

The changes made to this compromise compared to last iteration are marked in yellow.

Please note that this revised compromise includes several provisions to accommodate the concerns raised by the IPS. In addition to the elements included in this compromise, we propose to:

- Revert to the current text on Article 13(1) 3rd sub-paragraph and keep the option for Member State to decide that members of IPS pay lower contributions to the DGS;
- Reinsert the specific transitional provisions for IPS but limiting it to 36 months (as proposed by SD).

SD comments are highlighted in this colour

Document reflects also outcome of discussion in technical meeting on 20 February 2024.

Version 7 - 2024.02.20: COMPROMISE A Article 11 to 11e - DGSD

Please note: Changes after technical meeting of 26 January 2024 marked green. Comments/ changes from previous meetings marked light blue.

(Covers: AM 40 Urtasun; AM 41 Urtasun; AM 42 Urtasun; AM 43 Urtasun; AM 44 Urtasun; AM 45 Urtasun; AM 46 Urtasun; AM 47 Urtasun; AM 48 Urtasun; AM 49 Urtasun; AM 50 Urtasun; AM 51 Urtasun; AM 52 Urtasun; AM 53 Urtasun; AM 54 Urtasun; AM 55 Urtasun; AM 56 Urtasun; AM 57 Urtasun; AM 58 Urtasun; AM 59 Urtasun; AM 60 Urtasun; AM 62 Urtasun; AM 63 Urtasun; AM 42 Urtasun; AM 43 Urtasun; AM 44 Urtasun; AM 45 Urtasun; AM 46 Urtasun; AM 47 Urtasun; AM 48 Urtasun; AM 49 Urtasun; AM 50 Urtasun; AM 191 Niedermayer; AM 196 Marques, Lalucq, Repasi, Fernández; AM 197 Ferber, Dorfmann; AM 198 Marques, Lalucq, Repasi, Fernández; AM 199 Zanni, Grant, Rinaldi; AM 200 Castaldo; AM 201 Marques, Lalucq, Repasi, Tinagli, Fernández; AM 202 Zanni, Grant, Rinaldi; AM 203 Castaldo; AM 204 Schuster; AM 205 Eroglu; AM 206 Marques, Lalucq, Repasi, Fernández; AM 209 Boyer, Yon-Courtin; AM 210 Ferber, Dorfmann; AM 211 Marques, Lalucq, Repasi, Fernández; AM 212 Boyer, Yon-Courtin; AM 213 Boyer, Yon-Courtin; AM 214 Zanni, Grant, Rinaldi; AM 215 Marques, Lalucq, Repasi, Tinagli, Fernández; AM 216 Boyer, Yon-Courtin; AM 218 Castaldo; AM 219 Zanni, Grant, Rinaldi; AM 220 Marques, Lalucq, Repasi, Tinagli, Fernández; AM 221 Zile; AM 222 Boyer, Yon-Courtin; AM 223 Niedermayer; AM 226 Marques, Lalucq, Repasi, Tinagli, Fernández; AM 228 Schuster; AM 229 Boyer, Yon-Courtin; AM 230 Niedermayer; AM 231 Boyer, Yon-Courtin; AM 234 Boyer, Yon-Courtin; AM 235 Niedermayer; AM 236 Niedermayer; AM 237 Boyer, Yon-Courtin; AM 238 Boyer, Yon-Courtin; AM 239 Boyer, Yon-Courtin; AM 240 Boyer, Yon-Courtin; AM 241 Niedermayer; AM 247 Marques, Lalucq, Repasi, Fernández; AM 248 Zanni, Grant, Rinaldi; AM 249 Castaldo; AM 250 Zanni, Grant, Rinaldi; AM 251 Castaldo; AM 252 Boyer, Yon-Courtin; AM 253 Niedermayer; AM 254 Heinäluoma; AM 255 Heinäluoma; AM 256 Marques, Lalucq, Repasi, Fernández; AM 257 Zile; AM 259 Marques, Lalucq, Repasi, Tinagli, Fernández; AM 260 Castaldo; AM 261 Marques, Lalucq, Repasi, Tinagli, Fernández; AM 262 Marques, Lalucq, Repasi, Fernández; AM 263 Zile; AM 264 Niedermayer; AM 265 Boyer, Yon-Courtin; AM 267 Zanni, Grant, Rinaldi; AM 268 Castaldo; AM 269 Niedermayer; AM 270 Boyer, Yon-Courtin; AM 272 Marques, Lalucq, Repasi, Fernández; AM 273 Boyer, Yon-Courtin; AM 274 Niedermayer; AM 275 Heinäluoma; AM 276 García-Margallo y Marfil; AM 277 Marques, Lalucq, Repasi, Fernández; AM 278 Pedro Marques, Aurore Lalucq, René Repasi, Jonás Fernández; AM 281 Heinäluoma; AM 282 Boyer, Yon-Courtin; AM 284 Zanni, Grant, Rinaldi; AM 285 Marques, Lalucq, Repasi, Fernández; AM 286 Boyer, Yon-Courtin; AM 290 Boyer, Yon-Courtin; AM 291 Boyer, Yon-Courtin; AM 296 Boyer, Yon-Courtin; AM 297 Boyer, Yon-Courtin)

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

Article 1

Amendments to Directive 2014/49/EU

Directive 2014/49/EU is amended as follows:

(12) Article 11 is replaced by the following:

‘Article 11

Use of funds

1. Member States shall ensure that DGSs use the available financial means referred to in Article 10 primarily to ~~repay~~ **secure repayments to** 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.~~

(AM 40 Urtasun; AM 191 Niedermayer)

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.**

(AM 196 Marques, Lalucq, Repasi, Fernández)

3. Member States ~~may~~ **shall** 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 the following applies:

(AM 41 Urtasun; AM 198 Marques, Lalucq, Repasi, Fernández; AM 199 Zanni, Grant, Rinaldi; AM 200 Castaldo)

(a) **the credit institution has not been determined as failing or likely to fail in application of the competent and resolution authorities have confirmed that none of the circumstances referred to in** Article 32(4) of Directive 2014/59/EU ~~are present;~~

(Combined: AM 201 Marques, Lalucq, Repasi, Tinagli, Fernández; AM 202 Zanni, Grant, Rinaldi; AM 203 Castaldo; AM 204 Schuster; AM 205 Eroglu)

(aa) the DGS has confirmed that the intervention is necessary to preserve the financial soundness and long-term viability of the credit institution;

(AM 206 Marques, Lalucq, Repasi, Fernández)

(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;

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

~~(ca) — the credit institution has not benefitted in the last five years from any extraordinary public financial support measures as defined in article 32e of Directive 2014/59/EU.~~

(AM 209 Boyer, Yon-Courtin)

4. Where available financial means are used for preventive measures **or alternative measures** as referred to in **paragraphs 3 and 5 of this Article 11a**, the affiliated credit institutions shall **immediately without delay** 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 **or to intervene in resolution** arises and the available financial means of the DGS amount to less than two-thirds of the target level;

(AM 211 Marques, Laluqç, Repasi, Fernández)

(b) the available financial means of the DGS fall below **40 [62,5 25 %]** of the target level **following the financing of preventive measures**, **unless, the repayment schedule of the institution or institutions to which preventive measures are granted foresees a reimbursement by these institutions within 6 months resulting in the available financial means exceeding 40% of the target level;**

~~(ba) the available financial means of the DGS fall below **50 75 62,5 %** of the target level following the financing of alternative measures.~~

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 shall** 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, ~~provided that~~ **where all of the following applies:**

(a) 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;

(b) ~~and that~~ all the conditions laid down in Article 11d of this Directive are met.

~~(c) — the measure was envisaged in the resolution plan as defined in Articles 10 and 12 2(1), point (41), of the Directive 2014/59/EU, or in the group resolution plan as defined in Article 2(1), point (43), of that Directive;~~

(d) **where the measure takes the form of a transfer of assets or liabilities, the transferred liabilities take the form of one or more of the following:**

(i) covered deposits;

(ii) **eligible deposits from natural persons and micro, small and medium-sized enterprises;**

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

(iv) **any liabilities that ranked senior to covered deposits in the national creditor hierarchy of claims in insolvency.;**

(Combined: AM 42 Urtasun; AM 213 Boyer, Yon-Courtin; AM 214 Zanni, Grant, Rinaldi; AM 215 Marques, Laluqç, Repasi, Tinagli, Fernández)

(13) the following Articles 11a to 11e are inserted:

‘Article 11a

Preventive measures

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 **the designated authority, after consulting the competent authority and the resolution authority, approves in a timely manner the use of DGSs use the available financial means of DGSs** for the preventive measures referred to in Article 11(3), provided that all of the following conditions are met:

(Combined: AM 43 Urtasun; AM 218 Castaldo; AM 219 Zanni, Grant, Rinaldi; AM 220 Marques, Lahuqc, Repasi, Tinagli, Fernández; AM 221 Zile)

(a) **the request of a credit institution for the financing of such preventive measures is accompanied by a note containing measures as contained in the business reorganisation plan referred to in Article 11b aim 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 and are credible and feasible;**

(Combined: AM 44 Urtasun; AM 45 Urtasun; AM 222 Boyer, Yon-Courtin; AM 223 Niedermayer)

(b) **the credit institution has consulted the competent authority on the measures envisaged in the note referred to in Article 11b has confirmed that the conditions under Article 11b are met and that the measures are necessary to secure the financial soundness and the long-term viability of the credit institution;**

(Combined: AM 46 Urtasun; AM 47 Urtasun; AM 226 Marques, Lahuqc, Repasi, Tinagli, Fernández)

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

(Combined: AM 48 Urtasun; AM 228 Schuster)

(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;**

(AM 229 Boyer; Yon-Courtin)

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

(f) **the credit institution complies with its obligations under this Directive, has not already been subject to extraordinary public financial support or any preventive measure in the last 5 years and has fully complied with the reimbursement schedule of reimbursed any other previous preventive measure extraordinary financial support or any other preventive measure received in the last 10 years.**

(AM 230 Niedermayer; AM 231 Boyer, Yon-Courtin)

(AM 234 Boyer, Yon-Courtin)

(fb)

(AM 235 Niedermayer; AM 237 Boyer, Yon-Courtin)

(fc) the measures are not used to offset losses that the institution or entity has incurred or is likely to incur in the near future.

(AM 236 Niedermayer; AM 239 Boyer, Yon-Courtin)

(fd) the measures are of a precautionary and temporary nature and are based on a pre-defined exit strategy approved by the competent authority, including the explicit reference to a clearly specified termination date, sale date or repayment schedule [or sale date] for any of the measures provided;

(AM 238 Boyer, Yon-Courtin)

By way of derogation from the first sub-paragraph, where the benefitting institution belong to an IPS, the IPS shall determine, based on the results of the least cost test referred to in Article 11e, the amount of the available financial means for preventive measures subject to the approval of the designated authority

(AM 240 Boyer, Yon-Courtin; AM 241 Niedermayer)

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.

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.

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

Member States shall ensure that the DGS 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.

(Combined: AM 49 Urtasun; AM 247 Marques, Lалуç, Repasi, Fernández)

4a. EBA shall develop draft regulatory technical standards to specify the following:

~~(a) — the methodology for assessing the credibility and feasibility of preventive measures under paragraph 1, point (a);~~

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

~~(b-e)~~ the monitoring systems and decision-making procedures that DGSs are to have in place in accordance with paragraph 2;

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

EBA shall submit those draft regulatory technical standards to the Commission by ... [one year from the date of entry into force of this amending Directive].

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.

(Combined: AM 50 Urtasun; AM 248 Zanni, Grant, Rinaldi; AM 249 Castaldo)

‘Article 11b

Note accompanying **Requirements for financing** preventive measures

(AM 51 Urtasun)

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 **credible and feasible business reorganisation plan** consultation a note with measures that those credit institutions commit to undertake to **ensure and secure long-term viability and compliance with the applicable supervisory requirements in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013.**

~~Member States shall ensure that, upon the request of the competent authority, a DGS can finance preventive measures in accordance with Article 11(3) of this Directive where the competent authority considers that those measures would enable the credit institution to maintain or restore compliance with the applicable supervisory requirements applicable to the credit institution concerned and that are laid down in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013. In that case, the credit institution shall present the business reorganisation plan referred to in the first subparagraph of this paragraph to the competent authority.~~

(Combined AM: AM 52 Urtasun; AM 250 Zanni, Grant, Rinaldi; AM 251 Castaldo; AM 252 Boyer, Yon-Courtin; AM 253 Niedermayer; AM 254 Heinäluoma)

2. The ~~note~~ **business reorganisation plan** 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.

(AM 255 Heinäluoma)

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

subparagraph, of Directive 2014/59/EU if the conditions under that paragraph Article (6) of Directive 2014/59/EU are met.

(Combined AMs: AM 53 Urtasun; AM 256 Marques, Lalucq, Repasi, Fernández; AM 257 Zile)

3.

(Combined: AM 56 Urtasun; AM 260 Castaldo; AM 261 Marques, Lalucq, Repasi, Tinagli, Fernández)

OPTION B:

3. Member States shall ensure that in the event of a capital support measure under paragraph 1, first subparagraph, the available financial means of a DGS covers only the capital shortfall as determined by the competent authority and evidenced in the business re-organisation plan. The capital shortfall shall be determined on the basis of the following elements as evidenced in the business re-organisation plan:

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

(b) capital raising measures to be implemented within six months of submission of that business reorganisation plan;

(c) safeguards preventing outflows of funds including measures referred to under paragraph 5;

(d) where deemed appropriate, contributions by shareholders and subordinated debt holders of the supported credit institution in the form of write down and conversion of eligible instruments.

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

By way of derogation of this paragraph, IPS may determine the capital shortfall subject to the approval by the competent authority.

S&D COMMENTS

- S&D preferred a more prudent approach to this subject and requested a less prescriptive option - and we acknowledge the new proposal by the Greens goes towards that direction, which we appreciate.
- Nevertheless, by analysing the Communication's section on recapitalisation (3), its criteria for burden-sharing by shareholders and subordinated creditors (3.1.2) implies that this approach was designed for entities already FOLTF - because there is no option for writing down of such instruments before FOLTF.
- Inserting comparable criteria on preventive measures could have an adverse effect of increasing the likelihood of an entity becoming FOLTF because the use of preventive measures became excessively strict. Therefore, we think reaching a balance requires a more prudent text.

- EPP's reluctance to touch upon subjects related to the Banking Communication of 2013 is, thus, understandable. Notwithstanding, the Commission's proposal is very limited, in the sense that it merely requires the note (which accompanies the request for preventive measures) to include some information. This is not enough.
- Firstly, we should ensure a sufficient level of harmonisation is established for preventive measures. Not merely in information provided via the note/business reorganisation plan, but in the actual way each CA determines the capital shortfall.
- Secondly, perhaps even more importantly, we must ensure that private DGS face the same conditions as public DGS. The former are not subject to conditions deriving from the Banking Communication (see Section 5, point 63), which means CMDI should establish comparable criteria.
- Therefore, as a basis for a compromise, we kindly ask you to consider a solution based on the following principles:
 1. Full harmonisation of the information provided under the business reorganisation plan, following the Commission's proposal as closely as possible. That includes a removal of explicit references to writing down, since this will raise huge red flags (see my deletion on Option B's text).
 2. Indicate that the capital shortfall should be determined by the competent authority, taking into account the information provided by point 1.
 3. By derogation of 2, grant IPSs the option to determine the capital shortfall, subject to approval of the competent authority.
 4. Request the EBA to make a report after 3 years of entry into force, assessing the need to further harmonise the methodology.

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

~~*Where the available financial means of a DGS have been used for preventive measures under this paragraph, Member States shall ensure that capital support measures are not taken until at least 18 months have elapsed since the date on which measures under this paragraph were implemented.*~~

~~*(Covers:AM 57 Urtasun)*~~

5. ~~*Where relevant, Member states shall ensure that no dividends, share buy-backs or variable remuneration are paid out and no irrevocable commitment to pay out dividends, share buy-backs or variable remuneration is undertaken by the supported credit institution. [The competent authority may exceptionally partially restrict this prohibition where the credit institution establishes to the satisfaction of the competent authority that it is legally bound to pay out the dividends.]*~~

~~*Member States shall ensure that the supported credit institution does not undertake any irrevocable commitment to pay out dividends, share buy-backs or variable remuneration once a request by the credit institution or competent authority to finance preventive measures has been made under paragraph 1 of this Article. Dividends, share buy-backs or variable remuneration can be paid out by the credit institution unless the*~~

~~relevant commitment was undertaken less than three months before the request of the credit institution or competent authority under paragraph 1 of this Article.~~ Member States shall ensure that the measures envisaged in the note referred to in *restrictions under this paragraph 1* are aligned **remain in place until the supported credit institution has reimbursed the DGS** with the capital conservation plan referred to in Article 142 of Directive 2013/36/EU **same amount used for the preventive measures.**

(Combined: AM 58 Urtasun; AM 262 Marques, Lalucq, Repasi, Fernández; AM 263 Zīle)

5a. Member States shall ensure that the beneficiary credit institution, its shareholders, its creditors or the business group to which it belongs, contribute to the restructuring from their own resources and provide an adequate remuneration for the preventive measure granted by the DGS. Member States shall ensure that the DGS 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 DGS for the preventive measures granted to support liquidity provision.

(Covers: AM 264 Niedermayer; AM 265 Boyer, Yon-Courtin)

5b. Member States shall ensure that where the competent authority is not satisfied that the measures included in the business reorganisation plan referred to in paragraph 1 are credible and feasible or that the requirements under paragraphs 3 to 5a are met, the DGS does not grant any preventive measures to the credit institution concerned.

(Covers: AM 59 Urtasun)

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

(Combined: AM 60 Urtasun; AM 267 Zanni, Grant, Rinaldi; AM 268 Castaldo; AM 269 Niedermayer; AM 270 Boyer, Yon-Courtin)

6a. The competent authority shall provide the business reorganisation plan to the resolution authority. The resolution authority may examine the business reorganisation plan with a view to identifying any actions which 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.

When applicable, the consultation granted under the previous subparagraph shall be extended to the relevant IPS.

(AM 272 Marques, Lalucq, Repasi, Fernández)

6b. The competent authority shall ~~have two weeks to~~ approve the business reorganisation plan **within two weeks of receipt of the assessment and recommendations of the resolution authority. When the competent authority deems the business**

reorganisation plan unsatisfactory, the envisaged preventive measure ~~cannot~~ shall not be undertaken.

(AM 273 Boyer, Yon-Courtin; AM 274 Niedermayer)

Article 11c

Remediation plan

1. Member States shall ensure that where the credit institution fails to fulfil the commitments outlined in the ~~note~~ **business reorganisation plan** referred to in Article 11b(1), or fails to repay the amount contributed under the preventive measures at maturity ~~or to~~ **comply with exit strategy under Article XX**, the DGS informs the competent authority thereof without delay.

(AM 275 Heinäluoma)

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

(Combined: AM 276 García-Margallo y Marfil; AM 277 Marques, Lalucq, Repasi, Fernández)

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)~~, 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.**

(AM 278 Pedro Marques, Aurore Lalucq, René Repasi, Jonás Fernández)

4. By ... [OP – please insert the date = ~~42~~ **24** months after the date of entry into force of this Directive] the EBA shall issue guidelines setting elements of the ~~note~~ **business reorganisation plan** accompanying the preventive measures referred to in **Article 11b** the remediation plan referred to in paragraph 1 of this Article.

(AM 281 Heinäluoma; AM 282 Boyer, Yon-Courtin)

Article 11d

Transparency of marketing process in Alternative measures

(AM 61 Urtasun)

1. ~~Where~~ Member States ~~allow~~ **shall enable** the use of DGS funds for the alternative measures referred to in Article 11(5). **Member States** ~~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:

(Combined: AM 62 Urtasun; AM 284 Zanni, Grant, Rinaldi; AM 285 Marques, Lalucq, Repasi, Fernández)

- (a) the marketing is open and transparent and does not misrepresent the assets, rights and liabilities that are to be transferred;
- (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;
- (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.

1a. Member States shall ensure that no alternative measures financed by DGSs are undertaken before the requirements set out in Article 11b(3b) are met.

(AM 63 Urtasun)

1b. Member States shall ensure that, where the DGS 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 DGS to which that credit institution is affiliated shall contribute the following amounts:

- (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, and the value of the assets of the institution under resolution which are to be transferred to a recipient; and***
- (ii) where relevant, an amount necessary to ensure the capital neutrality of the recipient following the transfer.***

~~***2. [Member States shall ensure that the available financial means used for a single credit institution in accordance with Article 11(5) do not exceed [50-25]% of DGS target level pursuant to Article 10.]***~~

~~***Where the amount needed from the DGS is 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.***~~

(AM 286 Boyer, Yon-Courtin)

Article 11e

Least cost test

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:
 - (a) the estimated cost for the DGS to finance the measures referred to in Article 11(2), (3) or (5);

(b) the estimated cost of repaying depositors in accordance with Article 8(1).

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 earnings, operational expenses and potential losses related to the measure;:

(AM 291 Boyer, Yon-Courtin)-

(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;

(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 the potential additional cost of funding for the DGS; :**

(AM 291 Boyer, Yon-Courtin)

(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 %.

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.

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).

4a. As soon as possible after performing alternative measures, Member States shall ensure that DGS publish a summary of the core elements of the calculation made as per this Article. That summary shall in particular comprise the net recovery rate derived from the estimated cost of repaying depositors for the DGS and a broad justification of the related underlying assumptions.

By way of derogation from the first sub-paragraph, where the alternative measure is performed by an IPS, the summary of the core elements of the calculation made per Article 11e, including the net recovery rate derived from the estimated cost of repaying depositors for the DGS and a broad justification of the related underlying assumptions, shall be provided to the competent authority, the resolution authority and the designated authority.

(AM 296 Boyer, Yon-Courtin)

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:

(AM 298 Marques, Lalucq, Repasi, Fernández)

- (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~~ *expected* recoveries referred to in paragraph 2, point (c), **and the potential additional cost of funding for the DGS;**
- (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 potential additional cost of funding for the DGS referred to in the first subparagraph, point (b), the methodology shall factor in:

- a. **the administrative costs linked to the process of repayment that are not covered by annual contributions;**
- b. **the administrative costs of levying contributions pursuant to Article 10(8) should such contributions be needed to repay the depositors, and the costs of mobilising alternative funding arrangements pursuant to Article 10(9) should these arrangements be mobilised;**

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). **Regarding IPS referred to in Article 1(2) point (c), prevented reputational damage by protecting the joint corporate trademark is to be taken into account as well as prevented external costs in the specific region through continuation of credit and financial services function of the institutions belonging to an 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].

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.;