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Introduction

At the Council Working Party meeting on July 7th MS discussed some Selected issues on the Deposit Guarantee Scheme Directive (DGSD) proposed by the Presidency which covered: (i) **definitions, scope and membership** (Articles 1, 2, 4, 5, 6, 8b); (ii) **operational provisions around pay-out** (Articles 7, 7a, 8, 8a, 8c, 9); (iii) **financing of DGS funds in all interventions** (Article 10); (iv) **cooperation between DGSs within the Union** (Article 14); (v) **coverage of branches from and in third countries** (Articles 1(2)(d), 15, 15a) and (vi) **transparency** (Articles 16 and 16a).

Following MS's written comments the Presidency proposes the following possible compromises as potential ways forward.

1. Definitions, scope and membership (DGSD Articles 1, 2, 4, 5, 6, 8b)

1.1. Article 1: Subject matter and scope

As stated in the recital, it is proposed to clarify that along with the establishment and functioning of the DGS, *the coverage and repayment of deposits, and the use of DGS funds for measures that aim to maintain the access of depositors to their deposits*, also fall within the scope of this Directive.

The vast majority of MS did not raise concerns with this amendment. However, some MS consider that the proposed drafting is not clear, as introducing "*ensure the access of depositors to their deposits*" could be misleading and suggested replacing it with "*for measures other than the repayment of the depositors*". Another MS welcomed the amendment but understood that the text also created confusion so as it could be considered that preventive and alternative measures could be understood as mandatory and saw merit in making even clearer the discretionary basis of these measures. Finally, there was another MS that did not support the amendment as understands that the only function of the DGS should be the payout. No further comments were received.

Based on the existing feedback, the Presidency considers that is merit in clarifying it.

Therefore, the following amendment is proposed in article 1, paragraph 1:

*1. This Directive lays down rules and procedures relating to the establishment and the functioning of deposit guarantee schemes (DGSs), the coverage and repayment of deposits, and, **where appropriate, the safeguards for the use of DGS funds for measures other than repayment of depositors** that aim to ensure the access of depositors to their deposits.*

Q1.1: Do Member States agree with the proposed way forward?

1.2. Article 2: Definitions

Article 2 sets out terms and definitions that are used for the purpose of the DGSD. It is amended to introduce definitions, consistently with the new provisions introduced in the

proposal following the EBA's recommendations on its opinions on clients' funds deposits and anti-money laundering and terrorist financing.

In this regard the main comments received by MS were:

- ✓ **Article 2.1. Point (3) definition of deposit.** This amendment is mainly aimed at clarifying that deposits relate to normal banking transactions habitually carried out by credit institutions in the course of their business. The vast majority of the MS did not make any comments regarding this change. One MS suggested to remove the word "habitually" as it would create confusion. Another MS considered that the rationale of this change should be further developed in the recital as there is no further definition of "deposit" in Regulation 575/2013 as this could be applied *per analogiam*; and, finally, another MS expressly agreed with the proposed change as it was aligned with the ECJ ruling [C-688/15 and C-109/16], and EBA Opinion on Eligibility, p.56.
- ✓ **Article 2.1, Point (13) Payment commitment.** It is amended to clearly specify they should be "irrevocable" and to specify that it shall have to be paid when requested by the DGS. This change is aligned with the EBA Opinion on "Funding and Uses of funds" that recommended aligning the terminology to payment commitments in the EU framework and doing so by amending the DGSD to replace the term 'payment commitments' with the term 'irrevocable payment commitments and to clarify that irrevocable payment commitment should have to be defined as an irrevocable obligation of a credit institution towards a DGS to pay a monetary amount when the payment commitment is called. The vast majority of the MS did not raise concerns against this change, although there was one MS who proposed adding that payment commitments would be due to the DGS under specified conditions.
- ✓ **Article 2.1, Points (19) to (23)** are added to incorporate new definitions related to "resolution authority", "client funds deposits", "Union State aid framework", "money laundering" and "terrorist financing", respectively. The vast majority of MS did not raise concerns with the new proposed definitions, although some MSs commented about the new definition of "client funds deposits" and argued that the treatment for this account should be aligned with the treatment of the rest of accounts open also on behalf of third parties by non-financial entities. In any case, these comments will be treated when analysing article 8b.
- ✓ **Article 2, paragraph 3** is amended to remove the reference to UK. Since this is a technical change due to the exit of UK from the EU no additional concerns were raised by MS.

The Presidency considers that there is broad support among MS to support the COM proposals, and no changes are proposed to these COM definitions.

Q1.2: Do Member States agree with the proposed way forward?

1.3. Article 4: Official recognition, membership and supervision

As indicated by the COM, DGSs, or where relevant, designated authorities, can apply pecuniary sanctions for late payment of contributions and, in order to improve coordination between DGSs, designated and competent authorities may also consider the need to take enforcement actions against a credit institution that does not comply with its obligations. Likewise, it is necessary to ensure that designated authorities inform the competent authorities in time about any infringement of obligations of credit institutions under deposit protection rules. Finally, it is proposed that, to support further convergence of DGSs' practices and assist DGSs in testing their resilience, the EBA should issue guidelines on the performing of stress tests of DGS' systems.

For these reasons, paragraphs 4, 5 and 6 are amended, paragraph 8 it is deleted and new paragraphs 4a) and 13 are inserted.

The vast majority of the MS did not raise concerns against these changes. However, some technical comments for improvement were received regarding the following paragraphs:

- ✓ **Article 4, Paragraph 4 and 4a) sanctioning measures:** one MS raised some technical concerns to ensure consistency with Recital 2 and to take into account situations where the DGS it is not the designated authority. Another MS suggested amending recital 2 to clarify that pecuniary sanctions can only be imposed by competent authorities and not DGSs or designated authorities. It also raised concerns on whether administrative penalties and other administrative measures would be adopted in addition or in accordance with Directive 2013/36/EU. Finally, another MS considers convenient to clarify that the imposition of statutory interest rate on the amount due should have to be done following consultation with the competent authority.

The Presidency considers that for consistency purposes there is merit to clarify these aspects in the text. Regarding whether administrative penalties and other administrative measures would be adopted in addition or in accordance with Directive 2013/36/EU, the Presidency after consulting the COM believes that it should be "in addition" since Directive 2013/36/EU does not foresee this possibility.

- ✓ **Article 4, Paragraphs 5. DGS Membership removal:** there were some concerns by MS aimed at clarifying that DGSs or, where appropriate, the designated authority should report to the competent authority if the measures imposed to the credit institution to return to compliance had failed, as in the current proposal this is not foreseen. Presidency considers that there is merit in clarifying for consistency.

For all these reasons, the Presidency understands that there is a broad support for the COM proposals with the following amendments that are suggested as possible compromise text:

Recital 2

*The failure to comply with the obligations to pay contributions to DGSs or to provide information to depositors and DGSs could undermine the objective of depositor protection. DGSs, or where relevant, designated authority ~~can apply pecuniary sanctions~~ **charge statutory interest rate on the amount of contributions due** for late payment of contributions [...]*

Article 4 paragraphs 4, 4a and 5.

4. *Members States shall ensure that where a credit institution does not comply with its obligations as a member of a DGS, that DGS, or where relevant, the designated authority shall immediately notify the competent authority of that credit institution thereof. Member States shall ensure that the competent authority, in cooperation with that DGS, or where relevant, the designated authority, uses the supervisory powers laid down in Directive 2013/36/EU, and promptly takes 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 ~~the implementation of~~ provisions of Title VII, Chapter 1, Section IV, of Directive 2013/36/EU.’;*

4a) *Members States shall ensure that 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, that DGS or where relevant, the designated authority shall, for the period of the delay, after consultation with the competent authority charge statutory interest rate on the amount due.’*

‘5. *Member States shall ensure that the DGS, or when appropriate the designated authority, informs the competent authority, designated authority where the measures referred to in paragraphs 4 and 4a fail to restore compliance by the credit institution. Member States shall ensure that the DGS or when appropriate, designated authority assesses whether the institution still fulfils the conditions for a continued membership of the DGS and inform the competent authority of the outcome of that assessment.*

Q1.3: Do Member States agree with the proposed way forward?

1.4. Article 5: Eligibility of deposits

As indicated in the recital, deposits of certain financial institutions, including investment firms are excluded from coverage by the DGS. However, the funds that those financial institutions receive from their clients and that they deposit in a credit institution on behalf of their clients, on the basis of segregation requirements under sectoral rules, should be protected subject to certain conditions. Likewise, 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. Therefore, it is proposed that deposits of all non-professional investors, including public authorities, can benefit from the protection offered by a DGS.

The main MS comments can be summarized as follows:

- ✓ **Article 5, Paragraph 1(c) money laundering and terrorist financing:** some MS suggested clarification regarding the determination of the deposits that would be affected by the exclusion of money laundering and terrorist financing since the text is not clear enough as it could create further identification problems.

- ✓ **The introductory wording of Article 5, Paragraph 1 in point (i)** should be deleted as pointed by some MS. This a technical correction because indeed this part of the Directive is not amended.
- ✓ **Article 5, Paragraph 1 (e) deposits by investment firms:** some MS raised concerns against the deletion of this letter which excludes deposits held by investment firms from coverage. However, the Presidency considers that the deletion of point (e) in Article 5(1) DGSD on the exclusion of investment firms is only a technical amendment because investments firms are already excluded from coverage under point (d) of Article 5(1), so there is no need for retaining letter (e). Additionally, the Presidency considers that there could be merit as well to indicate in letter (e) that the deposits excluded from the DGS coverage from financial institutions are the ones made on their own behalf and for their own account.
- ✓ **Article 5, Paragraph 1 (f) identification of depositors:** some MS suggested some technical amendments to clarify the text. There was one MS that suggested that before making the payment to the depositor, the DGS always needs to identify the depositor. Another MS considered that the burden of proof of the depositor to prove why he has not been identified should not fall on the side of the depositor.

The Presidency sees merit in clarifying that a depositor needs to be always identified before the payment of the guaranteed amount. Regarding the comment on the burden of proof on the side of the depositor, the Presidency, while understanding the view of MS, considers that this is a very specific circumstance and only related to proving his lack of action (e.g., the credit institution sent him an email asking to provide his ID and the depositor did not do it). It is therefore implicitly suggested that it is the credit institution the one that has the burden in the first place, so the Presidency considers that there is no need for the amendment.

- ✓ **Article 5, Paragraph 1 (j) and derogation of paragraph 2b. Public sector entities:** Some MS agree to include coverage of some public sector entities that are not sophisticated depositors (schools, hospitals, some local services etc.) but more sophisticated ones, as central/regional governments, should remain excluded from coverage. Other MSs are against protecting deposits from any public sector entities, while others agree with the COM proposal of inclusion. Finally, there was another MS who agreed with the proposal, suggesting an extension of both the coverage limit and the scope, as to also cover other public sector entities.

The Presidency, taking into account the number of comments received, considers that there is merit in maintaining the COM proposal but excluding from coverage more sophisticated deposits like central and regional governments. Additionally, it is not foreseen that this exclusion would have a relevant impact on their budget, and believes it would be the solution that could count with more support among MS. The Presidency considers that the definition of regional and central government could be left to national discretion, given the relevance of the domestic administrative set-up in each MS, but another possibility would be to include the

definition stated in in points 2.114 and 2.115 of Regulation (EU) No 549/2013 on the European system of national and regional accounts in the European Union.

For all these reasons, the Presidency understands that there is broad support for the COM proposal with the following amendments that are suggested as possible compromise text:

Article 5, Paragraph 1 (point (i) of the amending text:

the introductory wording is replaced by the following:

'1. The following shall be excluded from any repayment by a DGS:'

Article 5, Paragraph 1 (d)

(d) deposits made by financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013 on their own behalf and for their own account;

Article 5, Paragraph 1, letter f)

*'(f) deposits the holder of which has never been identified pursuant to Article 16 of Regulation (EU) [please insert short reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], 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. **In this case, the identity of the depositor should be verified before the payout;***

Article 5, Paragraph 5.1 letter j)

*j) **deposits by central and regional governments***

Q1.4:

(a) Do Member States agree with the proposed way forward?

(b) Do Member States agree and with not including a definition for central and regional government?

1.5. Article 6: Coverage Level

As indicated by the COM, 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 (**THB**). It is proposed 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, so it is proposed 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. On the other hand, the COM understands that during a real estate transaction, the funds can transit through different accounts prior to the actual settlement of the transaction and suggests that the 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. This would be as well aligned with the EBA proposal on their DGSD opinions.

The following main comments have been made by some MS:

- ✓ **Article 6, Paragraph 2. Amount and time limit of THB:** one MS considers convenient to clarify that the temporary high coverage should apply to all the temporary situations indicated in the DGSD (article 6.2 subparagraphs (i), (ii) and (iii)) but as a limit for each of the cases. In this regard, while it seems unlikely that the depositor in question would be in those 3 cases at the same time during those 6 months period, the Presidency sees merit in clarifying it to avoid any further confusion.

Some MSs consider that the temporary high amount should be guaranteed for 3 months instead of 6 months since this period would be considered sufficient for the depositor to decide. On the contrary, some other MSs consider it convenient to extend it to 12 months or setting 6 months at a minimum period. Some other MSs consider the minimum 500,000 euro to be burdensome for some jurisdictions and advocate for a lower level. The Presidency understands that, without prejudice of some concerns raised regarding the temporary protection limit and the minimum amount, there is a broad support for the COM proposal.

- ✓ **Article 6, Paragraph 2a) Private residential property.** Some MSs raised concerns with using “*concluded in the short term*” since it would be vague if not further developed. Some MSs consider that the reference to “*deposits intended for such transactions*” would be as well difficult to define, and it could be open to possible abuses, if extended to different situations. Another MS considers that the 6 months limit should need to differentiate if the real estate transaction has occurred before the unavailability of deposits, in which case the funds should need to be covered up to 6 months after the amount has been credited, or in case it has not yet occurred, the 6 months limit should count from the date when the transaction is planned.

The Presidency considers that there is merit in clarifying the text in order to clarify that “*deposits intended for such transactions*” are referred, as indicated in recital 7 of the DGSD proposal, to the purchase and sale of private residential property. On the other hand, since the wording “*concluded in the short term*” is very wide and difficult to define, it is proposed to delete it, and because, on the other hand, there is already a general 6- month deadline protection in paragraph 2.

The Presidency considers that there is a broad support to the COM proposal with the following technical amendments, so the subsequent possible compromise text is proposed:

Article 6.2.

*2. 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 that amount has been credited or from the moment when such deposits become legally transferable **for each of the following cases:***

Article 6.2, letter a)

*(a) deposits by **natural persons** ~~resulting from real estate transactions~~ **relating to a sale or purchase** of private residential properties and ~~deposits intended for such transactions, provided that those transactions are concluded in the short term by a~~*

natural person, and provided that that natural person can provide documents proving such transaction;'

Q1.5: Do Member States agree with the proposed way forward?

1.6. Article 8b: Coverage of Client funds

As indicated by the COM, it is proposed to insert a new article aimed at protecting client funds that financial institutions hold in bank accounts on behalf or for the account of their clients in order to comply with the safeguarding requirements applicable under the respective sectoral rules (such as, the Payment Services Directive, the E-money Directive and Commission Delegated Directive (EU) 2017/593 related to MIFID services), under certain conditions. In view of the rapid developments in innovative financial services, the clarification aims at building clients' trust in non-bank financial institutions and in their business continuity if a bank failure occurs. Additionally, the COM considers that when determining the repayable amount for an individual client, the DGS shall not take into account the rest of the aggregate fund deposits placed by that client with the same credit institution and, therefore, under such circumstance the client fund would be independently covered by the DGS. Finally, the new proposed article delegates in EBA to develop Regulatory Technical Standards (RTS) regarding: (i) the identification of clients for the repayment; (ii) the criteria under, and the circumstances in which the repayment is to be made to the account holder for the benefit of each client or to the client directly; (iii) and the rules to avoid multiple claims for payouts to the same beneficiary.

There is broad support within MS for the COM proposal. A vast majority of MS supported the extension of the new proposed regime of client funds to the accounts open by other non-financial entities (such as notaries, attorneys, real state agencies, etc.), so-called "**beneficiary accounts**", which would ensure that, when the client has at the same time a deposit in the failing credit institution, the DGS coverage can be applied independently to both situations (in essence, because depositors cannot easily take any other measure to limit their risk). However, other MS opposed to this extension, arguing that the protections should stem from a segregation obligation, and favoured a previous dedicated impact assessment.

The Presidency understands that there is broad support to extend this protection to beneficiary accounts referred to in article 7(3). Likewise, it considers more appropriate to extend this protection by amending article 7(3) rather than by changing this proposed article 8 (b). Finally, some MSs consider that in paragraph 4 a) there is an error and reference to article 8 of the DGSD should need to be made to article 8b). The COM has clarified that the reference is correctly made so the Presidency sees no merit in clarifying it.

For all these reasons, the Presidency considers that there is broad support for the COM proposal with some amendments, so the subsequent possible compromise text proposed is the following:

Article 7.3 is amended as follows:

3. Where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or a judicial authority makes a ruling referred to in point (8)(b) of Article 2(1). **In account held for professional purposes, and 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 fund deposits placed by that client with the same credit institution.**

Q1.6: Do Member States agree with the proposed way forward?

2. Operational provisions around pay-out. Articles: 7, 7a, 8, 8a, 8c, 9

2.1. Article 7. Determination of the repayable amount

As indicated by the COM, this article is amended to harmonise the rules for the calculation of the repayable amount which currently state that Member States may decide that the liabilities of the depositor to the credit institution are taken into account when calculating the repayable amount where they have fallen due on or before the date on which a relevant administrative authority makes the payout determination. Additionally, paragraph 7 is amended to take into account the situation where the interest rate is negative.

The main MS comments can be summarized as follows:

- ✓ **Article 7, Paragraph 5. Deletion of Set-off:** Some MS are opposed to this deletion mainly because it is a national discretion and they consider that allowing set-off of due liabilities of the depositor it is a useful tool to reduce the impact to the DGS.

The Presidency considers that since the current paragraph 5 drafting it not mandatory and it is a national discretion and that it is useful tool to some MS, it is worth to maintain it. Additionally for the avoidance of doubts in the reintroduced text the Presidency considers that there is merit in clarifying that only the amounts fallen due at the time the relevant authority makes a determination that deposits are unavailable are subject to set-off.

- ✓ **Article 7, Paragraph 7. Negative interest.** One MS raised some concerns regarding this amendment, as they understood that the inclusion of the negative interest is not clear. Another MS raised legal concerns towards including negative interest in the guaranteed amount to be paid since that could enter into conflict with one of the own features of the deposit definition where principal has to be repayable at par as indicated in the definition of deposit EBA included on its Opinion on elements of the definition of credit institution under Article 4(1), point 1, letter (a) of Regulation (EU) No 575/2013 and on aspects of the scope of the authorisation (EBA/OP/2020/15).

The Presidency shares the view that including negative interest in the repayable amount could enter into conflict with the definition of deposit. This definition of deposit is not only included in such EBA Opinion, but also in art 2.3b) of the DGSD and in

particular in letter b) that excludes from the consideration of deposit the ones that are not repayable at par.

For all these reasons, the Presidency considers that although not a lot of comments were received by MS, there is merit in clarifying: (i) the national discretion of allowing for set off of due liabilities, since this is not mandatory and the ones that have implemented have indicated that it is very useful tool; (ii) and the coverage of negative interest, since this could enter into conflict with the definition of deposit and the need to reimburse the principal amount.

Hence, the Presidency suggest maintaining the COM proposal with some amendments, so the subsequent possible compromise text proposed is the following:

Article 7.5 (reintroduced) with technical amendment.

5. Member States may decide that the liabilities of the depositor to the credit institution are taken into account when calculating the repayable amount where they have fallen due on or before the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or when a judicial authority makes a ruling as referred to in point (8)(b) of Article 2(1) to the extent the set-off is possible under the statutory and contractual provisions governing the contract between the credit institution and the depositor.

Depositors shall be informed prior to the conclusion of the contract by the credit institution whether such ~~where~~ their liabilities towards the credit institution are taken into account when calculating the repayable amount.

Article 7.7

*7. Member States shall ensure that the DGS reimburses **the principal amount at par and the** interest on deposits which has accrued until, ~~but has 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 coverage level laid down in Article 6(1) or, in the circumstances referred to in Article 6(2), the coverage level laid down in that paragraph, shall not be exceeded.;*

Q2.1: Do Member States agree with the proposed way forward?

2.2. Article 7a). Burden of proof for deposit eligibility and entitlement

As indicated by the COM, this new article clarifies the burden of proof of beneficiary accounts and temporary high balances, relying on depositors and account holders to prove that they are absolutely entitled to the deposits.

Some MS indicated that this burden of proof regime also needs to be extended to article 8b of client funds as they consider them to be similar to beneficiary accounts and see merit in having a harmonized approach.

The Presidency believes that the nature of client funds (non-bank financial institutions) and their peculiarities as high volatile accounts with potentially large sums of deposits need to have an *ad hoc* regime as indicated in art. 8b and there should be a delegation to the EBA to develop an RTS which, among other aspects, would include the identification of the clients. Hence, the Presidency considers that there is no need for this extension to be included here, since it will already be included in art 8b as one of the topics to be developed by EBA and taking into account the special natura of these accounts.

The Presidency considers that there is broad support in the COM proposal and suggests keeping it without modification.

Q2.2: Do Member States agree with the proposed way forward?

2.3. Article 8. Repayment

As indicated by the COM, it is proposed that 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. Indeed, article 8 is amended to allow the 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. The cut-off date starts being counted 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.

The main MS comments can be summarized as follows:

- ✓ **Article 8, Paragraph 3 Payout extension:** Some MS wanted to keep the 3 months initial payout timeframe in the current DGSD to ensure there is enough time to gather the required documentation, and other MS to extend the proposed 20 working days to 60. Other MS wanted to extend it to other temporary situations in general. Another MS indicated that instead of indicating that the depositor is the only one who should send the documentation to the DGS, it should be included also the possibility for the DGS to receive the documentation by the account holder for the cases of client funds and beneficiary accounts, since most probably, the account holder would be the one that could have all the information related to their clients. Finally, other MS considered convenient to remove the express reference that the DGS would be one receiving the documentation directly from the depositor since, depending on each jurisdiction, the recipient could be the insolvency practitioner or liquidator, when the DGS is not the one entitled to verify the claim.

The Presidency considers that, for consistency purposes, there is merit in clarifying the text to allow that the documentation can be received from a person different from a depositor (e.g. account holder, liquidator) and that the addressee of such documentation would not necessarily be in all cases the DGS. Therefore, it is proposed to remove “*from a depositor*”, hence, by not mentioning the sender, it could be open to other third parties. Additionally, it is as well convenient to allow for the possibility that the documentation can be verified by a third party (e.g. liquidator in case it is not the DGS), thus, by adding the term “information or” before “documentation” we believe it would cover such possibility.

- ✓ **Article 8, Paragraph 5, point c) and paragraph 9. Dormant accounts and payout threshold.** One MS suggest clarifying what “no transaction” means since it is not clear if it would be a transaction initiated by a client or by the bank. Another MS considers that, regardless of whether the account is dormant or not, an administrative threshold can be imposed by the DGS for the payment of the guaranteed amount. Other MSs consider convenient to remove the exception of the payment of the dormant account if requested by the depositor in a set time frame (but a MS raises issues about the expanded deadline for liquidation this would imply), and other MSs would see merit in removing it, since differentiating these deposits internally by the DGS could turn to be more costly or harm specially the more socially vulnerable. The Presidency considers that there is merit in clarifying that the exclusion for repayment of dormant accounts applies in the cases where the depositor has an account in the same credit institution.

For all these reasons, the Presidency considers that there is broad support of the COM proposal with the following amendments, so the subsequent compromise text is proposed:

Article 8.3

*(3) By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, which shall not exceed 20 working days from the date on which those DGSs received the complete **information or** documentation they requested ~~from a depositor~~, to examine the claims and verify that the conditions for repayment are met.*

Article 8(5)(c):

*“by way of derogation from paragraph 9, there has been no transaction relating to the deposit within the last 24 months (the account is dormant), except where a depositor also has deposits on another account **with the same credit institution** that is not dormant”*

Q2.3: Do Member States agree with the proposed way forward?

2.4. Article 8a) Repayment of deposits exceeding EUR 10,000

As indicated by the COM, this article is inserted to ensure that depositors, above a threshold of EUR 10,000, are reimbursed via credit transfers in line with the AML/CFT objectives.

No major concerns were received by MS, but only some comments. One MS indicated the convenience to include the possibility of pay by cheque for amounts exceeding EUR 10,000. Another MS opposed this inclusion and suggested its deletion, while another MS questioned why it was proposed the definition for “credit transfer” as laid down in Directive 2014/92/EU instead of the one used in the PSD2 Directive (EU) 2015/2366.

In relation to the latter, the COM confirmed that there is a technical mistake and the reference should be to the definition of ‘credit transfer’ under Article 4 of Directive (EU) 2015/2366.

The Presidency considers that there is a broad support from MS to support the COM proposal with the following technical amendment:

Article 8a

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 ~~42~~, point (240), of Directive ~~2015/2366~~2014/92/EU of the European Parliament and of the Council.

Q2.4: Do Member States agree with the proposed way forward?

2.5. Article 8c) Suspension of repayments in case of concerns about money laundering or terrorist financing

As indicated by the COM, this new article is introduced in order to avoid the 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 a smooth exchange of information between the designated authority and the DGS in these cases. This new provision also establishes withholding arrangements on DGS repayments for payouts of covered deposits entailing money laundering/terrorism financing concerns.

Some MSs suggested to remove the provision since banks already perform this activity of daily basis and it can slow down the payout process. Another MS suggested that this provision should be contained in the guidelines that are expected to be issued by AMLA and /or EBA, due to its complexity and also expresses concerns with the 24 hours notice for the DGS designated authority to notify the DGS and how it interacts with the 7 payout period. Some other MS indicated that, since the review of the AMLA is in progress, this provision cannot be properly assessed.

The Presidency considers that there is merit on further analysing this provision in light of the development of the AMLA proposal, so not possible compromise text is yet suggested.

Q2.5: Do Member States agree with the proposed way forward?

2.6. Article 9. Claims against DGSs

As indicated by the COM, this article is amended to specify that, when DGS funds are used in the context of transfer strategies in resolution or alternative measures in insolvency proceedings, the DGS should have a claim against the residual institution or entity in its subsequent winding-up proceedings under national law. Additionally it is proposed that this claim should rank at the same level as deposits, and that DGS contribution to an open-bank bail-in 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. Finally, the period during which depositors can make a claim against the DGS is harmonized to 5 years.

The Presidency highlights the change in article 9.2 as it refers to the DGS depositor preference clearly indicating that it will rank at the same level as deposits. This sentence is connected with art. 108 of the BRRD, which was discussed in the Presidency note on Resolution funding (WP CMDI 18-09-2023) and keeps being discussed in the WP. The Presidency considers therefore that there is merit in removing this part from paragraph 2 and not making a reference in the DGSD, since this will be incorporated in the BRRD.

Besides this sentence, the main MS comments can be summarised as follows:

- ✓ **Article 9, Paragraph 2. Subrogation.** A few MSs considered that the use of the term “losses” in the DGS subrogation should be clarified when referred to resolution and alternative measures, since the DGS should subrogate itself for the amount contributed for and the loss would only be known at the end of the process once the recoveries are known. Another MS was also concerned with the DGS subrogation when is referred that DGS losses would be compared with the ones depositor would have suffered.

The Presidency considers that there is merit in clarifying this aspect, to make clear that the DGS would have to subrogate itself for the contribution made in resolution and in alternative measures.

- ✓ **Article 9, Paragraph 3. Prescription period.** One MS understands that the DGSD should be flexible on this and leave it at a national discretion level. Other MS consider that the prescription period is too long and recommend lowering it down to 3 years. Some other MSs consider that the initial counting day for the 5-year period should be indicated.

The Presidency understand that there is broad support for the 5-year period. Additionally, the Presidency understands that there is merit on specifying the initial counting date.

For all these reasons, and based on the comments received by MSs, the Presidency proposes the following possible compromise text.

Article 9.2

2. Without prejudice to rights they may have under national law, DGSs that make 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 the DGSs payments made to depositors. DGSs that make 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) of this Directive, shall have a claim against the residual credit institution for ~~any loss incurred as a result of any such contributions made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer made pursuant to Article 11(5) of this Directive in connection to losses which depositors otherwise would have borne. That claim shall rank at the same level as deposits under national law governing normal insolvency proceedings.~~

Article 9.3

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

Q2.6: Do Member States agree with the proposed way forward?

3. Financing of DGS funds in all interventions (Article 10)

As indicated by the COM, this article is amended to specify the reference period for the calculation of the target level and the fact that only money directly contributed to the DGS or recovered by the DGS is 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. Additionally, it is proposed to delete paragraph 4, given the fact that 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 in practice.

Furthermore, and in line with the with the EBA opinions, to improve convergence of practices and ensure that funds could be made available to meet the deadline to reimburse depositors, it is inserted the possibility of providing for flexibility for DGSs to use alternative funding arrangements financed through private sources before using the available financial means and funds collected through extraordinary contributions. This 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) and also to enable 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.

Finally, (i) it clarifies requirements to ensure the sound management of DGS funds and mandates the EBA to develop guidelines on the diversification of DGS' investment strategy; (ii) provides for the possibility to place DGS funds in a segregated account at the national central bank or national Treasury; and (iii) mandates EBA to develop regulatory technical standards on the delineation of available financial means for DGSs.

The main comments that were received from MS are the following:

- ✓ **Article 10, Paragraph 2. Target level and available financial means (AFM).** There were several and different comments raised by MS: One MS indicated that due to the wider functions of the DGSD under the CMDI proposal it understands that limiting the cases of replenishment of the AFM only to the cases where the DGS has made "disbursement" could be very narrow as there could be other circumstances where the DGS AFM can be reduced (e.g. natural devaluation of the DGS AFM, DGS bad investments, etc.). Another MS ask to clarify the first sentence as it is not clear what is meant by "*the reference period shall be between 31 December preceding the date by which the target level is to be reached and that date*". Another MS asked to clarify how this provision interacts for the cases where the deposit guarantee function and resolution relies on the same entity and expressed concerns with the 6-year period to

replenish the target level of the DGS, which should allow for more flexibility to do it more evenly. One MS suggests including as AFM recoveries from liquidation procedures where DGS has subrogated itself on behalf of depositors, as well as the need to establish a joining fee to new credit institutions joining a DGS to be paid within 6 years and the need to regulate the circumstances where a DGS is below the target level but above 2/3. One MS suggests to clarify that a loan of any type should not be counted as AFM to avoid overstating AFM. One MS considers the possibility to exclude unclaimed repayments from the proposal in line with the EBA Guidelines on AFM as it considers that until funds have not been paid to the relevant depositors there are available to use in further interventions. Other MS consider that loans made to another DGS shall still count toward the target level as long as the loan is financed by fund stemming from contributions and that it will incentivise the borrowing between DGSD (article 12). They consider as well that this treatment would ensure consistency with the current treatment of loans between resolution funds (see article 106(6) BRRD) and foster loans between DGSs.

The Presidency considers that even though there were different comments raised by MS there was not a broad support to support an amendment on the COM proposal. Regarding the possibility of considering or excluding from the consideration of AFM the loans given between DGS, there were some MS that consider the possibility of consider them as AFM, but it is the Presidency understanding that this position does not count with a broad support among MS and the majority of the MS would be in favour of excluding them following the COM proposal, which, at the same time, would be aligned with the EBA Guidelines on AFM.

- ✓ **Article 10, Paragraph 11. Use of AFM.** One MS opposes to this addition since it understands that the measures for which the DGS can be used should be calibrated in a way that ensures that they can be undertaken with the available financial means. One MS raised some concerns with the inclusion of the possibility of including public funds as last resort. One MS considers that DGS should be permitted to receive short-term financing from public funds before private alternative financing and extraordinary contributions to ensure swift repayment of deposits when there are financial stability risks. Another MS raised concerns against allowing the use of alternative funding arrangements for measures other than payout. The Presidency considers that there is broad support from the MS to support the COM proposal.

For all these reasons, and based on the comments received by MSs, the Presidency proposes to maintain the COM proposal.

Q3.1: Do Member States agree with the proposed way forward?

4. Cooperation between DGSs within the Union (Article 14)

As indicated by the COM, this amendment is intended to clarify (i) that the protection by DGSs also covers depositors located in Member States where their member credit institutions exercise the freedom to provide services and allows to the Host Member State to operate as a point of contact for depositors;(ii) sets the conditions to give a DGS in a home Member State the possibility to reimburse directly depositors of branches established in another Member State. Finally, it specifies 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.

The main comments received by the MS can be summarised as follows:

- ✓ **Article 14, Paragraph 2. Payment of depositors by Home Member State.** One MS is against this possibility as it considers it would harm the credibility of the system. Another MS considers that the prior consent of the Host DGS is necessary for the Home DGS to proceed to the direct payment of the guaranteed amount to the depositor.
- ✓ **Article 14, Paragraph 3. Transfer of Contributions.** Some MSs consider that the amount transferred should be proportional "to the risk" transferred and the volume of deposits to avoid (i) strategic behaviour of the entities and (ii) to ensure that DGSs are adequately funded and also consider that the EBA should be mandated to develop this methodology. Some MS also pointed out that the current proposal could turn to be inefficient for some DGS once the target level is reached and no contributions are being paid. In that case, no contributions should have to be transferred when an entity changes affiliation, thus creating unlevel playing field issues. Other MSs support the COM proposal.

The Presidency considers that there is a broad support from MS to establish that the amount to be transferred should take into account the risk and volume of deposits and that the EBA should be mandated to develop it. This would also be aligned with the EBA recommendation in its Opinion of August 8, 2019.

For all these reasons, and based on the comments received by MSs, the Presidency proposes the following possible compromise text.

Article 14, paragraph 3:

*3. Member States shall ensure that where a credit institution ceases to be member of a DGS and joins a DGS of another Member State, or if some of the credit institution's activities are transferred to a DGS of another Member State, the DGS of origin shall transfer to the receiving DGS **an amount of contributions that would be based on the covered deposits to be transferred and on the risk of the institution due for the last 12 months preceding the change of DGS membership, with the exception of the extraordinary contributions referred to in Article 10(8).** ~~The EBA shall develop draft regulatory technical standards to specify the methodology for the calculation of the amount of contributions which shall, in particular, take into account the risk and covered deposits to be transferred~~;*

Q4: Do Member States agree with the proposed way forward?

5. Coverage of branches from and in third countries (Articles 1(2)(d), 15, 15a)

5.1. Article 1(2) d. Third country branches

As indicated by the COM, it is further proposed to expand the definition of credit institution to include third country branches, since according to art. 15, they should join the EU DGS

in the MS where they are located. This is proposed to ensure consistency with Directives 2013/36/EU and 2014/59/EU that aims to introduce a more robust prudential and resolution framework for third country groups providing banking services in the Union.

Most MSs did not make any comments on this regard, except for one MS that did not agree with the proposed amendment because it did not agree with widening the scope and introducing the requirement that EU-DGS would have to include depositors of branches in the Union of a credit institution that has its head office in a third country in all cases.

The vast majority of the MSs did not raise concerns with these amendments nor with the aim to protect EU depositors that place their deposits in branches of third country institutions authorised in the EU.

For this reason, the Presidency considers that there is broad support in maintaining the COM DGDS proposal.

Q5.1: Do Member States agree with the proposed way forward?

5.2. Article 15. Branches of credit institutions that are established in third countries

As indicated by the COM, this amendment intends to require third country branches of credit institution with their head office outside the EU to join the DGS in the Member State where they will be operating before they are allowed to take eligible deposits in the EU. Additionally the COM indicates that according to the EBA opinion, the vast majority of third country branches in EU Member States (according to the EBA opinion, among the 74 non-EEA branches in the EU, 5 were not members of an EU DGS) are already members of an EU DGS, either because the third country depositor protection regime is deemed to be non-equivalent or because no formal equivalence assessment has been made and this will follow the EBA recommendation, so this ensures equal protection for depositors in the EU branches of third country banks and for depositors in branches of EU in different Member States.

Finally, the COM indicated that this enhances the protection of depositors because 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, and because 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, which is to facilitate the use DGS funds in resolution.

The vast majority of the MSs did not raise concerns with this proposal except one MS, who considers convenient to leave it as a discretion for the MS to decide, since it will expose EU DGS to the economic and financial risks of third countries, because the head office in the third country is not subject to EU supervision, thus failures of such head offices could not be prevented or avoided by EU authorities.

Taking into account the broad support from MSs, the Presidency proposes to maintain the COM proposal.

Q5.2: Do Member States agree with the proposed way forward?

5.2.1. Article 15a. Member credit institutions that have branches in third countries

According to the COM, this proposal is intended to establish, as a general principle, the non-DGS coverage to EU branches of EU credit institution located outside the EU in order of avoiding that DGS funds are exposed to economic and financial risks, unless such coverage it is approved by the relevant designated authority and contributions are raised for that relevant branch.

In this regard, only some comments were received by one MS in relation to the need to of further development by the EBA to establish the cases where designated authorities could approve the coverage of those branches and by another MS who consider that DGS should cover EU branches in third countries as the branch is a continuation of the same credit institution.

Taking into account the broad support from MS, the Presidency proposes to maintain the COM proposal.

Q5.3: Do Member States agree with the proposed way forward?

6. Transparency (Articles 16 and 16a)

6.1. Article 16 Depositor information

As indicated by the COM, this article is amended to harmonise information which banks have to provide to their clients annually on the protection of their deposits. It also enhances the requirements on information to be provided to depositors in case of mergers or other major reorganisations of credit institutions, changes of DGS affiliation and unavailability of deposits due to the critical financial situation of banks. Finally, it empowers MS to verify the appropriateness of the information provided to depositors and mandates EBA to develop draft regulatory standards for the format and the content of the information sheet and the procedures and the information to depositors.

There were some general concerns expressed by MSs which consider that requiring the depositor to acknowledge receipt of the information could be burdensome, since the depositor can decide not to do it. There was another MS which considered convenient to be more precise on what information should the depositor be giving his consent at. Another MS understands that this proposal is too detailed for level 1 legislation and prefers having a more general approach. Finally, another MS considers that the term “branch” should be removed from the obligation to provide information to depositors, since branches are not DGS Members. Regarding this latter comment, the Presidency considers that since third country branches would be members of a DGS there is a need to maintain it.

Some other MSs raised concerns about the obligation to inform depositors annually and argued that informing depositors when entering into a contract with the relevant credit institution should be sufficient.

For all these reasons, the Presidency considers that there is broad support for the COM proposal with the following amendments, so the possible subsequent compromise text is proposed:

Article 16, Paragraph 2

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

Q6.1: Do Member States agree with the proposed way forward?

6.2. Article 16 a) Information exchange between credit institutions and DGS, and reporting by authorities

As indicated by the COM, this article is introduced to clarify the rules on reporting and to improve the exchange of information from the credit institution to the DGSs and from the DGSs and the designated authorities to the EBA. The COM considers important that the DGS receives from its affiliated institutions, at any time and upon request, information on the deposits it insures to operate in an effective way. On the other hand, it is important that the EBA is appropriately informed of situations that occur and for which the DGS may intervene in accordance with the DGSD.

There is broad support from MS to the COM proposal. However, some minor comments were received by some MS. One MS suggested to extend the possibility for asking this information for testing purposes. The Presidency considers that the COM proposal would already allow for this possibility. Another MS suggested the need to establish a clear deadline for the submission to EBA by the DGS of the information indicated in paragraph 4 (mainly related to DGS interventions and the ceased and establishment of DGS) as the current proposal does not foresee a clear deadline; and, finally, there was another MS who indicated that reference to article 8 (1) of the DGSD in paragraph 4 (b) should need to be made to article 8 instead in general as article 8 (1) it is only referred to the amounts to be paid within 7 days and there could be other amounts to be repaid in longer repayment period. There were some other MS comments but the Presidency considers they are not of a substantial nature.

The Presidency considers that there is a broad support from MSs, so it suggests maintaining by the COM proposal with the following technical amendment as possible compromise text.:

Paragraph 4b

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 Article 8 ~~(1)~~ and Article 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.

Q6.2: Do Member States agree with the proposed way forward?
