BCC CREDITO COOPERATIVO Federcasse

Position Paper on
EUROPEAN COMMISSION
RISK REDUCTION MEASURES PACKAGE

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PART 1

GENERAL COMMENTS

1. Introduction

On behalf of Italian *Banche di Credito Cooperativo* (BCCs), Federcasse welcomes the Risks Reduction Measures. Conceived as a consistent package, proposals emending the CRD IV, the CRR, the BRRD and the SRMR aim at overcoming some shortcomings in the framework currently in force. Overall, Federcasse fully endorses the objectives pursued and appreciates the attention paid to interactions between rules belonging to different pieces of legislations, the effort to improve proportionality in the level 1 legislation, to harmonise without erasing or ignoring key differences between business models and institutional types. We believe the package as it stands represents a sound ground open to further improvements.

Indeed, Federcasse strongly believes in the necessity to further reduce risks in the European banking system. However some potential down side effects may still be embedded in certain measures. The objective of this position paper is threefold. On one side, we express our support not only of the whole package but also on some specific qualifying measures. On the other side, we would like to raise the awareness of lawmakers on potential pitfalls associated to some others measures, especially with regard to their effect on BCCs business model. By doing so, our goal is to contribute positively to the overall improvement of the package. Finally we make a proposal to improve the recovery and resolution process of less significant institutions.

2. Key issues with room for improvement

- **Proportionality**

Proposals to simplify reporting and disclosure requirements for small institutions represent a first positive step. Nevertheless, we do think that more could be done. In particular, we believe that proportionality should be taken into account in much greater detail in other regulatory areas covered by the CRD 4, such as governance requirements (e.g. management body) and combined buffer requirements. In the BRRD review, reporting and disclosure obligations associated to the MREL could be tailored to better reflect the principle of proportionality. There is also a case for greater proportionality in the NSFR that will be dealt with later.

- **IFRS 9**

We welcome the Commission will to address the issue of the significant increase of the level of provision in the balance sheet and its adverse impact on bank's capital ratios due to the new impairment approach provide for in IFRS 9. To BCCs point of view, the Commission proposal entails two appreciable characteristics that should be commended. First of all, the particular dynamic approach chosen by the Commission seems to be sufficiently simple to be implemented by banks with the characteristics of BCCs. In addition, the Commission proposal seems to be appropriate to reduce or mitigate (not fully eliminate) to an acceptable level disadvantages suffered by institutions using the SA vis-à-vis institutions using the IRB approach.

- **Qualifying Tier 1 instruments and Own Funds included in consolidated Tier 1 capital**

We believe that this issue is one of those where regulation should pursue stability paying some attention to differences between institutional models. Cooperative banking group or consolidated network (IPS) are built upon the principle of solidarity between entities belonging to the group or the network. Where some conditions are met for example the existence of a cross-guarantee scheme providing that there are no practical or legal impediment to the transfer of funds, minority interests should be allowed to support the risks in the subsidiary to which it relates and in the group as a whole.

- **Large exposures: Tier 1 Capital as calculation basis**

The replacement of eligible capital with Tier 1 Capital as a calculation basis for the large exposures requirement may prove to be particularly deceitful for small size cooperative banks i.e., institutions with no direct access to capital markets. On one side, issuing Additional Tier 1 Capital may be unsustainable. On the other, CET1 can be raised only in a progressive manner.

- **Liquidity: retail deposit definition and NSFR**

Retail customers represent the core and in the overwhelming majority of cases the only category of customers for BCCs. In addition, many of them are also member of BCC. Funding for small size and local banks as BCCs is provided by retail customers. That explain also the stability of funding for this type of banks. As a consequence, it seems reasonable to treat bank retail securities as retail deposits. Such a treatment may avoid an unjustified increase in the costs of funding i.e., for regulatory purposes and make more feasible the compliance with the NSFR. More generally, we believe that lawmakers should carefully consider the possibility of a simplified NSFR for institutions meeting certain criteria: the scope of operations, the size, the complexity, the customer base and the representative customer.

- **Adjustment to capital requirements for credit risk for exposures to social economy enterprises**

The EU has undertaken a sustained effort to promote and strengthen social economy enterprises (SEEs). Notwithstanding progresses so far achieved, on one side, access to finance has remained Achilles' heel of many initiatives. On the other side, SEEs have continued to rely upon banks financing. We believe that EU lawmakers have the opportunity to fill a gap in the overall policy framework and tools and achieve a greater consistency between two policy fields: enhancing SEEs' access to their primary finance providers that are banks without jeopardizing the stability of the later. Italian BCCs are the first finance provider for SEEs. In return, SEEs are the less risky category of businesses in BCCs' portfolio. As a consequence, we believe that alongside a SMEs supporting factor, also a SEEs supporting factor is worth considering.

PART 2

THE CRR/CRD 4 AND BRRD REVIEW

1. CRD 4 review

1.1 Interest risk arising from non-trading book – Art. 84

It is of the utmost importance that there are no automatisms between the determination of the interest rate risk profile and an additional own funds under Pillar 2. The use of maximum harmonisation tools, such as EBA RTSs (i. e., the new Art. 84(4)), will deprive supervisors of the necessary flexibility to assess and appreciate on a case by case basis the risk profile of institutions. Additional own funds must reflect the actual risks to which institutions are exposed, in particular for cases as peculiar as the exposure to interest rate risk. Moreover, the outlier criterion has been tightened and with more far reaching consequences than in the Basel guidance (i.e. the definition of scenarios seems to have no specific limitation). We see the risk of cliff effects, and the old criterion (20% change in present value / (Tier I and Tier II)) seems more reasonable.

1.2 Credit Spread Risk in the Banking Book – Art. 84

Regarding the inclusion of Credit Spread Risk in the Banking Book (CSRBB) in the Pillar 2 framework we have the following main concerns. First of all the inclusion of CSRBB in regulatory provisions nominally addressing IRRBB could lead to confusion and unintended consequences, especially if metrics conceived and widely understood to capture IRRBB are adapted to include CSRBB. Within the European Banking Authority (EBA) guidelines on management of IRRBB, CSRBB is defined as a sub-category of market risk and is related to credit spread risk arising from positions measured at fair value. We agree with EBA approach that IRRBB should be covered separately from CSRBB. Secondly, while CSRBB is transparent and easy to measure on a liquid and marketable financial instruments, it would be very difficult, if not impossible, to calculate CSRBB on the non-marketable products of the banking book.

1.3 Additional own funds requirement – Art. 104a

We welcome that the Pillar 2 requirement is split into a 'hard' Pillar 2 capital requirement (P2R) and a 'soft' Pillar 2 capital guidance (P2G) whose breach does not automatically result in pay-out restrictions. We believe that this approach will rightly give flexibility to the competent authorities and should be used in order to differentiate the treatment applied to banks which are characterized by a different risk profile. We support the clarification introduced in Art. 104a(1) that competent authorities shall not impose additional own funds requirement to cover for macro-prudential or systemic risks, as these are already catered for under the Pillar I requirements (i.e. buffers). We also appreciate the streamlining and additional clarity provided in the proposal. This is necessary to allow institutions to better understand and plan capital needs also on the basis of the supervisory dialogue. We believe that a further reference could be introduced to include also certain other risks that are sufficiently covered under Pillar 1.

1.4 Pillar 2 Capital Guidance – Art. 104b

The interaction between regulatory and accounting measures should be analysed in detail to understand the extent to which different measures are addressing the same risk such as for example the interaction with stress test. The worsening of a macroeconomic expectations will be reflected in the stress test results, leading to a higher P2G requirement by the competent authorities. It will in addition either increase the probability of an adverse scenario or introduce a new adverse scenario in the range of

scenarios to cover the 'unbiased probability weighted' requirement, resulting in higher levels of provisions under the IFRS 9. Finally, if the worsening of a macro expectations is based on an expansive trend in the economy, the counter cyclical buffer might have been activated in the past, to tackle the same risk factor. Therefore in order to avoid a double counting of capital needs we believe that art. 104b(1)(a) should be deleted. P2G requirement should be set only as a result of the supervisory adverse stress test. As such P2G is not be included in calculations of the Maximum Distributable Amount (MDA), even though competent authorities would expect banks to meet that guidance except when explicitly agreed, in particular in severe adverse economic conditions

Amendment to art. 104b CRD 4

COM proposal	Federcasse proposed amendment
1. Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority, institutions shall establish an adequate level of own funds that is sufficiently above the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and in this Directive, including the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), in order to ensure that:	1. Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority, institutions shall establish an adequate level of own funds that is sufficiently above the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and in this Directive, including the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), in order to ensure that:
(a) cyclical economic fluctuations do not lead to a breach of those requirements; and	~~**(a) cyclical economic fluctuations do not lead to a breach of those requirements; and**~~
(b) the institution's own funds can absorb, without breaching the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), potential losses identified pursuant to the supervisory stress test referred to in Article 100.	~~**(b)**~~ the institution's own funds can absorb, without breaching the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), potential losses identified pursuant to the supervisory stress test referred to in Article 100.
2. *(...)*	2. *(...)*

Justification: *on one side, the proposed amendment aims at avoiding a potential double accounting of capital needs, in the light of interaction between micro prudential, macro and accounting measures. On the other side, the amendment leaves unaltered the required flexibility for competent authority with regard to the use of the most appropriate given the situation.*

1.5 Proportionality

Overall, we appreciate the intention of the European Commission to enshrine in the level 1 legislation a more structured approach to the declination of the proportionality principle. We see the proposals to simplify reporting and disclosure requirements for small institutions as a first positive step. Nevertheless, we do think that more could be done. In particular, we believe that proportionality should be taken into account in much greater detail in other regulatory areas covered by the CRD 4, such as governance requirements (e.g. management body) and combined buffer requirements.
With regard to governance requirements:

- in art. 91 it could be foreseen the implementation of an ex-post competent authorities' assessment procedure regarding the suitability of members of the management body of non-significant institutions with a balance sheet of less than EUR 10 billion;

- finally, a clarification on the methodology for calculating the directorships according to Article 91(4) CRD IV would be appropriate. In this respect, we believe that all directorships held within the same credit institution group/network, within an IPS or in qualifying holdings of the institution count should count as one single directorship.

With regard to remuneration policies:

- the absolute threshold of €50,000 laid down in art. 94(3) is too low and in our view should be set at €100,000. Moreover, the relative threshold should be increased up to 50%;
- we believe that none of the provision of article 94, par. 1, points (l), (m) and second subparagraph of point (o) should be applied to any subsidiary of a banking group provided that the total assets of that subsidiary has been not higher than €5 billion over the four-year period immediately preceding the current financial year and provided that the banking group apply article 94 on a consolidated level;
- the derogation left to the Competent authorities should be limited to cases in which institutions' total assets and/or staff member's annual variable remuneration are close to the thresholds set in the CRD 4.

We propose the following amendment to article 94 of the CRD 4:

Amendment to art. 94 CRD 4

COM proposal	Federcasse proposed amendment
3. By way of derogation from paragraph 1, the principles set out in points(l), (m) and in the second subparagraph in point (o) of Article 94(1) shall not apply to:	3. By way of derogation from paragraph 1, the principles set out in points(l), (m) and in the second subparagraph in point (o) of Article 94(1) shall not apply to:
(a) an institution the value of the assets of which is on average equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;	(a) an institution the value of the assets of which is on average equal to or less than EUR ~~**5**~~ **10** billion over the four-year period immediately preceding the current financial year;
(b) a staff member whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than one fourth of the staff member's annual total remuneration.	(b) a staff member whose annual variable remuneration does not exceed EUR ~~**50.000**~~ **100.000** and does not represent more than ~~**one fourth**~~ **50%** of the staff member's annual total remuneration.
By way of derogation from point (a), a competent authority may decide that institutions whose total asset value is below the threshold referred to in point (a) are not subject to the derogation because of the nature and scope of their activities, their internal organisation or, if applicable, the characteristics of the group to which they belong.	By way of derogation from point (a), a competent authority may decide that institutions whose total asset value is ~~**below**~~ **close to** the threshold referred to in point (a) are not subject to the derogation because of the nature and scope of their activities, their internal organisation or, if applicable, the characteristics of the group to which they belong.
By way of derogation from point (b), a competent authority may decide that staff members whose annual variable remuneration is below the threshold and share referred to in point (b) are not subject to the derogation because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.	By way of derogation from point (b), a competent authority may decide that staff members whose annual variable remuneration is ~~**below**~~ **close to** the threshold and share referred to in point (b) are not subject to the derogation because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.

Justification: *thresholds included in the COM proposal may result being not very effective to address the need of proportionality for a representative small/medium size bank. Proposed amendments address that risk.*

As for combined buffer requirements we propose the following amendment to article 141a of the CRD 4.

Amendment to art. 141a CRD 4

COM proposal	Federcasse proposed amendment
1. *(...)* 2. By way of derogation from paragraph 1, an institution shall not be considered as failing to meet the combined buffer requirement for the purposes of Article 141 where all the following conditions are met: (a) the institution meets the combined buffer requirement defined in Article 128(6) and each of the requirements referred to in points (a), (b) and (c) of paragraph 1; (b) the failure to meet the requirements referred to in point (d) of paragraph 1 is exclusively due to the inability of the institution to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013; (c) the failure to meet the requirements referred to in point (d) of paragraph 1 does not last longer than 6 months. 3. *(...)*	1. *(...)* 2. By way of derogation from paragraph 1, an institution shall not be considered as failing to meet the combined buffer requirement for the purposes of Article 141 where all the following conditions are met: (a) the institution meets the combined buffer requirement defined in Article 128(6) and each of the requirements referred to in points (a), (b) and (c) of paragraph 1; (b) the failure to meet the requirements referred to in point (d) of paragraph 1 is exclusively due to the inability of the institution to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013; (c) the failure to meet the requirements referred to in point (d) of paragraph 1 does not last longer than 6 months, **unless the competent authority authorises a longer timeframe. Competent authorities shall grant such authorisations only based on the individual situation of an institution and taking into account the scale and complexity of the institution's activities.** 3. *(...)*

Justification: *the proposed amendment inserts an element of flexibility, useful in the matter for competent authorities and for banks.*

2. CRR review

2.1 Qualifying Tier 1 instruments and Own Funds included in consolidated Tier 1 capital - Art. 85 e 87

Article 84, paragraph 6 of the CRR exempts credit institutions permanently affiliated in a network to a central body and institutions established within an institutional protection scheme subject to the conditions laid down in Article 113(7) that have set up a cross-guarantee scheme to deduct the minority interest arising within it from the CET1 and hence allow them to recognize that minority interest in full. This provide that there is no current or foreseen material, practical or legal impediment to the transfer of the amount of own funds above the regulatory requirements from the counterparty to the credit institution.
In other words, in the case of a cross-guarantee scheme which met with the conditions above mentioned the CRR recognizes that minority interest can support the risks in the subsidiary to which it relates and it is also available to support risks in the group as a whole. We strongly advocate that the same rule should be provided for Qualifying Tier 1 instruments and Own Funds.
Therefore we propose the following amendments to articles 85 and 87 of the CRR.

Amendment to art. 85 CRR

COM proposal	Federcasse proposed amendment
1. *(...)*	1. *(...)*
2. *(...)*	2. *(...)*
3. *(...)*	3. *(...)*
	4. **Where credit institutions permanently affiliated in a network to a central body and institutions established within an institutional protection scheme subject to the conditions laid down in Article 113(7) have set up a cross-guarantee scheme that provides that there is no current or foreseen material, practical or legal impediment to the transfer of the amount of own funds above the regulatory requirements from the counterparty to the credit institution, these institutions are exempted from the provisions of this Article regarding deductions and may recognise any qualifying Tier 1 instruments arising within the cross-guarantee scheme in full.**

Amendment to art. 87 CRR

COM proposal	Federcasse proposed amendment
1. *(...)*	1. *(...)*
2. *(...)*	2. *(...)*
3. *(...)*	3. *(...)*
	4. Where credit institutions permanently affiliated in a network to a central body and

	institutions established within an institutional protection scheme subject to the conditions laid down in Article 113(7) have set up a cross-guarantee scheme that provides that there is no current or foreseen material, practical or legal impediment to the transfer of the amount of own funds above the regulatory requirements from the counterparty to the credit institution, these institutions are exempted from the provisions of this Article regarding deductions and may recognise any qualifying own funds arising within the cross-guarantee scheme in full.

Justification: *amendments proposed address a shortcoming of the current legislation and the proposal on recognizing a critical characteristic of cooperative banking groups and consolidated networks. The operating principle of solidarity should be fully recognised as it's beneficial also for the stability of this typology of banking groups .*

2.2 Retail exposure – Art. 123

Exposures to Salary Secured Loans And Pension Secured Loans are consumer loan products that have a number of specific legal and product features that mitigate risk and generally imply lower losses than standard retail exposures to natural person. As such, they deserve a different and better designed prudential treatment with respect to alternative forms of consumer credit.
This consideration is supported by the results of a survey of the market riskiness of this technical form, which highlight the low level of credit risk with respect to other forms of retail loan. In particular, the survey showed that for the set of public employees and pensioners:

- the probability of default (PD) within 12 months is 3.0%;
- there is a 32.6% return to performing status within one year;
- the effective loss rate (weighted-average LGD rate) is 5.8%;
- the expected loss (EL) is 0.16%.

Accordingly, the theoretical risk weighting (RW) factor, calculated on the retail curve, is 8.4% (compared with the regulatory parameter using the standard method of 75%).
In view of this evidence, this kind of exposures should be recognised as loans that are less risky than other retail loans and merit a risk weight that is consistent with their intrinsic patterns and significantly lower than the current risk weight for the retail portfolio (75%). For those reasons, we ask a reduction of RWA percentage of this product to 35%, the same treatment as the mortgage.

Amendment to art. 123 CRR

COM proposal	Federcasse proposed amendment
Exposures that comply with the following criteria shall be assigned a risk weight of 75 %:	Exposures that comply with the following criteria shall be assigned a risk weight of 75 %:
(a) the exposure shall be either to an natural person or persons, or to a small or medium-sized enterprise (SME);	(a) the exposure shall be either to an natural person or persons, or to a small or medium-sized enterprise (SME);
(b) the exposure shall be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced;	(b) the exposure shall be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced;
(c) the total amount owed to the institution and parent undertakings and its subsidiaries, including any exposure in default, by the obligor client or group of connected clients,	(c) the total amount owed to the institution and parent undertakings and its subsidiaries, including any exposure in default, by the obligor client or group of connected clients,

but excluding exposures fully and completely secured on residential property collateral that have been assigned to the exposure class laid down in point (i) of Article 112, shall not, to the knowledge of the institution, exceed EUR 1 million. The institution shall take reasonable steps to acquire this knowledge. Securities shall not be eligible for the retail exposure class. Exposures that do not comply with the criteria referred to in points (a) to (c) of the first subparagraph shall not be eligible for the retail exposures class. The present value of retail minimum lease payments is eligible for the retail exposure class.	but excluding exposures fully and completely secured on residential property collateral that have been assigned to the exposure class laid down in point (i) of Article 112, shall not, to the knowledge of the institution, exceed EUR 1 million. The institution shall take reasonable steps to acquire this knowledge. Securities shall not be eligible for the retail exposure class. Exposures that do not comply with the criteria referred to in points (a) to (c) of the first subparagraph shall not be eligible for the retail exposures class. The present value of retail minimum lease payments is eligible for the retail exposure class. **Exposures to Salary Secured Loans And Pension Secured Loans guaranteed by (i) mandatory insurance covering the risks of death of the employee or of the retired (pensioner) and of unemployment for non-retired obligors and (ii) direct repayments by the employer or pension institution through deduction from the obligor's salary or pension and (iii) monthly instalment not exceeding 35% of the net monthly salary or pension, shall be assigned a risk weight of 35%.**

Justification: *the proposed amendment fill a damaging gap between markets developments (salary secured loans and other consumer loans products with similar characteristics) and the inconsistent prudential treatment associated to their patterns.*

2.3 Liquidity: retail deposit definition – Art. 411

Retail customers provide stability to funding, respect to other customers, so it's reasonable to treat bank retail securities as retail deposits. Retail bonds are bonds that have a plain-vanilla profile and can be held by unsophisticated retail investors like households and SMEs. Considering the general and increasing need of stable funding for institutions in order to respect the new liquidity standards (LCR and NSFR), it is worth to let institutions treat as retail deposit not only debt securities issued exclusively in the retail market but also securities issued by them, held in a dossier unequivocally linked to a retail account of the institution and where internal systems and controls have been put in place to monitor the effective holder of the instrument. Customers can change the status of retail counterpart from one reporting period to another due to factors which are not under the bank's control (e.g. an increase of the turnover beyond the threshold to be defined as a retail SME). This treatment would avoid an increase in the costs of funding for regulatory purposes and make more feasible the compliance with NSFR.
Therefore we ask also for the amendment of the definition of retail deposit provided for in article 411 - that holds for both LCR and NSFR

Amendment to art. 411 CRR

COM proposal	Federcasse proposed amendment
(1) *(…)*	(1) *(…)*
(2) 'retail deposits' means a liability to a natural person or to a small or medium-sized enterprise ('SME'), where the SME	(2) 'retail deposits' means a liability to a natural person or to a small or medium-sized enterprise ('SME'), where the SME

would qualify for the retail exposure class under the standardised or IRB approaches for credit risk, or a liability to a company which is eligible for the treatment set out in Article 153(4), and where the aggregate deposits by that SME or company on the basis of a group of connected clients as defined in point (39) of Article 4(1) do not exceed EUR 1 million; (3) *(…)*	would qualify for the retail exposure class under the standardised or IRB approaches for credit risk, or a liability to a company which is eligible for the treatment set out in Article 153(4), and where the aggregate deposits by that SME or company on the basis of a group of connected clients as defined in point (39) of Article 4(1) do not exceed EUR 1 million; **'retail deposits' include notes, bonds and other debt securities issued by the credit institution, when at least one of the following situation apply to those bank's liabilities:** **a) liability is sold exclusively in the retail market and held in a retail account;** **b) liability is held in a dossier linked to a retail account of the issuer institution and it is possible to monitor the effective holder of the instrument.** (3) *(…)*

Justification: *the proposed amendment address a shortcoming with regard to how the NSFR impact across business models.*

2.4 NSFR: Compliance with liquidity requirements

Art. 414 sets a requirement to calculate NSFR on a daily basis when an institution fails to meet or even if it expects to fail to meet the stable funding requirement. This exceeds the Basel rules and is in contrast with the nature of NSFR as a metric for stable funding.

Amendment to art. 414 CRR

COM proposal	Federcasse proposed amendment
An institution that does not meet, or expects not to meet, the requirements set out in Article 412 or in Article 413(1), including during times of stress, shall immediately notify the competent authorities thereof and shall submit without undue delay to the competent authorities a plan for the timely restoration of compliance with the requirements set out in Article 412 or Article 413(1), as appropriate. Until compliance has been restored, the institution shall report the items referred to in Title II, III or IV, as appropriate, daily by the end of each day unless the competent authority authorises a lower reporting frequency and a longer reporting delay. Competent authorities shall only grant those authorisations based on the individual situation of an institution and taking into account the scale and complexity of the institution's activities.	An institution that does not meet, or expects not to meet, the requirements set out in Article 412 or in Article 413(1), including during times of stress, shall immediately notify the competent authorities thereof and shall submit without undue delay to the competent authorities a plan for the timely restoration of compliance with the requirements set out in Article 412 or Article 413(1), as appropriate. Until compliance has been restored, the institution shall report the items referred to in Title II **daily and Title**~~,~~ III or IV **monthly**, as appropriate, ~~**daily**~~ by the end of each day **or month** unless the competent authority authorises a lower reporting frequency and a longer reporting delay. Competent authorities shall only grant those authorisations based on the individual situation of an institution and taking into account the scale and complexity of the institution's activities.

2.5 Large exposures: Tier 1 Capital as calculation basis

The revised text in the proposal suggests that the *Tier 1 Capital* should replace the definition of *eligible capital* as a calculation basis for the large exposures requirement purposes. We do not see any reason to

tighten the definition and move away from the well-working requirement set in the current CRR. If upheld, that amendment would disproportionately harm smaller or medium-sized banks, which due to the sheer size of the balance sheet might end up in breach way more easily. In particular, institutions that have no direct access to the capital market (e.g. small cooperative banks) can raise Additional Tier 1 capital only in a progressive manner. The regulatory concept of the Basel Committee was designed for globally active, capital-market-oriented institutions, and should not be implemented in its form in the EU, where the banking environment is much more varied.

Amendment to art. 4 CRR

COM proposal	Federcasse proposed amendment
in point (71) of paragraph 1, the introductory sentence in point (b) is replaced by the following: "(b) for the purposes of Article 97 it means the sum of the following:"	~~in point (71) of paragraph 1, the introductory sentence in point (b) is replaced by the following:~~ ~~"(b) for the purposes of Article 97 it means the sum of the following:"~~

Amendment to art. 392 CRR

COM proposal	Federcasse proposed amendment
An institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its Tier 1 capital.	An institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its ~~Tier 1~~ **eligible capital**.

Amendment to art. 395 CRR

COM proposal	Federcasse proposed amendment
"1. An institution shall not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to a client or group of connected clients the value of which exceeds 25 % of its Tier 1 capital. Where that client is an institution or where a group of connected clients includes one or more institutions, that value shall not exceed 25 % of the institution's Tier 1 capital or EUR 150 million, whichever is higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to all connected clients that are not institutions does not exceed 25 % of the institution's Tier 1 capital. (...)	1. An institution shall not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to a client or group of connected clients the value of which exceeds 25 % of its ~~Tier 1~~ **eligible capital**. Where that client is an institution or where a group of connected clients includes one or more institutions, that value shall not exceed 25 % of the institution's ~~Tier 1~~ **eligible capital** or EUR 150 million, whichever the higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to all connected clients that are not institutions does not exceed 25 % of the institution's ~~Tier 1~~ **eligible capital**. (...)

Justification: *proposed amendments aim at avoiding side effects for small size and local banks that otherwise may be disadvantage because of their limited or lack of access to capital markets for Tier 1 capital instruments issuance .*

2.6 NSFR: Residual maturity of an asset – Art. 428q

Consistently with article 32(3)(i) of LCR Delegated Act, assets with undefined contractual end date, for which the contract allows the credit institution to withdraw or to request payment within 30 days, shall be considered for the purpose of the NSFR as short term loans.

Amendment to art. 428q CRR

COM proposal	Federcasse proposed amendment
1. Unless otherwise specified in this Chapter, institutions shall take into account the residual contractual maturity of their assets and off-balance sheet transactions when determining the appropriate required stable funding factors to be applied to their assets and off-balance sheet items under Section 2 of this Chapter.	1. Unless otherwise specified in this Chapter, institutions shall take into account the residual contractual maturity of their assets and off-balance sheet transactions when determining the appropriate required stable funding factors to be applied to their assets and off-balance sheet items under Section 2 of this Chapter. **1a. The residual maturity of assets with an undefined contractual end date is the date at which the contract allows the credit institution to withdraw or to request payment.**

Justification: *the propose amendment address the risk of inconsistency between the LCR and the NSFR.*

2.7 NSFR: Assets resulting from secured lending and capital market-driven transactions– Art. 428r

The European Commission proposal takes on board the asymmetry treatment between Repo and Reverse Repo from Basel 3 – NSFR. This approach is likely to have an adverse effects on market liquidity since brings about *outright L1 assets* with a RSF 0% *vs L1 assets sourced by assets resulting from secured lending and capital market-driven transactions* with a RSF 5% *vs L1 funded via liabilities resulting from secured lending and capital market-driven transactions* with an ASF of 0%. Non-economic terms and conditions may force banks to refrain from being active in primary and secondary markets as well as from secured funding which may hamper the liquidity stemming even from HQLA for the purpose of LCR and NSFR. Therefore, we propose to set RSF for *assets sourced by assets resulting from secured lending and capital market-driven transactions* on L1 collateral to 0%.
More generally, to ensure market liquidity and consistency with the development of the Capital Market Union, *assets and liabilities resulting from secured lending and capital market-driven transactions* should be treated symmetrically when they are executed with regulated financial institutions.

Amendment to art. 428r CRR

COM proposal	Federcasse proposed amendment
1. The following assets shall be subject to a 0% required stable funding factor: *(…)*	11. The following assets shall be subject to a 0% required stable funding factor: **(aa) assets that have a residual maturity of less than six months resulting from secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3) with financial customers, where those assets are collateralised by assets that qualify as Level 1 assets under Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation , and where the institution would be legally entitled and operationally able to reuse those assets for the life of the transaction, regardless of whether the collateral has already been reused. Institutions shall take those assets into account**

	on a net basis where Article 428e(1) of this Regulation applies; **(ab) assets that have a residual maturity of less than six months resulting from secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3) with regulated financial customers, where the institution would be legally entitled and operationally able to reuse those assets for the life of the transaction, regardless of whether the collateral has already been reused. Institutions shall take those assets into account on a net basis where Article 428e(1) of this Regulation applies;** *(...)*

Amendment to art. 428s(b) CRR

COM proposal	Federcasse proposed amendment
The following assets and off-balance sheet items shall be subject to a 5% required stable funding factor: *(...)* (b) assets that have a residual maturity of less than six months resulting from secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3) with financial customers, where those assets are collateralised by assets that qualify as Level 1 assets under Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation , and where the institution would be legally entitled and operationally able to reuse those assets for the life of the transaction, regardless of whether the collateral has already been reused. Institutions shall take those assets into account on a net basis where Article 428e(1) of this Regulation applies; *(...)*	The following assets and off-balance sheet items shall be subject to a 5% required stable funding factor: *(...)* ~~**(b) assets that have a residual maturity of less than six months resulting from secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3) with financial customers, where those assets are collateralised by assets that qualify as Level 1 assets under Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation , and where the institution would be legally entitled and operationally able to reuse those assets for the life of the transaction, regardless of whether the collateral has already been reused. Institutions shall take those assets into account on a net basis where Article 428e(1) of this Regulation applies;**~~ *(...)*

Justification: *the proposed amendment aims at incentivizing market liquidity and consistency and the development of the Capital Market Union. To this end, assets and liabilities resulting from secured lending and capital market-driven transactions should be treated symmetrically when they are executed with regulated financial institutions.*

2.8 Introduction of IFRS 9 – Art. 473a

We welcome the Commission will to address the issue of the significant increase of the level of provision in the balance sheet and its adverse impact on bank's capital ratios due to the new impairment approach provide for in IFRS 9. To BCCs point of view, the Commission proposal entails two appreciable characteristics that should be commended. First of all, the particular dynamic approach chosen by the Commission seems to be sufficiently simple to be implemented by banks with the

characteristics of BCCs. Other dynamic approaches and even a static approach would have been more burdensome. In addition, the Commission proposal seems to be appropriate to reduce or mitigate (not fully eliminate) to an acceptable level disadvantages suffered by institutions using the SA vis-à-vis institutions using the IRB approach, not to say EU institutions vis-à-vis international competitors.
Indeed, we would like to stress that the accounting reform is entering into force on 1 January 2018. Taking into account the time needed to complete the legislative process, the full CR2 might not be adopted and be in force as of January 2018. Furthermore, international work at Basel Committee level is not finalised and trajectory cannot be defined at EU level only.
Therefore it is necessary that the transitional arrangement laid down in article 473a is aligned with IFRS9 implementation schedule. In addition, the transitional arrangement should, to the extent possible, ensures a level playing field between EU banks and US ones and allows an appropriate triggers' calibrations and thresholds associated to the movements of assets between the first 2 stages.

Amendment to art. 473a CRR

COM proposal	Federcasse proposed amendment
1. Until [date of application of this Article + 5 years] institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002 may add to their Common Equity Tier 1 capital the amount calculated in accordance with paragraph 2 of this Article multiplied by the applicable factor laid down in paragraph 3.	1. Until **31 December 2022** institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002 may add to their Common Equity Tier 1 capital the amount calculated in accordance with paragraph 2 of this Article multiplied by the applicable factor laid down in paragraph 3.
2. The amount referred to in paragraph 1 shall be calculated as the twelve month expected credit losses determined in accordance with paragraph 5.5.5 of Commission Regulation (EU) No .... / 2016 (32) and the amount of the loss allowance for financial instruments equal to the lifetime expected losses determined in accordance with paragraph 5.5.3 of Commisison Regulation (EU) No .... / 2016 (1).	2. The amount referred to in paragraph 1 shall be calculated as the twelve month expected credit losses determined in accordance with paragraph 5.5.5 of Commission Regulation (EU) No .... / 2016 (32) and the amount of the loss allowance for financial instruments equal to the lifetime expected losses determined in accordance with paragraph 5.5.3 of Commisison Regulation (EU) No .... / 2016 (1).
3. In calculating the amount referred to in paragraph 1, thefollowing factors apply:	3. In calculating the amount referred to in paragraph 1, thefollowing factors apply:
(a) 1 in the period from [date of application of this Article] to [date of application of this Article + 1 year - 1 day];	(a) **1 in the period from 1 January 2018 to 31 December 2018;**
(b) 0,8 in the period from [date of application of this Article + 1 year] to [date of application of this Article + 2 years - 1 day];	(b) **1 in the period from 1 January 2019 to 31 December 2019;**
(c) 0,6 in the period from [date of application of this Article +2 years] to [date of application of this Article +3 years - 1 day];	(c) **0,8 in the period from 1 January 2020 to 31 December 2020;**
(d) 0,4 in the period from [date of application of this Article +3 years] to [date of application of this Article +4 years - 1 day];	(d) **0,6 in the period from 1 January 2021 to 31 December 2021;**
(e) 0,2 in the period from [date of application of this Article +4 years] to [date of application of this Article +5 years - 1 day].	(e) **0,4 in the period from 1 January 2022 to 31 December 2022;**
	(e) **0,2 in the period from [date of application of this article] to [date of application of this article +1 year -1 day].**
Institutions shall include in their own funds disclosures the	Institutions shall include in their own funds disclosures the amount added to their Common Equity Tier 1 capital in

amount added to their Common Equity Tier 1 capital in accordance with paragraph 1.".	accordance with paragraph 1.

Justification: *proposed amendments aim at avoiding side effects resulting from misalignment of entries to force of different legislations otherwise correlated. They strike the right balance between simplicity for implementation, the level playing field between institutions using the SA and institutions using the IRB approach. Finally they take into account at reasonable level prudential impacts.*

2.9 Adjustment to capital requirements for credit risk for exposures to social enterprises – Art. 501

Amendment to art. 501 CRR

COM proposal	Federcasse proposed amendment
1. 1. Capital requirements for credit risk on exposures to SMEs shall be multiplied by the factor 0,7619. 2. *(…)*	1. Capital requirements for credit risk on exposures to SMEs shall be multiplied by the factor 0,7619 **and to social economy enterprises by the factor 0,60.** 2. *(…)* **3.**

Justification: *social economy enterprises play a role even greater than the one play by SMEs. Access to finance has remained the Achilles' heel of initiatives so far taken to support the EU social economy agenda. The proposed amendment fills a consistency gap between two bodies of EU policies as further explained below.*

UE Social economy enterprise definition.

a) As part of its Social Business Initiative, which ran from 2011 until 2014, the European Commission developed the following definition based on three key criteria: social objective, limited profit distribution and participatory governance:

b) A social enterprise is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involve employees, consumers and stakeholders affected by its commercial activities.

c) The Commission uses the term 'social enterprise' to cover the following types of business:
d) those for which the social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation,
e) those where profits are mainly reinvested with a view to achieving this social objective,
f) and where the method of organisation or ownership system reflects their mission, using democratic or participatory principles or focusing on social justice (for example, with a reduced range of pay).
Thus:
g) businesses providing social services and/or goods and services to vulnerable persons (access to housing, health care, assistance for elderly or disabled persons, inclusion of vulnerable groups, child care, access to employment and training, dependency management, etc.); and/or
h) businesses with a method of production of goods or services with a social objective (social and professional integration via access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and

marginalization) but whose activity may be outside the realm of the provision of social goods or services.

A short hint at Italian BCCs experience with SEEs

In Italy as in many EU member States, SEEs address a growing demand for social services and inclusion. Among factor explaining such a demand, there is the aging population. In the Italian banking system, BCCs consistently with their mission in local communities, are the first finance provider for SEEs. In return, SEEs have proved to be less risky than other categories of enterprises. This pattern has been verified across regions and economy cycles.

3. BRRD review

3.1 The scope of the bail-in tool

The following amendments aim at limiting the scope of the bail-in tool. The first amendment introduces the principle of non-retroactivity of the bail-in tool; the second one excludes deposits by public authorities in the list of liabilities from the application of the bail-in tool.

Amendment to article 44.2 - BRRD

Current BRRD text	**Federcasse proposed amendment**
1. (…) 2. Resolution authorities shall not exercise the write down or conversion powers in relation to the following liabilities whether they are governed by the law of a Member State or of a third country: (a) covered deposits (…)	1. (…) 2. Resolution authorities shall not exercise the write down or conversion powers in relation to the following liabilities whether they are governed by the law of a Member State or of a third country: (a) covered deposits **(a-*bis*) all liabilities of an institution, existing at 31/12/2015** (…)

Justification. *This amendment aims at establishing the principle of non-retroactivity regarding the bail-in tool.*

3.2 MREL implementation

The following amendment aims at safeguarding the liabilities issued before 01/01/2016 from the scope of the bail-in, at the same time guaranteeing the supervisory instances by the means of a gradual implementation of the MREL requirement.

NEW Article 45.c.1-bis – BRRD2

COM proposal	Federcasse proposed amendment
Article 45c. Determination of the minimum requirement for own funds and eligible liabilities	*Article 45c. Determination of the minimum requirement for own funds and eligible liabilities*
1.The requirement referred to in Article 45(1) of each entity shall be determined by the resolution authority, after having consulted the competent authority, on the basis of the following criteria:	1.The requirement referred to in Article 45(1) of each entity shall be determined by the resolution authority, after having consulted the competent authority, on the basis of the following criteria:
(a)the need to ensure that the resolution entity can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;	(a)the need to ensure that the resolution entity can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
(b)the need to ensure, in appropriate cases, that the resolution entity and its subsidiaries that are institutions, but not resolution entities have sufficient eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers were to be applied to them, respectively, losses could be absorbed and the total capital ratio and the leverage ratio in the form of Common Equity Tier 1, of the relevant entities can be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;	(b)the need to ensure, in appropriate cases, that the resolution entity and its subsidiaries that are institutions, but not resolution entities have sufficient eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers were to be applied to them, respectively, losses could be absorbed and the total capital ratio and the leverage ratio in the form of Common Equity Tier 1, of the relevant entities can be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;
(c)the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in pursuant to Article 44(3) or might be transferred to a recipient in full under a partial transfer, the resolution entity has sufficient other eligible liabilities to ensure that losses could be absorbed and the capital requirements, or as applicable, the leverage ratio in the form of Common Equity Tier 1 of the resolution entity can be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;	(c)the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in pursuant to Article 44(3) or might be transferred to a recipient in full under a partial transfer, the resolution entity has sufficient other eligible liabilities to ensure that losses could be absorbed and the capital requirements, or as applicable, the leverage ratio in the form of Common Equity Tier 1 of the resolution entity can be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;
(d)the size, the business model, the funding model and the risk profile of the entity;	(d)the size, the business model, the funding model and the risk profile of the entity;
(e)the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 109;	(e)the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 109;
(f)the extent to which the failure of the entity would have an adverse effect on financial stability, including, due to the interconnectedness of the entity with other institutions or entities or with the rest of the financial system through contagion to other institutions or entities.	(f)the extent to which the failure of the entity would have an adverse effect on financial stability, including, due to the interconnectedness of the entity with other institutions or entities or with the rest of the financial system through contagion to other institutions or entities.
	1-*bis.* Until 2022, the minimum requirement pursuant to paragraph 1 shall be determined as follows: - **until 2019 it shall be reduced by the amount of 100% of all liabilities issued before 01/01/2016 and existing at the beginning of the reference period**

…)	- **until 2020 it shall be reduced by the amount of 75% of all liabilities issued before 01/01/2016 and existing at the beginning of the reference period** - **until 2021 it shall be reduced by the amount of 50% of all liabilities issued before 01/01/2016 and existing at the beginning of the reference period** - **until 2022 it shall be reduced by the amount of 25% of all liabilities issued before 01/01/2016 and existing at the beginning of the reference period** (…)

Justification. *In order to balance the needs for investor protection's, prudential supervision and funding sustainability of the new issued MREL eligible financial instruments, this amendment establishes a two-phases MREL regime:*

- *a transitional phase where the requirement is reduced year by year by a defined percentage of all liabilities issued before 01/01/2016 and existing at the beginning of the reference period*
- *the ordinary MREL regime, which was already set in the BRRD provisions*

3.3 Proportionality in supervisory reporting and public disclosure of the TLAC/MREL requirement

The proposed Article 45i introduces reporting and disclosure obligations with regard to the level of MREL eligible liabilities and their composition. However, there is no provision on proportionality associated to those obligations. Federcasse is of the opinion that proportionality is needed also for those obligations based on the following reasons:

1) In the BRRD, there are general provisions that govern the application of proportionality in recovery and resolution planning;
2) The MREL is set by the resolution authority within the process of resolution planning;
3) Where the resolution authority has set waivers or granted simplified obligations for resolution planning, including the frequency for updating resolution plans, those waivers or simplified obligations, to the extent that they impact directly or indirectly the level and composition of the MREL, should be reflected in reporting and disclosure obligations;
4) For example, Italian NCA has set a frequency of two years for recovery planning to be applied for LSIs not of a high priority. If the resolution authority applies the same frequency with regard to resolution planning, banks subject to simplified resolution plans should be obliged to report and disclose the level and composition of MREL eligible liabilities.

Amendments

COM proposal	Federcasse proposed amendments
Article 45i **Supervisory reporting and public disclosure of the requirement**	**Article 45i** **Supervisory reporting and public disclosure of the requirement**

1. Entities referred to in Article 1(1) shall report to their competent and resolution authorities on the following on at least a yearly basis: (a) the levels of available items that meet the conditions of Article 45b or Article 45g(3) and the amounts of own funds and eligible liabilities expressed in accordance with Article 45(2) following the application of deductions in accordance with Articles 72e to 72j of Regulation (EU) No 575/2013; (b) the composition of the items referred to in point (a), including their maturity profile and ranking in normal insolvency proceedings. 2. Entities referred to in Article 1(1) shall make the following information publicly available on at least a yearly basis:	1. **Without prejudice to provisions implementing Art. 4,** entities referred to in Article 1(1) shall report to their competent and resolution authorities on the following on at least a yearly basis: (a) the levels of available items that meet the conditions of Article 45b or Article 45g(3) and the amounts of own funds and eligible liabilities expressed in accordance with Article 45(2) following the application of deductions in accordance with Articles 72e to 72j of Regulation (EU) No 575/2013; (b) the composition of the items referred to in point (a), including their maturity profile and ranking in normal insolvency proceedings. 2. **Without prejudice to provisions implementing Art. 4,** entities referred to in Article 1(1) shall make the following information publicly available on at least a yearly basis:

PART 3

BRRD - Recovery and resolution for less significant institutions: a proposal

1. Recovery and resolution for less significant institutions: a proposal for the improvement of recovery and resolution framework in small - regional - cooperative banking industry

The proposal of the COM amending Directive 2014/59/EU (the BRRD) on loss-absorbing and recapitalisation capacity of credit institutions represents an opportunity to review and fine-tune some other critical parts of the Directive after 3 years of its entry into force. One of this part deals with recovery actions and early intervention measures for small-size local banks.

The preservation of the value of "diversity" among financial players, which is positively correlated to the resilience of a financial system, requires that regulatory policies be specifically designed to address the issues posed by small-sized, locally-rooted banks, often established as cooperatives, in the context of the Banking Union. As widely recognized, the principle of proportionality – which is a general principle of EU law[1] – requires avoiding unnecessary burdens (as assessed according to a cost-benefit analysis) even at the cost of uniformity. Thus, the current one-size-fits-all approach appears inadequate and clearly needs to be improved.

This should also be true with respect to the framework of bank recovery and crisis management. In this field, policy makers share the view that the stability of the financial system should always rank first in policy making, which indeed appears valid and legitimate. To this purpose, a new legal framework has been devised to help rescuing temporary distressed banks through a recovery action and, if the capital and financial position of the bank cannot be redressed, through a resolution action, which is designed to minimize the impact on financial stability.

However, this legal framework has been devised for large banks and would need to be fine-tuned to address the issues posed by small (and even medium banks). In this regard, two considerations seem crucial:

1) resolution tools are not available to small (and medium) banks, since such tools are currently applicable only to a very limited number of banks whose distress poses a serious threat to the financial stability at EU level, regardless of the impact of the insolvency of a smaller bank at national or regional level;

2) even more importantly, temporary distressed conditions might lead "less significant" banks towards progressive deterioration of their capital and financial position, since such banks are too small in size to effectively implement recovery measures that are exclusively based on internal resources or market solutions (respectively, due to the more limited types of transactions that a small bank may engage in to restore its full viability and, currently, the common absence of investors interested in acquiring or recapitalizing a small bank).

The outcome is that small banks facing a temporary distress can hardly find a solution, among those provided to them by the current legal toolbox, allowing to redress their financial and capital position

[1] See ECJ Case 11/1970 (*Internationale Handelsgesellschaft*); Article 5 of the Treaty on European Union; Protocol No. 2 on the application of the principles of subsidiarity and proportionality. Such principle is also cited in the secondary EU law and, in the field of bank resolution, in the Single Rulebook.

and, once they inevitably become non-viable, they are bound to value-destructive liquidations, without being admitted to use resolution tools.

That result produces a significant loss for the entire financial system in several ways, particularly preventing the conservation of economic value, allowing for the sacrifice of social values acknowledged by the European Union, and undermining the resilience of the banking system, which is negatively correlated to the standardization of the business model.

Further, even in the context of resolution, the experience that may be drawn by the resolution of four Italian regional banks – initiated in November 2015 and still ongoing – shows that the application of the new regulatory tools and procedures may bring about complexity, red tape and high transaction costs. Some risk of instability may also arise if procedures are not timely started and advanced and, in any case, due to the fact that the public confidence on the resilience of the banking system fades away over time.

In light of the above, banks, their associations and instrumental bodies have privately structured "alternative measures" that reduce the impact of the inefficiency of the application of a one-size-fits-all approach to small banks, consistently with the common responsibility arising from the need to protect "trust" in financial markets. Such measures (e.g., an IPS or a separate section within a DGS) may, thus, embody the sense of common responsibility within the banking industry and some sort of solidarity spirit. However, these strategies are, indeed, elusive of the current framework, despite both pursuing the very same objective (namely, financial stability) and, due to such nature, they achieve that goal less frequently and at a greater cost than it would happen using more direct strategies.

In this respect, voluntary schemes for rescuing banks, mergers and other market solutions may be put in action as alternative measures, which are still in the direction of avoiding public intervention[2]. Nevertheless, these processes are often value destructive due to their complexity, a high degree of uncertainty, and the risk of being considered non-compliant with the controls that have been developed in the DGS/IPS experience. Moreover, such solutions may increase moral hazard problems since the ascertainment of responsibility in case of mismanagement or fraud of a distressed bank normally is underrated in the context of private solutions to bank distress.

In addition, their pure voluntary nature may find a strong limitation in free-riding behaviors, occurring due to some opportunistic banks taking advantage of more responsible banks, leaving the latter with the whole burden of the voluntary scheme necessary to preserve financial stability and public confidence. In other terms, the "free-rider" bank may keep enjoying the confidence and stability of the banking system (which is similar to a public good like bus transportation) without any contribution (bus ticket) to the scheme. That behavior may ultimately affect competition and reduce the resources available for banking rescues that are in the best interest of the banking sector.

In light of what stated above, the adjustment of the framework to make it proportionate to the features and needs of small banks could be threefold.

1) *Alternative measures for allowing small banks to recover from temporary distressed conditions or, in case of non-viability, to liquidate in a way that is less value destructive and more deferential to public confidence than an atomistic liquidation.*

Particularly, it should be possible to structure such "alternative measures" with a view at limiting moral hazard and free riding problems. In this respect, such interventions and measures should, indeed, be

2 In Italy, the Fondo Atlante has been established on a voluntary basis in order to provide tools and financial resources for rescuing some banks, together with the "voluntary arm" of the Fondo interbancario di tutela dei depositi. On the other hand, BCCs have established the "Fondo temporaneo del Credito Cooperativo" to cope with the streamlining process towards the implementation of the Cooperative Banking Group, as stated in the Reform Act issued by the Italian Parliament in April 2016.

coupled with a strict code of conduct as far as the ascertainment of responsibilities in the bank crisis is concerned. Further, as financial stability is a fundamental policy issue, it is in the public interest to incentivize solutions aimed at rescuing temporarily distressed banks and, to that purpose, avoid free-riding behaviors with respect to bank rescue operations. Public policy is therefore expected to foster, among the other things, the establishment of such schemes (e.g., voluntary arm within DGS, IPS)[3]. This policy would be in line with the need for strengthening common responsibility within the financial system, which in turn implies setting up peer monitoring mechanisms. This process is thus likely to reduce moral hazard by enhancing controls by the market and better handling asymmetric information in credit and finance.

2) *Early interventions should be fine-tuned to make them effective also with respect to small banks, so as to avoid such banks to be always condemned to become non-viable due to the lack of tools adequate to their size. In that regard, a wider acknowledgment of both the insurance and wider statutory mandate of DGS, including loss-minimizing and risk reduction, would be advisable.*

The moral hazard problems that may be associated thereto should be partially offset by more supervision and the threat of sanctions. In this perspective, the DGS' broad mandate may be clearly stated **by reconciling the BRRD provisions with those already set forth by the DGSD**.

In the same vein, but on a different level, a revision of the State aid rules aimed at explicitly excluding their application to DGSs would be appropriate. Such a development would be particularly justified with respect to those DGSs that are fully privately run by independent bodies, with no public body involvement in the decision process for their intervention.

It is worth noting that, in any case, interventions for recovering, rescuing or supporting the liquidation of small-sized, local banks in a Member State may have a negligible impact on competition even at the regional or national levels, with no Europe-wide effects at all. The "better regulation" principle and proportionality, which have solemnly been stated as the basis for the EU regulatory process (despite being sometimes neglected), should also be applied with respect to State aid regulation.

Moreover, the completion of the Third Pillar of the Banking Union brings about an agreed solution for EDIS. If mechanisms of re-insurance or solidarity are to be established at the EU level in order to lessen the link between single Member States and domestic banks, early interventions may be partially or totally left with the national DGSs and/or IPSs where established, reducing the risk of EDIS activation. More generally, the EDIS proposal is still under discussion and needs to be accurately assessed also in terms of possible or desired objectives and mandates[4]. The chance to reach an agreement on a re-insurance scheme at the Banking Union level, leaving the DGS at national level, is to be seriously taken into account at present stage of the ongoing negotiations on EDIS.

3) *Rather than assuming as a good practice the simple exit from the market of inefficient and mismanaged banks with no systemic relevance through a value-destructive atomistic liquidation, Supervisors and Regulators would be expected to encourage more efficient alternatives.*

In consideration of the above, some policy stances and proposals are reported in the first of the following tables, believing that some corrective measures may contribute to complete and strengthen

[3] For example, the legal provision of the BCC Reform Act concerned with the establishment of the "Fondo Temporaneo del Credito Cooperativo" in the BCC network leaves exclusively its Statute with the decision about the financial resources to be assigned to the Fund and the criteria to be applied for their use, excluding any kind of authorization or control power by Public Agencies. Therefore, the Legislator only stated the principle of its establishment and simply acted as a promoter, reducing the risk of free riding behaviors. It is also provided that The Fondo Temporaneo will be integrated into the cooperative groups as they will be authorized by Banca d'Italia and the ECB.

[4] For an insight into the EDIS project, see G. Boccuzzi e R. De Lisa, *The changing face of deposit insurance in Europe: from the DSGD to the EDIS proposal*, in the Volume "The Italian Banks: which will be the New Normal?", edited by G. Bracchi, U. Filotto and D. Masciandaro, EDIBANK, 2016.

the efficacy of the Banking Union as far as the recovery and resolution framework for less significant banks is concerned.

Consequently, some suggested amendments to BRRD are set forth in the next tables.

GENERAL POLICY ISSUES	SPECIFIC POLICY INTERVENTIONS
A) Fostering the completion of Banking Union through the realization of the third pillar (EDIS) by a compromise: **re-insurance at BU level to be coupled with DGS and IPS at Country level (EDRIS)**. B) Supporting the use of **early intervention tools** and actions	1) Fully implementation of the DGSD principles with regard to early intervention powers of DGS
C) Fostering the use of **private financial resources** to avoid atomistic failures (alternative measures)	2) **Making State aid regulation more flexible,** applying DGS pre-authorized intervention schemes
D) Avoiding elusive strategies and increasing the flexibility in the application of the Second Pillar principles (BRRD)	3) **Fostering IPS or other private schemes** also on a compulsory basis in order to avoid free-riding (legal provision may be limited to IPS establishment, leaving scope, funding and functioning with self-regulation and supervisory requirements)
E) **Opposing free-riding behavior** by individual financial intermediaries which benefit from the common good called "trust" F) **Allowing peer monitoring and joint-responsibility** in the financial industry by setting up private schemes (voluntary arm of DGS, IPS)	4) Promoting measures to ascertain the responsibility of the bank management, introducing ineligibility and appointment rules.

Suggested amendments to BRRD

CURRENT	PROPOSED
Article 27 **Early intervention measures**	***Article 27*** **Early intervention measures**
1. Where an institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1,5 percentage points, is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, Member States shall ensure that competent authorities have at their disposal, without prejudice to the measures referred to in Article 104 of Directive 2013/36/EU where applicable, at least the following measures:	1. Where an institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1,5 percentage points, is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, Member States shall ensure that competent authorities have at their disposal, without prejudice to the measures referred to in Article 104 of Directive 2013/36/EU where applicable, at least the following measures:
(a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 5(2) to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure that the conditions referred to in the introductory phrase no longer apply;	(a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 5(2) to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure that the conditions referred to in the introductory phrase no longer apply;
(b) require the management body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;	(b) require the management body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
(c) require the management body of the	(c) require the management body of the

institution to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;	institution to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;
(d) require one or more members of the management body or senior management to be removed or replaced if those persons are found unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU;	(d) require one or more members of the management body or senior management to be removed or replaced if those persons are found unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU;
(e) require the management body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;	(e) require the management body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;
(f) require changes to the institution's business strategy;	(f) require changes to the institution's business strategy;
(g) require changes to the legal or operational structures of the institution; and	(g) require changes to the legal or operational structures of the institution; and
(h) acquire, including through on-site inspections and provide to the resolution authority, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with Article 36.	(h) acquire, including through on-site inspections and provide to the resolution authority, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with Article 36.
	(i) assess the potential effectiveness of the measures and the conditions imposed on the credit institution by the DGS to which the institution is affiliated, if alternative measures have been deliberated by the DGS according to Article 11, paragraph 3 of Directive 2014/49/UE.

CURRENT	PROPOSED
Article 32 **Conditions for resolution** 1. Member States shall ensure that resolution authorities shall take a resolution action in relation to an institution referred to in point (a) of Article 1(1) only if the resolution authority considers that all of the following conditions are met: (a) the determination that the institution is failing or is likely to fail has been made by the competent authority, after consulting the resolution authority or, subject to the conditions laid down in paragraph 2, by the resolution authority after consulting the competent authority; (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments in accordance with Article 59(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe; (c) a resolution action is necessary in the public interest pursuant to paragraph 5.	*Article 32* **Conditions for resolution** 1. Member States shall ensure that resolution authorities shall take a resolution action in relation to an institution referred to in point (a) of Article 1(1) only if the resolution authority considers that all of the following conditions are met: (a) the determination that the institution is failing or is likely to fail has been made by the competent authority, after consulting the resolution authority or, subject to the conditions laid down in paragraph 2, by the resolution authority after consulting the competent authority; (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS **or by a private scheme recognised as a DGS envisaging a broad mandate under article 11 paragraph (3) and (6) of Directive 2014/49/UE**, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments in accordance with Article 59(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe; (c) a resolution action is necessary in the public interest pursuant to paragraph 5.

CURRENT	PROPOSED
Article 59	***Article 59***
Requirement to write down or convert capital instruments	**Requirement to write down or convert capital instruments**
1. The power to write down or convert relevant capital instruments may be exercised either:	1. The power to write down or convert relevant capital instruments may be exercised either:
(a) independently of resolution action; or	(a) independently of resolution action; or
(b) in combination with a resolution action, where the conditions for resolution specified in Articles 32 and 33 are met.	(b) in combination with a resolution action, where the conditions for resolution specified in Articles 32 and 33 are met.
2. Member States shall ensure that the resolution authorities have the power to write down or convert relevant capital instruments into shares or other instruments of ownership of institutions and entities referred to in points (b), (c) and (d) of Article 1(1).	2. Member States shall ensure that the resolution authorities have the power to write down or convert relevant capital instruments into shares or other instruments of ownership of institutions and entities referred to in points (b), (c) and (d) of Article 1(1).
3. Member States shall require that resolution authorities exercise the write down or conversion power, in accordance with Article 60 and without delay, in relation to relevant capital instruments issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) when one or more of the following circumstances apply:	3. Member States shall require that resolution authorities exercise the write down or conversion power, in accordance with Article 60 and without delay, in relation to relevant capital instruments issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) when one or more of the following circumstances apply:
(a) where the determination has been made that conditions for resolution specified in Articles 32 and 33 have been met, before any resolution action is taken;	(a) where the determination has been made that conditions for resolution specified in Articles 32 and 33 have been met, before any resolution action is taken;
(b) the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) will no longer be viable;	(b) the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) will no longer be viable;
(c) in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary make a joint determination taking the form of a joint decision in accordance with Article 92(3) and (4) that unless the write down or conversion power is exercised in relation to those	(c) in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary make a joint determination taking the form of a joint decision in accordance with Article 92(3) and (4) that unless the write down or conversion power is exercised in relation to those

instruments, the group will no longer be viable;	instruments, the group will no longer be viable;
(d) in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;	(d) in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
(e) extraordinary public financial support is required by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) except in any of the circumstances set out in point (d)(iii) of Article 32(4).	(e) extraordinary public financial support is required by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) except in any of the circumstances set out in point (d)(iii) of Article 32(4).
4. For the purposes of paragraph 3, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met:	4. For the purposes of paragraph 3, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met:
(a) the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group is failing or likely to fail;	(a) the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group is failing or likely to fail;
(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, independently or in combination with a resolution action, would prevent the failure of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group within a reasonable timeframe.	(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures **(including measures settled by a private scheme recognised as a DGS envisaging a broad mandate under article 11 paragraph (3) and (6) of Directive 2014/49/UE)** or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, independently or in combination with a resolution action, would prevent the failure of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group within a reasonable timeframe.

CURRENT	PROPOSED
Article 109	***Article 109***
Use of deposit guarantee schemes in the context of resolution	**Use of deposit guarantee schemes in the context of resolution and orderly insolvency proceedings**
1. Member States shall ensure that, where the resolution authorities take resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for:	1. Member States shall ensure that, where the resolution authorities take resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for:
(a) when the bail-in tool is applied, the amount by which covered deposits would have been written down in order to absorb the losses in the institution pursuant to point (a) of Article 46(1), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or	(a) when the bail-in tool is applied, the amount by which covered deposits would have been written down in order to absorb the losses in the institution pursuant to point (a) of Article 46(1), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or
(b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.	(b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.
In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.	In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.
When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (b) of Article 46(1).	When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (b) of Article 46(1).
Where it is determined by a valuation under Article 74 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 75.	Where it is determined by a valuation under Article 74 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing

2. Member States shall ensure that the determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article complies with the conditions referred to in Article 36. 3. The contribution from the deposit guarantee scheme for the purpose of paragraph 1 shall be made in cash. 4. Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6 of Directive 2014/49/EU. 5. Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years. In all cases, the liability of a deposit guarantee scheme shall not be greater than the amount equal to 50 % of its target level pursuant to Article 10 of Directive 2014/49/EU. Member States, may, by taking into account the specificities of their national banking sector, set a percentage which is higher than 50 %. In any circumstances, the deposit guarantee scheme's participation under this Directive shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.	arrangement in accordance with Article 75. 2. Member States shall ensure that the determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article complies with the conditions referred to in Article 36. 3. The contribution from the deposit guarantee scheme for the purpose of paragraph 1 shall be made in cash. 4. Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6 of Directive 2014/49/EU. 5. Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years. In all cases, the liability of a deposit guarantee scheme shall not be greater than the amount equal to 50 % of its target level pursuant to Article 10 of Directive 2014/49/EU. Member States, may, by taking into account the specificities of their national banking sector, set a percentage which is higher than 50 %. In any circumstances, the deposit guarantee scheme's participation under this Directive shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings **6. Where conditions for undertaking resolution action are not met, Member States should nevertheless encourage the exit of non-viable players, while allowing for the exit process to take place in an orderly manner so as to preserve financial stability, also through the intervention of a private sector institution recognised as a DGS envisaging a broad**

	mandate under article 11 paragraph (3) and (6) of Directive 2014/49/UE. **Such an intervention should be based on the autonomous decision taken by the DGS, according to a comprehensive assessment of (i) the liquidation costs on the whole and (ii) further risks of interventions arising from the undesired loss of public confidence. Measures taken under the current paragraph to support the liquidation of failing credit institutions do not constitute State aid once equity, hybrid capital and subordinated debt have fully contributed to offset any losses.**