Report from the Expert Group Meeting of October 2 on contributions under the BRRD

1. Estimated impact of the proposed treatment of derivatives

JRC presented the analytical work conducted to estimate the impacts.

CS clarified that the last column of the last table of the working document was included by error and should be disregarded for the purpose of the discussion.

One MS asked for more granular data on derivatives by bank size. That MS also asked for clarifications of the example presented in the working document.

CS clarified that the example provided in the working document is not meant to provide estimates but to illustrate how the proposed treatment would work.

JRC clarified that it is possible to derive some information from the cumulative distribution presented and that there is a tendency for the largest among the largest banks to have more derivatives in percentage terms.

A MS asked how many of the largest banks do not use IFRS. According to it, the assumptions used in the analysis of the cumulative distribution for pillar 4 indicators are unrealistic.

CS clarified that it is not possible to answer the question on accounting standards on the basis of the available information. CS also stated that the results presented in the working document show that even without the pillar 4 indicators, banks representing the largest 85% of assets in the Euro area are still around 90% of total contributions.

Another MS stated that these estimates have to be taken with caution. It also reiterated that there is no data on differences between the accounting standards and a request for more granular information.

Another MS asked why CS did not take the real figures to do the analysis.

JRC answered that the final database made of data provided by Member States was used. It is not possible to match individual banks from Bankscope to individual banks in the final database, because the latter is anonymized. The purpose of the analysis was to see the impact of the maximum reduction on the very largest banks and verify whether this would have a significant impact on the overall distribution of contributions.

Another MS said that distortions between Member States can be significant.

Another MS said that it is not possible to take decisions without exact figures. They reiterated that the accounting treatment of derivatives is the most appropriate.

Another MS asked clarifications about the missing data and asked that a more granular analysis is produced.

Another MS is concerned by changes between Member States.

CS stated that many estimates have already been provided to the Expert Group for discussion. The treatment of derivatives in the basis is separated from the risk-adjustment factor for derivatives.

JRC clarified that cross-checks were conducted with another database at consolidated level, which displayed averages in line with the ones used. The averages were also not relevantly different between Member States. Even though there are some missing values among larger banks, we should not expect dramatic changes if we had complete data. It is not possible to do an individual-level simulation, but if we were to use more granular averages the impact should not be very relevant.

Another MS thanked CS and JRC for the analyses. The phrasing should not be talking about “deductions” or “discounts”. IFRS are only required on a consolidated basis. This analysis helps all Member States to put an upper bound on the impacts.

Another MS suggested that the proposed review could be advanced with respect to June 2016.

Another MS stated that their question was not answered. They do not see the need for the proposed treatment of derivatives because its impact is too small.

2. Updated working document on the way forward on the delegated act

CS illustrated the main changes to the working document compared to the previous version and invited Experts to provide constructive comments and concrete suggestions for amendments in view of launching the Interservice consultation within the Commission shortly.

One MS indicated that high level discussions are still taking place in this Member State. They have sent suggestions to the Commission on mortgage credit institutions. The level 2 text should comply with the political compromise reached in level 1, which is not the case in the current text.

CS clarified that the rationale is that the significant risk-based reduction proposed for institutions exempted from MREL would be granted on the basis of the very low likelihood that they would use resolution financing arrangements.

Another MS welcomed the removal of Union branches from the scope of the future delegated act. They are not convinced about the possibility that the Commission could propose a specific treatment in the future for them due to limitations on the scope of the empowerment contained in the parent act. In a spirit of compromise, they would accept the proposed treatment of investment firms. It may be worth looking at this in the revision of the delegated act and/or in the wider review of the regulation of investment firms mandated by the CRR. On the definition of covered deposits, it should be made more explicit. On the definition of resolution authority, they welcome the flexibility of the Commission, but they would need to consider internally whether this goes far enough for them.

CS replied that other Member States had similar concerns on investment firms and union branches.

Another MS indicated that the definition of liquidity coverage ratio would not work because it would cover also national requirements. The definition should rather refer to the delegated act on LCR. The removal of the bail-in condition from the intragroup liabilities is fine. It is not clear how the distribution between entities of the same group of intragroup liabilities would be conducted. They would consider it to be on a transaction by transaction basis. The complexity and resolvability indicator should not interpret the absence of a resolution plan at individual level as a risk factor. The 8% for bail-in-able liabilities is not a harmonized requirement. The SRB may well decide on very low requirements for subsidiaries, which would make the 8% benchmark very high. They would prefer to use the entity’s MREL instead of the 8%. They still see a problem with how the additional risk indicators would work.

Another MS expressed that they would provide written comments. The scope of promotional banks and promotional loans has changed quite a lot. The incentives of excluding any loan that has public guarantees may be perverse. If the goal is to grant a risk-based reduction to promotional banks because they will less likely use the fund, then a reduction such as the one for mortgage credit institutions should be introduced. Their constitution is against the discretion granted to resolution authorities in the pillar 4.

CS clarified that the treatment of promotional loans applies only to very specific institutions that operate for specific purposes related to public policy goals.

Another MS agreed with the removal of the bail-in-ability condition for intragroup. They are not convinced about the possibility to apply the leverage method to derivative liabilities. They do not understand the pillar 4.

Another MS indicated, with respect to the reallocation of unallocated weights of the fourth pillar to the first three pillars, that, given that the use of intervals corresponding to the weights that can be assigned to the indicators of the fourth pillar leads to situations where the sum of the weights is less than the total of 20% allocated to that pillar, it should be specified if and how the remaining percentages of pillar four will be allocated to the other three pillars, such that the sum of the weights of all the pillars is 100%.

CS replied that the methodology for the treatment of derivatives would be clarified in the legal text and explained the policy choice for pillar 4.

Another MS sees the rationale of the proposed treatment for entities which are fully under the scope of Article 10 of the CRR. This provision should have been extended to all waivers in the CRR. The provision on the bail-in-ability of intragroup liabilities should be maintained, but they can accept its removal in the spirit of compromise. It agrees with other Member States that the risk indicator should refer to MREL and not to 8%. They would also like to better understand the level playing field issue of promotional loans and why promotional loans and not development banks are considered.

Another MS stressed that they are very concerned with the discretion in pillar 4 and how it could affect the weight of the other pillars.

Another MS does not see the connection between the complexity and IPS indicators in pillar 4.

Another MS asked if it would be possible to exclude from the scope investment firms that are below certain size thresholds. The condition on the bail-in-ability of intragroup liabilities should be kept and be applied to all other cases. MREL should be used in the risk indicator instead of 8%. They are concerned about pillar 4.

CS explained that it would be difficult to exclude them because the level 1 text has to be respected. The exclusion of intragroup liabilities is only for double counting issues.

Another MS stated that the bail-in-ability criterion should be applied for the exclusion of intragroup and intra-IPS liabilities. The conditions should be as strict as possible. They are concerned about the fact that this condition has been removed.

Another MS would submit written comments.

Another MS said that the first two indicators in pillar 4 should have a combined weight of 18%. There are no IPS in this Member State. The bail-in-ability condition should be kept.

Another MS agreed with substituting 8% with MREL in the risk indicator. They would like that some discretion is kept for resolution authorities in pillar 4.

Another MS stated that the definition of covered deposits should refer to Article 6 paragraph 1 of DGSD. They asked what would happen to intragroup liabilities with Member States that do not apply the delegated act. They think that systemic importance is not adequately reflected in the risk adjustment.. There should be no impact in pillar 4 of the value of one risk factor on the value of another risk factor. A specific weight should be given to all factors. The weight for the IPS indicator is way too low and the weight of the complexity indicator is way too low.

CS invited Member States to submit written comments by lunch time on 3 October.

Another MS agreed that a compromise has to be found to ensure a level playing field but don't think that downgrading the requirements for intragroup and intra-IPS liabilities is the way to go. The right criterion has yet to be found. Article 49(3) should be used for the conditions of the IPS risk indicator.

Another MS suggested that more detail work on the waivers should be performed. They agreed with the removal of the bail-in-ability condition and with the proposed treatment of derivatives. MREL should replace 8% in the risk indicator.

CS presented and invited Experts to discuss the procedural aspects presented in the working document.

A MS asked if the data from two years before would be used for the calculation of contributions. They also highlighted that data on covered deposits would not be available before 2015. It suggested that payments could be corrected ex-post on the basis of the correct data as it becomes available.

Another MS asked about which data would be used for institutions which change of status.

Another MS asked for more information on what exactly would happen during 2015.

Another MS expressed that providing for a single installment might not be in line with Article 103(1) of the BRRD.

Another MS asked about administrative measures. Sanction powers are laid down in national law. Their legal experts have doubts that this is possible in a delegated act.

3. Information point

CS explained the next steps for the adoption of the delegated act: Interservice consultation within the Commission to be launched shortly, followed by translations and the formal adoption of the delegated act and the draft proposal for an implementing act on the third week of October.

A MS asked if the risk adjustment would vary if the target level varies.

CS clarified that the risk-adjustment mechanism applies is fully defined in the delegated act.

Another MS thinks that the 8% interest rate is too high, and that classifying an institution as highest risk class is not an appropriate sanction.

Another MS urged the CS to communicate the intention to hold meetings well in advance otherwise their experts cannot attend.