

EBA-Op-2019-10

8 August 2019

Opinion of the European Banking Authority on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes

Introduction and legal basis

1. Article 19(6) of the recast Directive 2014/49/EU on deposit guarantee schemes (DGSD) requires that the European Commission (Commission), “supported by EBA, shall submit to the European Parliament and to the Council a report on the progress towards the implementation of’ the DGSD. To support the Commission in meeting its obligation, the EBA committed to drafting three opinions, including this opinion on the deposit guarantee schemes’ eligibility, coverage and cooperation.
2. The EBA’s authority to deliver an opinion is based on Article 34(1) of Regulation (EU) No 1093/2010¹, as the topic of correct application of the DGSD, including ensuring issues relating to eligibility, coverage and cooperation for national deposit guarantee schemes, relates to the EBA’s area of authority, as per Article 26 of that Regulation.
3. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors², the Board of Supervisors has adopted this opinion, which is addressed to the Commission.

General comments

4. The opinion outlines a number of proposals for the Commission to consider when preparing a report on the implementation of the DGSD to be submitted to the European Parliament and the Council, and if and when preparing a proposal for a revised DGSD. Further proposals for the Commission to consider will be outlined in two more opinions to be delivered later in 2019 — on deposit guarantee scheme (DGS) payouts, and on DGS funding and uses of DGS funds — some

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

² Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (EBA/DC/2011/01 Rev4).

of which may be interrelated with the proposals in this opinion. The Commission is invited to consider the proposals in all three opinions jointly, if and when it prepares a proposal for a revised DGSD. Finally, the EBA notes that this opinion and the other two opinions aim to present an expert view from a depositor protection perspective, but do not include a thorough impact assessment from all the relevant perspectives, so, where appropriate, the EBA proposes that more analysis may be warranted.

5. This opinion lists all the proposals made by the EBA on the topic of eligibility of deposits, coverage level and cooperation between deposit guarantee schemes. More specifically, it provides proposals on the following topics and subtopics:
 - i. Home-host cooperation, and cooperation agreements, including:
 - i.1. the EBA's role in DGS cooperation agreements,
 - i.2. sharing of data between DGSs;
 - i.3. temporary high balances in cross-border payouts.
 - ii. Transfer of contributions, including:
 - ii.1. general considerations in relation to credit institutions changing their DGS affiliation;
 - ii.2. considerations in relation to third country branches.
 - iii. DGSs' cooperation with various stakeholders.
 - iv. Coverage level.
 - v. Current list of exclusions from eligibility, including issues in relation to:
 - v.1. financial institutions and investment firms;
 - v.2. pension schemes and public authorities;
 - v.3. deposits the holder of which was never identified;
 - v.4. coverage of deposits at EU credit institutions' branches in third countries.
 - vi. Current provisions on eligibility, including issues in relation to:
 - vi.1. definition of deposit;
 - vi.2. joint accounts;
 - vi.3. absolute entitlement to the sums held in an account;

- vi.4. dormant accounts;
 - vi.5. administrative cost threshold.
 - vii. Depositor information, including information provided to depositors:
 - vii.1. in the standardised information sheet;
 - vii.2. when there are certain changes to the credit institution including the right to withdraw eligible deposits without incurring any penalties.
 - viii. Third country branches' DGS membership.
 - ix. Cooperation between the EBA and the European Systemic Risk Board (ESRB).
 - x. Implications of the European Supervisory Authorities Review and amendments to other EU regulations and EU directives.
6. The report attached to this opinion provides detailed analysis of each topic and subtopic, including (i) the background, (ii) the methodology, data sources and their limitations, (iii) the analysis, (iv) the options to address the identified issues and (v) the conclusions, which are also included below as specific EBA proposals to the European Commission.

Specific EBA proposals to the European Commission

7. In this opinion, the EBA proposes the following.
- i. On home-host cooperation, and cooperation agreements:
 - a) In relation to the EBA's role in cooperation agreements no changes to the DGSD seem necessary. There also seems to be no need to provide any further guidance or advice using other instruments.
 - b) It is not necessary to amend the DGSD in order to include a more explicit and clearer requirement in the DGSD to share the most important data, because the current text of the Directive does not prohibit the sharing of these data and requires home DGSs to exchange them with the host DGSs. Furthermore, the type of data to be shared is already outlined in the bilateral agreements signed by DGSs.
 - c) In relation to the temporary high balances in cross-border payouts, no changes to the DGSD, at this stage, seem necessary. There also seems to be no need to provide any further guidance or advice using other instruments.
 - ii. On transfer of contributions:

- a) There is a need to amend the current provisions in Article 14(3) of the DGSD, in which the amount of contribution transferred is linked to the contributions paid in the 12-month period prior to the institution changing its DGS affiliation or the transfer of some of the activities to another Member State.
 - b) There is a need to develop a different methodology addressing the issues highlighted in the attached report, taking into account the diversity of current methodologies to calculate risk-based contributions allowed under the EBA Guidelines on methods for calculating contributions from DGSs.
 - c) Given its technical nature, the EBA, together with its member authorities and schemes, is best placed to develop the new methodology, so the opinion invites the Commission to consider conferring corresponding mandates to the EBA. To ensure uniform application across Member States, the methodology should be specified through EBA draft regulatory technical standards to be adopted by the Commission.
 - d) In relation to third country branches, the current provisions on the transfer of contributions for third country branches are sufficiently clear and there is no need to propose changes to the DGSD in relation to this matter and/or to provide any further related guidance or advice.
- iii. On DGSs' cooperation with various stakeholders:
- a) In relation to the deposit guarantee scheme designated authorities' (DGSDAs') and DGSs' cooperation with the affiliated credit institutions, competent authorities, resolution authorities and other DGSs, there is no need to propose changes to the DGSD, and there is no need to provide any further guidance or advice using other instruments.
 - b) The current lack of engagement between the DGSDAs/DGSs and the anti-money laundering (AML) authorities should be considered further in the EBA Opinion on DGS payouts, which will address issues related to DGS payouts where there are AML concerns.
- iv. On coverage level:
- a) Based on the quantitative and qualitative analyses, the current coverage level of EUR 100,000 is adequate and therefore no changes to the DGSD seem necessary.
 - b) The currently applicable options for currency of repayment in relation to the coverage level included in the DGSD seem adequate and there is no need for an amendment of the DGSD.
- v. On current list of exclusions from eligibility:

- a) No change is needed in the DGSD with regard to the definition of financial institutions and investment firms, other than those necessary in relation to excluded entities in the context of absolute entitlement to the sums held in an account (as per proposals vi (d-g) listed below).
 - b) In relation to public authorities, an amendment of the DGSD may be appropriate and the amendment could extend DGS coverage to the public authorities with no need to differentiate between them based on their budgets. However, further analysis of the impact of such an extension may be warranted.
 - c) In relation to personal pension schemes and occupational pension schemes of small and medium-sized enterprises, at this stage no changes to the DGSD seem necessary. There also seems to be no need to provide any further guidance or advice using other instruments.
 - d) In relation to deposits the holder of which was never identified, an amendment of the DGSD is necessary. If depositors have never been identified through no fault of their own, the amendment should introduce the flexibility for DGSs to make those depositors' funds available to them, subject to any necessary checks under the DGSD and Anti-money Laundering Directive (AMLD), to be performed by the insolvency practitioner or the authorities best placed to do such checks. The revised DGSD text should be aligned with other requirements, for example those stemming from the AMLD, and it would need to be accompanied by the necessary safeguards to avoid cases in which anonymous and/or unidentified depositors are repaid.
 - e) In relation to the coverage of deposits at EU credit institutions' branches in third countries, an amendment of the DGSD is appropriate. The amendment should ensure that deposits in these branches are not protected by an EU DGS of which the EU credit institution is a member.
- vi. On current provisions on eligibility:
- a) The DGSD should be amended to remove from the definition of a deposit the word 'normal' in relation to banking transactions.
 - b) The Commission should assess further the need to provide clarity in relation to the treatment of structured deposits, including cases where they may yield negative returns, considering the options outlined in the attached report, their pros and cons, and the materiality of structured deposits as outlined in the EBA Report on cost and past performance of structured deposits published on 10 January 2019.
 - c) In relation to joint accounts, at this stage no changes to the DGSD seem necessary. There also seems to be no need to provide any further guidance or advice using other instruments.

- d) In relation to absolute entitlement to the sums held in an account, the harmonisation of the approach to the identification of the person absolutely entitled to the sums is not necessary.
- e) Also in relation to absolute entitlement to the sums held in an account, there is no immediate need to address the issue of the calculation of contributions for accounts whose holder is not absolutely entitled to the sums, but this topic may be revisited in the next review of the EBA guidelines on methods for calculating contributions to deposit guarantee schemes.
- f) The Commission should enhance clarity in the DGSD on how the see-through approach applies to deposits placed with credit institutions by account holders who are excluded from eligibility.
- g) The topic of absolute entitlement to the sums held in an account is complex, so further analysis may be needed of how best to formulate the wording in different pieces of EU legislation. In subsequent policy considerations concerning investment firms and financial institutions, it is recommended to take a holistic view regarding the relationship between those institutions and their clients, the related safeguarding requirements and the implications they have for DGS protection.
- h) In relation to the deferral of repayment of dormant accounts provided for in Article 8(5)(c) of the DGSD, there is no need to remove the possibility of deferring the payout of dormant accounts.
- i) There is merit in amending Article 8(5)(c) of the DGSD to clarify that, if a depositor has multiple accounts and at least one is non-dormant, all the amounts should be aggregated and the aggregated amount should be made available to the depositor before the deadline envisaged in Article 8(1) of the DGSD.
- j) In relation to the administrative cost threshold as per Article 8(9) of the DGSD, the Directive should be amended to allow DGSs to repay depositors irrespective of the amount of funds in their account and the dormancy of the account.
- k) In relation to the administrative cost threshold, the DGSD should be amended to allow DGSs to set an administrative cost threshold below which they would be allowed not to take active steps to make the amount available to the depositor, but depositors would have the right to receive their funds upon request.
- l) In relation to the administrative cost threshold, the DGSD should be amended to specify that the administrative cost threshold must be sufficiently low and justifiable, and communicated ex ante to the depositors via the information sheet.

vii. On depositor information:

- a) The information sheet in Annex I of the DGSD could be amended in favour of a more flexible approach to how to specify the information that the depositor should receive.
- b) The DGSD could list only the set of essential elements to be included in the information sheet (based on what is currently included, with further amendments outlined below).
- c) Another legal instrument, such as EBA guidelines or EBA draft technical standards to be adopted by the Commission, could further specify that necessary information and the format of that information.
- d) The information sheet as currently set out in Annex I to the DGSD should be amended to:
 - include the details of the credit institution as a first point of contact for information on the content of the information sheet and include its contact details (address, telephone, e-mail, etc.) while retaining the link to the relevant DGS's website in the information sheet;
 - abolish the requirement for acknowledgement of receipt by the depositor;
 - clearly highlight the purpose of the information sheet.
- e) The information sheet could also include further information relevant to the depositors, such as relevant provisions concerning temporary high balances and the application of set-off, and other relevant information.
- f) The DGSD should not be amended with regard to the frequency at which information about DGS protection should be provided, and the current requirement for an annual update should be retained.
- g) In relation to the application of the current provision on the depositors' right to withdraw or transfer eligible deposits without incurring any penalties, the DGSD should be amended so that such provisions should be limited to changes in the coverage of deposits.
- h) In relation to the information provided to depositors in cases of mergers, conversions of subsidiaries into branches or similar operations, including when there is a change of DGS affiliation, the DGSD should clarify that all depositors in both institutions should be informed of such events, but that the information should be provided in the most efficient and cost-effective manner (i.e. by electronic means and/or by incorporating relevant information about the operation

into the regular, active and direct communication that banks have with their customers).

- i) The DGSD should be amended to ensure that at least the depositors who will lose coverage for some of their funds because of the merger, conversion of subsidiaries into branches or similar operations should be informed of their right to withdraw their funds without incurring a penalty up to an amount equal to the lost coverage of deposits. This means that, although all depositors should be informed of the abovementioned events, not all depositors in the credit institutions in such scenarios should be informed of the right to withdraw funds without incurring a penalty, as this right will in most cases apply to relatively few depositors.
 - j) In relation to the currently applicable timelines for informing depositors in the abovementioned cases, the EBA notes that respondents to the survey identified issues. The EBA has not discussed this aspect of current DGSD framework in detail but proposes that the Commission should take note and revisit this topic in the future.
- viii. On third country branches' DGS membership:
- a) The DGSD, and in particular the current Article 15, should be amended and replaced by provisions stipulating that branches established within the territory of Member States by a credit institution that has its head office outside the Union, if they are licensed by the relevant supervisory authority in the EU to take deposits as defined by the DGSD, must join a DGS in operation within the territory of the relevant Member States.
 - b) It could be considered that, by way of derogation from the above provision, some flexibility could be provided to Member States to exempt branches established within their territory by a credit institution that has its head office outside the Union from the obligation to join a DGS in operation within their territories. Such a decision could potentially be made on the basis of a voluntary equivalence assessment, and where it is absolutely necessary in order to maintain the level playing field, depositors' confidence and financial stability. If protection is not equivalent, Member States must stipulate that such branches must join a DGS in operation within their territories.
- ix. On cooperation between the EBA and the ESRB:
- a) There is no need to propose changes to the DGSD and/or to provide any further related guidance or advice. The EBA and the ESRB are in a position to agree bilaterally on the content and the timing of the cooperation on systemic risk analysis concerning DGSs.

- x. On implications of the European Supervisory Authorities Review and amendments to other EU regulations and EU directives:
 - a) To minimise the risk of possible inconsistencies and to eliminate possible misinterpretation, the DGSD would need to be amended should the term ‘peer reviews’ be replaced by a different wording in the mandate of the European Supervisory Authorities.
 - b) All the cross-references in the DGSD to other EU regulations and directives should be updated in due course to avoid misinterpretation.

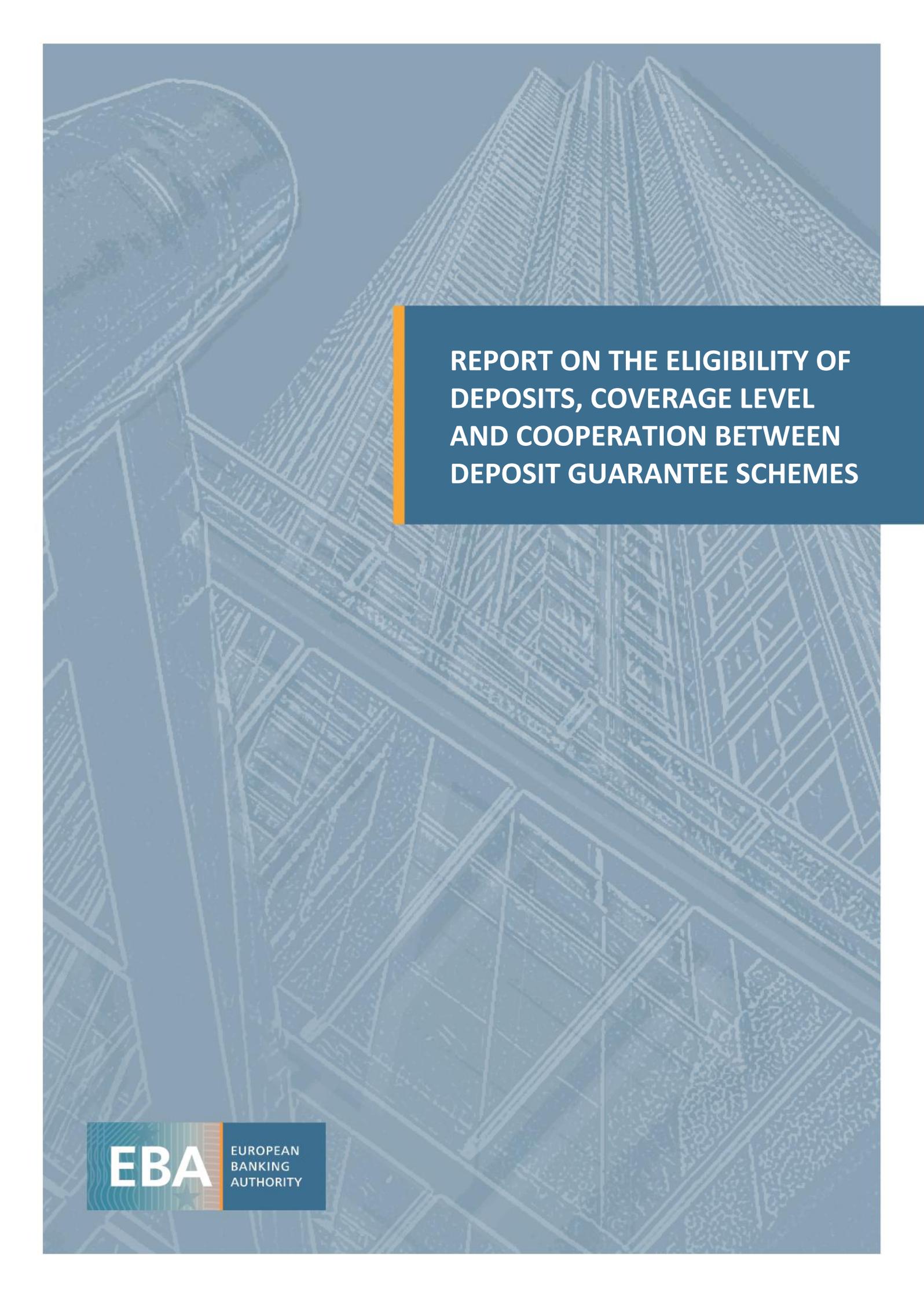
This opinion will be published on the EBA’s website.

Done at Paris, DD Month YYYY

[signed]

Jose Manuel Campa

Chairperson
For the Board of Supervisors



**REPORT ON THE ELIGIBILITY OF
DEPOSITS, COVERAGE LEVEL
AND COOPERATION BETWEEN
DEPOSIT GUARANTEE SCHEMES**

EBA

EUROPEAN
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AUTHORITY

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Executive summary

The Deposit Guarantee Schemes Directive (DGSD) requires that the European Commission (Commission), “supported by EBA, shall submit to the European Parliament and to the Council a report on the progress towards the implementation of the DGSD. Further to that mandate, on 6 February 2019, the Commission sent a Call for Technical Advice to the EBA “to provide technical analysis [...] and to provide, where appropriate, policy recommendations on potential amendments reflecting the experience gained by deposit guarantee schemes (DGS) and designated authorities (DGSDA) during the years of application of the DGSD since July 2015”. The Commission’s Call for Technical Advice provided a detailed list of issues to be analysed by the EBA, while also acknowledging that the EBA could “provide feedback on additional relevant provisions not listed” in its request.

The Commission requested that the EBA should complete and provide its assessment by 31 October 2019, with potential sequencing of the EBA’s input to the Commission in several stages. To support the Commission in meeting its obligation, the EBA committed to fulfilling this mandate by submitting three opinions to the Commission. This EBA Opinion on the eligibility of deposits, coverage level and cooperation between DGSs constitutes the first of this trilogy. The remaining two opinions will follow later in 2019.

To provide an assessment and, where appropriate, policy recommendations to the Commission, in October 2018 the EBA collected data from DGSDAs and DGSs on the implementation and practical application of the DGSD across Member States. These data, together with other information available to the EBA, served as the basis for an extensive analysis of each topic presented in this report. This report forms the analytical basis for this EBA Opinion on the eligibility of deposits, coverage level and cooperation between DGSs.

The report, and in consequence the EBA opinion, provides 43 proposals addressed to the Commission. Of these 43 proposals, 28 propose a change either to the DGSD or to related products such as EBA guidelines, or express a need to study a particular topic further, while the remaining 15 propose that no change to the DGSD or any other part of the DGSD framework is necessary. The report proposes changes in relation to current provisions on transfers of DGS contributions, DGSs’ cooperation with various stakeholders, the current list of exclusions from eligibility and current provisions on eligibility, depositor information, the approach to third country branches’ DGS membership, and implications of the European Supervisory Authorities Review and amendments to other EU regulations and EU directives. The report proposes no changes in the current coverage level of EUR 100,000, or provisions on home-host cooperation, cooperation agreements or the cooperation between the EBA and the European Systemic Risk Board (ESRB).

The EBA invites the Commission to consider the proposals outlined in this report when preparing a report on the implementation of the DGSD to be submitted to the European Parliament and the Council, and if and when it prepares a proposal for a revised DGSD. To fully consider the EBA’s proposals in relation to the implementation of the DGSD, this report, and in consequence the opinion it is annexed to, should be considered by the Commission alongside two other EBA opinions

and the corresponding analytical reports, on DGS payouts, and on DGS funding and uses of DGS funds, due to be published in the second half of 2019.

1. Background

1. Article 19(6) of the DGSD requires that the European Commission (Commission), “supported by EBA, shall submit to the European Parliament and to the Council a report on the progress towards the implementation” of the DGSD by 3 July 2019. That report “should, in particular, address”:
 - a. the ex ante funds target level for deposit guarantee schemes (DGSs) “on the basis of covered deposits, with an assessment of the appropriateness of the percentage set, taking into account the failure of credit institutions in the EU in the past”;
 - b. “the impact of alternative measures used in accordance with Article 11(3) on the protection of the depositors and consistency with the orderly winding up proceedings in the banking sector”;
 - c. the DGSD implementation’s “impact on the diversity of banking models”;
 - d. “the adequacy of the current coverage level for depositors”;
 - e. whether or not these matters “have been dealt with in a manner that maintains the protection of depositors.”
2. Furthermore, Article 19(6) also requires the EBA to report to the Commission on “calculation models and their relevance to the commercial risk of the members” and to “take due account of the risk profiles of the various business models” also by 3 July 2019.
3. Further detail of the desired content of the EBA’s support was provided by the Commission in a letter sent to the EBA on 6 February 2019, in which it formally requested technical advice from the EBA in relation to the mandate above. In the light of the resource intensity of the task, the Commission requested that the EBA should complete and provide its assessment by 31 October 2019, possibly supplying its input to the Commission in several stages.
4. More specifically, the Commission requested the EBA “to provide technical analysis [...] and to provide, where appropriate, policy recommendations on potential amendments reflecting the experience gained by deposit guarantee schemes and designated authorities during the years of application of the DGSD since July 2015”. The Commission explicitly requested the EBA’s input in relation to the following issues:
 - a. The target level and related matters:
 - i. basis of the target level (covered deposits);

- ii. the target level percentage (0.8% of covered deposits), including its appropriateness and the rationale for some DGSs raising contributions above the minimum target level;
 - iii. the implementation of and practical experience with the application of alternative funding arrangements under Article 10(9) of the DGSD in Member States, including their possible impact on the level of ex ante funding;
 - iv. calculating DGS contributions of third country branches.
- b. Alternative measures (Article 11(3) of the DGSD), including the incidence of failure prevention measures, their impact on the depositor protection and their consistency with winding-up proceedings.
- c. The impact of the diversity of banking models, including an analysis of if and how approaches to calculating contributions to DGSs reflect the diversity of bank business models.
- d. The coverage level for depositors and related issues, such as, in particular:
- i. the adequacy of the current coverage level (EUR 100,000);
 - ii. the implementation of provisions on temporary high balances (Article 6(2) of the DGSD) in Member States;
 - iii. the approaches of Member States to third country branches' equivalence (Article 15 of the DGSD) and their impact on depositor protection;
 - iv. the approaches to setting off covered deposits and liabilities that have fallen due (Article 7(5) of the DGSD) and their effect on the coverage level in Member States;
 - v. an analysis of whether or not there is a need for authorities to report regularly on the levels of covered deposits, eligible deposits and non-eligible deposits across all banks;
 - vi. the implementation of the list of exclusions from eligibility (Article 5(1) of the DGSD);
 - vii. the implementation of optional coverage of pension funds and deposits of local authorities with a small budget (Article 5(2) of the DGSD);
 - viii. the provisions with respect to joint accounts (Article 7(2) of the DGSD).
- e. Assessment of whether or not the matters referred to in Article 19(6), second subparagraph, have been dealt with in a manner that maintains the protection of depositors, such as, in particular:

- i. practical implementation of the definitions used in the DGSD such as ‘deposit’ and ‘unavailable deposits’ (Article 2(1)(3), Article 2(1)(8) and Article 3(2), second subparagraph, of the DGSD);
 - ii. implications of current anti-money laundering (AML) rules for payouts and their interaction with the provisions of the DGSD (including exchanges of information between authorities responsible for the application of the DGS and AML directives);
 - iii. compensation of depositors by using the failing banks’ assets, where available, rather than the DGS’s available financial means;
 - iv. analysis of the role of the EBA in cooperation agreements signed between DGSs (Article 14(5) of the DGSD);
 - v. analysis of cross-border payouts (Article 14(2) of the DGSD), including potential benefits and drawbacks of introducing the possibility of the home DGS directly compensating depositors at a branch in another Member State;
 - vi. analysis of practical application in the Member States of other selected provisions in the DGSD, such as, in particular, the DGS investment strategy (Article 10(7)) and transfer of DGS contributions (Article 14(3) of the DGSD).
5. In addition to the mandate outlined above, in developing the three opinions the EBA has identified additional issues that are not explicitly listed in the Commission’s Call for Technical Advice. Some, for example, arise from Member States incorporating the DGSD differently in national law, and others have arisen as a result of the application of DGSD provisions to real-life cases. This is in line with the Commission’s request, which also stated that the EBA could “provide feedback on additional relevant provisions not listed” in its request. Examples of such additional topics where issues have been identified include the application of provisions in relation to beneficiary accounts, treatment of accounts with amounts below a threshold of administrative costs that would be incurred by the DGS in making such a repayment, and depositor information.
6. The EBA decided to fulfil the mandate with three separate opinions on:
 - a. eligibility of deposits, coverage level and cooperation between DGSs;
 - b. DGS payouts;
 - c. DGS funding and uses of DGS funds.
7. Together, the three EBA opinions will cover the topics under each of the five points (a-e) of the first subparagraph of Article 19(6) of the DGSD, and some additional topics not explicitly outlined in the Commission’s Call for Technical Advice.

8. To provide an assessment and, where appropriate, policy recommendations to the Commission, in September-October 2018 the EBA collected data from DGSDAs and DGSs on the implementation and practical application of the DGSD across Member States. These data, together with other information available to the EBA, served as the basis for an extensive analysis of each topic. However, the EBA notes that this opinion and the other two opinions aim to present an expert view from a depositor protection perspective, but do not include a thorough impact assessment from all the relevant perspectives, so, where appropriate, the EBA proposes that more analysis may be warranted. This report starts with a description of the broad methodology employed and the data sources used (Chapter 2). Chapter 3 is composed of a section on each of the topics and subtopics. Each section includes first the background and then further information on the methodology, data sources and their limitations, given that different topics required different approaches, and the information used was of different types and qualities. The analysis of each topic or subtopic comes third, followed by the outline and analysis of the options to address the identified issues, and finally the conclusions.
8. This report, which forms the analytical basis for the EBA Opinion on the eligibility of deposits, coverage level and cooperation between DGSs, addresses the following topics:
- a. home-host cooperation and cooperation agreements;
 - b. transfer of contributions;
 - c. DGSs' cooperation with various stakeholders;
 - d. coverage level;
 - e. current list of exclusions from eligibility;
 - f. eligibility;
 - g. depositor Information;
 - h. third country branches' equivalence;
 - i. cooperation between the EBA and the European Systemic Risk Board (ESRB);
 - j. implications of the European Supervisory Authorities Review and amendments to other EU regulations and EU directives.

2. Methodological approach

2.1 General approach

9. To deliver on the Commission’s request for technical assistance, and to be able to take a comprehensive and accurate view across all EU Member States — and non-EU European Economic Area (EEA) countries, also referred to as ‘Member States’ in the remainder of this report — the EBA used a range of data sources and types of information.

10. The EBA used what it deemed to be the most suitable type, scope and depth of analysis for each topic and subtopic, given the wide range of topics, and differences in the following, among others:

- the characteristics of each topic (qualitative versus quantitative);
- the materiality of the issues identified;
- the level of real-life experience of applying certain provisions.

11. In practice, this means that the analysis in relation to some topics is:

- based on numerical data and calculations, while in other cases it is purely qualitative;
- accompanied by detailed assessments, including uses of scenarios and various options, while other topics, particularly if they are less material, are analysed in less detail;
- focused mainly on how provisions have been implemented, while in other cases the focus is more on the practical application of such provisions.

2.2 Data sources

12. The main source of information used for the purpose of this report comes from a survey the EBA sent to the DGSDAs and DGSs on 4 October 2018. The annex includes the part of the survey relevant to the topics covered in this report. The EBA received responses to the survey from 36 DGSDAs and DGSs from 29 Member States (including two non-EU EEA countries). The EBA did not receive input from Hungary, Iceland, Slovakia or Slovenia. Although most respondents provided answers to all the questions, this was not always the case, which is why the number of responses is reported separately for each question in Chapter 3. Furthermore, while developing the analysis, the EBA requested further information by means of small, targeted surveys, with questions also included in the annex.

13. The EBA also used information that it had previously collected for other purposes, such as information on:

- i. covered deposits and available financial means, collected in accordance with Article 10(10) of the DGSD and published on the EBA's website following the decision agreed by the EBA's Board of Supervisors on 24 October 2016;
- ii. approach to third country branches and equivalence assessment, collected in February 2018 as part of work performed in relation to the withdrawal of the United Kingdom from the European Union;
- iii. real-life cases collected in the context of EBA's mandate in relation to depositor protection.

14. The EBA also requested additional information from DGSDAs and DGSs using targeted surveys where the analysis of certain topics showed that additional information was needed to arrive at a recommendation. These surveys focused on the following points.

- i. A survey sent on 14 March 2019 asked about the transfer of contributions and included different options for the transfer of contributions. Respondents were asked to evaluate each option against a number of criteria.
- ii. A survey sent on 15 March 2019 asked about the absolute entitlement to the sums held in an account and included questions with regard to identifying depositors and calculating contributions in such cases.
- iii. A survey sent on 5 April 2019 asked about the definition of a deposit. It included a non-exhaustive list of products offered in the EU and asked DGSDAs and DGSs to report whether or not such products are considered to be deposits and, therefore, whether or not they are covered, in their jurisdiction.

15. Because of the heterogeneity of the topics covered, Chapter 3 outlines data sources and data limitations separately for each subtopic.

3. Assessment

3.1 Home-host cooperation and cooperation agreements

3.1.1 The EBA's role in cooperation agreements

Legal basis and background

16. Article 14(2) of the DGSD states that “Depositors at branches set up by credit institutions in another Member State shall be repaid by a DGS in the host Member State on behalf of the DGS in the home Member State. The DGS of the host Member State shall make repayments in accordance with the instructions of the DGS of the home Member State. The DGS of the host Member State shall not bear any liability with regard to acts done in accordance with the instructions given by the DGS of the home Member State. The DGS of the home Member State shall provide the necessary funding prior to payout and shall compensate the DGS of the host Member State for the costs incurred.”

“The DGS of the host Member State shall also inform the depositors concerned on behalf of the DGS of the home Member State and shall be entitled to receive correspondence from those depositors on behalf of the DGS of the home Member State.”

17. Pursuant to Article 14(5) of the DGSD, “In order to facilitate an effective cooperation between DGSs, with particular regard to [Article 14 and Article 12 of the DGSD], the DGSs, or, where appropriate, the designated authorities, shall have written cooperation agreements in place.”

18. Article 14(5) of the DGSD also requires the designated authority to notify the EBA of the existence and the content of such agreements, and explicitly states that the EBA may issue opinions in accordance with Article 34 of the EBA Regulation, No 1093/2010.

19. Finally, Article 14(5) of the DGSD states that, if “designated authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to the EBA [for a binding mediation] in accordance with Article 19 of Regulation (EU) No 1093/2010 and EBA shall act in accordance with that Article.”

20. On 15 February 2016, the EBA published Guidelines on cooperation agreements between deposit guarantee schemes, to facilitate the entry into cooperation agreements between DGSs in order to ensure a consistent application of the DGSD throughout the EU and foster the convergence of the European system of national DGSs; and to ensure that such agreements include the necessary elements to ensure effective cooperation, particularly in the event of an institution's failure. To avoid the signing of multiple detailed bilateral agreements between multiple DGSs within the EU, the guidelines include the terms of a multilateral framework cooperation agreement (MFCA); the DGSs or, where relevant, the designated authorities should

adhere to the MFCA or otherwise conclude bilateral or multilateral agreements based on its terms.

21. On the basis of the terms of the MFCA, the European Forum of Deposit Insurers (EFDI) issued in September 2016 the terms of the 'Multilateral Framework Cooperation Agreement under Article 14(5) of Directive 2014/49/EU of 16 April 2014 on deposit guarantee schemes', which was welcomed by the EBA in a letter dated 21 June 2016.

Methodology, data sources and their limitations

22. The survey circulated to the DGSDAs and DGSs included one question in relation to the EBA's role in cooperation agreements.

Main findings, issues identified and the analysis

23. The survey circulated to the DGSDAs and DGSs asked respondents "Do you consider the EBA's role in cooperation agreements adequate or are there any areas in which you consider that the role could be expanded? If yes, please elaborate." The responses received were as follows:

- 29 respondents from 23 Member States considered that the EBA's role in cooperation agreements is adequate;
- 2 respondents from 2 Member States considered that the EBA could offer additional assistance in some areas such as (i) monitoring and, if needed, requiring DGSs/DGSDAs to enter into home-host cooperation agreements, as well as reviewing home-host agreements, and (ii) harmonising the costs that can be charged during the implementation of the agreements where divergence between jurisdictions exists, for example in legal fees or salaries;
- 1 respondent considered that the EBA's role is adequate but could be expanded to provide a central data exchange platform for the purpose of the information exchange referred to in paragraph 23 of the EBA Guidelines on cooperation agreements between DGSs;
- 2 respondents from 2 Member States did not provide a response to this question.

24. In relation to the EBA's role in cooperation agreements, given that the vast majority of the respondents consider that the role of the EBA is adequate, the EBA concluded that there is no need to analyse this topic further.

Options to address the identified issues

25. In the light of the responses to the survey, the EBA concluded that there was no reason to consider further if there is a need to amend the DGSD, or propose changes by any other means. The option discussed was not to amend the DGSD regarding this matter and, hence, to keep the current provisions included in the DGSD, without any amendments.

Conclusions

26. The analysis in relation to the EBA's role in home-host cooperation, and cooperation agreements, shows that at this stage no changes to the DGSD seem necessary. There also seems to be no need to provide any further guidance or advice using other legal instruments.

3.1.2 Sharing of data

Legal basis and background

27. Article 14(4) of the DGSD also states that "Member States shall ensure that DGS [sic] of the home Member State exchange information referred to under Article 4(7) or (8) and (10)', provided that "The restrictions set out in that Article [...] apply", with those in host Member States. Article 4(8) sets forth the obligation of Member States to ensure that a DGS, at any time and upon the DGS's request, receives from its members all information necessary to prepare for a repayment of depositors, including markings under Article 5(4), which refers to marking eligible depositors in a way that allows an immediate identification of such deposits.

Methodology, data sources and their limitations

28. The survey circulated to the DGSDAs and DGSs included one question related to the cross-border sharing of data.

Main findings, issues identified and the analysis

29. The survey circulated to the DGSDAs and DGSs asked respondents if the DGS in their jurisdiction, "in its capacity as a Home DGS, collect[s] branch-level data from your member institutions for their branches in other Member States". "If yes, how and which information is collected and in what frequency? If no, what are the reasons for not collecting this information?". The responses received were as follows.

- 17 respondents collect such information, and among them:
 - 7 respondents from 7 Member States collect this information on an annual basis;
 - 6 respondents from 6 Member States collect this information on a quarterly basis;
 - 4 respondents from 4 Member States collect such information without specifying the frequency;
 - 1 respondent replied that it receives this information semi-annually and another respondent replied that it receives these data at least twice per year;
- 10 respondents from 7 Member States do not collect such information;
- 6 respondents from 6 Member States replied that the question does not apply to them, as they do not have branches of institutions in other Member States.

30. Respondents that collect these data from the branches of credit institutions in other Member States reported that they do so either directly or through the supervisor and on an aggregated level. A small proportion of the DGSs collect detailed information for the depositors in these branches.

31. The survey also asked “If your DGS collects this branch-level data, do you provide this information to your Host DGS partners? If yes, does your DGS have any experience in sharing this information with Host DGSs? If no, what are the reasons for not sharing this information with Host DGSs?” The responses received were as follows.

- 24 respondents from 19 Member States reported that they currently do not share this information with the host DGS. Among them:
 - 3 respondents from 3 Member States reported that branch-level data are not provided to the host DGS because of legal constraints;
 - 4 respondents from 4 Member States reported that no such request has been received.

Nevertheless, a significant proportion of the 24 respondents added that such sharing is currently being considered and could take place on the basis of the relevant bilateral agreements.

- 1 respondent reported that it shares this information with the host DGS on the basis of the bilateral cooperation agreements signed.
- 9 respondents from 9 Member States replied that this question does not apply to them, as they do not have branches of institutions in other Member States, or do not collect sufficient information to provide to host DGSs.

32. With regard to the collection and sharing of data for branches of institutions in other Member States, there were several responses with different approaches. Nevertheless, taking into consideration that there is already a clear provision in this respect under Articles 14(4), 4(8) and 5(4) of the DGSD, which sets forth the obligation for Member States to ensure that a DGS, at any time and upon the DGS’s request, receives from its members all information necessary to prepare for a repayment of depositors (including marking of eligible depositors in a way that allows an immediate identification of such deposits), there is no need to amend the DGSD. The type of data that should be shared is already outlined in the bilateral agreements signed by DGSs. There is no need to provide a more explicit and clearer requirement in the DGSD to share these data because Article 14(4) of the DGSD already requires Member States to ensure that the home DGS exchanges such data with the host DGS and these would be shared with the host DGS in the event of a payout event or if the latter asked for it.

Options to address the identified issues

33. In relation to the issue of sharing of data, given the variations from the main findings stemming from the survey responses, and further discussions with the relevant authorities, it was discussed whether or not the DGSD would need to be amended so that it explicitly provides that data (in particular the number of eligible depositors and possibly the amount of eligible deposits in an EU branch) would need to be shared in business as usual.

Conclusions

34. It is not necessary to amend the DGSD in order to include a more explicit and clearer requirement in the DGSD to share the most important data because the current text of the Directive does not prohibit the sharing of these data and requires home DGSs to exchange them with the host DGSs. Furthermore, the type of data to be shared is already outlined in the bilateral agreements signed by DGSs.

3.1.3 Temporary high balances in cross-border payouts

Legal basis and background

35. Article 6(2) of the DGSD provides that Member States must ensure that the following deposits resulting from certain transactions, or serving certain social or other purposes, are protected above EUR 100,000 for at least 3 months and no longer than 12 months after the amount has been credited or from the moment when such deposits become legally transferable. According to recital 26 of the DGSD, Member States should decide on a temporary maximum coverage level for such deposits and, when doing so, they should take into account the significance of the protection for depositors and the living conditions in the Member States.

Methodology, data sources and their limitations

36. The survey circulated to the DGSDAs and DGSs included one question related to temporary high balances (THBs) in cross-border payouts.

Main findings, issues identified and the analysis

37. The survey asked respondents if they have “experienced any issues with regard to THBs and discrepancies between Member States, e.g. in case of a cross-border payout, or in informing depositors about the applicable coverage levels”. The responses received were as follows.

- 25 respondents from 21 Member States reported that they have not experienced any issues with regard to THBs and discrepancies between Member States. Among them:
 - 3 respondents from 3 Member States said that this is the case because they have never experienced a cross-border payout;

- 3 respondents from 3 Member States reported that THBs may create confusion about how different Member States handle specific deposits, particularly given that topping up is allowed in some jurisdictions, which could create level playing field issues.
- 10 respondents from 10 Member States replied that this question does not apply to them, as they do not have branches of institutions in other Member States.

38. Finally, THBs are not considered a material issue in cross-border payouts.

Options to address the identified issues

39. In relation to THBs in cross border pay-outs, given the main findings stemming from the responses to the survey, and further discussions with the relevant authorities, there was no reason to consider further if there is a need, at this stage, to amend the DGSD, or propose changes by any other means. The option discussed was not to amend and, hence, to keep the current provision included in the DGSD, without any amendments.

Conclusions

40. The analysis in relation to THBs in cross-border payouts shows that no changes to the DGSD, at this stage, seem necessary. There also seems to be no need to provide any further guidance or advice using other instruments.

3.2 Transfer of contributions

3.2.1 General considerations in relation to credit institutions changing their DGS affiliation

Legal basis and background

41. Article 10(1) of the DGSD provides that “Member States shall ensure that DGSs have in place adequate systems to determine their potential liabilities. The available financial means of DGSs shall be proportionate to those liabilities.

“DGSs shall raise the available financial means by contributions to be made by their members at least annually. This shall not prevent additional financing from other sources.”

42. Article 10(2) of the DGSD provides that “Member States shall ensure that, by 3 July 2024, the available financial means of a DGS shall at least reach a target level of 0.8% of the amount of the covered deposits of its members.”

43. Article 14(3) of the DGSD provides that “If a credit institution ceases to be member of a DGS and joins another DGS, the contributions paid during the 12 months preceding the end of the membership, with the exception of the extraordinary contributions under Article 10(8), shall be transferred to the other DGS. This shall not apply if a credit institution has been excluded from a DGS pursuant to Article 4(5).

“If some of the activities of a credit institution are transferred to another Member State and thus become subject to another DGS, the contributions of that credit institution paid during the 12 months preceding the transfer, with the exception of the extraordinary contributions in accordance with Article 10(8), shall be transferred to the other DGS in proportion to the amount of covered deposits transferred.”

Methodology, data sources and their limitations

44. The survey circulated to the DGSDAs and DGSs included six questions related to the transfer of contributions between DGSs when a credit institution changes its DGS affiliation.

45. The analysis also includes issues that have arisen in real-life cases and have been brought to the EBA staff’s attention.

Main findings, issues identified and the analysis

46. The survey circulated to the DGSDAs and DGSs asked respondents if they “raise DGS contributions annually, semi-annually or quarterly”. The responses received were as follows:

- 27 respondents from 22 Member States reported that they raise contributions on an annual basis, and among them:

- 2 respondents from 2 Member States also clarified that they currently do not raise contributions because the target level has been reached,
- 2 respondents from the same Member State mentioned that contributions can be raised at any time, even though they calculate contributions once per year;
- 1 respondent raises contributions semi-annually;
- 4 respondents from 4 Member States raise contributions quarterly;
- 1 respondent raises contributions monthly.

47. The survey also asked if DGSs “(or another authority) invoice institutions on the same day every year”. The respondents to the survey answered as follows:

- 20 respondents from 17 Member States do not invoice contributions on the same day every year;
- 7 respondents from 7 Member States replied that they do so on the same day;
- 6 respondents from 6 Member States clarified that, even though they have a deadline by which contributions must be invoiced (and 5 of them have the date set in their national legislations), invoicing can happen earlier and so would not by default happen on the same day every year.

48. Furthermore, the survey asked if “institutions pay invoices on the same day every year” and respondents provided the following responses:

- 25 respondents from 20 Member States do not require their institutions to pay contributions on the same day every year;
- 8 respondents from 8 Member States specify the date by which contributions must be paid but allow institutions to pay earlier if they wish to do so.

49. Some of the respondents set a harmonised payment date when invoicing contributions whereas one DGS has a specific date for the payment of such contributions set in its national legislation.

50. The survey also asked “How many days do the authorities give institutions to pay the invoices”. The responses received were as follows:

- 27 respondents from 22 Member States replied that they require credit institutions to pay the invoices within 60 days;
- 6 respondents from 6 Member States indicated longer deadlines or did not specify precisely.

51. The next question in the survey was if DGSs had “transferred or received contributions to/from another DGS since the implementation of the revised DGSD” and, if so, “if any issues had been encountered during this process”. The answers to that question were as follows.

- 17 respondents from 17 Member States have transferred and/or received contributions since the implementation of the DGSD. In particular, 8 out of these 17 respondents mentioned that they have experienced various issues during the process such as:
 - different interpretations of the period for which contributions must be transferred;

- no transfer made because of delay in incorporating the DGSD into national law by the Member State of one of the DGSs involved in the transaction;
- the need for a DGS to raise the relevant funds through a credit line, which had led to a delay of approximately 1.5 years;
- DGSs not being informed by other authorities concerning subsidiaries being converted into branches.
- 16 respondents from 11 Member States declared that they have not transferred or received a transfer of contributions, and therefore they did not encounter any issues.

52. The last question in this section, for the DGSDAs and DGSs that answered in the previous question that they had transferred contributions to another DGSs since the implementation of the revised DGSD, was on how they determined the amount to be transferred in accordance with Article 14(3) of the DGSD. The answers from the 17 respondents from 17 Member States were as follows:

- 13 respondents reported that they calculated the amount transferred by taking into account the contributions paid in the last 12 months as provided in the DGSD;
- 1 respondent reported that it calculated the amount to be transferred as the accumulation of the last four quarterly fees;
- 1 respondent reported that the amount transferred was calculated pro rata for the last annual contribution paid by the credit institution and according to the amount of covered deposits of the transferred branches;
- 1 respondent reported that the question is not applicable despite its experience with transfer of contributions, because it was only the recipient of the transfer and so did not calculate the figure;
- 1 respondent reported that the question is not applicable to it, without indicating a particular reason.

53. Furthermore, the EBA staff are also aware of real-life cases where disagreements between DGSs have arisen. In one such case, the transferring DGS did not transfer any contributions because, on the one hand, the institution in question had paid its previous year's contributions more than 12 months before the day of the change of its DGS affiliation and, on the other hand, it paid the next year's contributions after the change of the DGS affiliation, based on an invoice that had been sent ahead of the change of its DGS affiliation in relation to some of its branches turning into subsidiaries. In that case, the receiving DGS did not receive any contributions. That same institution then changed its DGS affiliation in the following year and, in this instance, the receiving DGS received a transfer of contributions paid in respect of 2 years of that institution's contributions because in this instance, the institution paid both invoices in a span of less than 12 months.

54. The EBA identified that the current literal wording of the DGSD could be creating issues, by for instance, facilitating situations whereby:

- the receipt of contributions happens in such a way that the amount accrued during the 12 preceding months is paid after the end of the membership of the former DGS or the transfer of activities;
- in some instances, a credit institution can choose when to pay the invoice, with an impact on whether the paid amount is or is not transferred.

55. The EBA discussed a hypothetical scenario, based on a real-life case, that shows the impact of the transfers of DGS contributions when a large institution changes its DGS affiliation under the current provisions of the DGSD (see Table 1). The scenario assumed that:

- a large institution with EUR 75 billion in covered deposits is moving from Member State A to Member State B;
- the contribution paid by this large institution in the previous 12 months was EUR 60 million;
- both DGSs have reached the minimum target level of 0.8% of covered deposits;
- the DGSs are of different sizes.

Table 1: Effect of a large institution changing its DGS affiliation — current DGSD provisions

	DGS in Member State A		DGS in Member State B	
	Before the credit institution joins the DGS in Member State A	After the credit institution joins the DGS in Member State A	Before the credit institution leaves the DGS in Member State B	After the credit institution leaves the DGS in Member State B
Amount of covered deposits protected by the DGS (EUR)	50 000	125 000	250 000	175 000
Amount of available financial means of the DGS (EUR)	400	460	2 000	1 940
Amount of available financial means as a percentage of covered deposits	0.80%	0.37%	0.80%	1.11%

56. The main conclusions from the numerical example, under current provisions in the DGSD, included above are the following:

- DGS A (the DGS to which the institution moves) has to replenish the fund by 0.43% of the total covered deposits of all credit institutions in its jurisdiction (including the transferring institution), which can be considered equivalent to contributions raised over approximately 4 years in the build-up phase.

- The missing 0.43% will be built up by all institutions, including the new institution A. Institution A will contribute about 60% to meet the target, while the rest of the institutions will contribute about 40% (estimate disregarding the risk factors for different institutions).
- Institutions affiliated to DGS A before the new institution A joined will be ‘punished’ by having to contribute about 21% more than they would have if the big institution had not entered the market.
- DGS B (the DGS from which the institution is moving out), now has 0.31% of funds above the target level. If funds are used and need to be replenished (and assuming the DGS does not collect funds above the target level), institutions affiliated to that DGS will not need to contribute as much as they would have to if that institution were still a member of the DGS.

57. The main findings stemming from the responses to the survey, and further discussions with the relevant authorities, with regard to the transfer of DGS contributions, show that current provisions in relation to the transfers of DGS contributions could create serious issues and lead to disputes between DGSs in different Member States, and these issues will only become more pronounced once more DGSs reach the minimum target level.

Options to address the identified issues

58. The EBA assessed three options to address the issues posed by current provisions of the DGSD in relation to the transfer of contributions when a credit institution changes its DGS affiliation, or when some of the activities of the institution are transferred to another Member State.

Option 1 — Maintain the current provisions on transfers of contributions

59. The first option that was assessed was to maintain unchanged the current provisions of the DGSD. The EBA identified the following pros and cons of this option.

Pro:

- It is relatively easy to determine the amount that needs to be transferred (notwithstanding the issue of when the amount was paid).

Cons:

- The transferred amount does fully not take into account the transfer of potential liabilities and risks, and therefore the receiving DGS faces an increase in its potential liability without receiving funds to match this increase.
- The receiving DGS would be paid no contributions if the institution changing DGS affiliation was previously a member of a DGS that has already reached the minimum target level and is no longer raising contributions, whereas the receiving DGS might receive a transfer if the other DGS were still collecting contributions.

- Issues observed in real-life cases have been mentioned in the previous section, such as the possibility that the scope for the transfer is affected by when contributions are raised, and by the date when an institution chooses to pay its invoice.

60. In the light of the limitations associated with this option and the issues identified in real-life cases, the EBA considers that it is not advisable to maintain current DGSD provisions.

Option 2 — Delete the provisions on transfers of contributions altogether

61. The second option assessed by the EBA was to delete the provisions on transfers of contributions altogether, which would mean that DGSs will not have to transfer contributions to other EU DGSs when an institution transfers its activities to another jurisdiction. The following pros and cons of this option were assessed.

Pros:

- The simplicity of removing transfers of contributions would limit the scope for interpretation and provide a harmonised approach to cases in which a credit institution changes its DGS affiliation.
- If a DGS requires a sign-up fee from the new member, the funds paid by the institution may adequately reflect the additional potential liability for that DGS.

Cons:

- If there were no sign-up fee to mitigate the impact of no transfer:
 - The DGS accepting a new credit institution could face a significant funding gap due to the increase in potential liability. Funding gaps will need to be filled in at least partly by the DGS's current members, whereas members of the DGS that the institution has left could benefit from lower contributions in the future because the amount of covered deposits will decrease, while the amount of available financial means will stay the same, thereby increasing the proportion of available financial means in relation to covered deposits. It needs to be noted that under current provisions such funding gaps arise as well, and are covered by the other credit institutions.
- If there were a sign-up fee to mitigate the impact of no transfers:
 - A sign-up fee could undermine the single market by creating a barrier to entry, and could influence an institution's decision to move between jurisdictions.
 - Deciding on the correct amount of the sign-up fee is not necessarily less complex than designing a methodology for the transfers, so it may not be a much simpler solution.

62. Referring to the hypothetical example presented in paragraph 55, and the assumptions made, the effect of the large institution’s changing its DGS affiliation when no contributions are transferred would be as in Table 2.

Table 2: Effect of a large institution changing its DGS affiliation — no transfers of DGS contributions

	DGS in Member State A		DGS in Member State B	
	Before institution A joins the DGS	After institution A joins the DGS	Before institution A leaves the DGS	After institution A leaves the DGS
Amount of covered deposits protected by the DGS (EUR)	50 000	125 000	250 000	175 000
Amount of available financial means of the DGS (EUR)	400	400	2 000	2 000
Amount of available financial means as a percentage of covered deposits	0.80%	0.32%	0.80%	1.14%

63. The main conclusions from the numerical example where there are no transfers are the following:

- DGS A (the DGS to which the institution moves) has to replenish the fund by 0.48% of the total covered deposits of all credit institutions in its jurisdiction (including the transferring institution), which can be considered equivalent to contributions raised over approximately 5 years in the build-up phase.
- The missing 0.48% will be built up by all institutions, including the new institution A. Institution A will contribute about 60% to meet the target while the rest of the institutions will contribute about 40% (estimate disregarding the risk factors for different institutions).
- Institutions affiliated to DGS A before the new institution A joined will be ‘punished’ by having to contribute about 25% more than they would have if the big institution had not entered the market.
- DGS B (the DGS from which the institution is moving out) now has 0.34% of funds above the target level. If funds are used and need to be replenished (and assuming the DGS does not collect funds above the target level), institutions affiliated to that DGS will not need to contribute.

64. While the EBA acknowledges that the removal of the requirement to transfer contributions may be the easiest option from an operational perspective, this option is not considered appropriate

from a risk perspective and can create significant issues, particularly when large institutions move between jurisdictions.

Option 3 — Amend the DGSD provisions

65. The third option was to amend current provisions on transfers of DGS contributions with the objective of introducing provisions that will form the basis for a new methodology. The pros and cons of providing a new methodology for the transfer of contributions are the following:

Pros:

- The new methodology could involve partial or full compensation for the transfer of the potential liability between DGSs.
- The impact on the potential funding gaps can be partly or fully mitigated.
- It is possible to design a methodology that will limit the need for other institutions to contribute to the DGS fund in order to ensure that the target level is reached on time.

Con:

- Depending on the methodology to be established, the transferring DGS fund might see a reduction (while the receiving DGS might see an increase) in the coverage ratio of the fund and the other members would have to pay additional contributions.

66. The EBA assessed the basic features of the methodology and discussed the following approaches:

- Linking the transferred amount to the previous contributions, but not only the amount paid in the previous 12 months

Such an approach would in most cases ensure that the receiving DGS receives more funds than currently is the case, thereby limiting the potential funding gap created by a new institution joining that DGS. A number of issues were identified with such an approach, especially once the minimum target level is reached and some DGSs no longer collect contributions while others continue to do so. It could lead to a situation whereby DGSs that continue collecting ex ante contributions above the minimum target level would be much more likely to have to transfer contributions than those that choose not to collect ex ante contributions above the minimum target level. The calculation of the transferable amount would also be complicated by any pay-out events that occurred after the credit institution started to pay contributions, as it could result in a gap between the net amount of contributions paid and the resources available within the DGS.

- Linking the transferred amount to a part of the DGS's liability that is transferred and so to a part of the amount of covered deposits and possibly risk factors of the institution changing DGS affiliation.

This approach would not create an uneven playing field between institutions that continue collecting contributions above the minimum target level and those that do not. However, it could be challenging to calculate the precise amount to be transferred, and could create issues if the amount is higher than what the DGS currently holds in ex ante funds.

- Requiring that the transferring DGS needs to transfer the full ‘excess amount’ possible to maintain its current coverage ratio.

This option was assessed as more sophisticated than the previous ones but still not sophisticated enough, as it would not take into account and reflect important factors such as the riskiness of the institution changing DGS affiliation, the DGS’s liabilities such as loans, the expected recoveries or a situation in which a DGS has no available financial means. That being said, such a method is more appropriate than the current provisions in the DGSD because it makes it easier for the DGS receiving the transfer to be ready for a payout, and it remains relevant even after the minimum target level is reached in 2024.

67. Based on the difficulty of finding the most appropriate methodology in the course of developing this opinion, the EBA assessed the following options:

- i. Amending the DGSD and including the methodology in the Directive

Changes to the methodology would almost certainly require an amendment of the DGSD. Based on the observations outlined in this chapter, the EBA concluded that the methodology would need to take into account a number of important factors, and a simple methodology to be outlined in the DGSD itself would be neither possible nor advisable.

- ii. Amending the DGSD and mandating the EBA to develop the precise methodology

Within this option, the EBA assessed whether such a methodology should be outlined within (i) EBA guidelines or (ii) EBA draft regulatory technical standards.

68. With regard to the most appropriate legal vehicle to specify the methodology, the EBA and the relevant authorities agreed that the most important factor is to ensure sufficient legal certainty given the cross-border nature of the transfers and the need to ensure that the same rules apply to DGSs in different Member States. In the light of that, the EBA agreed that it is advisable that the methodology be set out through a legally binding act applicable entirely and directly in all Member States without requiring national implementation. For that reason, the EBA considers that EBA draft regulatory technical standards specifying the methodology are more appropriate because, unlike EBA guidelines, they are not subject to the ‘comply or explain’ mechanism and do not require implementation; they apply directly and uniformly across the EU. The proposal should not be understood as implying that the method for calculating contributions from DGSs currently outlined in EBA guidelines must be fully harmonised.

Conclusions

69. Given the main findings stemming from the responses to the survey, and further discussions with the relevant authorities, the EBA proposes that:

- there is a need to amend the current provisions in Article 14(3) of the DGSD, which link the amount of contribution transferred to the contributions paid in the 12-month period prior to the institution changing its DGS affiliation or the transfer of some of the activities to another Member State;
- there is a need to develop a different methodology addressing the issues highlighted in this report, taking into account the diversity of current methodologies for risk-based contributions allowed under the EBA Guidelines on methods for calculating contributions from DGSs;
- given its technical nature, the EBA is best placed to develop the new methodology jointly with its member authorities and schemes, and invites the Commission to consider conferring corresponding mandates to the EBA;
- to ensure uniform application across Member States, the methodology should be specified through EBA draft regulatory technical standards to be adopted by the Commission.

3.2.2 Third country branches changing their DGS affiliation

Legal basis and background

70. Article 1(2) of the DGSD provides that “This Directive shall apply to: [...]

‘(d) credit institutions affiliated to the schemes referred to in points (a), (b) or (c) of this paragraph.”

71. Article 10(1) of the DGS provides that “Member States shall ensure that DGSs have in place adequate systems to determine their potential liabilities. The available financial means of DGSs shall be proportionate to those liabilities.

‘DGSs shall raise the available financial means by contributions to be made by their members at least annually. This shall not prevent additional financing from other sources.”

72. Article 10(2) of the DGSD provides that “Member States shall ensure that, by 3 July 2024, the available financial means of a DGS shall at least reach a target level of 0.8% of the amount of the covered deposits of its members.”

73. Article 14(3) of the DGSD provides that “If a credit institution ceases to be member of a DGS and joins another DGS, the contributions paid during the 12 months preceding the end of the membership, with the exception of the extraordinary contributions under Article 10(8), shall be

transferred to the other DGS. This shall not apply if a credit institution has been excluded from a DGS pursuant to Article 4(5).

‘If some of the activities of a credit institution are transferred to another Member State and thus become subject to another DGS, the contributions of that credit institution paid during the 12 months preceding the transfer, with the exception of the extraordinary contributions in accordance with Article 10(8), shall be transferred to the other DGS in proportion to the amount of covered deposits transferred.’

Methodology, data sources and their limitations

74. The survey circulated to the DGSDAs and DGSs did not include questions in relation to the transfer of contributions applicable to third country branches when these change their DGS affiliation from one EU DGS to another or when some of the activities are transferred to another Member State. However, while the opinion was being prepared, relevant authorities raised it as an important question to be clarified in the revised DGSD.

Main findings, issues identified and the analysis

75. The EBA assessed whether or not:

- the current provisions on transfers of contributions in the DGSD also apply to third country branches changing their DGS affiliation or moving some of their activities to another Member State, including an assessment of:
 - the scope of the provision and the rationale,
 - mandatory requirements for triggering the application of Article 14(3) of the DGSD;
- the same approach as in the case of transfers of contributions from EU institutions should apply to the transfers of contributions from third country branches in order to minimise any potential level playing field issues.

Scope of the provision and the rationale

76. Article 14 of the DGSD refers to cooperation rules and it is addressed neither to credit institutions nor to third country branches specifically, but to the EU DGSs, setting several obligations on them to cooperate with each other. In this vein, recital 51 of the DGSD highlights that DGSs should cooperate with each other.

77. Within this scope of cooperation, Article 14(3) is related to a funding mechanism for DGSs (in particular, transfer of contributions between DGSs). In addition, recital 5 of the DGSD refers to the aim of the Directive to encompass the harmonisation of the funding mechanisms of DGSs. Recital 27 of the DGSD states that “It is necessary to harmonise the methods of financing of DGSs” and recital 54 refers to the “harmonisation of rules concerning the functioning of DGSs” as the objective of the Directive.

78. In relation to financial stability concerns, recital 3 of the DGSD indicates that depositors will benefit from robust funding requirements. This will improve consumer confidence in financial stability throughout the internal market. There are several references throughout the DGSD to the purpose of protecting financial stability. If this were undermined, there would be distortions within the internal market.

Mandatory requirements for triggering the application of Article 14(3) of the DGSD

79. To activate the obligation for a DGS to transfer the contribution to another DGS, the following requirements must be fulfilled:

- a. “a credit institution ceases to be member of a DGS and joins another DGS”

It is to be determined whether or not the reference to ‘credit institution’ should include ‘third country branches’ for the effects of Article 14(3) of the DGSD. In this vein, Article 2(1) of the DGSD (9 and 10) defines both credit institutions and branches:

- ‘credit institution’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 [the CRR];
 - ‘branch’ means a place of business in a Member State which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions.
- b. The DGSD has opted to use the functional definition of ‘credit institution’ provided by the CRR (i.e. an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account) and to define ‘branch’ as part of a credit institution, and hence not an independent legal entity.
 - c. Article 1 (Subject matter and scope), paragraph 2(d), of the DGSD indicates that “This Directive shall apply to [...] credit institutions affiliated to the schemes.” Therefore, although this provision does not expressly refer to third country branches in the EU, it covers them as well insofar as they are a part of a credit institution. Indeed, Article 15 of the DGSD (Branches of credit institutions established in third countries) covers them specifically. Moreover, if it were concluded that third country branches affiliated to a DGS do not fall under the scope of the DGSD, Article 15 thereof, which states that, if protection is not equivalent, Member States may stipulate that third country branches must join a DGS in operation within their territories, would be superfluous.

80. The EBA then assessed if the change of DGS affiliation of a third country branch should be treated differently from when an EU institution changes its DGS affiliation. The EBA did not see any reason why this should be the case.

Options to address the identified issues

81. In the light of the analysis outlined above, the only option considered by the EBA is not to amend the DGSD and the wider DGS framework and, hence, to keep the current provisions included in the DGSD and elsewhere.

Conclusions

82. The EBA considers that the current provisions on the transfer of contributions of third country branches are sufficiently clear and there is no need to propose changes to the DGSD in relation to this matter or to provide any further related guidance or advice.

3.3 DGSs' cooperation with various stakeholders

Legal basis and background

83. Article 3(2) of the DGSD states that “Competent authorities, designated authorities, resolution authorities and relevant administrative authorities shall cooperate with each other and exercise their powers in accordance with this Directive.”
84. Article 4(3) and (4) of the DGSD elaborates on the link between deposit taking and DGS membership, and on the cooperation between competent authorities and DGSs. Article 4(3) provides that an EU-authorized credit institution “shall not take deposits unless it is a member of a scheme officially recognised in its home Member State”. Article 4(4) provides that “If a credit institution does not comply with the obligations incumbent on it as a member of a DGS, the competent authorities shall be notified immediately and, in cooperation with the DGS, shall promptly take all appropriate measures including if necessary the imposition of penalties to ensure that the credit institution complies with its obligations.”
85. Article 11(2) of the DGSD requires the resolution authority to determine, in consultation with the DGS, the amount by which the DGS is liable, in order to finance the resolution of a credit institution in accordance with Article 109 of the Directive 2014/59/EU on bank recovery and resolution (BRRD).
86. Article 11(3) of the DGSD provides that the DGS must consult the resolution authority and the competent authority on the measures and the conditions imposed on the credit institution when deciding to use its available financial means for alternative measures to prevent the failure of a credit institution.
87. Article 13(2) of the DGSD allows DGSs to use their own risk-based methods for determining and calculating the risk-based contributions by their members. Nevertheless, each method must be approved by the competent authority in cooperation with the designated authority.
88. Article 14(6) of the DGSD provides that “Member States shall ensure that appropriate procedures are in place to enable DGSs to share information and communicate effectively with other DGSs, their affiliated credit institutions and the relevant competent and designated authorities within their own jurisdictions and with other agencies on a cross-border basis, where appropriate.”
89. Article 14(7) of the DGSD provides that the “EBA and the competent and designated authorities shall cooperate with each other and exercise their powers in accordance with the provisions of this Directive and with Regulation (EU) No 1093/2010.”
90. Article 14(5) of the DGSD provides that the DGSs, or, where appropriate, the designated authorities, must have written cooperation agreements in place in order to facilitate cooperation between DGS. The absence of such agreements will not affect the claims of

depositors under Article 9(1) of the DGSD or of credit institutions under paragraph 3 of Article 14(5) of the DGSD.

Methodology, data sources and their limitations

91. The survey circulated to the DGSDAs and DGSs included 10 questions on the cooperation between DGSDAs/DGSs and various stakeholders.

Main findings, issues identified and the analysis

92. The survey circulated to the DGSDAs and DGSs included a matrix that asked respondents if they have (i) “regular contacts” and (ii) written memorandums of understanding (MoUs) on cooperation and/or information exchange or similar agreements with the following stakeholders:

- affiliated credit institutions;
- competent authorities;
- resolution authorities;
- AML authorities;
- other DGSs.

Affiliated credit institutions

93. In relation to the question on the DGSDAs’/DGSs’ regular contacts with the affiliated credit institutions, the survey responses show that:

- 29 respondents from 23 Member States replied that they have regular contacts with affiliated credit institutions;
- 3 respondents from 3 Member States consider that they do not have regular contacts with affiliated credit institutions.

94. In relation to the question on the DGSDAs’/DGSs’ information exchange MoUs or similar agreements with the affiliated credit institutions, the survey responses show that:

- 28 respondents from 23 Member States do not have in place written information exchange MoUs or similar agreements with affiliated credit institutions;
- 5 respondents from 4 Member States have in place such agreements for exchanging information with affiliated credit institutions.

Competent authorities

95. In relation to the question on the DGSDAs'/DGSs' regular contacts with the competent authorities, the survey responses show that:

- 32 respondents from 26 Member States have regular contacts with the competent authorities;
- 2 respondents from 2 Member States answered that this question is not applicable to them, and 1 respondent did not provide an answer to this question, presumably because the respondents are also the competent authorities.

96. In relation to the question on the DGSDAs'/DGSs' information exchange MoUs or similar agreements with the competent authorities, the survey responses show that:

- 16 respondents from 14 Member States have in place written information exchange MoUs or similar agreements with the competent authorities. Among them:
 - 7 respondents from 6 Member States share the necessary information in accordance with the established legal framework in their jurisdiction;
 - 4 respondents from 4 Member States have in place written information exchange MoUs;
 - 3 respondents from 3 Member States stated that they share information based on cooperation agreements signed with the relevant competent authorities.
- 16 respondents from 12 Member States responded that they do not have in place such agreements to exchange information with their competent authorities.
- 4 respondents from 4 Member States answered that they do not have such agreements in place, as the respondent is also the competent authority in its jurisdiction.

Resolution authorities

97. In relation to the question on the DGSDAs'/DGSs' regular contacts with the resolution authorities, the survey responses show that:

- 30 respondents from 23 Member States have regular contacts with the resolution authorities;
- 3 respondents from 3 Member States answered that this question is not applicable to them, presumably because the respondents are also the resolution authorities;
- 1 respondent stated that it does not have regular contacts with the resolution authorities.

98. In relation to the question on the DGSDAs'/DGSS' information exchange MoUs or agreements with the resolution authorities, the survey responses show that:

- 17 respondents from 15 Member States have in place written MoUs on cooperation and/or exchange of information or similar agreements with the resolution authorities. Among them:
 - 7 respondents from 7 Member States reported that they are both the resolution authority and the DGS in their jurisdiction or part of the same organisation/department;
 - 3 respondents from 3 Member States share information based on written MoUs on cooperation and/or exchange of information;
 - 5 respondents from 4 Member States share information based on cooperation agreements signed with the relevant resolution authorities;
 - 2 respondents from 2 Member States share information based on cooperation agreements signed with the relevant competent authorities.
- 14 respondents from 10 Member States responded that they do not have in place such agreements to exchange information with the resolution authorities.
- 3 respondents from 3 Member States answered that this question is not applicable to them, presumably because the respondents are also the resolution authorities.

AML authorities

99. In relation to the question on the DGSDAs'/DGSS' regular contacts with the AML authorities (understood as the AML supervisor and/or the Financial Intelligence Unit (FIU)), the survey responses show that:

- 23 respondents from 19 Member States do not have regular contacts with the AML authorities;
- 10 respondents from 8 Member States reported that they have regular contacts with the AML authorities.

100. In relation to the question on the DGSDAs'/DGSS' MoUs or agreements with the AML authorities, the survey responses show that:

- 28 respondents from 23 Member States do not have in place such agreements to exchange information with the AML authorities.

- 6 respondents from 5 Member States replied that they do have in place written information exchange MoUs or similar agreements with the AML authorities. Among them:
 - 2 respondents from 1 Member State share the relevant information based on a written information exchange MoU;
 - 3 respondents from 3 Member States replied that they share the relevant information in accordance with the established legal framework in their jurisdiction;
 - 1 respondent reported that the DGS and the AML authority are both part of the same organisation.

Other DGSs

101. In relation to the question on the DGSDAs'/DGSs' regular contacts with other DGSs, the survey responses show that:

- 27 respondents from 22 Member States have regular contacts with other DGSs;
- 7 respondents from 7 Member States do not have regular contacts with other DGSs.

102. In relation to the question on the DGSDAs'/DGSs' MoUs or agreements on cooperation and/or exchange of information with the other DGSs, the survey responses show that:

- 25 respondents from 21 Member States have in place such agreements to exchange information with the other DGSs. In particular, almost all respondents have reported that they have adhered to the EFDI multilateral cooperation agreement.
- 8 respondents from 8 Member States replied that they do not have in place written information exchange MoUs or similar agreements with other DGSs.

Options to address the identified issues

103. In relation to the DGSDAs' and DGSs' cooperation with the affiliated credit institutions, the competent and resolution authorities, and other DGSs, and based on the main findings stemming from the responses to the survey and further discussions with the relevant authorities, the EBA is of the view that the existing cooperation and exchange of information arrangements at EU and national levels are sufficient and that there are no arguments or evidence put forward that demonstrate the ineffectiveness of those arrangements, and therefore there are no reasons to consider an amendment to the DGSD or propose changes to the DGS framework by any other means. The option considered is therefore not to amend, at this stage, the DGSD in relation to this matter and hence to keep the current provisions included in the DGSD and elsewhere, without any amendments.

104. In relation to the DGSDAs' and DGSs' cooperation with the AML authorities, the EBA considers that the lack of engagement between them highlighted by the survey results should be considered further in the EBA Opinion on DGS payouts, which will address issues related to DGS payouts where there are AML concerns.

Conclusions

105. Based on the analysis outlined above, the EBA considers that, in relation to the DGSDAs' and DGSs' cooperation with the affiliated credit institutions, competent authorities, resolution authorities and other DGSs, there is no need to propose changes to the DGSD, and there is no need to provide any further guidance or advice using other instruments.

106. The current lack of engagement between the DGSDAs/DGSs and the AML authorities should be considered further in the EBA Opinion on DGS payouts, which will address issues related to DGS payouts where there are AML concerns.

3.4 Coverage level

Legal basis and background

107. Article 6(1) of the DGSD requires Member States to ensure that the coverage level for the aggregate deposits of each depositor is EUR 100 000 “in the event of deposits being unavailable.”
108. Article 6(4) of the DGSD requires Member States to “ensure that repayments are made in any of the following: (a) the currency of the Member State where the DGS is located; (b) the currency of the Member State where the account holder is resident; (c) euro; (d) the currency of the account; (e) the currency of the Member State where the account is located.”
109. Article 10(10) of the DGSD provides that “Member States shall, by 31 March each year, inform EBA of the amount of covered deposits in their Member State and of the amount of the available financial means of their DGSs on 31 December of the preceding year.”
110. Article 19(4) of the DGSD provides that “By way of derogation from Article 6(1), Member States which, on 1 January 2008, provided for a coverage level of between EUR 100 000 and EUR 300 000, may reapply that higher coverage level until 31 December 2018.”
111. Article 19(6) of the DGSD requires the Commission, supported by the EBA, to report to the European Parliament and to the Council on the progress towards implementation of the DGSD, including, in point (d), addressing the adequacy of the current coverage level for depositors.

Methodology, data sources and their limitations

112. The survey circulated to the DGSDAs and DGSs included seven questions on the coverage level. The EBA used responses to the first three questions to assess the adequacy of the coverage level from a quantitative perspective and the other four to assess it from a qualitative perspective.

Quantitative analysis

113. To assess if the current coverage level is adequate, the EBA aimed to replicate parts of the impact assessment³ performed by the Commission in 2010, which was based on 2007 data. The Commission’s impact assessment concluded that “Among the harmonised coverage levels, EUR 100 000 seems to be the most effective one as it would ensure a substantial progress in terms of increased deposit protection compared to the pre-crisis period.” At the time, such a coverage level would have ensured that 71.8% of all eligible deposits would be covered and 95.4% of all depositors would be fully covered.

³ The relevant assessment is included on page 31 of <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010SC0834&from=EN>

114. To the extent possible, the EBA aimed to replicate that assessment previously done by the Commission to check if there are significant changes to two ratios that were included in the Commission's original assessment. To perform the analysis, the EBA collected data on eligible deposits, eligible depositors and fully covered depositors as of 31 December 2017⁴, and combined them with the already available data on covered deposits reported to the EBA in accordance with Article 10(10) of the DGSD. In particular the survey included the following three questions:
- i. "What was the amount of eligible deposits held by the institutions affiliated to your DGS as of 31 December 2017?"
 - ii. "What was the number of fully covered depositors in the institutions affiliated to your DGS as of 31 December 2017?"
 - iii. "What was the number of all eligible depositors in the institutions affiliated to your DGS as of 31 December 2017?"
115. Representatives from the relevant authorities considered the information collected by the EBA sufficient and adequate for the analysis of the coverage level.
116. The quantitative data with reporting date 31 December 2017, collected through the survey, and the data that the EBA collected on covered deposits were used by the EBA to calculate the following two ratios:
- covered deposits/eligible deposits, which shows the proportion of all eligible deposits that are protected by a DGS;
 - fully covered depositors/eligible depositors, which shows the proportion of all depositors whose deposits are fully covered and, therefore, depositors who do not have deposits above the coverage level.
117. To ensure robustness, the EBA calculated the ratios in two ways:
- by calculating the ratios for each DGS in the sample separately, and then calculating a simple, unweighted average of the ratios across all the DGSs;
 - by aggregating all the amounts of deposits and numbers of depositors in the sample, and only then calculating the two ratios for the whole sample.
118. The analysis was based on the responses from 20 Member States relating to 24 DGSs for which data were available.

⁴ The data were collected in October 2018 and hence at that point the most up-to-date information was as of the end of 2017.

Main findings, issues identified and the analysis

Quantitative analysis

119. The Commission, in its methodology incorporated in the 2010 impact assessment, used data provided by Member States to calculate the unweighted averages of the ratios. The unweighted average of the ratio of covered deposits to eligible deposits reported in the Commission’s impact assessment was 71.8% at the end of 2007. The end-2017 data show that the figure is 64.5% when looking at unweighted averages per DGS, and 61.2% based on the aggregated amounts (see Table 3).

Table 3: Proportion of covered deposits to eligible deposits at the ends of 2007 and of 2017

	Assessment done by the Commission based on data from 31 December 2007	Assessment done by the EBA based on data from 31 December 2017	
	Ratio	Ratio (unweighted averages per DGS)	Ratio (aggregated amounts)
Covered deposits/eligible deposits	71.8%	64.5%	61.2%

120. The data show a fall in the ratio of covered deposits/eligible deposits between 2007 and 2017. It seems that the decrease in the deposit coverage ratio may partly be explained by the broadening of the scope of depositors that are eligible for DGS protection in the DGSD. More specifically, the current definition of covered and eligible deposits includes deposits by large corporates, while the definition applicable in 2007 did not consider such deposits covered. Because it could be expected that large corporates hold higher amounts of deposits than households, their inclusion in the scope of the definition of eligible deposit should result in a decrease in the covered deposits/eligible deposits ratio. Furthermore, given the steady growth of deposits across the EU, the ratio of covered deposits/eligible deposits should gradually decrease as there is an increase in the amount of eligible deposits above the coverage level.

121. The unweighted average ratio of fully covered depositors to eligible depositors reported in the Commission’s impact assessment was 95.4% at the end of 2007. The end-2017 data show that the figure is 97.6% when looking at unweighted averages per DGS, and 98.1% based on the aggregated amounts (see Table 4).

Table 4: Proportion of fully covered depositors to all eligible depositors at the ends of 2007 and of 2017

	Assessment done by the Commission based on data from 31 December 2007	Assessment done by the EBA based on data from 31 December 2017	
	Ratio	Ratio (unweighted averages per DGS)	Ratio (aggregated amounts)
Fully covered depositors/eligible depositors	95.4%	97.6%	98.1%

122. The data show that, at the end of 2017, the proportion of fully covered depositors had increased in comparison with the 2007 data, despite the fall in the proportion of covered deposits as outlined in the preceding paragraphs. The survey does not provide any information to assess the source of this increase. A potential — but not verified — explanation could be an increase in the awareness of the DGS coverage among depositors and/or an increase in the number of accounts that depositors have with different credit institutions.

123. Furthermore, the results in relation to both ratios should be interpreted carefully, because of the following caveats:

- the sample does not include information from some of the biggest Member States, such as France, Germany, and the UK, where, on the one hand, the proportion of depositors with deposits above the coverage level is likely to be higher than in Member States with lower GDP per capita and, on the other hand, the average amount of eligible deposits held by large corporates is likely to be higher than in Member States with lower GDP per capita;
- the sample used by the Commission in the 2010 impact assessment was different from the sample used by the EBA, so the data may not be directly comparable;
- the ratio of fully covered depositors to eligible depositors calculated in this opinion is an approximation of the ratio of fully covered deposits to eligible deposits used in the Commission’s impact assessment; however, it is considered that these ratios are comparable.

Qualitative analysis

Adequacy of the coverage level

124. The survey asked if, based on the respondents’ “experience with payouts and depositors’ claims for reimbursement of deposits”, they think that “the current coverage level is adequate”.

125. All respondents except one consider that the current coverage level of EUR 100 000 is adequate even though six of them clarified that they have not experienced a compensation case yet.
126. The qualitative responses on the adequacy of the coverage level, together with the results of the quantitative analysis, suggest that there is no need to consider changes to the currently applicable coverage level.
127. In one Member State (Norway), the coverage level is NOK 2 000 000, which is approximately EUR 200 000, even though the current provisions of the DGSD do not allow a coverage level higher than EUR 100 000 after 31 December 2018. The Commission is already engaging on this issue with the relevant Norwegian authorities and therefore the EBA did not engage on this issue further.

Currency

128. The survey asked respondents if their coverage level is set in a currency other than Euro". The responses received were as follows:
- 24 respondents from 24 Member States stated that the coverage level is set in euro in their jurisdiction. Among them, 2 respondents indicated that, if the DGS is activated and therefore depositors are compensated, they are paid in their national currency based on the exchange rate on the date when deposits were rendered unavailable.
 - 4 respondents from 4 Member States reported that the coverage level is set in their national currencies. 1 of these respondents varies the currency of the coverage level (e.g. euro or pound sterling) depending on the currency of the European Union jurisdiction where a foreign branch of a domestic institution operates.

Additional coverage ('topping-up')

129. Furthermore, respondents were asked if they "provide additional coverage ("topping-up") for branches of institutions established in other Member States that operate in [their] jurisdiction (e.g. because of differences in the scope and coverage level for THBs, the scope of DGS coverage and the level of coverage due to exchange rate adjustments)".
130. The answers received show that only 6 respondents offer topping up in their jurisdictions. Of the 6, only the three Member States use it in practice. Respondents from the other 3 Member States reported that the possibility of topping up is provided for in the national implementation of the DGSD but has never been used in practice.
131. The last question in this section asked respondents if they consider that there are "any issues arising because of this lack of the requirement for a host DGS to offer topping up to EU branches." The answers received were as follows:

- 25 respondents stated that there are no issues arising from no requirement for a host DGS to offer topping up to EU branches.
- 8 respondents from 8 Member States reported that some issues might arise if topping up is not an option. The main issues that these respondents indicated stem from the fact that the DGSD has not reached full harmonisation. Therefore, there are still differences in the protection between Member States, i.e. the scope and coverage level of THBs, differences stemming from currency fluctuations when calculating the maximum compensation limit in different currencies, and also the scope of coverage, as there are differences in the interpretation of the concept of a deposit between Member States (in some jurisdictions some products may be covered on a national basis while in other Member States they are not covered).

132. The responses to the survey in this area and subsequent discussions by representatives from authorities suggest that the majority of respondents consider topping up not to be causing significant issues that could distort the level playing field between Member States. On the other hand, for a minority of respondents, further harmonisation would be needed to avoid any level playing field issues, whereas some respondents consider that the harmonisation of THBs is more important than harmonisation in relation to topping up.

Options to address the identified issues

133. Given the main findings stemming from the responses to the survey and further discussions with the relevant authorities, there was no reason to consider further the need for an amendment of the DGSD regarding:

- the current coverage level;
- the currently applicable options for the currency of repayment.

In both cases, the only option considered by the EBA was that the DGS framework should continue unchanged.

134. The EBA also considered if the topping up issue should be analysed separately from the adequacy of the coverage level. As topping up is used only in three Member States, the EBA considered that it is unlikely to be creating any level playing field issues. It was therefore decided that there was no reason and no clear need to consider further whether or not to amend the DGSD to regulate topping up.

Conclusions

135. The quantitative and qualitative analyses in relation to the coverage level show that the current coverage level of EUR 100 000 is adequate and therefore no changes to the DGSD seem necessary.

136. The analysis of the currently applicable options for currency of repayment in relation to the coverage level included in the DGSD indicates that they seem adequate and there is no need for an amendment of the DGSD.

3.5 Current list of exclusions from eligibility

137. Based on the responses to the survey sent to the DGSDAs and DGSs, the EBA considered that the majority of the respondents have encountered issues when applying the provisions of Article 5(1) of the DGSD with regard to deposits that are excluded from eligibility. The four exclusions from eligibility that respondents identified as causing the most confusion are those related to:

- financial institutions and investment firms (including the link to the provisions on persons absolutely entitled to the sums covered in more detail in Section 3.6);
- pension schemes and public authorities;
- deposits the holder of which has never been identified;
- coverage of deposits at EU credit institutions' branches in third countries.

3.5.1 Financial institutions and investment firms

Legal basis and background

138. Article 5(1) of the DGSD provides an exhaustive list of cases excluded from any repayment by a DGS. In particular:

- Article 5(1)(a) excludes from any repayment the deposits made by other credit institutions on their own behalf and for their own account;
- Article 5(1)(d) excludes from any repayment the deposits by financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
- Article 5(1)(e) excludes from any repayment the deposits by investment firms as defined in point (1) of Article 4(1) of Directive 2004/39/EC.

Methodology, data sources and their limitations

139. The survey circulated to the DGSDAs and DGSs included five questions related to the list of exclusions from eligibility. Two of these questions are relevant to the exclusion of deposits made by financial institutions and investment firms.

Main findings, issues identified and the analysis

140. The responses to the first two questions of the survey relevant to this section are reported together below, given that the respective answers are often related and cross-referenced. The first question asked if participants had “encountered issues when applying the provision regarding exclusions from eligibility as per Article 5(1) of the DGSD”, whereas the second one asked if “Since the implementation of the revised DGSD” respondents had “faced any [...] issues

with any of the definitions”. The answers in relation to Article 5(1)(d) and (e) on investment firms and financial institutions were as follows:

- 21 respondents from 17 Member States reported that they had not encountered issues with regard to these two exclusions from eligibility of deposits in the DGSD.
- 12 respondents from 9 Member States reported that they have encountered issues either when applying the provision regarding exclusions from eligibility with regard to financial institutions and/or investment firms, or with these definitions. The most important issues identified by respondents with regard to financial institutions and investment firms were the following:
 - Whether an undertaking can be classified as a financial institution (as defined in Regulation No 575/2013 (Article 4(1)(26)) only based upon its principal activity or it is sufficient if one or more of the activities of an undertaking relate to those activities listed in points 2 to 12 and point 15 of Annex I of Directive 2013/36/EU. If the former, undertakings perform various activities and it is difficult to distinguish which of them is the principal activity.
 - If all holding companies (irrespective of whether the holdings in question relate to undertakings in or outside the financial sector) qualify as financial institutions (as defined in Regulation No 575/2013 (Article 4(1)(26))).
 - In Article 5(1)(a) the DGSD specifically considers the possibility that an account with a credit institution is in the name of another credit institution but other persons are absolutely entitled to the sums held in that account (Article 7(3) of the DGSD). Similar references are not included in relation to accounts with credit institutions in the name of other excluded entities, even though other (eligible) persons are absolutely entitled to the sums held in an account.

141. The survey results showed that the exclusions of financial institutions and investment firms seem to be causing interpretation issues for DGSDAs and DGSs and to have created issues in real-life cases in the past.

142. The EBA considered if, with regard to Article 5(1)(d) and (e), there is a need for more clarity on:

- the application of Article 7(3) on absolute entitlement in those cases where the account is in the name of an excluded entity (the issue applies to all excluded entities but has particular relevance for financial institutions and investment firms) — this issue is covered further in Section 3.6.3 of this report;
- the definition of financial institutions as defined in Regulation No 575/2013.

Options to address the identified issues

143. In relation to the application of the provisions on absolute entitlement, further analysis and proposals are outlined in Section 3.6.3 of this report.
144. In relation to the definition of financial institutions, in this opinion the EBA did not consider options to address the identified issues because the issue is beyond the scope of the DGSD and it could be addressed only within Regulation No 575/2013 or Directive 2013/36/EU.

Conclusions

145. The EBA considered that no change is needed in the DGSD with regard to the definition of financial institutions and investment firms, other than those necessary in general for excluded entities in the context of absolute entitlement (see Section 3.6.3).

3.5.2 Pension schemes and public authorities

Legal basis and background

146. Article 2(4) of the DGSD defines ‘eligible deposits’ as deposits that are not excluded from protection pursuant to Article 5 of the DGSD.
147. Article 5(1) of the DGSD provides a list of exclusions from coverage, such as any deposits by:
- pension and retirement funds (subparagraph (i));
 - public authorities (subparagraph (j)).
148. Article 5(2) of the DGSD provides that, by way of derogation from the provisions of Article 5(1) of the DGSD, “Member States may ensure that the following are included up to the coverage level laid down in Article 6(1):
- (a) deposits held by personal pension schemes and occupational pension schemes of small or medium-sized enterprises;
 - (b) deposits held by local authorities with an annual budget of up to EUR 500 000.”

Methodology, data sources and their limitations

149. The survey circulated to the DGSDAs and DGSs included two questions related to the following categories of deposits, which are excluded from DGS coverage:
- i) personal pension schemes and occupational pension schemes of small and medium-sized enterprises (SMEs);
 - ii) local authorities with an annual budget of up to EUR 500 000.

Main findings, issues identified and the analysis

150. The first question in this section asked DGSDAs and DGSs if “they include in the coverage personal pension schemes and occupational pension schemes of small and medium-sized enterprises.” The responses received were as follows:

- 23 respondents from 19 Member States reported that they do not include in the coverage personal pension schemes and occupational pension schemes of SMEs. Among them, 1 respondent explained further that it covers only small self-administered pension schemes.
- 10 respondents from 7 Member States reported that they cover these schemes.
- 1 respondent reported that it covers only personal pension schemes but not occupational pension schemes.

151. The second question in this section asked participants if they include in the coverage local authorities with an annual budget of up to EUR 500 000. The answers received were as follows:

- 24 respondents from 20 Member States do not include in the coverage local authorities with an annual budget of up to EUR 500 000;
- 10 respondents from 7 Member States reported that they cover these authorities, or would cover them if there were any.

Exclusion of public authorities from coverage

152. With regard to the issue of excluding public authorities, the EBA considered:

- issues stemming from the difficulties with defining which authorities are public, and their legal structure;
- whether such authorities should continue to be excluded or not.

153. With reference to the definition of a public authority, the EBA concluded that the legal structure and/or classification of an authority may not always allow an easy determination of whether a particular entity is a public authority or not. Some respondents also highlighted that different language versions of the DGSD seem to convey different meanings of what is a public authority: in some instances the term used clearly relates to governmental authorities, as is the case in the official German translation of the DGSD, while other official language versions, including the English one, do not seem to provide such a narrow interpretation.

154. With reference to whether or not public authorities should be covered, the EBA considered the pros and cons of removing them from the list of exclusions from coverage. The EBA considered the following arguments in favour of extending coverage to deposits made by public authorities:

- Notwithstanding the issues with the definition, in at least some Member States, public authorities include entities such as hospitals, schools and municipal services such as swimming pools, which are not sophisticated investors, and so should not be considered akin to investment firms or financial institutions, which are currently also excluded from coverage. The EBA considered that, if deposits made by corporates are covered, deposits by public authorities should be covered too.
- It is operationally easier to cover deposits made by public authorities because of:
 - the difficulties with defining what a public authority is;
 - when the option to include local authorities is exercised:
 - the difficulty in defining what ‘local authority’ means,
 - the difficulty in assessing whether that authority’s budget is or is not below EUR 500 000 as prescribed in Article 5(2) of the DGSD.

Therefore, including public authorities would decrease the administrative costs for credit institutions and the EU DGSS.

- In the event of failure of a credit institution, and public authorities losing their funds, there might be an impact on financial stability, particularly given that the introduction in the BRRD5 of depositor preference for eligible depositors and ‘superpreference’ for covered deposits — as determined by the DGSD — means that public authorities are now more at risk of losing their funds in insolvency or being bailed in in resolution, owing to their weaker position in the creditor hierarchy.
- The increase in covered deposits from such an amendment in the DGSD would probably be immaterial because the number of public authorities should not be high in comparison with the total number of depositors, and the coverage per public authority per credit institution will be limited to EUR 100 000, notwithstanding that the amount of eligible deposits of public authorities might be higher. This reflects a similar argument that was applied to support the extension of eligibility from only SMEs to all enterprises, which was introduced in the recast DGSD.

155. The EBA also considered the following arguments against offering DGS protection to public authorities:

- public authorities’ funds may already be guaranteed by the state and there is no need to offer them additional coverage by the DGS;

⁵ [Directive 2014/59/EU](#)

- public authorities should be able to make informed decisions about where to place their deposits, unlike individual depositors;
- treating public authorities more favourably than those that are not covered (generally financial institutions) creates an advantage for the public authorities — this may be an issue, for example, where there are state-owned banks;
- it may create moral hazard issues if public authorities become aware of actions of authorities in relation to a particular credit institution;
- without a more thorough analysis of the numbers of public authorities that would be brought within the scope of the DGSD's coverage, it is difficult to determine whether or not such an extension of coverage would have a material impact on the creditor hierarchy.

Exclusion of personal pension schemes and occupational pension schemes of small and medium-sized enterprises from coverage

156. With regard to personal pension schemes and occupational pension schemes of SMEs, the EBA considered potential cross-border issues stemming from different treatment of certain pension schemes whereby one Member State allows their coverage and another one does not. It discussed if in such cases the need for top-up coverage could arise.

Options to address the identified issues

Exclusion of public authorities from DGS coverage

157. In relation to the issue of including public authorities in the scope of DGS protection, the following options were considered:

- i. maintain the current provisions of the DGSD;
- ii. amend the DGSD so that the current Article 5(1)(j), which prescribes that 'deposits by public authorities' are excluded from coverage, is deleted and, therefore, such deposits are covered by a DGS;
- iii. amend the DGSD to clarify the definition of a public authority;
- iv. amend the DGSD to allow Member States to decide whether to include public authorities in the scope of coverage by a DGS or not.

158. The EBA considered that maintaining current provisions is suboptimal given the seeming inconsistency of covering deposits by large corporates and not covering deposits by public authorities, which would in most cases be very small, and potential implications of public authorities losing funds. The EBA also considered that defining what a public authority is would be difficult given different legal structures across Member States, and it may not achieve the desired effect. Finally, in order to ensure harmonisation and disincentivise public authorities from shopping for coverage in branches of credit institutions from Member States that cover

public authorities, the EBA considered that flexibility for Member States would not be appropriate. Based on the arguments raised in previous section and in an attempt to introduce further harmonisation in this area, which will ensure a level playing field and maintain financial stability, the EBA considered that option ii, which extends coverage to public authorities, seems to be the most appropriate. However, the EBA also notes that further analysis of the impact of such an extension of coverage, based on the number of public authorities that would be captured, may be warranted.

Exclusion of personal pension schemes and occupational pension schemes of small and medium-sized enterprises from coverage

159. In relation to the issue of offering DGS coverage to personal pension schemes and occupational pension schemes of SMEs, given the main findings stemming from the responses to the survey, and further discussions with the relevant authorities, there was no reason to consider further if there is a need to amend the DGSD, or propose changes by any other means. The option considered was not to amend the DGSD regarding this matter and, hence, to keep the current provisions included in the DGSD, without any amendments.

Conclusions

Exclusion of public authorities from DGS coverage

160. The analysis and the subsequent discussions with regard to the issue of public authorities show that an amendment of the DGSD may be appropriate. Such an amendment to the DGSD could extend DGS coverage to deposits made by public authorities with no need to differentiate between such authorities based on their budget. With this amendment, all deposits made by public authorities would be covered by DGSs. However, the EBA notes that further analysis of the impact of such an extension may be warranted.

Exclusion of personal pension schemes and occupational pension schemes of small and medium-sized enterprises from coverage

161. The analysis in relation to personal pension schemes and occupational pension schemes of SMEs shows that, at this stage, no changes to the DGSD seem necessary. There also seems to be no need to provide any further guidance or advice using other instruments.

3.5.3 Deposits the holder of which has never been identified

Legal basis and background

162. Article 5(1)(f) of the DGSD provides that “deposits the holder of which has never been identified pursuant to Article 9(1) of Directive 2005/60/EC (Anti-Money Laundering Directive (AMLD)), when they have become unavailable” are excluded from coverage.

163. Article 9(1) of Directive 2005/60/EC (since then replaced by Article 14(1) of Directive 2015/849) states that “Member States shall require that the verification of the identity

of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction.”

Methodology, data sources and their limitations

164. The survey circulated to the DGSDAs and DGSs did not include any questions in relation to the issue of deposits the holder of which has never been identified.

165. The EBA considered examples of real-life cases in which credit institutions have not identified their customers pursuant to Article 14(1) of Directive 2015/849 (replacing Article 9(1) of Directive 2005/60/EC) despite the requirement to do so, and the consequences such significant shortcomings may have on depositors should the relevant authority determine that deposits are unavailable.

Main findings, issues identified and the analysis

166. The EBA considered current provisions in Article 5(1)(f), which exclude ‘deposits the holder of which has never been identified pursuant to Article 9(1) of Directive 2005/60/EC, when they have become unavailable’, as this article has caused issues in real-life contingency planning in some Member States, and in real-life cases in which credit institutions have not performed their duties in relation to the identification of depositors.

167. The EBA considered arguments that the current provisions of Article 5(1)(f) of the DGSD are very rigid, which can create the following issues:

- there is a possibility that, through no fault of the depositor and purely because of a failure of the credit institution to identify the customer in line with relevant AMLD provisions, that depositor would automatically be excluded from repayment should that credit institution fail, with no opportunity for the depositor to prove their identity and, on that basis, become entitled to a payout;
- the failings of a credit institution’s identity checks may lead the relevant administrative authorities to try to avoid the determination of unavailability of deposits, or try to delay such a determination, to avoid affecting such depositors in an adverse way.

168. The EBA considered:

- If flexibility should be introduced to ensure that depositors who through no fault of their own have never been identified, because of shortcomings in the credit institution’s due diligence, are not automatically excluded from repayment. Current provisions of the DGSD could be too rigid and could potentially have a serious adverse impact on depositors, who could lose the right to repayment of their funds, and seek to redress the situation through a potentially lengthy insolvency procedure.
- If the necessary identity checks that should have been performed could still be performed after the determination that deposits are unavailable, and so if such cases could be

treated in a similar way to cases in which it is uncertain whether or not a depositor is entitled to receive repayment and where the possibility of a deferral is currently envisaged in the DGSD.

- Who should perform these additional checks and what these checks may include. The EBA considered arguments that DGSs might currently lack the capacity and expertise to perform detailed know-your-customer (KYC) and AML checks. The EBA considered that such checks should be performed by the insolvency practitioner or the authorities best placed to do them, but did not reach a final view on which authority this should be, partly because the designation of such responsibilities should also be studied from other perspectives such as the requirements laid down in AML regulations.

169. The EBA considered these issues, while aware of the serious risks of obliging the DGS to make funds available to depositors that have never been identified and, potentially, could be engaging in money laundering or terrorist-financing activities.

170. The EBA considered that any flexibility should strike the right balance between ensuring that depositors do not lose the right to the repayment through no fault of their own and, at the same time, that funds are not repaid to depositors that have not been adequately identified and verified in line with the applicable AMLD provisions.

Options to address the identified issues

171. The EBA considered that current provisions in the DGSD are too rigid and that, in the light of the arguments presented in the section above, the Directive should be amended to avoid the automatic exclusion of depositors who have never been identified through no fault of their own. The other option was to do nothing. That option was considered suboptimal because, even though the number of cases in which depositors have never been identified is likely to be low, the adverse impact it may have on depositors is significant. Any amendment would need to be aligned with other requirements stemming from the AMLD, and it would need to be accompanied by the necessary safeguards to avoid a case in which anonymous and unidentified depositors are repaid.

172. Secondly, the EBA considered which authorities should perform the necessary identity checks before funds are made available to such depositors: the DGSs or the relevant AML authorities (understood as the authorities responsible for such checks under the AMLD). The EBA considered arguments raised in previous section and considered the option of introducing the flexibility for DGS to make funds of depositors who have never been identified available to them, subject to any necessary checks under the DGSD and AMLD, to be performed by the insolvency practitioner or the authorities best placed to do such checks.

173. Finally, the EBA considered that any amendment to avoid the automatic exclusion of depositors who have never been identified through no fault of their own would also apply to similar circumstances for persons who are absolutely entitled to the sums held in account. Here, it could be that the credit institution relied on the account holder to ensure that those persons

were identified (as explicitly acknowledged by Article 7(3) of the DGSD through the phrase ‘or is identifiable’) but shortcomings in the account holder’s actions lead to a situation in which those absolutely entitled persons have not been identified.

Conclusions

174. The analysis and the subsequent discussions with regard to the issue of depositors who have never been identified show that an amendment of the DGSD is necessary. The amendment should introduce the flexibility for DGSs to make funds of depositors who have never been identified through no fault of their own available to them, subject to any necessary checks under the DGSD and AMLD, to be performed by the insolvency practitioner or the authorities best placed to do such checks. The revised DGSD text should be aligned with other requirements such as those stemming from the AMLD, and it would need to be accompanied by the necessary safeguards to avoid a case in which anonymous and/or unidentified depositors are repaid.

3.5.4 Coverage of deposits at EU credit institutions’ branches in third countries

Legal basis and background

175. Article 15 of the DGSD states that:

“Member States shall check that branches established in their territory by a credit institution which has its head office outside the Union have protection equivalent to that prescribed in this Directive.

If protection is not equivalent, Member States may, subject to Article 47(1) of Directive 2013/36/EU, stipulate that branches established by a credit institution which has its head office outside the Union must join a DGS in operation within their territories.

When performing the check provided for in the first subparagraph of this paragraph, Member states [sic] shall at least check that depositors benefit from the same coverage level and scope of protection as provided for in this Directive”.

176. The DGSD does not include provisions in relation to EU DGS coverage of branches in third countries established by a credit institution that is a member of the DGS and has its head office in the Union.

Methodology, data sources and their limitations

177. The survey circulated to the DGSDAs and DGSs included one question on this topic.

Main findings, issues identified and the analysis

178. The survey asked DGSs and DGS if they extend coverage “to deposits at branches in third countries of credit institutions that are a member of the DGS.” The responses received were as follows:

- 20 respondents from 17 Member States reported that they do not extend the DGS coverage to deposits at branches in third countries of credit institutions that are members of the DGS and have their head offices in the Union. Among them:
 - 1 respondent reported that there is no automatic coverage for member institutions but they can apply to the DGS to extend the coverage to also include deposits at branches in third countries;
 - 1 respondent clarified that such coverage is strictly prohibited by the national legislation.
- 11 respondents from 9 Member States answered that they offer such coverage to deposits at branches in third countries of credit institutions that are members of the DGS and have their head offices in the Union. Among them, 1 clarified that DGS coverage is provided to such branches by the GI DGS only where the coverage level offered by the host DGS is less than the coverage level offered in that Member State.
- 1 respondent replied that it makes such determinations on a case-by-case basis.
- 1 respondent replied that its members do not have branches in third countries.
- 2 respondents from 2 Member States responded that this provision is not applicable to them.

179. In the light of the survey results and subsequent discussions, the EBA considered if differences in the approach across the EU creates level playing field issues between EU credit institutions. The EBA also considered arguments that EU DGSs protecting branches of their members in third countries exposes the EU DGSs to risks in third countries. In that regard, the EBA considered if there should be further harmonisation by means of excluding third country branches from coverage by EU DGSs.

Options to address the identified issues

180. The only option considered was to amend the DGSD in order to harmonise the treatment of such third country branches of EU credit institutions by excluding those deposits from coverage by EU DGSs. The EBA considered that this option will limit the DGSs' exposure to the risks as outlined in the previous section.

Conclusions

181. The analysis and the subsequent discussions with regard to the issue of EU DGSs protecting deposits in EU credit institutions' branches in third countries show that an amendment of the DGSD is appropriate. The amendment should ensure that deposits in these branches are not protected by an EU DGS of which the EU credit institution is a member.

3.6 Eligibility

3.6.1 Definition of deposits

Legal basis and background

182. In Article 2(1)(3) of the DGSD a deposit is defined as “a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit.” According to Article 2(1)(3) a credit balance does not fall within the protective framework of the DGSD where:

“(a) its existence can only be proven by a financial instrument as defined in Article 4(17) of Directive 2004/39/EC of the European Parliament and of the Council), unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014;

(b) its principal is not repayable at par [or]

(c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party.”

183. Article 7(7) of the DGSD provides that “Interest on deposits which has accrued until, but has not been credited at, the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or a judicial authority makes a ruling as referred to in point (8)(b) of Article 2(1) shall be reimbursed by the DGS. The limit referred to in Article 6(1) shall not be exceeded.”

184. Article 4(17) replaced by Article 4(1)(15) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MIFID II), in conjunction with Section C of Annex I of Directive 2004/39/EC (repealed and replaced by MIFID II), lists the following, among others, as ‘financial instruments’: transferable securities, money-market instruments, options, futures, swaps and any other derivatives.

185. Article 4(1)(43) of MIFID II defines a structured deposit as a product “which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors [...]”

Methodology, data sources and their limitations

186. The survey circulated to the DGSDAs and DGSs asked three questions about the definition of a deposit.

187. The EBA also considered the findings outlined in the EFDI non-binding guidance paper ‘Covered deposits in the EU: definition and special cases’ (September 2018) and the EBA Report on cost and past performance of structured deposits published on 10 January 2019⁶.

Main findings, issues identified and the analysis

188. The first survey question in this area asked DGSDAs and DGSs if the definition of a deposit is clear in the DGSD. The answers received were as follows:

- 18 respondents from 17 Member States consider that the definition of a deposit is sufficiently clear in the DGSD. Among them, 3 respondents from 3 Member States reported that the definition of a deposit is sufficiently clear but that they have the following concerns:
 - more clarity is needed with regard to the definition of structured deposits as provided in MIFID II (2014/65/EU);
 - there is a need for additional harmonisation at EU level concerning the interpretation of the definition;
 - there are issues with in-flight transactions (i.e. transactions which have not yet been settled);
 - the interpretation of the definition of a deposit in relation to new types of services and products provided by fintech firms that have a banking licence.
- 16 respondents from 12 Member States identified issues with the definition of a deposit. The main issues reported with the definition have to do with the term ‘normal banking transactions’, the impact of negative interest rates, the treatment of accrued interest and structured deposits.

189. The second question asked respondents “What is the definition of repayment at par in your jurisdiction, if specified beyond the sole term.” The answers received were as follows:

- 28 respondents from 22 Member States reported that the term ‘repayment at par’ has not been further defined in national legislation;
- 5 respondents from 5 Member States reported that their national legislation includes a definition of ‘repayment at par’ that goes beyond the sole term in order to provide more clarity to depositors.

190. The third question asked if DGSDAs/DGSs had encountered “issues related to the definition of repayment at par and accrued interest, for example in the context of negative interest rates and the risk component of a structured deposit.” The answers received were as follows:

⁶ [EBA Report on cost and past performance of structured deposits](#)

- 16 respondents from 16 Member States reported that they did not identify any issues with the term. Among them, 3 respondents from 3 Member States did not identify any issues but did not rule out the possibility that issues may occur in future.
- 17 respondents from 12 Member States reported that they have identified issues. The most important issue highlighted by the majority of these respondents is with the interpretation and treatment of structured deposits. Other issues also reported relate to:
 - the interpretation of the definition in the case of negative interest;
 - accrued interest that has not fallen due, as it has been reported that some institutions face difficulties in determining this amount on a continuous basis;
 - lack of clarity in relation to the term ‘repayment at par’;
 - uncertainty concerning a situation in which there is positive interest to pay to a depositor from which taxes on that interest need to be paid to the State;
 - issues when applying the current definition to some Islamic/Sharia-compliant deposit-like products, where the entitlement to be repaid at par may be subject to contractual requirements.

191. The survey results and the discussions held have revealed concerns with regard to the following three issues:

- i. the definition of the deposit;
- ii. the approach to structured deposits;
- iii. eligibility of products other than structured deposits.

The definition of the deposit

192. The EBA considered two issues in relation to the current definition of a deposit:

- the meaning and purpose of the term ‘normal’ banking transaction used in the definition;
- the purpose and the rationale of Article 2(1)(3)(a) of the DGSD, which refers to the credit balance the existence of which “can only be proven by a financial instrument as defined in Article 4(17) of Directive 2004/39/EC of the European Parliament and of the Council, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014.”

193. With regard to the term ‘normal’ banking transaction, the EBA considered that the purpose of including the word ‘normal’ was unclear. The EBA considered if including this term could be

confusing and could imply that there are transactions that are abnormal. That, in turn, raised questions about which transactions are normal and which ones are not.

194. The EBA has also considered a recent European Court of Justice (ECJ) ruling under Article 267 of the Treaty on the Functioning of the European Union, which was made following a request from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decisions of 18 December 2015 (C-688/15) and 12 February 2016 (C-109/16), received at the ECJ on 21 December 2015 and 25 February 2016 respectively. The ruling provided the following clarifications of what constitutes a normal banking transaction:

“[...] 90. In their ordinary meaning, the words “normal banking transactions” refer to transactions habitually carried out by credit institutions in the course of their business.

91. In accordance with the definition that is given, in identical terms, by Article 1(4) of Directive 94/19 and by Article 4(1)(a) of Directive 2006/48 relating to the taking up and pursuit of the business of credit institutions, the activity which is characteristic of such institutions is receiving deposits or other repayable funds from the public and granting credits for their own account.

92. That said, it is not in dispute that credit institutions habitually carry out, in connection with that activity, a wide range of operations, a list of which was drawn up by the EU legislature in Annex I to Directive 2006/48. In the light of the fact that Directive 94/19 and Directive 2006/48 both apply to credit institutions and that they pursue common objectives, in particular the protection of savings and depositors, the list of activities set out in that annex is relevant for interpreting the concept of “normal banking transactions” within the meaning of Article 1(1) of Directive 94/19.”

195. With regard to the purpose of Article 2(1)(3)(a) of the DGSD, the EBA considered that certificates of deposit made out to a named person are a traditional savings product in Italy and are still issued by Italian banks. Such certificates are financial instruments issued not as a single class but to a named person and they are not subject to the prospectus requirement. Therefore they are excluded from the MIFID and so are within the scope of eligible deposits.

The approach to structured deposits

196. The survey results and subsequent discussions highlighted the current lack of clarity on the treatment of structured deposits. Given the exclusion of products for which principal is not repayable at par, there are different interpretations of whether structured deposits should be considered protected by the DGS or not. Some respondents to the survey argued that, based on the definition in MIFID II, it seems that the fixed part of a structured deposit is always fixed and so is always covered. The EBA Report on cost and past performance of structured deposits provides further interpretation, stating that, “akin to other deposits, the amount invested in [structured deposits] benefits from the protection of the national transposition of the European Deposit Guarantee Scheme Directive (2014/49/EU), which guarantees that deposits up to €100 000, or the equivalent amount in national currency, will always be repaid even if the credit

institution holding them fails.” Other respondents considered that it is not clear whether or not structured deposits are currently covered.

197. The EBA further considered if clarification needs to be provided of whether or not different components of structured deposits are covered. In particular, it considered if, other than the amount initially deposited, DGS coverage also applies to any return gained and/or interest accrued until the moment a credit institution fails. Respondents to the survey considered that this is not clear, because current provisions in the DGSD are explicit on the coverage of accrued interest, but, in the case of structured deposits, interest is not accrued; instead, gains are realised at particular moments in time.

198. The EBA considered three options in relation to the coverage of the variable component of structured deposits:

- i. provide DGS coverage only to the amount initially deposited;
- ii. cover the amount that has been credited to the depositor up to the point when the relevant administrative or judicial authority determines the deposit to be unavailable;
- iii. cover the full value of the deposit including any interest or premiums at a certain point in time, irrespective of whether or not interest has already been credited to the depositor.

Eligibility of products other than structured deposits

199. When analysing the survey responses, the EBA considered if there is a potential lack of clarity and consistency between Member States in relation to the current approach to coverage of different products and how to treat them in the light of the current definition of a deposit, which dates back to the original DGSD from 1994.

200. To understand current practices better, the EBA circulated a new survey, which included a table of products based on the discussions held with authorities, in order to do a stocktake of the current approaches across the EU. Respondents reported how the different products in the list are currently treated in their jurisdictions.

201. The results of the survey show that the treatment of certain products is not harmonised in the EU, and in particular there are differences in the approach to the coverage of:

- funds on prepaid credit cards and chip cards;
- (crypto)currencies;
- cash collaterals;
- brokered deposits;

- accounts opened by depositors as a collateral of their own liabilities to the bank (these accounts are not available until the liability exists);
- deposits collected via digital platforms (fintech);
- clearing positions.

202. The EBA also considered that some new innovative products or services offered by credit institutions with deposit-like characteristics raise questions in relation to the definition of a deposit. Furthermore, the EBA considered that the precise scope and the application of the exclusion of deposits non-repayable at par remain unclear. Some examples include deposits with potentially negative interest, or Islamic/Sharia-compliant deposit-like products, where the entitlement to be repaid at par may be subject to contractual requirements.

Options to address the identified issues

203. Given the main findings stemming from the responses to the survey and further discussions with the relevant authorities, the following options were considered:

Definition of deposits

204. It was considered whether or not the definition of a deposit in the DGSD should be amended to delete the word 'normal' from the term 'normal banking transactions' for the reasons outlined in previous section. The other option was to do nothing. The EBA considered that such an amendment would be warranted despite the ECJ ruling that provided some clarity in this regard.

205. With regard to Article 2(1)(3)(a) of the DGSD and in light of such products still being issued in Italy, the only option considered was to do nothing.

206. More broadly, given differences in the treatment of different products, and the fact that new innovative products will appear that raise questions about the definition of a deposit, the EBA considered whether there is a need to make the definition of a deposit more detailed or more principles-based, or it should be kept as it is. The EBA considered that an exhaustive list of products would not be achievable and so would not be desirable. The EBA also considered that the current definition is sufficiently wide, issues with treatment of different products may not stem directly from the definition itself, and it could not be guaranteed that a different definition would provide clarity in relation to each product and each case.

207. The EBA considered whether or not the definition of a deposit in the DGSD should be amended to move towards a more principles-based definition that would be more robust in the light of future changes within the banking business and innovative products and services appearing on the market with deposit-like characteristics. The EBA took into account arguments that this might be necessary to ensure that banking products and services are treated equally between Member States and DGSs and to avoid possible distortions of the level playing field.

Finally, the EBA considered arguments that the current definition of a deposit is already principles-based and, therefore, there is no immediate need to amend it.

Structured deposits

208. The EBA considered how to provide further clarity in relation to the treatment of structured deposits. The EBA considered that a reference in this report to the definition in Article 4(43) of MIFID II, and to the EBA report on structured deposits, could provide more clarity to the relevant stakeholders. The EBA considered arguments that additional clarity on structured deposits is necessary and would be beneficial both for the depositors but also for the credit institutions.

209. The EBA considered if there is merit in clarifying in the DGSD whether the amount covered in structured deposits is restricted to the amount initially deposited or it also includes any return gained and/or interest accrued until the moment on which the credit institution fails.

Eligibility of products other than structured deposits

210. Despite a lack of clarity in relation to the treatment of certain products, and different treatments of certain products between Member States, the EBA considered that the issue itself is not directly related to the definition of deposit, which is sufficiently clear. For that reason, the option considered was not to amend the DGSD in this respect.

Conclusions

211. The EBA considered that the DGSD should be amended in order to remove from the definition of a deposit the word ‘normal’ in relation to banking transactions;

212. The EBA considered that the Commission should assess further the need to provide clarity in relation to the treatment of structured deposits, including cases where they may yield negative returns, considering the options outlined in this report, their pros and cons, and the materiality of structured deposits as outlined in the EBA Report on cost and past performance of structured deposits published on 10 January 2019.

3.6.2 Joint accounts

Legal basis and background

213. Article 7(1) of the DGSD provides that “The limit referred to in Article 6(1) shall apply to the aggregate deposits placed with the same credit institution irrespective of the number of deposits, the currency and the location within the Union.”

214. The first two subparagraphs of Article 7(2) of the DGSD provide that “The share of each depositor in a joint account shall be taken into account in calculating the limit provided for in Article 6(1). In the absence of special provisions, such an account shall be divided equally among the depositors.”

215. The third subparagraph of Article 7(2) of the DGSD provides that “Member States may provide that deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, may be aggregated and treated as if made by a single depositor for the purpose of calculating the limit provided for in Article 6(1).”

Methodology, data sources and their limitations

216. The survey circulated to the DGSDAs and DGSs included two questions in relation to joint accounts.

Main findings, issues identified and the analysis

217. The first question in the survey asked respondents if they find the “definition of a joint account sufficiently clear in the revised DGSD.” The responses received were as follows:

- 32 respondents from 25 Member States reported that the definition of a joint account was sufficiently clear.
- 2 respondents from 2 Member States reported that the definition of a joint account needs to be clarified. In particular:
 - One respondent mentioned that additional clarity could be provided with regard to what is meant by the phrase “or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons.”
 - One respondent mentioned that it is unclear to it because the definition seems to include accounts requiring the joint signature of all holders. However, on the other hand, Article 7(2) provides that “accounts to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, may be aggregated and treated as if made by a single depositor for the purpose of calculating the limit provided for in Article 6(1).” In some cases, such as undivided ownerships where the joint signature of all holders is required, it is not clear if an account qualifies as a joint account (with a multiple guarantee limits) or an account within the meaning of Article 7(2) (with a single limit).

218. The survey then asked respondents if, following the revision of the DGSD, they faced any issues in relation to the treatment of joint accounts. The responses received were as follows:

- 21 respondents from 19 Member States reported no specific issue with the treatment of joint accounts since the revision of the DGSD.
- 10 respondents from 7 Member States mentioned a series of actual or potential issues, such as:

- Potentially different interpretations of the definition of a joint accounts in different Member States. This concern does not seem to be material given that nearly all respondents consider the definition to be sufficiently clear.
- Issues with deceased depositors who hold a joint account.
- Application of THBs to joint accounts.
- Blocked accounts/depositors.
- Set-off against the deposits of one of the co-owners of the account.
- Issues with deposits that are pledged, i.e. rental deposits, and to whom they belong.
- Lack of clarity in relation to the special provisions mentioned in Article 7(2) of the DGSD in the context of bilateral agreements between the depositors of which the credit institutions might not be aware.

219. The EBA considers that, based on the responses to the survey, the current definition of ‘joint accounts’ is sufficiently clear. The EBA considers that the potential issues identified by respondents with regard to the treatment of joint accounts in some specific circumstances do not warrant further clarifications and should be assessed by the DGS on a case-by-case basis.

Options to address the identified issues

220. In relation to the issue of joint accounts given the main findings stemming from the responses to the survey, and further discussions with the relevant authorities, there was no reason to consider further if there is a need to amend the DGSD, or propose changes by any other means. The option considered was not to amend the DGSD regarding this matter and, hence, to keep the current provisions included in the DGSD, without any amendments.

Conclusions

221. The analysis in relation to the issue of joint accounts shows that, at this stage, no changes to the DGSD seem necessary. There also seems to be no need to provide any further guidance or advice using other instruments.

3.6.3 Absolute entitlement to the sums held in an account

Legal basis and background

222. Article 2(1)(6) of the DGSD defines the ‘depositor’ as “the holder or, in the case of a joint account, each of the holders, of a deposit.”

223. Article 7(3) of the DGSD provides that “Where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on

which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or a judicial authority makes a ruling referred to in point (8)(b) of Article 2(1). Where several persons are absolutely entitled, the share of each under the arrangements subject to which the sums are managed shall be taken into account when the limit provided for in Article 6(1) is calculated.”

224. Article 8(5)(a) provides that the repayment may be deferred where “it is uncertain whether a person is entitled to receive repayment [...].”

Methodology, data sources and their limitations

225. The survey circulated to the DGSDAs and DGSs included two questions related to the absolute entitlement to the sums held in an account and the identification of accounts which might contain an absolute entitlement for other persons than the person in whose name the account is (beneficiary accounts).

226. Following the discussions with the relevant authorities, an additional survey on the matter was circulated on 15 March 2019. The survey included five questions on this topic, of which the first four were related to the identification of persons absolutely entitled to the sums held in an account and the last one to the calculation of contributions based on beneficiary accounts.

Main findings, issues identified and the analysis

227. The first question in the survey asked if in the view of the respondents it is sufficiently clear in the DGSD what is meant by “where the depositor who is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee.” In general, this provision relates to beneficiary accounts where the account holder holds money in account on behalf of or for the purpose of third parties who are absolutely entitled to these sums. The answers received were as follows:

- 17 respondents from 11 Member States reported that the definition is not clear or could be clearer. In particular, it is not clear whether or not the definition applies to particular account holders such as investment firms and financial institutions (including payment institutions) when they place deposits with a credit institution on behalf of their clients.
- 17 respondents from 16 Member States answered that the definition is clear.

228. The second question on this subtopic asked respondents if following the revision of the DGSD in 2014 they “faced any issues in relation to the treatment of beneficiary accounts.” The answers received were as follows:

- 19 respondents from 14 Member States faced such issues. In particular, respondents reported issues regarding:
 - the identification of the persons who are absolutely entitled;

- when this identification should take place;
 - who should be reimbursed in the event of payout (the account holder or the persons absolutely entitled) and the implications this could have for determining the level of compensation.
- 15 respondents from 14 Member States reported that they did not face any issues.
229. To understand this topic better, as mentioned in the methodology section of this subtopic, the EBA circulated an additional survey consisting of five questions on the matter on 15 March 2019.
230. The issues identified by the respondents to the survey fall under separate headings:
- i. information about beneficiary accounts, necessary to:
 - a) identify the persons absolutely entitled and when this identification should take place,
 - b) correctly calculate the contributions to DGS;
 - ii. the link between Article 7(3) and Article 5(1) and potential lack of clarity on the treatment of sums held in accounts where the account holder is excluded from eligibility but where the persons absolutely entitled to the sums held in an account are eligible for protection by the DGS;
 - iii. who should be reimbursed in the event of payout (the account holder or the persons absolutely entitled).
231. These issues are relevant considering that beneficiary accounts are widely used and take various forms across Member States.

Identifying the person absolutely entitled to the sums held in an account

232. With regard to identifying persons who are absolutely entitled to the sums held in an account, a survey within a subset of EU DGSs showed that:
- currently, DGSs follow different practices about the time when the person who is absolutely entitled to the sums held in an account is identified, in line with the flexible requirement in the DGSD that the person has been identified or is identifiable before the date on which the repayment by the DGS was triggered;
 - all respondents who identify absolute beneficiaries on an on-going basis have reported that they do so through the Single Customer View (SCV) file;
 - those respondents that identify absolute beneficiaries only in the event of payouts reported that they collect this information from the account holder or the liquidator;

- most respondents do not actively collect information on persons absolutely entitled in accounts in credit institutions placed by other credit institutions, financial institutions, investment firms, insurance and reinsurance undertakings, and collective investment undertakings.

233. The EBA considered further arguments about why the identification of absolutely entitled persons by the DGS in the case of payout and/or the credit institution in normal business times is often challenging. Firstly, for operational reasons, credit institutions may not know who the absolutely entitled persons are and — where KYC requirements would allow this — only know the identity of the account holder. In addition, the absolutely entitled persons might be unaware of the credit institution where their funds have been placed, and this may be known only by the account holder. Moreover, in some cases only the account holder can prove that the absolutely entitled person was identified or could have been identified before the deposits were unavailable. In the event of a payout, this lack of information affects the possibility of identifying the absolutely entitled person on the basis of information in the records of a credit institution. Furthermore, there may be rapid changes in the composition of beneficiaries in such accounts, which makes accurate identification even more difficult.

Calculating contributions

234. With reference to the calculation of contributions:

- When the information about the persons who are absolutely entitled to the deposits is available (this may differ from account to account), respondents with practical experience reported that in their jurisdictions they calculate contributions by incorporating the absolute entitlement amounts in the covered deposits of each such person in the SCV file up to EUR 100 000.
- When information about the persons absolutely entitled to the deposit and their shares is not available (this may differ from account to account), the answers from respondents with practical experience varied. Some take the total amount of deposits in the account into consideration when calculating contributions, while others take only EUR 100 000 into account and consider the amount above that not covered for the purpose of the calculations.

235. It was considered whether or not the use of different approaches in relation to the two issues mentioned above and the divergences of approaches applied by national designated authorities and DGSs affect the level playing field issues and can lead to uneven treatment of credit institutions that have such accounts, depending on the jurisdiction. Lack of harmonisation in this area affects the covered deposits base used for the calculation of contributions and therefore it could create level playing field issues.

Relationship between absolute entitlement and exclusion of depositors

236. Responses to the survey highlighted that there is a potential lack of clarity on the link between Article 7(3) and Article 5(1). This relates to the treatment of sums held in accounts where the account holder is excluded from eligibility but the persons absolutely entitled to the sums held in the account are eligible for protection by the DGS. In other words, it is unclear whether or not the see-through approach applies in such cases.
237. Article 5(1)(a) of the DGSD in relation to deposits made by credit institutions specifically considers the possibility that an account is in the name of a credit institution but other persons are absolutely entitled to the sums held in an account (i.e. Article 5(1)(a) is related to Article 7(3) of the DGSD). This reference is not included in relation to other entities, where the account is in the name of, for example, a financial institution or investment firm, even though other (eligible) persons are absolutely entitled to the sums held in that account.
238. Responses to the survey show that the issue has a particular relevance to deposits placed by investment firms and financial institutions (including payment institutions and e-money institutions) with credit institutions on behalf of or for the purpose of their clients.
239. As a starting point for this analysis, the EBA identified the following considerations:
- In the past, in connection to the funds placed by investment firms with credit institutions on behalf of their clients, the Commission services took the view that provisions in Article 7(3) of the DGSD apply where the depositor is in fact the customer of a bank or a firm, then the depositor can be eligible directly, if the money was deposited at their name [or] indirectly, [...] if they are absolutely entitled to the funds and they are identified or identifiable by the time of determination of unavailability. The criterion of the “absolute entitlement” is not defined and must be resolved under national law. On this basis, Article 7(3) of the DGSD serves to identify the real holder of a deposit where the latter is in fact different from the disclosed owner. Consequently, if the deposit is above EUR 100 000 and several persons are absolutely entitled, the DGS should pay each absolutely entitled person’s share applying the EUR 100 000 limit to every such person.
 - Q&A 2015_2452, published by the EBA on 1 July 2016, states that “A deposit (or part of a deposit) received from financial institutions on behalf of clients who are natural persons and SMEs who are the absolutely entitled in the meaning of Article 7(3) Directive 2014/49/EU (DGSD), benefits from depositor preference”, and only eligible deposits benefit from depositor preference.
 - The wording of Article 5(1)(a) and Article 7(3) of Directive 2014/49/EU was already included in the first DGS Directive (94/19/EC)⁸. However, the exclusions from repayment by a DGS set out in Articles 5(1)(d), 5(1)(e) and 5(1)(g) to 5(1)(j) were incorporated for the

⁷ https://eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_2452

⁸ Article 5(1)(a) in Directive 2014/49/EU correlates to Article 2 in Directive 94/19/EC, and Article 7(3) in Directive 2014/49/EU correlates to Article 8(3) in Directive 94/19/EC.

first time in the recast of the Directive (2014/49/EU). Before that, these depositors were included in an annex to Directive 94/19/EC as optional exclusions from guarantee. This could provide a historical explanation of the difference in the wording in relation to deposits placed by credit institutions on behalf of their clients (i.e. Article 5(1)(a)) and those placed by the other entities, which are excluded from eligibility.

240. Notwithstanding these existing clarifications about the applicability of the see-through approach, and the fact that the link between Article 7(3) and the exclusions in Article 5(1) is of relevance to all excluded persons, the EBA reflected on specific arguments concerning (the desirability of) protecting deposits placed by investment firms and financial institutions (in particular, payment institutions and e-money institutions) with a credit institution on behalf or for the purpose of their clients if a credit institution fails.

241. Arguments in favour of applying the see-through approach to deposits made by investment firms and financial institutions on behalf of their clients are:

- If the see-through approach were not applied, the failure of a credit institution where funds are placed would put at risk the ability of the investment firm or financial institution to return the safeguarded money to its clients, which would probably lead to the failure of that investment firm or financial institution, raising concerns about contagion effects and financial stability.
- If the see-through approach were applied to other credit institutions but not to financial institutions or investment firms, this would create a competitive distortion disadvantaging financial institutions and investment firms. This is because, as established by Annex I of Directive 2013/36/EU, credit institutions can be licensed to offer all the services provided by financial institutions and/or investment firms, including, for example, all payment services as defined in Directive (EU) 2015/2366, trading for the account of customers, portfolio management and advice, money broking and issuing electronic money.
- Other EU legislation, for example Directive (EU) 2015/2366 on payment services in the market (PSD2), Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (e-Money Directive) and MiFID II, contains safeguarding requirements related to client money held by institutions licensed under one of these directives. In particular:
 - Related to investment firms, Article 4(1) of the Delegated Directive (EU) 2017/593 requires investment firms “on receiving any client funds, [to] promptly place those funds into one or more accounts opened with any of the following: (a) a central bank; (b) a credit institution authorised in accordance with Directive 2013/36/EU; (c) a bank authorised in a third country; (d) a qualifying money market fund”. Whereas this delegated directive requires investment firms to ensure that clients give their explicit consent to the placement of their funds in a qualifying money market fund, such

explicit consent is not required for the placement of client funds in a credit institution (Article 4(3)).

- Related to payment institutions, Directive 2015/2366 requires those institutions to safeguard all funds that have been received from the payment service users or through another payment service provider for the execution of payment transactions either (i) by ensuring that “funds shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held” or (ii) by covering the funds “by an insurance policy or some other comparable guarantee”. If a payment institution makes use of the first option, and the funds are still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds were received, “they shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets [...] and they shall be insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of insolvency” (Article 10). Given this, it is highly likely that funds held by payment institutions on behalf of payment service users will be deposited in a separate account in a credit institution.
- Related to electronic money institutions, Directive 2009/110/EC requires those institutions to safeguard funds that have been received in accordance with the requirements laid down for payment service providers outlined above (Article 7(1))⁹. Given this, it is highly likely that funds held by electronic money institutions on behalf of their users will be deposited in a separate account in a credit institution.

From this it follows that the safeguarding requirements within PSD2, MiFID II and the e-Money Directive are aimed at protecting the funds of the clients, users or holders. Not applying the see-through approach to the separate accounts set up by investment firms, payment institutions or electronic money institutions, if the credit institution where the separate account is held fails, would have the consequence that the safeguarded funds are not accessible any more due to the failure of the credit institution. This would damage the protection offered to the clients, users or holders.

- In relation to investment firms, the EBA considered further arguments that the compensation offered by investor compensation schemes pursuant to Directive 9/97/EC (ICS Directive) would not be applicable to the inability of a credit institution to return client funds to an investment firm that safeguarded these funds in a segregated account with the credit institution. This is because the investor compensation scheme must provide coverage for only claims arising out of the inability of the investment firm itself to repay money owed to or belonging to investors and held on their behalf in connection with investment business (Article 2(2)). Therefore, applying the see-through approach fills

⁹ Article 7(1) of Directive 2009/110/EC refers to Article 9(1) and (2) of Directive 2007/64/EC. These articles correlate with Article 10(1) and (2) of Directive 2015/2366, which repealed and replaced Directive 2007/64/EC.

a gap that would exist otherwise in the safeguarding requirements for investment clients. The EBA also took note of the fact that Directive 9/97/EC has established that “no claim shall be eligible for compensation more than once under [the ICS Directive and DGSD].”

- In its judgment in joined cases C-688/15 and C-109/16, the ECJ concluded that “Claims relating to funds which were debited from accounts that individuals held with a credit institution and credited to accounts opened in that institution’s name, in respect of subscription to future transferable securities, of which that institution was to be the issuer, in circumstances where owing to that institution’s insolvency those securities were ultimately not issued, fall within [...] the deposit-guarantee schemes provided for by Directive 94/19.” This ruling also has relevance to the current DGS Directive, because there are similar definitions of deposits and absolute entitlements. Although the judgment relates to investment services offered by a credit institution, it clarifies that the see-through approach needs to be applied for funds that are safeguarded in the context of investment services to clients, especially because a deposit opened by and within the credit institution in its own name would by definition be excluded from the DGS if it were not for the application of the article on absolute entitlement.

242. The EBA considered the following issues in relation to the application of the see-through approach to such cases:

- In relation to investment firms and financial institutions, depending on the pay-out approach applied, the DGS would either (i) pay out to the holder of the account — i.e. the investment firm or financial institution — based upon the eligibility and coverage of the persons absolutely entitled to the sums held in the account or (ii) pay out directly to the persons absolutely entitled to the sums held in the account (who would then subrogate their claim on the sums that they are absolutely entitled to). The latter approach would affect the contractual relationship between the investment firms or financial institutions and their clients. As a consequence, directly paying out to the persons absolutely entitled to the sums held in the account endangers the continuity of the business of the institution that safeguarded the money on behalf or for the purpose of its clients¹⁰. It could ultimately even lead to the failure of that firm or institution.
- On the other hand, while from the perspective of the continuity of the investment firm or financial institution there is a clear issue with directly paying out to the persons absolutely entitled, the issue is not solved by not applying the see-through approach (i.e. not compensating such depositors at all), because in that case both the clients, users or holders and the investment firms or financial institutions would lose access to the funds after the failure of the credit institution.
- Specifically in relation to investment firms, the EBA considered an argument that, while acknowledging the existing requirement for investment firms to safeguard clients funds

¹⁰ Note that this is an operational issue that applies to all types of accounts where money is safeguarded on behalf of clients, for example segregated accounts opened for the clients of notaries or law firms.

under Delegated Directive (EU) 2017/593, in conjunction with some of the services and activities offered by investment firms (see Annex I of Directive 2014/65/EU), the purpose of these funds generally is or was to be invested rather than kept as a deposit.

- Specifically in relation to payment institutions and e-money institutions, electronic money and funds received in exchange for electronic money are not considered to be deposits (as per recital 29 of the DGSD and, in relation to funds received by electronic money institutions, Article 6(3) of the EMD). This relates to the relationship between the electronic money institution and its users.

At the same time, funds placed by the electronic money institution with a credit institution to meet the safeguarding requirements to support the money-like features of electronic money are deposits. This relates to the relationship between the credit institution and the electronic money institution.

The EBA considered observations that the lack of clarity in the DGSD could create an impression of a tension between e-money not being a deposit and the fact that e-money issued must be 'deposited' with a credit institution in order to safeguard the funds (as per recital 14 of the EMD). As a consequence, there is a risk that the complexity of interpreting the interaction between this set of regulations (PSD2, EMD, DGSD) could lead to different policies between DGSs, which could in turn lead to different interpretations of the interaction between Articles 5(1)(a) and 7(3) of the DGSD.

In the same vein, any funds received by payment institutions from payment service users with a view to the provision of payment services do not constitute deposits (Article 18(3) of PSD2) — this relates to the relationship between a payment service institution and its users — while the relationship between the credit institution and the payment service institution leads to a deposit when these funds are safeguarded in this way.

243. Finally, it should be noted that any clarifications of whether or not such deposits are covered can lead to changes in the current approach to the eligibility for coverage applied by particular DGSs in practice. For those DGSs, it may have an impact on the amount of DGS contributions to be paid by the credit institutions. The amounts placed with a credit institution by an investment firm or a financial institution on behalf of its clients may be substantial.

Options to address the identified issues

244. In relation to the identification of the persons absolutely entitled to the sums held in an account, it was considered whether or not the DGSD would need to be amended in order to harmonise the approach followed to identify the person who is absolutely entitled to the deposit, also requiring that the identification of this person is performed on an on-going basis by the credit institution. The other option considered was to do nothing and maintain current flexibility in the DGSD. On balance, given the arguments for and against harmonisation outlined in previous section, and in particular significant operational challenges, the EBA considered that there is no need to propose an amendment to the DGSD.

245. In relation to the calculation of DGS contributions related to the beneficiary accounts, the EBA considered if the DGSD would need to be amended and/or an EBA product would be useful in order to reach harmonisation in this area. In particular, it was considered whether or not further harmonisation could be introduced by making it the default option that the whole amount in such an account is taken into account when calculating contributions, but, if institutions collect more information about the shares of each depositor, they then need to calculate contributions in accordance with those updated and accurate data. The EBA considered if there is a need for such harmonisation, in the light of the potential level playing field issues and considering that the aim of the DGSD is also to eliminate market distortions and to contribute to the completion of the internal market. The other option was to do nothing, and conclude that there is no need to harmonise the approach to the calculation of contributions in relation to such accounts, as this has a limited effect on the level playing field. On balance, the EBA considered that there is no immediate need to address the issue of the calculation of contributions for the accounts whose holder is not absolutely entitled to the sums, but this topic may be revisited in the next review of the EBA guidelines on methods for calculating contributions to deposit guarantee schemes

246. Given the main findings related to the lack of clarity on the link between Article 7(3) and Article 5(1), the EBA considered whether or not an amendment to Article 5(1) of the DGSD is needed in order to clarify that the see-through principle is applicable to all cases where the account holder is excluded from eligibility but where the persons absolutely entitled to the sums held in the account are eligible for protection by the DGS (and not only to deposits by other credit institutions explicitly covered by Article 7(3)). A possible amendment to the DGSD could take the form of introducing the wording currently used in Article 5(1)(a) applicable to deposits made by other credit institutions, 'on their own behalf and for their own account', to deposits made by investment firms and financial institutions as per Article 5(1)(d) and (e).

247. However, the EBA considered that, while from the depositor perspective there are strong arguments in favour of clarifying in the DGSD that deposits placed by investment firms and financial institutions with credit institutions on behalf of their clients are covered, this is a complicated issue, with interlinkages to other EU regulations and directives and of relevance to institutions that are normally not directly affected by DGSD provisions. Furthermore, the question of whether such funds are covered or not is of fundamental importance. For that reason, notwithstanding the conclusions outlined in the paragraph above, the EBA considered that further clarification in this area is needed, supported by further analysis.

Conclusions

248. With regard to the issues identified, the EBA proposes that:

- The harmonisation of the approach to the identification of the person absolutely entitled to the sums is not necessary.

- There is no immediate need to address the issue of the calculation of contributions for the accounts where the account holder is not absolutely entitled to the sums, but this topic may be revisited in the next review of the EBA guidelines on methods for calculating contributions to deposit guarantee schemes.
- The Commission should enhance clarity in the DGSD on how the see-through approach applies to deposits placed with credit institutions by account holders that are excluded from eligibility.
- The topic is complex, so further analysis may be needed of how best to formulate the wording in different pieces of EU legislation. In subsequent policy considerations concerning investment firms and financial institutions, it is recommended to take a holistic view regarding the relationship between those institutions and their clients, the related safeguarding requirements and the implications this has for DGS protection.

3.6.4 Dormant accounts

Legal basis and background

249. Article 8(5)(c) provides that the repayment may be deferred where there has been no transaction relating to the deposit within the last 24 months (i.e. the account is dormant).

Methodology, data sources and their limitations

250. The survey circulated to the DGSDAs and DGSs asked one question in regard to the deferral of repayment of dormant accounts.

251. The EFDI non-binding guidance paper ‘Covered deposits in the EU: definition and special cases’ was used as a source for further analysis of the issue of dormant accounts.

Main findings, issues identified and the analysis

252. The survey asked if DGSs had encountered “any issues related to the identification of accounts where there has been no transaction relating to the deposits within the last 24 months.” The answers to the question were as follows:

- 24 respondents from 20 Member States identified no issues related to the identification of dormant accounts.
- 6 respondents from 6 Member States identified issues related to the identification of dormant accounts. Issues identified include:
 - lack of clarity about whether the transaction has to involve some activity of the depositor (e.g. money transfer) or not (interest is credited to the account by the bank);

- some ambiguity about what this provision meant, which in the respondent's jurisdiction was solved by including a detailed definition of 'no transaction' in national legislation;
 - the impossibility for an institution to hold a register updated day-to-day where such accounts are marked;
 - the infeasibility and/or cost of identifying such accounts; the investment needed to make this identification possible defies the purpose of the provision.
- 2 respondents from 2 Member States did not answer this question directly. One of them reported that there is no commonly applied bank standard for dormant accounts as different banks could have different policies in this regard whereas the other one stated that this is something deposit firms are expected to check as part of their SCV requirements.

253. While the vast majority of respondents did not face any issues with the identification of dormant accounts, a minority of respondents would find it useful to define what kind of deposits fall under this provision. The DGSD does not provide a clear description of circumstances under which an account may be considered dormant, apart from the general approach of an absence of transactions within the last 24 months. This ambiguity may create challenges for credit institutions when they have to mark accounts as dormant. More specifically, the credit institution may need to examine, on a regular basis and/or at the point when deposits are determined to be unavailable, whether a transaction with regard to the deposit involved active steps taken by the depositor (placing deposits, taking cash out, paying using the account, or bank transfers) or only passive changes (e.g. payment of interest, account being charged for administrative costs or regular bank fees).

254. The EBA considered the potential rationale for the deferral of a payout of dormant accounts and considered that this provision might be helpful to DGSs, as they can focus on repaying 'non-dormant' accounts in the first instance. This may be helpful, especially since in some cases such accounts constitute a significant proportion of all accounts despite holding a tiny fraction of the total covered deposits in an institution.

255. Based on the results of the survey, and the EFDI non-binding guidance on the definition of deposits, the EBA considered further the drawbacks of this provision, such as the administrative burden and high costs that the implementation of this provision imposes on credit institutions. The EBA also considered cases where a depositor has multiple accounts, one of which is dormant and the other(s) is/are not. While the DGSD is silent on cases in which a depositor has multiple accounts, the EBA considered the argument that it seems sensible to repay one sum aggregating both accounts, rather than to treat one deposit as active and the other as dormant.

Options to address the identified issues

256. Given the main findings stemming from the responses to the survey and further discussions with the relevant authorities, in relation to the potential deferral of payout in relation to such accounts, it was considered whether or not there is merit in proposing to remove such a deferral to avoid the need to flag such deposits. The other options was to maintain current provisions, as they allow the DGS to focus on paying out 'active' depositors first and potentially defer the payout of dormant accounts. On balance, the EBA considered that the benefits of current provisions outweigh the drawbacks, so there is no need to amend the DGSD or propose changes to Article 8(5)(c) by any other means .

257. However, the EBA also considered if there was merit in proposing to amend Article 8(5)(c) of the DGSD in order to clarify that where a depositor has multiple accounts, one of which is dormant and the others are not, the aggregate amount stemming from all the depositor's accounts is considered jointly, in the interest of the depositor.

Conclusions

258. EBA considers that, based on the analysis in regard to the deferral of repayment of dormant accounts provided for in Article 8(5)(c) of the DGSD:

- there is no need for the DGSD to be amended so that the possibility of deferring the payout of dormant accounts is removed;
- however, there is merit in amending Article 8(5)(c) of the DGSD so that it is clarified that, where a depositor has multiple accounts and at least one is non-dormant, all the amounts should be aggregated and the aggregated amount should be made available before the deadline envisaged in Article 8(1) of the DGSD.

3.6.5 Administrative cost threshold

Legal basis and background

259. Article 8(5)(c) of the DGSD provides that the repayment may be deferred where there has been no transaction relating to the deposit within the last 24 months (the account is dormant).

260. Article 8(9) of the DGSD provides for the exclusion from any repayment of deposits where there has been no transaction relating to the deposits within the last 24 months and the value of the deposit is lower than the administrative costs that would be incurred by the DGS in making such a repayment.

Methodology, data sources and their limitations

261. The survey circulated to the DGSDAs and DGSs asked one question in regard to the administrative cost threshold.

Main findings, issues identified and the analysis

262. The survey asked what is the value of the administrative costs that would be incurred by the DGS in making such a repayment, and if DGSs encountered any issues related to the identification of accounts where there has been no transaction relating to the deposits within the last 24 months. The answers to the question were as follows:

- 15 respondents from 13 Member States reported that this was neither defined in national legislation nor determined in advance and that an ad hoc decision based on the value of the administrative costs in relation to a given payment would be assessed to determine this value;
- 5 respondents from 4 Member States reported that this amount is set at zero, as they consider that the cost of identifying and implementing such an administrative threshold is higher than the cost of reimbursing these depositors;
- 8 respondents from 8 Member States reported that the administrative cost thresholds set by the DGSs range from EUR 0 to EUR 10;
- 4 respondents from 1 Member replied that the DGSDA set the administrative value at EUR 20;
- 1 respondent reported that the administrative cost threshold is EUR 100.

263. The EBA considered what was the rationale for:

- the DGSD seemingly not allowing DGSs to repay accounts whose contents amount to less than the administrative costs and where no transactions relating to the deposit took place in the last 24 months;
- treating accounts where no transactions took place within the last 24 months differently from other accounts below the administrative threshold.

264. The only potential benefit the EBA could identify was to ensure that DGSs do not incur costs higher than their administrative costs. However, if this was the rationale and the main benefit of the restriction, it is unclear why it then applies only to accounts where there have been no transactions in the last 24 months. The EBA then considered if the costs associated with the need for the credit institutions to mark such accounts would not outweigh any operational benefits that marking them could offer to the DGS. The EBA took note of the solution applied in some jurisdictions whereby the administrative cost is set at zero to ensure that the DGS can repay such depositors. Finally, the EBA considered if full flexibility to set the threshold at any level would not disadvantage depositors in one Member State in comparison with other Member States, particularly given that responses to the survey show that one Member State set the threshold at a significantly higher level than other Member States.

Options to address the identified issues

Flexibility irrespective of the administrative threshold

265. Given the main findings stemming from the responses to the survey and further discussions with the relevant authorities, the EBA considered the following five options to ensure that DGSs could repay deposits irrespective of the amount and the transactions in the account in the previous 24 months:

- i. maintain the current provisions of the DGSD as they are;
- ii. amend Article 8(9) of the DGSD to allow DGSs to repay dormant accounts irrespective of the administrative cost incurred;
- iii. amend Article 8(9) of the DGSD to allow DGSs to decide not to repay deposits below a certain threshold for the administrative cost incurred, irrespective of the dormancy of the account;
- iv. amend Article 8(9) of the DGSD to allow DGS to decide not to make the amount available to the depositor if it is below a certain threshold, irrespective of the dormancy of the account, unless the depositor requests the DGS to make the amount available;
- v. delete Article 8(9) of the DGSD and require the DGSs to repay everyone irrespective of the dormancy of the account and any administrative costs incurred.

266. Table 5 outlines the treatment of different depositors under current provisions of the DGSD and under each of these three option outlined above, assuming that the administrative cost threshold is set at EUR 20 in a given Member State.

Table 5: Treatment of depositors in different circumstances in case of bank failure under current provisions of the DGSD, and under four additional options

Assumption that the administrative threshold is EUR 20	Depositor with EUR 10 in the account, non-dormant	Depositor with EUR 10 in the account, dormant	Depositor with EUR 30 in the account, non-dormant	Depositor with EUR 30 in the account, dormant
i) Maintain current provisions of the DGSD as they stand	Paid	Not paid	Paid	Paid
ii) Amend Article 8(9) of the DGSD to allow DGSs to repay dormant accounts irrespective of the administrative cost	Paid	Could be paid when currently cannot be paid	Paid	Paid
iii) Amend Article 8(9) of the DGSD to allow DGSs to decide not to repay deposits below a certain threshold for the administrative cost incurred irrespective of the dormancy of the account	May be paid but also may not be paid	May be paid but also may not be paid, whereas currently would not be paid	Paid	Paid
iv) Amend Article 8(9) of the DGSD to allow DGSs to decide not to make the amount available to the depositor if it is below a certain threshold for the administrative cost incurred irrespective of the dormancy of the account, unless the depositor requests the DGS to make the amount available	Paid automatically, or on request	May be paid but also may not be paid, unless requested	Paid	Paid
v) Delete Article 8(9) of the DGSD and require the DGS to repay everyone irrespective of the dormancy of the account and any administrative cost	Paid	Paid	Paid	Paid

267. The EBA discussed the following points:

- maintaining the current text of Article 8(9) of the DGSD as it stands (option i)) is not optimal, as it unnecessarily constrains the DGS's ability to repay certain depositors, or requires them to look for the indirect solution of setting the administrative cost at zero, if they want to be able to repay such depositors;
- deleting Article 8(9) of the DGSD (option v)) is also not optimal, as it would require a DGS to make the amount available to the depositor irrespective of the amount and dormancy

of the account, which in some instances, and depending on the payout method, could generate a high cost for little or no benefit to the depositor (e.g. if there are many ‘unclosed’ accounts with tiny amounts).

268. The EBA then considered the less rigid options and their respective pros and cons:

- Option ii) gives the DGSs flexibility to repay inactive depositors but does not allow them not to repay accounts with tiny amounts.
- Option iii) provides full flexibility to the DGSs, which would help to limit operational costs for the DGS, but would also allow DGSs not to repay depositors who would be repaid under current provisions in the DGSD. Furthermore, not repaying such depositors could simply postpone the issue, to be dealt with in the insolvency proceedings.
- Option iv) provides full flexibility to the DGSs to repay all depositors, or to set an administrative cost threshold and not to take active steps to make the amount available to the depositors below such a threshold, but at the same time does not take away the depositors’ right to the repayment of their funds, if they request it.

269. On balance, the EBA considers that option iv) strikes the right balance between allowing DGSs to repay all depositors and setting an administrative cost threshold to limit operational costs, but without taking away depositors’ ability to claim their funds.

Administrative cost threshold

270. While option iv) ensures that all depositors would have the right to claim their deposits, the EBA considered if there was a need to:

- set a harmonised, quantitative administrative cost threshold or
- introduce principles-based wording requiring the administrative cost threshold to be adequately low and justifiable, and communicated ex ante to the depositors in the information sheet.

271. The EBA considered that there is little merit in setting a harmonised administrative cost threshold, as this would differ between Member States depending on the payout method and other factors. On the other hand, the EBA considered that setting a threshold at a level that could be seen as high could limit depositor’s trust in the DGS protection and create unnecessary confusion, and could have financial stability implications. For that reason, on balance, the EBA considered that the DGSD should specify that this administrative cost threshold, if established, must be sufficiently low and justifiable, and communicated ex ante to the depositors in the information sheet.

Conclusions

272. The EBA considers that the DGSD should be amended to:

- allow DGSs to repay depositors irrespective of the amount of funds in their account and the dormancy of the account;
- allow DGSs to set an administrative cost threshold below which they would be allowed not to take active steps to make the amount available to the depositor, but depositors would have the right to receive their funds upon request;
- specify that the administrative cost threshold must be sufficiently low and justifiable, and communicated ex ante to the depositors in the information sheet.

3.7 Depositor information

3.7.1 Information provided to depositors in the standardised information sheet

Legal basis and background

273. Article 16(1) of the DGSD prescribes that “Member States shall ensure that credit institutions make available to actual and intending depositors the information necessary for the identification of the DGSs of which the institution and its branches are members within the Union. Member States shall ensure that credit institutions inform actual and intending depositors of the applicable exclusions from DGS protection.”

274. Article 16(2) of the DGSD provides that “Before entering into a contract on deposit-taking, depositors shall be provided with the information referred to in paragraph 1. They shall acknowledge the receipt of that information. The template set out in Annex I shall be used for that purpose.”

275. Article 16(3) of the DGSD prescribes that “Confirmation that the deposits are eligible deposits shall be provided to depositors on their statements of account including a reference to the information sheet set out in Annex I. The website of the relevant DGS shall be indicated on the information sheet. The information sheet set out in Annex I shall be provided to the depositor at least annually.

The website of the DGS shall contain the necessary information for depositors, in particular information concerning the provisions regarding the process for and conditions of deposit guarantees as envisaged under this Directive.”

276. Article 16(8) provides that “If a depositor uses internet banking, the information required to be disclosed by this Directive may be communicated by electronic means. Where the depositor so requests, it shall be communicated on paper.”

Methodology, data sources and their limitations

277. The survey circulated to the DGSDAs and DGSs included one question related to the information provided to the depositor.

278. The respondents were asked “Have you made any substantial changes to the informative leaflet included in Annex I of the revised DGSD? If yes, what changes were made and what was the rationale for these changes”. Of the 30 responses to the question on the information sheet included in Annex I of the revised DGSD:

- 24 respondents from 23 Member States reported that they have not made any substantial changes to the template;
- 6 respondents from 4 Member States replied that they have applied the following changes:

- included contact details of the credit institution,
- added supplementary information and/or clarification (e.g. on institutional protection schemes).

Main findings, issues identified and the analysis

279. Although few issues have been identified in the survey, the EBA considered whether or not the information provided to depositors could be improved, including if the template in Annex I (the information sheet) could be clearer. More specifically, the EBA considered if there is merit in proposing amendments to the format, the content and the frequency of the information provided to depositors.

Format

280. On the format of the information sheet, the EBA discussed:

- If the provision of information could be simplified and more flexibility in the use of communication channels should be permitted to adapt to different methods that depositors use to interact with their credit institution (e.g. an application on a mobile phone or a website). The EBA considered the arguments raised by relevant authorities that the template may be too rigid and not suitable to all possible ways that customers use to open bank accounts and interact with their credit institution. More specifically, a rigid table as prescribed in Annex I may not be suitable to interaction using mobile devices with small screens, which is becoming increasingly popular. For that reason, some flexibility in the format of the information provided may be warranted.
- If the information sheet should be retained as an annex to the DGSD, as it was argued that this makes it rigid and difficult to amend if changes are considered necessary in the future. The EBA considered the arguments raised by relevant authorities that the content and the form of the information sheet could be outlined not in the Directive itself, but in a separate legal instrument, such as EBA guidelines or EBA draft technical standards to be adopted by the Commission, which may be easier to amend in the future without the need to reopen the whole Directive.

281. The EBA also considered arguments in favour of retaining the information sheet as an annex to the Directive, which ensures that the form is consistent across the EU, and follows the same approach as in relation to information sheets in other EU directives. These arguments are in line with the provisions of recital 43 of the DGSD, which provides that information with regard to the DGS coverage and the responsible DGS must be provided to all depositors and the content of such information should be identical for all depositors. This could minimise risks associated with financial stability. A counterargument considered by the EBA was that the case for full harmonisation is not as strong as in relation to products where the information sheet is used by a customer to find out key features of a given product and make decisions on that basis — in such cases full harmonisation allows customers to easily compare products. In relation to the

information sheet in the DGSD, the depositor is not expected to choose a product or a credit institution based on the information in the sheet, because, by design, the most important features of deposit protection are harmonised in the EU. A depositor is highly unlikely to be comparing the information sheets on deposit protection in relation to different accounts to decide which credit institution to choose.

282. On balance, the EBA considered that the benefits of allowing more flexibility in the format of the information sheet outweigh the concerns outlined in the paragraphs above.

Content of the information sheet

283. The EBA then considered whether or not the content of the current information sheet is adequate. In general, the EBA considered that the content is adequate, but small improvements could be considered. More specifically, the EBA considered the following potential amendments:

- If the contact details included in the information sheet should be those of the credit institution rather than those of the DGS, but there should also be a link to the DGS website or that of the DGSDA included as additional information. The arguments in favour of such an amendment were as follows:
 - In DGSs' experience, the vast majority of calls and queries they receive following the distribution of the information sheet are addressed to the credit institution and only the credit institution, with access to individual accounts' data, can answer them. This is because depositors get in touch to understand their particular situation, and not merely general provisions on depositor protection.
 - It could also be argued that such an amendment would be more consistent with current provisions in Article 16 of the DGSD which requires the credit institution to provide the depositor with the information sheet, and not the DGS or the DGSDA. However, the EBA considered whether it would be appropriate to leave it entirely up to the credit institutions to provide depositors with answers or there should be a role for the DGSDA or the DGS to provide credit institutions with assistance to ensure consistency and relevance. It was considered that some guidance from DGSs/DGSDAs to the credit institution could be considered, as it would further strengthen the supervisory tasks of the DGSs or DGSDAs with regard to the provision of information by the credit institutions.
- If the acknowledgement of receipt of this information by the depositors is causing a burden for the DGS and/or the institution and could be removed.
- If the wording in the information sheet could be clearer and more user-friendly. Relevant authorities reported that the current text of the information sheet can cause misunderstandings on the part of depositors. A key concern with the current wording was that it was not sufficiently clear that the information sheet is for information purposes only, and DGSs reported that depositors often consider receiving the information sheet

as a sign that an institution has failed and that they need to request that their funds be reimbursed. The EBA considered that the information sheet should more clearly state what its purpose is.

284. The EBA considered that, based on current experience, such small amendments should be proposed.

Frequency of information provided

285. With regard to the provision to inform depositors on an annual basis, the EBA considered whether or not it is beneficial to depositors to maintain the cycle of informing depositors each year. It was argued that, to build confidence and trust among depositors, it is of utmost importance to increase and/or maintain public awareness on depositor protection. It was also argued that there is room for a more tailor-made approach to inform depositors. Some authorities argued that the dissemination of the information sheet on an annual basis confuses depositors and is not helpful, while others expressed the view that this annual communication with depositors creates an opportunity to increase depositors' awareness of the DGS and its provisions, so it is useful.

286. The EBA considers that maintaining regular updates is beneficial, but that flexibility in how the annual update is provided may be useful.

Options to address the identified issues

287. Given the main findings stemming from the responses to the survey, and further discussions with the relevant authorities, the need to amend the DGSD was considered by the EBA. In an attempt to address the various issues mentioned above with regard to the information sheet included in Annex I of the DGSD, amending the DGSD in the following ways was considered:

- i. In relation to the content and format, the EBA considered if Annex I should be removed from the DGSD in favour of a more flexible approach to the information sheet, such as specifying the relevant information requirements in EBA guidelines or draft technical standards. The DGSD could then still contain the set of elements to be included in the information sheet, but the content and format could be further specified within a set of EBA guidelines or draft technical standards as a separate EBA product. Arguments in favour of such an amendment are that the current content and format make the information sheet rigid and difficult to amend if changes are considered necessary in the future. Moreover, the inclusion of the information sheet in technical standards would further increase harmonisation across Member States, as they do not need further implementation and ensure a level playing field.
- ii. In relation specifically to the content of the information sheet, the EBA considered that small improvements outlined in the previous section could be introduced to the annex

(should it remain as an annex in the DGSD), or could be introduced in a separate EBA product if the legislators agreed with the EBA's proposal above.

- iii. In relation to how often information about DGS protection should be provided, the EBA considered whether or not the DGSD should be amended in order to alter the frequency and hence the current requirement for an annual update.

Conclusions

288. The EBA considers that the current approach to informing depositors could be improved in the following ways:

- Annex I to the DGSD could be amended in favour of a more flexible approach to how to specify the information that the depositor should receive, making use of other legal instruments such as EBA guidelines or EBA draft technical standards to be adopted by the Commission. The DGSD should list only the set of essential elements to be included in the information sheet (based on what is currently included), while EBA guidelines or draft technical standards could further specify that information and the format.
- The information sheet currently provided to depositors, set out in Annex I to the DGSD, should be amended to:
 - include the details of the credit institution as a first point of contact for information on the content of the information sheet and include its contact details (address, telephone, e-mail, etc.) while retaining the link to the relevant DGS's website in the information sheet;
 - remove the requirement for acknowledgement of receipt by the depositor;
 - clearly highlight the purpose of the information sheet.
- The information sheet could include further information relevant to the depositors, including on relevant provisions concerning temporary high balances, the application of set-off, and other relevant information. The EBA considers that the DGSD should not be amended with regard to how often information about DGS protection should be provided, and that the current requirement for an annual update should be retained.

3.7.2 Information provided to depositors when there are certain changes to the credit institutions and the right to withdraw eligible deposits without incurring any penalties

Legal basis and background

289. Article 16(6) of the DGSD provides that "In the case of a merger, conversion of subsidiaries into branches or similar operations, depositors shall be informed at least one month before the operation takes legal effect unless the competent authority allows a shorter deadline on the grounds of commercial secrecy or financial stability.

Depositors shall be given a three-month period following notification of the merger or conversion or similar operation to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits including all accrued interest and benefits in so far as they exceed the coverage level pursuant to Article 6 at the time of the operation.”

290. Article 16(7) of the DGSD provides that “Member States shall ensure that if a credit institution withdraws or is excluded from a DGS, the credit institution shall inform its depositors within one month of such withdrawal or exclusion.”

291. Article 16(8) provides that “If a depositor uses internet banking, the information required to be disclosed by this Directive may be communicated by electronic means. Where the depositor so requests, it shall be communicated on paper.”

Methodology, data sources and their limitations

292. The survey circulated to the DGSDAs and DGSs included one question related to Article 16(6) of the DGSD and issues participants faced in practice.

Main findings, issues identified and the analysis

293. The respondents were asked if they had “experienced any issues in the application of Article 16(6)”, if it was “applied in all cases” and how respondents acted “to ensure that depositors above the coverage level are informed about the right to withdraw their funds without a penalty.” The responses received were as follows:

- 16 respondents from 12 Member States reported that the obligation to provide information applies primarily to credit institutions.
- 7 respondents from 7 Member States reported that they have not faced any issues in the application of Article 16(6).
- 5 respondents from 4 Member States stated that they have no supervisory powers or responsibility in this respect.
- 5 respondents from 5 Member States indicated that based on their experience they consider that there is room for improvement. In particular, respondents suggested that it should be considered:
 - If the timeframes could be more flexible, in particular where it might not be possible to send information to depositors at least a month in advance of a merger, conversion of subsidiaries into branches or similar operations.
 - If there is a need to retain the provision in Article 16(6) of the DGSD that states that “In the case of a merger, conversion of subsidiaries into branches or similar operations, depositors shall be informed at least one month before the operation takes legal effect

unless the competent authority allows a shorter deadline on the grounds of commercial secrecy or financial stability.”

- When depositors who lose protection because of a change of circumstances of an institution should be made aware of such changes and if they should be able to remove only the amount of deposit that loses protection. In particular, it was argued that currently it is possible for depositors to remove amounts that were ‘eligible’ but not covered before the events outlined in Article 16(6). The respondents argued that, if the depositor is taking the risk of having uncovered deposits with a credit institution before the merger, conversion of subsidiaries into branches or similar operations, they should not benefit from being able to withdraw the whole deposit without incurring a penalty (where such a penalty would otherwise apply) because of one of the events outlined in Article 16(6).
- 1 respondent stated that it never encounters such events and it has therefore no practical experience of the matter.
- 1 respondent replied that when it experienced such an event the only action it took was to publish the relevant information on its website.

294. Based on the survey results and the subsequent discussions between the relevant authorities, two main issues have been identified with regard to the provisions of Article 16(6), (7) and (8). The two topics are the following:

- i. withdrawal or transfer of eligible deposits without incurring any penalties;
- ii. informing depositors about changes in their credit institution.

Withdrawal or transfer of eligible deposits without incurring any penalties

295. The EBA discussed the need to provide more clarity with regard to the provisions of the second subparagraph of Article 16(6), which prescribes that depositors must be given a 3-month period following the notification mentioned in the first subparagraph of the article to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits including all accrued interest and benefits in so far as they exceed the coverage level at the time of the operation. In particular, the following elements were considered:

- If the current provisions allow depositors to take advantage of insignificant events, such as the legal integration of a tiny credit institution that is a subsidiary into a much larger parent credit institution, to withdraw their deposits without penalty irrespective of the contractual obligations, and pursue a better deal elsewhere. This raises the possibility of a potentially insignificant event leading to a significant outflow of deposits, especially from corporates.

- If it is possible for depositors to remove ‘eligible’ deposits even above the covered amount. The EBA considered whether or not a depositor who is taking the risk of having uncovered deposits with a credit institution before one of the events envisaged in Article 16(6) should benefit from being able to withdraw the whole deposit without incurring a penalty. To illustrate this case, the EBA considered an example in which a depositor had EUR 150 000 at credit institution A and EUR 200 000 at credit institution B, and credit institution A merged with credit institution B. The EBA considered whether in this instance, the depositor should be allowed to withdraw only EUR 100 000 (as this is the amount of protection that has been lost) or EUR 250 000 (the amount that is not covered), without incurring any penalty. This issue was previously analysed by the Commission, which considered, in the second DGSD transposition workshop on 18 July 2014, that the depositor should be allowed to withdraw the entire amount exceeding EUR 100 000 in the new credit institution (i.e. EUR 250 000 out of the total EUR 350 000). The EBA considered that such an approach raises questions in relation to other scenarios, such as a case in which a depositor has EUR 350 000 at credit institution A and an account with no funds with credit institution B, and the two institutions merge. The Commission’s approach would suggest that, in this case, the depositor should be allowed to withdraw EUR 250 000 without incurring any penalty.

Informing depositors about changes in their institutions

296. The EBA also considered the need to provide clarity to the provisions in Article 16(6) of the DGSD, which states that depositors must be informed of mergers, conversions of subsidiaries into branches and similar operations. In particular, the EBA considered if proportionality should be taken into consideration when deciding which depositors should be informed.
297. The EBA considered an example of a large institution with millions of depositors that acquires a significantly smaller institution with just a few thousand depositors, in which case it is reasonable to assume that there may be no material change in the structure of the absorbing institution and no change in its risk profile. The EBA considered if it is practical and proportionate to inform all the depositors about such a merger, or if there is a way to minimise the burden on the institution while ensuring that depositors who may be affected by the event are informed.
298. The EBA considered if it would be sufficient to inform depositors with the smaller institution (as such a merger would probably matter only to depositors who have accounts with both institutions, and contacting those in the smaller institution would ensure that all potential depositors in both institutions are informed). That way, depositors with deposits in both institutions would be aware of the merger and could take appropriate steps to ensure that all their funds are still protected.

Options to address the identified issues

Withdrawal or transfer of eligible deposits without incurring any penalties

299. The EBA considered a number of options with regard to the withdrawal or transfer of eligible deposits without incurring any penalties. The EBA considered the following four options:

Option 1: Limit the application of the provision to changes in coverage of deposits (the ‘coverage gap’)

300. This option envisages that, following a merger of the two institutions, depositors with eligible deposits of EUR 150 000 in bank A and EUR 200 000 in bank B would be allowed to withdraw only the amount that lost coverage because of the merger. This means that before the merger the depositor would have a coverage level of EUR 200 000 (EUR 100 000 with bank A and EUR 100 000 with bank B). After the merger, the coverage level would decrease to EUR 100 000, resulting in a coverage gap (i.e. reduction of coverage) of EUR 100 000. Under this option, this depositor would be allowed to withdraw without incurring a penalty only a maximum amount equal to the coverage gap, that is, in this case, EUR 100 000.

Option 2: Amend the DGSD to treat the ‘coverage gap’ stemming from a merger or other operation as a THB

301. This option envisages that the amount of eligible deposits that was previously covered and following the merger exceeds the coverage level would be covered for a limited period of time (the period that applies to THBs in accordance with the provisions of the national legislation). That means that, if the depositor had EUR 150 000 in bank A and EUR 200 000 in bank B and the two institutions merged, then, for the period applicable to THBs, the depositor would be covered for EUR 200 000 (as opposed to EUR 100 000).

Option 3: Amend the DGSD to ensure that the depositor keeps the original protection for the whole duration of the term deposit

302. This option is similar to Option 2 and envisages that, following a merger of bank A, in which the depositor had EUR 150 000, and bank B, in which the depositor had EUR 200 000, the depositor would be covered until the term deposits reached maturity, at which point they could be withdrawn without incurring any penalties. This option removes the need for the depositors to move their funds to ensure coverage, and also avoids the issue of penalty fees.

Option 4: Remove the provisions from the DGSD altogether

303. This option envisages that, where such an event takes place, the aggregated amount of eligible deposits of the depositor will be considered together and the depositor will not have the option to withdraw any funds without incurring penalties. In other words, if the depositor had EUR 150 000 in bank A and EUR 200 000 in bank B and both institutions merged, then this depositor would not be allowed to withdraw any funds without incurring a penalty (where such

a penalty applies) and would be considered as having eligible deposits of EUR 350 000, of which EUR 100 000 would be covered.

Table 6: Amounts depositors can withdraw without incurring any penalties under different options

	Option 0: Maintain current provisions of the DGSD (no change)	Option 1: Limit the application of the provision to changes in coverage	Option 2: Treat the coverage gap as a THB	Option 3: Cover all previously covered deposits until term deposits reach maturity	Option 4: Remove provision
The amount the depositor can transfer without incurring any penalty when bank A (where the depositor has EUR 150 000) and bank B (where the depositor has EUR 200 000) merge	EUR 250 000	EUR 100 000	EUR 0 but for a limited time the amount previously covered would still be covered	EUR 0 but no need to transfer because full amount subject to penalties is covered	EUR 0

304. Table 7 outlines the pros and cons of the options identified by the EBA.

Table 7: Pros and cons of different options

Options	Pros	Cons
<p>1. Limit the application of the provision to changes in coverage of deposits ('coverage gap')</p>	<ul style="list-style-type: none"> ▪ Limits the option for large depositors to withdraw non-covered but eligible deposits without a penalty fee (where such a fee applies) in case of insignificant events ▪ The depositor has the right to withdraw or transfer their previously covered deposits to ensure they are still covered, while previously uncovered deposits remain uncovered ▪ Harmonised approach across the EU 	<ul style="list-style-type: none"> ▪ Provides more limited protection of deposits than the Commission's interpretation of current provisions
<p>2. Amend the DGSD to treat the 'coverage gap' stemming from a merger or other operation as a THB</p>	<ul style="list-style-type: none"> ▪ Maintains the original coverage level for a limited period 	<ul style="list-style-type: none"> ▪ Stretches the logic of current THB provisions, which are meant to cover temporarily high amounts of deposits when otherwise the depositor would not have amounts above the coverage level ▪ Creates issues in relation to the deadline applicable to THBs and the deadline when term deposits reach maturity
<p>3. The depositor to keep the original protection for the whole duration of the term deposit</p>	<ul style="list-style-type: none"> ▪ Maintains the original coverage level for the entire period of the term deposit 	<ul style="list-style-type: none"> ▪ Operationally, tracking such amounts for an extended period of time may be difficult, if not impossible ▪ It might be difficult to explain to depositors why this additional coverage would be offered for amounts above the coverage limit resulting from term deposits but not for other deposits for which no penalty is incurred upon termination
<p>4. Remove the provision</p>	<ul style="list-style-type: none"> ▪ Simple, clear and harmonised application 	<ul style="list-style-type: none"> ▪ Significant reduction of depositor protection, i.e. the change would take away depositors' right to withdraw their deposits without incurring any penalty, and thus could disadvantage some depositors

305. On balance, the EBA considers that the most appropriate option is Option 1, which limits the application of the provision to the coverage gap resulting from the event. This option eliminates the risk of depositors taking advantage of the DGSD provision in order to benefit from

insignificant events, while maintaining depositors' protection level, and ensures a level playing field.

Informing depositors about changes in their institutions

306. In relation to which depositors should be informed of mergers, conversions of subsidiaries into branches or similar operations, including cases when there is a change of DGS affiliation, the EBA considered the option of amending the DGSD in order to provide more clarity and be specific about which depositors should be informed in such cases. With regard to how such an amendment could be introduced, the following two options were considered:

- i. To inform at least the depositors who are directly affected by the change. In practice, this could mean that those informed are at least the depositors who have accounts in both institutions and the depositors of the institution that transfers its deposits to another credit institution. This option attempts to balance ensuring that relevant depositors are informed with minimising the costs to the credit institutions and minimising the risk of confusing depositors who are not affected by the change.
- ii. To inform all depositors in both institutions but in the most efficient and cost-effective manner. This can be done by electronic means and/or by incorporating relevant information about the operation into the regular, active communication banks have with their customers. Such an approach assumes that all depositors are directly and individually informed, as opposed to the credit institution using a passive, indirect way of communication such as posting information on its website and/or social media accounts or other indirect means of communication. This option allows credit institutions to send separate letters about the operation to all depositors, but does not require this information to be provided in that way. The main argument in favour of this approach is to ensure depositors' protection and confidence.

307. The EBA considered that option (ii) is preferable because it ensures that all depositors are informed and have the chance to take action based on this information, while, at the same time, credit institutions are allowed to find a cost-effective and/or environmentally friendly way to provide this information without the need to send separate letters.

308. The EBA also considered whether or not an amended DGSD should specify which depositors should be informed of their right to withdraw their funds without incurring a penalty (this goes beyond informing depositors of the change in their institution). The two options considered were the following:

- i. To inform all depositors in both institutions about the right to withdraw funds without a penalty in some cases. The benefit of this approach is that all depositors are informed. The drawback is that the right to withdraw their funds without incurring a penalty will most likely be relevant to only a tiny fraction of depositors, who have a term deposit with one or both credit institutions (because deposits in current accounts can be always

withdrawn without penalties) and whose combined deposits are above the coverage level, so informing all depositors can create confusion.

- ii. To inform at least the depositors who will lose coverage for some of their funds because of the change. This means that not all depositors in the credit institutions in the abovementioned scenarios should be informed of the right to withdraw funds without incurring a penalty, as this right will in most cases apply to relatively few depositors.

309. The EBA considered that option (ii) is preferable because it ensures that relevant depositors are informed about their rights to withdraw funds without incurring any penalty, without the need to inform those for whom it is not relevant and may cause confusion because the vast majority of deposits are not subject to any penalty fees upon withdrawal.

Conclusions

310. The EBA is of the opinion that the DGSD should be amended to specify that the application of the provision on the withdrawal or transfer of eligible deposits without incurring any penalties should be limited to changes in coverage of deposits (Option 1 in Table 6).

311. The EBA is of the opinion that the DGSD should be amended to specify that:

- All depositors in both institutions should be informed about mergers, conversions of subsidiaries into branches or similar operations, including cases when there is a change of DGS affiliation. Information should be provided in the most efficient and cost-effective manner (that is, by electronic means and/or by incorporating relevant information about the operation into the regular, active and direct communication banks have with their customers).
- At least the depositors who will lose coverage for some of their funds because of the change should be informed of their right to withdraw their funds without incurring a penalty up to an amount equal to the lost coverage of deposits. This means that, whereas all depositors should be informed of the abovementioned event, not all depositors in the credit institutions in such scenario should be informed of the right to withdraw funds without incurring a penalty, as this right will in most cases apply to relatively few depositors.

312. The EBA notes that respondents to the survey identified issues in relation to current timelines for when depositors should be informed of a merger, conversion of subsidiaries into branches or similar operations. The EBA has not considered this aspect of the current DGSD framework in detail but proposes that the Commission should take note and revisit this topic in the future.

3.8 Third country branches' DGS membership

Legal basis and background

313. Article 4(3) of the DGSD provides that “A credit institution authorised in a Member State pursuant to Article 8 of Directive 2013/36/EU shall not take deposits unless it is a member of a scheme officially recognised in its home Member State pursuant to paragraph 1 of this Article.”

314. Article 15 of the DGSD requires Member States to “check that branches established in their territory by a credit institution which has its head office outside the Union have protection equivalent to that prescribed” in the DGSD. The same article then specifies that, if protection is not equivalent, Member States may, subject to Article 47(1) of the Capital Requirement Directive (CRD) — i.e. provided that it does not result in a more favourable treatment than that accorded to branches of credit institutions having their head office in the European Union — stipulate that these branches must join a DGS in operation in their territory.

Methodology, data sources and their limitations

315. The survey circulated to the DGSDAs and DGSs did not include any questions on third country branch equivalence. However, a dedicated survey was previously circulated by the EBA in February 2018 in order to understand:

- the number of branches of third country credit institutions established in the European Union;
- the ‘home country’ of the third country branch’s head office;
- the current approaches embraced by the DGSDAs to perform the DGSD-mandated equivalence assessments of third country protection regimes.

316. Survey responses were received from 27 Member States, as well as all 3 non-EU European Economic Area countries. The survey conducted by the EBA showed that in February 2018:

- there were 74 third country branches from 23 third countries present in 15 Member States;
- 69 third country branches were members of a local DGS, either because the third country depositor protection regime was deemed to be non-equivalent or it seems that no formal equivalence assessment has been made;
- 5 branches are not members of the local EU DGS — sometimes notwithstanding the results of the assessment showing that their protection is not equivalent.

317. The survey also highlighted significant differences in the approach to equivalence assessment across Member States:

- 12 respondents have rules on the equivalence assessment stipulated by law, while 17 respondents do not;
- time to conduct the assessment ranges from a few days to 6 months, sometimes as part of the overall authorisation process;
- 19 respondents look at the coverage level as part of the equivalence assessment, while 10 respondents reported not checking the coverage level,
- 18 respondents take into account the scope of protection,
- 17 respondents look at eligibility of deposits,
- 15 respondents look at repayment deadlines,
- 8 respondents consider the reciprocity of protection.

Main findings, issues identified and the analysis

318. Based on the information outlined above, in practice, currently very few third country branches established in the European Economic Area are not members of a local EU DGS.

319. Furthermore, the survey results show that there are different approaches to the equivalence assessment, which creates a potential risk that the authorities in one Member State assess the deposit protection regime of a third country as equivalent, while the authorities from another Member States consider that same regime not equivalent. This could create level playing field issues and perceived inconsistency in the EU deposit guarantee schemes framework.

320. The EBA also considers that the current requirement to perform the equivalence assessment has the following effects:

- it requires time and effort and therefore creates costs for the national authorities, while in practice, the outcome is nearly always that the third country regime is not equivalent;
- in order to ensure that depositors in the EU who place their deposits with such a third country branch are adequately protected, the EU authorities would need to monitor changes to the third country deposit protection regime to be sure that the regime remains equivalent;
- in the event of a payout, EU customers with deposits in such third country branches would be subject to the payout method applicable in that third country, which can create operational issues for such depositors.

Options to address the identified issues

321. To address the current lack of harmonisation in relation to the equivalence assessment and ensure that depositors with deposits in third country branches located in the EU are well protected, and considering the burden of the equivalence assessment on the EU authorities, three options were considered:

- i. Maintain current DGSD provisions but harmonise further the methodology of the equivalence assessment.

This solution would have the benefit of introducing a level of harmonisation, and, depending on the content of the harmonised assessment methodology, could include checking that in a payout depositors can receive their funds as easily as they would have received them in a local payout. The disadvantage of this option is that it would not address the issue of the need to conduct a potentially costly assessment, and that it would be possible to ensure harmonisation only of the process but not of the outcome.

- ii. Amend the DGSD to remove the provisions that make it possible for third country branches to take deposits in the EU without being affiliated to a local EU DGS.

Such an amendment would ensure uniform protection offered to depositors, a harmonised approach across the EU, and less burden in terms of time and costs for the EU DGSs. It would significantly simplify the legal framework and give legal certainty and a level playing field to the protection offered to the depositors in the Union. The potential disadvantage of such an approach could be that it creates a barrier to entry for third country branches from countries where such branches would be required to be members of the deposit insurance scheme in their home country and then also be required to join a local EU DGS.

- iii. Amend the DGSD to remove the provisions that require an equivalence assessment before the relevant authorities can decide whether or not to require a third country branch to join a local DGS, but include some flexibility for the EU DGS to decide on an ad hoc basis (potentially on the basis of an equivalence assessment) not to accept a third country branch as its member.

322. In the context of the options to amend the DGSD, the EBA considered the following three cases in which a third country branch may not be required to join a local EU DGS:

- i. When a third country branch is also required to be a member of its home DGS in the third country, so requiring it to join an EU DGS would lead to double coverage. The EBA considered that, even though double coverage would not in itself be detrimental to the depositors, it could cause unnecessary confusion to the depositors so there could be merit in some flexibility in such cases. Such a decision could be made potentially on the basis of a voluntary equivalence assessment. Furthermore, flexibility in such cases could make it easier for third country institutions to set up branches in the EU.

- ii. Where the third country branch does not meet all the requirements to join the EU DGS. The EBA considered that requiring third country branches to join a local EU DGS should not be understood as implying that a branch that does not meet the requirements to join the local DGS must be accepted.
- iii. Where the licence issued to a third country branch by the relevant supervisory authority in the EU does not allow the branch to take any deposits as defined by the DGSD. The EBA considered that there is merit in specifying that, if the DGSD were amended to require third country branches to join the local EU DGS, this requirement should apply only to branches that are licensed by the relevant supervisory authority to take any deposits as defined by the DGSD.

Conclusions

323. The analysis in relation to the equivalence of protection of third country branches shows that the DGSD, and in particular its current Article 15, should be amended and replaced by provisions stipulating that branches established within the territory of Member States by a credit institution that has its head office outside the Union, and that are licensed by the relevant supervisory authority in the EU to take deposits as defined by the DGSD, must join a DGS in operation within the territory of the relevant Member States.
324. It could be considered that, by way of derogation from the above provision, some flexibility could be provided to Member States to exempt branches established within their territory by a credit institution that has its head office outside the Union from the obligation to join a DGS in operation within their territories. Such a decision could be made potentially on the basis of a voluntary equivalence assessment, and where it is absolutely necessary in order to maintain the level playing field, depositors' confidence and financial stability. If protection is not equivalent, Member States must stipulate that such branches must join a DGS in operation within their territories.

3.9 Cooperation between the EBA and the ESRB

Legal basis and background

325. Article 14(8) of the DGSD provides that the “EBA shall cooperate with the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council on systemic risk analysis concerning DGSs.”
326. Article 36(1) of the EBA Regulation states that the EBA will cooperate closely and on a regular basis with the ESRB.
327. Article 36(2) of the EBA Regulation also requires that the EBA “shall provide the ESRB with regular and timely information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or aggregate form shall be provided, without delay, to the ESRB upon a reasoned request, as specified in Article 15 of Regulation (EU) No 1092/2010. The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular information regarding individual financial institutions.”

Methodology, data sources and their limitations

328. The survey circulated to the DGSDAs and DGSs did not include questions in relation to the EBA’s cooperation with the ESRB.

Main findings, issues identified and the analysis

329. In the course of developing this opinion, EBA staff engaged with the DGSDAs and DGSs, and other relevant authorities, to seek their views on any specific products to be delivered under the general requirement for the EBA and the ESRB to cooperate on systemic risk analysis concerning DGSs. In particular, they discussed whether or not the EBA and the ESRB could agree bilaterally on the content and the timing of the systemic risk analysis concerning DGSs.

Options to address the identified issues

330. In the light of the views expressed by the relevant stakeholders, the EBA considered that there was no need to consider further an amendment to the DGSD or to the DGS framework. The option considered was not to amend and, hence, to keep the current provisions included in the DGSD and elsewhere as they are.

Conclusions

331. The EBA considers that, in relation to the current provisions on the cooperation between the EBA and the ESRB, there is no need to propose changes to the DGSD and/or to provide any further related guidance or advice. The EBA and the ESRB are in a position to agree bilaterally on the content and the timing of the cooperation on systemic risk analysis concerning DGSs.

3.10 Implications of the European Supervisory Authorities Review and amendments to other EU regulations and EU directives

Legal basis and background

332. The third subparagraph of Article 4(10) of the DGSD provides that “Based on the results of the stress tests, EBA [sic] shall, at least every five years, conduct peer reviews pursuant to Article 30 of Regulation (EU) No 1093/2010 in order to examine the resilience of DGSs. DGSs shall be subject to the requirements of professional secrecy in accordance with Article 70 of that Regulation when exchanging information with EBA.”

Methodology, data sources and their limitations

333. The survey circulated to the DGSDAs and DGSs did not include any questions with regard to the implications of the European Supervisory Authorities (ESAs) Review.

Main findings, issues identified and the analysis

334. In the course of developing this opinion, EBA considered whether or not there is a need to assess if the wording of the DGSD may need to be revised in order to align it with the terms used in the revised mandates of ESAs in the ESAs Review (as of July 2019 under negotiations in trialogues). A particular example was that the draft ESAs Review proposed removing ‘peer reviews’ from the mandate of the ESAs, to be replaced by a different wording, whereas the DGSD requires EBA to perform a peer review of DGS stress tests. Therefore, the EBA considered that, in such a case, the wording may need to be aligned.

335. The EBA also considered the need to update cross-references to other EU regulations and directives, as some of them have been amended since the adoptions of the DGSD. An example is that Article 5(1)(f) and Article 8(8) of the DGSD refer to Directive 2005/60/EC (Anti-Money Laundering Directive) which has now been replaced by Directive (EU) 2018/843.

Options to address the identified issues

336. In the light of the views expressed by the relevant stakeholders, the EBA considered the option of amending the DGSD if the term ‘peer reviews’ is replaced by a different wording in the mandate of the ESAs, to align its text with that of the ESAs Review in order to minimise the risk of inconsistencies and to eliminate possible misinterpretation.

337. The EBA also considered the need to check all the cross-references, if and when the Commission issues a proposal for a revised DGSD, to ensure that they are up to date.

Conclusions

338. The EBA considers that, in relation to the implication of the ESAs Review for work on DGSs and in order to minimise the risk of inconsistencies and to eliminate possible misinterpretation, DGSD would need to be amended should the term 'peer reviews' be replaced by a different wording in the mandate of the ESAs, to align its text with that of the ESAs Review.
339. The EBA also considers that all the cross-references to other EU regulations and directives in the DGSD should be updated in due course to avoid misinterpretation.

4. Conclusions

340. This report provides the analytical background to the proposals outlined in the EBA Opinion on the eligibility of deposits, coverage level and cooperation between DGs, and outlines a number of proposals for the Commission to consider when preparing a report on the implementation of the DGSD, and if and when it prepares a proposal for a revised DGSD.
341. To fully deliver on the mandate conferred on the EBA under Article 19(6) of the DGSD, and further outlined in the Commission's Call for Technical Advice from the EBA sent on 6 February 2019, this report should be considered by the Commission alongside two other EBA opinions and the corresponding analytical reports, on DGS payouts, and on DGS funding and uses of DGS funds, due to be published in the second half of 2019. The EBA notes that this opinion and the other two opinions aim to present an expert view from a depositor protection perspective, but do not include a thorough impact assessment from all the relevant perspectives, so, where appropriate, the EBA proposes that more analysis may be warranted.

5. Annex

List of questions in the survey relevant to the topics covered in this report

Home-host cooperation and cooperation agreements			
Question Number	DGSD Article number	Question	Answer
1	14(5)	Do you consider the EBA's role in cooperation agreements adequate or are there any areas in which you consider that the role could be expanded? If yes, please elaborate.	<i>Free text</i>
2	14(2)	In your view, what are the potential benefits and drawbacks of introducing a possibility to allow the Home DGS to repay directly depositors at branches in other Member States (i.e. departing from the current approach where Host DGS repays depositors on behalf of the home DGS)?	<i>Free text</i>
3	14(2)	In your view, are there particular circumstances or conditions under which the Home DGS could be allowed to repay directly depositors at a branch in a host Member State? (e.g. the majority of depositors at the branch are residents of the home MS or a depositor has funds both at the credit institution in the home MS and its branch in the host Member State).	<i>Free text</i>
4	14(2)	As a Home DGS, who will perform the payout in case a (foreign) depositor has deposits at multiple branches in multiple Member States?	<i>Free text</i>
5	14(2)	Does your DGS, in its capacity as a Home DGS, collect branch-level data from your member institutions for their branches in other Member States? If yes, how and which information is collected and in what frequency? If no, what are the reasons for not collecting this information?	<i>Free text</i>
6	14(2)	If your DGS collects this branch-level data, do you provide this information to your Host DGS partners? If yes, does your DGS have any experience in sharing this information with Host DGSs? If no, what are the reasons for not sharing this information with Host DGSs?	<i>Free text</i>
7		Have you experienced any issues with regard to THBs and discrepancies between Member States, e.g. in case of a cross-border payout, or in informing depositors about the applicable coverage levels?	<i>Free text</i>
<u>Additional comments:</u>		<i>Free text</i>	

Transfer of contributions

Question Number	DGSD Article number	Question	Answer
1	14(3)	Do you raise DGS contributions annually, semi-annually or quarterly?	<i>[Annually/semi-annually/quarterly/other (please specify)]</i>
2	14(3)	Does your DGS (or another authority) invoice institutions on the same day, every year?	<i>[Yes/no]</i>
3	14(3)	Do institutions pay invoices on the same day every year?	<i>[Yes/no]</i>
4	14(3)	How many days do the authorities give institutions to pay the invoices?	<i>Free text</i>
5	14(3)	Has the DGS in your Member State transferred or received contributions to/from another DGS since the implementation of the revised DGSD? If yes, have you encountered any issues during this process?	<i>Free text</i>
6	14(3)	If yes, regarding the transferred contributions, how exactly did you determine the 12-month period mentioned in the DGSD? Please provide illustrative examples (with dates as possible).	<i>Free text</i>

Additional comments:

Free text

Cooperation with stakeholders

Question Number	DGSD Article number	Question	Answer
			Do you have in place explicit information exchange MoUs or similar agreements with the following stakeholders? If yes, please explain briefly.
1	-	a) affiliated credit institutions	<i>[Yes/no/not applicable]</i> <i>Free text</i>
2	-	b) competent authorities	<i>[Yes/no/not applicable]</i> <i>Free text</i>
3	-	c) resolution authorities	<i>[Yes/no/not applicable]</i> <i>Free text</i>
4	-	d) AML authorities	<i>[Yes/no/not applicable]</i> <i>Free text</i>
5	-	e) other DGS	<i>[Yes/no/not applicable]</i> <i>Free text</i>

Additional comments:

Free text

Coverage level

Question Number	DGSD Article number	Question	Answer
1	6	What was the amount of eligible deposits held by the institutions affiliated to your DGS as of 31 December 2017? (Please provide these data in local currency and in thousands)	<i>Free text</i>
2	6	What was the number of fully covered depositors in the institutions affiliated to your DGS as of 31 December 2017?	<i>Free text</i>
3	6	What was the number of all eligible depositors in the institutions affiliated to your DGS as of 31 December 2017?	<i>Free text</i>
4	6(4)	Is your coverage level set in a currency other than Euro?	<i>[Yes/no]</i>
5	6(1)	In view of your experience with payouts and depositors' claims for reimbursement of deposits, do you think that the current coverage level is adequate?	<i>[Yes/no]</i>
6	6	Do you provide additional coverage ('topping-up') for branches of institutions established in other Member States that operate in your jurisdiction (i.e. because of differences in the coverage for THB's, the scope of DGS coverage and the level of coverage due to exchange rate adjustments)?	<i>Free text</i>
7	6	In your view, are there any issues arising because of this lack of the requirement for a host DGS to offer topping up to EU branches?	<i>Free text</i>

Additional comments: *Free text*

List of exclusions from eligibility

Question Number	DGSD Article number	Question	Answer
1	5(1)	Have you encountered issues when applying the provision regarding exclusions from eligibility as per Article 5(1) of the DGSD?	<i>Free text</i>
2	5(1)	Since the implementation of the revised DGSD, have you faced any disputes or issues with any of the definitions? Please explain briefly.	<i>Free text</i>

3	5(2)	Do you include in the coverage personal pension schemes and occupational pension schemes of small and medium-sized enterprises?	[Yes/no]
4	5(2)	Do you include in the coverage local authorities with an annual budget of up to EUR 500 000?	[Yes/no]
5	5(2)	Does coverage extend to deposits at branches in third countries of credit institutions that are a member of the DGS?	[Yes/no]
Additional comments:		<i>Free text</i>	
Eligibility			
Question Number	DGSD Article number	Question	Answer
1	7(2)	Is the definition of a joint account sufficiently clear in the revised DGSD?	[Yes/no]
2	7(2)	Following the revision of the DGSD, did you face any issues in relation to the treatment of joint accounts? Please explain briefly.	<i>Free text</i>
3	7(3)	Is it sufficiently clear in the revised DGSD what is meant by 'where the depositor who is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee'?	<i>Free text</i>
4	7(3)	Following the revision of the DGSD, did you face any issues in relation to the treatment of beneficiary accounts? Please explain briefly.	<i>Free text</i>
5	2(1)(3)	Is the definition of deposit clear in the revised DGSD? If not, please explain briefly.	<i>Free text</i>
6	-	What is the definition of repayment at par in your jurisdiction, if specified beyond the sole term?	<i>Free text</i>
7	-	Are there any issues related to the definition of repayment at par and accrued interest, for example in the context of negative interest rates and the risk component of a structured deposit?	[Yes/no]
8	8(5)(c) & 8(9)	Are there any issues related to the identification of accounts 'where there has been no transaction relating to the deposit within the last 24 months'?	<i>Free text</i>
9	8(9)	What amount has been determined by the DGS as the 'value of the administrative costs that would be incurred by the DGS in making such a repayment'?	<i>Free text</i>
Additional comments:		<i>Free text</i>	

Depositor information			
Question Number	DGSD Article number	Question	Answer
1	16(3)	Have you made any substantial changes to the informative leaflet included in Annex I of the revised DGSD? If yes, what changes were made and what was the rationale for these changes?	<i>Free text</i>
2	16(6)	In case of a merger, conversion of subsidiary into branch or a similar operation, have you experienced any issues in the application of Article 16(6), was it applied in all cases and how did you act to ensure that depositors above the coverage level are informed about the right to withdraw their funds without a penalty?	<i>Free text</i>
<u>Additional comments:</u>		<i>Free text</i>	



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