, another currency;	DE: (Comments): Could agree.
(iv) applicable exclusions from DGS protection;	DE: (Comments): Could agree. However in practice it could be difficult to determine by the institutions in certain cases which exclusion applies.
(v) limit of protection in relation to joint accounts;	DE: (Comments):

	Could agree.
(vi) reimbursement period in case of the credit institution's failure;	DE: (Comments): Could agree.
(vii) currency of reimbursement;	DE: (Comments): Could agree.
(viii) identification of the DGS responsible for protecting a deposit, including a reference to its website.';	DE: (Comments): Could agree.
(c) paragraph 2 is replaced by the following:	
'2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and, subsequently, annually. Depositors shall acknowledge the receipt of that information sheet.';	CY: (Comments): It is suggested that Article 16(2) provides that the credit institution is responsible for requesting the depositors to acknowledge the receipt of this information sheet. If the above recommendation is not taken on board, the intention of the Regulator is not achieved as depositors may choose not to acknowledge receipt. PL: (Comments): The amended paragraph states that depositors must always acknowledge the receipt of the information sheet. We propose that depositors will be obliged to confirm only the receipt

	of the first information sheet. Thus, the depositor will do it only one time before enters into a contract with deposit-taking institutions. IE: (Drafting): '2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and, subsequently, annually~~. Depositors shall acknowledge the receipt of that information sheet.'~~; IE: (Comments): May be impractical to require that depositors acknowledge receipt of an annual information sheet CZ: (Drafting): '2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and, subsequently, annually. ~~Depositors shall acknowledge the receipt of that information sheet.~~'; CZ: (Comments): In order to reduce the administrative burden, we would support deleting of the obligation according to which depositors shall acknowledge the receipt of the information sheet. It is not clear that the acknowledgement by clients that they have received the information sheet increases clients' real awareness of deposit insurance. Crucial is that clients receive the information. EE:

	(Comments): Scrutiny reservation. HU: (Drafting): '2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and, subsequently, annually. ~~Depositors shall acknowledge the receipt of that information sheet.~~' HU: (Comments): This is an unnecessary administrative burden for the depositor and the institution, and it will be problematic to implement. DE: (Comments): Disagree. Yearly acknowledgement of receipt of information sheet by depositors is practically difficult and overburdensome. In general, we are sceptical if acknowledgement of receipt of the information sheet is necessary at all. BE: (Drafting): '2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and, subsequently, annually. Depositors shall acknowledge the receipt of that information sheet **to the credit institution**.'; BE: (Comments): Experience has shown that the confirmation is often sent to the DGS. This causes

	confusion for the depositor and extra administrative burden for the DGS. AT: (Drafting): '2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and **depositors shall acknowledge the receipt of that information sheet**. ~~S~~Subsequently, **the information sheet referred to in paragraph 1 shall be provided at least** annually. ~~**Depositors shall acknowledge the receipt of that information sheet**~~.'; AT: (Comments): We **oppose the requirement of a yearly acknowledement of the receipt of the information sheet** as this would mean unjustified additional adminstrative burden for credit institutions compared to the current legal situation in the DGSD. Acknowledgement once is absolutely sufficient to ensure relevant information. Moreover, it is questionable whether an annual provision of the information sheet is really necessary or whether provision of the information sheet only once, namely before entering into a contract on deposit-taking, would be sufficient.
(d) in paragraph 3, the first subparagraph is replaced by the following:	FR: (Drafting): '2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and, subsequently, annually. Depositors shall acknowledge the receipt of that information sheet **when they enter into a contract**.'; FR: (Comments): We believe depositors shall achnowledge the receipt of the information sheet only once, and not annually. We suggest a drafting clarification.

'Member States shall ensure that credit institutions confirm on their depositors' statements of account that the deposits are eligible deposits, including a reference to the information sheet referred to paragraph 1.';	DE: (Comments): Could agree.
(e) paragraph 4 is replaced by the following:	
'4. Member States shall ensure that credit institutions make the information referred to in paragraph 1 available in the language that was agreed by the depositor and the credit institution when the account was opened or in the official language or languages of the Member State in which the branch is established.';	NL: (Comments): NL question: should this provision also apply to cross border services without a branch office? If so, we suggest to amend the wording at the end of the paragraph to reflect this. DE: (Comments): Could agree. LU: (Drafting): '4. Member States shall ensure that credit institutions make the information referred to in paragraph 1 available in the language that was agreed by the depositor and the credit institution when the account was opened **and, where different,** ~~**or**~~ in **at least one of** the official language**s** ~~**or languages**~~ of the Member State in which the branch is established.'; LU: (Comments): The language agreed upon by the depositor and the bank may be a non-EU language and this could give rise to practical issues.
(f) paragraphs 6 and 7 are replaced by the following:	
'6. Member States shall ensure that in the case of a merger of credit institutions, conversion of subsidiaries of a credit institution into branches, or similar operations, credit	DE: (Comments):

institutions notify their depositors thereof at least 1 month before that operation takes legal effect, unless the competent authority allows for a shorter deadline on the grounds of commercial secrecy or financial stability. That notification shall explain the impact of the operation on the depositor protection.	Could agree.
Member States shall ensure that, where as a result of operations referred to in the first subparagraph, depositors with deposits in those credit institutions will be affected by the reduced deposit protection, the credit institutions concerned notify those depositors that they may withdraw or transfer to another credit institution their eligible deposits, including all accrued interest and benefits, without incurring any penalty up to an amount equal to the lost coverage of their deposits within 3 months following the notification referred to in the first subparagraph.	PL: (Comments): The provision drafted in that way imposes on the credit institutions the obligation of additional analysis to identify the depositors of a given credit institution to whom the guarantee protection will be reduced due to the occurrence of the circumstances referred to in the first sentence of the provision. According to the current provision of the DGSD, all depositors of a given credit institution are informed of the above circumstances, which in our opinion is a sufficient solution. CZ: (Drafting): Member States shall ensure that, where as a result of operations referred to in the first subparagraph, ~~depositors with deposits in those credit institutions will be affected by the reduced deposit protection,~~ the credit institutions concerned notify those depositors that they may withdraw or transfer to another credit institution their eligible deposits, including all accrued interest and benefits, without incurring any penalty ~~up to an~~ **in the** amount **at least** equal to the lost coverage of their deposits within 3 months following the notification referred to in the first subparagraph. CZ: (Comments): See our comment on the merit of the proposed amendment in Recital 37. PT: (Comments):

	It should be clarified if the amount to be withdrawn or transferred without incurring the penalty only includes the part of the deposit up to EUR 100,000, which is covered by the DGS pursuant to Article 6(1), or also the part of the deposit that may be covered in accordance with Article 6(2). DE: (Comments): Could agree.
7. Member States shall ensure that credit institutions that cease to be a member of a DGS inform their depositors thereof at least 1 month prior to such cession.'; (g) the following paragraph 7a is inserted:	DE: (Comments): Could agree.
'7a. Member States shall ensure that designated authorities, DGSs and credit institutions concerned inform depositors, including by a publication on their websites, of the fact that a relevant administrative authority has made a determination as referred to in Article 2(1), point (8)(a), or a judicial authority has made a ruling as referred to in Article 2(1), point (8)(b).';	CZ: (Comments): It should be clarified that only the credit institution is obliged to inform the depositor directly. DGS does not have access to all client's data, therefore it is not able to inform all clients individually about the decision made by a relevant administrative authority. DGSs may publish such information on their websites or social media, however are not able to contact clients directly. A SCV file, that DSG receives from a failed credit institution, contains only data of depositors who are eligible for payout. EE: (Comments): Scrutiny reservation. DE: (Comments):

	Need further evaluation AT: (Drafting): '7a. Member States shall ensure that designated authorities, DGSs and credit institutions concerned inform depositors**~~,~~ ~~inclu~~ding ~~~~** by a publication on their websites**~~,~~** of the fact that a relevant administrative authority has made a determination as referred to in Article 2(1), point (8)(a), or a judicial authority has made a ruling as referred to in Article 2(1), point (8)(b).'; AT: (Comments): The proposed amendment should further clarify that publications on the respective websites of the designated authorities, the DGSs and the credit institutionsthere are sufficient. This would not prevent Member States to require additional measures for information of depositors.
(h) paragraph 8 is replaced by the following:	
'8. Member States shall ensure that where a depositor uses internet banking, credit institutions provide the information they have to provide to their depositors under this Directive by electronic means unless a depositor requests to receive that information on paper.';	DE: (Comments): Could agree.
(i) the following paragraph 9 is added:	
'9. The EBA shall develop draft implementing technical standards to specify:	PL: (Comments): As far as we know from our DGS, as part of the work on the amendment of the DGSD, there was a consensus in many groups regarding the postulate of leaving the content of the information sheet to the decision of Member States. Now, the wording of paragraph 9 again imposes the template of an information sheet, which solution has not worked

	earlier. We do not agree with that. We advocate deleting paragraph 9. Article 16(1a) is sufficient in this respect. IE: (Comments): This section may need to be further evaluated during the course of negotiations, to ensure that all relevant information is captured in the sheet EE: (Comments): Scrutiny reservation. The ultimate solution should work for both credit institutions and depositors. DE: (Comments): Need further evaluation. However, important that the information sheet is manageable both for banks and depositors. AT: (Comments): In the context of the proposed ITS, it will be important that the information sheet is manageable both for credit institutions and depositors.
(a) the content and the format of the information sheet, referred to in paragraph 1a;	
(b) the procedure to be followed for the provision of, and the content of, the information to be provided in the communications from designated authorities, DGSs or credit institutions to depositors, in the situations referred to in Articles 8b and 8c and in paragraphs 6, 7 and 7a of this Article.	

The EBA shall submit those draft implementing technical standards to the Commission by … [OP - please insert date = 12 months after the date of entry into force of this Directive].	
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’;	
(18) the following Article 16a is inserted:	
‘*Article 16a*	DE: (Comments): Need further evaluation
Information exchange between credit institutions and DGS, and reporting by authorities	NL: (Comments): We support improvement of the information exchange for the purpose of a smoothly functioning DGS.
1. Member States shall ensure that DGSs, at any time and upon request, receives from their affiliated credit institutions all information necessary to prepare for a repayment of depositors, in accordance with the identification requirement laid down in Article 5(4), including the information for the purposes of Article 8(5) and Articles 8b and 8c.	SI: (Comments): We propose to amend the provision to enable receipt of information also for testing purposes. PT: (Drafting): 1. Member States shall ensure that DGSs, at any time and upon request, receives from their affiliated credit institutions all information necessary to prepare for a repayment of **deposits**~~depositors~~, in accordance with the identification requirement laid down in Article 5(4), including the information for the purposes of Article 8(5) and Articles 8b and 8c. PT: (Comments):

	Typo DE: (Comments): Could agree. AT: (Comments): We welcome the strengthening of the exchange of information between credit institutions and DGSs. LU: (Comments): LU does not support the introduction of Article 8b. Should Article 8b be maintained in its current form, many operational questions would arise. It would notably be important to clarify what the information for the purposes of Article 8b should consist of, as banks do not know the identities "at any time" of the clients of payment institutions/e-money institutions.
2. Member States shall ensure that credit institutions, upon request of a DGS, provide the DGS of which they are a member information about:	DE: (Comments): Could agree.
(a) depositors at branches of those credit institutions;	DE: (Comments): Could agree.
(b) depositors who are recipients of services provided by member institutions on the basis of the freedom to provide services.	DE: (Comments): Could agree.

The information referred to in points (a) and (b) shall indicate the Member States in which those branches or depositors are located.	DE: (Comments): Could agree.
3. Member States shall ensure that, by 31 March each year, DGSs inform the EBA of the amount of covered deposits in their Member State on 31 December of the preceding year. By the same date, DGSs shall also report to the EBA the amount of their available financial means, including the share of borrowed resources, payment commitments and the timeline for reaching the target level in case of use of DGS funds.	SI: (Comments): See comment to paragraph (1). PL: (Comments): In case of Poland data reported to the EBA by 31 March will be unaudited yet. EE: (Comments): Scrutiny reservation. PT: (Drafting): 3. Member States shall ensure that, by 31 March each year, DGSs inform the EBA of the amount of covered deposits in their Member State on 31 December of the preceding year. By the same date, DGSs shall also report to the EBA the amount of their available financial means, including the share of borrowed resources, payment commitments and the timeline for reaching the target level **following a disbursement of DGS's funds referred to in Article 10(2)(third subparagraph)**~~in case of use of DGS funds~~. PT: (Comments): Our suggestion aims to bring Article 16a(3) into line with Article 10(2)(third subparagraph). DE:

	(Comments): Need further evaluation
4. Member States shall ensure that the designated authorities notify the EBA, without undue delay, about all of the following:	EE: (Comments): Scrutiny reservation. DE: (Comments): Need further evaluation AT: (Comments): A harmonised deadline for submission of this information should be determined against the background of harmonisation. In any case the authorities should be given sufficient time for processing the information, as in this case there are exclusively ex-post information requirements.
(a) the determination of unavailable deposits pursuant to circumstances referred to in Article 2(1), point (8);	
(b) whether any of the measures referred to in Article 11(2), (3) and (5) have been applied and the amount of funds used in accordance with Article 8(1) and Article 11(2), (3) and (5), and, where applicable and once available, the amount of funds recovered, the resulting cost for the DGS and the duration of the recovery process;	SI: (Comments): See comment to paragraph (1). FR: (Drafting): (a) the determination ~~of unavailable deposits~~ **that deposits become unavailable** pursuant to circumstances referred to in Article 2(1), point (8); FR: (Comments):

	Technical - Drafting PT: (Drafting): (b) whether **<u>a repayment of deposits in accordance with Article 8 or</u>** any of the measures referred to in Article 11(2), (3) and (5) have been applied and the amount of funds used in accordance with Article 8~~(1)~~ and Article 11(2), (3) and (5), and, where applicable and once available, the amount of funds recovered, the resulting cost for the DGS and the duration of the recovery process; PT: (Comments): We believe reference should be made to the repayment of deposits and to Article 8.
(c) the availability and the use of alternative funding arrangements as referred to in Article 10(3);	PT: (Drafting): (c) the availability and the use of alternative funding arrangements as referred to in Article 10(~~3~~**<u>9</u>**); PT: (Comments): We believe reference should be made to Article 10(9), and not to Article 10(3).
(d) any DGSs that have ceased to operate or the establishment of any new DGS, including as a result of a merger or of the fact that a DGS started operating on a cross-border basis.	
The notification referred to in the first subparagraph shall contain a summary describing all of the following:	PL: (Comments): This paragraph seems inadequate to all cases presented in the first subparagraph (e.g. point (d)).

	IT: **(Drafting):** The notification referred to in the first subparagraph shall contain a summary describing all of the following~~:~~ PT: (Drafting): The notification referred to in the first subparagraph**, point (b),** shall contain a summary describing all of the following: PT: (Comments): The information contained in this summary refers solely to point (b) of the first subparagraph.
(a) the initial situation of the credit institution;	**IT:** **(Drafting):** (a) the ~~**initial**~~ **most updated** situation of the credit institution; **IT:** **(Comments):** The meaning of "initial" situation is not clear. We suggest to amend with the most updated situation based on the data available for the Authority. AT: (Drafting): ~~(a) the initial situation of the credit institution;~~ AT: (Comments):

	It is not clear why EBA requires such information, since it is not a banking supervision authority, and therefore is not a "competent authority". Moreover, the notifying "designated authority" is not a "competent authority" either.
(b) the measures for which the DGS funds have been used;	SI: (Comments): See comment to paragraph (1). **IT:** **(Drafting):** (b) the measures for which the DGS funds have been used~~;~~**.** PT: (Drafting): (b) the **repayment of deposits in accordance with Article 8 or the** measures **referred to in Article 11(2), (3) and (5)** for which the DGS funds have been used; PT: (Comments): Our intention is to make clear that this notification regards a repayment of deposits or any of the measures referred to in Article 11(2), (3) and (5).
(c) the expected amount of available financial means used.	**IT:** **(Drafting):** (c) the expected amount of available financial means used. PT: (Drafting): (c) the expected amount of **funds** ~~available financial means~~ used. PT:

	(Comments): In our view, the summary should mention the total amount of funds used, which may be higher than the amount of available financial means used.
5. The EBA shall publish the information received in accordance with paragraphs 2 and 3 and the summary referred to in paragraph 4 without undue delay.	EL: (Drafting): EL: The EBA shall publish the information received in accordance with paragraph~~s 2 and~~ 3, **the information in accordance with paragraph 2 in summary form** and the summary referred to in paragraph 4 without undue delay. EL: (Comments): EL: The publication of information of paragraph 2 should be only in the form of a summary. PL: (Comments): It is not clear which provision requires the DGSs to inform the EBA of the issues presented in paragraph 2. **IT:** **(Drafting):** 5. The EBA shall publish the information received in accordance with paragraph**s ~~2 and~~** 3 **~~and the summary referred to in paragraph 4~~** without undue delay. **IT:** **(Comments):** Paragraph 2 refers to information that are not in the availability of the EBA (and also probably not in its interest); the reference should therefore be checked. With regard to paragraph 4, we have some concerns about the opportunity to publish the data; expecially the information on the initial situation of the credit institution and the amount of AFM used could have negative impacts on the public confidence and financial

	stability. PT: (Comments): AT: (Comments): Such information should be handled in an exceptionally sensitive and restrictive manner towards the general public. Under no circumstances shall publication be recommended prior to the conclusion of measures as defined in Article 11. Instead, proceeding in such a way may lead to a further deterioration of the financial situation as a result of a loss of depositors' confidence in the credit institution ("bank run"). As one additional point, EBA does not receive any information under paragraph 2 of this Article, thus EBA cannot publish such information. LU: (Comments): This provision needs further clarification, as the information referred to in paragraph 2 is not addressed to EBA.
6. Member States shall ensure that the resolution authorities of the credit institutions which are a member of a DGSs provide that DGS, upon request, with the summary of the key elements of the resolution plans as referred to in Article 10(7), point (a), of Directive 2014/59/EU, provided that such information is necessary for the DGS and designated authorities to exercise the obligations referred to in Article 11(2), (3) and (5) and in Article 11e.	SI: (Comments): See comment to paragraph (1). AT: (Comments): The amendment is welcomed from the point of view of transparency. LU: (Comments): The mandatory transfer of information from the SRB to DGS should also apply for the

	purpose of DGS determining their potential liabilities in accordance with Article 10(1). Currently, a DGS is unable to access information about the preferred resolution strategy of a member bank for which there is no resolution college. As a consequence, a DGS must in principle be able to finance the reimbursement of the gross amount of covered deposits of even the largest banks, which is of course impossible.
7. The EBA shall develop draft implementing technical standards to specify the procedures to be followed when providing the information referred to in paragraphs 1 to 4, the templates for providing that information, and to further specify the content of that information, taking into account the types of depositors.	PL: (Comments): It is not clear to us what information referred to in paragraphs 1 and 2, which is not covered by paragraph 4 of the proposed Article 16a, would be provided by DGSs to the EBA (and under what regulations). DE: (Comments): Could agree.
The EBA shall submit those draft implementing technical standards to the Commission by …. [OP - please insert the date = 12 months after the date of entry into force of this Directive].	DE: (Comments): Could agree.
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’;	DE: (Comments): Could agree.
(19) Annex I is deleted.	PL: (Comments): We support the proposal to resign from presenting an information sheet template (Annex 1) in the DGSD and we also suggest deleting Article 16(9). Based on our DGS’ experience and its cooperation with other DGSs, the sheet has not fulfilled its basic information function and it needs to be adapted in terms of the content presented. We support the intention that basic information on guarantee protection should be primarily published on the website of the deposit guarantee institution.

Article 2	
Transitional provisions	
1. Member States shall ensure that branches of credit institutions that have their head office outside the Union and take eligible deposits in a Member State on … [OP please insert the date = date of entry into force], and that are not members of a DGS on that date, join a DGS in operation within their territories by [OP please insert the date = 3 months after entry into force]. Article 1(15) shall not apply to those branches until [OP please insert the date = 3 months after entry into force].	SK: (Comments): We are afraid this can only be done after transposing the Directive and not within the timeframe of 3 months.
2. By way of derogation from Article 11(3) of Directive 2014/49/EU, as amended by this Directive, and Articles 11a, 11b, 11c and 11e in relation to preventive measures, until [OP – please insert the date = 72 months after the date of entry into force of this Directive], Member States may allow IPS referred to in Article 1(1), point (c), to comply with the national provisions implementing Article 11(3) of Directive 2014/49/EU as applicable on [OP – please insert the date of entry into force of this Directive].	SI: (Comments): See comment to paragraph (1). **IT:** **(Drafting):** 2. **IPS referred to in Article 1(2), point (c), should comply with the third subparagraph of Article 4(2) within five years as from the date of their official recognition as DGS.** By way of derogation from Article 11(3) of Directive 2014/49/EU, as amended by this Directive, and Articles 11a, 11b, 11c and 11e in relation to preventive measures, until [OP – please insert the date = ~~72~~**60** months after the date of entry into force of this Directive], Member States may allow IPS referred to in Article 1(1), point (c), to comply with the national provisions implementing Article 11(3) of Directive 2014/49/EU as applicable on [OP – please insert the date of entry into force of this Directive]. PT: (Drafting): **Delete**.

	PT: (Comments): We fail to understand why IPS should be given additional time to start applying the new regime for preventive measures. Indeed, IPS are supposed to be experts in the application of preventive measures and should not have problems complying with new conditions and proceedings. This is even more impressive when we think of DGS that up until now never applied preventive measures but will start doing it now, in which case they will have a shorter timeframe. This creates an unwarranted unlevel playing field between DGS and IPS which we cannot support. Therefore, we strongly support the deletion of this transitional arrangement.
Article 3	
Transposition	IE: (Comments): *This section may need to be reviewed in the course of the negotiations*
1. Member States shall adopt and publish, by … [OP – please insert the date = 24 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	
They shall apply those provisions from … [OP – please insert the date = 24 months after the date of entry into force of this Directive]. However, they shall apply the provisions necessary to comply with Article 11(3), as amended by this Directive, and Articles 11a, 11b, 11c and 11e in relation to preventive measures from … [PO – please insert the date = 48 months after the date of entry into force of this Directive].	SI: (Comments): See comment to paragraph (1). IE: (Comments): While we wish to ensure a level playing field for entities across the Union, in line with the Eurogroup statement, we can support the idea of facilitating the adaption and

	adjustment of IPS processes to the new framework via this transitional provision. EE: (Comments): Scrutiny reservation. DE: (Drafting): They shall apply those provisions from … [OP – please insert the date = 24 months after the date of entry into force of this Directive]. However, they shall apply the provisions necessary to comply with Article 11(3), as amended by this Directive, and Articles 11a, 11b, 11c and 11e in relation to preventive measures from … [PO – please insert the date = **96** months after the date of entry into force of this Directive]. DE: (Comments): In general, no transition period will avert the eventual impairment of the IPS functioning as of the date of application. As such, the transition period by itself is insufficient to ensure the functioning of IPS preventive measures. The proposed transition period also does not provide sufficient time for DGS currently using preventive measures to adapt to the new system.
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	

Article 4	
Entry into force	
This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	
Article 5	
Addressees	
This Directive is addressed to the Member States.	
Done at Strasbourg,	
For the European Parliament *For the Council*	
The President *The President*	***END***