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REPORT

From:	Presidency
To:	Council
Subject:	Strengthening of the Banking Union / Risk-reduction measures - Presidency Progress Report

I. INTRODUCTION

1. Pursuant to the Council Conclusions on the Roadmap to complete the Banking Union as adopted by the Council on 17 June 2016 (doc. 10460/16), and building upon the Progress Report prepared by the Dutch Presidency (doc. 10036/16) and the Progress Report of the Slovak Presidency (doc. 14841/16), the Council continued to work constructively at a technical level on the Commission proposal for the establishment of a European Deposit Insurance Scheme (EDIS), while monitoring progress on discussions in the Financial Services Working Party on the package of proposals for risk reduction measures, including amendments to Regulation (EU) No 575/2013 (the Capital Requirements Regulation or CRR), Directive 2013/36/EU (the Capital Requirements Directive or CRD), to Directive 2014/59/EU (the Bank Recovery and Resolution Directive or BRRD), and to Regulation (EU) No 806/2014 (the Single Resolution Mechanism Regulation or SRMR).

2. On 23 November 2016 the Commission presented the Risk Reduction Measures Legislative Package (the "RRM Package" or "RRM Proposals") comprising the following 5 proposals to amend existing legislation:

(a) a draft Regulation amending Regulation (EU) No 575/2013 (the "CRR") as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements (the "CRR Proposal");

(b) a draft Directive amending Directive 2013/36/EU (the "CRD") as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (the "CRD Proposal");

(c) a draft Directive amending Directive 2014/59/EU (the "BRRD") and other Directives on loss-absorbing and recapitalisation capacity of credit institutions and investment firms (the "BRRD Proposal");

(d) a draft Directive amending the BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy (the "Bank Creditor Hierarchy Proposal");

(e) a draft Regulation amending Regulation (EU) No 806/2014 (the "SRMR") as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms (the "SRMR Proposal").

3. The RRM Package's primary objective is to reduce risks in the banking sector by implementing in EU law a set of financial regulation reforms agreed at an international level following the 2008-09 crisis, whilst enhancing the degree of risk-sensitivity and proportionality in the framework with a view to promoting more readily available lending to the economy on a sounder basis. The RRM Package intends to address some of the Council Conclusions on the Roadmap to Complete the Banking Union as adopted by the Council on 17 June 2016 (doc. 10460/16), taking into account the Dutch Presidency Progress Report (doc. 10036/16) and the Slovak Presidency Progress Report (doc. 14841/16).

4. The legal provisions embedded in the RRM Proposals can be grouped as follows:

(a) financial stability promotion provisions, which are intended to reduce overall risk in the financial system by making credit institutions and financial firms sounder and more resilient to external shocks. These provisions include in particular:

(i) adequately risk-sensitive capital requirements for market risk, counterparty credit risk, exposures to collective investment undertakings ("CIUs"), exposures to central counterparties ("CCPs") and interest rate risk in the banking book;

(ii) a binding Leverage Ratio ("LR") to prevent institutions from incurring in excessive leverage;

(iii) a binding Net Stable Funding Ratio ("NSFR") to address the excessive reliance on short-term wholesale funding and reduce long-term funding risk;

(iv) a requirement for Global Systemically Important Institutions ("G-SIIs") to hold minimum levels of capital and other instruments to absorb losses in resolution (the "Total Loss-Absorbing Capacity" or "TLAC");

(v) a reviewed minimum requirement for own funds and eligible liabilities ("MREL"), to ensure consistent rules and adequate amounts for the bail-inable buffers that contribute to an efficient and orderly resolution process; and

(vi) a harmonised national insolvency ranking of unsecured debt instruments to enhance legal certainty in resolution and facilitate issuance of TLAC-compliant debt instruments.

(b) proportionality-enhancing provisions, which are intended to improve banks' lending capacity to support economic growth and job creation. Provisions within this group include certain exemptions from the scope of the CRD for development banks and credit unions, simplified prudential requirements, reduced compliance burden for the benefit of smaller or less complex institutions and a preferential risk-weight treatment for lending to SMEs and infrastructure projects;

(c) miscellaneous provisions, namely:

(i) the transitional phase-in of the prudential impact of the new accounting standards on loan loss provisions under IFRS9;

(ii) certain technical amendments to the large exposure framework and phase-out of the current exemption for exposures to certain sovereign debt of Member States issued in a non-domestic EU currency;

(iii) amended and new regulatory requirements for groups of institutions, including;

- cross-border capital and liquidity waivers for subsidiaries of parent institutions established in a different Member State;
- a requirement on third country groups to set up an "intermediate parent undertaking" ("IPU") to head all institution subsidiaries within the EU to facilitate group supervision and resolution;
- authorisation requirements on (mixed) financial holding companies ("(M)FHC");

(iv) provisions to make the supervisory review process and the use of discretionary powers by competent authorities ("Pillar 2") more transparent, consistent and better anchored to the Single Rulebook

5. The Ad Hoc Working Party on the Strengthening of the Banking Union (the "AHWP") was established on 13 January 2016 (doc. 5006/16) and met five times under the Maltese Presidency (20th January, 28th February, 28th March, 18th May and 6th June 2017) to examine the EDIS proposal. The discussions were of a technical nature and progress on decision-making at a political level was held off pending sufficient progress on risk reduction according to the June 2016 ECOFIN Council Conclusions.

6. The Financial Services Working Party (the "WPFS") met 16 times during the Maltese Presidency to examine the RRM Package. The WPFS arranged its work around two main subject matters: prudential requirements (capital, liquidity and supervision of institutions) and resolution. Towards the second half of the semester, the Presidency called a number of *ad hoc* meetings on certain narrow topics requiring quick progress ahead of the semester's end.

7. This progress report has been prepared under the responsibility of the Maltese Presidency having regard to the opinions expressed by delegations during the above referred meetings and to address various calls for a written record of progress achieved during the Presidency on the EDIS and RRM files. This report and its annexes may not be relied upon as binding on the delegations and, instead, should be viewed as the Presidency's assessment of the outcome of the discussions held at those meetings. This report is intended to provide continuity and facilitate the task of the incoming Presidency.

8. For the avoidance of doubt, any reference to "institutions" in this Progress Report shall be construed as a reference to credit institutions or investment firms in line with the definition of "institution" in Article 4(2) of the CRR.

9. The progress report is divided into two parts. Section II covers the discussions carried out on the EDIS proposal under the AHWP, while Section III covers the discussions carried out under the various sessions of the WPFS in relation to the RRM Proposals.

II. EDIS PROPOSAL

A). GENERAL CONSIDERATIONS

10. The Presidency followed up on the work of the previous Dutch and Slovak Presidencies with the aim of progressing to the extent possible on the pending technical elements, and where necessary also revisiting and building upon past discussions.

11. During its first meeting the Maltese Presidency took stock of the questionnaire launched towards the end of the Slovak Presidency whereby delegations had been invited to provide their feedback in relation to various sections of the Commission Services Effects Analysis on EDIS, the interaction between EDIS and options and national discretions (ONDs) under the Deposit Guarantee Scheme Directive (DGSD), as well as comments on any additional matters where further work was considered relevant. The objective was to identify those areas, raised by Member States in the questionnaire launched by the Slovak Presidency, that required to be addressed further.

12. Discussions from this first meeting showed that various topics tackled under the Commission Effects Analysis that required further work, related primarily to ONDs stemming from the DGSD and the extent to which these could be harmonised within EDIS. While such ONDs had been noted and discussed in previous meetings, the Maltese Presidency identified a number of priority areas that required further work. Such areas were grouped into specific themes, primarily: the contributions mechanism and the available means for contributing to the scheme; the possible uses of participants' available financial means; and issues related to the scope of EDIS and membership in the scheme. This notwithstanding, the Presidency also recognised delegations' views that further work in relation to other ONDs could be tackled at a later stage in the AHWP discussions.

13. Moreover, the Presidency also continued discussions on other areas of importance which were discussed under previous Presidencies, namely in relation to the accession to and departure from EDIS as well as on the possible impacts of the EDIS proposal on the internal market.

14. The Presidency also sought to re-ignite discussions on one of the central issues which has been an ongoing theme in the dialogues and technical work undertaken on various elements of the EDIS proposal. Namely, the discussion on the overall and final design of EDIS remains an important issue in view that, throughout discussions many delegations repeatedly argued, that final agreement on the calibration of various elements of the EDIS can be dependent on changes in the final design.

15. At the outset, the Presidency considered that much of the technical work to be conducted by the AHWP would greatly benefit from the examination of experiences of various players in relation to issues that are relevant to the functioning of EDIS. In this regard the Presidency therefore considered it beneficial to, wherever possible, undertake discussions on the basis of such experiences. In particular, the input from various participants, among which the specific experience of Member States vis-à-vis certain issues being discussed under EDIS, as well as the experiences and input from other relevant institutions including the Single Resolution Board (SRB), the European Commission (Commission), the European Central Bank (ECB), and the European Banking Authority (EBA) were considered.

16. Considering the work being carried out in parallel by Member States' national experts in relation to the RRM proposals, and considering the remit of the AHWP, the Presidency also provided regular updates at the AHWP on the work being undertaken on RRM in the meetings of the WPFS. During the AHWP meetings, the Presidency also provided delegations with the possibility to raise questions for clarification in relation to the work taking place in the RRM meetings.

B). MAIN ISSUES

17. With respect to ONDs, the Presidency took due consideration of the responses provided by Member States on a set of questions circulated in a survey performed by the Slovak Presidency in connection with the various sections of the Commission Services Effects Analysis on the EDIS. From the analysis of the responses it transpired that the important areas on which discussions would be undertaken related to:

    (a) <u>Risk-Based Contributions;</u>

    (b) <u>Alternative and Preventive measures;</u>

    (c) <u>Irrevocable Payment Commitments (IPCs);</u>

    (d) <u>Scope of EDIS;</u>

    (e) <u>Institutional Protection Schemes (IPSs);</u>

    (f) <u>Temporary High Balances (THBs)</u>

18. Moreover, the Presidency identified additional technical aspects of the proposal requiring further discussion, namely the issues related to the <u>accession to and departure from EDIS.</u>

19. In relation to the Commission's Effects Analysis, a number of delegations, supported by several other delegations, requested additional analysis by the Commission on <u>whether and how EDIS would impact the EU internal market</u>.

20. Finally, the Presidency conducted a technical discussion <u>on the design of EDIS</u> by considering alternative design elements to the ones provided in the original Commission proposal.

21. Further details on the aforementioned topics are provided in the subsequent sections of this Progress Report.

➢ **Risk-based contributions methodology**

22. The Commission EDIS proposal states that the Commission shall be empowered to adopt two Delegated Acts in order to specify a risk-based methodology for the calculation of contributions.

    (a) The first delegated act shall be adopted in the reinsurance phase, only to the Deposit Insurance Fund (DIF). The calculation shall be based on the amount of covered deposits and the degree of risk incurred by each credit institution relative to all other credit institutions affiliated to the same participating DGS.

    (b) Whereas the second delegated act, shall specify the method for the calculation of the contributions payable to the DIF as from the co-insurance period. In this regard, the calculation shall be based on the amount of covered deposits and the degree of risk incurred by each credit institution relative to all other credit institutions in the Banking Union.

23. The EDIS proposal sets out a number of criteria which the Commission must take into account in the determination of the risk-based method, but leaves it for the Commission to select specific indicators and provide a formula for the calculation.

24. One of the key outcomes in this regard which took place under the Dutch Presidency discussions was that a large number of delegations had asked for the methodology on risk calibration to be included in level one legislative text rather than for this to be established via a Delegated Act. During discussions held under the Maltese Presidency, delegations agreed that contributions to the DIF would be risk-based and that such a methodology would indeed be developed in level one legislative text.

25. Considering that risk-based contributions are one of the main elements of the EDIS that required further work for technical discussions under EDIS to progress, the Maltese Presidency presented a non-paper in which it laid out methods used for the risk-based contributions, namely the EBA Guidelines[1] on methods for calculating contributions to the DGSs as well as the methods used for risk-based contributions in the Single Resolution Mechanism Regulation (SRMR). Following the discussion, the majority of delegations agreed that the risk-based method to be adopted for EDIS should be based on the EBA guidelines and that the list of indicators used in the calculation methodology should be adapted to specifically cater for the purposes of EDIS, also depending on its final design. While some delegations pointed to the lack of experience with the EBA Guidelines, some other delegations noted that some indicators included in the EBA Guidelines have some limitations which should be further assessed. In view of this and in order to progress work in this area further discussions would also be required in relation to reliable data collection for the development of the methodology. In this regard, concerns were voiced in relation to the anonymity of data as well as the legal basis for a data collection exercise. A number of delegations also voiced the possibility of use of data which could be readily available from other sources such as in relation to the work being conducted by the EBA.

26. The EBA Guidelines include guidance on specific indicators, risk classes, thresholds for risk weights assigned to specific risk classes and other necessary elements for the calculation of contributions. During meetings it was highlighted that these Guidelines were in the process of being amended and hence, some delegations showed preference to work on the basis of the Guidelines once these were amended.

[1] The EBA “Guidelines on methods for calculating contributions to DGSs”, were published by the EBA on 28 May 2015.

27. In view of the above, the Presidency invited the EBA to deliver a presentation to provide a general overview on the current state-of-play on the update of these Guidelines and the data collected by the EBA, whilst sharing their experience on the implementation of the Guidelines. The EBA welcomed the Presidency's invitation and during their presentation explained that a survey was conducted to collect comments on the current Guidelines, however, the objective was not to propose immediate changes but rather to produce future recommendations for any possible refinements of the Guidelines. Moreover, the EBA explained that the data collected during the EBA exercise was at aggregate DGS level and not at an individual institution level as would be required for the calibration of the risk-based methodology under EDIS. On the basis of the aforementioned, the EBA also expressed their view that the AHWP work on the development of the risk-based methodology could be conducted in parallel to the work of the EBA and that therefore there was no requirement to delay the work of the AHWP.

28. In the process of the discussions on risk-based contributions, the ECB delegate noted that research work on the issue was also being undertaken by ECB staff. The AHWP welcomed the possible contribution by ECB staff in this area and the Presidency invited the ECB to deliver a presentation on preliminary findings. The results presented by ECB staff indicated that a fully-funded DIF would be sufficient to cover pay-outs in a non-systemic banking crisis, which is by design a key goal of a deposit insurance scheme – while other safety net tools are necessary to deal with systemic crises. Furthermore, there would be no unwarranted systematic cross-subsidisation within EDIS in the sense of some banking systems systematically contributing less than they would benefit from the Fund. A key message from the study is that risk-based contributions can and should internalise specificities of a banking system, allowing moving forward with risk-sharing measures in parallel with risk reduction measures, tackling moral hazard and avoiding any decrease in EDIS capacity. For example, the results show that the inclusion of an MREL indicator would considerably reduce the level of contributions for banks more likely to go into resolution and having a higher loss absorbency capacity. The reason is that the higher the MREL, the higher the likelihood of resolution and the higher the expected loss-absorbency capacity, thus the lower the potential exposure for EDIS. This approach is preferable to the lowering of the EDIS target level. Contributions for the largest banks should decline even further as MREL is built up.

The results also indicate that mid-sized banks would contribute on average more to EDIS than the smallest and the largest banks, suggesting that there is no need to introduce low flat contributions for small banks or introduce additional features to further reduce contributions for the largest banks.

29. Delegations generally welcomed the presentation by the ECB. Whilst some delegations supported its conclusions, others had mixed views particularly with respect to the methodology applied and the representativeness of the selected sample of banks. In addition, some delegations disputed the inclusion of MREL and the plausibility of the conclusions.

30. The Maltese Presidency also sought to address legal concerns expressed by a number of MS in relation to the data collection exercise. In this respect the Presidency invited the Council Legal Services to express its views on the matter.

31. Following this it was agreed that a data collection exercise was necessary to further analyse the distribution of contributions across entities and to support the development of a methodology under the proposed EDIS. In this regard the Presidency asked the Commission to prepare a template and instructions for the data collection exercise. The Presidency conducted further discussions on the basis of a data collection template prepared by the Commission whereby the feasibility of using the latest available data for 2016 was also considered. This was further followed up by written procedures in order to ascertain that delegations' suggestions for the indicators in the data template were incorporated and considered to the extent possible. Following written requests on the availability of end 2016 data, it was also ascertained that the use of such data would be possible.

32. The Presidency subsequently requested the Commission to launch a data survey on a bank-by-bank basis to initiate and facilitate work on the development of the methodology for calculating risk-based contributions under EDIS.

33. The data collection exercise was launched on 16th May and Member States have been invited to provide the requested data by mid-June 2017. The Commission is expected to provide an overview on the data as well as an outlook on the next analytical steps to the AHWP in July at the first meeting of the incoming Estonian Presidency.

➢ Alternative and preventive measures

34. Under the DGSD Member States may allow their DGSs to finance measures (preventive measures) to prevent failures (Article 11(3)) as well as alternative measures in the context of national insolvency proceedings to preserve access of depositors to covered deposits (Article 11(6)).

35. The Dutch Presidency had identified the possible use of common means for alternative measures and the interaction with the principle of cost neutrality for participating DGSs as a topic that warrants further fundamental discussions. It was suggested to continue work in order to assess the need to allow for a deposit book transfer of only covered deposits as also suggested in the ECB opinion on the proposal. Furthermore, in this regard the Slovak Presidency, backed by several Delegations, proposed to discuss the issue of alternative measures, particularly in the context of deposit book transfers, again on the basis of further analysis with the help of those Delegations that have more experience with these measures.

36. Some participating Member States have incorporated the alternative measures (Art. 11(6) DGSD) as an option in their domestic legislation while others allow the use of preventive measures (Art. 11(3) DGSD), or both. The Commission Services Effects Analysis on the EDIS concluded that preventive and alternative measures are only used by a limited number of Member States. Furthermore, since those functions are not clearly defined in advance at EU level, EDIS would have to contribute to interventions that are not clearly identifiable in advance. Against this background, the Commission did not include EDIS coverage of preventive and alternative measures in the proposal. Nevertheless, the Commission voiced its openness to explore, especially, the issue of alternative measures further.

37. From an analysis on the feedback to the survey on the Effects Analysis initiated by the Slovak Presidency, the Maltese Presidency observed that the suggested option in the Effects Analysis (to finance deposit book transfer) attracted the interest of a number of Member States. To this effect, the Presidency invited delegations with previous experience of deposit book transfer or other related alternatives to provide the Working Party with insights of their experience, such that any decision reached for including or not including provisions related to alternative measures in EDIS, would be based on an informed basis.

38. At the Presidency's request Italy presented a Non-Paper which provided a detailed analysis on the DGSs' alternative measures in Italy. In particular, alternative interventions carried out by DGSs to support transfers of asset and liabilities of a "failed bank" in the context of a bank's ordinary insolvency procedure (i.e., compulsory liquidation taking a practical case as example – with a description of its cost efficiency and implementation). This Non-Paper followed another one presented by Italy during the Dutch Presidency.

39. Furthermore, an additional technical non-paper setting out the interaction of Article 11 of the DGSD with the BRRD/SRMR was also presented by the Single Resolution Board (SRB) for discussion.

40. It was concluded that delegations were not in favour of incorporating the financing of preventive measures by the DIF and they were open to continue discussions on the possible use of alternative measures instead.

41. Furthermore, the financing of such interventions by national DGSs is subject to the condition that the use of funds does not exceed the net amount of compensating covered depositors at the credit institution concerned ("least cost principle"). Nevertheless, because a DGS would be acting beyond its pay-out function, such measures should be seen in light of the 2013 Banking Communication on EU State aid rules. In this regard, the Commission delivered a presentation clarifying the way State aid rules are applied in the context of alternative and preventive measures.

42. With respect to alternative measures, the majority of the delegations agree to further analyse their use in EDIS as this may increase efficiency in insolvency whilst avoiding material impact on depositors. There was broad support for deposit book transfers pertaining only to covered deposits. In addition, some delegations remain sceptical regarding (i) which situations would be present such that conditions to trigger resolution of a given bank are not fulfilled, but the use of alternative measures would be justified, (ii) the decision making process vis-à-vis the deposit book transfers at the level of EDIS, in addition to the pay-out function, because of the 'Meroni' doctrine. To note also that emphasis was made by delegates on the fact that the agreement on the use of alternative measures also depends on the final design of EDIS.

43. There was also a call by one delegation for inviting the US Federal Deposit Insurance Corporation (FDIC) to deliver a presentation on the US legislation and practices with respect to the regime for the insolvency of banks. Such a presentation would be useful to clarify the scope of alternative measures under EDIS in comparison to resolution action, given that the US FDIC provides both for resolution and deposit insurance functions. In this regard a number of delegations also cautioned that the discussions at the AHWP should focus on the pay-out function of the DIF and not on a separate resolution framework for small banks which is considered to go beyond the mandate of the AHWP.

➢ **Irrevocable Payment Commitments**

44. Under the Dutch Presidency a number of delegations had already indicated a need for Irrevocable Payment Commitments (IPCs) to be included in the financial means available for credit institutions to transfer to the DIF, contrary to the Commission's proposal to exclude them. To this end, the Dutch Presidency had brought forward a number of amendments to the EDIS Proposal to take into account the availability of IPCs. At the same time the Dutch Presidency recommended to delegate powers to the Commission to specify the requirements applying to the IPCs to ensure consistency within the overall EDIS framework.

45. The responses to the survey on the Effects Analysis conducted by the Slovak Presidency signalled varying views between Member States, including some that did not specify an exact stance on the use of IPCs and on the possibility to incorporate them in the EDIS text as available financial means. In view of this the Maltese Presidency considered it pertinent to continue discussions to explore and identify further technical solutions for a smooth process of using IPCs.

46. In order to assess at a technical level the conditions under which the use of IPCs could be effectively implemented and operationally managed within the context of EDIS, Member States were invited to share their experience. Germany presented a non-paper on its experience with the use of IPCs by the national DGS. Furthermore, the SRB submitted a note on the use of IPCs within the context of the Single Resolution Fund (SRF), concluding that it did not encounter any experience that would justify banning the use of IPCs.

47. Delegations welcomed the presentations as these clarified further the implications of use of IPCs. However, there were mixed views on the implications of such experiences for including IPCs in EDIS. While some delegations support the inclusion of IPCs, there was reluctance at the AHWP by delegations to commit on the inclusion or exclusion of the use of IPCs in EDIS at this stage and that therefore this issue would need to be revisited further on in the discussions. Some delegations suggested that an analysis on the accounting treatment of the IPCs should be conducted at EU level.

48. This notwithstanding, with the objective of completing the drafting suggestions on IPCs by the Dutch Presidency, the Maltese Presidency suggested the inclusion of text in relation to the "call of irrevocable payment commitments" which reflects Article 7 of the Council Implementing Regulation specifying uniform conditions of application of the SRMR[2]. There was broad support to include this as a draft provision in the EDIS text, although some considered that such provision could instead be included in level two legislation alike in the SRMR.

➢ **Scope of EDIS: Treatment of non-CRR entities and third country branches**

49. The issue of the scope of EDIS covers two aspects: (a) the possible inclusion of third-country branches established in the territory of a Member State by a credit institution which has its head office outside the European Union (if Member States require those branches to join a DGS after execution of the mandatory equivalence test); and (b) the possible inclusion in EDIS of deposit taking entities that could be covered by EDIS but that are currently excluded from the SSM (non-CRR entities) and are already covered by existing national DGS.

[2] In order to provide continuity for future meetings of the AHWP, a consolidated draft text of the EDIS proposal including drafting suggestions made during the Dutch, Slovak and Maltese Presidencies was provided to the AHWP.

50. During the discussions held under the Dutch and Slovak Presidencies, scope was identified as one of the main issues under EDIS. In past discussions two approaches emerged in this regard. A number of delegations supported the Commission proposal that includes in the scope of EDIS all those entities affiliated to the national DGS so as not to discriminate between depositors in the Internal Market and to avoid a two-tier system that would require a supplementary national DGS covering institutions not included within the scope of the EDIS. In this context, it is recalled that despite the relevance of these institutions for local depositors, they will likely not reach the critical mass to form their own DGS. On the other hand, other delegations called for regulatory consistency and equal treatment with institutions subject to the single rulebook, arguing that it would not be sound to share the risk of entities not subject to the Single Rulebook and not supervised under the SSMR, and therefore, calling for an alignment of the scope of EDIS with the other pillars of the Banking Union.

51. The Commission Effects Analysis also tackled the issue of scope of EDIS by looking at a number of policy options in relation to which entities could be eligible for coverage under EDIS. Generally, the Effects Analysis considered that both non-CRR entities as well as third country branches could be included under the coverage of EDIS without creating any additional material risk for EDIS.

52. While the Dutch Presidency had proposed to incorporate in EDIS a provision to delegate to the Commission the undertaking of an equivalence test to decide whether third country branches would be included under the national DGS and under EDIS, no additional drafting suggestions have thus far been considered under the AHWP with respect to non-CRR entities under the scope of EDIS.

53. The Maltese Presidency conducted an analysis of the replies to the Slovak survey on the Effects Analysis in which delegations brought up various views to substantiate their stance rejecting or endorsing proposals on the inclusion of non-CRR entities and third country branches in the scope of EDIS. On the one hand, the arguments related to the avoidance of any misalignments between the scope of the Single Rule Book and the Third Pillar of the Banking Union and to the increased risk exposure to EDIS *vis-à-vis* the inclusion of such entities. On the other hand, the exclusion of non-CRR entities was considered by several delegations as an approach that would contravene the principal aim of the EDIS proposal, namely that of enhancing depositor protection across the Banking Union. The argument was also raised that credit unions and other non-CRR entities only represent relatively small overall amounts in terms of coverage of EDIS funds and hence should be included. In addition, it was argued by some delegations that it would not be economically viable to maintain a national DGS for the sole purpose of covering non-CRR entities. A number of delegations suggested to tackle the issue through risk-based contributions.

54. In this regard, the Maltese Presidency continued work on the issue of scope with the objective of gathering more information to address doubts presented by delegations on the inclusion of third country branches and non-CRR entities in the scope of EDIS.

55. On 15th March 2017, the Presidency launched a comprehensive questionnaire to take stock of the prudential treatment of non-CRR entities as well as third country branches established in EU MS[3]. Indeed, while previous discussions on scope relied on the arguments brought forward by delegations and on the results of the Effects Analysis, it was not possible to discuss on the basis of a more accurate stock take of the frameworks applied across jurisdictions. Following the questionnaire, the Presidency presented a note on the findings, focusing on those MS in which non-CRR entities and/or third country branches were affiliated to a national statutory DGS. The results of the questionnaire showed that while MS applied heterogeneous frameworks to varying degrees of comparability with the CRR/CRD IV framework, in general, the frameworks applied were often tailor made to the proportional needs in relation to the entities and also depending on the type of institutions being regulated.

56. Following the discussions ensuing from the results of the questionnaire, several delegations supported the view that the AHWP could discuss further on the issue of scope with the aim of finding a solution for including all institutions covered by national DGSs. In this regard, the views of delegations in favour of maintaining the scope of EDIS to cover entities under the national DGS also expressed the importance of applying a robust regulatory framework based on the principle of proportionality for non-CRR entities and/or adjusting risk-based contributions paid by entities to make up for lack of harmonisation of the applicable prudential regime. At the same time, basing on the heterogeneity of the frameworks, other delegations expressed doubts on the possibility of maintaining within the scope of EDIS non-CRR entities in view of the importance of full alignment with the CRR and in order to maintain consistency within the pillars of the Banking Union. A mixed approach has also been suggested, combining the development of an harmonised proportional framework, based on CRR/CRD, with the inclusion of such entities within the other pillars of the Banking Union. A number of delegations also argued that the issue of scope of entities covered by EDIS was also dependent on the design of EDIS and that therefore this issue could be explored further on the basis of alternative design elements.

57. As regards third country branches, delegations supported the carrying out of an equivalency test by the Commission for determining whether the third country branches would be included under the national DGS and therefore under EDIS. However, some delegations argued that the DGSD equivalence test was insufficient to protect EDIS from undue risks and that therefore further prudential safeguards, including the inclusion of such entities within the other pillars of the Banking Union, were necessary.

58. Taking note of the discussions at the AHWP, the Presidency is of the view that there is a basis for further work to be carried out on the issue of scope of EDIS, particularly in the light of the new information from the questionnaire conducted by the Maltese Presidency. In fact, from the discussions it resulted that further work is needed to discuss a more concrete proposal on the issue of coverage of non-CRR entities and on the possible elements to be considered by the AHWP in a proportional yet robust common framework under EDIS. This could possibly also be undertaken by drawing from the experience of Member States in this regard.

➢ **Institutional Protection Schemes**

59. The DGSD requires all credit institutions to join an officially recognised DGS at a national level. The DGSD, however, also recognises Institutional Protection Schemes (IPS) which protect the credit institution on an individual basis and which, in particular, ensure its liquidity and solvency. If such an IPS is officially recognised as DGS it is allowed to determine the contributions of its members on its own risk-based-calculation. However, where such a Scheme is separate from a DGS, its additional safeguard role should be taken into account when determining the contributions of its members to the DGS**.** As a result, the members of a 'recognised' IPS may be allowed to make lower contributions to the DGS (Article 13(1) DGSD). Also, the EBA Guidelines for calculating contributions to a DGS as well as the SRF methodology take into account the specific features of IPS membership.

60. The Commission's Effects Analysis also makes reference to the possible use of IPSs as a national discretion alongside EDIS. The resulting reduced risks for EDIS and exposure of the DIF might then have a bearing on the relevant risk-based contributions.

61. The issue of IPSs was already touched upon during the Slovak Presidency on the basis of a discussion on the Commission's Effects Analysis, particularly in relation to the reduced risks of entities participating in an IPS. Indeed, IPSs can offer added protection via their possible use in alternative and preventative measures and in ensuring liquidity and solvency to avoid bankruptcy where necessary. This also has an effect on the calculation for risk-based contributions of entities participating in an IPS.

62. During discussions in the AHWP under the Maltese Presidency, delegations were interested to learn from the experience of the SRB on IPSs and how these were treated under the SRF and possibly also the experience of other Member States which have IPSs as part of their DGSs. In this respect, the Maltese Presidency invited the SRB to prepare a non-paper for its preliminary views and experience with IPSs and their relation to the SRF.

63. Following the presentation of the non-paper by the SRB and the discussion that ensued, delegations expressed mixed views on the inclusion of IPSs in the scope of EDIS. To note that, the ECB, in its research in relation to the risk-based methodology, did not include IPS membership as it is difficult to quantify the effects of IPS. However, there was agreement to assess their impact in the risk-based methodology, as well as in relation to 'central body' schemes. Some delegations emphasised that it should remain conditional to mandatory interventions of IPSs which are fully pre-funded and for which resolution is not the preferred strategy. The Commission, took note of this request and it was later included in the data template to support the risk-based methodology for DIF contributions. Moreover, delegations stated their preference for having IPS-related provisions in level one legislative text rather than in a Commission Delegated Act.

➢ **Temporary High Balances**

64. The Presidency also directed its attention to Temporary High Balances (THBs), which had already been addressed under the previous two Presidencies. Insights have been extracted from the responses that Member States provided to the survey on the Effects Analysis conducted by the Slovak Presidency.

65. Mixed reactions emerged from the survey, ranging from a support for full coverage of THBs under EDIS as per Commission proposal, to a preference for a lower or even no coverage. Some Member States, cautioned about having a two tier system for the coverage of THBs in view of the envisaged challenges to collect funds both at a national and central level and to coordinate both processes of pay-outs.

66. Overall, delegations called for a pragmatic approach by means of a cost-benefit-analysis delineating the pros and cons of having full or partial THB coverage by the DIF, highlighting the implications on level playing field and lack of harmonisation in the Banking Union, taking into account cost neutrality and the protection of depositors.

67. Based on delegations' views, the Maltese Presidency therefore considers that further work is merited in this area.

- **Accession to and Departure from EDIS**

68. During discussions conducted by the Dutch Presidency in 2016 the issue of Member States' accession to and departure from EDIS was identified as one of the key topics of the EDIS proposal. Further detailed discussions were merited in view of underlying differences in the possible approaches and considering that the EDIS proposal does not include a mechanism to address a case of accession of a Member State pursuant either to the adoption of the euro as their single currency or via the establishment of close cooperation in accordance with Article 7 of Regulation (EU) No 1024/2013[4].

69. The Slovak Presidency continued the discussion on accession and termination of close cooperation through a non-paper and drafting suggestions basing on the provisions of Articles 8 of the IGA which deals with the accession to the SRMR and on the basis of Article 4 of the SRMR which deals with the suspension and termination of participation and recoupment of contributions. At the same time, discussions under the Slovak Presidency identified that it was too early to discuss whether such provisions should be included in the EDIS proposal or in an IGA and that indeed such a decision was a political one.

70. Discussions under the Maltese Presidency indicated that there were mixed views on whether the use of an IGA was warranted to determine the issue of accession to and departure from EDIS as it was still premature to determine this at this stage. Nevertheless, the Presidency considered useful to explore further the modalities on the aspects of accession and termination with respect to the EDIS, which discussion was welcomed by the Member States.

[4] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

71. The AHWP discussed the issue of accession to and departure from EDIS by expanding the discussion on a number of aspects on the basis of a Presidency note, namely on the following issues:

(a) The framework on the basis of which acceding Member States' contributions shall be calculated;

(b) Safeguards to the DIF and to national DGSs in specific scenarios;

(c) A delineation between scenarios of "accession", "departure" and "termination";

(d) Which entities will be acceding/participating in the EDIS;

(e) The fair treatment between Member States having the intention to participate in the Banking Union and those already participating in the mechanism.

72. Regarding the issue of the calculation of acceding Member States' contributions to the EDIS, the Maltese Presidency recalled that under the Slovak Presidency a proposal was put forward to use Article 8 of the IGA as a basis. At the same time, following a call for comments carried out by the Slovak Presidency, an alternative approach had also been highlighted as a possible option. The approach based on Article 8 of the IGA was considered complex by many delegates, in view that it required a backward re-calculation for all banks under EDIS by also including the late entrants. The alternative proposal considered a simpler approach which removed the need for a backward re-calculation while allowing for additional adjustments to be made ex-post in order to take into account other factors such as adequate risk adjustments. While the use of Article 8 as a basis for calculating contributions of acceding Member States was welcomed by delegations, many delegations also supported the possibility of investigating further the option of a simpler approach primarily to avoid a backward re-calculation which would potentially render the accession process more complex. At the same time, it was considered that further work was required in this area in order to consider an alternative option on the basis of a concrete proposal which could then be more thoroughly compared to the methodology provided for in the IGA. In both possible scenarios, respecting the risk-based methodology of contributions applied for Member States already under EDIS was considered as a core principle.

73. On the issue of safeguards, the Presidency considered further the proposal put forward under the Slovak Presidency for situations in which a DGS of an acceding Member States faces a pay-out event or its funds are used for resolution purposes before accession. The Presidency sought to clarify whether the proposed wording based on Article 8 of the IGA was sufficient safeguard for Member States. Safeguards are envisaged for the DIF, which will not bear costs of pay-outs taking place before accession, as well as for the DGS of the acceding Member States. In the latter, in case of a pay-out event or contributions to resolution in accordance with Article 109 of Directive 2014/59/EU within its territory, the financial means used in these actions shall be deducted from the initial contributions to the DIF. During the discussions, many delegations supported the principle used on the basis of Article 8 of the IGA. At the same time, a further avenue of work could be to explore the possible implications on safeguards of the raising of ex-post contributions.

74. In discussing the issue of accession and departure, the Presidency considered it important to delineate between the different scenarios that could constitute accession, departure and termination, with a view to having a sound understanding of the definitions for the various scenarios which could then serve as a basis for framing future discussions on this matter. The Presidency also sought to explore whether there was a solid common understanding on the connection of the accession to and departure from EDIS and the other pillars of the Banking Union and moreover to explore the issue of accession and departure in light of the different phases of the EDIS proposal. On the issue of differentiating between termination, voluntary departure and temporary disqualification, the Presidency presented different possible scenarios.

75. Discussions showed that delegations were firmly of the view that departure from EDIS or termination from EDIS were separate from the issue of disqualification. The latter scenario was strictly related to the issue of temporary sanctions being applied in extreme circumstances. As a result, disqualification and departure or termination should be treated differently. The discussions also showed that further work to clarify the issue of the treatment of termination and disqualification were warranted particularly in view of the implications of Member States not being fully compliant with the Single Supervisory Mechanism Regulation (SSMR) which could indeed result in either disqualification or termination from the Banking Union on the basis of a decision according to the conditions set out in Article 7 of Council Regulation (EU) No 1024/2013. Delegations deemed that it was important to explore this issue in connection with a standard set of rules for joining or leaving all the three pillars of the Banking Union.

76. On the issue of exploring accession and departure procedures for the different phases of EDIS, delegations were generally of the view that it was too early to delve into this technical matter as this was largely conditional primarily on the overall design of EDIS.

77. The Presidency also sought to find clarity on delegations' views on the wider issue of whether accession and termination should be based at the level of the DGSs, and whether the applicability of accession and departure at the level of individual institutions would therefore be considered redundant. In this regard, further discussions may be warranted to ascertain delegations' views.

78. Finally the discussion on accession and departure also touched upon the concept of fair treatment such that Member States having the intention to participate in the Banking Union should be allowed to participate in EDIS on the basis of equivalent terms as those Member States already participating in the mechanism. The Presidency considered that such an equivalent approach would need to apply in terms of the possible different scenarios under which accession could take place as well as on the applicability of the different phases of EDIS and that any relevant analysis would need to be undertaken on these principles. No objections were raised on this approach. At the same time, however, a number of delegations referred to past discussions under the Dutch Presidency whereby calls were made for further analysis to be provided by the Commission in relation to the entry and exit conditions and impacts on non-Euro Area Member States and on the internal market. This issue was subsequently discussed further under the Maltese Presidency.

➢ **Impact of EDIS on the internal market**

79. Ensuing discussions that took place under the Dutch Presidency on Member States' views on subjects to be covered by a Commission analysis on the effects of the EDIS proposal and following the discussions that took place under the Slovak Presidency in light of the Commission Effects Analysis, the Maltese Presidency continued with discussions on the matter of the internal market on the basis of a joint non-paper presented by a number of MS[5].

80. The discussion under the Maltese Presidency revolved around questions on the possible impacts of EDIS on the internal market and more generally on the possible impacts of EDIS on the functioning of markets, the free movement of capital as well as macroeconomic impacts. In view of delegates' support for additional work to be carried out by the Commission, the Presidency called for the Commission to provide input to the AHWP discussions on the matter.

81. At the same time, the majority of delegates expressed their views that such work and discussions should be conducted in parallel to the technical discussions on EDIS.

82. The Presidency emphasised that discussions on matters relevant to all Member States should continue to be discussed at the level of the EU28 at the AHWP.

➢ **Design of EDIS**

83. The Maltese Presidency took into consideration the views expressed by the majority of delegates, during meeting discussions, that progress on most of the technical elements under discussion in the AHWP depends on the final design of EDIS. Consequently, the Maltese Presidency deemed it appropriate to re-ignite discussions on alternative options for design.

84. A development following the proposal by the Commission, was the draft proposal by EP Rapporteur Esther de Lange on EDIS to the European Parliament. The Maltese Presidency considered it opportune to trigger discussions in the light of alternative proposals.

85. In view of this, the Maltese Presidency requested the Commission to present to the AHWP the design differences between the Commission proposal and the proposal made to the European Parliament (including the tabled amendments by the various MEPs). Apart from reminding delegates of the proposed stages and the mutualisation objectives of both proposals, the main aim was to invoke a discussion on a common understanding of the alternative design elements and technical considerations required depending on the final design of EDIS. From the outset, the Maltese Presidency brought to the attention of delegates that the discussion on design should focus on the development of the Commission proposal and on the discussions taking place at Council level. Indeed, the EP Rapporteur draft text was not to be considered as a template or target for the Council discussions but merely as an opportunity to discuss different technical elements emerging from the designs which could further develop the Commission proposal.

86. In this respect, apart from the above-mentioned presentation of the Commission, the Maltese Presidency presented a note focusing primarily on the objectives and constraints of the main design elements for EDIS namely: basic design, funding structure, safeguards and risk-based contributions.

87. Whilst the majority of delegations were in support of discussing on the basis of the Commission proposal, others found merit in certain alternative design elements included in the draft EP Rapporteur proposal as discussed on the basis of the Commission presentation. In general delegations considered that discussion in the AHWP should have as a starting point the Commission proposal and any future proposals for alternative design changes should be provided through a Presidency non-paper or contribution from within the Council discussions. In fact, the AHWP generally supported to continue exploring further technical elements of various options for the design of EDIS.

III. BANKING PACKAGE (RRM PROPOSALS)

A). GENERAL APPROACHES

➢ **Transitionals on IFRS 9 & Large Exposures (Art. 473a, Art. 493(4) to (7) of the CRR)**

88. On 24 July 2014 the International Accounting Standards Board published International Financial Reporting Standard 9 Financial Instruments ("IFRS 9"). The standard's purpose is to improve financial reporting on financial instruments with a more forward-looking model for recognition of expected credit losses on financial assets. The European Commission implemented IFRS 9 through Commission Regulation (EC) No 2016/2067 by virtue of which institutions using IFRS to prepare their financial statements will be required to apply IFRS 9 for financial periods starting on or after 1 January 2018.

89. The RRM Package acknowledged that IFRS 9 may have a significant regulatory capital impact on institutions, insofar as its application could lead to a sizable increase in expected credit loss provisions and a consequent sudden fall in institutions' capital ratios. The CRR Proposal included a transitional period to mitigate that impact and allow institutions to phase-in the potential detrimental effect of IFRS 9 on their capital ratios over 5 years. The proposed phase-in was consistent with the "dynamic" approach methodology under discussion at the Basel Committee on Banking Supervision (the "BCBS").

90. Delegations recognised early on the need to apply the phase-in from 1 January 2018 to ensure consistency with the new accounting standard adopted by virtue of Commission Regulation (EC) No 2016/2067 and, accordingly, agreed to split off Art. 473a of the CRR from the original Proposal and fast-track its entry into force. On this basis, the Presidency prepared a draft Regulation with a view to its adoption by the Co-Legislators as a self-standing legal instrument before the end of 2017. The European Parliament also agreed to split and fast track Art. 473a of the CRR.

91. The draft Presidency compromise Regulation provides for a phase-in of the regulatory capital impact resulting from the application of IFRS 9 in accordance with the following overarching principles:

(a) where institutions' capital ratios fall as a result of increased expected credit loss provisions in accordance with IFRS 9 when compared to the current incurred loss model under IAS 39, they may add back an amount to their Common Equity Tier One ("CET 1") capital equal to a percentage of the institution's increased provisions as of the first date of application of IFRS 9 (on or after 1 January 2018). This is consistent with the "static" approach methodology also developed by the BCBS;

(b) institutions may add a further amount to their CET 1 capital subsequent to the first date of application of IFRS 9 where they incur significant new provisions during the transitional period. Such extra relief adds a "dynamic" component to the phase-in arrangements intended to mitigate the pro-cyclical nature of IFRS9 giving rise to larger than expected provisions as a result of worsening macroeconomic outlook. The amount of this extra relief will, however, be limited to any excess of provisions over 20% of the sum of stage 1 and stage 2 provisions held by the institution on the first day of application of IFRS;

(c) the transitional period will have a maximum duration of 5 years;

(d) as the interaction of the transitional arrangements with other provisions in the CRR and the CRD will give rise to double-counting, institutions benefitting from the transitional arrangements will have to recalculate:

  (i) the deductions from CET 1 due to the amount of deferred tax assets;

  (ii) the amount of specific credit risk adjustments in accordance with Art. 111(1) of the CRR; and

  (iii) the amount of Tier 2 items calculated in accordance with Art. 62(d) of the CRR; and

(e) to reflect technical differences, the method of calculating the phase-in will be adjusted depending to whether institutions calculate the risk weighting of their exposures in accordance with the Standardised Approach to credit risk or the Internal Rating Based Approach.

92. Delegations also agreed to add to the same draft Regulation a set of transitional arrangements to phase-out the exemption from the large exposure limit for exposures to certain public sector debt of Member States denominated in a non-domestic EU currency. This exemption is currently used by institutions in several non-euro area Member States in connection with their holdings of euro-denominated public debt of those Member States and, unless the CRR is amended, will cease to apply after 31 December 2017. The draft Regulation includes both transitional arrangements for new exposures and a grandfathering of existing exposures at the date of the adoption of the Regulation and is intended to soften the impact of the termination of the current exemption over a period of 3 years starting on 1 January 2018.

93. The text of the draft Regulation is set out in document 9480/17.

➢ **Bank Creditor Hierarchy (Art. 108 of the BRRD)**

94. On 17 June 2016, the ECOFIN Council invited the Commission to put forward a proposal on a common approach to the hierarchy of bank creditors. On 23 November 2016, the Commission adopted a separate proposal from the other proposals on risk reduction measures, with a view to fast-tracking this specific amendment to the BRRD.

95. The proposal contributes towards financial stability by reinforcing the implementation of a more effective bail-in tool, especially in a cross border context. The proposal is also necessary to reduce inconsistencies between national rules concerning the way to meet the subordination requirement of the loss absorbency and recapitalisation capacity of banks, which could distort competition in the internal market.

96. Due to possible limitations in the capacity of markets to absorb new eligible debt meeting the subordination requirement, issuances of senior non preferred should start as soon as possible.

97. The Commission considers that the proposal should be prioritised to foster compliance with the TLAC/MREL requirements, by ensuring that banks have a sound legal basis on which to build necessary buffers of eligible debt. Likewise, investors also need legal clarity, certainty and confidence to invest in these instruments.

98. Most delegations agree with the need for the proposed harmonisation of the bank creditor hierarchy in insolvency proceedings and its fast-tracking. A limited number of delegations have criticised that the proposal does not achieve sufficient risk reduction and pointed out the merits of alternative approaches, in particular statutory subordination. They would also welcome a higher level of harmonisation. Furthermore, one of these delegation sees merit in adopting the eligibility criteria jointly with the bank creditor hierarchy proposal. Every effort was made to accommodate - delegations in order to achieve the widest support possible within the Council for the General Approach on this text.

99. The text is set out in document 9479/17.

B). PROGRESS ON KEY ISSUES

100. A number of issues were thoroughly discussed during the Maltese Presidency, in particular, the key issues of eligibility criteria and home-host balance. Taking into account the concerns of a substantial number of delegations, the Presidency assigned a very high importance to these key issues. Consequently, several substantial discussions on these two key issues took place at the WPFS. Building on these discussions, the Presidency tabled two compromise proposals, containing the legal texts as set out in Annexes A and B, as last circulated by the Presidency in the WPFS for discussion. Given the extensive work and discussions on these key issues, the Presidency considers it appropriate for these texts to be reflected in the Annexes, something which some delegations consider an exception which should not set a precedent. Annex B, in particular, is also complemented by the content of the progress report on a number of other issues which, although not presented as a legal text, received substantial support by a vast majority of delegations.

101. The Presidency considers its proposals in the Annexes as balanced and reflecting the best possible compromise given delegations' heterogeneous positions. The Presidency notes that its proposals as annexed are supported by a broad majority of delegations. However, the Presidency also notes that some other delegations are not fully satisfied with the proposals in the Annexes and called for further discussion at a later stage.

➢ **Eligible Liabilities Items and Instruments (Art. 72a,72b, 72c, 494(3), 494b of the CRR)**

102. The Commission proposed a list of liabilities which cannot qualify as eligible liability items for the purpose of compliance with the requirement for own funds and eligible liabilities(Art. 72a(2) of the CRR Proposal). It also proposed that eligibility criteria for liabilities qualify as eligible liabilities instruments and specified the conditions where non-subordinated may be used to meet that requirement (Art. 72b of the CRR Proposal). Finally it established that instruments may count towards eligible liabilities only as long as their residual maturity is at least one year (Art. 72c of the CRR Proposal). This set of criteria is crucial for ensuring the necessary loss absorption capacity.

103. There is broad support for adding to the Commission's Proposal a transitional provision grandfathering certain existing liabilities, issued prior to a certain date and for as long as they comply with certain conditions of Art. 72b(2) of the CRR Proposal, until they mature, in order to ensure legal certainty and minimise the shortfalls for both MREL Pillar 1 and MREL Pillar 2, while also ensuring a smooth transition to the application of more stringent eligibility criteria.

104. There were also requests by a number of delegations to add to the Commission proposal another transitional provision allowing for senior preferred liabilities to qualify as eligible liabilities for MREL Pillar 1 provided that they meet certain conditions in Art. 72b(3) of the CRR Proposal. Some delegations deem that such transitional provision should be extended to the *de minimis* provision of Article 72b(4) of the CRR Proposal while a number of other delegations deem that such transitional provision should not be included at all.

105. There was broad support to delete the condition relating to disclosure to investors where an instrument could be subject to application of a statutory bail-in power by resolution authorities in Art. 72b of the CRR Proposal. Delegations found the condition to be misleading by giving investors the impression that only eligible liabilities would be subject to bail-in, which is clearly not the case.

106. A number of delegations would like to modify the condition that disallows the holder of the instrument the right to accelerate the payment of interest or principal other than in the case of insolvency of the institution, by providing for a possibility to accelerate the payment if the failure to pay continues for 30 days or more. Other delegations preferred to keep the condition unchanged.

107. Some delegations would like to introduce an additional criterion prohibiting cross-default clauses in liabilities of institutions referring to the default on their eligible liabilities. In this regard, the Presidency introduced a review clause inviting the Commission to assess this subject and present any appropriate proposals.

108. The text includes a clarification on embedded derivatives for the purposes of Art. 72a of the CRR Proposal for all eligible items. Some delegations would like liabilities with simple embedded derivatives ("simple structured notes"), such as the ones referred to in Article 45b(2) of the Commission's proposal, to count as senior liabilities eligible under conditions to TLAC (Art. 72b(3) and (4)). Some other delegations were of the view that such amendment should be avoided.

➢ **Home-host balance (Art. 7, 8 of the CRR; Art. 45g(4), Art. 45h(5), Art. 44(2) of the BRRD; Art. 27(3) of the SRMR)**

109. A group of thirteen delegations mainly from host Member States expressed strong concerns during the negotiations about the change to the home-host balance resulting from the Commission Proposals amending the CRR, the BRRD and the SRMR.

110. They are of the view that the RRM Proposals would need to be modified to restore an acceptable home-host balance, as well as to operationalise the proposed Single Point of Entry strategy in a consistent way and fostering the credibility of resolution plans. These views were broadly supported by the WPFS.

111. Upon request of the Presidency, the group of thirteen delegations mainly from host Member States identified four elements which should be prioritised and which are motivated as follows:

(a) deletion of the proposed amendments to the waivers in Art. 7 and 8 of the CRR, reverting to the current version of the CRR, due to their potential detrimental impact on financial stability;

(b) deletion of the provisions providing for collateralised guarantees in Article 45g of the BRRD Proposal and Art. 12h of the SRMR Proposal in view of such mechanism not being reliable in times of stress;

(c) re-introduction of the safe-harbour range in Art. 45h(5) of the BRRD Proposal as an important element of the BRRD's procedure for determining the MREL requirement for groups; and

(d) exclusion of some intragroup liabilities from bail-in in Art. 44(2) of the BRRD and Art. 27(3) of the SRMR, namely intragroup exposures of subsidiaries on their resolution entity, with a view of further operationalising resolution strategies.

112. On substance, the concerns expressed by these thirteen delegations from host Member States are fully supported by another five delegations. However, a number of the other delegations underlined the interlinkages with other issues and expressed concern about pre-empting the negotiations on the other aspects of the RRM Package at this stage of the negotiations.

113. A vast majority of delegations support the deletion of the proposed amendments to the waivers in Art. 7 and 8 of the CRR Proposal, and therefore want to revert to the current wording in the CRR. On the other hand some other delegations emphasised that the proposed amendments are directly linked with the functioning of the Banking Union and see merit in discussing them further, in particular Art. 8 of the CRR Proposal which can be further operationalised to set up cross border liquidity subgroups.

114. In view of the broad measure of support as set out above, the Presidency tabled a compromise deleting the proposed amendments to the waivers as set out in Annex B.

115. The group of eighteen delegations was joined by a number of other delegations also supporting the deletion of the provisions providing for collateralised guarantees in Art. 45g of the BRRD Proposal and Article 12h of the SRMR Proposal. These delegations consider that such mechanism is not enforceable and does not offer any reassurance that SPE strategies can be effectively implemented. Some other delegations support the provisions on the guarantees as an alternative to Internal MREL as they would allow for a more efficient management of capital and liquidity within banking groups.

116. Some delegations could consider alternative solutions, such as, increasing the amount of collateralisation of the guarantee from 50% to 100%, creating more safeguards to ensure the enforceability of the collateralised guarantees, limiting the use of such guarantees where the resolution entity and subsidiary are in the same Member State.

117. As regards the re-introduction of the safe harbour clause, apart from twelve of the thirteen host Member States, more than five other delegations could support the re-introduction of the safe-harbour range in Art. 45h(5) of the BRRD Proposal. A few other delegations would be open to acknowledge the principle if it would also be recognised that such a safeguard would be without prejudice to the calibration of external and internal MREL requirements and/or guidance. Others would like to discuss further and see strong links with other parts of the Commission's Proposal, especially MREL calibration.

118. As regards the exclusions from bail-in, eighteen delegations (the group of thirteen delegations mainly from host Member States plus another five) fully supported this proposal. Other delegations were concerned with the consequences of such proposal and called for further discussion and explanations for why the current framework does not provide for sufficient assurances. Given the broad acknowledgement of the problem, but given the concerns raised by some delegations both on substance and on process, the Presidency is of the view that the issue merits further reflection.

C). PROGRESS ON OTHER ISSUES

➢ **Market Risk (Fundamental Review of the Trading Book) (Art. 94, 102 to 106, 325 to 325bq, 501b, 519a of the CRR)**

119. The Commission proposal aims to better capture the full range of market risks and reduce opportunities for regulatory arbitrage between institutions' trading and non-trading activities. It also contains revised rules for the use of internal models to calculate own funds. The CRR Proposal included a phase-in period to soften the regulatory impact during the initial years of application of the new requirements.

120. The Presidency proposed several alternatives to the proposed phase-in period, namely:

(a) institutions would be allowed an extra year (from two to three years) to prepare for the implementation of the new requirements;

(b) in view of the proposal in (a), either a shorter phase-in of two years , instead of the three years proposed by the Commission, in order to have a total phase-in of 5 years or the three years proposed by the Commission which, together with the proposal in (a), would increase the phase-in to 6 years;

(c) as an alternative to the flat phase-in proposed by the Commission, the correction factor could increase progressively up to 100% over the transitional period of two or three years as noted in point (b) (Art. 501b of the CRR);

(d) deletion of the power for the Commission to prolong the phase-in period and amend the correction factor through a Delegated Act.

121. While delegations generally supported the aim and the principles underpinning the Presidency proposals, more work needs to be done on the details and, hence, a concrete redraft of these provisions requires further discussion at the WPFS, including on the modalities of the transitional arrangements. However, it is worth noting that the extension from two to three years to prepare for the implementation of the new requirements was supported by most delegations (point (a) in previous paragraph). A number of delegations also supported the deletion of the Delegated Act (point (d) in previous paragraph).

122. Some delegations supported higher thresholds for applying the simplified standardised approaches and the derogation from the trading book rules, but others underlined the need for a recalibration of the simplified standardised approach. More discussion on the issue of proportionality for both the application of the simplified standardised approach and the derogation from the trading book rules is required.

➢ **Scope (Art. 2(5), 2(5a), 2(5b), 2(6), 2(7), 9(2) and 145 of the CRD)**

123. Some public development banks and credit unions in certain Member States are specifically exempted from the CRD-CRR regulatory framework. The CRD Proposal provided for an additional exemption for similar institutions in other Member States through a delegated act that would exempt institutions on an individual basis (for development banks) or as an entire category of institutions (in the case of credit unions) subject to certain criteria. In addition, the CRD Proposal also suggested review clauses to enable the Commission to carry out a review of the entities exempted under the current Art. 2(5) of the CRD and any additional ones that became exempted in accordance with a delegated act.

124. However, the majority of delegations would prefer to address the scope of the CRD/CRR by potentially modifying the list of exemptions through the co-decision procedure, rather than by empowering the Commission to make changes via delegated acts. During the course of the discussions on the RRM Proposals, the Presidency also explored other possible options, such as using a Council Implementing Act, but these did not gain sufficient support and, ultimately, the Presidency proposed to delete the provisions put forward in the CRD Proposal which empower the Commission to issue a delegated act (Article. 2(5a) and (5b) of the CRD), as well as the proposed review clause (Article 2(7) of the CRD). Consequently, the Presidency also proposed deleting the amendments as set out in the CRD Proposal to Articles 2(6) and 145 of the CRD and recital (17) of the CRD, which referred to Articles 2(5a) and (5b) of the CRD, whist maintaining the deletion of Art. 146(a) of the CRD. As pointed out below, it was also suggested amending the list of entities in Art. 2(5) of the CRD.

125. The CRD Proposal also provided for specific exemptions for Dutch credit unions and, further to Croatia's Accession Treaty, Croatian credit unions, as well as the Croatian Bank for Reconstruction and Development. These entities would be added to the list of exempted entities in Art. 2(5) of the CRD. Further to the CRD Proposal, the Presidency also proposed the following amendments to Art. 2(5):

(a) the deletion of the obsolete reference to the Belgian legal entity in Art. 2(5)(4) of the CRD;

(b) a technical amendment to the Lithuanian legal entities referred to in Art. 2(5)(14) of the CRD; and

(c) the insertion of new exemptions for several German regional development banks and one Maltese development bank.

126. While delegations generally supported the insertion of the Croatian legal entities and the deletion of the obsolete Belgian legal entity, further discussions are required on whether the list in Art. 2(5) of the CRD should be extended any further to include the various other legal entities referred to above. Furthermore, at the last WPFS where scope was discussed, a number of delegations considered the possibility of adding to the list in Art. 2(5) of the CRD legal entities from their respective Member States which, in their view, were similar to those already in or to be added to the list. If the list in Art. 2(5) of the CRD were to be extended, most delegations supported including additional legal entities on the basis of objective criteria.

127. The Commission also proposed an amendment to Art. 9(2) of the CRD to better frame the exceptions from the prohibition of carrying out the business of taking deposits or other repayable funds from the public. In view of the concerns expressed in relation to this amendment, the Presidency proposed to address such concerns by inserting two new recitals in the CRD. A number of delegations would rather revert to the current text in the CRD and have Commission clarify what issue it tried to address with the proposed amendment to Art. 9(2) of the CRD.

➢ **Pillar 2 Requirements & Guidance (Art. 84, 97-99, 103, 104, 104a, 104b, 104c, 105, 141, 141a of the CRD)**

128. The CRD Proposal clarifies the conditions for setting own funds requirements in excess of minimum capital requirements and emphasises the institution-specific nature of those requirements (the "Pillar 2 framework"). It also spells out the main features of capital guidance and clarifies the interaction between the additional own funds, the minimum own funds ("Pillar 1"), the own funds and eligible liabilities, the MREL and the combined buffers requirements (the "stacking order"). In addition, the Commission's proposal constrains competent authorities' discretion when imposing additional reporting and disclosure obligations on institutions under the Pillar 2 framework.

129. Some delegations were critical about the constrains on competent authorities powers to impose requirements under the Pillar 2 framework as set out the CRD Proposal. Further to these and other concerns raised at the WPFS, the Presidency proposed several changes to the Pillar 2-related provisions in the CRD Proposal. In particular, the Presidency proposed the following, which most delegations supported:

(a) increase the built-in flexibility in Pillar 2 for competent authorities to use their supervisory powers relative to the CRD Proposal (Art. 104a(1)(b), 104a(2), 104a(4) and 104b(4) of the CRD);

(b) remove restrictions on the competent authorities' powers to impose additional own funds requirements (Art. 104a(1) of the CRD);

(c) give competent authorities the power to require a higher percentage of Tier 1 or CET 1 capital (Art. 104a(4) of the CRD);

(d) delete the empowerment for the EBA to develop draft regulatory technical standards specifying how risks and elements of risks are to be measured (Art. 104a(6) of the CRD;

(e) loosen the limitations on the competent authorities' powers to require additional disclosures and reporting (Art. 104(1)(l) and 104(2) of the CRD);

(f) delete the prioritisation of distributions on AT1 instruments (Art. 141(3) of the CRD);

(g) clarify the disclosure of Pillar 2 requirements (Art. 438 and 447 of the CRD); and

(h) clarify the application of Pillar 2 to address interest rate risk in the banking book (see below).

130. Some delegations suggested additional changes to the legal text on Pillar 2. In particular, these delegations would welcome a mandate for the EBA to develop guidelines instead of the Commission proposed Regulatory Technical Standards ("RTS"). Other delegations objected to the requirement to justify the decision to determine an additional capital add-on by giving a clear account of the elements referred to in Article 104a(1) to (4). In relation to the disclosure of Pillar 2 guidance, views were mixed with some delegations wanting the CRR to be explicit in not requiring the disclosure of Pillar 2 guidance. On the composition of additional capital requirements, some delegations were of the view that the competent authority should have the power to require only CET1 to meet the Pillar 2 requirements while some other delegations deemed that the composition should reflect that of the Pillar 1 requirements.

131. General concern was expressed that the limitation of the scope of Pillar 2 may prevent competent authorities from imposing Pillar 2 requirements where an institutions would need more capital to cover risks that are underestimated by Pillar 1. Some delegations also supported a clarification that risks “explicitly excluded” from Pillar 1 requirements should be considered within the scope of Pillar 2 requirements while others considered that Pillar 2 should not be allowed to override Level 1 requirements. In this respect, further discussions are required.

132. The Commission’s proposal also provided for the supervisory review and evaluation process ("SREP") and the corresponding supervisory requirements to be confined to purely micro-prudential purposes, to which several delegations objected. In this respect further discussions are required to understand what other macro-prudential tools would be available to replace the use of Pillar 2 for macro-prudential purposes as well as what additional amendments to the RRM Proposals might be necessary to make sure that macro and systemic risks, including at the national level, can be adequately addressed.

- **Leverage ratio (Part seven of the CRR)**

133. The majority of delegations support the main purpose of the CRR Proposal to introduce a binding leverage ratio requirement of 3% of Tier 1 capital and a surcharge on systemic institutions that reflect the agreement reached at an international level. A few delegations would, however, support a higher leverage ratio. With respect to setting a higher leverage ratio for systemic institutions, there were mixed views. This issue together with the exemptions from the leverage exposure measure require discussion.

134. The Presidency has proposed some limited technical amendments on the treatment of export credit exposures and securitisations (Art. 429a (1) f (ii) and (m) of the CRR) and the definition of public development credit institutions (Art. 429a (2) (a) and (e) of the CRR). While in principle many delegations are open to exempting such exposures from the leverage exposure measure, both the treatment of export credit exposures and the definition of 'public development credit institutions', in the latter case to cater for the specificities of different systems of promotional lending across the EU need to be discussed further. .

- **Regulatory reporting (Art. 99, 101(5), 394(3) & (4) and 430(1) of the CRR and Art. 104(1)(j) and 104(2) of the CRD) and disclosure (Part Eight of CRR and Art. 104(1)(l) of the CRD)**

135. The Commission's Proposal's main objective in relation to reporting and disclosure requirements was to enhance the degree of proportionality in the rules and reduce compliance costs for institutions.

136. The Presidency proposed a series of amendments to the Commission's Proposal which delegations supported, subject to additional technical discussions. In particular, there was support to:

(a) delete the proposed reduced reporting frequency for "small institutions" (Art. 99, 101, 394 and 430 of the CRR);

(b) amend the mandate for the EBA to assess the costs/benefits of regulatory reporting, including the effect on supervisory reporting (Art. 99(7) and (8) of the CRR); and

(c) clarify the meaning of duplicative reporting (Art 99 (11) of the CRR).

137. In relation to point (a), delegations would rather maintain the current regularity of reporting but reduce its granularity for small institutions. For these purposes, delegations would support giving the EBA a mandate to develop ad hoc reporting templates for small institutions, although further work will have to be conducted by the WPFS to agree on the terms of such mandate.

138. With respect to disclosure, delegations supported the principle of lighter disclosure for smaller institutions consistent with the Commission's Proposal, but the criteria to define "small institution" remain subject to discussion. In particular, the Euro 1.5 billion threshold proposed by the Commission was regarded as either too low or too high by different delegations. As a compromise, some delegations advocated a relative threshold.

139. Several delegations called for effective measures to reduce reporting and disclosure requirements which would give small institutions immediate relief, while at the same time not undermining the quality and efficiency of banking supervision. Several delegations also supported having further measures to strengthen proportionality.

➢ **Interest rate risk in the banking book (IRRBB) (Art. 84, 98, 104 and 104a of the CRD and Art. 448 of the CRR)**

140. Following developments at an international level on the measurement of interest rate risks, the Commission proposed a revised set of requirements for capturing interest rate risks for banking book positions. The Commission’s Proposal included the introduction of a common standardised approach that institutions might use to capture these risks or that competent authorities may require an institution to use when the systems developed by the institution to capture these risks are not satisfactory, an improved outlier test, new disclosure requirements and an empowerment for the EBA to:

(a) develop the details of the standardised methodology with regard to the criteria and conditions that institutions should follow to identify, evaluate, manage and mitigate interest rate risk; and

(b) define the supervisory shock scenarios applied to interest rates and the common assumption that institutions have to implement for the outlier test.

141. The Presidency proposed amending the Commission's Proposal by:

(a) adding a specific requirement on supervisors to exercise supervisory powers in connection with IRRBB where:

(i) an institution experiences a large decline in its net interest income as a result of a sudden and unexpected change in interest rate in accordance with supervisory shock scenarios; and if

(ii) an institution's management of IRRBB is regarded as "inadequate" (Article. 98(5) of the CRD):. and

(b) adding a definition of "supervisory powers" for the purposes for the purposes of Article 98(5) of the CRD; and

(c) increasing flexibility for competent authorities to determine the materiality of IRRBB for the purposes of imposing additional own funds requirements (Article 104a(2) of the CRD).

142. Although a majority of delegations agreed with many of the proposed amendments, some delegations regarded those as insufficient and called for more flexibility to be available to competent authorities. In particular, some delegations called for a better alignment with the BCBS standards by ensuring the absence of automaticity between the results of the outlier test(s) and the adoption of supervisory measures. A number of delegations objected to the limitation of the power to determine an additional capital requirement only if a certain materiality threshold has been exceeded.

143. Moreover, the Presidency further clarified the potential outlier test to be developed by EBA (Art. 98 of the CRD) and tabled a technical amendment to introduce harmonised mandatory disclosures for IRRBB (Art. 448(3)(b) of the CRR) which delegations mainly supported. However, the list of parameters to be defined by the EBA for the purpose of the outlier test still needs further discussion.

- **Counterparty Credit Risk ("CCR") (Art. 272 to 283, 298, 299 of the CRR)**

144. A new method to compute the exposure value of derivatives exposures has been proposed by the Commission to address the shortcomings of the existing standardised methods. The Commission Proposal includes the introduction of a new (simplified) approach for CCR (SA-CCR) and a revised original exposure method (OEM) to make it more risk-sensitive.

145. A number of delegations wanted to reintroduce the mark-to-market method. Consequently, the Presidency proposed amendments to the revised OEM, including setting a higher level of thresholds for its application (from EUR 20 million to EUR 100 million) and for the simplified SA-CCR (from EUR 150 million to EUR 300 million) to capture a larger set of institutions.

146. There was some support for the proposed approach to increase the thresholds, but the exact set-up of those in both absolute amounts and relative terms (as a proportion of institutions' total assets) is yet to be agreed. Some delegations noted that, before setting the thresholds, it should be ensured that simpler approaches are always more conservative than the complex ones.

147. The Presidency also proposed the introduction of further proportionality by providing that, where the derivative business does not exceed the threshold for using one of the simplified approaches at the consolidated level, all institutions within the group should be allowed to use those approaches. Such approach was supported by a large number of delegations.

148. There was also support for the method for calculating the size of the derivative business that should not allow netting between long and short positions and on the monitoring by the EBA of the untested new models (SA-CCR and OEM) in order to look closely at their impact in the coming years (Art. 514 of the CRR).

149. The Presidency has also proposed changes to the mandates for EBA to develop RTSs to allow more flexibility for EBA to determine whether a position is long or short with respect to the primary risk driver (RTS mandate set out in Art.279(4)(b) of the CRR), delete the RTS mandate to determine what constitutes a large and concentrated commodity derivative portfolio Art. 280e(3) of the CRR and clarify the intention and scope of application of the RTS mandate set out in Art. 277 of the CRR to determine the primary and other material risk drivers of a position. The delegations generally agreed to proposed changes in the EBA RTS mandates. although further discussion may be needed.

- **SME supporting factor (Art. 501 of the CRR)**

150. The Commission's Proposal includes changes to Art. 501 of the CRR in relation to the capital requirements for exposures to small and medium-sized enterprises (SMEs) increasing the capital relief for these exposures. A majority of delegations support an extension of the SME supporting factor of 15% to SME exposures above EUR 1,5 million.

151. While delegations were broadly supportive of the Commission's Proposal, a few delegations were of the view that the extension of the SME supporting factor to institutions using the IRB approach for credit risk was not appropriate since the IRB requirements already reflect accurately enough the underlying credit risk for SME exposures.

- **Contractual Recognition of Bail-in (Art. 55 of the BRRD)**

152. Art. 55 of the BRRD requires recognition of bail-in in contracts subject to the law of a third country. The proposed policy option provides for the possibility for resolution authorities to waive the requirement, where it is impracticable or legally unfeasible and does not constitute an impediment for the institution in question.

153. Most delegations agreed to place the burden of proof as regards impracticability and compliance on institutions while providing for a RTS to give some guidance and clarity as well as strengthen the provisions related to monitoring and supervision by the resolution authorities.

154. A few delegations consider that such an approach would weaken the role of the resolution authority and limit safeguards against abuse of the waiver regime. They consider that these provisions still need to be amended, in order to offer less discretion to the entities involved.

155. However, the Presidency considers that the balance expressed above is the best possible one.

➢ **Moratorium Tools (Art. 29a, 63(1) of the BRRD)**

156. A suspension of payments to certain creditors, for a short period of time, should facilitate a more adequate evaluation of assets and liabilities as well as the effective application of one or more resolution tools.

157. The BRRD already contains provisions allowing the suspension of payment obligations in resolution. The importance of the power to suspend payment obligations (moratorium) in resolution was underlined by a large majority of delegations. However, this has been implemented in different ways across the Union, lacking consistency as regards elements such as scope, conditions for application and duration of the suspension.

158. In particular, the Commission considers that such a tool could be useful in a pre-resolution context (where it would be applied by supervisors) and during resolution.

159. The latest Presidency compromise, includes, in particular, the separation of pre-resolution moratorium from early intervention measures, a revised balance between the supervisory and resolution powers and removal of covered deposits from the list of items exempted from suspension, while setting the maximum duration of the pre-solution and resolution moratorium at, respectively, 5 and 3 days.

160. A significant number of delegations expressed concerns on the proposed pre-resolution moratorium as its use may automatically lead to a failing or likely to fail assessment. Some delegations were in favour to limit the use of a pre-resolution moratorium when a bank has been assessed as failing or likely to fail.

161. The duration of the resolution tool was deemed too short to be effective by a number of delegations. On the scope, there were mixed views on whether covered deposits should be excluded together with calls for further discussion and analysis on the interaction with the impact on deposit guarantee schemes and on the impact of the suspension of payments related to deposits. Some delegations expressed the wish to design the pre-resolution moratorium as a minimum harmonisation, allowing Member States to maintain or adopt further-reaching national moratoria for institutions which would be subject to insolvency proceedings.

D). <u>OUTSTANDING ISSUES</u>

162. The Working Group started discussion on the below items but no significant progress was made during the Maltese Presidency. Additional technical work will be required to progress these items.

➢ **CRR/CRD**

- **Remuneration (Articles 92, 94 and 109 of the CRD)**

163. The Commission proposed amendments to the remuneration rules in order to clarify the interpretation of proportionality. During the discussions it became clear that a number of delegations is broadly supportive of the rationale and objectives of the Commission's Proposal in this area, while others expressed concern that the Commission's approach reduces proportionality.

164. Views were split on the level of thresholds to be set with delegations arguing for either a higher or a lower threshold than the one proposed by the Commission. A number of delegations preferred a combination of thresholds based on both relative and absolute criteria rather than just an absolute threshold.

165. A number of delegations were of the view that the CRD Proposal reduced discretion to apply the principle of proportionality and called for the remuneration requirements to be simplified further, including for, but not limited to, smaller institutions.

- **NSFR (Articles 411, 413, 428a-ag and 510 of the CRR)**

166. Following the finalisation of the NSFR standard at the international level (the "Basel NSFR"), the Commission proposed its implementation in the EU. The NSFR requires institutions to finance their longer term activities (assets and off-balance sheet items) with stable sources of funding (liabilities) in order to increase the institution's resilience to funding constraints. Under the NSFR standard, institutions are required to have a ratio of available stable funding relative to their required stable funding needed to cover a one-year horizon of no less than 100%. The CRR Proposal provided for various targeted amendments to the Basel NSFR to cater for a number of EU specificities, in particular in relation to:

    (a) pass-through models and covered bonds issuance;

    (b) trade finance activities;

    (c) centralised regulated savings;

    (d) residential guaranteed loans; and

    (e) credit unions.

167. Delegations were generally supportive of both the need to implement the Basel NSFR in EU law and make some changes to that standard to cater for EU specificities.

168. However, delegations had mixed views regarding some of the other deviations from the Basel NSFR in the Commission's Proposal, such as the phase-in of the requirements for short term transactions with financial counterparties and the use of the SA-CCR approach. Furthermore, given that the treatment of derivatives in the NSFR has been reopened in the BCBS and a revised standard will be adopted by the end of 2017, many delegations would prefer to put this issue on hold pending the revised BCBS standard.

169. In light of the above, further analysis and discussions are required at technical level in order to agree on a way forward.

- **EU Intermediate parent undertaking (IPU) (Art. 21b of the CRD)**

170. With the stated objective to facilitate the implementation of the internationally agreed standards on internal loss-absorbing capacity for non-EU G-SIIs in EU law and, more broadly, simplify and strengthen the resolution process of third-country groups with significant activities in the EU, the Commission proposed the introduction of a new requirement in the CRD for establishing an intermediate EU parent undertaking where two or more institutions established in the EU have the same ultimate parent undertaking in a third country. The intermediate EU parent undertaking can be either a holding company subject to the requirements of the CRR and the CRD or an institution authorised in the EU.

171. In accordance with the Commission's Proposal this requirement would apply only to third-country groups that are identified as non-EU G-SIIs or that have entities on the EU territory with total assets of at least EUR 30 billion (where the assets of both subsidiaries and branches of those third-country groups are to be taken into account for the purpose of calculating the total assets).

172. Given the number of issues which delegations raised regarding the Commission's Proposal and, in particular, the lack of a cost/benefit assessment of this part of the Proposal, further discussions are necessary.

- **(Mixed) Financial Holding Companies (Art. 4(1)(20), 4(1)(26), 21a of the CRD)**

173. New provisions and various amendments to existing CRD provisions were included in the Commission's Proposal to bring financial holding companies and mixed financial holding companies directly within the scope of the EU prudential framework and make them responsible for ensuring compliance with requirements on a consolidated level.

174. It was acknowledged that the Commission's Proposal would require further clarification, in particular in relation to matters such as the interaction with current similar requirements, the scope of the authorisation requirement, the effect of withdrawal of the authorisation, the treatment of existing holding companies (e.g. grandfathering) and the implications on consolidation supervision.

- **Treatment of infrastructure exposures (Art. 501a of the CRR)**

175. The Commission's proposal aims at mobilising private finance for high quality infrastructure projects. Following the recent regulatory developments at international level, it is proposed to grant under both the Standardised Approach and the Internal Based Approach for credit risk a preferential treatment for specialised lending to safe and sound infrastructure projects. In this regard, the Commission also introduced a review clause to fine-tune it in light of its impact on infrastructure investments in the EU and to consider any developments at global level.

176. Delegations broadly supported the proposal. However there were several requests for clarifications and issues identified by delegations which need to be addressed. These issues mainly relate to the type of exposures which would benefit from beneficial treatment, the eligibility criteria for qualifying exposures and the calibration of the multiplying factor. Further work is therefore necessary in connection with these particular issues.

- **Investment firms review (Art. 501c of the CRR)**

177. The Commission proposed to allow investment firms that are not systemic to continue to apply the current CRR, while submitting systemic investment firms to the CRR as amended in accordance with the CRR Proposals.

178. There were some initial discussions on this issue but more will be necessary. Delegations generally agreed to postpone substantive discussions on the prudential treatment of investment firms there is more clarity on the Investment Firm Review.

- **BRRD/SRMR**

- **MREL criteria, calibration, Pillar 2 Requirement, Guidance & MREL Breaches (Art. 45, 45a, 45b, 45c, 45e, 45k of the BRRD)**

179. In the existing version of the BRRD, the institution specific MREL is set as a percentage of the total liabilities of the institution. The Commission proposed to align the MREL metrics with the minimum requirement for G-SIIs as provided in the TLAC standard ('the TLAC minimum requirement'), to be expressed as a percentage of the total risk exposure amount and of the leverage ratio exposure measure of the relevant institution. Delegations generally support the Commission proposal in this respect.

180. In the Commission proposal, the eligibility criteria for the instruments and items that count for MREL are broadly aligned with the eligibility criteria provided in the TLAC standard for the TLAC minimum requirement in the CRR with the exception of the subordination requirement. Different views have been expressed by delegations on such subordination requirement.

181. Mixed views were expressed by delegations as regards the calibration, where further discussions are required.

182. As regards the minimum requirement for own funds and eligible liabilities (Art. 45c of the BRRD), a certain number of criteria are defined, to be used by the resolution authority to determine MREL.

183. A large number of delegations welcome the proposal by the Commission but disagree with parts of it, for example, the cap on the requirement. Some delegations were of the view that the Commission proposal implies a reduction of MREL compared to the status quo. These delegations opined that the proposal does not ensure risk reduction and does not fully implement the TLAC term sheet. Also, since this Article is based broadly on the Commission Delegated Regulation 2016/1450 for setting MREL, these delegations preferred that the text of the Delegated Regulation be adhered to in order to ensure legal certainty and continuity.

184. Some other delegations suggested that the wording remain as that found in the current BRRD. Furthermore, there were differing views between delegations on the amount of discretion that should be allowed to resolution authorities in setting the level of MREL. As a result of the issues mentioned above this article is still under discussion.

185. As regards the Guidance for minimum requirements of owns funds and eligible liabilities (Art 45e of the BRRD), there were diverging opinions. On one hand some delegations opposed the introduction of the MREL Guidance as it would create in their view complexity and additional uncertainty regarding the bindingness of the MREL requirement. These delegations called for a return to the previous BRRD and MREL RTS framework that allowed MREL to be set with regard to factors such as market confidence.

186. Some delegations also had doubts with respect to the concept of MREL guidance and on how the tool could potentially be used to reduce hard MREL.

187. Lastly, some delegations had broad support to the MREL guidance to avoid the negative consequences of an MDA level set too high while underlining that if the guidance is softer than the requirement it is not a soft provision. As a result of the issues mentioned above this article is still under discussion.

188. Some delegations considered important that institutions are granted adequate transitional periods to meet any potential MREL shortfalls. Such transitional periods should be determined taking into account prevailing market conditions and the impact on the viability of the institution.

189. With respect to the breaches of the minimum requirement for own funds and eligible liabilities (Art 45k of the BRRB), delegations called for a clear delineation of competencies and responsibilities of competent and resolution authorities depending on the reasons for which the combined buffer requirement (CBR) is breached.

- **Supervisory reporting and disclosure of the MREL requirement (Art. 45i, 45j, 45l of the BRRD)**

190. With respect to the Supervisory reporting and public disclosure of the MREL requirement (Art 45i of the BRRD), the main concern of delegations was the duplication of reporting to both the competent authority and the resolution authority, which they wanted to prevent. Some delegations suggested that supervisory reporting and public disclosure of the MREL should be waived where the resolution authority deems it feasible and credible to liquidate the institution.

191. On Reports (Art 45l of the BRRD), there were calls for a clearer date for the submission of the EBA report to the Commission. The article is still under discussion.

IV. <u>CONCLUSIONS</u>

192. The Maltese Presidency invites the Council to take note of this Report, with a view to progressing work further.

193. The Estonian Presidency is invited to build on the progress made when taking over and continue to work towards strengthening the Banking Union, addressing its various work-streams

DISCLAIMER: ANNEX A is an integral part of this Progress Report and should be read in conjunction with this Report, in particular its introduction.

ANNEX A

Eligible liabilities items and instruments

NEW Recitals 19a & 19b and Articles 72a, 72b, 72c, NEW paragraph 3 to Article 494 and NEW Article 494b of the CRR

NEW Recital 19a

"19a. Eligible liabilities should not be subject to set-off or netting rights which would undermine their loss-absorbing capacity in resolution. Therefore, it is necessary that the liabilities are not subject to set-off arrangements or netting rights, which does not mean that the contractual provisions governing the liabilities should contain a clause explicitly stating that the instrument is not subject to set-off or netting rights."

NEW Recital 19b

"19b. In order to avoid cliff-edge effects, it is necessary to grandfather existing debt instruments with respect to certain eligibility criteria. For liabilities issued before [the date of entry into force to be added when the text is published], certain eligibility criteria should be waived. Such a grandfathering should apply to liabilities counting towards, where applicable, the subordinated portion of the TLAC requirement and the subordinated portion of the MREL requirement pursuant to Directive 2014/59/EU, as well as to liabilities counting towards, where applicable, the non-subordinated portion of the TLAC requirement and the non-subordinated portion of the MREL requirement pursuant to Directive 2014/59/EU."

"CHAPTER 5a

Eligible liabilities

SECTION 1

ELIGIBLE LIABILITIES ITEMS AND INSTRUMENTS

Article 72a

Eligible liabilities items

1. Eligible liabilities items shall consist of the following, unless they fall into any of the categories of excluded liabilities laid down in paragraph 2, and to the extent specified in Article 72c:

(a) eligible liabilities instruments where the conditions laid down in Article 72b are met, to the extent that they do not qualify as Common Equity Tier 1, Additional Tier 1 and Tier 2 items;

(b) Tier 2 instruments with a residual maturity of at least one year, to the extent that they do not qualify as Tier 2 items in accordance with Article 64.

2. By way of derogation from paragraph 1, the following liabilities shall be excluded from eligible liabilities items:

(a) covered deposits;

(b) sight deposits and short term deposits with an original maturity of less than one year;

(c) the part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level referred to in Article 6 of Directive 2014/49/EU;

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

(e) secured liabilities, including covered bonds and liabilities in the form of financial instruments used for hedging purposes that form an integral part of the cover pool and that according to national law are secured in a way similar to covered bonds, provided that all secured assets relating to a covered bond cover pool remain unaffected, segregated and with enough funding and excluding any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured;

(f) any liability that arises by virtue of the holding of client assets or client money including client assets or client money held on behalf of collective investment undertakings, provided that such a client is protected under the applicable insolvency law; (g) any liability that arises by virtue of a fiduciary relationship between the resolution entity or any of its subsidiaries (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable insolvency or civil law;

(h) liabilities to institutions, excluding liabilities to entities that are part of the same group, with an original maturity of less than seven days;

(i) liabilities with a remaining maturity of less than seven days, owed to:

(i) systems or operators of systems designated in accordance with Directive 98/26/EC;

(ii) participants in a system designated in accordance with Directive 98/26/EC or arising from the participation in such a system;

(iii) third country CCPs recognised in accordance with Article 25 of Regulation (EU) No 648/2012.

(j) a liability to any one of the following:

(i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement, and except for the variable component of the remuneration of material risk takers as referred to in Article 92(2) of Directive 2013/36/EU;

(ii) a commercial or trade creditor, where the liability arises from the provision to the institution or the parent undertaking of goods or services that are critical to the daily functioning of the institution's or parent undertaking's operations, including IT services, utilities and the rental, servicing and upkeep of premises;

(iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;

(iv) deposit guarantee schemes, where the liability arises from contributions due in accordance with Directive 2014/49/EU.

(k) liabilities arising from derivatives;

(l) liabilities arising from debt instruments with embedded derivatives.

For the purposes of point (l), debt instruments containing early redemption options exercisable at the discretion of the issuer or of the holder, and debt instruments with variable interests derived from a broadly used reference rate such as Euribor or Libor, shall not be considered as debt instruments with embedded derivatives solely because of such features.

Article 72b

Eligible liabilities instruments

1. Liabilities shall qualify as eligible liabilities instruments, provided they comply with the conditions laid down in this Article and only to the extent specified in this Article.

2. Liabilities shall qualify as eligible liabilities instruments provided that all of the following conditions are met:

(a) the liabilities are directly issued or raised, as applicable, by an institution and are fully paid-up;

(b) the liabilities are not owned by any of the following:

(i) the institution or an entity included in the same resolution group;

(ii) an undertaking in which the institution has a direct or indirect participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of that undertaking;

(c) the acquisition of ownership of the liabilities is not funded directly or indirectly by the resolution entity;

(d) the claim on the principal amount of the liabilities under the provisions governing the instruments is wholly subordinated to claims arising from the excluded liabilities referred to in Article 72a(2). This subordination requirement shall be considered to be met in any of the following situations:

(i) the contractual provisions governing the liabilities specify that in the event of normal insolvency proceedings as defined in point 47 of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2);

(ii) the applicable law specifies that in the event of normal insolvency proceedings as defined in point 47 of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2);

(iii) the instruments are issued by a resolution entity which does not have on its balance sheet any excluded liabilities as referred to in Article 72a(2) that rank pari passu or junior to eligible liabilities instruments;

(e) the liabilities are neither secured, nor subject to a guarantee or any other arrangement that enhances the seniority of the claim by any of the following:

(i) the institution or its subsidiaries;

(ii) the parent undertaking of the institution or its subsidiaries;

(iii) any undertaking that has close links with entities referred to in points (i) 55 and (ii).

(f) the liabilities are not subject to set off or netting rights that would undermine their capacity to absorb losses in resolution;

(g) the provisions governing the liabilities do not include any incentive for their principal amount to be called, redeemed, repurchased prior to their maturity or repaid early by the institution, as applicable, except for the situations referred to in paragraph 3 of Article 72c;

(h) the liabilities are not redeemable by the holders of the instruments prior to their maturity, except for the situations referred to in Article 72c(2);

(i) where the liabilities include one or more early repayment options including call options, the options are exercisable at the sole discretion of the issuer, except for the situations referred to in point (h);

(j) the provisions governing the liabilities do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repurchased or repaid early, as applicable by the resolution entity other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;

(k) the provisions governing the liabilities do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in case of the insolvency or liquidation of the resolution entity;

(l) the level of interest or dividend payments, as applicable, due on the liabilities is not amended on the basis of the credit standing of the resolution entity or its parent undertaking;

For the purposes of point (d), where some of the excluded liabilities referred to in Article 72a(2) are subordinated to ordinary unsecured claims under national insolvency law, inter alia, due to being held by a creditor who has a special relationship with the debtor, by being or having been a shareholder, in a control or group relationship, a member of the management body or related to any of the above mentioned persons, subordination shall not be assessed by reference to claims arising from such excluded liabilities.

3. In addition to the liabilities referred to in paragraph 2, liabilities shall qualify as eligible liabilities instruments up to an aggregate amount that does not exceed 3.5% of the total risk exposure amount calculated in accordance with paragraphs 3 and 4 of Article 92, provided that:

(a) all the conditions laid down in paragraph 2 except for the condition in point (d) are met;

(b) the liabilities rank pari passu with the lowest ranking excluded liabilities referred to in Article 72a(2) with the exception of the excluded liabilities subordinated to ordinary unsecured claims under national insolvency law referred to in the last subparagraph of paragraph 2; and

(c) the inclusion of these liabilities in eligible liabilities items does not have a material adverse impact on the resolvability of the institution, as confirmed by the resolution authority after having assessed the elements referred to in points 56 (b) and (c) of Article 45b(3) of Directive 2014/59/EU.

An institution may decide not to include in eligible liabilities items the liabilities referred to in the first subparagraph.

4. Where an institution takes a decision as referred to in the second subparagraph of paragraph 3, liabilities shall qualify as eligible liabilities instruments in addition to the liabilities referred to in paragraph 2, provided that:

(a) the decision by the institution not to include in eligible liabilities items liabilities referred to in the first subparagraph of paragraph 3 is effective, in accordance with paragraph 5;

(b) all the conditions laid down in paragraph 2, except for the condition in point (d) of that paragraph, are met;

(c) the liabilities rank pari passu or are senior to the lowest ranking excluded liabilities referred to in Article 72a(2) with the exception of the excluded liabilities subordinated to ordinary unsecured claims under national insolvency law referred to in the last subparagraph of paragraph 2;

(d) on the balance sheet of the institution, the amount of the excluded liabilities referred to in Article 72a(2) which rank pari passu or below those liabilities in insolvency does not exceed 5% of the amount of the own funds and eligible liabilities of the institution;

(e) the inclusion of those liabilities in eligible liabilities items does not have a material adverse impact on the resolvability of the institution, as confirmed by the resolution authority after having assessed the elements referred to in points (b) and (c) of Article 45b(3) of Directive 2014/59/EU.

5. The decision referred to in the second sub-paragraph of paragraph 3 shall specify whether the institution intends either to include the liabilities referred to in paragraph 4 in eligible liabilities items or not to include any of the liabilities referred to in paragraphs 3 and 4. An institution may not decide to include liabilities referred to in both paragraphs 3 and 4 in eligible liabilities items.

The decision shall be published in the annual report and shall take effect 6 months after the publication of that report. The decision shall be effective for at least one year.

6. The resolution authority shall consult the competent authority when examining whether the conditions of this Article are fulfilled.

7. EBA shall develop draft regulatory technical standards to specify:

(a) the applicable forms and nature of indirect funding of eligible liabilities instruments;

(b) the form and nature of incentives to redeem for the purposes of condition (g) of paragraph 2 of Article 72b and paragraph 3 of Article 72c;

Those draft regulatory technical standards shall be fully aligned with the Commission Delegated Regulation (EU) No 241/2014.

EBA shall submit those draft regulatory technical standards to the Commission by 6 months after the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 72c

Amortisation of eligible liabilities instruments

1. Eligible liabilities instruments with a residual maturity of at least one year shall fully qualify as eligible liabilities items. Eligible liabilities instruments with a residual maturity below one year shall not qualify as eligible liabilities items.

2. For the purposes of paragraph 1, where an eligible liabilities instrument includes a holder redemption option exercisable prior to the original stated maturity of the instrument, the maturity of the instrument shall be defined as the earliest possible date on which the holder can exercise the redemption option and request redemption or repayment of the instrument.

3. For the purposes of paragraph 1, where an eligible liability instrument includes an incentive for the issuer to call, redeem, repay or repurchase the instrument prior to the original stated maturity of the instrument, the maturity of the instrument shall be defined as the earliest possible date on which the issuer can exercise that option and request redemption or repayment of the instrument."

NEW paragraph 3 of Article 494 of the CRR

“3. For the purposes of paragraph 3 of Article 72b, until the resolution authority assesses for the first time the elements referred to in points (b) and (c) of Article 45b(3) of Directive 2014/59/EU and confirms there is no material adverse impact on the resolvability of the institution, liabilities shall qualify as eligible liabilities instruments up to an aggregate amount that does not exceed, until 31 December 2021, 2.5% and, after that date, 3.5% of the total risk exposure amount calculated in accordance with paragraphs 3 and 4 of Article 92, provided that they meet the conditions laid down in points (a) and (b) of Article 72b(3).”

NEW Article 494b CRR

“By way of derogation from Article 72a(1)(a), liabilities issued prior to [the date of entry into force to be added when the text is published] shall qualify as eligible liabilities items where they satisfy the conditions laid down in Article 72b, except for the conditions referred to in points (f) to (n) of Article 72b(2).”

Review clause on cross-default provisions

With a view to reinforcing as much as possible the effectiveness of the bail-in tool, the Commission shall review and assess, no later than [insert date 3 years after entry into force of this Regulation], whether it is appropriate for liabilities qualifying for TLAC/MREL to be able to be bailed-in without triggering cross-default clauses in other contracts with a view to assessing whether no cross-default provisions referring to eligible liabilities should be included in the terms or contracts governing other liabilities complimentary to the TLAC/MREL eligibility. The Commission's review and assessment shall be accompanied by any appropriate proposals.

DISCLAIMER: ANNEX B is an integral part of this Progress Report and should be read in conjunction with this Report, in particular its introduction.

ANNEX B

Home-host balance

"~~(5) In Article 7, paragraphs 1 and 2 are replaced by the following:~~

~~"1. Competent authorities may waive the application of Article 6(1) to any subsidiary, where both the subsidiary and the parent undertaking have their head office situated in the same Member State and the subsidiary is included in the supervision on a consolidated basis of the parent undertaking, which is an institution, a financial holding company or a mixed financial holding company, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately between the parent undertaking and the subsidiary:~~

~~(a) there is no current or expected material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary;~~

~~(b) either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;~~

~~(c) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;~~

~~(d) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.~~

~~2. After having consulted the consolidating supervisor, the competent authority may waive the application of Article 6(1) to a subsidiary having the head office situated in a different Member State than the head office of its parent undertaking and included in the supervision on a consolidated basis of that parent undertaking, which is an institution, a financial holding company or a mixed financial holding company, provided that all of the following conditions are satisfied:~~

~~(a) the conditions laid down in points (a) to (d) of paragraph 1;~~

~~(b) the institution grants a guarantee to its subsidiary, which at all times fulfils the following conditions:~~

~~(i) the guarantee is provided for at least an amount equivalent to the amount of the own funds requirement of the subsidiary which is waived;~~

~~(ii) the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due or a determination has been made in accordance with Article 59(3) of Directive 2014/59/EU in respect of the subsidiary, whichever is the earliest;~~

~~(iii) the guarantee is fully collateralised for at least 50% of its amount through a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council ;~~

~~(iv) the guarantee and financial collateral arrangement are governed by the laws of the Member State where the head office of the subsidiary is situated, unless otherwise specified by the competent authority of the subsidiary;~~

~~(v) the collateral backing the guarantee is an eligible collateral as referred to in Article 197 , which, following appropriately conservative haircuts, is sufficient to fully cover the amount referred to in point (iii);~~

~~(vi) the collateral backing the guarantee is unencumbered and is not used as collateral to back any other guarantee;~~

~~(vii) there are no legal, regulatory or operational barriers to the transfer of the collateral from the parent undertaking to the relevant subsidiary.".~~

~~(6) Article 8 is replaced by the following:~~

~~"Article 8~~

~~Waiver from the application of liquidity requirements on an individual basis~~

~~1. Competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries having their head offices situated in the same Member State as the institution's head office and supervise them as a single liquidity sub-group, where all of the following conditions are satisfied:~~

~~(a) the parent institution on a consolidated basis or a subsidiary on a sub-consolidated basis complies with Part Six;~~

~~(b) the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors at all times the liquidity positions of all institutions within the liquidity sub-group that are subject to the waiver in accordance with this paragraph and ensures a sufficient level of liquidity for all of those institutions;~~

~~(c) the institutions within the liquidity sub-group have entered into contracts that, to the satisfaction of competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they become due;~~

~~(d) there is no current or expected material practical or legal impediment to the fulfilment of the contracts referred to in point (c).~~

~~2. Competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries having their head offices situated in different Member States than the institution's head office and supervise them as a single liquidity sub-group, only after following the procedure laid down in Article 21 and only to the institutions whose competent authorities agree about the following elements:~~

~~(a) their assessment of the compliance with the conditions referred to in paragraph 1;~~

~~(b) their assessment of the compliance of the organisation and treatment of liquidity risk with the criteria set out in Article 86 of Directive 2013/36/EU across the single liquidity sub-group;~~

~~(c) the distribution of amounts, location and ownership of the required liquid assets to be held within the single liquidity sub-group;~~

~~(d) the determination of minimum amounts of liquid assets to be held by institutions for which the application of Part Six will be waived;~~

~~(e) the need for stricter parameters than those set out in Part Six;~~

~~(f) unrestricted sharing of complete information between competent authorities;~~

~~(g) a full understanding of the implications of such a waiver.~~

~~3. An authority that is competent for supervising on an individual basis an institution and all or some of its subsidiaries having their head offices situated in different Member States than the institution's head office may waive in full or in part the application of Part Six to that institution and to all or some of its subsidiaries and supervise them as a single liquidity sub-group, provided that all of the following conditions are satisfied:~~

~~(a) the conditions referred to in paragraph 1 and in point (b) of paragraph 2;~~

~~(b) the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis grants to the institution or group of institutions having their head office situated in another Member State a guarantee that fulfils all of the following conditions:~~

~~(i) the guarantee is provided for an amount at least equivalent to the amount of the net liquidity outflows that the guarantee substitutes and that is calculated in accordance with Commission Delegated Regulation (EU) 2015/61 on an individual basis for the institution or on a sub-consolidated basis for the group of institutions subject to the waiver and benefitting from the guarantee, without taking into account any preferential treatment;~~

~~(ii) the guarantee is triggered when the institution or group of institutions subject to the waiver and benefitting from the guarantee is unable to pay its debts or other liabilities as they become due or a determination has been made in accordance with Article 59(3) of Directive 2014/59/EU in respect of the institution or group of institutions subject to the waiver, whichever is the earliest;~~

~~(iii) the guarantee is fully collateralised through a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC;~~

~~(iv) the guarantee and the financial collateral arrangement are governed by the laws of the Member State where the head office of the institution or group of institutions subject to the waiver and benefitting from the guarantee is situated, unless otherwise specified by the competent authority of those institutions;~~

~~(v) the collateral backing the guarantee is eligible as high quality liquid asset as defined in Articles 10 to 13 and 15 of Commission Delegated Regulation (EU) 2015/61 and, following the application of the haircuts referred to in Chapter 2 of Title II of that Regulation, covers at least 50% of the amount of the net liquidity outflows calculated in accordance with that Regulation on an individual basis for the institution or on a sub-consolidated basis for the group of institutions subject to the waiver and benefitting from the guarantee, without taking into account any preferential treatment;~~

~~(vi) the collateral backing the guarantee is unencumbered and is not used as collateral to back any other transaction;~~

~~(vii) there are no current or expected legal, regulatory or practical impediments to the transfer of the collateral from the institution granting the guarantee to the institution or group of institutions subject to the waiver and benefitting from the guarantee.~~

~~4. Competent authorities may also apply paragraphs 1, 2 and 3 to one or some of the subsidiaries of a financial holding company or mixed financial holding company and supervise as a single liquidity sub-group the financial holding company or mixed financial holding company and the subsidiaries that are subject to a waiver or the subsidiaries that are subject to a waiver only. References in paragraphs 1, 2 and 3 to the parent institution shall be understood as covering the financial holding company or the mixed financial holding company.~~

~~5. Competent authorities may also apply paragraphs 1, 2 and 3 to institutions which are members of the same institutional protection scheme referred to in Article 113(7), provided that those institutions meet all the conditions laid down therein, and to other institutions linked by a relationship as referred to in Article 113(6), provided that those institutions meet all the conditions laid down therein. Competent authorities shall in that case determine one of the institutions subject to the waiver to meet Part Six on the basis of the consolidated situation of all institutions of the single liquidity sub-group.~~

~~6. Where a waiver has been granted under paragraphs 1 to 5, competent authorities may also apply Article 86 of Directive 2013/36/EU, or parts thereof, at the level of the single liquidity sub-group and waive the application of Article 86 of Directive 2013/36/EU, or parts thereof, on an individual basis.~~

~~Where a waiver has been granted under paragraphs 1 to 5, for the parts of Part Six that are waived, competent authorities shall apply the reporting obligations set out in Article 415 of this Regulation at the level of the single liquidity sub-group and waive the application of Article 415 on an individual basis.~~

~~7. Where a waiver is not granted under paragraphs 1 to 5 to institutions to which a waiver was previously granted on an individual basis, competent authorities shall take into account the time needed for those institutions to get prepared for the application of Part Six or part thereof and provide for an appropriate transitional period before applying those provisions to those institutions.".~~"