



BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2014/27 ON
“DRAFT GUIDELINES ON PAYMENT COMMITMENTS UNDER
DIRECTIVE 2014/49/EU ON DEPOSIT GUARANTEE SCHEMES”

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, December 22nd, 2014

Foreword

Directive 2014/49/EU of the European Parliament and of the Council on deposit guarantee schemes (DGSD), was published in the Official Journal of the European Union on 12 June 2014.

DGSD aims at “*harmonising the methods of financing DGSs*”, via a mix of ex ante and ex post contributions. As provided in DGSD recital 34, in order to guarantee that the available financial means of DGSs reach the target level, “*It should be possible for the available financial means of DGSs to include cash, deposits, payment commitments and low-risk assets, which can be liquidated within a short period of time*”.

DGSD establishes that the available financial means to be taken into account, in order to reach the target level required under Article 10 of DGSD, may include payment commitments as defined in point (13) of Article 2(1).

Pursuant to Article 10(3) of the DGSD, the available financial means to be taken into account in order to reach the target level of the DGS may include payment commitment not exceeding 30% of the total amount of available financial means raised in accordance with that Article.

Under Article 10(3) of DGSD, EBA is required to issue guidelines on payment commitments, in order to ensure consistent application of the Directive. This response has been prepared on the basis of comments circulated and shared among the BSG members and the BSG’s Technical Working Group on Recovery and Resolution Planning. BSG welcomes the opportunity to contribute to the development of these guidelines. This response outlines some general comments by the BSG, as well as our detailed answers to some questions indicated in the CP.

General comments

BSG welcomes the DGSD as a measure that should increase the consistency of deposit insurance across the EU and strengthen depositors’ confidence in Deposit Guarantee Schemes.

BSG supports the aim for financial institutions themselves to bear the risk of compensating depositors and, in line with this, for Deposit Guarantee Schemes to be financed ex ante. BSG also recognises that onerous contribution requirements could impair both liquidity and, possibly also to a limited extent capital, and in turn, the capacity of banks to finance the real economy. BSG therefore supports the possibility for full collateralized payment commitments to be an alternative form of ex ante financing up to 30 per cent of the total amount of available financial means. BSG agrees that the terms of payment commitment arrangements must be fully consistent with the intended ex ante nature of this form of financing.

Replies to Questions

Question 1

Apart from the admissibility requirements suggested in the present guidelines, which objective criteria do you think could be applied, notably in order to determine the overall amount of payments to be accepted in a given year, or to be applied to individual banks applying for the option?

BSG supports the interpretation that Article 10(3) does not imply an automatic right for credit institutions to provide contributions in the form of payment commitments. At the same time BSG considers that MS should provide DGS with the power to accept payment commitments and that DGS should implement this mechanism to favour level-playing field among deposit institutions. BSG is of the view that the objective criteria set by EBA should be carefully calibrated so as not to undermine the capacity of DGS to allow full use of payment commitments within the boundaries of Directive 2014/49/EU. BSG notes that the 30 per cent limit in Article 10(3) relates to the total amount and considers that there may be scope for differential, but non-discriminatory, levels at individual bank level within the overall limit. Also, we understand that, given very different starting levels across countries, the 30% limit should be understood as referring to the final target level, but not to annual contributions.

Question 2

Do you agree with these provisions to be included in Payment Commitment Arrangements? Do you think other provisions should be provided?

BSG supports a contractual approach to payment commitment arrangements. BSG notes that a DGS will be contractually entitled to call upon a credit institution to make the cash payment at any time and that this irrevocable right to claim payment on demand at any time is in addition to the other enforcement events under which payment may become immediately due. BSG does not think that other provisions should be provided.

Question 3

Do you agree that a credit institution should pay in cash the Payment Commitment Amount, when its obligation becomes due, within 2 working days at the latest?

BSG agrees with the suggested period for payment.

Question 4

Do you agree with the option left to the DGS to enter into a Security Financial Collateral Arrangement (full ownership remains with the credit institution) or a Title Transfer Financial Collateral Arrangement (full transfer of ownership)?

BSG welcomes consistency with the approach of the Financial Collateral Directive and therefore agrees with the option left to the DSG to enter into a Security

Financial Collateral Arrangement or a Title Transfer Financial Collateral Arrangement. Furthermore, we consider that flexibility should be granted to credit institutions to choose between those alternative Arrangements.

Question 5

Do you think other requirements about the choice of the custodians should be provided under these guidelines?

The choice of custodians should be a decision of each DGS and no additional requirements should be provided under these guidelines. [Question 6](#)

Question 6

Do you agree on the above mentioned requirements? Would you suggest other limits on concentration in exposures?

BSG considers that a pragmatic and reasonable approach for collateral eligibility would be to use the eligibility criteria set by central banks for repo transactions. BSG notes that EBA's proposal leaves room for considerable discretion at DSG or designated authority level, including with regard to the interpretation of "illiquid assets", "high diversification" and "low correlation", and to the setting of "exposure limits" with adjustments, on proportionality grounds, for "small" institutions. BSG supports this approach subject to an expectation of EBA monitoring to ensure consistency in practice and to the possibility of more detailed EBA guidelines in future. BSG does not suggest other limits on concentration in exposure. BSG favours an approach that leaves an appropriate room for the credit institutions to choose the assets being delivered as collateral. Regarding the exclusion of asset backed securities recommended in the guidelines; the consideration that they are illiquid assets should in our view be qualified. The recent Commission delegated act on LCR recognizes the liquidity of certain High Quality Securitisation assets. Consequently those assets should not be disregarded as collateral to secure Payment Commitments.

Question 7

Is it in your view appropriate not to consider the currency of issuance when determining whether a debt instrument's value is correlated to an event of DGS pay-out, be it inside or outside the euro area?

BSG accepts, on pragmatic grounds, that the currency of denomination of debt should not be considered for this purpose. BSG notes that different treatment inside or outside the euro area would give rise to concerns on the ground of discrimination.

Question 8

Do you consider that the proposed wording correctly applies the concept of proportionality, or whether some limits to concentration should be envisaged also for smaller, locally operating banks?

Subject to 6 above, BSG supports the application of the concept of proportionality in this context and that limits to concentration should not be envisaged for smaller, locally operating banks.

Question 9

Do you agree with the criteria on the eligibility of the collateral provided in this Part 6? Do you think other requirements should be provided in these guidelines on this issue?

BSG considers that a pragmatic and reasonable approach for collateral eligibility would be to use the eligibility criteria set by central banks for repo transactions.

Question 10

Do you agree with the criteria on the haircut provided in this Part 7? Do you think there are other requirements which should be provided under these guidelines about this issue?

BSG considers that the haircut schedule for assets eligible for use as collateral by central banks, inside and outside, the euro area offers a sound solution. The approach adopted in the EBA Guidelines should build on, and not disturb, established market practices that operate effectively. Hence to the extent that this is the case BSG agrees with the provided criteria and that no other requirements should be provided.

Question 11

Do you agree with the prudential approach suggested? Would you suggest further details on the methodology to be applied, and if so which ones?

BSG understands that payment commitments were introduced into Directive 2014/49/EU to provide credit institutions with a degree of flexibility in reaching the target for ex ante financing. BSG is of the view that the prudential treatment afforded to payment commitments should be consistent with this objective. In particular, BSG notes that payment commitments, unlike cash, are subject to haircuts. This feature needs to be factored into prudential requirements in such a way as not to give a preference to cash.

Submitted on behalf of the EBA Banking Stakeholder Group

David T Llewellyn
Chair