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MEP Irene Tinagli
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Copy: *Poland CMDI attaché, Council Secretariat, CMDI Shadow Rapporteurs, ECON Chair, Acting Head of Unit D3, DG FISMA*

Industry position on CMDI review

31 January 2025

Dear Mr. Niezgoda,
Dear Mr. Niedermayer,
Dear Ms. Tinagli,
Dear Ms. Peter-Hansen,
Dear Mr. Bassi,

With the objective of providing a helpful and constructive contribution towards a successful and positive conclusion of the legislative negotiations, AFME[1] would like to provide its views on the key aspects of the Crisis Management and Deposit Insurance (CMDI) review, noting that the trilogues have recently started. Addressing the areas set out in this letter will be fundamental for the development of an effective recovery and resolution framework in Europe and the ongoing work to enhance resolvability in the EU. In turn, a safe banking sector should support deep and integrated European capital markets that serve the needs of companies and investors, facilitating employment and economic growth.

It is very important for the CMDI review to recognise that EU banks, especially G-SIBs and other large systemic banks, have made significant progress in recovery and resolution planning, raising MREL, acknowledged by both the EBA[2] and SRB, and enhancing resolvability. It is essential that any reforms to the resolution framework do not prejudice the progress already achieved, that the co-legislators be vigilant in avoiding unintended consequences of further reforms or any additional or increased contributions to DGSs or SRF, especially for those banks compliant with the BRRD resolution requirements.

[1] The Association for Financial Markets in Europe (AFME) represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is listed on the EU Transparency Register, registration number 65110063986-76.
[2] "Most EU resolution banks comply with the requirement aimed at supporting orderly resolution in case of failure, the EBA dashboard finds", Source: EBA's Quarterly Dashboard on MREL, published by the EBA on 2 July 2024.

We do not believe that it is necessary to make wholesale changes to the resolution framework and that the focus instead should be on targeted changes.

More generally, we believe that the following key principles should continue to underpin the remainder of the negotiations of the CMDI framework. In our view the CMDI review should result in:

1. Maintaining consistency in the tools and application of the framework at EU level in order to ensure that all banks, regardless of their size, or country of origin, can fail in an orderly manner, have a plan in place to provide for this and have the resources to support it (i.e., a level of MREL sufficient to fund their own resolution if earmarked for resolution).

2. Enhancing the credibility, predictability and consistency of the CMDI framework, including appropriately filtering the access of new banks to resolution, especially those banks earmarked for liquidation, seeking to stop such banks potential to seek a last-minute switch to resolution, further enhancing financial stability, without adversely impacting the progress made to date on resolution.

3. Minimising risk to taxpayers and moral hazard by ensuring a consistent, harmonised and careful approach across EU member states to the use of common or mutualised funds to absorb losses, subject to the Least Cost Test, supporting market discipline and avoiding competitive distortions.

4. Supporting strong cross-border cooperation and minimize fragmentation both within the EU and with third countries.

5. Maintaining the existing governance of the Single Resolution Board and the competences and powers of its Executive Board.

6. Not increasing contributions to mutualised funds.

As the co-legislators have recently entered trilogue negotiations, we stress below critical points from our review of the Commission, Parliament and Council's CMDI proposals against these principles. We have broadly prioritised our points, in line with the Presidency's priorities in the Trilogue, except MREL, where we view that the MREL proposals, should be duly prioritised, given their potential impact on banks' capital needs.

MREL – Loss-absorption and recapitalisation capacity as MREL – first line of defence / MREL Floor

4CT Lines:	314-322 BRRD
Reference:	BBRD: Article 45c - Determination of the minimum requirement for own funds and eligible liabilities (MREL)

It is important to recognise that all banks, regardless of size, may produce negative externalities in their failure. The approach for a given bank (be it any of the resolution strategies or a wind down via ordinary insolvency proceedings, or combination thereof) should seek to minimise this, and the loss-absorption and recapitalisation requirements that apply should be sufficient to ensure the foreseen approach is credible. Failing to put this in place would reflect a movement away from the long held 'polluter-pays' model and would be economically equivalent to forcing others to pay for the negative externalities of a private actor – be that via mutualised funding sources stepping in, or in the extremis, the state itself.

Any foreseeable need to rely on non-liquidity forms of support by mutualised funds as what essentially amounts to a supplemental source of capital is hard to justify from the polluter pays perspective and should therefore be minimised. This is moral hazard and may encourage excessive risk taking should the cost of a failure be borne by others. Hence our concerns with the concept of bridge-the-gap (BtG) for resolution, the least cost test (LCT) (also in connection with alternative and preventive measures) and removal of the super-preference.

The intended easing of access to mutualised funds rather than imposing sufficient requirements on going concern is not an equitable model for handling the negative repercussions of the failure of a financial institution – regardless of its size. It is why institutions already within scope of resolution are expected to issue and maintain MREL, as well as build-out and maintain capabilities to ensure a credible resolution strategy can be delivered upon should it ever be needed.

We view the existing approach to MREL calibration already provides for some proportionality and the same principle should apply to all banks to avoid competitive distortions in the market. At the same time, it should be recognised that access for small or medium size institutions to financial markets may differ between member states depending on the market structure and therefore, an appropriate transitional period should be provided where necessary to provide adequate time to issue eligible liabilities or further building up retained earnings to meet MREL requirements for institutions that are newly captured by the requirements. This should not lead to any additional or increased contributions to EU Deposit Guarantee Schemes (DGSs) or Single Resolution Fund (SRF) for those banks, in particular Global systemically important banks (GSIBs) and large banks, already compliant with the BRRD resolution requirements.

Solution – AFME views that a bank's own capacity should remain the first, essential line of defence for banks where it concerns absorbing losses and recapitalising the bank. We welcome the Parliament's proposal as set out under paragraph 3 of new Article 45ca, relating to the MREL Floor of keeping a minimum set in % of RWA. However, we prefer a 16% floor, which is closer to the already achieved level of average capitalisation of EU banks as per recent EBA reports – rather than the Parliament proposed 13.5% of the total risk exposure amount, and the proposed 5% of the total exposure measure. Moreover, we note that Article 45d (3), covering G-SIIs, refers to Article 45c when determining an MREL amount higher than the Total Loss-Absorbing Capacity (TLAC). Also, we note that the Council's general approach position is not ideal as it does not mention a floor for MREL for any bank earmarked for resolution.

AFME supports a simpler calibration of MREL, inspired by the FSB's TLAC, for any bank oriented towards resolution.

i) A specific percentage of Risk-Weighted Assets (RWA), such as the proposed 16%, plus the Combined Buffer Requirement, with capped add-ons for exceptional cases.

ii) A determined percentage of leverage exposure, with predefined and capped add-ons, proportional to those defined for RWA exposures.

This simplified model would benefit both competent authorities, as well as banks, by making the requirements more transparent, predictable and understandable, which would be valued by investors and stakeholders too. It could also facilitate harmonisation across the EU, eliminate add-ons, and reflect the evolution of the regulatory framework since the crisis management framework's implementation, including supervision and capital constraints in particular.

Moreover, this approach could bolster the international competitiveness of the banking sector by providing a clear, consistent regulatory environment that aligns with global standards.

MREL Calibration for transfer strategies

4CT Lines:	323-338 BRRD; 115-130 SRMR
References:	BRRD: New Article 45ca - Determination of the minimum requirement for own funds and eligible liabilities for transfer strategies leading to market exit SRMR: New Article 12da - Determination of the minimum requirement for own funds and eligible liabilities for transfer strategies leading to market exit.

AFME views that the extending the resolution tool to medium or small banks must be accompanied by a clear calibration of the MREL requirement for small and medium sized banks to enhance their financial and capital strength. Such measures would counterbalance the additional contribution burdens that larger banks might face towards Deposit Guarantee Schemes (DGSs) and Resolution Funds (namely the SRF) due to the more frequent use of these schemes. This increased use is a consequence of extending resolution tools to smaller banks, expanding the types of protected deposits and eliminating the super-preference regime of the DGS.

Solution - AFME supports the Commission proposal to establish new rules in the Bank Recovery and Resolution Directive (BRRD) (Article 45ca) regarding the calibration of MREL for banks whose resolution strategy involves the application of transfer tools. This approach would reduce legal uncertainty and mitigate against divergent methodologies being applied by resolution authorities.

We also support the amendment proposed by the Parliament as it ensures that the Recapitalisation Amount for credit institutions using the transfer tool, either alone or in combination with other resolution tools (e.g., bail-in), should be proportionately adjusted to reflect the reduced size of the entity post-resolution. This amendment reinforces the principle that the MREL requirement level should align with the most likely resolution strategy.

Further, we welcome the Parliament's approach, which distinguishes transfer strategies from market exit, rather than automatically linking them. This perspective allows for a combination of tools and different strategies for subsequent steps (i.e., exit versus resolution). This amendment is also supported by the Single Resolution Board's (SRB) ongoing efforts to enhance optionality and flexibility during resolution. The SRB[3] is considering adding transfer resolution tools (such as the sale of business and bridge bank tools) as variant strategies for plans that prefer 'open bank' bail-in as the primary resolution tool.

However, we do not support the Council proposal, as we view it restricts ability to use a combination of resolution tools.

[3] SRB 2025 Work Programme SRB puts focus on testing in its 2025 work programme | Single Resolution Board published 26 November 2024

Restriction of MREL eligible instruments for retail clients

4CT Lines: 299-299i BRRD
References: BRRD: Article 44a - Selling of subordinated eligible liabilities to retail clients

AFME supports the Commission's proposal for seeking that the EBA reports on use of MREL eligible instruments for retail clients and assessing any potential impact on cross-border operations. However, we do not support the Parliament's proposal, given it does not recognise that existing MiFID tools apply, and as a consequence is potentially duplicative and over complex for our firms and their clients. Moreover, the Parliament's proposal introduces complexity and may impact the funding of some banks. Further, we note that whilst a retail distribution channel remains a limited source of eligible funding, it provides a source of funding that should not be ruled out.

Public Interest Assessment (PIA)

4CT Line: 68 BRRD
References: BRRD: Article 2.1 (35)- Definition of Critical Function

AFME views that any proposed change to the Definition of Critical Function should align with the objectives of the CMDI review. Whilst AFME welcomes guidance on what "regional level" means, AFME cautions against making the definition too detailed, such as adopting the European Parliament's proposed NUTS level 2, as this could result in small institutions being classified as critical. This may lead to a positive Public Impact Assessment (PIA) at a very small regional level, potentially causing an increase in the scope of resolution versus banks going into liquidation, to the detriment of the broader industry. Additionally, obtaining granular data, such as NUTS level 2 data, would be challenging and difficult to operationalise, and could be viewed as contrary to the European Commission's Strategy on supervisory data in EU financial services.

Solution – AFME supports to retain the existing definition of Critical Function under the BRRD, Article 2.1 Point (35) Definition of Critical Function. However, if guidance on the definition of regional level is developed, consideration should be given to whether such proposal could be operationalised, e.g. referencing to NUTS 1, and not as granular as NUTS 2.

SRB Governance

4CT Lines: 362a-362j SRMR
Reference: BRRD: Title II - Session of the Board, Article 50 (1) - Tasks

AFME welcomes enhanced transparency of the SRB, such as giving more consultative powers. We view that such powers should be given to the SRB's Executive Board

We oppose changes proposed by the Council to the competence and powers of the SRB "Executive session" in order to give more powers to the "plenary session" as we believe such changes would introduce an unhealthy level of national sensitivities into the SRB's work and could eventually lead to more conservatism and fragmentation being reflected in guidelines, policies, etc.

Solution –AFME proposes retaining the existing BRRD text and views that any change to the SRB Governance may change the interplay between national resolution authorities (NRAs) views and the SRB Executive. Further such a change, may create a greater risk of fragmentation to the Banking Union were you to give more power to NRAs, and create operational difficulties in reaching agreement within the SRB.

Accounting treatment of Irrevocable Payments Commitments (IPCs)

4CT Lines: 421-423 BRRD; 395-397 SRMR

References: BRRD: Article 103 - Ex-ante contributions, and
SRMR: Article 70 - Ex-ante contributions

AFME believes that provisions that require a call of IPCs on return of a banking licence should be avoided.

Both the European Commission proposal and the European Parliament amendments to the CMDI framework have unintended consequences for the accounting treatment of IPCs and appear to be inconsistent with the original legislative aim. In particular, they could be detrimental to the current accounting treatment with the risk of leading - in some cases - to expensing the IPC with a P&L impact, rendering IPCs no longer viable going forward, as they would be an equivalent to the cash contributions from the accounting perspective.

Solution – AFME recommends further amending Article 103 BRRD and Article 70 SRMR to clarify that Resolution Authorities shall cancel IPCs and return the related collateral after the relevant entity has exited the scope of BRRD/SRMR (i.e. returned its banking license). The Council position restores the status quo on the accounting treatment of IPCs and we would therefore be supportive of their proposal.

Alternatively, we could support a delay until the next contribution call from banks, still in the SRMR scope, leaving time for the SRF to reach again its target level, despite the cancellation of IPC and reimbursement of collateral without any compensation, if, and when, necessary.

Further AFME does not support any changes that, as a consequence, would require banks to expense the stock of already outstanding IPCs from previous years, as this may result in a material one-off P&L impact for many European banks.

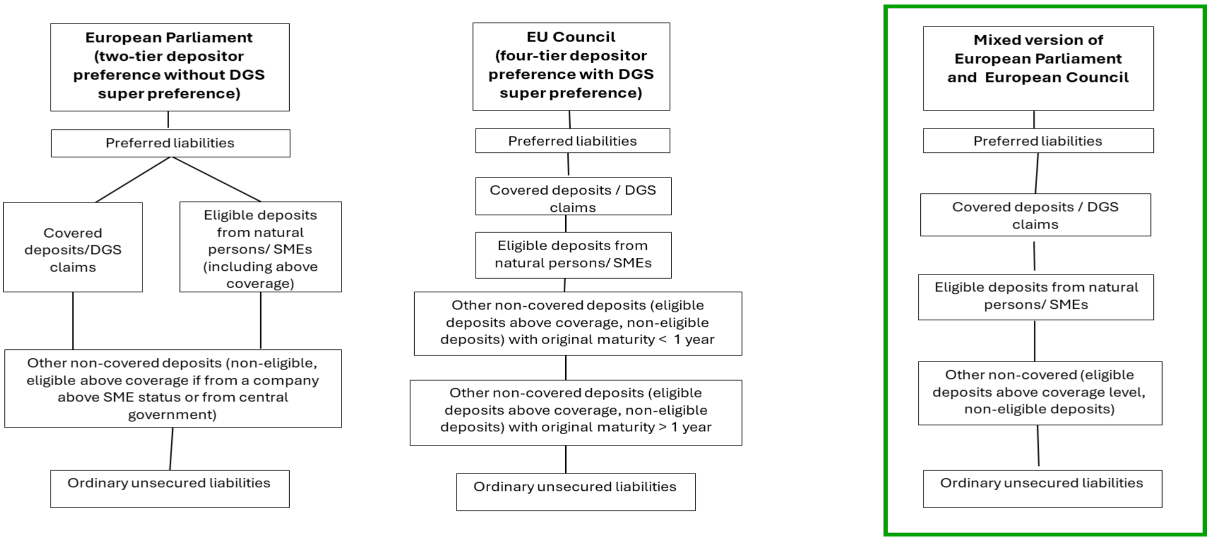
Modification of the hierarchy of creditors

4CT Lines: 426-431e BRRD
References: BBRD: Article 108 Ranking in insolvency hierarchy

AFME views that for any changes to be made in the ranking of deposits the potential change should be subject to a careful impact assessment before any changes are introduced.

For example, we view that the Parliament's proposal for the split of non-covered deposits into (i) below one year and (ii) above one year maturity buckets may create unnecessary downward pressure on credit institutions' deposit ratings where the overall volume of the most junior deposit layer (non-covered deposits >1 year maturity) is relatively small compared to total deposits. This adds to the pressure on senior preferred ratings generated by the introduction of harmonised general depositor preference and may lead to negative consequences for banks such as higher funding costs, reduced access to capital markets, and potential loss of customer confidence.

Solution - AFME supports a hybrid option of the Parliament and Council's proposals, i.e. combining the Parliament's proposed operational simplicity on operating deposit preference with the Council's proposed[4] upholding of super preference for covered deposits in the creditor hierarchy.



Namely, the ranking of deposits in insolvency should be in the following order: -

i) Preferred liabilities
ii) Covered deposits/DGS claims
iii) Eligible deposits from natural persons/ SMEs
iv) Other non-covered deposits (eligible deposits above coverage level, non-eligible deposits)
v) Ordinary unsecured liabilities

Bridge the Gap (BtG)

4CT Lines: 410a-o; 411a-411b; 412a-412b SRMR
References: SRMR: Article 79 - Use of DGS in the context of resolution, and
BRRD: Article 109 - Use of deposit guarantee schemes in the context of resolution

AFME views that the Council's proposals for safeguards to limit the use of the DGS bridge to access the SRF are a step in the right direction, in the absence of clear principles limiting DGS bridge use in the current texts. We would welcome some clear parameters, within the text for BtG, to limit the use of the DGS bridge to access the SRF.

Moreover, where the DGS is used to finance the resolution of a bank, it is important that the framework clearly establishes the roles of the relevant authorities and ensures close coordination between them. Speed is likely to be of the essence and coordination between relevant authorities should be considered in advance as part of resolution planning. Also, we are strongly opposed to the idea that DGSs' funds could be used to reach the threshold of 8% of bail-in/burden-sharing and open access to the Single Resolution Fund (SRF). In our view, which would clearly distort competition, generate moral hazard and result in a double bail-out by other institutions, first at national and then at Banking Union level.

[4] AFME notes that the Council's four-tier depositor preference proposal distinguishes other non-covered (eligible deposits above coverage level, non-eligible deposits) with maturity less than one year, with those non covered deposits with a maturity greater than one year. We view that such a distinction will impact the Net Stability Funding Ratio (NSFR) as liabilities over one year are critical for meeting the NSFR.

Smaller institutions should instead be given adequate time to meet the 8% threshold, rather than lowering the standard.

Solution - AFME views that if the DGS bridge is maintained, then to ensure the stability of the financial system together with a balanced and fair application of the DGS bridge, due safeguards need to be made to accommodate and address the needs of small and medium-sized banks. Such safeguards should be based relative to the size of the banks' balance sheets. Namely:

i) Small banks i.e. with balance sheets less that EU 30 billion.

ii) Medium-sized banks i.e. with balance sheets ranging from EU 30 to 80 billion.

For these small and medium sized banks, BtG should be limited to banks newly earmarked for resolution, during the transition period, but not within their first two years of transition.

iii) Large banks above EUR 80bn, no access to BtG until they reach 8% TLOF.

Accordingly, AFME does not support the Council's proposed 10-year limit of the availability of the BtG option for banks with balance sheets ranging from EU 30 to 80 billion, that are not yet designated as resolution entities. Moreover, the change from liquidation to resolution entity may occur sooner or later depending on the evolution of a given bank.

Also, we note that most of the Council's proposals have been integrated in the SRMR, but have not been reflected in the BRRD, while as many as possible should be if they are to be maintained.

Conditions for the application of DGS preventative measures

4CT Lines:	188-221n; 246, 247a DGSD
References:	DGSD: Article 11– Use of Funds; New Articles 11a; Preventive measures; 11b- Note accompanying preventive measures; 11e - Least Cost Test

AFME views it is important to ensure a consistent approach to any use of DGS funds for preventive measures. It is also important to bear in mind that deposit insurance is there to protect covered depositors, not to absorb losses that should otherwise be borne by the shareholders and other creditors of a failing bank.

We believe that preventive measures should be clearly framed to avoid keeping non-viable banks alive, and available supported by clear conditions which ensure a level playing field between DGSs. To ensure this is the case, for a bank to be eligible to access preventative measures, it should have in place a credible remediation plan demonstrating long-term viability. Furthermore, a bank should only be eligible for preventative measures in a single instance, thereby avoiding repeatedly extending support to so-called zombie banks.

In addition, each preventive measure should be subject to the Least-Cost Test (LCT) and to a numerical cap (for instance, it cannot be higher than a given percentage of the outstanding size of the DGS nor than a given percentage of the total liabilities, including own funds (TLOF)) to ensure the DGS is not excessively depleted.

AFME does not support the Council's proposal for the calculation of the counterfactual referred to in Article 11e, paragraph 1, point (b), as it provides unjustified flexibility for IPS members to access Resolution funds.

Solution - It is important that any preventative measure does not undermine the core principles of the crisis management framework, i.e., that all banks can fail in an orderly and safe manner. We would, however, expect preventive use of DGS funds to remain a valid option if, and when, economically more advantageous than the reimbursement of that bank's depositors in the event of liquidation according to the LCT and if, and when, long-term viability is duly demonstrated with appropriate plan.

Early Intervention Triggers

4CT Line: 123 BRRD
References: BRRD: Article 27 - Early intervention measures

Early intervention constitutes a key component of supervisory action and is defined by the Basel Committee on Banking Supervision 'Core Principles for Effective Banking Supervision' in the following way: 'adopting a forward-looking approach to supervision through early intervention can prevent an identified weakness from developing into a threat to safety and soundness. This is particularly true for highly complex and bank-specific issues (e.g. liquidity risk) where effective supervisory actions must be tailored to a bank's individual circumstances. Accordingly, the EBA developed guidelines on triggers for use of early intervention measures. However, due to the bank specific and judgement-based nature of these guidelines, there is the risk that early intervention does not take place soon enough. As such, a consistent trigger should be defined such that if certain metrics are breached e.g. if MREL plus combined buffer requirements (CBR) are not met for 9 months, without a breach of minimum capital requirements, then a review by the supervisor of whether the firm is in recovery phase is automatically triggered. This could be coupled with a subsequent review after a specified period assessing the firm failing or likely to fail (FOLF) status and the need for further action. This will help facilitate orderly transfers / exits if required.

Solution - AFME welcomes the Parliament's proposal for replacing the EBA Guidelines with a Regulatory Technical Standards on triggers, which should enhance consistency.

Electronic Money (e-money)

4CT Lines: 99a-b, 100-103c DGSD
References: DGSD Article 8b

AFME members support the parity in the treatment of non-bank e-money accounts with those of a bank's e-money accounts, and that they should both be deemed covered deposits. Hence, we welcome the clarification under Art 8b DGSD relating to e-money, but view that the Recital supporting this Article in the original BRRD (Recital 29) should not enable wider use of DGS Funds.

Solution - AFME suggests that Article 8b should be redrafted[5] to clarify that depositors of e-money funds should identify the ultimate client of the deposit when making deposits in banks, as this would then enable banks to identify the deposit owners and cover them appropriately.

[5] AFME suggest the follow drafting proposal to the text proposed by the Council
(i) DGSD, Article 8b, paragraph (b:
"such deposits are made to ***safeguard*** *client funds in* ***general, for instance when in*** *compliance with safeguarding requirements* ~~***laid down in Union law regulating the activities of the entities referred to in Article 5(1), point (d);***~~**"**
(ii) DGSD, Article 8b, paragraph (c)
the clients referred to in point (a) are identified or identifiable," **under the ultimate responsibility of the entity holding the account in the credit institution on behalf of clients**" prior to the date on which ….

We view that the parity in the treatment of non-bank e-money accounts with those of a bank's e-money accounts could be achieved by: -

i) amending the Council's drafting proposal, under Article 8b, paragraph (b), which currently includes a reference to article 5(1) point (d) which leads to a definition for "financial institutions", which in turn leads to a definition in CRR that excludes banks ("financial institution· means an undertaking other than an institution, the principal activity of which is…");

ii) Amending the text[6] in the Recital 29 in the original DGSD.

SRF target level and contributions

4CT Lines: 424 and 425 BRRD

References: BRRD: Article 104 - Extraordinary ex-post contributions
SRMR: Article 71 - Extraordinary ex-post contributions

AFME note that the Single Resolution Fund (SRF) is an emergency fund that can be called upon in times of crisis. It can be used to ensure the efficient application of resolution tools for resolving failing banks, after other options, such as the bail-in tool, have been exhausted. The SRF has been built up over a number of years from the contributions of the banking sector and has now reached around €80bn, allowing the SRB to pause contributions (for 2024). This is a considerable buffer for the failure of banks. This is on top of very high levels of MREL accumulated by EU banks on average (> 34% of TREA according to the EBA MREL dashboard Q4 2023). Much has changed since the SRF was first agreed, which could mean that the SRF, as currently structured, is not maximising value for the EU economy. While our key priority is to reconsider further increases beyond the current level, we note that the €80bn already represents financial resources that could otherwise be used productively to support the EU economy and contribute to European competitiveness.

We believe this creates the right momentum to reassess and reflect on the future of the SRF and understand afresh its purpose, utility, and structure, especially in view of other resolution safeguards put in place in the past few years (e.g. firms' levels of MREL/TLAC, extensive recovery plans being in place and available toolbox of resolution strategies).

We strongly advocate for a fundamental review of Article 104 (1) BRRD that allows for ex-post contribution to reach 37.5% of the SRF target level per year, which could be extremely procyclical and put banks at risk at times when many would probably already be under stress and/or in recovery. In this regard, we note also that the Council proposed some text changes to BRRD Article 104(1) second sub paragraph, which we do not support, as this retains the 'three times 12.5%' SRF target level, per annum.

Solution(s) – AFME views that the existing SRF contributions create a significant cost for banks and options should be explored to reduce this for example by:

i) Pausing ex-ante contributions beyond 2024 while EU policymakers carry out a comprehensive assessment of the SRF (target level and contributions calculation methodology). A consideration should also be given to moving to an ex-post contributions model now that the build-up phase has been reached.

[6] AFME suggest the follow drafting proposal to the DGSD (original) Recital 29:-
"*Electronic money* ~~***and funds received in exchange for electronic money***~~ *should not, in accordance with Directive 2009/110/EC of the European Parliament and of the Council (1), be treated as a deposit and would not therefore fall within the scope of this Directive.*"

ii) Capping the ex-ante funding target level of the SRF at the end of the build-up phase, changing the metric for the target level, and/or increasing the availability to use irrevocable payment commitments. Similar to the case of DGS contributions, the MREL stock of each bank needs to be taken into account when determining its SRF contributions, since MREL will be consumed first before any call to SRF will be effectuated. Therefore, the greater the MREL stock, the lower the likelihood that SRF funds will be required. This will help preserve the 'polluter pays' principle and ensure that contribution is aligned with the risk that a bank poses to using the fund.

iii) Limiting ex-post contribution to 12.5 % of the SRF target level per year and adding safeguards to avoid pro-cyclical impacts.

Portability of funds

4CT Lines: 265-266c and 267-270 DGSD
Reference: DGSD - Article 14 (3) and new 14 (3a) - Cooperation with the Union

Under the current DGS Directive (Article 14(3)), a bank that wants to switch between EU DGSs, for example because of a changing corporate structure, or when it sells or acquires a business, can only recoup and transfer the contributions paid in the previous 12 months to another EU DGS.

All other funds paid into the DGS over the years cannot be transferred. The DGS to which the bank transfers covered deposits will rightly want to ensure adequate financing of the additional covered deposits under its purview. This means the bank could pay twice for insuring the same deposits. This provision strongly disincentivises cross-border consolidation as well as branchification strategies. We believe banks should be able to transfer contributions from one EU DGS to another, commensurate with the risk being transferred. This is also an important feature of furthering the Banking Union.

We note that the European Council's proposal maintains the limitation of 12 months which we view is an obstacle to the portability of funds between the DGSs.

Solution: - AFME supports the European Parliament's proposal on this issue. However, we would propose that the mandate for the EBA to develop a methodology for risk-based transfers to be framed more clearly and allow for actual transfers commensurate with the risk being transferred.

Reporting to Resolution Authority

4CT Lines: 368a-368n BRRD
Reference: BBRD Article 55 Contractual recognition of bail-in, New Paragraph 2a

AFME does not support the Parliament's proposed amendment, which implies extending the reporting of clauses to all entities within the resolution group. Banks already do this for the purpose of Point of Entry (POE) and the relevant legal entities (within the Liability Data Report (LDR report)). The proposal would greatly extend this to all entities within the resolution group, even if they are not deemed as relevant. AFME would strongly caution against this.

Since 2016, banks have been working on the LDR with investments on tech developments and resources, with costs that will keep growing. Ideally, this should not be included in the final text, and we would hope it does not become a bargaining chip during trilogues.

Further extending such reporting could be viewed as contra to the European Commission's Strategy on supervisory data in EU financial services.

Transitional and post-resolution arrangements – Transitional Period

4CT Line: 347a-347g; 349a-b BRRD 144 SRMR
Reference: SRMR, Article 12k / BRRD: Article 45m - Transitional and post-resolution arrangements

AFME supports a long transitional period, noting that when the BRRD was first introduced, firms in the initial scope of the requirement, had 8 years to comply.

Solution - AFME views that consideration should be given to extending the transition period for new banks earmarked for resolution to five years, as opposed to the three years proposed by the Council.

Conclusion

We hope the contents of this letter supports your efforts to reach a positive conclusion to the CMDI negotiations in the coming months.

There are also some policy areas which have not been addressed in the above, but which we view should be considered in the wider Banking Union discussion, which we have set out in the below Annex. In particular, we continue to recommend that work should continue with the objective of clarifying access to the public sector backstop for temporary liquidity in resolution.

We would welcome the opportunity to further discuss the priorities raised in this letter in the early stages of the trilogues.

Yours sincerely,

Caroline Liesegang
Managing Director, Head of Capital & Risk Management, Sustainable Finance and Research, AFME

Annex: **AFME's analysis of issues not addressed by this CMDI review where AFME Members view require further review**

Liquidity funding in resolution	AFME views that it is important that the recovery and resolution framework imposes market discipline and sends the clear message that it is the primary responsibility of each bank to ensure that it has the loss absorbing resources available to manage its own failure in an orderly manner. However, it is equally important to separately consider the availability of liquidity in resolution and the external sources that will in most scenarios need to be obtained for this purpose. Provision of liquidity via a public backstop, on appropriate terms, does not per se foster moral hazard or distort competition in the same manner as mutualising losses or placing that burden onto the industry or taxpayers. **Solution** - Therefore, as part of, or alongside, the review of the CMDI framework, work should continue with the objective of clarifying access to the public sector backstop for temporary liquidity in resolution. It is important to ensure that a consistent approach is applied to all banks, regardless of size. Solvency support should be considered separately from liquidity provision in cases where a timely repayment of such liquidity can be expected for banks that are being credibly resolved and losses have been born by shareholders and creditors.
Review of State Aid Regulation	AFME urges the Commission to progress with the review of the State aid regulation pari passu with the revision of the CMDI framework, given the multiple interrelations. The review should aim at avoiding diverging consequences for DGSs depending on their legal status and/or governance structure. Indeed, State aid qualification should not be based solely on the evaluation of the DGS' governance arrangements, determining consequently the bank being failing or likely to fail (FOLF), which could ultimately compromise the attempt to pre-empt its failure through the preventive intervention.