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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/49/EU on deposit guarantee schemes as regards the scope of deposits protection, use of DGS funds, cross-border cooperation, and transparency

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (DGSD) harmonised further the deposit protection mechanisms across the Union. Deposit protection is key to improve depositors' confidence and ultimately strengthen the financial stability of the banking system and safeguard the functioning of the single market. To that end, at least one deposit guarantee scheme (DGS) is set up in every Member State to ensure fast reimbursement of depositors in the event of bank failures (payout) and a harmonised level of protection is set at 100 000 EUR. In addition, DGSs also play a role in banks' crisis management. They can contribute in resolution or may finance other measures by preserving depositors' access to covered deposits.

The DGSD is part of the so-called crisis management and deposit insurance (CMDI) framework. This framework lays out the rules for handling bank failures by using the banking sector's own resources. Besides the DGSD, it also consists of Directive 2014/59/EU (Bank Recovery and Resolution Directive or BRRD) and Regulation (EU) 806/2014 (Single Resolution Mechanism Regulation or SRMR), as well as the relevant national legislation.

The CMDI framework brought important improvements in terms of crisis preparedness and contingency planning as it has enhanced banks' resolvability through the build-up of resolution buffers and deposit guarantee and resolution funds, improved market discipline, curbed moral hazard and reduced the reliance on tax payers money. Taken altogether, these enhancements have contributed to financial stability and strengthened depositor protection, while boosting confidence in the EU banking sector.

The comprehensive review of the DGSD conducted by the European Commission confirmed that DGSD's main components, most notably the standard coverage level of EUR 100 000 per depositor per bank, the minimum target level of funding of the DGS to be pre-financed by risk-based contributions from the industry and the short timelines for depositor payout, overall generate positive benefits for depositors.

However, practical experience in the application of this framework has also shown remaining loopholes in the scope of depositor protection, divergent interpretation of conditions for the use of DGS's funds, flaws in terms of operational effectiveness and efficiency of DGSs, too large room for national discretions and options and room for further coordination between resolution and deposit insurance safety nets.

As an integral part of the CMDI legislative review undertaken by the European Commission (also encompassing the BRRD and the SRMR), this proposal is largely based on the preparatory work and the recommendations developed by the European Banking Authority (EBA) in its five opinions[1] on the application of the DGSD and takes into account instances where its practical application failed to achieve some of its important objectives or achieved them only partially.

[1] See the section 3 on collection and use of expertise

This proposal therefore intends to:

(1) clarify the scope of depositor protection by addressing identified discrepancies with the view to offer European depositors with a harmonised top-notch level of protection;

(2) facilitate the least costly ways of dealing with banks in distress in view of protecting access to deposits (prevention of failure, resolution and alternative measures facilitating market exit);

(3) enhance functioning of the DGSs by simplifying administrative procedures, while improving transparency on their financial robustness and use of funds;

(4) increase convergence in the practices of DGSs and authorities to level the playing field for European depositors;

(5) further improve cross border cooperation among the DGSs in case of reimbursement of depositors located in other Member States or in case of change of DGS affiliation by a bank.

- **Consistency with existing policy provisions in the policy area**

This proposal builds on and strengthens the existing deposit insurance framework set out in the DGSD. To that end, many elements of this proposal follow the work undertaken by the EBA, in cooperation with national DGSs and designated authorities. It proposes amendments to reflect the practical experience gained from the national transposition and application of some provisions, including in the context of the Banking Union. This proposal is initiated concomitantly with the reviews of the BRRD and SRMR to ensure the overall consistency of the EU bank crisis management framework.

- **Consistency with other Union policies**

This proposal builds on the reforms carried out in the aftermath of the financial crisis that led to the creation of the Banking Union and the single rulebook for all EU banks.

By strengthening depositor confidence and financial stability, this proposal contributes to the resilience of the EU banking sector and its ability to support the economic recovery following the COVID-19 crisis, in line with the political objectives of the European open strategic autonomy. This proposal also improves consumer protection, including harmonising the level and period of protection of specific retail deposits that are short-lived and contingent on rare life events (so called temporary high balances) or by strengthening information disclosure.

Further, also in order to mitigate the risk that DGSs reimburse depositors involved in Money Laundering and Terrorist Financing (ML/TF) activities, these amendments build on the existing Directive (EU) 2015/849 on anti-money laundering and take into account the direction proposed in the Commission's legislative package on the EU Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) regime, adopted on 20 July 2021.

In order to strengthen the enforceability of DGSD provisions, these amendments now refer to the supervisory powers laid down in Directive 2013/36/EU. This enshrines the fact that the compliance with DGS requirements is a first-order requirement for all banks and provides ground for the sequencing of events to discipline a bank that would fail to fulfil such obligations.

The amendments also harmonise and ensure robustness of the rules applicable to preventive measures financed by DGS funds. These rules must be appreciated in connection with the already existing requirements on State Aid for financial establishments set out in the Banking Communication[2].

Lastly, the amendments also clarify the protection of client funds held by non-bank financial institutions with a bank in line with the requirements for segregating client funds as established for example in the Payment Services Directive[3], the E-money Directive and Commission Delegated Directive (EU) 2017/593[4]. In view of the rapid developments in innovative financial services, this clarification aims at fostering the clients' trust towards non-bank financial institutions and their business continuity if a bank failure occurs.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 53(1) of the TFEU on the right of establishment, the same legal basis as the Directive being amended. According to Union case law[5], where a legislative act is designed merely as a supplement or a correction of another legislative act, without altering its original goal, the EU legislature is fully entitled to base the latter act on the legal basis of the first act.

• Subsidiarity (for non-exclusive competence)

The reforms envisaged with regard to DGSD comply with the subsidiarity principle. National rules cannot achieve a harmonised level of depositors' protection and a uniform set of rules on funding and functioning of DGSs. An EU intervention is therefore needed to level the playing field across Europe and avoid undue competitive advantage among financial institutions linked to heterogeneous rules in terms of deposits protection. The EBA also underlined this in its opinions related to the review of DGSD.

Moreover, the establishment of banks and provision of their services, including deposit taking, can be conducted on a cross-border basis. The cross-border nature of the banking systems can create many challenges for DGSs (changes of DGS affiliation of a bank, record keeping of clients or cross-border cooperation) that create a need for EU intervention.

Most of the amendments in this proposal update the existing Union law, and, as such, concern areas where the Union has already exercised its competence and does not intend to cease exercising such competence. Several actions in this proposal also aim to introduce an

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2 Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') Text with EEA relevance; OJ C 216, 30.7.2013, p. 1–15

3 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance); OJ L 337, 23.12.2015, p. 35–127

4 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (Text with EEA relevance.); OJ L 87, 31.3.2017, p. 500–517

5 See judgment of 21 June 2018, Poland v Parliament and Council, C-5/16, EU:C:2018:483, p. 49, p. 69 and case-law cited.

additional degree of harmonisation to achieve consistently the objectives defined by the DGSD.

- **Proportionality**

The provisions of the proposal are proportionate to what is necessary to achieve the objectives of DGSD.

The amendments establish common requirements to improve and harmonise the level of depositor protection within the EU. However, this proposal does not regulate the organisational models, legal structure or internal governance of European DGSs. Therefore, the European deposit insurance set-up relies and will keep relying on a network of national DGSs, organised in accordance with different models (public DGS, private DGS, institutional protection schemes (IPS)) and types of relationships between the DGS designated authority and the resolution authority (under a same umbrella entity or in distinct institutions).

Moreover, this proposal confers significant powers to national authorities, starting with the execution of the least cost test that determines the cost-efficiency of the use of DGS funds. A majority of topics in this proposal (on common level of temporary high balances, protection of client funds, protection of public entities) relate to areas where Member States explicitly asked for a pan-European standard in order to provide more legal certainty for the protection of depositors. The mandates foreseen under this proposal for the EBA (through guidelines and standards) are limited to the most technical DGSD topics for which a more granular explanation of requirements is necessary.

Finally, this proposal maintains existing provisions that recognize national specificities and ensure a proportionate application of DGSD provisions, for instance through the choice of national options, the possibility for certain Member States to apply a lower target level or for IPS members to benefit from reduced amounts of contributions.

- **Choice of the instrument**

The proposed amendments develop already existing provisions of the DGSD. As deposit insurance is closely linked to non-harmonised areas of national law, such as insolvency law, transposition is necessary to best integrate the proposed provisions into national legislative landscapes. A Directive is therefore the appropriate legal instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This proposal shares its Impact Assessment (IA) with the proposals on the review of the BRRD and the SRMR. Annex 6 of this IA describes the issues of the current DGS functioning, sets out the possible scenarios for its improvement and justifies the policy options retained in these proposed amendments. It concludes that DGSD has been broadly effective in improving the level of depositor protection across the EU. However, the application of DGSD safeguards remains uneven among national DGSs, hence requiring harmonised rules to address divergences that have adverse impacts on depositors. It also highlights the need for clarification of the coverage for certain types of depositors.

All policy choices take into account the EBA's suggestions and the subsequent feedback received from Member States' experts in the context of the Commission's Expert Group on

Banking, Payments and Insurance (EGBPI) as well as, where available, other analytical evidence.

- **Stakeholder consultations**

Inception impact assessment has been published for public feedback[6] between 10 November – 8 December 2020 and gathered 15 responses from EU and third countries.

On 18 March 2021, the Commission held a public conference on the review, with representatives from the banking industry, banking associations, national public authorities, the ECB and SRB, civil society and the European Parliament[7]. During this conference, panellists noted that the current framework would benefit from further harmonisation and a better interplay of the DGSD with AMLD rules, the Payment Services Directive and State aid rules. Also, consumer confidence and trust should be reflected in the DGSD review as well as the situation of smaller markets.

Moreover, the Commission launched a public and a targeted consultation to seek stakeholder feedback on the application of the CMDI framework and views on possible modifications, such as preventive measures, the design of the least cost test, DGS funding mechanisms etc. The targeted consultation, covering 39 general and specific technical questions, was available in English only and open from 26 January to 20 April 2021. The public consultation, consisting of 10 general questions, was open from 25 February 2021 to 20 May 2021. The Commission received in total 188 official responses from a variety of stakeholders inter alia EU citizens (26%), business organisations (24%), business associations (16%), and public authorities (19%). A "summary report" on the feedback to this consultation was published on 07 July 2021[8]. Both consultations showed that most respondents thought that public and local authorities should also be protected by the DGS, given that their exclusion creates additional management difficulties. The view of the majority of banks and DGSs is that the current regular information disclosure is sufficient and that no changes were necessary. Digital communication was often considered as the most suitable to save costs. Throughout all its policy-making process, the Commission consulted Member States, resolution authorities and designated authorities during 11 meetings of the Expert Group on Banking, Payments and Insurance. Opinions expressed by Member States in the context of these meetings predominantly aligned with the recommendations from the EBA.

In parallel, some of the issues addressed in this proposal were also discussed in the relevant Council working groups[9].

- **Collection and use of expertise**

To support its work on the DGSD review, the Commission sent a comprehensive "Call for Advice" to the EBA[10], which then submitted to the Commission five different opinions. The first opinion 'on the eligibility of deposits, coverage level and cooperation between deposit

6 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12738-Banking-Union-review-of-the-bank-crisis-management-deposit-insurance-framework-SRMR-review-/feedback_en?p_id=14094883

7 High-level conference – *Strengthening the EU's bank crisis management and deposit insurance framework: for a more resilient and efficient banking union.*

8 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12737-Banking-Union-Review-of-the-bank-crisis-management-and-deposit-insurance-framework-DGSD-review-/public-consultation_en

9 Ad Hoc Working Party on the Strengthening of the Banking Union (AHWP), currently Financial Services and Banking Union Working Party, and the High-Level Working Group on EDIS (HLWG).

10 EBA (2021), *Call for advice regarding funding in resolution and insolvency*

guarantee schemes' was submitted in August 2019[11]. The second opinion 'on deposit guarantee scheme payouts' was submitted in October 2019[12]. The third opinion 'on deposit guarantee scheme funding and uses of deposit guarantee scheme funds' was submitted in January 2020[13]. The fourth opinion 'on the treatment of client funds' was submitted in October 2021[14]. Additionally, the Commission took 2020 EBA's opinion on the interplay between the EU Anti-Money Laundering Directive and the EU Deposit Guarantee Schemes Directive[15] and the 2021 EBA's biennial opinion 'on risks of money laundering and terrorist financing (ML/TF) affecting the European Union's financial sector' into account[16].

Furthermore, the Commission contracted CEPS to provide two reports on deposit insurance, entitled "Harmonising Insolvency Laws in the Euro"[17] and "Options and national discretions under the DGSD"[18], that were published respectively in December 2016 and November 2019.

In addition to consulting stakeholders, the Commission participated in the discussions and exchange of views informing the work of the EBA's task force on deposit guarantee schemes and the EGBPI.

- **Impact assessment**

The IA concluded that a review of the DGS legal framework in accordance with the recommendations issued by the EBA would offer a superior outcome than a *status quo*.

The IA highlighted that the assessed policy choices would foster a consistent application of deposit insurance across Member states and enhance legal certainty and depositor confidence. They would adequately adapt deposit safeguards to the recent evolutions and vulnerabilities of the financial ecosystem through specific provisions targeted towards cross-border activities, fintech services and AML risk. They would also harmonise the use of DGS funds through a renewed LCT that would fuel national DGSs' action powers outside of payout procedures while reducing their administrative burden.

However, by clarifying the coverage for certain types of depositors and deposits (public authorities, temporary high balances etc.), these amendments could create additional – albeit

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11 https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2622242/324e89ec-3523-4c5b-bd4f-e415367212bb/EBA%20Opinion%20on%20the%20eligibility%20of%20deposits%20coverage%20level%20and%20cooperation%20between%20DGSs.pdf

12 https://www.eba.europa.eu/sites/default/files/document_library/EBA%20Opinion%20on%20DGS%20Payouts.pdf

13 https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2020/EBA%20Opinion%20on%20DGS%20funding%20and%20uses%20of%20DGS%20funds.pdf

14 https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2021/1022906/EBA%20Opinion%20on%20the%20treatment%20of%20client%20funds%20under%20DGSD.pdf

15 https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2020/961347/EBA%20Opinion%20on%20the%20interplay%20between%20the%20AMLD%20and%20the%20DGSD.pdf

16 last published in March 2021, https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2021/963685/Opinion%20on%20MLTF%20risks.pdf

17 https://www.ceps.eu/ceps-publications/harmonising-insolvency-laws-euro-area-rationale-stocktaking-and-challenges/

18 https://finance.ec.europa.eu/system/files/2019-11/191106-study-edis_en.pdf

limited – costs. Likewise, the changes of the LCT for the use of DGS other than for payout could also have a financial impact for the DGS. As they would entirely be borne by the financial industry through DGS contributions, these possible additional costs would not affect taxpayers in line with the principle of public money protection laid down in the DGSD.

The IA also confirmed that the EU DGS framework would be more resilient if backed by a European Deposit Insurance Scheme (EDIS). By pooling funds into a shared scheme, this would reinforce the ability of the EU deposit insurance system to cope with high scale payouts and enhance depositor confidence. Although the policy choice to set up an EDIS is technically the most robust, it is not politically feasible at this stage.

The IA for this proposal was developed as part of the CMDI review and received a positive opinion from the Regulatory Scrutiny Board (RSB) on 17/01/2023.

The Regulatory Scrutiny Board completed a first assessment of the IA and, with respect to DGSD, asked to better clarify the links between the EBA advice and the options set out in the IA.

- **Regulatory fitness and simplification**

The proposed Directive should help to reduce regulatory and administrative burden of DGSs, through removal of certain national options and discretions, homogeneous treatment of third country branches and reviewed arrangement for cross-border cooperation between DGSs. By streamlining required disclosures and align them with what is necessary for the recipients, the proposed amendments will alleviate the administrative work related to the implementation of DGS requirements.

As regards digital readiness, this proposal builds upon the technological and legal advancements to ensure that depositor information is as easy as possible while the payout process is as swift as possible.

In addition, empowerments for the EBA will allow further adjustments to enhance and harmonize even further the operational implementation of DGSD provisions.

Costs for banks and national authorities would be very limited. As estimated by the EBA in its opinions on DGSD, each of the depositor protection enhancements foreseen under this DGSD proposal (THBs, client funds, public authorities) would have a very marginal impact over DGS funds. For instance, in 13 Member States, the amount of client funds constitutes less than 1% of all covered deposits in that MS. This proposal will therefore preserve the competitiveness of the EU banking sector while enhancing the protection offered to EU depositors. Moreover, the potential additional costs – yet limited – stemming from such enhancements would be largely set off by the reduced costs for DGSs to perform their daily activities under the reviewed Directive. Indeed, by significantly reducing the number of options in place, simplifying the mechanisms in place for cross-border cooperation and establishing at EU level a common methodology for least cost test completion, this DGSD proposal will free up a significant amount of DGS administrative resources.

Due to an increased role of DGSs in crisis management, the use of their financial means, which are collected from the banking sector, might require more frequent replenishment of their funds. However, in compliance with the LCT, these measures are allowed only if they are considered as less costly for the DGS than a payout scenario, which safeguards its financial resources in the long term.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the freedom to conduct a business (Article 16), the right to property (Article 17) and consumer protection (Article 38).

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget. The proposal would require EBA to develop seven technical standards and six guidelines in addition to those already present in the DGSD. Among these six new mandates for guidelines, 3 solely aim at codifying in level 1 text already existing guidelines (stress testing, delineation and reporting of available financial means, cooperation agreements), that were established upon EBA's own initiative. Therefore, these mandates would not require a significant additional burden of work. The other empowerments foreseen under DGSD proposal relate to topics of unequal magnitude, covering both very targeted mandates (principle of diversification in low-risk assets) and wider topics (least cost definition).

Considering past and current work on crisis management at EBA, it is considered that the proposed tasks for EBA will not require the establishment of additional positions and can be carried out with current resources.

The delivery of the technical standards is due 12 months after the entry into force of the Directive. This deadline should provide sufficient time for EBA to develop them considering its current resources.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Through regular interactions with the EBA Task Force on Deposit Guarantee Schemes, the Commission assesses the implementation of legal provisions[19] and contributes to harmonise the level of depositor protection across the EU.

As already set out in existing DGSD, national authorities will keep reporting to EBA on the amount of available financial means, alternative funding arrangements and use of DGS funds, which EBA should in turn disclose. The proposal also maintains the periodic and follow-up reviews already foreseen in the original directive, for stress testing of DGSs, criteria for risk-based contributions and re-examination of coverage level.

- **Detailed explanation of the specific provisions of the proposal**

The proposed amendments build on and clarify the mandate of DGSs to better protect deposits in the context of reimbursement of depositors. They also enhance the role of the DGS outside of situations in which depositors are repaid by the DGS following the failure of a bank for the purpose of bank crisis management with the view to maintain depositor confidence and financial stability. They finally set up specific requirements to simplify the daily activities of DGS and deal with administratively complex situations.

The proposal amends the following provisions of DGSD:

[19] The proposal requires Member States to transpose this Directive in their national laws within 18 months from the entry into force of this proposal.

With a view of the enhanced possibilities for the use of DGS for financing preventive measures, transfer strategies in resolution and as an alternative to piecemeal liquidation in insolvency, Article 1 (Subject matter and scope) is amended to clarify that the mandate of DGS is to protect depositors and maintain financial stability while reducing its liabilities via other measures. Point (d) of this article is amended to clarify that branches of credit institution established in third countries are covered by the Directive.

Article 2 sets out terms and definition that are used for the purpose of this Directive. It is amended to introduce definitions, consistently with the new provisions introduced in the proposal following EBA recommendations in its opinions, in particular on clients' funds deposits and anti-money laundering and terrorist financing.

Paragraph 8 of Article 4 is consolidated in the new Article 16a on exchange of information between credit institutions and DGS and reporting by authorities (see below).

In its opinion the EBA pointed at divergent implementation of definition of public authorities and, as a consequence, different scope of protection of deposits across Member States, which in some cases excluded from protection schools, hospitals and other public entities performing social functions. Therefore, Article 5 on deposits eligible for a DGS repayment now includes all public authorities with the objective of harmonising and enhancing their protection. The article also clarifies that deposits related to terrorist financing are excluded from the DGS protection.

Article 6, that regulates the coverage level of depositor protection, is amended to harmonise the level of protection for temporary high balances, the related protection period and to precise the scope of protected deposits held in view of real estate transactions.

Considering the divergent interpretations of the existing options related to the deduction from the repayable amount of liabilities of depositors that have fallen due, paragraph 5 of Article 7 is deleted to harmonise the rules for the calculation of the repayable amount. Following EBA opinion, paragraph 7 is amended to take into account situations where the interest rate is negative.

A new Article 7a on the burden of proof is introduced to clarify the procedural aspect of eligibility or entitlement to the deposits, leaving the burden of proof on depositors and account holders to prove that they are absolutely entitled to the deposits in beneficiary accounts or accounts with temporary high balances.

To give more time to verify the eligibility for repayment and in line with the provision on the burden of proof laid down in Article 7a, Article 8 is amended to allow DGS to apply a longer period of up to 20 working days in the case of repayment of beneficiary accounts, client funds, and temporary high balances from the date on which a DGS received the complete documentation allowing the examination of claims and verification of conditions for repayment. The amended article also allows the DGS to set a threshold for the repayment of dormant accounts.

A new Article 8a is inserted to ensure that depositors, above a threshold of 10 000 euro, are reimbursed via credit transfer in line with AML/CFT best practices.

Certain financial institutions, such as investment firms, e-money institutions, and other collect funds from their clients and are required by the sectoral rules to put these funds on segregated accounts with credit institutions. A new Article 8b set rules to harmonize the scope of deposit

protection to such funds deposited on behalf and for the account of their clients, for the purpose of segregation. The article also details the modalities for the repayment of the account holder or the client and lays down an empowerment to the EBA to draft regulatory technical standards for the identification of clients.

[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] requires that financial supervisors cooperate with the resolution authorities or the designated authorities and inform those authorities of the outcome of the customer due diligence measures. In order to avoid repayment of deposits where the outcome of customer due diligence reveals that there is a suspicion of money laundering or terrorist financing as well as to ensure smooth exchange of information between the designated authority and the DGS in these cases, a new Article 8c is introduced. This new provision also establishes withholding arrangements on DGS repayments for payouts entailing money laundering / terrorism financing concerns.

The existing provision of Article 9 of the DGSD provides that where a DGS makes payments in the context of resolution proceedings, the DGS should have a claim against the relevant credit institution for an amount equal to its payments and that claim should rank *pari passu* with covered deposits. This provision does not make a distinction between DGS contribution when an open-bank bail-in tool is used (where the bank's entity is preserved and continues its operations) and when it contributes to the financing of a transfer strategy (sale of business or bridge institution tool and liquidation of the residual entity), and creates uncertainty with respect to the existence and amount of a DGS claim in different scenarios. Therefore, Article 9 is amended to specify that when DGS funds are used in the context of transfer strategies in resolution and as an alternative in insolvency proceedings, the DGS should have a claim against the residual institution or entity in its subsequent winding-up proceedings under national law, because the DGS funds are used in connection to losses that depositors would have otherwise borne. This claim should rank at the same level as deposits under national insolvency rules to ensure that the shareholders and creditors left behind in the residual institution or entity effectively absorb the losses of the institution and to improve the possibility of repayments in insolvency to the DGS. On the contrary, a DGS contribution to an open-bank resolution in lieu of covered deposits for the amount by which covered deposits would have been written down or converted had they been subject to bail-in, should not generate a claim against the institution under resolution, as it would eliminate the purpose of the DGS's contribution.

Article 9, paragraph 3 is amended to harmonise the period during which depositors can make a claim against the DGS.

Article 10 is amended to enshrine the reference period for the calculation of the target level and the fact that only money directly contributed to the DGS or recovered from the DGS are eligible to fulfil the target level. This clarification is in line with the current rules applicable by virtue of the EBA's guidelines. The objective is to clarify that money collected via loans is not eligible to reach the target level as too contingent.

Paragraph 4 of Article 10 is deleted as the option to raise the available financial means through the mandatory contributions paid by member institutions to existing schemes of mandatory contributions established by a Member State has not been used by any Member State.

In line with the EBA opinion, to converge divergent practices and ensure that funds could be made available to meet the deadline to reimburse depositors, a new paragraph 11 is added to Article 10 that provides for the flexibility of DGSs to use alternative funding arrangements before available financial means and funds collected through extraordinary contributions. Furthermore, such flexibility would allow DGSs to avoid having to immediately raise extraordinary contributions where raising such contributions would endanger financial stability (e.g. in a systemic crisis). Full flexibility is needed also to allow DGSs to use their funds in the most efficient way and avoid a fire sale of their assets (available financial means) at the point of crisis. At the same time, the provision ensures that funding from public sources could be used only as a last resort.

Additionally, it clarifies requirements to ensure the sound management of DGS funds and mandates the EBA to develop guidelines on the diversification of the DGS' investment strategy. It also provides for the possibility to place DGS funds on a segregated account at the national central bank or national Treasury. It mandates the EBA to develop standards on the delineation of available financial means for DGS.

Article 11 is amended to establish a clear distinction between preventive and alternative measures. Preventive measures are DGS interventions supporting financially a bank in distress to preserve its financial soundness, for example in the form of guarantees, cash injection, participation in capital increase. Alternative measures are DGS interventions supporting the transfer of deposits to another bank in the context of insolvency to preserve access of depositors to their money.

Article 11a establishes a set of safeguards for preventive measures and allocate the responsibilities among authorities for assessment of their fulfilment. This aims at ensuring that the use of these measures is timely, cost-effective and applied consistently across Member States, as opposed to past experiences.

Article 11b provides for conditions underlying the plan that a credit institution has to draft and submit to its competent authority in order to justify the need for using DGS funds to ensure or restore compliance with prudential requirements. It also establishes the procedure for the competent authorities to approve the plan.

Article 11c establishes requirements for the credit institutions which did not comply with their commitments or fail to repay previous preventive measures. EBA is mandated to develop guidelines on the content of the plan needed for the efficient implementation of a preventive measure and to ensure convergence of the supervisory practices on its approval by the competent authority.

In the scenario of recourse to DGS funds for the purpose of alternative measures referred to in Article 11(5), Article 11d provides for the conditions for the marketing of bank assets, rights and liabilities. This process should be harmonised in order to limit adverse impact on competition and to allow attracting potential buyers. This should also ensure consistency with the transfer tools under BRRD. In line with BRRD, procedures to wind up the residual entity in an orderly manner should be initiated without delay.

A least cost test compares the cost of a DGS intervention to prevent further deterioration of a bank's financial situation or the cost of the transfer of business to another bank with the cost of a hypothetical scenario of a payout in liquidation. This requirement has been implemented differently across Member States. A new Article 11e clarifies and harmonises the approach to

perform the least cost test, which determines by which maximum amount a DGS may intervene outside payout, to finance preventive, resolution and alternative measures. A payout can generate direct and indirect costs for the DGS and its members. Direct costs correspond to the amount disbursed by the DGS for its payout minus the recoveries from the liquidation proceedings. Indirect costs should take into account the replenishment of the funds used by the DGS and the additional cost of funding linked to the payout for the DGS. When the least cost test is performed for the purpose of preventive measures, the importance of such measures for the DGS statutory or contractual mandate should also be factored in the calculation of the payout counterfactual. The cost of interventions outside payout should take into account expected earnings, operational expenses and potential losses related to the intervention. The EBA is mandated to develop draft regulatory technical standards specifying the methodology for least cost test completion.

Article 14 is amended to clarify that DGS's protection also covers depositors located in Member States where their member credit institutions exercise the freedom to provide services. It sets the conditions to give a DGS in a host Member State the possibility to reimburse directly depositors of a branch belonging to a credit institution from another Member State or to operate as a point of contact for depositors at credit institutions that exercise the freedom to provide services. The EBA is mandated to develop guidelines on the respective roles of home and host DGSs and on the circumstances and conditions under which a home DGS should decide to reimburse depositors at branches located in another Member State. Furthermore, it specify the rules applicable to the calculation of funds to be transferred when a member institution changes its DGS affiliation from one Member State to another.

Article 15 is amended to require that branches of credit institutions established in third countries join a DGS within a Member State if they want to provide banking services and take eligible deposits in the EU. According to the EBA opinion[20], the vast majority of third country branches in EU Member States are already members of an EU DGS, either because the third country depositor protection regime is deemed to be non-equivalent or no formal equivalence assessment has been made. Some of the remaining branches that are not affiliated to any EU DGS did not join notwithstanding the results of the equivalence assessment showing their depositor protection was not equivalent. In line with EBA recommendation, this amendment enshrines this membership requirement and ensures equal protection for depositors in the EU branches of third country banks and in EU banks and their branches in different Member States. This enhances the protection of depositors as it eliminates the risk of having deposits in the EU whose protection by a non-EU DGS would not be up to the EU standards (according to EBA opinion[21], among the 74 non-EEA branches in the EU, 5 were not members of an EU DGS). Requiring EU branches of third country banks to join an EU DGS is also in line with one of the main objectives of this review to facilitate the use DGS funds in resolution.

In order to avoid that DGS funds are exposed to economic and financial risks in third countries, a new Article 15a allows DGS coverage of depositors belonging to branches of member institutions located in third countries only if the collected funds are above the minimum target level.

Article 16 is amended to harmonise information which banks have to provide to their clients on annual basis on how their deposits are protected. It also enhances the information

[20] EBA-Op-2019-10
[21] EBA-Op-2018-02

requirements for depositors in case of merger or other major reorganisation of the credit institution, change of DGS affiliation, unavailability of deposits due to the critical financial situation of the bank. Member States are empowered to verify the appropriateness of the information provided to depositors and EBA is empowered to develop draft regulatory standards for the format and the content of the information sheet and the procedures and the information to depositors, also with reference to client funds deposits and to terrorist financing/money laundering situations.

A new Article 16a is introduced to strengthen reporting requirements and the exchange of information from the credit institution to the DGSs and from the DGSs and the designated authorities to EBA. It is important that the DGS receives the information necessary to operate as requested by this Directive in an effective way and that EBA is appropriately informed of situations that occur and for which the DGS may intervene in accordance with this Directive, to support the EBA in its tasks of overseeing the financial integrity, stability, and security of the European banking system. EBA will be empowered to develop draft regulatory technical standards on the template, the procedures and the content of this information.

Member States have to transpose these amendments within two years after the entry into force of the amending Directive. The new rules regarding the application of safeguards on the use of preventive measures by DGSs under Article 11a require organisational changes and gradual building up of operational capacities of the DGSs and the designated authorities which justify a longer implementation period. Taking into account specificities of the IPSs which are recognised as DGS, this implementation period may be extended in cases justified by the competent authorities on prudential grounds.

2023/ ()

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/49/EU on deposit guarantee schemes as regards the scope of deposits protection, use of DGS funds, cross-border cooperation, and transparency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[22],

Having regard to the opinion of the Committee of the Regions[23],

Having regard to the opinion of the European Central Bank[24],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In accordance with Article 19(5) and (6) of Directive 2014/49/EU of the European Parliament and of the Council[25], the Commission has reviewed the application and the scope of that Directive and concluded that the objective of protection of depositors in the Union through the establishment of deposit guarantee schemes (DGSs) has mostly been met. However, the Commission also concluded that there is a need to address the remaining gaps in depositor protection and to enhance the functioning of DGSs, while harmonising rules for DGSs interventions other than payout proceedings.

(2) The failure to comply with the obligations to pay contributions to DGSs or to provide information to depositors and competent authorities could undermine the objective of depositor protection. DGSs, or where relevant, designated authorities can apply pecuniary sanctions for late payment of contributions. It is important to improve coordination between DGSs, designated and competent authorities to take enforcement actions against a credit institution which do not comply with its obligations. While application of supervisory and enforcement measures by the competent authorities against credit institutions is regulated under national laws and Directive 2013/36/EU, it is necessary to ensure that the competent authorities are timely informed by the designated authorities about any infringement of obligations of credit institutions under deposit protection rules.

22 OJ C , , p. .
23 OJ C , , p. .
24 OJ C , , p. .
25 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (OJ L 173, 12.6.2014, p. 149).

(3) In order to ensure convergence of DGS' practices and homogenous testing of their resilience, EBA should issue guidelines detailing how to perform stress tests of DGS' systems.

(4) Deposits that certain financial institutions, including investment firms, made on behalf and for their own account are excluded from coverage of the DGS as they are in the scope of the definition of financial institutions under Regulation EU/575/2013. However, the funds these financial institutions receive from their clients and they deposit in a credit institution on behalf of their clients, in the exercise of the services they offer, are now protected subject to certain conditions.

(5) The range of depositors that are currently protected through repayment by a DGS is motivated by the wish to protect non-professional investors, while professional investors are deemed not to need such protection. For that reason, public authorities have been excluded from such protection. It should be noted, however, that the majority of public authorities cannot be considered to be professional investors, because their main aim is not to invest and make a profit, but rather to provide public services under the form of schools, hospitals and the like. It is therefore reasonable to ensure that deposits of all non-professional investors, including public authorities, can benefit from the protection offered by a DGS.

(6) Deposits resulting from certain events, including real estate transactions relating to private residential properties or the payout of certain insurance benefits, can temporarily lead to large deposits. For that reason, Article 6(2) currently obliges Member States to ensure that deposits resulting from those events are protected above EUR 100 000 for at least three months, but for no longer than 12 months from the moment the amount has been credited or from the moment when such deposits become legally transferable. In order to harmonise depositor protection in the Union and to reduce the administrative complexity and legal uncertainty related to the scope of protection of such deposits, it is necessary to align their protection to at least EUR 500 000 for a harmonised duration of 6 months, in addition to the coverage level of EUR 100 000.

(7) During a real estate transaction, the funds can transit through different accounts prior to the actual settlement of the transaction. Therefore, in order to protect homogeneously depositors going through real estate transactions, protection of temporary high balances should apply to the proceeds of a sale as well as to the funds deposited for a purchase of a private residential property in the short-term. Depositors should document such transaction.

(8) In order to ensure timely disbursement, and simplify the administrative and calculation rules in place, the discretion to take into account due liabilities when computing the repayable amount is removed.

(9) In order to optimise the operational capacities of DGSs and reduce their administrative burden it is necessary to establish that when it comes to the identification of depositors entitled to deposits in beneficiary accounts or eligibility for temporary high balances safeguards, it remains the depositors' and account holders' responsibility to demonstrate, by their own means, their entitlement.

(10) Certain deposits may be subject to a longer repayment period because they require DGSs to verify the claim for repayment. In order to harmonise the rules in place across the EU, this extended period for repayment should be limited to 20 working days after the reception of relevant documentation.

(11) It is necessary to set clear rules regarding the repayment of deposits held in dormant accounts (accounts on which there has been no transaction over the last 24 months), below certain thresholds defined at national level, as the administrative cost related to the repayment of small amounts on dormant accounts can outweigh the benefits for the depositor However, the right of depositors to claim such amount should be preserved. In addition, DGSs should not defer the repayment when the same depositor also has other active accounts within this period, in accordance with the principle of aggregation of deposits. In this case, DGSs can easily retrieve the information needed to proceed with depositors' repayment.

(12) While DGSs have diverse methods to repay depositors, ranging from cash payouts to electronic transfers, depositor reimbursements via credit transfers should be the default payout method when reimbursement exceeds the amount of EUR 10.000. That will ensure the traceability of the repayment process from DGSs and will be in line with the objectives of the AML/CFT framework.

(13) Financial institutions are excluded from deposit protection. However, certain financial institutions, including as e-money institutions, payment institutions and investment firms, also deposit the funds received from their clients in bank accounts, often on a temporary basis, to comply with safeguarding obligations in line with applicable rules. Considering the growing role of those actors in the financial system, DGSs should protect such deposits under the condition that those clients are identified or identifiable.

(14) Given that clients do not always know which bank has been chosen by the financial institution to safeguard their funds, DGSs should not aggregate such deposit with a deposit that the same client might have in the same credit institution where the financial institution has placed its funds. The European Banking Authority (EBA) should be mandated to develop draft regulatory technical standards to specify the technical details related to the identification of clients for the purpose of repayment and calculation of contributions.

(15) When reimbursing depositors, DGSs may encounter situations that give rise to money laundering concerns. Therefore, the DGS should withhold the payout to a depositor upon receipt of information that a financial intelligence unit has suspended a bank or payment account in accordance with anti-money laundering rules.

(16) It is necessary to specify that when the DGS contributes to support the application of the sale of business tool or of the bridge institution tool under BRRD or alternative measures under Article 11(5), whereby a set of assets, rights and liabilities, including deposits, of the institution are transferred to a recipient, the DGS should have a claim against the residual institution in its subsequent winding-up proceedings under national law. To ensure that the shareholders and creditors left behind in the residual institution effectively absorb the losses of the institution and improve the possibility of repayments in insolvency to the DGS, the DGS claim shall have the same ranking as the depositors. The DGS contribution to resolution when the bail-in tool is applied in the amount by which covered deposits would have been written down in order to absorb the losses in the institution, had covered deposits been included within the scope of bail-in, shall not result in a claim against the institution under resolution

(17) It is important to harmonise an adequately long minimum period within which depositors can claim the repayment of their deposits, in those cases where the DGS has not repaid depositors within the deadlines foreseen by this Directive in the case of a payout. It strikes the right balance between providing ample opportunity for the

depositor to claim their deposits and avoiding operational hurdles for DGSs of a payout case which would remain open for an indefinite period..

(18) DGSs are required to reach a target level of 0,8% of the amount of the covered deposits. To objectively assess if DGSs fulfil this requirement, a clear reference period should be set for the purpose of the determination of the amount of covered deposits and DGS' available financial means.

(19) In order to ensure the resilience of DGSs, their funds should derive from stable and irrevocable contributions. Therefore, certain sources of DGS financing – such as loans and expected recoveries– are too contingent to be accounted as contributions to reach DGS' target level. A distinction between funds that qualify to reach the target level and those which are considered as complementary sources of financing is therefore necessary in order to harmonise DGSs' conditions for the fulfilment of their target level and ensure that DGSs' available financial means are financed by contributions from the industry. It is also necessary to specify that, after the target level has been reached for the first time, only a shortfall in DGS' available financial means caused by a DGS intervention (payout, preventive, resolution and alternative measures) should trigger a six-year replenishment period. In other cases, especially the foreseeable servicing of an outstanding liability related to the use of alternative financing arrangements, the target level should be reached again without delay. To ensure consistent application, EBA should issue draft regulatory technical standards specifying the methodology for the calculation of the target level by the DGSs.

(20) Available financial means of a DGS need to be immediately usable to face sudden events of payout or other interventions. In view of various practices across the Union, it is appropriate to lay down requirements for DGSs' funds investment strategy to mitigate any negative impact on the ability of the DGS to fulfil its own mandate. Where a DGS is not competent to set the investment strategy, the authority, body or entity in that Member State in charge of setting the investment strategy should also be required to respect the mandate and the principles set out in regarding diversification and investments in low-risk assets. If these funds are placed with the central bank or the Treasury, they should be earmarked and placed on a segregated account in order to preserve full operational independence and flexibility of the DGSs in terms of access to its funds and to avoid feeding the sovereign-banking nexus.

(21) In order to streamline the number of national options and discretions, in particular those that were rarely or never used, the option to raise the available financial means through the mandatory contributions paid by member institutions to existing schemes of mandatory contributions established by a Member State should be removed.

(22) To enhance depositor protection, while avoiding the need for a fire sale of DGS assets and limiting possible negative pro-cyclical effects over the banking industry from raising extraordinary contributions, DGSs should be allowed to use alternative funding arrangements that enable them to obtain short-term funding from sources other than contributions at any time, including before available financial means and funds collected through extraordinary contributions. As credit institutions should primarily bear the cost and responsibility for financing DGSs, alternative funding arrangements from public funds coming from all resources of the public sector, including central or decentralised, federal or regional authorities should only be used as a last resort.

(23) EBA should issue guidelines to ensure convergent practices of DGSs regarding diversification rules applicable to the investment policies of DGSs funds.

(24) While the primary objective of DGSs is the repayment of covered depositors, interventions outside pay-out can prove more cost-effective for DGSs and ensure uninterrupted access to deposits by facilitating transfer strategies. DGSs may be required to contribute to resolution of credit institutions and, in some Member States, DGSs can apply preventive measures to restore the long-term viability of the credit institution or alternative measures in insolvency. While such measures can significantly improve the protection of deposits, it is necessary to align incentives for their use and to subject them to adequate safeguards, including in the form of a harmonised least cost test.

(25) Measures to prevent failure of the credit institution through sufficiently early interventions can play an effective role in the continuum of crisis management tools to maintain depositor confidence and financial stability. Those measures can take various forms, such as capital support measures, guarantees, or loans. DGSs have had heterogeneous recourse to these measures and the coordination of such measures with other arrangements such as the early intervention framework and resolution financing under Directive 2014/59/EU of the European Parliament and of the Council[26] or state aid rules in financial matters requires clarification. Preventive measures are not appropriate to be used to absorb incurred losses and should be used early to prevent deterioration of the financial situation of the bank. Designated authorities should have a clear role to verify the fulfilment of safeguards for such DGS intervention. The conditions for applying preventive measures, while aligned with, do not apply to contractual arrangements underlying additional funds of IPSs recognised as DGS in accordance with this Directive, which are collected with the view to exercise their purposes as referred to in Article 113(7) of Regulation (EU) No 575/2013.

(26) To ensure preventive measures achieve their objective, the credit institution should be required to prepare a plan accompanying such measures. The plan should aim at strengthening the capital and liquidity position of the credit institution, making it capable of fulfilling all the relevant prudential and other regulatory requirements on a forward-looking basis. It should also include capital raising measures, which sets rules such as rules on issuance of rights, voluntary conversion of subordinated debt instruments, liability management exercises, capital generating sales of assets, securitisation of portfolio and earnings retention. The plan should anticipate exit strategy from the support measures, for example termination of guarantees, repayment of loans or redemption of capital instruments as soon as commercial and financial circumstances allow. Credit institutions will also need to strengthen their liquidity positions and refrain from aggressive commercial practices, acquiring stakes in undertakings and repurchasing own shares or call hybrid capital instruments during the implementation of the plan. Competent authorities are best positioned to assess the relevance and credibility of the plan from the credit institution requesting a preventive measure. This should be done in cooperation with the designated authorities of a DGS that is requested to finance a preventive measure

(27) The competent authority should request a remediation plan from the credit institution that did not comply with the conditions for granting any previous preventive measure. If the competent authority does not assess the measures contained in the remediation

[26] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

plan as capable of achieving the credit institution's long-term viability, the DGS should not grant any further preventive measures to the credit institution. In order to ensure a consistent approach across the EU, EBA should issue guidelines setting elements of the plan accompanying preventive measures and remediation plan, as well as the minimum criteria that they have to meet in order to receive the approval of the competent authority.

(28) In case of alternative measures in insolvency, to avoid detrimental effects on competition and on the internal market, authorities should make arrangements for the marketing of the business of the credit institution or part of it in an open, transparent and non-discriminatory process, while aiming to maximise, as far as possible, the sale price. The credit institution or any intermediary acting on behalf of the credit institution shall apply adequate rules for the transfer of assets, rights and liabilities to potential purchasers. In order to achieve an effective market exit, alternative measures facilitating transfers of the whole or part of the business can preserve the franchise value of the credit institution to a greater extent and avoid interruption in access of depositors to their money. In order to protect the funds of the DGS as much as possible, as well as to limit the distortion of competition between credit institutions when using alternative measures.

(29) In view of their mandate to protect covered deposits, DGSs should only be allowed to finance interventions other than payout provided that it is cheaper than repaying the covered deposits. Experience with the application of this rule has revealed several shortcomings as the current framework does not detail how to determine the cost of these interventions nor the cost of the counterfactual in a payout. To ensure a consistent application across Member States, it is therefore necessary to clarify the calculation of those costs, while taking into account the objective of avoiding excessively stringent conditions that would effectively disable the use of DGS funds for other interventions than payout. When carrying out the least cost assessment, DGSs should first verify that the cost to finance the selected measure is lower than the cost of reimbursement of covered deposits. The methodology for the least cost assessment should take into account the time value of money.

(30) Liquidation can be a lengthy process whose efficiency depends both on national judicial efficiency and insolvency regimes as well as individual bank features and the circumstances of the failure. For DGS interventions as part of alternative measures, the least cost test should rely on the valuation of the assets and liabilities of the credit institution under Article 36(1) and the estimate under Article 36(8) of Directive 2014/59/EU. However, the precise evaluation of liquidation recoveries can be challenging in the context of the least cost test for preventive measures, which supposedly happen long before any foreseeable liquidation. Therefore, the counterfactual for the least cost test for preventive measures should be adjusted accordingly and in any case the expected recoveries should be limited to a reasonable amount based on recoveries in past payout events.

(31) Further, the designated authorities should estimate the cost for the DGS related to the measure, for instance after the repayment of a loan, a capital injection or the use of a guarantee, net of expected earnings, operational expenses and potential losses, against a counterfactual based on a hypothetical final loss at the end of the insolvency proceedings which should take into account recoveries from the DGS as part of a bank's liquidation proceedings. The estimation of the loss incurred due to the reimbursement of covered deposits should also include costs indirectly related to the reimbursement of depositors in order to give a fair and more comprehensive picture of

the actual cost of depositors' repayment. Such costs should include the cost of replenishment of the DGS and the cost that the DGS might bear due to the recourse to alternative financing. In order to ensure consistent application, EBA should be empowered to adopt regulatory technical standards on the methodology of calculation of the cost of different DGS interventions. To ensure consistency of the methodology for the least cost assessment with the DGS statutory or contractual mandate as regards preventive measures, the EBA should take into account the relevance of preventive measures in the methodology for the calculation of the payout counterfactual.

(32) To enhance harmonised protection of depositors and specify respective responsibilities across the Union, the home DGS should ensure the payout to depositors located in Member States where the DGS member credit institutions take deposits and other repayable funds by offering deposit services on cross-border basis without establishment in the host Member State. To facilitate the payout operations and provision of information to depositors, the host DGS could operate as a point of contact for depositors at credit institutions that exercise the freedom to provide services.

(33) The cooperation between DGSs across the Union is vital to ensure fast and cost-efficient depositors' repayment where credit institutions conduct banking service through branches in other Member States. In view of technological advancements that promote the use of cross-border transfers and remote identification, the home DGS should be authorised to make the repayments directly to depositors at branches provided administrative burden and costs is lower than if the repayment was carried out by the DGS of the host Member State. This flexibility should complement the current cooperation mechanism, requiring the host DGS to repay depositors in branches on behalf of the home DGS. In order to preserve depositor confidence in both host and home Member States, EBA should issue guidelines in order to specify the modalities of the cooperation under such circumstances and list the conditions under which a home DGS should decide to reimburse depositors at branches located in another Member State.

(34) Credit institutions may change affiliation to a DGS because they move their headquarters to another Member State or convert their subsidiary into a branch or vice versa. Considering that contributions due during the 12 months preceding the change of DGS membership are not necessarily paid during this period, the sure should take into account contributions due rather than contributions paid.

(35) To ensure equal protection of depositors across the Union that cannot be fully guaranteed by an equivalence assessment regime of depositor protection in third countries, branches of a credit institution in the Union having its head office in a third country should be required to join a DGS in the Member State where they operate their deposit-taking activity. This requirement would also ensure consistency with Directives 2013/36/EU of the European Parliament and of the Council[27] and 2014/59/EU that aim to introduce a more robust prudential and resolution frameworks for third country groups providing banking services in the Union. Conversely, deposits of branches of Union member credit institutions set up in third countries should not be protected to avoid that DGSs are exposed to the economic and financial risks of third countries.

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[27] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(36) Standardised and regular information disclosure enhances awareness of depositors with regard to deposit protection. As they condition depositor confidence and preparedness for an actual crisis, information disclosure requirements should take into account the new paperless communication channels whereby credit institutions interact with depositors. Depositors should obtain clear and homogeneous information that explains their deposit protection while limiting the related administrative burden for credit institutions or DGSs. In this view, EBA shall be mandated to develop draft implementing technical standards to clarify, on the one hand, the content and format of the depositor information sheet to communicate to depositors on annual basis and, on the other hand, the template information that either DGSs or credit institutions may be required to communicate to depositors in specific situations catered for under this Directive.

(37) The merger of a credit institution or the conversion of subsidiary into branch or vice-versa constitute events that might affect the key features of depositor protection. In order to avoid adverse impacts on depositors that would have deposits in both of the merging banks and whose claim to deposit coverage would be reduced because of changes to DGS affiliation, all depositors should be informed about such changes and be entitled to withdraw their funds without incurring a penalty up to an amount equal to the lost coverage of deposits.

(38) It is necessary that the depositors are informed by the designated authority, a DGS and credit institutions concerned on deposits becoming unavailable and subsequent next steps with regard to those deposits and the credit institution concerned in order to preserve financial stability, avoid contagion and enable depositors to exercise their rights to claim deposits when applicable.

(39) The current reporting requirements should be strengthened to increase transparency for depositors and to promote financial robustness and trust among DGSs when fulfilling their mandate. Building on the current requirements that enable DGSs to request all necessary information from their member institutions to prepare for payout, DGSs shall also be able to request information necessary to prepare the DGSs for a payout in the context of cross border cooperation. Upon the request from a DGS, member institutions shall be required to provide general information about any material cross-border business in other Member States. Likewise, in order to provide the EBA with the suitable range of information on DGSs' available financial means evolution and use, Member States shall ensure that DGSs inform EBA on a yearly basis of an amount of covered deposits and available financial means and to notify EBA about the circumstances that led to the use of DGS funds either for payouts or other measures. Finally, to reflect the strengthened role of DGSs in the bank crisis management which aims to facilitate the use of DGS funds in resolution, DGSs should be entitled to receive the summary of resolution plans of credit institutions to increase their general preparedness to make the funds available.

(40) In view of the role of the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[28], in furthering the convergence of authorities' practices, the EBA should specify technical details related to the identification of clients for the purpose of the repayment, the EBA should also specify the methodology for the

[28] 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).

calculation of available financial means qualifying for the target level, the EBA should also specify detailed methodology for the least cost test.

(41) In order to ensure uniform conditions for the implementation of requirements on information to depositors and between credit institutions and DGSs, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[29].

(42) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(43) Directive 2014/49/EU should therefore be amended accordingly.

(44) Since the objectives of this Directive, namely to ensure uniform protection of depositors in the Union, cannot be sufficiently achieved by the Member States due to the risks that diverging national approaches might entail for the integrity of the single market but can rather, by amending rules that are already set at Union level, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/49/EU

Directive 2014/49/EU is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. This Directive lays down rules and procedures relating to the establishment and the functioning of deposit guarantee schemes (DGSs). It also lays down rules on coverage and repayment of deposits and on the application of measures to reduce the likelihood of future claims against DGSs, to maintain depositor confidence, and to contribute to financial stability.’;

(b) in paragraph 2, point (d) is replaced by the following:

‘(d) credit institutions, and branches of credit institutions that have their head office in a third country, that are affiliated to the schemes referred to in points (a), (b) or (c) of this paragraph.’;

(2) in Article 2, paragraph 1 is amended as follows:

(a) in point (3), the introductory wording is replaced by the following:

‘(3) ‘deposit’ means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking

[29] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

transactions habitually carried out by credit institutions in the course of their business, 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, but excluding a credit balance where:';

(b) in point (13), the introductory wording is replaced by the following:

'(13) 'payment commitment' means an irrevocable obligation of a credit institution towards a DGS to pay a monetary amount when called by the DGS and which is fully collateralised providing that the collateral:';

(c) the following points (19) to (23) are added:

(19) 'resolution authority' means a resolution authority as defined in Article 2, point (18) of Directive 2014/59/EU;

(20) 'client funds deposits' means funds deposited with a credit institution by account holders that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 in the course of their business for the account of their clients;

(21) 'Union State aid framework' means the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;

(22) 'money laundering' means money laundering as defined in Article 2, point (1) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];

(23) 'terrorist financing' means terrorist financing as defined in Article 2, point (2) [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].'

(d) paragraph 3 is replaced by the following:

'3. Shares in Irish building societies, apart from those of a capital nature covered in Article 5(1), point (b), shall be treated as deposits.';

(3) Article 4 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. If a credit institution does not comply with its obligations as a member of a DGS, that DGS shall notify the competent authorities immediately thereof. The competent authority shall, in cooperation with the DGS, use the supervisory powers laid down in Directive 2013/36/EU, and shall promptly take all measures to ensure that the credit institution concerned complies with its obligations, including where necessary by imposing administrative penalties and other administrative measures in accordance with the national laws adopted in addition to implementation of provisions of Title VII, Chapter 1, Section IV of Directive 2013/36/EU.';

(b) the following paragraph 4a is inserted:

'4a. Where a credit institution fails to pay the contributions referred to in Article 10 and Article 11(4) within the timeframe specified by the DGS, the DGS shall, for the period of the delay, charge statutory interest rate on the amount due.';

(c) paragraphs 5 and 6 are replaced by the following:

'5. The DGS shall inform the designated authority where the measures referred to in paragraphs 4 and 4a fail to restore compliance by the credit institution. The designated authority shall assess whether the institution still fulfils the conditions for a continued membership to the DGS and inform the competent authority of the outcome of this assessment.

6. Where the competent authority decides to withdraw the authorisation in accordance with Article 18 of Directive 2013/36/EU, the credit institution shall cease to be a member of the DGS. Deposits held on the date on which a credit institution ceased to be a member of the DGS shall continue to be covered by that DGS.';

(d) paragraph 8 is deleted;

(e) the following paragraph 13 is added:

'13. [PO – please add 36 months after entry into force], the EBA shall develop guidelines on the scope, contents and procedures to cover in the stress tests periodically performed by DGSs.';

(4) Article 5 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

'1. Without prejudice to Article 8b, the following shall be excluded from any repayment by a DGS:'

(ii) point (a) is replaced by the following:

'(a) deposits made by other credit institutions on their own behalf and for their own account;';

(iii) point (c) is replaced by the following:

'(c) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering and terrorist financing;';

(iv) point (e) is deleted;

(v) point (f) is replaced by the following:

'(f) deposits the holder of which has never been identified pursuant to Article 9(1) of Directive 2005/60/EC, where those deposits have become unavailable, except where a holder requests payout and proves that the lack of identification was not caused by his or her action;';

(vi) point (j) is deleted;

(b) paragraph 2 is replaced by the following:

'2. By way of derogation from paragraph 1, point (i), Member States may decide that deposits held by personal pension schemes and occupational pension schemes of small or medium-sized enterprises are included up to the coverage level laid down in Article 6(1).';

(5) Article 6 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the introductory wording is replaced by the following:

'In addition to paragraph 1, Member States shall ensure that the following deposits are protected as a minimum to an amount of EUR 500 000 for 6 months after the amount has been credited or from the moment when such deposits become legally transferable:';

(ii) point (a) is replaced by the following:

'(a) deposits resulting from real estate transactions relating to private residential properties and deposits intended for such transactions, provided that those transactions will be concluded by a natural person in the short term and that natural person can provide documents proving such transaction;';

(b) the following paragraph 2a is inserted:

'2a. The coverage level under paragraph 2 shall supplement the coverage level referred to in paragraph 1.'

(6) Article 7 is amended as follows:

(a) paragraph 5 is deleted.;

(b) paragraph 7 is replaced by the following:

'7. The DGS shall reimburse interest on deposits which have accrued until, but have not been credited or debited at, the date on which a relevant administrative authority makes a determination as referred to in Article 2(1), point (8)(a), or a judicial authority makes a ruling as referred to in Article 2(1), point (8)(b). The limit referred to in Article 6(1) shall not be exceeded.';

(7) the following Article 7a is inserted:

'Article 7a

Burden of proof for deposit eligibility and entitlement

Member States shall ensure that a depositor or, where appropriate, an account holder, proves, either the eligibility of deposits referred to in Articles 6(2), or entitlement to the deposits in the circumstances described in Article 7(3).';

(8) Article 8 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. By way of derogation from the timeframe referred to in paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Articles 6(2), 7(3) and 8b up to 20 working days from the date on which those DGSs received the complete documentation they requested from a depositor to examine the claims and verify that the conditions for repayment under this Directive are met.';

(b) in paragraph 5, point (c) is replaced by the following:

'(c) by way of derogation from paragraph 9, there has been no transaction relating to the deposit during the last 24 months (the account is dormant), except where a depositor also has deposits on another account for which the conditions for deferral have not been met;';

(c) Paragraph 5 point (d) is deleted;

(d) paragraph 8 is deleted;

(e) paragraph 9 is replaced by the following:

'9. Where there has been no transaction relating to the deposit during the last 24 months, DGSs may set a threshold concerning the administrative costs that would be incurred by those DGSs in making such a repayment, below which it shall not be obliged to take active steps to repay depositors. Depositors shall, upon request to the DGS receive funds below that threshold.';

(9) the following Articles 8a, 8b, 8c are inserted:

'Article 8a

Repayment of deposits exceeding EUR 10 000

Member States shall ensure that when amounts to be reimbursed exceed EUR 10 000 DGSs shall reimburse depositors via credit transfers as defined in Article 2(20) of Directive 2014/92/EU.

'Article 8b

Coverage of client funds deposits

1. Member States shall ensure that client funds deposits placed by entities referred to in Article 5(1), point (d) are covered by the DGSs where all of the following applies:

(a) such deposits are placed on behalf and for the account of clients who are eligible for protection in accordance with Article 5(1);

(b) such deposits are made to segregate client funds as required by Union law;

(c) the clients referred to in point (a) are identified or identifiable prior to the date on which a relevant administrative authority makes a determination as referred to in Article 2(1), point (8)(a) or a judicial authority makes a ruling as referred to in Article 2(1), point (8)(b).

2. The limit referred to in Article 6(1) shall apply to each of the clients that meet the conditions laid down in paragraph 1(c). By way of derogation from Article 7(1), when determining the repayable amount for an individual client, the DGS shall not take into account the aggregate deposits placed by that client with the same credit institution.

3. The DGSs shall repay covered deposits either to the account holder for the benefit of each client or directly to the client.

4. The EBA shall develop draft regulatory technical standards to specify the technical details related to the identification of clients for the purpose of repayment in accordance with Article 8, thereby taking into account:

(a) the specificities of the business model of the different types of financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013;

(b) and the specific requirements for the treatment of client funds under the applicable Union law by the financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013.

The EBA shall also specify:

(a) the criteria and circumstances under which the reimbursement is to be conducted in accordance with paragraph 3;

(b) the rules to avoid multiple claims for pay-outs to the same beneficiary.

EBA shall submit those draft regulatory technical standards to the Commission by [PO – please add 12 months after entry into force].

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first and second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 8c

Suspension of repayments in case of concerns about money laundering or terrorist financing

1. Member States shall ensure that the designated authority informs the DGS within 24 hours about the outcome of the customer due diligence measures in accordance with Article 15(4) of Regulation (EU) [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and the information received in accordance with Article 48 (4) of [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final]. The information exchanged between the designated authority and the DGS shall be limited to information strictly necessary for the exercise of the DGS' mandate under this Directive and in accordance with Directive 96/9/EC of the European Parliament and of the Council*[3].

2. Notwithstanding the time limit laid down in Article 8(1), Member States shall ensure that the DGS suspends payments, where a depositor or any person entitled to sums held in his or her account has been charged with an offence arising out of, or in relation to, money laundering or terrorist financing, pending the judgment of the court.

3. The DGS shall suspend the repayment referred to in Article 8(1) upon the receipt of information about deposits where the Financial Intelligence Unit referred to in Article 32 of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] has decided to suspend a transaction or to withhold consent to proceed with such a transaction, or to suspend a bank or a payment account in accordance with Article 20(1) or (2) of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] for the same duration as laid down in Article 20 of that Directive.

4. The DGS shall not be liable for any measures taken in accordance with the instructions of the Financial Intelligence Unit. The DGS shall use any information received from the Financial Intelligence Unit for the purposes of this Directive only.'

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*[3] Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).';

(10) in Article 9, paragraphs 2 and 3 are replaced by the following:

'2. Without prejudice to rights which it may have under national law, the DGS that makes payments under guarantee within a national framework shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to its payments made to

depositors. Where a DGS makes a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b) of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5), the DGS shall have a claim against the residual credit institution for any loss incurred by the DGS as a result of any contributions made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer pursuant to Article 11(5) in connection to losses which depositors would have otherwise borne. That claim shall rank at the same level as deposits under national law governing normal insolvency proceedings.'

3. Member States shall ensure that depositors whose deposits have not been repaid or acknowledged by the DGS within the timeframes laid down in Article 8(1) and (3) can claim the repayment of their deposits within a period of 5 years.';

(11) Article 10 is amended as follows:

(a) paragraph 2, is amended as follows:

(i) after the first subparagraph, the following subparagraphs are inserted:

'For the calculation of the target level referred to in the first sub paragraph, the reference period shall be between 31 December preceding the date by which the target level is to be reached and that date.

When determining whether the DGS has reached that target level, Member States shall only take into account available financial means directly contributed by, or recovered from, DGS members, net of administrative fees and charges. Those available financial means shall include investment income derived from funds contributed by DGS members, but shall not include repayments not claimed by eligible depositors during payout procedures, nor loans between DGSs.';

(ii) the third subparagraph is replaced by the following:

'Where, after the target level has been reached for the first time, the available financial means have been reduced to less than two-thirds of the target level following the disbursement of DGS's funds in accordance with Article 8 (1), Article 11(2), (3), and (5), DGSs shall set the regular contribution at a level allowing the target level to be reached within six years.';

(b) paragraph 3 is replaced by the following:

'3. The available financial means that the DGS takes into account to reach the target level referred to in paragraph 2 may include payment commitments. The total share of such payment commitments shall not exceed 30 % of the total amount of available financial means raised in accordance with paragraph 2. The EBA shall issue guidelines on payment commitments laying down the requirements they shall fulfil to count towards the target level;'

(c) paragraph 4 is deleted;

(d) paragraph 7 is replaced by the following:

'7. Member State shall ensure that DGSs or designated authorities or competent authorities set the investment strategy for available financial means

of DGSs, and that that investment strategy complies with the principle of diversification and investments in low-risk assets.';

(e) the following paragraph 7a is inserted:

'7a. DGSs may place all or part of their available financial means with their national central bank or national treasury, provided that those available financial means are kept on a segregated account and that they are readily available for the use by the DGS in accordance with Articles 11 and 12.';

(f) paragraph 10 is deleted;

(g) the following paragraphs 11, 12 and 13 are added:

'11. DGSs may use the funds originating from the alternative funding arrangements referred to in Article 10(9) before using the available financial means and before collecting the extraordinary contributions referred to in Article 10(8). In the context of application of measures referred to in paragraphs (1), (2), (3) and (5), Member States shall ensure that DGSs use alternative funding arrangements financed through public funds only as a last resort.

12. The EBA shall develop draft regulatory technical standards to specify the methodology for the calculation of available financial means qualifying for the target level referred to in paragraph 2, including the delineation of the available financial means of DGSs and, the categories of available financial means that derive from contributed funds, and to specify the details of the process to reach the target level referred to in paragraph 2 in case of use of DGS funds for the purposes of Article 11.

EBA shall submit those draft regulatory technical standards to the Commission by [PO – please add 24 months after entry into force].

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

13. [PO – please add 24 months after entry into force] The EBA shall develop guidelines on the principles of diversification and investments in low-risk assets applicable to the available financial means of DGSs.';

(12) Article 11 is replaced by the following:

'*Article 11*

Use of funds

1. DGSs shall use the available financial means primarily to repay depositors in accordance with Article 8. This primary role of depositors' repayment is not applicable to the funds collected by IPS referred to in Article 1(1)(c) in accordance with their statutory or contractual commitment as referred to in Article 113(7) of Regulation (EU) No 575/2013 in addition to the available financial means within the meaning of Article 10(2).

2. DGSs shall use their available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. The resolution authority shall determine the amount by which the DGS is liable after consulting the DGS on the results of the least cost test referred to in Article 11e.

3. Member States may allow DGSs to use the available financial means for preventive measures for the benefit of a credit institution where none of the circumstances referred to in Article 32(4) of Directive 2014/59/EU are present, provided that the DGS confirms that the cost of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e and that all of the conditions laid down in Articles 11a and 11b are met.

4. If available financial means are used in accordance with paragraph 3 of this Article, the affiliated credit institutions shall immediately provide the DGS with the means used for preventive measures, where necessary in the form of extraordinary contributions, where:

(a) the need to repay depositors arises and the available financial means of the DGS amount to less than two-thirds of the target level;

(b) the available financial means fall below 25 % of the target level.

5. Where a credit institution is wound up in accordance with Article 32b of Directive 2014/59/EU in order to exit the market or terminate its banking activity, Member States may allow DGSs to use the available financial means for alternative measures to preserve the access of depositors to their deposits, including transfer of assets and liabilities and deposit book transfer, provided that the DGS confirms that the cost of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e and that all the conditions laid down in Article 11d are met.';

(13) the following Article 11a is inserted:

'Article 11a

Preventive measures

1. DGSs may use the available financial means for preventive measures referred to in Article 11(3), provided that all of the following conditions are met:

(a) the request of a credit institution for financing of the preventive measures is accompanied with a plan to ensure or restore compliance of the credit institution with the supervisory requirements which complies with the conditions laid down in Article 11b and is approved by the competent authority in accordance with Article 11c;

(b) the competent authority has confirmed that the preventive measure is necessary to preserve the financial soundness and the long-term viability of the credit institution;

(c) the use of preventive measures by the DGS is linked to conditions imposed on the supported credit institution, involving at least more stringent risk monitoring of the credit institution and greater verification rights for the DGS;

(d) the use of preventive measures by the DGS is conditional to the credit institution's commitments to secure access to covered deposits;

(e) the ability of the affiliated credit institutions to pay the extraordinary contributions in accordance with Article 11(4) is confirmed.

(f) the credit institution complies with its obligations under this Directive and has fully reimbursed any previous measure.

2. Member States shall ensure that DGSs have monitoring systems and decision-making procedures in place that are appropriate for selecting and implementing preventive measures and monitoring affiliated risks.

3. Member States shall ensure that DGSs may implement preventive measures only where the designated authority has confirmed that all the conditions laid down in paragraph 1 have been met. DGSs shall notify the competent authority and the resolution authority of such confirmation upon receipt.';

(14) the following Article 11b is inserted:

'Article 11b

Plan accompanying preventive measures

1. Member States shall ensure that credit institutions which request a DGS to apply preventive measures in accordance with Article 11(3), submit to the competent authority a plan to ensure or restore compliance with the supervisory requirements applicable to the credit institution concerned in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013.

2. The plan referred to in paragraph 1 shall set out actions to mitigate the risk of deterioration of the financial soundness and strengthen its capital and liquidity position.

3. In the event of a capital support measure, the plan referred to in paragraph 1 shall identify all capital raising measures that can be implemented, a forward-looking capital adequacy assessment, and a subsequent determination of the capital shortfall that the DGS has to cover.

4. The plan referred to in paragraph 1 shall provide for clearly specified termination date for the measures or repayment schedule by the credit institution of any funds received as part of the preventive measures.

5. Where relevant, Member States shall ensure that the plan referred to in paragraph 1 is aligned with the capital conservation plan referred to in Article 142 of Directive 2013/36/EU.

6. Where the Union State aid framework is applicable, Member States shall ensure that the plan referred to in paragraph 1 is aligned with the restructuring plan that the credit institution is required to submit to the Commission under that framework.

7. The competent authority concerned shall assess the plan referred to in paragraph 1 without delay in consultation with the designated authorities of the DGS. Where the competent authority is satisfied that the plan is credible and feasible to achieve its objectives, it shall approve the plan.';

(15) the following Article 11c is inserted:

'*Article 11c*

Remediation plan

1.Where the credit institution fails to comply with the requirements set out in the plan referred to in Article 11b(1) or to repay the amount of preventive measures at maturity, the DGS shall inform without delay the competent authority. The competent authority shall request the credit institution to submit a remediation plan describing the steps it will take, the associated timeframe to restore compliance with

those requirements and for the repayment by the credit institution of the due amount contributed by the DGS to the preventive measure.

3. If the competent authority is satisfied that the remediation plan is credible and feasible to achieve the objectives set out in it, it shall approve the plan. If the competent authority is not satisfied that the plan is credible or feasible, no further preventive measures shall be granted to this credit institution.

4. [PO – please add 42 months after entry into force] The EBA shall issue guidelines setting elements of the plan accompanying preventive measures referred to in Article 11b(1) and remediation plan referred to in the first paragraph, and the minimum criteria that they have to meet in order to receive the approval of the competent authority in accordance with the first paragraph and Article 11b(7).';

(16) the following Article 11d is inserted:

'Article 11d

Transparency of marketing process in alternative measures

1. DGSs may use the available financial means for alternative measures referred to in Article 11(5), provided that the credit institutions market, or make arrangements for the marketing of the assets, rights and liabilities they intend to transfer in accordance with the following and without prejudice to the Union State aid framework:

(a) the marketing is open and transparent and does not misrepresent the assets, rights and liabilities that are to be transferred;

(b) the marketing does not favour nor discriminate between potential purchasers and does not confer any advantages on a potential purchaser;

(c) the marketing is free from any conflict of interest;

(d) the marketing takes account of the need to implement a rapid solution taking into account the timeline provided in Article 3(2), second subparagraph for the determination referred to in Article 2(1), point (8)(a);

(e) the marketing aims at maximising, as much as possible, the sale price for the assets, rights and liabilities concerned.';

(17) the following Article 11e is inserted:

'*Article 11e*

Least cost test

'1. When considering the use of DGS funds for the measures referred to in Article 11(2), (3) or (5) Member States shall ensure that DGSs compare:

(a) the estimated cost for the DGS to finance the measures referred to in Article 11 (2), (3) or (5), with

(b) the estimated cost of repaying depositors in accordance with Article 8(1).

2. For the comparison referred to in paragraph 1, the following shall apply:

(a) for the purpose of the estimation of the costs referred to in paragraph 1, point (a) the DGS shall take into account the expected earnings, operational expenses and potential losses related to the intervention;

(b) the DGS shall base its estimation of the cost of repaying depositors, as referred to in paragraph 1, point (b), on the valuation of the assets and liabilities of the

credit institution referred to in Article 36(1) and the estimate referred to in Article 36(8) of Directive 2014/59/EU for the measures referred to in Article 11(2) and (5);

(c) for the purpose of the estimation of the cost of repaying depositors, as referred to in paragraph 1, point (b), the DGS shall take into account the expected recoveries, the cost to be borne by credit institutions that are members of the DGS for the replenishment of the DGS and the potential additional cost of funding for the DGS;

(d) in case of measures referred to in Article 11(3), the DGS shall base its estimation of the cost of repaying depositors as referred to in paragraph 1, point (b) on an estimated ratio of recoveries for DGS interventions which shall not exceed 85% of the amount of the repayment.

3. The amount used for the measures referred to in Article 11(2), (3) or (5) shall not exceed the amount of covered deposits at the credit institution.

4. The competent and resolution authorities shall provide the DGS with all information necessary for the comparison referred to in paragraph 1. The estimated cost of intervention referred to in Article 11(2) which is based on the valuation of the assets and liabilities of the credit institution referred to in Article 36(1) shall be provided by the resolution authority.

5. The EBA shall develop draft regulatory technical standards to specify:

(a) the methodology for the calculation of the estimated cost referred to in paragraph 1, point (a) which shall take into account the variety of forms such intervention could take;

(b) the methodology for the calculation of the estimated cost of repaying depositors referred to in paragraph 1, point (b), including the estimated ratio of recoveries referred to in paragraph 2, point (c);

(c) for the purpose of the calculation of the estimated cost of repaying depositors referred to in paragraph 1, point (b) in the case of preventive measures, the methodology referred to in point (b) shall take into account the importance of preventive measures for the statutory or contractual mandate of the DGS;

(d) The way to account for the change of value of money due to potential accrued earnings over time in methodologies referred to in points (a), (b) and (c) when relevant.

The EBA shall submit those draft regulatory technical standards to the Commission by [PO – please add 12 months after entry into force].

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(18) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. DGSs shall cover the depositors at branches set up by their member credit institutions in other Member States and depositors located in Member States where their member credit institutions exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU.';

(b) in paragraph 2, the following subparagraph is added:

'By way of derogation from the first subparagraph, a DGS of the home Member State may decide to repay depositors at branches directly if the administrative burden and cost is lower than repayment by a DGS of the host Member State and it ensures that the depositors are not worse off than where the reimbursement is conducted in accordance with the first subparagraph.';

(c) the following paragraphs 2a and 2b are inserted:

'2a. A DGS of a host Member State may, subject to an agreement with a DGS of a home Member State, act as the point of contact for depositors at credit institutions that exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU, and shall be compensated for the costs incurred.

2b. In the cases referred to in paragraphs 2 and 2a, the DGS of the home Member State and the DGS of the host Member State concerned shall have an agreement in place on the payout conditions, including on the compensation of any costs incurred, the contact point for depositors and the payment method.';

(d) paragraph 3 is replaced by the following:

'3. Where a credit institution ceases to be member of a DGS and joins a DGS of another Member State or if some of its activities are transferred to a DGS of another Member State, the DGS of origin shall transfer to the receiving DGS the contributions due during the last 12 months preceding the change of DGS membership, with the exception of the extraordinary contributions referred to in Article 10(8).';

(e) the following paragraph 3a is inserted:

'3a. For the purpose of paragraph 3, the DGS of origin shall transfer the amount referred to in paragraph 3 within one month from the change of DGS membership.';

(f) the following paragraph 9 is added:

'9. The EBA shall issue guidelines to further specify the respective roles of home and host DGSs as referred to in paragraph 2, first subparagraph and the list of circumstances and conditions under which a home DGS decides to reimburse depositors at branches located in another Member State as laid down paragraph 2, second subparagraph.';

(19) Article 15 is replaced by the following:

'*Article 15*

Branches of credit institutions that are established in third countries

Member States shall require branches of credit institutions which have their head office outside the Union to join a DGS within their territory before they allow such branches to take eligible deposits in those Member States.';

(20) the following Article 15a is inserted:

'*Article 15a*

Member credit institutions that have branches in third countries

DGSs shall not cover depositors at branches that have been set up in third countries by their member credit institutions except where, subject to the approval of the designated authority, they raise corresponding contributions from the concerned credit institutions.';

(21) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that credit institutions make available to actual and intending depositors with the information those depositors need to identify the DGSs of which the credit institution and its branches are members within the Union. They shall provide that information in the form of an information sheet prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX of the European Parliament and of the Council [ESAP Regulation]*[4].

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*4 Regulation (EU) XX/XXX of the European Parliament and of the Council of dd mm jj establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability.';

(b) the following paragraph 1a is inserted:

'1a. The information sheet referred to in paragraph 1 shall contain all of the following:

(i) basic information about the protection of deposits;

(ii) contact details of the credit institution as a first point of contact for information on the content of the information sheet;

(iii) protection level for deposits within the meaning of Article 6(1) and 6(2) in EUR or, where relevant, another currency;

(iv) applicable exclusions from DGS protection;

(v) limit of protection in relation to joint accounts;

(vi) reimbursement period in case of the credit institution's failure;

(vii) currency of reimbursement;

(viii) identification of the DGS responsible for protecting a deposit, including a reference to its website.';

(c) paragraph 2 is replaced by the following:

'2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before entering into a contract on deposit-taking and, subsequently, annually. Depositors shall acknowledge the receipt of that information sheet.';

(d) in paragraph 3, the first subparagraph is replaced by the following:

'Member States shall ensure that credit institutions confirm on their depositors' statements of account that the deposits are eligible deposits, including a reference to the information sheet referred to paragraph 1.';

(e) paragraph 4 is replaced by the following:

‘4. Member States shall ensure that credit institutions make the information referred to in paragraph 1 available in the language that was agreed by the depositor and the credit institution when the account was opened or in the official language or languages of the Member State in which the branch is established.’;

(f) paragraphs 6 and 7 are replaced by the following:

‘6. Member States shall ensure that in the case of a merger of credit institutions, conversion of subsidiaries of a credit institution into branches, or similar operations, credit institutions notify their depositors thereof at least one month before that operation takes legal effect, unless the competent authority allows for a shorter deadline on the grounds of commercial secrecy or financial stability. That notification communication shall explain the impact of the operation on the depositor protection.

Member States shall ensure that, where as a result of operations referred to in the first subparagraph, depositors with deposits in those credit institutions will be affected by the reduced deposit protection, the credit institutions concerned shall notify those depositors that they may withdraw or transfer to another credit institution their eligible deposits, including all accrued interest and benefits, without incurring any penalty up to an amount equal to the lost coverage of their deposits within a three months following the notification referred to in the first subparagraph.

7. Member States shall ensure that credit institutions that cease to be a member of a DGS inform their depositors thereof at least one month prior to such cession.’;

(g) the following paragraph 7a is inserted:

‘7a. Member States shall ensure that designated authorities, DGSs and credit institutions concerned inform depositors, including by a publication on their websites, of the fact that a relevant administrative authority has made a determination as referred to in Article 2(1), point (8)(a), or a judicial authority has made a ruling as referred to in Article 2(1), point (8)(b).’;

(h) paragraph 8 is replaced by the following:

‘8. Member States shall ensure that where a depositor uses internet banking, credit institutions provide the information they have to provide to their depositors under this Directive by electronic means unless a depositor requests to receive that information on paper.’;

(i) the following paragraph 9 is added:

‘9. The EBA shall develop draft implementing technical standards to specify:

(a) the content and the format of the information sheet, referred to in paragraph 1a

(b) the procedure to be followed for the provision of, and the content of, the information to be provided in the communications from designated authorities, DGSs or credit institutions to depositors, in the situations referred to in Articles 8b and 8c and in paragraphs 6, 7 and 7a of this Article.

The EBA shall submit those draft implementing technical standards to the Commission by [PO - please insert date 12 months after the entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.';

(22) the following Article 16a is inserted:

'*Article 16a*

Information exchange between credit institutions and DGS, and reporting by authorities

1. Member States shall ensure that DGSs, at any time and upon request, receives from their affiliated credit institutions all information necessary to prepare for a repayment of depositors, in accordance with the identification requirement laid down in Article 5(4), including the information for the purposes of Article 8(5) and Articles 8b and 8c.

2. Member States shall ensure that credit institutions, upon request of a DGS, provide the DGS of which they are a member information about:

(a) depositors at branches of those credit institutions;

(b) depositors who are recipients of services provided by member institutions on the basis of the freedom to provide services.

The information referred to in points (a) and (b) shall indicate the Member States in which those branches or depositors are located.

3. Member States shall ensure that, by 31 March each year, DGSs inform the EBA of the amount of covered deposits in their Member State on 31 December of the preceding year. By the same date, DGSs shall also report to the EBA the amount of their available financial means, including the share of borrowed resources, payment commitments and the timeline for reaching the target level in case of use of DGS funds.

4. Member States shall ensure that the designated authorities notify the EBA, without undue delay, about all of the following:

(a) the determination of unavailable deposits pursuant to circumstances referred to in Article 2(1), point (8);

(b) whether any of the measures referred to in Article 11(2), (3) and (5) have been applied and the amount of funds used in accordance with Articles 8(1), 11(2), (3) and (5), and, where applicable and once available, the amount of funds recovered, the resulting cost for the DGS and the duration of the recovery process;

(c) the availability and the use of alternative funding arrangements in accordance with Article 10(3);

(d) any DGSs that have ceased to operate or the establishment of any new DGS, including as a result of a merger or the fact that a DGS started operating on a cross-border basis.

The notification referred to in the first subparagraph shall contain a summary describing the initial situation of the credit institution, a description of the measures

for which the DGS funds have been used and the expected amount of available financial means used.

5. The EBA shall, without undue delay, publish the information received in accordance with paragraphs 2 and 3 and the summary referred to in paragraph 4.

6. Member States shall ensure that the resolution authorities of the credit institutions which are a member of a DGSs provide that DGS, upon request, with the summary of the key elements of the resolution plans as referred to in Article 10(7), point (a), of Directive 2014/59/EU, provided that such information is necessary for the DGS and designated authorities to exercise obligations referred to in Article 11 (2), (3) and (5) and in Article 11e.

7. The EBA shall develop draft implementing technical standards to specify the procedures to be followed when providing the information referred to in paragraphs 1 to 4, the templates for providing information, and to further specify the content of that information, taking into account the types of depositors.

The EBA shall submit those draft implementing technical standards to the Commission by [PO - please add 12 months after entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.';

(23) Annex 1 is deleted.

Article 2

Transposition

1. Member States shall adopt and publish, by [PO – please add 24 months after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [PO – please add 24 months after entry into force] with the exception of Article 11(3) which shall apply from [PO – please add 48 months after entry into force].

A Member States which has officially recognised an IPS as a DGS in accordance with Article 4(2) may extend the date of application of Article 11(3) referred to in the second subparagraph up to 24 months. The Member State shall notify the reasons of this extension to the European Commission.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*