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| From: | CZ and SK delegations |
| To: | Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés |
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| Subject: | CMDI Review: DGSD - Item 2 – CZ-SK non-paper on extension of client funds deposits to other specific account holders |

Non-Paper from SK and CZ delegation

Extension of client funds deposits to other specific account holders

The practical implementation of the DGSD has brought up many questions on the coverage of specific deposits. In our view there are many deposits that are in a way or another governed under national law and that are in a way mandatorily deposited in a credit institution. To better illustrate our thoughts we try to briefly explain some of the most outstanding issues we face. These could be analogical to many other specific deposits (e.g. deposits on accounts held by notaries, attorneys, real estate agencies, distrainers or insolvency administrators) and may in some aspects resemble the deposits made through a payment institution or e-money institution.

First is the coverage of accounts owned by apartment and non-residential space owners (owners) which are held and disposed of by apartment building managers (managers). The legal or natural person willing to become a manager has to comply with statutory requirements.

Owners have to pay monthly lump sums that include the creation of a maintenance fund, insurance of the apartment building, energy, cleaning services etc. From these the maintenance fund has a mandatory statutory nature and represents the largest cumulated amount of funds that can very often exceed the coverage level of 100 000 eur. The funds have to be segregated from the property of the managers and have to be held in separate analytical accounts for each apartment building. The managers are under the national law allowed to dispose with the funds. The funds are also tied to the ownership of the apartment, that means they cannot be withdrawn by the owner and that the ownership would be transferred to the next owner, e.g. in case of sale of the apartment.

Currently these funds could be protected as a joint account or as a beneficiary account under art. 7(3). In either case the owners acting as depositors would be entitled for a single coverage level per credit institution. However, the owners cannot affect the choice of the manager in which bank he decides to deposit the funds, consequently some owners could be worse off as depositors. The funds that would not get repaid by the DGS (e.g. some of the owners acting as depositors exceeded the coverage level) or recovered would need to be paid again to the manager by those affected depositors. Furthermore, the repayment should be made to the manager and not to the owner.

Second example would be the case of deposits in beneficiary accounts held by notaries or attorneys, problems often arise in real estate transactions. The attorney, as the account holder, identifies the person depositing the funds as the beneficial owner when the account is established and the DGS is obliged to repay that person. However, in the meantime, the ownership of the property may be transferred to the buyer and the repayment should be made to the seller. Nevertheless, the DGS is obliged to repay the buyer who has already become the owner of the property and has also received repayment, which may damage the seller.

Therefore, we would like to propose the extension of Art. 2(20) and 8b of the DGSD proposal, where these would not be limited to financial institutions. In order to narrow down the scope and still provide enough flexibility for Member states, we could imagine specifying that the entitled deposits and entities need to be governed by national law.

Alternatively, we could also imagine a solution via art. 7(3), but with an individual coverage level as proposed in art. 8b (2). In our specific case we also see great merit in the provision in the proposed art. 8b (3) which could also be replicated for art. 7(3).