31st October 2022

AEB'S COMMENTS TO EBA'S CP ON DRAFT REVISED GUIDELINES ON DGS CONTRIBUTIONS.

GENERAL COMMENTS

QUESTION 1: DO YOU HAVE ANY COMMENTS ON THE PROPOSED CHANGES TO THE ADDRESSEES OR DEFINITIONS IN THE GUIDELINES?

We do not see the need to consider the introduction of larger number of authorities. Given that the Directive has to be transposed in each country, the transposition is the best way to adjust the "addressees" to the relevant authorities. In any case, we do not see the role for other authorities such as the macroprudential authority. It is for the competent authority and the DGS to define the contributions and whereas they might consider the macroprudential authorities' views, additional authorities should not be included in the process in a formal way. It may lead to a governance of the system for setting contributions more complex without clear advantages.

We agree with the EBA's proposal to define a "DGS intervention" as any action taken by the DGS that requires the use of DGS funds to meet its obligations to protect covered deposits in accordance with Article 11 of the DGSD.

QUESTION 2: DO YOU HAVE COMMENTS CONCERNING THE PROPOSED ALLOCATION OF RESPONSIBILITIES TO THE DGS, COMPETENT AUTHORITY AND DESIGNATED AUTHORITY IN THE GUIDELINES?

"Non-Applicable"

QUESTION 3: DO YOU HAVE ANY COMMENTS ON CHANGING THE REFERENCE FROM THE 'ANNUAL' CALCULATION OF CONTRIBUTIONS TO THE 'PERIODIC' CALCULATION OF CONTRIBUTIONS AND ON THE CLARIFICATION TO SET THE PERIODIC TARGET LEVEL IN SECTION 4.2 OF THE GUIDELINES?

Market analysts have already get used to see the impact of the contributions to the DGS in June every year and they take into consideration this event when analysing the results and when benchmarking among peers.

The possibility to calculate and raise contributions more frequently should be very limited to specific cases and should that possibility be used; the DGS should publish a statement explaining in a very clear way the reasons that have led to that decision.

Paragraph 17 of the new EBA guidelines on contributions indicates that in the event of DGS intervention and recourse to borrowing, loan repayments will be limited in time in order to maintain the available resources at least 2/3 of the target level of resources. On the contrary, the 6-year replenishment period specified in the DGSD directive should be used.

No new or more constraining requirements than those specified in the DGSD should be created, which could entail pro-cyclical effects in case of general economic stress.

QUESTION 4: DO YOU HAVE COMMENTS ON THE PROPOSED APPROACH TO ACCOUNT FOR COVERED DEPOSITS HELD IN BENEFICIARY ACCOUNTS OR OTHER DEPOSITS WHERE THERE IS UNCERTAINTY TO THE COVERAGE, AS SET OUT IN SECTION 4.3 OF THE GUIDELINES?

1. Regarding beneficiary accounts, please find below some previous considerations on some relevant points related to the issue.

   We are not putting into question the need for DGSs to cover funds deposited in beneficiary accounts. We understand and respect the European legislator's decision in this regard.

   Nevertheless, in our opinion, other ways of covering funds in beneficiary accounts should be explored. The settled procedure based on the beneficiary accounts supposes granting a guarantee to financial institutions clients that, however, neither the financial institutions nor their clients pay, but rather its cost is transferred to the credit institutions, which legally cannot refuse to open these accounts. This distorts the market, since it implies an incorrect allocation of costs, to the detriment of bank depositors compared to the clients of financial institutions who benefit -for free- from the same guarantee but without having to bear their cost.

2. Answering your question, we don't see the point of identifying the beneficiary accounts depositors.

   We do not fully understand, the need of retrospectively identifying the persons who are absolutely entitled in the beneficiary accounts.

   Unlike bank deposits that must last over time, since they are the main savings' tool for families and companies, deposits in beneficiary accounts reflect temporary situations and are merely instrumental (i.e., when undoing an investment position).

   Thus, it seems reasonable to individually identify all deposit beneficiaries since, most likely, they would be the real beneficiaries in case of a DGS intervention. However, this idea does not work for beneficiary accounts. Beneficiaries in case of a DGS intervention would not match with the previously identified persons, or this would only happen as a coincidence.

   Therefore, identifying the persons who, at a past date, were absolutely entitled of beneficiary accounts is completely useless for the DGS, whose interest will be in those who would be the beneficiaries at the date of intervention.

   In fact, according to the DGSD that person is covered when "*has been identified* ***or is identifiable before the date*** *on which …*"

3. The European regulation (Directive (EU) 2015/2366 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 on payment services in the internal market) requires financial institutions to safeguard all funds which have been received from the payment service users to be identified, not to be mixed with the financial institutions own funds and to be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets. It does not require, in any case, to establish a one-to-one relationship between the amount owed to each client and the amount deposited in a specific depositary account.

   Instead, financial institutions are required to have individually identified the amounts owed to each of their clients. Those amounts, globally considered, must be deposited in a separate account, or invested in secure, liquid low-risk assets. Therefore, it does not

seem correct to consider that each one of the euros deposited or invested corresponds to a specific client. It is the sum of funds that corresponds to the sum of clients.

4. If, as EBA's guidelines seem to suggest, the persons who are absolutely entitled of the depositary accounts must be individually identified, this identification should be responsibility of the financial institution account holder. And if needed by DGS, this real ownership should be communicated in a timely manner by the financial institutions to the credit institutions in order to correctly calculate the contributions to the DGS.

   Anyhow, we agree that if credit institutions that fail to comply with their obligations, if they receive such information, they should be penalized.

   It seems, nevertheless, completely unjustified to penalize diligent entities by assuming all funds in the beneficiary accounts to be covered. Especially when in the legislation of some Member States, this specific obligation of the financial institutions to communicate the beneficial ownership, is not contemplated or is not contemplated with sufficient clarity or non-compliance lacks legal sanction.

   In summary, only when the lack of identification of beneficial owners in the beneficiary accounts is due to the credit institution's negligence, the contributions to the DGS must assume all funds in the beneficiary accounts to be covered. Not so when the responsibility is not attributable to the entity itself but to the financial institutions that would be failing to comply with their obligations.

5. In addition, entities contributing for the entire balance do not respond to what the DGSD establishes. DGSD requires entities to make contributions for covered deposits -and only for covered ones-. According to what was proposed, under the umbrella of uncertainty, contributions would be made to non-covered deposits (due to exceeding the guaranteed limit by depositors) and even excluded from guarantee (due to clients not eligible by the DGS). A clear example is considering the relationship between total deposits, eligible deposits, and covered deposits, which is far from 100%. Requiring contributions for the entire balance of the beneficiary accounts, is in fact, equivalent to demanding contributions for non-covered deposits, and for a significant amount.

This extension of the scope of the contribution obligations of credit institutions would probably require, more than a Guide, a modification of European legislation.

QUESTION 5: DO YOU HAVE COMMENTS ON THE PROPOSED CHANGES TO THE CORE INDICATORS AND ADDITIONAL INDICATORS AS SET OUT IN SECTION 4.5 (I)?

"Non-Applicable"

QUESTION 6: DO YOU HAVE COMMENTS ON THE DEFINITION OR CALCULATION OF THE CORE INDICATORS?

"Non-Applicable"

QUESTION 7: DO YOU HAVE COMMENTS ON THE PROPOSED CHANGES TO THE MINIMUM WEIGHTS OF CORE INDICATORS AND THE MAXIMUM WEIGHT OF ANY INDICATOR, AS SET OUT IN SECTION 4.5 (II) OF THE GUIDELINES?

"Non-Applicable"

QUESTION 8: DO YOU HAVE COMMENTS ON THE PROPOSED CHANGES TO THE FORMULA TO CALCULATE MINIMUM CONTRIBUTIONS, AS SET OUT IN SECTION 4.6 (I) THE GUIDELINES?

"Non-Applicable"

QUESTION 9: DO YOU HAVE COMMENTS ON THE PROPOSED MINIMUM THRESHOLDS FOR THE IRS OF SOME CORE INDICATORS, AS SET OUT IN SECTION 4.5 (III) OF THE GUIDELINES?

"Non-Applicable"

QUESTION 10: DO YOU HAVE COMMENTS ON THE PROPOSED CHANGES TO THE FORMULA FOR TRANSLATING THE ARS INTO THE ARW, AS SET OUT IN SECTION 4.5 (V) OF THE GUIDELINES?

"Non-Applicable"

QUESTION 11: DO YOU HAVE COMMENTS ON THE PROPOSED REGULAR REVIEW AND RECALIBRATION, AS SET OUT IN SECTION 4.7 OF THE GUIDELINES?

To the EBA's proposal to consider that the calculation method should be reviewed and recalibrated at regular intervals, we agree, as, over time, its risk sensitivity may deteriorate. We believe that the SREP scores are a good indicator to this end.

QUESTION 12: DO YOU HAVE ANY FURTHER COMMENTS REGARDING THE PROPOSED REVISED GUIDELINES?

"Non-Applicable"