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Presidency note on PIA, resolution funding and other selected issues

WP CMDI 21-11-2023

1. Introduction

The Eurogroup Statement of 16 June 2022 stated that *"Today, we have agreed that, as an immediate step, work on the Banking Union should focus on strengthening the common framework for bank crisis management and national deposit guarantee schemes (CMDI framework). […]. We invite the co-legislators to complete any legislative work during this institutional cycle until early-2024"*.

Following extensive consultations with Member States and the Commission, the Spanish presidency has identified a potential landing zone on two core building blocks: Public Interest Assessment (PIA) and a balanced funding scheme. These building blocks are interrelated, so it is essential to keep a holistic view to ensure consistency.

At previous Council Working Party meetings, the Presidency presented separate notes on PIA and on funding in resolution with questions and options. The objective of this note is to provide a recap of those discussions, propose some drafting suggestions for PIA-related issues and present a way forward which we hope may gather support as a viable option to eventually become consensual on these highly interconnected elements of the CMDI proposal.

2. PIA topics

Annex I recaps what the Presidency concluded and was later confirmed by MS´ comments on the PIA. It stems from the discussions that the scope of resolution should be broadened from the current legal text, while at the same time avoiding a significant increase on the number of institutions earmarked for resolution. There seems to be broad agreement on keeping the resolution objectives as they are in the current version of the Directive, incorporating amendments related to the regional level.

In this context, the Presidency proposes the following treatment to PIA that would allow:

- Expanding the scope of resolution when resolution objectives are at risk and when it is proportionate to do so. At the same time, it must be ensured that small institutions are not earmarked for resolution if either those objectives are not at risk or earmarking them for resolution is not proportionate;
- The necessary flexibility for resolution authorities to determine the PIA taking into account existing specificities in different Member States, both inside and outside the Banking Union;
- Protection of public funds by minimizing reliance on extraordinary public financial support, in particular, when coming from the budget of a Member State.

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2.1. Introduction of explicit reference to 'national or regional level' in the definition of 'critical functions' (Article 2(1), point (35), of BRRD)

Most MS agreed to introduce an explicit reference to 'national or regional level' in the definition of 'critical functions' (Article 2(1), point (35), of BRRD). However, the PRES notes that a MS disagreed, and another only supported it, if it was further detailed what regional impact meant.

Considering the above, the Presidency believes there is broad support to keep the Commission proposal as currently drafted. Article 2(1)(35) is, therefore, suggested to be amended as follows:

> (35) 'critical functions' means activities, services or operations the discontinuance of which is likely in one or more Member States to lead to the disruption of services that are essential to the real economy or to disrupt financial stability at national or regional level, due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations;

2.2. New reference to support provided from 'the budget of a Member State' in the resolution objective of protecting public funds (Article 31(2), point (c), of BRRD)

Most MS agreed to (a) introduce a new recital to ensure the new wording in the article is interpreted in a sense that extraordinary public financial support (EPFS) through the budget could be expected only after the possible use of industry-funded safety nets and (b) keep the Commission proposal on the article. However, among them, some MS insisted that MREL should remain the first line of defence and that losses should be primarily borne by shareholders and creditors, while other MS wanted to ensure that any wording still allows MS to provide a backstop to the Resolution Fund, that when industry-funded safety nets are considered within the State budget, these are to be used before the rest of budget resources, or that it does not exclude absolutely EPFS. Finally, among the MS accepting the proposed way forward of the Presidency, some MS believe financial support provided by industry funded safety nets should not be qualified as EPFS or ask for the revision of the State Aid regime, to differentiate between EPFS originating from State Budget and industry safety nets. At the same time, other MS disagree with proposed way forward because, in their view, it could be interpreted as a way to encourage bailouts by industry funds or because any EPFS is always State aid and the State Aid regime does not differentiate between these funds.

Based on the existing feedback, the Presidency considers that there is broad support for the proposed way forward. The Presidency believes that the concerns expressed, while being legitimate, should be resolved by the rest of the BRRD text, which makes sure that (i) MREL is adequate and losses are primarily borne by shareholders and creditors, (ii) EPFS is not excluded per se (neither as a backstop to resolution funded safety nets nor in abstract). Furthermore, (iii) depending on specific conditions, industry-funded safety nets are currently considered State aid, and (iv) it is for the Commission to decide on a revision of the State aid regime following this CMDI review.

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The Presidency nevertheless takes into consideration practical concerns expressed by some MS and proposes to modify the suggested recital to ensure the new wording is interpreted correctly. For all of the above, the Presidency proposes (additions to last wording proposed in red):

- To introduce wording in the recital 11 which is suggested to be drafted as follows:

  (11) The assessment of whether the resolution of an institution or entity is in the public interest should also reflect, to the extent possible, the difference between, on the one hand, funding provided through industry-funded safety nets (resolution financing arrangements or DGSs) and, on the other hand, funding provided by Member States from taxpayers' money. Funding provided by Member States bears a higher risk of moral hazard and a lower incentive for market discipline. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, resolution authorities should find funding through the resolution financing arrangements or the DGS preferable to funding through an equal amount of resources from the budget of Member States. **In any case, the differentiation between both public and industry funding should not lead to the conclusion that extraordinary public financial support through the Budget is to be expected after the possible use of industry-funded safety nets. When industry funds are considered part of the public budget, they should be used prior to any other budgetary sources.**

- To keep the Commission proposal as currently drafted. Article 31(2), point (c) is suggested to be amended as follows:

  (c) to protect public funds by minimising reliance on extraordinary public financial support, in particular when provided from the budget of a Member State.

2.3. Changes to the resolution objective of protecting depositors (Article 31(2), point (d), of BRRD)

On the Commission proposal to include "while minimising losses for deposit guarantee schemes", most MS agreed not to include it, while other MS believe a reference should be included because they are concerned that DGS might be otherwise be suffering too many losses.

On the Presidency proposals regarding how the protection of deposits should be framed as a resolution objective, most MS favour keeping the current BRRD text which refers only to deposits covered by Directive 2014/49/EU. However, other MS believe a reference to all depositors should be included.

Considering the above, the Presidency believes there is broad support to keep the BRRD text but would suggest also including a new recital mirroring recital 72 of the original BRRD.

Hence, the Presidency proposes not to amend the current BRRD wording on resolution objective of deposits. Article 31(2), point (d) would then remain as follows:

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'(d) to protect depositors ~~while minimising losses for deposit guarantee schemes~~ **covered by Directive 2014/49/EU** and investors covered by Directive 97/9/EC; '

A new recital X would be included.

New recital

'(X). Resolution authorities should be able to exclude or partially exclude liabilities in a number of circumstances including where the exclusion of the application of the bail-in tool to these liabilities is necessary to avoid the spreading of contagion and financial instability which may cause serious disturbance to the economy at a national or regional level. When carrying out this assessment, resolution authorities should give consideration to the consequences of a potential bail-in of non-covered deposit liabilities.'

2.4. Amendments to the comparison between resolution and national insolvency proceedings (Article 32(5), first subparagraph, of BRRD)

The Presidency proposed 3 options:

- Option 5.1: staged approach in determining PIA + maintaining "more effectively" in the comparison between insolvency and resolution).
- Option 5.2: presumption for insolvency + maintaining "more effectively" in the comparison.
- Option 5.3: Insolvency remains the default approach but qualified for some scenarios for which resolution is likely + reverting to "lesser extent" in the comparison.

The Presidency believes that views were split between basically maintaining the current BRRD text and changing it and making specific changes to the public interest assessment.

Considering the above, the 16 June 22 Eurogroup statement calling to *`build a crisis management framework suited for all types of banks'*, and that, as confirmed in the WP discussions, most MS agree that more institutions should be subject to resolution, but not all of them, the Presidency believes there is merit suggesting the option 5.1 of the Presidency note on PIA, as the basis for further discussions.

This staged approach should enable filtering the large majority of smaller institutions which should continue to be placed in liquidation by looking at whether the resolution objectives are at risk (i.e. without too much burden of proof). However, for those institutions which are too big to liquidate, the resolution authorities will have additional legal grounds to place them in resolution with all the consequences inferring from the choice of strategy (MREL, resolvability, reporting, disclosures).

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New recital – option 5.1

'**(X). Although a failing institution should in principle be liquidated under normal insolvency proceedings, such liquidation under normal insolvency proceedings might, in some cases, jeopardise financial stability and interrupt the provision of critical functions. This could be the case, for instance, when the institution is of a relevant size or when insolvency would likely imply losses on some deposits or significant difficulties in the continuity of access to some deposits, which are deemed by the resolution authority to have an impact on the provision of critical services or financial stability through contagion or on the real economy. In such cases it is highly likely that there would be a public interest in placing the institution under resolution and applying resolution tools rather than resorting to normal insolvency proceedings.**'

Article 32(5) – option 5.1

'5. **In order to determine whether a resolution action shall be treated as in the public interest for the purposes of paragraph 1, point (c), the resolution authority shall, in a first stage, assess whether any of the resolution objectives would be at risk in case the institution would be wound up under normal insolvency proceedings. Resolution action shall be treated as not being in the public interest if none of the resolution objectives would be at any risk in case the institution would be wound up under normal insolvency proceedings.**

In case the outcome of the assessment referred to in the first subparagraph is such that one or more of the resolution objectives would be at risk in case the institution would be wound up under normal insolvency proceedings, the resolution authority shall, in a second stage, assess whether a resolution action is necessary for the achievement of, and is proportionate.

In case the outcome of the assessment referred to in the second subparagraph results in a determination that resolution action is necessary and proportionate to one or more of the resolution objectives referred to in Article 31, a resolution action shall be in the public interest for the purposes of paragraph 1, point (c) if, in the assessment of the resolution authority, winding up of the institution under normal insolvency proceedings would not meet those resolution objectives more effectively.

~~For the purposes of paragraph 1, point (c), a resolution action shall be treated as in the public interest where that resolution action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives referred to in Article 31 and where winding up of the institution under normal insolvency proceedings would not meet those resolution objectives more effectively.~~

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2.5. Requirement to consider and compare all extraordinary public financial support that can reasonably be expected to be granted to the institution (Article 32(5), second subparagraph, of BRRD).

Most MS agreed not to include the proposed Commission amendment. However, some MS disagree because it would be incoherent to consider such EPFS as a resolution objective but not include how Resolution authorities should take it account.

Hence, the Presidency proposes not to amend the current BRRD wording on this matter and not incorporate the Commission proposed amendment on article 32.5 BRRD. Article 32.5 would then remain as above, without incorporating the proposed second paragraph:

> '~~Member States shall ensure that when carrying out the assessment referred to in the first subparagraph, the resolution authority, based on the information available to it at the time of that assessment, considers and compares all extraordinary public financial support that can reasonably be expected to be granted to the institution, both in the event of resolution and in the event of winding up in accordance with the applicable national law.~~'

Questions for Member States **In the spirit of reaching a final compromise on the CMDI file, pending agreement on all other issues:** **1. Do you agree with the proposed drafting to the different elements considered as a basis for possible future compromise? Is there any source of particular concern which would prevent us from considering this as a possible final agreement on these topics?**

3. Funding in resolution topics and other selected issues

At the WP on October 31st the Presidency presented for consideration a set of 2 coherent packages of options elaborating on three elements: (A) MREL calibration, (B) DGS bridge safeguards and (C) the creditor hierarchy enabling DGS contributions under the LCT. These were not intended as rigid proposals, but rather to refine previous ideas and test grey areas while insisting on the need to maintain a coherent proposal/package. The aim was that the discussion on the presented preliminary elements contributed to better understanding options to facilitate convergence.

Annex I recaps the takeaways from MS comments on Funding in resolution before the last WP. In the meeting, MS did not show support for any of the two packages presented. However, a possible landing zone emerged: in broad terms, the Presidency considers that most MS, are open to study a 2-tier deposit creditor hierarchy. Among

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these, some MS believe that the best option is the Commission proposal. On the other side, some MS would prefer to maintain the current 3-tier deposit hierarchy (i.e. superpreference of covered deposits) and follow other options to unlock the DGS funds to bridge the funding gap.

Regarding the specific elements of each of the options:

A. MREL Calibration for transfer strategies.

On the possibility to include the "depth of the market" as an element for MREL calibration, some MS argue in favour while other MS are against.

Besides, some MS could agree with establishing a floor for this MREL calibrated to take into account the specificities of transfer strategies, while other are against. But no specific proposals were presented, just references to the fact that calibrations should be closely correlated to the credible implementation of the resolution tools being planned, or that it is not convenient to water down existing safeguards. Allegedly, such correlation should also be admissible where the combination of tools credibly allows for the downsizing of institutions whose main resolution tool is the bail-in, when the bail-in is accompanied by the transfer of a certain perimeter to be carved-out from the original institution.

A MS suggest that a lower MREL calibration could indirectly result in higher effective MREL levels by reducing false negative PIAs.

B. DGS bridge-the-gap

Most MS could agree to establish limits on the use of DGS to bridge the funding gap but, among these, some remark that they could only agree on establishing such limits if those can be waived to ensure DGS funds can be unlocked. Other MS are against any such limit. One MS raises the need to revisit the role played by DGS if non-covered deposits are transferred, considering that DGS should play a bigger role when most of the liabilities transferred are covered deposits. Besides, a minority of MS consider that any intervention by the DGS in resolution should not count for the 8% threshold, while many other MS consider that any intervention by the DGS should count. Moreover, comments were also raised suggesting a possible reduction of the 8% TLOF limit for smaller institutions in specific circumstances. Finally, a MS warns that excluding liquidation entities from accessing the BtG might compromise financial stability. Some MS raise governance issues and consider that the BtG could be acceptable if the DGS designated authority had the power to activate the BtG.

Following proposals from Delegations the Presidency requested information from the SRB on contributions to the SRF by institutions earmarked for liquidation or resolution via transfer strategies. This seems to be relevant to understand the merits of institutions under consideration in this file to access the SRF and whether otherwise larger institutions would be leveraging on funding from smaller ones which might in fact not find it possible to benefit from their contributions. Please refer to Annex 2 for more details, but it seems reasonable to consider that circa 10% of the EUR 7.74 bn

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has been contributed from banks where the preferred resolution strategy relies on a transfer tool and 13% or EUR 10 bn from banks earmarked for liquidation.

C. Creditor hierarchy and LCT

Some MS believe that the creditor hierarchy among deposits has to be discussed separately to determine which deposits merit more protection than others in resolution, while other MS stress that hierarchy and DGS bridge topics are interrelated, as the creditor hierarchy is the binding condition that currently limits the unlocking of DGS funding to bridge-the-gap.

Regarding the 2-tier proposal presented by the Presidency, in addition to the MS willing to pursue this option, other MS see it as a step on the right direction, although, as stated above, some MS would prefer to maintain the current 3-tier deposit hierarchy (i.e. superpreference of covered deposits) and follow other options to unlock the DGS funds to bridge the funding gap, while other MS believe that the best option is the single tier.

Comments have been raised (in writing and during the last WP) on the size of the initially suggested junior tier. In order to illustrate discussions, the Presidency has requested the COM to present their best estimates on the issue: this is presented in Annex 3, referred to the October split proposal.

Some MS stress the need to ensure the bail-inability of the deposits that count as MREL. These MS stress the need to signal that certain deposits made for investment purposes should be included in the junior tier as they could be a way to arbitrage securities investment but some MS underline the need to qualify that not all corporate deposits in the eventual new junior tier are made for investment purposes. Some other MS mention that we should not create the expectation that some deposits will always be protected. Finally, a MS stresses the apparent incoherence of having a creditor hierarchy that puts interbank deposits on a junior tier while being excluded from bail-in.

Regarding the LCT, some MS willing to study a 2-tier, emphasize the need to make the LCT flexible enough to ensure DGS funds are unlocked. Some MS are in favour of waiving the LCT altogether (through expanded indirect cost and/or systemic exemption) to ensure it is possible to maintain their current 3-tier with the possibility to unlocking DGS funds to bridge the funding gap. In relation to this specific topic, a few MS were reluctant to include those indirect costs. The possibility of an EBA guidance on indirect costs is suggested by some as option.

Based on the existing feedback, the Presidency would like to present for consideration the following packaged option.

A. MREL calibration for transfer strategies

The Presidency considers that:

- MREL must be calibrated according to the resolution strategies planned by RAs for each specific institution. Therefore, if the RA considers that a feasible

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resolution strategy involving a transfer tool needs a lower amount of MREL in comparison to a bail-in only strategy, the determined MREL could be lower than the one currently established in the BRRD in consideration of a simple open-bank bail-in strategy.

- But MREL must be set in a prudent manner. Therefore, in the particular case of institutions which would not exit the markets (i.e. combination of open-bank bail-in plus a partial transfer of the initial perimeter) the lack of support to the core institution from an external purchaser and their most likely bigger size and more complex structure advises to be particularly prudent and add a floor to the MREL requirement for this subgroup of institutions, with respect to MREL calibrated for a bail-in-only strategy.
- On a more general note, MREL should be determined considering only the institutions' resolvability (I.e. separability of specific elements), without taking into consideration external elements such as the ability to access the markets. In the same vein, if an institution is not identified as having a public interest, resolution considerations should not apply to it.

For all of the above, the Presidency suggests:

1. **The MREL treatment in art. 45ca should always be the result of the RAs assessment of the feasibility of separability** of a potential perimeter of assets and liabilities to be transferred, as a condition to secure resolvability at the planning stages.
2. **Retaining in article 45ca the proposal for an MREL calibration for transfer strategies.** But simplifying its content to include only the previous condition regarding the feasibility of the resolution actions and key criteria to be considered. This should provide support to the different adaptations of the full MREL already developed by RAs, without going into the detail of such categories so that the different policies adopted to secure enough MREL to operationalize resolution strategies may be retained. In this regard, the Presidency considers there might be merit in exploring the possibility to set a mandate for EBA guidance on the content of the core simplified categories.
3. **Such criteria would not include the "depth of the market" criterion**. And art. 45ca would not be made extensive to liquidation institutions for which an add-on to the capital requirements has been established (I.e. removal of art. 45ca paragraph 2).
4. **Not excluding the application of the rules in art. 45ca to situations where the transfer is secondary to an open-bank bail-in** as preferred resolution tool (open-bank bail-in as main tool plus a partial transfer strategy). This application would require as an additional condition that the MREL would need to reach at least an 8% TLOF with issued securities or non-cancellable subordinated deposits. This condition would secure access to the resolution funds.

B. DGS bridge-the-gap

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The Presidency considers that:

- DGS is the only industry-funded safety net available to bridge the funding gap created by the potential need to transfer some deposits without reaching the 8% threshold, if a well calibrated MREL proves to be insufficient.
- Institutions earmarked for both transfer strategies or liquidation have made so far relevant contributions to resolution funds, suggesting there is merit in allowing some sort of access to their financial means.
- Nevertheless, for institutions changing from liquidation to resolution due to changes in the PIA assessment, a certain transitional period should be considered so that they build up their initial MREL and internal burden sharing capacities before being considered eligible for the BtG.
- When noncovered deposits are transferred, the financing burden of covered deposits might not completely rely on the Resolution funds.
- There is merit in further discussing the case presented to include a Systemic Risk Exception clause in the BRRD to align EU regulations with international standards by securing a fallback option for extremely rare although not completely discardable situations.

For all of the above, the Presidency suggests:

4. **Broadly maintaining the COMs proposal in article 109 as it currently stands. With a transitional period for newcomers.** As regards the latter, institutions changing from insolvency to resolution would not be admissible to the BtG option before they meet their initial MREL requirements for the first time.
5. **Introducing a Systemic Risk Exception clause** for extremely rare although not completely discardable situations, facilitating access to already existing BRRD tools, coupled with strict governance including EU level authorities and provided that capital and debt holders will continue to contribute to funding the resolution action to the maximum possible extent.
6. **Division of labor between Deposit Guarantee Schemes and Resolution Funds:** Assessing possible options to ensure that, when non-covered deposits are transferred, the burden associated to covered deposits is borne equitably by resolution funds and DGSs.

C. Creditor hierarchy and LCT

The Presidency considers that:

- Whilst the possibility of a funding gap is widely acknowledged, there is no strong appetite amongst MS to allow direct access to resolution funds through the unconditional use of DGSs funds (for example, without applying any LCT or any other safeguard) or the reduction in the 8% TLOF requirement. Therefore, there is a need to seek an alternative avenue.
- A 2-tier creditor hierarchy for deposits (and a more flexible LCT) would ensure that sufficient DGS funds are unlocked to bridge a potential funding gap. To

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ensure sufficient funding capacity there needs to be a balance between the creditor hierarchy and other elements of the LCT, such as indirect/contagion costs.

- Some deposits merit less protection in insolvency, and thus, theoretically, also in resolution. In this regard, it is important to note that the protection in insolvency and in resolution are not always correlated. For instance, since in resolution the continuity of functions is key, some liabilities such as interbank liabilities might merit a junior status in insolvency while being automatically excluded from bail-in in resolution. The latter situation represents a NCWO risk which should warrant certain flexibility to the benefit of RAs.
- To secure coherence to the proposal, although on a slightly different note, it is also important to flag that the lower/higher protection-worthiness of a certain deposit is not dependent on the institution holding the deposit, be it big or small, but on the characteristics of the deposit itself.
- The deposits that merit less protection are those that are investment-like instruments held by corporations and others with highly professionalized staff dedicated to treasury management.
- The LCT is relevant not only for using the DGS in resolution but also in preventive and alternative measures.
- One possible proxy for measuring the risk of contagion and of increased losses for the DGS that meet these criteria could be the amount of losses that deposits that meet the conditions under Article 44(3) BRRD would have suffered in insolvency. The assumption is that if the circumstances for exemption of certain or all non-covered deposits from bail-in are met (lets recall it is a condition to BtG), those circumstances would remain relevant if the bank is liquidated. In other words, regardless of the resolution or insolvency scenario, imposing losses on those deposits would give rise to widespread contagion and a serious disturbance to the economy of a Member State or of the Union, or a destruction in value that would increase losses also for other creditors'.

For all of the above, the Presidency suggests:

7. **Establishing a preferential 2-tier depositor creditor hierarchy,** where deposits would, in principle, be above any other senior liabilities, except where deposits are contractually subordinated under a bilateral agreement between the parts in the contractual relationship (only under this exception already existing in several MS it should be possible that deposits lie in a more junior tranche).
8. **Including in the junior tranche the following deposits**:
    - Non-covered deposits held by non-SME corporations with an initial maturity exceeding 6 months, and
    - Liabilities excluded from DGSs coverage according to article 5 of DGSD (pending final agreement on such article).
9. **The above clustering should also inform the already existing possibility in article 44.3 BRRD** to exclude all liabilities from bail-in in resolution, in so far as the categorization is basically dependent on the merits of the deposits and

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not of the holding institution. This could be done in a recital. However, we suggest not to amend art. 44.3 BRRD to prohibit any possible exclusion from bail-in as it might be necessary to extend exclusions even to more junior liabilities to prevent the NCWO situation previously described in relation to interbank deposits and others according to art. 44.2 BRRD.

10. **Including a LCT that is sufficiently flexible by incorporating indirect/contagion cost.** For instance, considering that resolution authority has assessed that some non-covered deposits have to be excluded from bail-in because of financial stability risks, it can be said that, in insolvency, those risks will materialize if non-covered deposits suffer losses, hence, those losses could be used as a proxy for the DGS indirect costs. A simpler approach could be allowing a haircut to expected recoveries.
11. **Reminder that all deposits, with the exception of covered deposits, are bail-inable liabilities.**

D. **Other selected issues**

The Presidency considers that some of the above proposals may have an indirect impact on issues not specifically related to resolution or insolvency, but still relevant to the well-functioning of the EU banking sector, as mentioned by several Delegations. We are specifically referring to the impact on profit and loss accounts via additional contributions (also connected to the proposed changes to Irrevocable Payment Commitments -IPCs-) and the correct functioning of Institutional Protection Schemes -IPSs-.

The Presidency reckons that both IPCs and IPSs are of relevance to a final balanced agreement and would like to recall that there will be a need to revisit them in due course to deliver on the mandate by the Eurogroup in an overall balanced manner.

Regarding IPCs, the Presidency notes that, according to the COM's statements in the CWP, it was never intended that amendments to the IPCs should have an impact on P&Ls or prudential treatment.

On IPS, following what was stated by the Eurogroup in June 2022, it is important that the harmonized and improved framework for CMDI and, in particular, for the funding of resolution, preventive and alternative measures, takes due "*account of the specificities in the national banking sectors, including by preserving a functioning framework for institutional protection schemes to implement preventive measures*".

Questions for Member States

Considering the discussions held so far and the different views expressed by MS on the issue of funding, and that this topic is still work in process:

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1. **Do you agree that this proposal combining the calibration of MREL according to the resolution strategy, the maintenance of the BtG as the way to overcome the funding gap and a two-tier depositor hierarchy seems to be the most consensual way forward to deliver on the Eurogroup mandate, and should be further explored? Have you identified a more promising landing zone?**
2. **Could you please share with the WP views on any of the 11 proposals put forward for consideration which you would consider might help to reach a final agreement? Is there any element which should be added or deleted to improve the mix?**

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Annex I. Current state of affairs on PIA and funding in resolution

I. PIA

The Presidency concluded, and was later confirmed by MS, that the Council would like to advance along the following lines (same wording as in PRES note on PIA discussed in October, 9th).

- Most MS agree that more institutions should be subject to resolution, but not all of them.
- Most MS agree that there is not a general case for "too small for resolution": while small institutions could be subject to national insolvency procedures if those are efficient and do not endanger the resolution objectives, it could be conceived that, depending on the circumstances, a small institution could be earmarked for resolution.
- At the same time, the existing practice with the current BRRD shows that the same wording can lead both to an ample resolution scope and to a limited resolution scope.
- Most MS agree that, if insolvency proceedings are efficient and/or the resolution objectives are not considered to be at risk, wind-down through ordinary insolvency procedures is to be expected.
- Most MS agree that imposing losses on some deposits might have an impact on financial stability and effects on the real economy, but their views differ (i) on the need to include the protection of those deposits as a resolution objective in absolute terms, and (ii) on what such deposits really are.
- Some MS consider that more clarity should be given to what a new resolution scope would look like. However, it is also noted that resolution authorities, and in a Banking Union context, national resolution authorities in particular, have discretion on the matter. Hence, to some extent, they should be best placed to estimate the impact of the changes in their Member State for the entities under their direct responsibility.
- Most MS are aware that expanding the scope implies additional costs for the institutions. Some MS believe that, in some instances, these costs would not be proportionate to the benefits of preparing for resolution instead of insolvency.

II. Funding in resolution.

The Presidency concluded, and was later confirmed by MS, that the Council would like to advance along the following lines (same wording as in PRES note on PIA discussed in October, 31st, except for the additions in red underline).

1. **On MREL for transfer strategies,** all MS agree that MREL is the first and main line of defence. Besides, there is broad support to include article 45ca in the BRRD. However, there is less agreement on the criteria to be included and whether more safeguards should be included to ensure MREL is adequate.

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Finally, some MS would like more details on some of the criteria and some argue in favor of delegating to EBA for specifying them.

2. **On MREL for liquidation strategies,** the Presidency considers that MS still have split views on the need to require an MREL add-on for liquidation entities outside resolution based on the same list of criteria as in MREL for transfer strategies.
3. **On bridging the possible funding gap**, the Presidency considers that MS broadly agree with the existence of a possible funding gap but disagree with the means to close it (and some disagree about its real size): some MS favour higher MREL, others believe the 8% threshold to access the RF for smaller banks should be revisited. However, most MSs seem to accept the use of DGS resources to bridge the funding gap if enough safeguards (and MREL) are set.
4. **On creditor hierarchy**, the Presidency believes that most MS are willing~~would prefer~~ to discuss a two-tier depositor preference. However, at the same time, on the one hand, some MS ~~still~~ support the single-tier proposal because it is instrumental to unlocking the most funds from the DGS to close the potential funding gap which is, in turn, supported (or accepted by most), while, on the other hand, other MS remain reluctant to change the current superpreference of covered deposits.
5. **On LCT**, the Presidency considers that there is broad support to harmonise the LCT for all DGS intervention outside payout (preventive, alternative and resolution measures). Some MSs see leeway to amend the proposed LCT to ensure that, even with a 2-tier deposit preference framework, DGS can provide funding for a potential BtG (and for preventive and alternative measures).
6. **On impact analysis,** some MS argue in favor of carrying out a precise and comprehensive impact analysis**, considering that the existing work and presentations** are not sufficient, while other MS consider that the current pre-study is adequate, considering in particular the timeframe given by the June 16th Eurogroup Statement.

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Annex 2. CMDI – Recent Presidency data requests

1. Ex ante contributions to the Single Resolution Fund

For the 2023 contribution cycle, EUR 11.8 billion were collected, of which:

- 77% from banks where the preferred resolution strategy relies on the bail-in tool
- 10% from banks where the preferred resolution strategy relies on a transfer tool
- 13% from banks earmarked for liquidation

Given that the scope of the public interest assessment and the choice of strategies have changed over the last eight years during which contributions have been collected, it is not possible to define with full accuracy the shares of contributions coming from banks with transfer strategy and earmarked for liquidation. However, the SRB states that these ratios have been relatively stable, and that they can be used as an approximation for the total size of the SRF (EUR 77.4 bn):

~10% or EUR 7.74 bn from banks where the preferred resolution strategy relies on a transfer tool.

~13% or EUR 10 bn from banks earmarked for liquidation.

2. Additional breakdown of deposit structures

Based on feedback received from the SRB, part of the information requested by the Presidency is not available on the basis of the reporting currently in place. More specifically:

- The maturity breakdowns available in the liability data reports can distinguish non-covered deposits with residual maturity (i) below 1 month, (ii) above 1 month and below 1 year, (iii) above 1 year and below 2 years and (iv) above 2 years. There is no distinction for deposits with residual maturity of above 6 months. There is also no information if the original maturity is considered.

- The information on account balances of individual depositors available in the liability data reports is aggregated for all covered and preferential deposits as well as for all non-preferential and non-covered deposits of residual maturity of less than 1 year. These deposits are grouped by counterparty type, insolvency ranking and secure/unsecured and it is not possible to distinguish individual depositors. NCNP deposits with a residual maturity of 1 year and more are reported on a transaction basis, with each transaction reported as an individual row item and without any reporting thresholds. However, the SRB warns about the quality of these data in granular tabs of the liability data reports. It follows that the SRB cannot distinguish individual households/SMEs with certain amount of deposits, while it could be possible to distinguish individual corporates with NCNP deposits of above/below 10 million EUR, subject to data quality issues. On this latter point, more policy analysis would be required on the pros and cons of any tiering based on such quantitative thresholds before launching any data collection.

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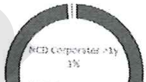
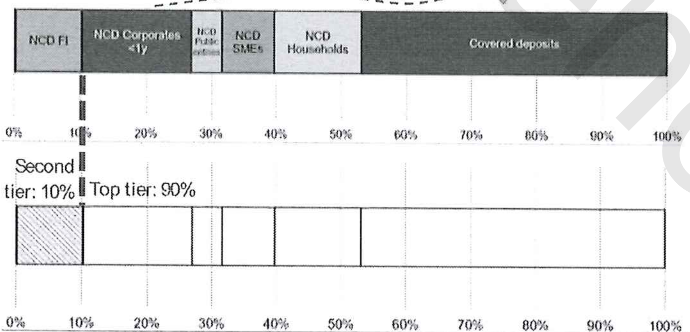
Annex 3: Breakdown of deposits under the two-tier depositor preference regime submitted by the ES Presidency

SRB data (end 2022)

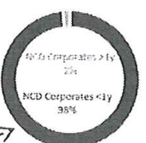
Please see p.2 of the document prepared by EC "EU depositor base" for the 20/07/2023 CWP for more precisions on the scope.

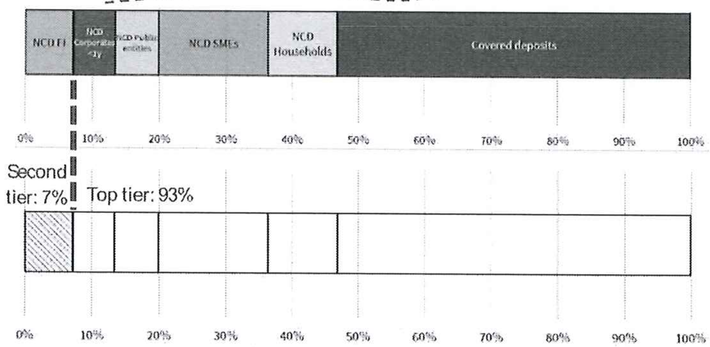


Significant institutions



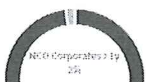
Less significant institutions



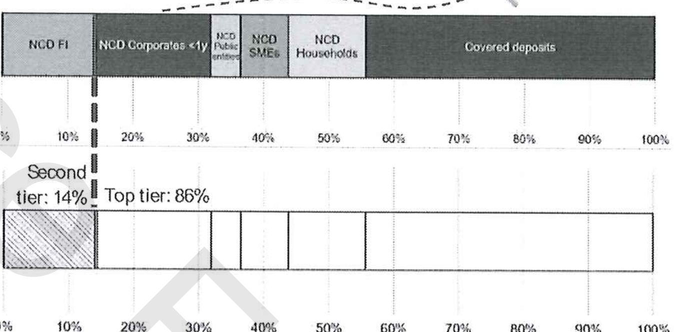


EBA data (end 2021)

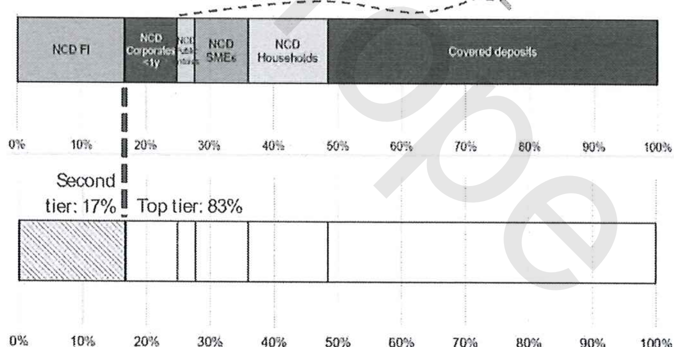
Please see p.2 of the document prepared by EC "EU depositor base" for the 20/07/2023 CWP for more precisions on the scope.



Banks with total assets > 30 EUR bn[1]



Banks with total assets < 30 EUR bn



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1 In the Liability Data Report template (that was used as a basis for this data compilation), liabilities excluded from bail-in are reported separately from liabilities not excluded from bail-in. Therefore, short deposits of financial institutions with a maturity below 7 days are not included in the scope of the second tier depicted in this one-pager (as they are not bail-inable).

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