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## REPORT

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From: Presidency

To: Delegations

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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)

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### **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, 'June 2016 Roadmap'), and building upon the Progress Report prepared by the Dutch Presidency (doc. 10036/16), the Progress Report of the Slovak Presidency (doc. 14841/16) and the Progress Report of the Maltese Presidency (doc. 9484/17), 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 Ad Hoc Working Party on the Strengthening of the Banking Union (the ‘AHWP’), established on 13 January 2016 (doc. 5006/16), met 3 times under the Estonian Presidency (on 18 July, 25 September and 20 November 2017) to examine the EDIS proposal. The discussions were of a technical nature as political discussions were held off pending sufficient progress on risk reduction according to the June 2016 Council Conclusions.

4. This Progress Report has been prepared under the responsibility of the Estonian 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 EDIS. This report 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.
5. 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.

## **II. EDIS PROPOSAL**

### **A). GENERAL CONSIDERATIONS**

6. The Presidency followed up on the work of the previous Dutch, Slovak and Maltese 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.
7. During the Dutch, Slovak and Maltese Presidencies, the AHWP has identified a number of issues regarding the EDIS proposal that need to be further addressed and explored at technical level, including inter alia:
  - Risk-based contributions methodology
  - Alternative measures
  - Scope of EDIS
  - Non-compliance / disqualification
  - Administrative provisions on EDIS

8. The Estonian 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 taking into account that, as many delegations repeatedly argued, final agreement on the calibration of various elements of EDIS would be dependent on changes in the final design. However, the discussions in the AHWP were limited to technical aspects since political discussions on risk sharing – including political discussions on the final design of EDIS – will take place as soon as sufficient progress has been made on risk reduction, as agreed in the June 2016 Roadmap.
9. The final form of EDIS and its overall design was also an issue in the context of the presentation by the Commission of its new possible approach to EDIS considered in the Communication on completing the Banking Union of 11 October 2017.<sup>1</sup>
10. 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 considered it beneficial to, wherever possible, undertake discussions on the basis of such experiences and input from other relevant institutions, including the Single Resolution Board (SRB), the European Commission (Commission), the European Central Bank (ECB), the European Forum of Deposit Insurers (EFDI) and the US Federal Deposit Insurance Corporation (FDIC).
11. The Presidency continued to underline the importance of equal treatment of euro area and non-euro area Member States, including cost neutrality as regards joining the Banking Union at a later stage. The Presidency notes that possible impact of the EDIS proposal on the functioning of the internal market and on the free movement of capital should be further examined.

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<sup>1</sup> Communication to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on completing the Banking Union of 11 October 2017

12. 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 Estonian 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 provided delegations with the possibility to raise questions for clarification in relation to the work taking place in the RRM meetings.

## **B). MAIN ISSUES**

### ➤ **Risk-based contributions methodology**

13. The Presidency continued the work on the development of the methodology for calculating contributions based on a data collection launched by the Commission at the request of the Maltese Presidency. During discussions held under the Maltese Presidency, delegations agreed that contributions to the DIF should be risk-based and that such a methodology should indeed be developed in level one legislative text.
14. 27 Member States provided full data packages in the course of data collection exercise. In order to ensure the highest possible data quality, the Commission carried out various checks (e.g. comparisons with EBA/ECB statistics, plausibility checks, re-computation of indicator values). Member States stressed the importance of quality assurance.
15. The Commission regularly informed delegations in detail on the state of play of data collection. Overall, with exceptions set out below, data coverage proved sufficient. However, harmonised standards at the EU level (Implementing Technical Standards on Supervisory reporting) have not yet been fully implemented in all Member States, especially with regard to financial data (FINREP). The data template accordingly allowed for the submission of proxy data for missing FINREP data. Member States were invited to use items providing the closest match to the requested data under FINREP, while explaining the main differences from the relevant FINREP data. Some Member States underlined the necessity to update the data with FINREP data based on the ECB regulation on supervisory reporting<sup>2</sup>.

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<sup>2</sup> Regulation of 17 March 2015 on reporting of supervisory financial information (ECB/2015/3)

16. A number of Member States provided proxy data for certain indicators (e.g. non-performing loans, total assets, profit and loss for the year), mostly retrieved from national reporting systems. Differences to FINREP, which is based on IFRS, are often related to the application of national accounting principles. For example, assets are carried at amortized cost and not at fair value. Some countries also referred to the different accounting treatment of derivatives. In other cases, Member States explained that there were no material differences between the proxy data provided and the FINREP data.
17. The submission of proxy data was not possible in relation to some indicators due to the lack of comparable data at national level, for example data on non-performing exposures and level 3 assets.
18. The correlation analysis showed that some indicators attributed to certain categories are highly correlated to each other. In the category 'capital' this could be observed for the leverage ratio, the capital coverage ratio and the CET1 ratio. High correlations were also found in the category 'asset quality' (NPL ratio, net NPL ratio, NPE ratio, net NPE ratio). Against this background, some indicators, where data availability was rather low, were excluded from analysis (NPE ratio, net NPE ratio, capital coverage ratio), without it having any impact on the quality of the analysis. In order to streamline the database, the Commission in its initial analysis also proposed to remove a few low coverage indicators where appropriate proxy data are not available (dynamic ratio, level 3 assets ratio).
19. The majority of delegations indicated already under the Maltese Presidency that the risk-based methodology to be adopted for EDIS should take into account the EBA guidelines for calculating contributions to a DGS.<sup>3</sup> Others were of the view that the implementation of the EBA guidelines had shown many difficulties, and further evaluation was necessary. In this context, the Commission introduced a multi-step approach:

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<sup>3</sup> The EBA 'Guidelines on methods for calculating contributions to DGSs', were published by the EBA on 28 May 2015 and updated on 13 June 2016.

- (a) The EBA Guidelines offer flexibility when implementing certain methodology. In particular, DGS can choose between different methods, namely the bucket and the sliding scale approach.<sup>4</sup> There is also some flexibility regarding the indicators applied, their weights and other important parameters (e.g. ranges, number of risk classes, thresholds). To take into account this diversity, the Commission defined 16 models subject for further analysis.
  - (b) The Commission then compared contributions derived from selected models with 'non-risk-based contributions' based on covered deposits only, in order to inform delegations on variations in contributions generated by different models.
  - (c) Finally, the Commission tested the models against possible benchmark data to assess the risk sensitivity of each selected model.
20. The analysis on risk-based vs non risk-based contributions showed that bucket approaches tend to have a higher impact on contributions whereas sliding scale approaches are closer to non-risk-based contributions. Bucket approaches also generate more extreme values. Member States' responses to this result were mixed. Some Member States were in favour of methodologies providing stronger variations. The 'discriminatory power' under bucket approaches could incentivize banks to move between buckets in order to reduce contributions, at least when banks are close to a threshold allowing them to jump to the next bucket. Other Member States, however, stressed the accuracy of sliding scale approaches without discriminating certain banks. The analysis also showed that the majority of smaller banks pay less under all approaches, in particular when applying bucket approaches. One Member State raised concerns regarding this result because the final methodology should not only take into account the risk profile of individual banks but also their potential to generate losses to the insurance fund - it was argued that the methodology should factor in the likelihood of banks to be liquidated rather than incur a resolution decision. Some Member States, however, argued that the methodology should not allow for a discount for larger banks.

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<sup>4</sup> Under bucket approaches risks are measured on a discrete scale whereas sliding scale approaches measure risks on a continuous scale.

21. In addition, some Member States stressed the need to follow up on the issue of risk-based benchmark criteria. The Commission explained that it lacked of appropriate data. External benchmarks, such as CDS spreads and ratings, are not fully available or cannot be applied due to the use of anonymised data. Instead, the Commission provided analysis based on data field DP33 of the template, which has to be populated if a Competent Authority decides that a bank has to meet a higher CET1 capital ratio ('Target CET1 ratio due to Pillar II adjustments'). Correlations with selected models were, however, relatively low and did not allow making a clear distinction between models. One Member State also proposed using SREP scores as an indicator of risk that a bank poses to the DGS.
22. As the way forward, the Commission proposed to analyse the impact of specific indicators (MREL proxies, interconnectedness indicator, SREP scores) and the application of the SRF methodology. In the view of some Member States, analysis should also consider the inclusion of relevant country-specific indicators, however, some others strongly opposed to such analysis, pointing out to insufficient comparability of such indicators and the need to ensure level playing field. It was also suggested that more information should be provided on the distributive effects with regard to national banking sectors. Moreover, it was pointed out that the contributions regime to a large extent depended on the design of EDIS. Further discussions should include, inter alia, the questions whether contributions for individual banks would be calculated on European or on national level and whether individual banks or national DGSs would be liable for paying contributions into an European fund.
- **Alternative measures**
23. The Estonian Presidency continued discussing alternative measures, as Maltese Presidency concluded in its Progress Report that delegations are open to continue discussion on the issue of alternative measures within the meaning of Article 11(6) of the DGSD.<sup>5</sup> To proceed with the issue, the Estonian Presidency invited the FDIC to present its experience with 'purchase & assumption transactions' (so-called P&A transactions) under U.S. federal law. The latter are somewhat similar to alternative measures, allowing for the transfer of assets and liabilities to an acquiring bank in the context of national insolvency proceedings.

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<sup>5</sup> Progress Report prepared by the Maltese Presidency of 12 June 2017



24. The FDIC gave an overview of its powers and how it applies alternative measures. The presentation focused on the resolution framework under the Federal Deposit Insurance Act, starting with bidding process and continuing with the least cost test. The FDIC also clarified the important difference between the EU and US framework, namely as regards to determining the amount of the loss. The EU framework stipulates ‘super priority’ of covered deposits, while in the US depositors are treated equally in priority ranking (‘pari passu’), i.e. losses that are not already borne by shareholders or other creditors are distributed pro rata among unprotected and protected depositors.
25. The AHWP in general welcomed the FDIC presentation. Some delegations spoke in favour of using such interventions also under EDIS. Some other delegations, however, emphasised relevant differences between the EU and US systems. In addition, those delegations highlighted the differences in supervisory structure and general approach to crisis management between the EU and the US systems, the role of insolvency proceedings, the fact that the FDIC has receivership and it intervenes at a much earlier stage (up to 60 days before the actual transfer).
26. The Presidency considered useful to discuss whether the features of the US system could be appropriate for the EU. The main benefits for using alternative measures in EDIS would include more flexibility, the same or lesser burden for the DIF and lesser destruction of economic value. Hence, according to some of the delegations, alternative measures would also contribute to financial stability. Other delegations challenged the assumption that alternative measures would produce a more cost-effective solution. Therefore, they preferred to restrict such interventions under EDIS to deposit book transfer limited to covered deposits. It was also suggested that covered deposits are the sole liabilities that EDIS is deemed to protect. One delegation pointed out that liquidation often has a 100% recovery rate.
27. The Presidency proposed to discuss the issue of alternative measures in more detail to assess their potential economic and financial stability benefits and drawbacks. Several aspects need to be considered further, particularly the scope of such interventions, the design of the least cost test under EDIS and related governance issues. The SRB announced to provide input on alternative measures to support the discussion in the Council AHWP.

➤ **Scope of EDIS: Treatment of third-country branches and non-CRD/CRR entities**

28. The Estonian Presidency took forward the discussion on the scope of EDIS which was identified as one of the main issues under the Dutch, Slovak, and Maltese Presidencies - with the aim to outline alternative options and explore avenues for a concrete proposal.
29. The issue of the scope of EDIS covers two separate issues with unique characteristics: (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 of deposit taking entities that are currently excluded from the SSM/SRM (non-CRD/CRR entities) but are covered by existing national DGS. The Commission's proposal stipulates that EDIS should apply to all credit institutions affiliated to a national DGS, hence including in its scope entities that fall outside the scope of the other pillars of the Banking Union.
30. Previous discussions have indicated that in the view of some delegations the Commission's approach would enhance the ultimate goal of depositor protection and would be more cost-efficient compared to the two-tier system where the scope of EDIS would be aligned with the other pillars of the Banking Union. Hence, those delegations have voiced strong opposition against creating a two-tier system. However, some delegations have expressed concerns that the indicated third-country branches and non-CRD/CRR entities may apply less strict prudential rules than provided by the single rulebook or be subject to lower supervisory standards than those in place in the SSM. For that reason, the need to ensure regulatory consistency and equal treatment with institutions subject to the single rulebook has been highlighted. The Commission's effect analysis concluded that both options have pros and cons, favouring however the extended scope of EDIS.

31. Regarding third-country branches, they have been assessed as being non-equivalent in terms of depositor protection. Consequently, Member States have in the vast majority of cases opted to compel those branches to join the respective DGSs. Hence, most of those entities would fall under the scope of EDIS according to the Commission's proposal. The Dutch Presidency proposed to grant the Commission the power to perform the mandatory equivalence test of the depositor protection of the third-country branches. However, doubts were expressed by some delegations on whether the inclusion of those entities under EDIS is appropriate by referring to the lack of prudential safeguards.
32. The Estonian Presidency prepared a working paper on the scope of EDIS and proposed alternative options for the treatment of third-country branches. The Presidency put forward an option to include them within the scope of EDIS provided that certain conditions are fulfilled. These conditions would have to be determined by the Commission through a delegated act. The equivalence test could be applied to check not only the requirements under the DGSD, i.e. the coverage level and scope of protection, but also be extended, inter alia, to the quality of supervision and the financial situation of the credit institution's head office.
33. Several delegations agreed to the Presidency suggestion provided that such an inclusion would not lead to increasing risks in EDIS. In the Presidency's view the proposal of an extended equivalence test performed by an EU central body should be further explored.
34. In its working paper the Estonian Presidency also proposed four alternatives as regards the possible inclusion of non-CRD/CRR entities within the scope of EDIS, namely: 1) determination of the conditions that need to be fulfilled (subject to an assessment), 2) special treatment under risk-based contributions, 3) conditioning the coverage by EDIS on applying the CRD/CRR framework to these entities, and finally, 4) creation of a separate fund for such entities.

35. According to the first option, non-CRD/CRR entities could be within the scope of EDIS provided that they are subject to a sound supervisory and regulatory framework. This would ensure that the risks to which they are exposed are properly managed and that appropriate prudential requirements are in place. Whether or not non-CRD/CRR entities fulfil the conditions could be subject to an assessment performed by the Commission and/or another EU central body. The EU central body could also be entrusted with some specific powers to ensure the fulfilment of such conditions over time. The second option put forward that non-CRD/CRR entities could be subject to a specific treatment under the methodology for calculating contributions to EDIS. Specific indicators could be introduced for such entities reflecting the fact that they are not subject to the EU regulatory framework. The third option proposed to allow non-CRD/CRR entities to join the EU framework and hence be covered by EDIS. This option would ensure that non-CRD/CRR entities are not treated in a different manner as compared to institutions already being covered by the EU framework. Finally, the fourth option considered that non-CRD/CRR entities could be included in a separate fund managed by the SRB that would function in the same way as the DIF in EDIS.
36. While some delegations advocated preserving consistency as regards the scope of all three pillars of the Banking Union, several others favoured the approach set out in the Commission's proposal.
37. However, delegations generally welcomed the idea of further exploring alternative solutions in view of finding a compromise on the scope of EDIS. The most frequently mentioned basis for possible further work was the option that entities could be included in EDIS provided that certain conditions are fulfilled - ascertained through an assessment performed by an EU central body. Some delegations also considered that this should be accompanied with a special treatment under the risk-based contributions, yet without unduly penalizing non-CRD/CRR entities. A few delegations found that the idea of creating a separate European fund for such entities should not be discarded at this stage, while other delegations expressed concerns as regards the introduction of a two-tier system. One delegation supported the option that concerned Member States would forsake the option taken under national legislation and ask non-CRD/CRR entities to fully comply with the CRR.

38. A number of delegations shared the view that the appropriate scope of EDIS is contingent on its final design and cannot be solved as a stand-alone issue.
39. Overall, delegations had dissenting views on whether to follow the SSM/SRM scope or apply the wider scope for EDIS, both having their pros and cons. The Presidency recalled the relative importance of this issue in view of the small share of covered deposits of non-CRD/CRR entities. The Presidency sees merit in looking for a pragmatic compromise as regards the scope of EDIS, taking into consideration both the economic viability of insuring deposits in Europe and the need for appropriate safeguards in EDIS. The alternative options outlined by the Presidency could serve as a starting point for such a compromise. However, some delegations reiterated that entities not regulated under the EU framework and not supervised by the SSM should not be included.

➤ **Non-compliance / disqualification**

40. The Estonian Presidency continued the discussions on disqualification, also identified as one of the main issues under the previous Presidencies. Main objectives were to identify outstanding issues and to explore avenues for a way forward.
41. The Dutch Presidency concluded that the procedure foreseen under Article 41i of the EDIS proposal could have a negative impact on financial stability. In the best interest of depositors exclusion from coverage should be a last resort measure, i.e. before final disqualification a layer of less severe measures should be imposed allowing the financing of a DGS in need even in the case of non-compliance. Against this background, the Dutch Presidency proposed to establish a ‘staggered intervention ladder’, which was further developed under subsequent Presidencies.<sup>6</sup>
42. The main idea behind the staggered intervention ladder is that even in case of non-compliance by a DGS, financing should be made available but only in the form of a loan subject to certain conditions. In addition, the DGSs would be subject to a continuous monitoring by the Commission and the Board on their ability to meet specific key obligations as set out in the DGSD and the EDIS proposal itself. Under the staggered intervention ladder, if a DGS does not meet its key obligations, the Commission and the Board would have several options at

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<sup>6</sup> Council Working paper on the consolidated draft EDIS text of 2 June 2017.

their disposal. First, the Board could issue a recommendation to the DGS concerned to comply with the obligations within a timeframe of 3 months. If the DGS fails to comply with the recommendation within the specified timeframe, the Commission has the discretion to transform EDIS funding into a loan in case of a payout event. As a final step, i.e. in case of continuing non-compliance, the DGS shall be disqualified from EDIS coverage based on a decision of the Commission. Disqualification from coverage would not be permanent as the DGS concerned should be able to (re)qualify for coverage by EDIS once it meets all obligations.

43. The Slovak Presidency added new elements into the Dutch proposal. It was proposed that once non-compliance is identified, the Board may 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 could 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 by EDIS to be readmitted to the coverage by EDIS after it fulfils all the requested conditions and notifies the Commission.
44. Following the previous Presidency's discussion, the Estonian Presidency introduced new aspects on the non-compliance and safeguards on disqualification based on the input of previous Presidencies. The Presidency suggested that for transparency and legal certainty it would be better to separate monitoring and non-compliance intervention provisions.
45. Delegations voiced their concerns on the Presidency's proposal regarding separating monitoring and non-compliance intervention provisions. Accordingly, these provisions should be considered together.

46. Moreover, the Presidency proposed to automatically reclassify payout from EDIS as a loan without any discretion for the Commission where the national DGS persists in non-complying with the rules after the specified period of time. In the view of the Presidency this automatic procedure would ensure that depositors are always protected. At the same time, there would be no need for using public sources, namely the taxpayer's money, to reimburse deposits. The Presidency also proposed to use the same loan conditions for 'automatic loans' which have been agreed under the DGSD in the context of voluntary borrowing (DGSD Article 12).
47. The AHWP excluded the possibility of an automatic disqualification from EDIS. It was agreed, however, that the 'corrective measures' should be in place in case of non-compliance and for safeguard of misuse of the mutual EDIS system. Several delegations expressed concerns that automatic loan reclassification could reduce incentives to comply with key obligations. Moreover, delegations did not support using the same loan condition as provided by the DGSD. Overall, delegations seemed to be in favour of the 'staggered intervention ladder', already developed under previous Presidencies, and suggested putting in place additional steps before reclassifying amounts paid from EDIS as a loan in case of non-compliance, whereas one delegation continued to raise legal concerns on the issue. The Presidency noted that further work is also needed on the role of the Commission and SRB in non-compliance process.

➤ **Administrative provisions on EDIS**

48. The Estonian Presidency brought forward the work done under the previous Presidencies and looked at issues related to administrative provisions from a different perspective. The Estonian Presidency believed that more work had to be done in better determining the role and operational functioning of national guarantee schemes in the framework of EDIS, so that once EDIS would be completed the system would function in the desired way.

49. Delegations agreed in the meeting of 18 July 2017 that national DGS will continue to play an important role under a European scheme. They will be involved in crucial tasks, such as the settlements of payouts, the monitoring of insolvency proceedings, and the collection of contributions. In addition they will remain a local point of contact for depositors and banks. Therefore, the Presidency considered it necessary to discuss the role of national DGSs in more detail.
50. Hence, several stakeholders and the European Forum of Deposit Insurers (EFDI) were invited to share experiences and opinions in the meeting of 25 September.
- (a) EFDI presented to the AHWP how diverse EU DGSs payout systems are. They emphasized that payout systems could not be harmonised or centralised at the EU level due to this diversity. The Commission clarified that administering the payouts remain at national level under the EDIS proposal. EFDI also stressed the need for strong cooperation among national DGSs. In this context, EFDI explained its multilateral cooperation agreement to handle host depositors compensation, which has been implemented by 30 DGSs. The AHWP underlined the importance of sufficient liquidity in deposit insurance systems for payouts to be conducted in a timely manner.
- (b) In addition, the AHWP discussed the internal governance of EDIS and, in particular, on the functioning of the Board in its different compositions (executive session, EDIS plenary session, SRB plenary session, joint plenary session). Some delegations stressed the need to give additional powers to the Board. Others were reluctant and questioned the necessity in raising the issue of the SRB's role under EDIS and did not see the need for further centralisation. The discussion enabled to clarify that the governance structure should not in any case reduce the speed of timely payouts.



- (c) The SRB focused in its presentation on its powers and responsibilities, mainly in the context of monitoring payouts to depositors (Article 41p) and use of EDIS in resolution, namely insolvency proceedings (Article 41q). The SRB asked for a stronger role arguing that the current role under the EDIS proposal is rather vague and open to interpretation. Some delegations argued that there is no need to extend the SRB powers and asked the SRB to prepare more detailed non-paper to better understand the underlying background. While other delegations showed some understanding since a stronger role of the SRB could facilitate the functioning of the European Scheme given the range of discretion available at DGS level (e-g. maximising the proceeds from the insolvency state). It was agreed to follow up on this issue at a later stage, as the role of the SRB depended on the final design of the framework.
- (d) The Presidency prepared a non-paper on the administrative functioning of national DGSs. The key question related to the weaknesses in the current system and to find out whether any aspects need to be further improved so that deposits are protected in an effective manner. At the same time, Member States' interests would have to be adequately represented, in particular where the use of European means was at stake. Some delegations stressed that there is no need to change the current procedure applied by national DGSs. Others were open to further explore this issue. It was suggested that EBA could prepare Guidelines aiming at improving the DGSs functioning under EDIS.

51. Overall, the discussion on administrative provisions showed clearly that the role of a national DGS is vital. There was an overall agreement at the AHWP that national payout systems did not need any further harmonization. There may be need to discuss their future role under the European scheme in more detail, particularly regarding their monitoring at the EU level, governance structure and the interaction between DGS and EDIS.

➤ **EDIS Design**

52. The key elements of EDIS were discussed during the Estonian Presidency with the aim of identifying, from a technical point of view, the most suitable solution to focus on. In July 2017 the Presidency launched a questionnaire in which full insurance, as provided for in the Commission's proposal, and re-insurance were compared against different features (risk-absorbing capacity, moral hazard protection, operational efficiency and cost neutrality). Given the mandate under the June 2016 Roadmap and the political nature of any discussion about the design of EDIS, the Presidency and Member States made clear that discussions served to clarify the different perspectives under which technical elements would need to be further analysed. Therefore, no conclusions were drawn regarding the final design of EDIS.
53. Considering technical elements, many Member States considered full insurance as superior in terms of risk-absorbing capacity (since it would provide more resources to EDIS), operational efficiency (since it would minimise coordination costs) and cost neutrality (thanks to a more balanced redistribution of losses across banks not penalising banks for their nationality but only for the way they manage their risk exposure, and thus, helping to break bank-sovereign nexus). Other Member States took a different view that a well-designed re-insurance system, i.e. assuring liquidity provision in case of liquidity shortfall, could provide the same level of risk-absorbing capacity and operational efficiency. They also argued that both the risk of additional funding needs via ex-post contributions and the risk of moral hazard would be lower under re-insurance as the DGS would have to deplete its own funds first before seeking EDIS funding. It was also pointed out that re-insurance could better accommodate national options.
54. In the context of moral hazard protection, almost all Member States stressed the relevance of a credible contribution regime irrespective of the approach applied. Several Member States highlighted that risk-based contributions at Banking Union level would provide strong incentives for banks to appropriately manage their risks, whilst some others pointed out that a risk-based methodology is important but not sufficient to address moral hazard in a comprehensive way.

55. As a way to address moral hazard, some respondents pointed out that an Asset Quality Review (AQR) would be appropriate, while others disagreed. Several Member States opposed to the idea of including country-specific indicators, such as the average recovery rate, as a means to reduce moral hazard. In their view, this would discriminate banks in relation to their place of origin and fail to accurately reflect their riskiness. One respondent did not consider recovery rates relevant for the final loss of a scheme due to super preference of covered depositors in the creditor hierarchy (Art. 108 BRRD). In view of another respondent, full insurance would not prevent negative spillovers in other Member States when a bank crisis occurs in one Member State.
56. The outcome of the questionnaire was discussed at the meeting on 18 July, where several delegations supported the Commission's proposal for full-insurance, while other delegations reiterated their strong opposition. It was also stressed that the AHWP does not have mandate for political discussions.
57. The Commission published its communication on Completing the Banking Union on 11 October 2017. The Commission presented new possible ways forward as regards EDIS in the AHWP on 20 November 2017, stressing that their initial proposal remains on the table. The Communication is intended to be a basis for further discussions in the AHWP.

### **III. CONCLUSIONS**

58. The Estonian Presidency invites the Council to take note of this Report, with a view to progressing work further.
59. The Bulgarian 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 as agreed in the June 2016 Roadmap.