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REPORT

From: Presidency
To: Delegations

Subject: - Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme (First reading)
- Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions "Towards the completion of the Banking Union"
= Progress report (State of play)

I. INTRODUCTION

1. Following up on 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), the Council continued to work constructively at technical level" on the Commission proposal for the establishment of a European Deposit Insurance Scheme, while monitoring progress on risk reduction measures, and namely the preparation of the Commission's proposals referred to in the aforementioned Council conclusions.

2. The European Commission delivered its Effects Analysis¹ on the EDIS on 11 October 2016.
3. The Committee on Economic and Monetary Affairs of the European Parliament held a first exchange of views on the draft report on the EDIS proposal on 9 November 2016.
4. Under the Slovak Presidency, the *Ad Hoc* Working Party on the Strengthening of the Banking Union (hereinafter, "AHWP"), established on 13 January 2016 (doc. 5006/16), met six times (the 15th of July, 16th of September, 13th of October, 25th of October, 10th of November and 22nd of November 2016), examining the EDIS proposal article by article in order to prepare the substance for the future political decision-making as soon as sufficient further progress will be made on the risk reduction measures.
5. This progress report has been drawn up under the responsibility of the Presidency on the basis of positions expressed by delegations at the aforementioned meetings, and taking into consideration the replies to several calls for written comments. This report cannot be considered as binding on the Member States, but it does represent the Presidency's best assessment of the main outcomes of the discussions and aims at providing continuity by constantly referring to the work carried out under the previous Presidency, on the one hand, and by suggesting orientations for the work ahead, on the other.
6. The progress report is divided in two parts: section II covers the work carried out on the EDIS proposal and section III covers the discussions on measures to strengthening the Banking Union.

¹ Link to the EDIS Effects Analysis: http://ec.europa.eu/finance/general-policy/docs/banking-union/european-deposit-insurance-scheme/161011-edis-effect-analysis_en.pdf.

II. EDIS PROPOSAL: OUTCOME OF THE TECHNICAL WORK CARRIED OUT AND STATE OF PLAY ON SPECIFIC ISSUES

1. GENERAL CONSIDERATIONS

7. After the June Council conclusions, Member States have showed willingness to continue constructive work at technical level on the EDIS proposal in order to progress with solving the identified issues. However, some have reiterated their objections to the proposal and its timing, stressing the priority to progress with the risk reduction measures listed in the aforementioned Council conclusions.
8. Most of the Delegations continued to disapprove of the absence of a specific impact assessment accompanying the EDIS proposal. The Presidency, while holding the firm intention to continue with constructive work at technical level, acknowledged that an assessment of the effects of the proposed measures would support progress on specific issues of the proposal. Therefore, the Presidency welcomed the letter sent on the 14th of July 2016 to the ECON Chair Roberto Gualtieri and to the Chair of the ECOFIN Council Peter Kažimír by which the Vice-President of the European Commission Valdis Dombrovskis and the former member of the European Commission Jonathan Hill expressed the Commission's readiness to prepare a supplementary analytical report on the effects of the proposal (“Effects Analysis”).
9. The issue of the suitability of the legal basis, being politically very sensitive and closely linked to the final design of the EDIS, was temporarily set aside for it to be assessed at a later, more advanced stage of the discussions.
10. Some delegations have recalled the Council conclusions taking note of the intention of Member States to have recourse to an Intergovernmental Agreement (IGA) when political negotiations on the EDIS start. With this in mind, the Presidency has tried to hold a preliminary discussion on specific provisions which could be possibly included in an IGA. No concrete outcome emerged, however, as delegations were not able to express specific views on this issue at this stage.

11. The Presidency followed-up on the work of the previous Dutch Presidency with the aim to go through all of the provisions of the EDIS proposal, addressing also the more sensitive and difficult ones, in order to identify issues which could be solved at technical level and those requiring further political guidance. The Presidency did not focus primarily on the full insurance stage, but on the EDIS proposal as a whole, as it considered that only such approach would allow a deeper examination and understanding of the proposal.
12. It should be noted that a broad majority of the Member States not participating in the Banking Union find the preservation of the level-playing field currently established by the Directive No 2014/49/EU on deposit guarantee schemes (DGSD) between the Eurozone and the non-euro Member States as crucial also in the EDIS regime.
13. The Presidency would also like to point out that the finalisation of the technical issues depends to large extent on the final decision on the design of the EDIS.

2. MAIN ISSUES

2.1. Scope (Article 2)

14. The Slovak Presidency had taken over the discussion on scope to further examine the issue and possibly contribute to the Effects Analysis before it was finalised and published. The current scope of the EDIS includes credit institutions affiliated to participating DGSs. The issue of scope has two main parts: (i) the inclusion of the third-country branches, if Member States require those branches to join a DGS after execution of the mandatory equivalence test (Art. 15 (1) DGSD); (ii) the inclusion of certain entities excluded from applying the CRR/CRD IV rules.
15. Under the DGSD, Member States have the discretion to require a third-country branch to join a national DGS if the third country protection is not considered as equivalent. The Dutch Presidency therefore proposed to give the Commission the competence of performing the mandatory equivalence check.

16. Generally, during the discussion, delegations expressed two logics. Some supported following the scope of the DGSD and thus covering institutions protected by the national DGSs, in order not to discriminate amongst depositors in the Internal Market and to avoid a two-tier system that would require a supplementary DGS covering the institutions not included in the scope of the EDIS. Other Delegations called for a strict alignment of the scope with the other pillars of the Banking union (SSM and SRM) in the name of the regulatory consistency and equal treatment.
17. In this context, Delegations discussed, in more detail, the equivalence for third-country branches and proportionality regimes for credit unions. Some Delegations expressed concerns on the coverage by EDIS of third-country branches, as they are subject to third-country supervision, which would not necessarily always meet the European standards. In this context, some Delegations therefore suggested that the non-equivalent deposit protection regimes of the third-country branches should be topped-up by the participating DGS within EDIS.
18. As regards the credit unions, the share of covered deposits held by them as percentage of all covered deposits in the Banking Union is very low. Nevertheless, in a few Member States credit unions hold significant shares of covered deposits and total assets and play a big role in the financial inclusion of the population. Some Member States confirmed the application of capital requirement rules provided for in Regulation (EU) No 575/2013 (CRR) and Directive No 2013/36/EU (CRDIV) on their credit unions. Others recalled the decision to exempt credit unions from the scope of the CRR for reasons of proportionality.
19. This discussion showed the need for a pragmatic solution ensuring consistency. The possibility to apply a proportionate CRR/CRD regime appears as worth exploring. Many Delegations have also proposed the inclusion of credit unions under the EDIS coverage under certain conditions and minimum standards as well as applying safeguards aimed at mitigating risks possibly emerging from such inclusion. Some Delegations expressed that a mixed - national and mutualised - system of funds could solve this issue, although this has been opposed by others.

20. As some Delegations had insisted on the necessity to first analyse the importance and the size of the issue, the Presidency performed, in cooperation with the Commission services a survey mapping the number of third-country branches, credit unions and other entities and their relevance in the means of share of total assets, amounts of deposits and covered deposits. This survey served as the basis for the Commission's Effects Analysis.
21. The Commission presented the part of the Effects Analysis focusing on scope (part 5.3.) on the meeting on the 10th of November. A mixed picture emerged as regards credit unions and other non-CRR entities: most of the Member States require these entities to join a national DGS, whereas, in other Member States these are not under the umbrella of the national DGSs. As already mentioned, although significant in number, credit unions and non-CRR entities are less significant when considering the proportion of deposits held by them in individual Member States or compared to the aggregate amount of covered deposits on the European level. The Commission services provided a comparison of 2 policy options: (i) including the entities not covered by CRR, which are however affiliated to the national DGS and not supervised by the SSM, into the EDIS framework and (ii) excluding these entities from the scope of EDIS but allowing for coverage at a national level.

The first option would help maintaining the level playing field and safeguard the same level of depositor protection, but most of the Delegations expressed concerns that it would imply a misalignment of scopes and inconsistency within the Banking union.

Under the second option, the Member States would have to maintain the funding of their DGS for a limited number of entities. While most of the Delegations did not consider this as an effective solution considering the costs and administrative inefficiency, others noted that if different design of the EDIS will be opted for dividing funds between national and European level, such an approach would not be problematic. Nevertheless, some Delegations believe that the exclusion of the non-CRR entities could undermine the main aim of the EDIS proposal that is to enhance the depositor protection. The application of the CRR framework to these entities could be a way forward, although a challenging one, due to their size and limited business operations.

22. Within the Effects Analysis, the Commission services also addressed the issue of the third-country branches coverage. In the majority of cases (91 out of 97 in the Banking Union), third country branches' home DGS are not deemed equivalent and these branches must join the local DGS. Generally, the market share of covered deposits held by third-country branches is low (ranging from 0.02% to 0.8% in the respective countries). There is one exception to that pattern; however in that country the branches are not covered by the local DGS, i.e. they would also not be covered by EDIS. It was also recalled that the current scope of the EDIS proposal is not fully aligned with the scope of the Regulation (EU) No 1024/2013 (SSMR) and Regulation (EU) No 806/2014 (SRMR). The Commission also considered the policy option of a more harmonised or centralised equivalence check.
23. This issue will have to be further discussed. Considering, on the one side, the problems of a two-tier system and, on the other side, the views on the necessity to build a consistent Banking union, a possible way of handling this issue could be the application of a proportionate CRR/CRD regime. To that end, some Delegations suggested to test whether the outright exemption of credit unions from the scope could be replaced by a regime which would exempt them only from certain provisions of the CRR. This could be further explored in parallel with the CRR/CRD review. As regards the third-country branches, the policy options considered within the Effects Analysis should be further explored. As an alternative, some Delegations proposed to further explore ways to design EDIS in order to allow an adequate protection of depositors of credit unions and third country branches at the national level.

2.2. Stages of EDIS (Articles 41a to 41h)

24. Discussions in the AHWP on the stages of the EDIS and its design proved to be essential in identifying the plausibility of the framework and capacity for further progress. The stages are a crucial part of the proposal for the Presidency and will remain so for the further work of the Council. It is definitely also a very sensitive political topic.

The Presidency, having the ambition to examine the EDIS proposal at technical level and to explore the possible avenues for future political guidance once the conditions indicated in the June Council Conclusions are met, undertook the examination of the EDIS design in order to map the Delegations' ideas and positions.

Further discussions should continue taking into account the Effects Analysis, as the proposed setting of the stages has raised many concerns. Moreover, the shift in the initial timetable for the adoption of the proposal creates the opportunity to re-evaluate the mechanism of funding of the DIF and the mutualisation of risks under the EDIS.

25. Under the Dutch Presidency, the AHWP carried out an examination of some elements of the proposed framework for the stages, starting with the provisions related to the full insurance stage. The idea was that it would be easier to agree on the intermediate stages, if an agreement on the full insurance stage and all the horizontal issues (governance etc.) were reached.
26. The Presidency shared the views on the importance of assessing the design of the full insurance stage. However, the intermediate stages as devised by the Commission services need to be addressed as well, since they are key elements of the proposed approach. Therefore, the Presidency tabled a joint discussion on the overall design of the EDIS and on the possible stages.
27. In order to take into consideration the various views expressed on the EDIS stages, the discussion has gone beyond the design of EDIS as proposed by the Commission (which provides for the reinsurance, co-insurance and full-insurance stages), allowing the AHWP to freely assess possible alternative options for building the third pillar of the Banking union, while complying with some key principles.
28. A great majority of Delegations share the view that the original timing of EDIS cannot be met. Many questions were also raised about the reasoning behind the design of the stages. Therefore, the Presidency opened a broad discussion on options and alternatives, which could be further analysed, starting from the options which had already been mentioned by some Delegations, including:

- a) skipping the reinsurance stage;
- b) having only reinsurance as an overall design of the EDIS (possibly only providing liquidity support);
- c) keeping a sequenced approach evolving towards a more mutualized form based on conditional reviews.

29. Some Delegations indicated that re-insurance was a priority, as it could reinforce financial stability while preserving national specificities, adding in some cases, that the parameters currently proposed could be reviewed upwards. In this regard, some Member States indicated that covering liquidity needs of the national DGSs was the main objective in view of ensuring depositor protection and questioned whether loss coverage and full mutualisation was necessary. Some Member State also argued that a system based on the mandatory lending would suffice. Other Delegations opposed this approach and argued that a fully mutualised insurance scheme should remain the main objective. Also the Commission services demonstrated in their Effects Analysis that a full insurance creating a joint scheme would be the most economically beneficial of the options assessed, with a view to enhancing the stability of the whole system as third pillar.
30. With this in mind the Presidency encourages further technical examination of the options, so that the EDIS succeeds in enhancing depositor protection in the Banking Union while ensuring that no Member State is made worse-off and respecting the principles of subsidiarity, proportionality and cost-efficiency.

2.3. Governance (Articles 43 to 59)

31. The governance provisions were generally understood as not dependent on the Effects Analysis, but rather on the final design of EDIS. The discussion on governance held on 13 October 2016 was guided by inputs provided by the Commission services, the Single Resolution Board and the Presidency. Comparing provisions in the DGSD and in the EDIS proposal allowed to identify key questions with a view to some possible re-drafting.

32. Following the request for clarification by some Delegations on the role of the designated authorities as defined in Article 2(1)(18) of the DGSD, the Commission services explained the background of Article 2(2). In case that a DGS is administered by a public authority, the obligations and rights created by the EDIS are deemed to be those of the designated authority and, if a DGS is administered by a private entity, the obligations and duties created by EDIS fall directly upon the DGS. Concerning the composition of the Board according to the amendment of Article 43(1) of the SRMR, in both cases the DGSs would be represented by the designated authorities.
33. Some Delegations have stressed the necessity to safeguard the separation of tasks and called for consistency with legal provisions of the DGSD. It has also been discussed that obligations and duties created by the EDIS may not necessarily fall directly upon the DGS or the designated authority, as it depends on the separation of tasks defined or to be defined by the Member States.
34. The SRB presented to the AHWP its objectives and tasks under the SRM and the EDIS proposal. Some Delegations argued that the discussion on the role of the SRB was premature as it depends on the final design of the framework. Nevertheless, such discussion was also welcomed as the clarifications provided could contribute to further progress. One of the main concerns raised was the feasibility of the joint plenary session meetings as regards the number of attendees. Some Delegations indicated that DGS should participate in the executive session as observers.
35. The SRB outlined also areas of possible conflicts. The Presidency would like to point out three of them: The first of them is the role of national competent authorities. It was recalled that the BRRD provides for the operational independence of the competent and resolution functions, but, if these entities are also designated authorities, the EDIS proposal would provide for competent authorities to sit on the plenary session of the Board directly. Several Delegations considered this issue as an unintentional misalignment of the DGSD with the resolution regime.

36. The second area for the possible emergence of conflicts, as identified by the SRB, is the adoption of the work programme and of the budget of the SRB in the joint plenary session. The funding for its work is provided by banks, including those supervised by other (i.e. not designated and not plenary participating) competent authorities. This could raise conflicting views as the SRB budget appropriations would be a cost for those entities, while national competent authorities would be involved.
37. The third area of possible conflicts of interests is the evolving role of the SRB across the EDIS stages and whether the participation of national DGSs is necessary during the early stages of the EDIS. It is worth saying that in this regard some possible conflicts of interests could be solved once the final design of the EDIS is agreed.
38. Some Delegations welcomed this discussion, while warning against an excessive caution, as some of these possible conflicts of interests may be more theoretical than real. In this context, many Delegations expressed support for the Commission's proposal as it stands, whereas others underlined that many open questions still needed to be resolved.
39. The SRB provided the AHWP with some alternative approaches, with respect to governance: the national resolution authorities could become designated authorities, which could reduce the size of the plenary sessions, as of the Members States would be represented within the joint plenary session by one joint representative; the creation of a simplified plenary session for decision-making on the SRB governance; the allocation of tasks and decision-making power between the plenary and the executive session. Some of the Delegations would prefer to extend the competences of the plenary session to all general decisions with financial implications except payout events, as well as to enhance the transparency and the accountability of the executive session. The SRB will further analyse the issue of the possible conflicting areas within the light of the comments received from the Delegations.

Exchange of information and data protection

40. The Presidency also examined the issues of exchange of information and data protection, with special reference to the sensitivity of the data the Board will be collecting to exercise its duties. The discussions in the AHWP showed that it would be beneficial to clarify what kind of data the Board should be collecting. Most of the Delegations agreed that, the SRB should be able to collect the individual data it needs to fulfil the role it will be entrusted with. The exercise of “Temporary high balances” was pointed out as one example where individual data may be necessary.

Repayment

41. On the question of the Presidency whether the repayment period of seven days as defined in Article 8(1) of the DGSD would be realistic under the EDIS proposal, the members of the AHWP broadly agreed that the seven-day period could be retained.

2.4. Funding (Articles 74a to 77a)

42. The Presidency examined the financing of the Part I of the budget of the Board. Under the current regime, the financing of the administrative expenditures of national DGSs is dealt with in accordance with national laws, since the DGSD has neither explicitly nor implicitly elaborated on it. The EDIS proposal requires, according to Article 59, annual contributions to finance the administrative expenditures of the Board while introducing the right for participating DGSs and designated authorities to levy fees in accordance with national law to finance their administrative expenditures. Based on the comments received, most of the Delegations would prefer the contributions to be collected separately, although an idea of a common SRF-EDIS contribution was presented which may deserve further reflection.
43. During the discussions, several Delegations explained the ways their national DGSs are financed. Some Member States finance the administration of their DGSs through special levies, whereas others by revenues from investments. The current environment of low interest rates may have to be reflected.

3. ISSUES DISCUSSED ON THE BASIS OF THE EFFECTS ANALYSIS

44. The Effects Analysis has been discussed in two meetings. Some Delegations welcomed it as an essential contribution to the assessment of the impact of the EDIS proposed provisions. In addition to the specific comments summarised below, some Delegations have presented reservations on the methodology of the analysis as well as on the arguments provided in order to support the effectiveness of the proposed approach to the EDIS. Many Delegations have expressed their positions and asked questions on the topics to be clarified and/or further analysed.
45. The questions and remarks collected by the Presidency could be further addressed in the coming months.

Several Delegations have indicated that the Effects Analysis should be complemented mainly by addressing: (i) the possible impact of the EDIS on competition in the single market and on the level-playing field; (ii) the first loss requirement in order to avoid setting wrong incentives; (iii) the effects of differences in the insolvency law; (iv) the interconnectedness of banks likely to be liquidated; (v) the new legal environment and the interaction of the third pillar with the first two pillars of the Banking Union; (vi) the maximum exposure for the EDIS in view of the deposit book transfer.

3.1. Irrevocable payment commitments (IPCs)

46. Some Delegations have been asking for the inclusion of IPCs into the EDIS proposal in order to take them into account as financial means that institutions transfer to the DIF in order to reach its target level. As this option was not included in the Commission proposal, amendments in this direction were proposed under the previous Presidency.

47. Building on this, the Presidency held a discussion on IPCs based on the Effects Analysis whereby the Commission services assessed both options: allowing and not allowing for IPCs under the EDIS. Allowing IPCs was regarded as challenging due to: the differing accounting treatment of IPCs; pro-cyclical effects; potential to increase asset encumbrance; possible difficulties and costs to establish an EU-wide operational and risk management framework; possible negative impact on the repayment period. The Commission services also included options to mitigate risks emerging from the IPCs, such as a prudential treatment for IPCs, clear criteria for calling the IPCs and a collateral and risk management framework that enables EDIS member banks to use the same type of collateral independent of their geographical location.
48. Diverging views on the inclusion of IPCs still prevailed as some Member States require their allowance up to 30% while other Member States are opposing their inclusion or are still unconvinced. Any decision on the use of IPCs, should include also their calibration. An option of managing IPCs using the services of a third party was also presented and could be further assessed.

3.2. Temporary high balances

49. The Dutch Presidency performed a survey on the levels and circumstances when referring to temporary high balances with the aim to find a harmonised median. According to the Effects Analysis, temporary high balances would be covered by the EDIS within the loss cover which is determined on the basis of the total amount repaid to depositors under Article 8 of the DGSD. In this regard it could be further clarified how the EDIS proposal would deal with the liquidity need especially in the full insurance.
50. The Effects Analysis also provides concrete figures for one Member State, while three have reported no claims related to temporary high balances. Although the issue, in these cases, did not seem to be significant in numbers, it seems to be a key issue to have higher or full coverage of their temporary high balances by the EDIS, especially for Member States providing higher protection while other Delegations would prefer a lower coverage or no coverage by the EDIS. The Presidency believes this issue will have to be further analysed, possibly by considering the option to reflect the occurrence or costs of the repayment of temporary high balances into the ex-post contributions of the DGS concerned.

3.3. EDIS cover in case of alternative and preventive measures

51. Under the DGSD, Member States may allow their DGSs to finance measures to prevent failures (Article 11(3)) as well as alternative measures in the context of national insolvency proceedings (Article 11(6) DGSD). The Presidency held a discussion on these issues based on the findings of the Effects Analysis, in which the Commission services underlined that, if the financing of the preventive measure constitutes State aid under the BRRD regime, the use of funds to finance these measures without triggering resolution is limited to financing by private sector schemes such as the institutional protection schemes. The EDIS proposal does not allow for financing of these measures.
52. Based on a survey on the use of these national discretions in the national law, the Commission services illustrated that these are only used by a limited number of Member States. They analysed the options of having: (i) EDIS to provide funding for both types of measures; (ii) EDIS to provide funding only for certain types of alternative measures; or (iii) these measures funded by the national DGSs, as per the Commission proposal. Some Delegations objected to this proposed approach and advocated that these measures - which should be considered in the light of the “least cost principle” - should not be regarded as a national privilege to keep, but could only be retained at an EDIS level as otherwise the measures could no longer be funded nationally. Other Delegations underlined that Bail-In and State Aid rules should not be put into question.

The Presidency, supported by several Delegations, proposed to discuss the issue of alternative measures, and in particular in the context of deposit book transfers, again on the basis of further analysis with the help of those Delegations which have more experience with this kind of measures.

3.4. Contributions

53. Following the outcomes of previous discussions, where a large number of Delegations asked to include the methodology to calculate the contributions in the level 1 text and to provide for the direct transfer of the already collected contributions from the DGS to the DIF instead of compensating the banks, the Presidency continued the discussion on the basis of the Effects Analysis. The Commission services assessed, within their Effects Analysis different options of calculating the contributions: retaining the current approach of the DGSD; methodology regarding the national level; methodology regarding the Banking union level or the current two-stage approach of the EDIS proposal.
54. While some Delegations viewed this discussion as premature due to the dependence on the final design of the EDIS, some Delegations indicated that the ex-ante contributions should be validated by the plenary session and that the risk weights applied should take into consideration the likelihood of the occurrence of encountering a payout event or resolution action also recognising the existence of Institutional Protection Schemes, which lower the probability of a bank default and should thus be considered as a risk mitigating factor.

4. DRAFTING SUGGESTIONS BY THE PRESIDENCY

4.1. Inclusion of Stress testing

55. The Presidency pointed out that Article 4(10) of the DGSD requires the DGSs to perform stress tests of their systems. Some Delegations indicated that they would like to have the Board perform stress tests of EDIS and its systems.
56. The Presidency therefore drafted a proposal to include regular stress testing in the EDIS proposal as a new article. Article 4(10) of the DGSD was used as the basis. However, the stress testing under DGSD only includes the systems of the DGSs. As regards the Board, the Presidency included not only its systems in deposit insurance but also its communication with the relevant national authorities as it could be important in view of fulfilling the deposit insurance duties in times of stress. According to the discussion, many Delegations agreed with the involvement of the EBA in the process, the extent of which would need to be further examined. In this respect, some Delegations noted that the EBA guidelines could be followed. After performing the stress tests the Board should inform the Commission and the relevant national authorities on the results.

57. While most of the Delegations supported the inclusion of stress testing, some of the details may need to be further adapted to the final design of the EDIS. Furthermore, the consequences in the case that weaknesses are identified should be evaluated to complement the procedure of stress testing. Some Delegations expressed their views also on the convenience to include more areas into the stress tests, such as funding or the provision of funding to the host DGS as proposed by the Presidency.

4.2. Inclusion of the provision of funding to the host DGS

58. The Presidency, when comparing the DGSD and EDIS regimes, included the provision of the DGSD concerning the repayment of depositors at branches set up by a credit institution in another Member State. The Presidency came to the conclusion that the possibility to have the DIF provide funding directly to the host DGS on behalf of the home DGS could be further assessed.
59. During the first round of discussions, some Delegations indicated that the liability to repay the depositors stays on the home DGS, this should thus be providing the necessary funds to the host DGS and the payout should only take place upon instructions of the home DGS. On the other hand, some Delegations indicated that speeding up the process of depositor repayment would be helpful, as the time period for any repayment is short, the time effectiveness is a concern in this regard.
60. The Presidency therefore drafted amendments to the EDIS proposal allowing the Board to provide funding directly to the host DGS. The first part of the proposal provides the home DGS with the additional option to issue an instruction to transfer funding to the host DGS. Therefore the funding, that would normally be claimed from the DIF by the home DGS and provided afterwards to the host DGS (according to Article 14(2) of the DGSD), could be directly provided by the DIF to the host DGS increasing the efficiency of the EDIS. The second part sets the duty on the home DGS to notify the Board about the instruction and the amount necessary to repay the depositors covered by the host DGS concerned.

61. The necessity to safeguard the off-setting of the funding provided by the DIF to the home DGS and also off-setting of the obligation of home towards the host DGS could be further discussed. The Presidency included an option of addressing this issue as it is of the view it could contribute to the certainty that the funding provided by the DIF to the host DGS counts towards the possible claim of the home DGS (against EDIS) and host DGS (against the home DGS according to Article 14(2) of the DGSD). The amendment proposed envisages that the option of the direct funding of the host DGS could be exercised upon instruction by the home DGS.
62. Some Delegations stressed that this amendment was important for non-participating Member States and that it should be available to them as well.

4.3. Amendment of provisions on Disqualification: Staggered intervention ladder

63. The Article 41i of the EDIS proposal applied disqualification without applying any precedent and less severe measures. Due to the fact that it raises questions of legal and procedural nature and could have negative impact on the financial stability, several Delegations indicated that it should be a last resort measure. A staggered intervention ladder has been previously explored instead, and the Presidency continued in this effort. The discussions within the AHWP were based on a comparison between the DGSD and EDIS provisions followed by drafting suggestions.

64. The Presidency proposed that the Commission and the Board should monitor the ability of DGSs to meet their obligations under the relevant legislation and, if the Commission or the Board identifies non-compliance, it would inform the other party and the DGS monitored. The Board may after a non-compliance is identified issue a recommendation to the DGS to comply with obligations breached. That recommendation should include corrective measures and could also include technical assistance from the SRB. If the DGS fails to comply with the recommendation, the funding requested from the DIF should be provided in a form of a loan or the funding already provided can be transformed into a loan. Specific conditions would apply to the loan such as: the DGS must first deplete its financial means; the DGS must comply with the instruction of the Commission; the interest rate of the loan would be derived from the EURIBOR rate; the maturity should not exceed 3 years; the amount should be capped. If the DGS concerned continues to fail to comply, it should no longer be covered by EDIS and should repay the loan in a shorter period. The Presidency upon the comments from the Delegations added an option for the DGS that lost the coverage of the EDIS to be additionally readmitted to the coverage by the EDIS after it fulfils all the requested conditions and notifies the Commission.
65. The Presidency drafting suggestion was welcomed by most Delegations as a good basis for further discussions. Being a controversial, but a necessary safeguard, this raised differing views: while some Delegations would like to include more layers of intervention and softer punitive measures, other Delegations would prefer stricter interventions in order to minimise moral hazard. Several options with punitive character were mentioned by the Delegations, for example: conditional access to funding, higher interest rates for the loan depending on the severity of non-compliance, or reduction of the coverage share of the DIF.
66. In this regard, some additional issues have been also discussed. The wording of the breach of the principle of sincere cooperation has been considered by some Delegations as being too vague and might therefore need further clarification or discussion, in the light of Article 13 TEU. Measures significantly worsening bank balance sheets can be further addressed as well. Some Delegations have also raised the question of repatriation of funds in case of disqualification.

67. Comparing the DGSD and the EDIS regimes, the Presidency indicated that under the DGSD deposits made before the exclusion of a credit institution from the DGS remain to be covered. However, if a DGS gets disqualified or loses access to coverage from the EDIS, the deposits made prior to that event would not be protected. That is relevant especially for the full insurance stage where the national DGS is not obliged to be funded. Most Delegations considered that the depositor protection should be a priority and that covered deposits made before disqualification should continue to be covered by the EDIS, although setting wrong incentives should be avoided. No Member State indicated having experienced exclusion of a credit institution from a DGS under Article 4(5) of the DGSD.

4.4. Additional provisions on Accession and departure

68. Following the Progress report of the Dutch Presidency with respect to the provisions requiring fundamental discussion as well as previous discussions in the AHWP, the Presidency addressed the need to thoroughly discuss the process of late accession and of departure from the EDIS framework.

69. While acknowledging that any drafting suggestions depend on the final design of EDIS, the presidency intends to provide ground for analysing the details of the EDIS proposal allowing Delegations to contribute to constructive work on the technical level.

70. Accession to the SRM is predominantly provided for in the IGA on the SRF (Article 8 IGA), while Suspension or Termination of participation and recoupment of contributions is set out in the SRMR (Article 4 SRMR). The EDIS proposal addresses Suspension or Termination of close cooperation and recoupment of contributions in a similar manner, however it does not address the Accession of non-euro Member States.

71. Focusing primarily on technical aspects, the Presidency considered amending both texts as pragmatic, without having any intention to conclude on whether its drafting proposal should be implemented into the EDIS proposal or into an IGA, as this political discussion would need to take place only at a later stage.

72. The majority of the Delegations supported the Presidency's approach. The remarks raised concerned mainly: (i) the reference to an IGA – considered as premature by some and necessary by others; (ii) the risk of “free-riding” – which for some needed to be addressed.
73. The Presidency therefore proposed a mechanism of accession for Member States whose currency is not the euro both by accepting the euro as their single currency or by establishing a close cooperation (in accordance with Article 7 of Regulation (EU) No 1024/2013) and thus becoming part of the Banking Union.

According to the Presidency proposal, the DGSs located in the acceding Member State should transfer to the DIF contributions equivalent to amounts which they would have transferred to the DIF if they would have participated in the EDIS since the entry into force of the EDIS Regulation.

In case a DGS faces a payout event or use in resolution, the financial means used in these actions shall be deducted from the initial contributions to the DIF; it should however remain bound to transfer the remaining amount within a concrete deadline. This should add to the exact amount of contributions specified by the Board in agreement with the acceding Member State.

The Presidency proposed also safeguards preventing the bearing of costs by either the entities of the acceding Member State or by the DIF for any payout events or resolution actions initiated, before the accession to the EDIS, in the territory of the acceding Member State or the participating Member State. A similar safeguard applies also in case the ECB in its comprehensive assessment considers any of the institutions of the acceding Member State is failing or likely to fail.

5. OTHER ISSUES ADDRESSED

5.1. Monitoring of insolvency procedure (Article 41q)

74. Effective insolvency proceedings and their exercise are seen as essential for the effective functioning of a DGS. During the discussion on the Article 41q of the EDIS proposal, the Presidency asked whether Member States envisage any barriers the Board may face when collecting the deposit claims if the DGS has failed to exercise its insolvency claims. Some Delegations indicated that this would not be possible. Moreover, in case that a DGS has failed to exercise its insolvency claims, normally there would be no further possibility for the Board to exercise them.

5.2. Merging and creation of cross-border DGSs (Art. 4(1) DGSD)

75. The Presidency has asked the Member States whether they have experienced any merging or creation of a cross-border DGS as enabled by Article 4(1) of the DGSD and which would be their views in connection to the EDIS. Member States indicated that especially the case where a participating DGS would merge with a non-participating DGS may require clarification. Some Delegations would welcome the exploration of this option in more detail to avoid possible adverse effects.

5.3. Informing depositors on the website

76. Most of the Delegations answered positively to the Presidency question on whether the websites of the participating DGSs should inform on the coverage by the EDIS, so that transparency to the public would be pursued, thus contributing to reinforcing public confidence. If this is agreed, the EDIS text should be complemented with a provision in this sense.

III. MEASURES TO STRENGTHEN THE BANKING UNION: ONGOING WORK AND REMAINING CHALLENGES

77. The AHWP is entrusted with work on the Commission's proposal on EDIS as well as on the Commission communication "Towards the completion of the Banking Union. As stated in its mandate, it "should address further initiatives, including legislative proposals, which would be instrumental to the objective of strengthening the banking union" and "this AHWP will remain in place until relevant themes derived from the Commission proposal/communication and all other related measures have been adequately addressed". The AHWP received further guidance by the aforementioned Council Conclusions.

Since the beginning, the Presidency showed its readiness to start working in the risk reduction area as soon as the Commission would adopt the proposals it had announced. In the meantime, a regular monitoring of progress was carried out at every AHWP meeting.

6. ONGOING WORK

78. Currently, several institutions and bodies are working on measures that are considered to be relevant in the context of the Banking Union, while noting that several measures are also relevant to the EU28. In this regard, the AHWP has taken note of the following ongoing efforts at Banking Union, EU28 and international level.

6.1 At the Banking Union level

79. Work on the EDIS proposal has been going on in the Council, as just described above, as well as in the European Parliament.
80. All Member States have transposed the BRRD, thus meeting the condition for starting work on the common backstop for the SRF. At the last ECOFIN meeting of the 8th November, the Member States decided to entrust the EFC with the mandate to kick-off technical discussions on this.

81. The SSM has launched public consultations on the exercise of options and discretions (ONDs) by National Competent Authorities (NCAs) in relation to less significant institutions. Two distinct documents were put forward for consultation, the first being a legally binding guideline and the second one a recommendation. The aim of the two documents is the enhanced convergence in the application of supervisory rules.

6.2 At the EU-28 level

82. The Council work stream on Non-Performing Loans (NPL) started in September, within an ad hoc subgroup of the **Financial Services Committee**, which was mandated on the 6th July 2016 to assess the state of play regarding current NPL stocks and related developments in the Member States and at the EU level, as well as the relevant legal framework at national and EU level. This sub-group should also establish policy options and areas for action. The first interim report is scheduled to be presented to the FSC in December 2016 and thereafter to the EFC. A final report including the conclusions on policy options and areas for action should be submitted to the FSC for adoption by spring 2017, and thereafter to the EFC.

In this regard, the EBA has published a report on the dynamics and drivers of non-performing exposures in the EU banking sector.

Furthermore, from September to November, the ECB has launched a public consultation on guidance to banks on non-performing loans, where by it recommends that banks with a high level of NPLs establish a clear strategy aligned with their business plan and risk management framework.

83. The EBA has also performed 2016 EU-wide stress tests and published the results on 29 July 2016. The 2016 EU-wide stress tests didn't contain a pass/fail threshold. Instead they were designed to support ongoing supervisory efforts to maintain the process of repair of the EU banking sector. The stress tests will therefore be an important input into the supervisory review and evaluation process (SREP) in 2016.
84. As for Commission's proposal on Bank Structural Reform (BSR) the European Parliament is still in the process of trying to establish its negotiating position. The Council has adopted its negotiating position in June 2015.

85. The way forward for the Regulatory Treatment of Sovereign Exposures (RTSE) depends on the progress of the Basel Committee in this respect.

6.3 At international level

86. In October 2016, the Basel Committee published the final standard on the regulatory capital treatment of banks' holdings of total loss-absorbing capacity (TLAC) instruments. The standard seeks to ensure resolvability of global systemically important banks (G-SIBs). The Committee is working on finalisation the Basel reforms by the end of 2016 whereby the Committee intends to: enhance the risk sensitivity and robustness of standardised approaches; consider additional constraints to the role of internally modelled approaches in the capital framework; finalise the calibration of the leverage ratio and a potential capital floor based on standardised approaches.
87. The Financial Stability Board published its second progress report on measures to reduce misconduct in September 2016. The progress report sets out actions and next steps on the FSB work plan to reduce misconduct risk, which was launched in May 2015.

6.4 Work by the Commission

88. Several measures are expected to be proposed by the Commission in the short and medium term. Some of the measures will apply to the EU28 and others only to the Banking Union Member States.
89. The Commission was invited to propose amendments to the legislative framework to ensure the availability of sufficient adequate bail-inable liabilities by implementing the Total Loss Absorbing Capacity (TLAC) standard and reviewing the Minimum Requirement of Own Funds and Eligible Liabilities (MREL). The interim report on implementation and design of the MREL framework was published by EBA in July 2016, with the final report expected in December. Technical standards on determining MREL were adopted and published in the Official Journal in early September 2016.
90. On 22 November 2016, the Commission submitted a package of proposals addressing the following issues:

- a) the CRR/CRD review, including the Pillar II rules, review of remuneration, proportionality regime for smaller banks & disclosure, review of the large exposure regime, harmonisation of ONDs. This framework includes also the measures to complete the Basel III reforms such as the: Leverage ratio, Net Stable Funding Ratio (NSFR), Standardised approach on counterparty credit risk (SA-CCR), Market risk/fundamental review of the trading book (FRTB);
- b) the implementation of the TLAC standard and the MREL review, with a focus on ensuring consistent rules and adequate amounts for the bail-inable buffers that contribute to an efficient and orderly resolution process in line with the BRRD for all credit institutions for which bail-in would be the validated resolution strategy;
- c) a common approach to the bank creditor hierarchy to enhance legal certainty in case of resolution as a separate proposal amending the BRRD;
- d) the harmonisation of rules and application of moratorium tools as a proposal amending the BRRD;
- e) minimum harmonisation in the field of insolvency law in the context of the Capital Markets Union (CMU).

91. In relation to the proposal under e) above , at the AHWP meeting on 13 October 2016, representatives of the Commission services (DG JUST) presented their work on:

- a) the preparation of a proposal for minimum harmonisation Directive on preventive debt restructuring and second chance;
- b) benchmarking process to evaluate the outcomes of national loan enforcement/insolvency regimes from a bank (creditor) perspective;
- c) preparations for clarification of the ranking of bank creditors (in particular holders of unsecured debt) in a resolution situation through amendment of the BRRD;
- d) examination of longstanding provisions of EU law establishing special treatment for certain types of financial transactions (in settlement systems, collateralised transactions) in order to protect them from uncertainty stemming from application of national insolvency procedures;

e) measures to clarify the application of insolvency law in the context of cross-border entities.

92. The Commission should also, by the end of 2018, review the implementation and application of the DGSD, BRRD and SRMR.

IV. CONCLUSIONS

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

94. It is our view that a substantial part of the technical work which could be accomplished in the absence of political decisions on the nature of the insurance scheme has been carried out. However, building on this work, a number of issues would need to be examined more in-depth, as suggested in the specific sections above.

95. As for negotiations at political level, as agreed by the Council in the aforementioned Conclusions, they "will start as soon as sufficient further progress has been made on the measures on risk reduction".

96. In order to take stock of such progress on risk reduction, the Slovak Presidency has already scheduled a meeting, on 9th December, aimed at kicking off technical work on the Commission proposals mentioned in paragraph 90 above.

The Maltese Presidency will then take over and continue to work towards completing the Banking Union, addressing its various work-streams.
