EBA/OP/2020/02

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Opinion of the European Banking Authority on deposit guarantee scheme funding and uses of deposit guarantee scheme funds

Introduction and legal basis

1. Article 19(6) of the recast Directive 2014/49/EU on deposit guarantee schemes (the DGSD) requires the European Commission, 'supported by EBA, to submit to the European Parliament and to the Council a report on the progress towards the implementation of the DGSD'. To support the Commission in meeting its obligation, the EBA has committed to drafting three opinions, including this opinion on the deposit guarantee scheme funding and uses of deposit guarantee scheme funds.

2. The EBA's authority to deliver an opinion is based on Article 34(1) of Regulation (EU) No 1093/2010,[1] as the topic of the correct application of the DGSD, including with regard to deposit guarantee scheme (DGS) funding and uses of DGS funds, relates to the EBA's area of authority, according to Article 26 of that regulation.

3. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors,[2] the Board of Supervisors has adopted this opinion, which is addressed to the Commission.

General comments

4. The opinion sets out a number of proposals for the Commission to consider when preparing a report on the implementation of the DGSD to be submitted to the European Parliament and the Council, and if and when it prepares a proposal for a revised DGSD. This is the third opinion in a set of three, following the EBA opinion on the eligibility of deposits, coverage level and

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

[2] Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (EBA/DC/2011/01, Rev. 4).

cooperation between DGSs,[3] published on 8 August 2019, and the EBA opinion on DGS payouts,[4] published on 30 October 2019. Proposals in this opinion should be read alongside those included in the two EBA opinions previously published, as some of the topics in this opinion are interrelated with the proposals in the other two opinions. The Commission is invited to consider jointly the proposals in all three opinions, if and when it prepares a proposal for a revised DGSD. Finally, the EBA notes that this and the other two opinions aim to set out an expert view from a depositor protection perspective, but they do not include a thorough impact assessment from all other perspectives that may be relevant. Therefore, the opinion at times proposes not a possible solution but that more analysis may be warranted.

5. This opinion lists all the proposals made by the EBA on the topic of DGS funding and uses of DGS funds. More specifically, it provides proposals on the following topics and subtopics:

   i. Target level, collection of contributions and fund access, including:

      i.1. target level basis and target level percentage;

      i.2. contributions after reaching the minimum target level;

      i.3. raising contributions when available financial means fall below the target level;

      i.4. DGSs' access to DGS funds;

      i.5. repayment of previous contributions.

   ii. The definition of available financial means.

   iii. Extraordinary contributions and alternative funding arrangements, including:

      iii.1. the current approach to extraordinary contributions and alternative funding arrangements;

      iii.2. the sequence of use of different funding sources.

   iv. The use of DGS funds for interventions other than payouts.

   v. The use of failed institutions' assets for DGS payouts.

   vi. Payment commitments.

[3] EBA-Op-2019-10 https://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

[4] EBA-Op-2019-14 https://eba.europa.eu/sites/default/documents/files/document_library//EBA%20Opinion%20on%20DGS%20Payouts.pdf

vii. Investment strategy, including:

   vii.1. responsibility for the investment strategy;

   vii.2. the requirement to invest funds in low-risk assets;

   vii.3. the requirement to ensure sufficient diversification.

viii. An assessment of the impact of risk-based contributions on different business models, including:

   viii.1. a qualitative assessment;

   viii.2. a quantitative assessment.

ix. Contributions from third-country branches.

x. Reporting of data.

6. The report attached to this opinion provides detailed analysis of each topic and subtopic, including (a) background, (b) methodology, data sources and their limitations, (c) analysis, (d) options to address the issues identified and (e) conclusions, which are also included below as specific EBA proposals to the European Commission.

Specific EBA proposals to the European Commission

7. On target level, collection of contributions and fund access, the EBA proposes that:

   (a) No amendments to the DGSD are necessary in relation to the target level basis for DGSs' available financial means. Thus, covered deposits should be retained as the target level basis.

   (b) No amendments to the target level in the DGSD are needed, and therefore the current minimum target level of 0.8% of covered deposits, as well as the current threshold for the reduced minimum target level of 0.5% of covered deposits, should be retained. Nevertheless, if the Commission decides to amend the target level, the following factors could be taken into account:

      - the amounts of DGS funds used in real-life cases of payouts since the implementation of the recast DGSD;

      - DGS recovery rates, which are affected by the Bank Recovery and Resolution Directive (BRRD) superpreference for covered deposits in the creditor hierarchy;

- resolution authorities' approach to resolution, including the loss-absorbing capacity of individual DGS members;
- the availability of failure-prevention measures to the DGS;
- different market structures and different types of institutions;
- exchange rate risks due to the mismatch between the currency used for the coverage level (the euro) and the currency of repayment, which may not be the euro.

(c) To provide clarity on the expected timeline for the approval of a reduced minimum target level under Article 10(6) of the DGSD, the Commission should consider specifying an appropriate deadline in the DGSD or providing clarity on the timeline for the assessment by other means.

(d) There is no need to introduce restrictions on the collection of DGS contributions after the minimum target level has been reached, so no amendment to the DGSD in that respect is needed.

(e) No amendment to the DGSD is needed with regard to clarifying the requirement on the collection of contributions when available financial means fall below the target level by less than one third of the minimum target level.

(f) No amendment to the DGSD is needed regarding DGSs' control of DGS funds, including where a Member State avails itself of the option to use mandatory contributions paid by credit institutions to existing schemes of mandatory contributions under Article 10(4) of the DGSD. However, current provisions under Article 10(4) of the DGSD should be considered further in the context of future amendments in relation to transfers of DGS contributions when a credit institution changes its DGS affiliation.

(g) Despite different approaches to the repayment of DGS contributions across the EU, no additional clarity appears to be necessary.

8. On the definition of available financial means, the EBA proposes that:

(a) The DGSD should be amended to unequivocally state that funds or low-risk assets stemming from or being financed by borrowed resources do not count towards the available financial means (and so do not count towards the minimum target level). Before such a clarification is introduced into the DGSD, there may also be a need to provide an interpretation of current provisions in this respect, for example by means of the EBA Q&A tool or another EBA product.

(b) The DGSD may need to be clarified in relation to the treatment of administrative fees, funds recovered in an insolvency process, income from investment activities and

unclaimed repayments. Alternatively, clarity concerning how these elements relate to available financial means and whether or not they should be included in a DGS's calculation of its available financial means could be provided by means of an EBA legal instrument on the calculation of and reporting on available financial means.

9. On extraordinary contributions and alternative funding arrangements, the EBA proposes that:

(a) At this point, there is no need to amend the DGSD in relation to ensuring that extraordinary contributions can be raised and alternative funding arrangements can be accessed when needed.

(b) The DGSD should be clarified to establish whether or not there is a hierarchy or sequence in which different funding sources (i.e. available financial means, extraordinary contributions and alternative funding arrangements) can be used by DGSs, because the current provisions of the DGSD are interpreted differently across the EU.

(c) If the Commission were to clarify the DGSD as proposed above, it should consider various arguments, such as those in favour of allowing DGSs the flexibility to use any of the available funding sources, including using alternative funding arrangements ahead of available financial means. The EBA agreed that, if the DGSD were to be amended to clearly allow the flexibility to use alternative funding arrangements ahead of available financial means, using alternative funding arrangements first should be accompanied by conditions and restrictions, such as the following:

- At least when using alternative funding arrangements first, the DGS and/or the deposit guarantee scheme designated authority (DGSDA) must take into account the costs and benefits of different funding options. Such a condition would ensure that an assessment was done, but it would not prevent the DGS/DGSDA from choosing the most appropriate form of assessment, and would not require it to be done in every case in which DGS funds were used. In consequence, there would be no need to further specify what such an assessment should include.

- The use of alternative funding arrangements first should be accompanied by a requirement for the DGS/DGSDA to develop a plan for financing the expected repayment of the funds accessed by means of those alternative funding arrangements, taking into account the information available to the DGS/DGSDA. However, acknowledging the difficulty of assessing potential recoveries, it should be up to the DGS/DGSDA to determine the form of and the level of detail in such a repayment plan.

(d) If the Commission were to amend the DGSD to clarify that alternative funding arrangements can be used ahead of available financial means, there would be no merit in introducing a restriction on the deadline for the funds accessed by means of

alternative funding arrangements to be repaid (except in the case of loans between DGSs, which the DGSD states must be repaid within five years).

(e) In line with the proposal in paragraph 8(a) of this opinion, the liabilities of a DGS should not be included in the reported amount of available financial means, as this would contradict the proposal in relation to the deadline for the repayment of funds accessed by means of alternative funding arrangements.

(f) However, in order to ensure transparency in relation to DGS funding, Member States should be required to inform the EBA by 31 March each year, including for the purpose of publication, not only of the amount of covered deposits and available financial means (not including borrowed cash and low-risk assets) but also of any borrowed cash and low-risk assets stemming from the use of alternative funding arrangements, or other funding sources, as well as the liability of the DGS, to be understood as the amount of outstanding loans (but excluding operational liabilities). Given this, the EBA has concluded that the DGSD should be amended accordingly.

(g) It could be explored further in the context of the potential EBA legal instrument on the calculation and reporting of available financial means (as proposed in paragraph 8(b) of this opinion) whether or not to provide the possibility for DGSs to also provide brief additional information, for example on expected recoveries.

(h) The EBA agreed that it was important to emphasise that covered deposits remain covered irrespective of the amount of available financial means, borrowed resources and liabilities a DGS has at any given point, and this will be clearly communicated by the EBA when publishing such data on the EBA website.

10. On the use of DGS funds for interventions other than payouts, the EBA proposes that:

(a) More clarity is needed on how to assess that:

- ‘the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the DGS’ (as per Article 11(3) of the DGSD);
- ‘the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the credit institution concerned’ (as per Article 11(6) of the DGSD).

More clarity is needed about what kind of costs should be taken into account in the abovementioned assessments (only direct or also indirect costs – and what costs constitute indirect costs). Such clarifications should be made in a legal instrument that provides sufficient legal certainty for DGSs.

(b) The EU framework should be clarified to the effect that the use of DGS funds in line with Article 11(3) does not in itself cause the determination that the institution is

failing or likely to fail, and, if the EU framework is clarified to that effect, the Commission should consider further if there is a need for greater clarity about which authority is required to assign losses to ensure burden sharing (where this is required by state aid rules).

(c) The incorrect cross-reference to Article 27 of the BRRD in Article 11(4) of the DGSD should be amended to refer to Article 32 of the BRRD.

(d) Article 11 of the DGSD should be clarified to ensure that measures mentioned in Article 11(3) of the DGSD are referred to as 'preventive measures' and those in Article 11(6) of the DGSD are referred to as 'alternative measures'.

(e) Subject to the outcome of the Commission's appeal in the *Tercas* case, the EBA invites the Commission to consider:

- if there is a need to amend the Banking Communication;
- the potentially different consequences for DGSs depending on their legal status and/or governance structure.

11. On the use of failed institutions' assets for DGS payouts, the EBA proposes that:

(a) The Commission should consider exploring further the merits of introducing into the DGSD a tool for using the failed institution's assets for a DGS payout. When carrying out the relevant impact assessment, the Commission should take into account national insolvency laws (and the feasibility of harmonising on this matter), the fundamental rights to property and to the freedom to conduct a business, and the principle of proportionality.

12. On payment commitments, the EBA proposes that:

(a) The terminology in relation to payment commitments in the EU framework should be aligned by amending the DGSD to replace the term 'payment commitments' with the term 'irrevocable payment commitments'. The DGSD should clarify that the term 'irrevocable payment commitment' is defined as 'an irrevocable obligation of a credit institution towards a DGS to pay a monetary amount when the payment commitment is called and which is fully collateralised provided that the collateral: (a) consists of low risk assets; and (b) is unencumbered by any third-party rights and is at the disposal of the DGS'.

(b) The DGSD needs to be amended to clarify that in circumstances where DGS contributions made by credit institutions can be returned upon a decision by the DGS to the credit institution, the same approach should be allowed in relation to the cancellation of payment commitments upon a decision by the DGS, with the collateral

pledged by credit institutions for the purpose of payment commitments being returned.

Any future changes to the provisions on payment commitments would require careful consideration to avoid undesirable consequences in relation to payment commitments already in place.

13. On investment strategy, the EBA proposes that:

    (a) The DGSD should be clarified to state that, when it is not the DGS that sets the investment strategy, Member States should designate an entity with a mandate in line with the DGSD to be entrusted with setting the investment strategy. That entity should set the investment strategy in line with the objectives set out in recital 3 of the DGSD and the requirements under Article 10(7) of the directive, and any further national legal specifications that are part of the transposition of the DGSD into national law, and the investment strategy should not be subject to other objectives or additional restrictions, to mitigate the risk of the DGS being unable to fully perform its mandate of depositor protection.

    (b) Amendments to the DGSD appear to be unnecessary in relation to the requirement to invest funds in low-risk assets. However, the EBA invites the Commission to consider further whether or not the definition of a low-risk asset linked to Article 336 in the CRR is adequate.

    (c) The DGSD should be amended to require that the entity/entities responsible for determining the investment strategy for DGS funds should consider if the investment strategy will achieve sufficient diversification in terms of issuer, asset class, maturity and rating, taking into account the need to manage the liquidity of the fund and the riskiness of the assets. However, this amendment should not imply that the entity/entities is/are obliged to ensure that diversification is achieved for each of the four factors.

    (d) The DGSD should be amended to clarify that placing most or all of a DGS's available financial means with a central bank is allowed, despite the requirement to ensure sufficient diversification.

    (e) With regard to whether or not DGSs should be obliged to periodically review the investment strategy and to communicate the investment strategy to the DGSDA and/or the EBA, the EBA concluded that there was no need to introduce these requirements into the DGSD.

14. On the assessment of the impact of risk-based contributions on business models, the EBA concluded that:

(a) The DGSD and other elements of the DGS framework do not need to be amended. However, the outcomes of the analysis could be revisited in the next review of the EBA guidelines on methods for calculating contributions to DGSs, to be completed by 3 July 2022, in line with paragraph 13(3) of the directive, with a particular focus on credit unions.

15. On contributions from third-country branches, the EBA concluded that:

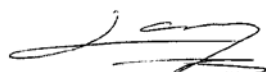
(a) Given the current immateriality of contributions from third-country branches in almost all cases, there is no need to propose amendments to the DGSD. However, the topic may need to be revisited in the future, particularly after the UK's withdrawal from the EU.

16. On reporting of data, the EBA proposes that:

(a) The DGSD should be amended to specify that, when a DGS intends to reach the target level for the first time in 2024, the determination of whether or not the target level has been reached, in accordance with Article 10(2) of the DGSD, should be based on covered deposits data with a reference date set by the DGSDA or DGS no earlier than 31 December 2023 and no later than 3 July 2024.

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

Done at Paris, 23 January 2020



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Executive summary

Directive 2014/49/EU (the Deposit Guarantee Schemes Directive (DGSD)) requires the European Commission (the Commission), with the support of the European Banking Authority (EBA), to 'submit to the European Parliament and to the Council a report on the progress towards the implementation' of the directive. The DGSD also requires the EBA to report to the Commission on calculation models for contributions to deposit guarantee scheme (DGS) funds and their relevance to the commercial risk of the DGS members and to 'take due account of the risk profiles of the various business models' of those members.

Further to that mandate, on 6 February 2019, the Commission sent a call for technical advice to the EBA requesting its technical analysis and, 'where appropriate, its policy recommendations on potential amendments reflecting the experience gained by deposit guarantee schemes and designated authorities during the years of application of the DGSD since July 2015'.

To support the Commission, the EBA committed to fulfilling this mandate by submitting three opinions to the Commission. The first opinion, on eligibility of deposits, coverage level and cooperation between DGSs, was published on 8 August 2019. It was followed by a second opinion, on DGS payouts, on 30 October 2019. The opinion on DGS funding and uses of DGS funds is the last of the three opinions in relation to the implementation of the DGSD. It puts forward 33 recommendations addressed to the Commission, 23 of which either propose a change to the DGSD or to related legal instruments, such as EBA guidelines, or call for further analysis on a particular topic. The remaining 10 recommendations do not see the need for any change to the DGSD or to any other part of the EU framework. This report, annexed to the opinion, provides the analytical bases for the recommendations in the opinion.

More specifically, the report recommends, inter alia:

- important clarifications in the DGSD in relation to what funds should count towards a DGS's available financial means (i.e. *ex ante* funds), and when different DGS funding sources, including loans, can be used and under what conditions;
- introducing more transparency in relation to the reporting of DGS funds, more consistency in the approach to payment commitments and more precision in the DGSD in relation to how DGS funds should be invested;
- that the Commission consider further the consequences of the recent General Court ruling in the *Tercas* case, up to what amount DGS funds can be used to prevent failure of credit institutions and whether or not to introduce into the EU framework the possibility of using a failed institution's assets for a DGS payout;

- no changes to the current DGSD provisions in relation to the minimum target level, the target level basis and the possibility for DGSs to continue collecting contributions above the minimum target level, no changes in relation to contributions from third-country branches and no immediate changes to the risk-based contributions based on the assessment of their impact on different business models.

The EBA invites the Commission to consider the proposals put forward in the final opinion, as well as the other two EBA opinions, when preparing its own report on the implementation of the DGSD to be submitted to the European Parliament and the Council, and if and when it prepares a proposal for a revised DGSD.

1. Background

1. Article 19(6) of the DGSD requires that the Commission, supported by the EBA, 'submit to the European Parliament and to the Council a report on the progress towards the implementation' of the DGSD by 3 July 2019. That report 'should, in particular, address':

   (a) the *ex ante* funds target level for DGSs 'on the basis of covered deposits, with an assessment of the appropriateness of the percentage set, taking into account the failure of credit institutions in the EU in the past';

   (b) 'the impact of alternative measures used in accordance with Article 11(3) on the protection of the depositors and consistency with the orderly winding up proceedings in the banking sector';

   (c) the DGSD implementation's 'impact on the diversity of banking models';

   (d) 'the adequacy of the current coverage level for depositors';

   (e) whether or not these matters 'have been dealt with in a manner that maintains the protection of depositors'.

2. Article 19(6) also requires the EBA to report to the Commission on 'calculation models and their relevance to the commercial risk of the members' and to 'take due account of the risk profiles of the various business models' by 3 July 2019.

3. Further detail on the desired content of the EBA's support was provided by the Commission in a letter sent to the EBA on 6 February 2019, in which it formally requested technical advice from the EBA in relation to the mandate above. In the light of the resource intensity of the task, the Commission requested that the EBA complete and provide its assessment by 31 October 2019, possibly supplying its input to the Commission in several stages.

4. More specifically, the Commission requested the EBA 'to provide technical analysis … and to provide, where appropriate, policy recommendations on potential amendments reflecting the experience gained by deposit guarantee schemes and designated authorities during the years of application of the DGSD since July 2015'. The Commission explicitly requested the EBA's input in relation to the following issues:

   (a) the target level and related matters, namely:

      i. the basis of the target level (covered deposits);

ii. the target level percentage (0.8% of covered deposits), including its appropriateness and the rationale for some DGSs raising contributions above the minimum target level;

iii. the implementation of and practical experience with the application of alternative funding arrangements under Article 10(9) of the DGSD in Member States, including their possible impact on the level of *ex ante* funding;

iv. calculating the DGS contributions of third-country branches;

(b) alternative measures (Article 11(3) of the DGSD), including the incidence of failure-prevention measures, their impact on depositor protection and their consistency with winding-up proceedings;

(c) the impact on the diversity of banking models, including an analysis of if and how approaches to calculating contributions to DGSs reflect the diversity of banks' business models;

(d) the coverage level for depositors and related issues, such as, in particular:

i. the adequacy of the current coverage level (EUR 100 000);

ii. the implementation of provisions on temporary high balances (Article 6(2) of the DGSD) in Member States;

iii. the approaches of Member States to third-country branches' equivalence (Article 15 of the DGSD) and their impact on depositor protection;

iv. the approaches to setting off covered deposits and liabilities that have fallen due (Article 7(5) of the DGSD) and their effect on the coverage level in Member States;

v. an analysis of whether or not there is a need for authorities to report regularly on the levels of covered deposits, eligible deposits and non-eligible deposits across all banks;

vi. the implementation of the list of exclusions from eligibility (Article 5(1) of the DGSD);

vii. the implementation of optional coverage of pension funds and deposits of local authorities with a small budget (Article 5(2) of the DGSD);

viii. the provisions with respect to joint accounts (Article 7(2) of the DGSD);

(e) an assessment of whether or not the matters referred to in Article 19(6), second subparagraph, have been dealt with in a manner that maintains the protection of depositors, such as, in particular:

   i. the practical implementation of the definitions used in the DGSD such as 'deposit' and 'unavailable deposits' (Article 2(1)(3) and 2(1)(8) and Article 3(2), second subparagraph, of the DGSD);

   ii. the implications of current anti-money laundering (AML) rules for payouts and their interaction with the provisions of the DGSD (including with regard to exchanges of information between the authorities responsible for the application of the DGSD and the AML directives);

   iii. the compensation of depositors using the failing bank's assets, where available, rather than DGS available financial means;

   iv. an analysis of the role of the EBA in cooperation agreements signed between DGSs (Article 14(5) of the DGSD);

   v. an analysis of cross-border payouts (Article 14(2) of the DGSD), including the potential benefits and drawbacks of introducing the possibility for the home DGS to compensate depositors directly at a branch in another Member State;

   vi. an analysis of the practical application in the Member States of other selected provisions in the DGSD, such as, in particular, the DGS investment strategy (Article 10(7) of the DGSD) and transfer of DGS contributions (Article 14(3)).

5. In addition to the mandate outlined above, in developing the three opinions, the EBA has identified additional issues that are not explicitly listed in the Commission's call for technical advice. Some, for example, arise from Member States incorporating the DGSD differently into national law and others from the application of DGSD provisions to real-life cases. This is in line with the Commission's request, which also stated that the EBA could 'provide feedback on additional relevant provisions not listed' in its request. Examples of such additional topics in relation to which issues have been identified include the definition of available financial means and the sequence of using different DGS funding sources.

6. The EBA decided to fulfil the mandate by means of three separate opinions on:

   a. eligibility of deposits, coverage level and cooperation between DGSs;

   b. DGS payouts;

   c. DGS funding and uses of DGS funds.

7. Together, the three EBA opinions will cover the topics under each of the five points (a)-(e) of the first subparagraph of Article 19(6) of the DGSD, and some additional topics not explicitly outlined in the Commission's call for technical advice.

8. To provide an assessment and, where appropriate, policy recommendations to the Commission, in September-October 2018 the EBA collected data from deposit guarantee scheme designated authorities (DGSDAs) and DGSs on the implementation and practical application of the DGSD across Member States. These data, together with other information available to the EBA, served as the basis for an extensive analysis of each topic. However, the EBA notes that this opinion and the other two opinions aim to set out an expert view from a depositor protection perspective, but they do not include a thorough impact assessment from all other perspectives that may be relevant. Therefore, the opinion at times proposes not a possible solution but that more analysis may be warranted. This report starts with a description of the broad methodology employed and the data sources used (Chapter 2). Chapter 3 is composed of sections on each of the topics and subtopics. Each section includes first the background and then further information on the methodology, data sources and their limitations, given that different topics required different approaches, and the information used was of different types and qualities. An analysis of each topic or subtopic comes third, followed by an outline and analysis of the options to address the issues identified, and finally the conclusions are given.

9. This report is the analytical basis for the EBA opinion on DGS funding and uses of DGS funds, and addresses the following topics:

   (a) target level, collection of contributions and fund access;

   (b) the definition of available financial means;

   (c) extraordinary contributions and alternative funding arrangements;

   (d) the use of DGS funds for interventions other than payouts;

   (e) the use of failed institutions' assets for DGS payouts;

   (f) payment commitments;

   (g) investment strategy;

   (h) an assessment of the impact of risk-based contributions on different business models;

   (i) contributions from third-country branches;

   (j) reporting of data.

2. Methodological approach

2.1. General approach

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

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

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

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

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

2.2. Data sources

13. The main source of information used for the purpose of this report is a survey that the EBA sent to the DGSDAs and DGSs on 4 October 2018. The annex includes the part of the survey relevant to the topics covered in this report. The EBA received responses to the survey from 36 DGSDAs and DGSs in 29 Member States (including two non-EU EEA countries). The EBA did not receive input from Hungary, Iceland, Slovakia or Slovenia. Although most respondents provided answers to all of the questions, this was not always the case, which is why the number of responses is reported separately for each question in Chapter 3. The EBA also used information on real-life cases collected in the context of the EBA's mandate in relation to depositor protection.

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

(i) covered deposits and available financial means, collected in accordance with Article 10(10) of the DGSD and published on the EBA's website following the decision agreed by the EBA's Board of Supervisors on 24 October 2016;

(ii) real-life cases collected in the context of the EBA's mandate in relation to depositor protection.

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

    - bank-level data for the purpose of assessing the impact of risk-based contributions on business models of DGS member institutions;

    - contributions raised from third-country branches.

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

3. Assessment

3.1. Target level, collection of contributions and fund access

3.1.1. Target level basis and target level percentage

Legal basis and background

17. Article 10(2) of the DGSD states that 'Member States shall ensure that, by 3 July 2024, the available financial means of a DGS shall at least reach a target level of 0.8% of the amount of the covered deposits of its members' (i.e. the minimum target level).

    'Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again.

    If, 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, the regular contribution shall be set at a level allowing the target level to be reached within six years.

    The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this Article.

    Member States may extend the initial period referred to in the first subparagraph for a maximum of four years if the DGS has made cumulative disbursements in excess of 0.8% of covered deposits.'

18. Article 10(6) of the DGSD provides that 'By way of derogation from paragraph 2, Member States may, where justified and upon approval of the Commission, authorise a minimum target level lower than the target level specified in paragraph 2 ['reduced minimum target level'], provided that the following conditions are met:

    (a) the reduction is based on the assumption that it is unlikely that a significant share of available financial means will be used for measures to protect covered depositors, other than as provided for in Article 11(2) and (6); and

    (b) the banking sector in which the credit institutions affiliated to the DGS operate is highly concentrated with a large quantity of assets held by a small number of credit institutions or banking groups, subject to supervision on a consolidated basis which, given their size, are likely in case of failure to be subject to resolution proceedings.

    That reduced target level shall not be lower than 0.5% of covered deposits.'

19. Recital 27 of the DGSD states: 'It is necessary to harmonise the methods of financing of DGSs. On the one hand, the cost of financing DGSs should, in principle, be borne by credit institutions themselves and, on the other, the financing capacity of DGSs should be proportionate to their liabilities. In order to ensure that depositors in all Member States enjoy a similarly high level of protection, the financing of DGSs should be harmonised at a high level with a uniform *ex-ante* financial target level for all DGSs.'

20. Recital 28 of the DGSD states: 'However, in certain circumstances, credit institutions may operate in a highly concentrated market where most credit institutions are of such a size and degree of interconnection that they would be unlikely to be wound up under normal insolvency proceedings without endangering financial stability and would therefore be more likely to be subject to orderly resolution proceedings. In such circumstances, schemes could be subject to a lower target level.'

21. Article 102(4) of Directive 2014/59/EU (the Bank Recovery and Resolution Directive (BRRD)) requires the EBA to submit to the European Commission a report with recommendations on the appropriate reference point for setting the target level for resolution financing arrangements, and in particular whether total liabilities constitute a more appropriate basis than covered deposits.

22. On 28 October 2016, the EBA submitted the report on the appropriate target level basis for resolution financing arrangements under the BRRD[5] and recommended changing the basis for the target level for resolution financing arrangement to one of the following: 'total liabilities (excluding own funds) less covered deposits', 'total liabilities (excluding own funds)' or 'total liabilities'. The key arguments in favour of these options are their consistency with the regulatory framework and contributions methodology, and their simplicity and transparency.

Methodology, data sources and their limitations

23. The survey circulated to the DGSDAs and DGSs included four questions related to the setting of the target level.

Main findings, issues identified and analysis

24. The survey circulated to the DGSDAs and DGSs asked respondents 'What is the target level of your DGS?' The responses received were as follows:

    - Twenty-one respondents from fifteen Member States reported that the target level that the DGS was required to reach was equal to 0.8% of covered deposits.

    - Six respondents from six Member States reported that the target level was higher than 0.8%, ranging from 1% to 2.5%.

5 https://eba.europa.eu/documents/10180/1360107/Report+on+the+appropriate+target+level+basis+for+resolution+financing+arrangements+%28EBA-OP-2016-18%29.pdf

- Seven respondents from seven Member States reported that they continued to raise contributions above the minimum target level of 0.8% required by the DGSD. The figure of 0.8% of covered deposits is considered a floor for the available financial means. Three respondents reported that they did not have a maximum target level and continued to raise contributions indefinitely. Of these respondents, one reported that the current amount of available financial means of the DGS was already above this level, at 2.7%.

- Two respondents from two Member States declared that the target level that the DGS was required to reach was currently equal to 0.5% of covered deposits. One of them clarified that it had asked the Commission for a derogation to have a reduced minimum target level, in line with Article 10(6) of the DGDS, but had not received a reply yet.

25. The survey asked respondents what their views were regarding (a) the target level basis (i.e. covered deposits of a DGS's members) and (b) the appropriateness of the current percentage (0.8% or the reduced minimum target level of 0.5% where it applies[6]), taking into account their past experience with failures. Respondents were then asked if they thought there was merit in changing those two elements. The responses received were as follows:

- In relation to the target level basis:
  - Thirty-two respondents from twenty-seven Member States stated that there was no need to change the current target level basis.
  - One respondent, an institutional protection scheme (IPS), stated that there was merit in considering a different target level basis for IPSs, and that risk-weighted assets would be more appropriate as a basis. The IPS clarified that, based on its experience with preventive and alternative measures, for an IPS the risk was related not to covered deposits but to risk-weighted assets.

- In relation to the target level percentage:
  - Twenty-two respondents from seventeen Member States stated that there was no need to change the current target level percentage.
  - Nine respondents from nine Member States stated that there was merit in considering an increase in the minimum target level percentage. Of these respondents, four indicated that they already applied a higher or unlimited target level percentage. One respondent considered that the current targeted amount could be too low for a jurisdiction with a small number of credit institutions.

[6] Throughout this chapter, whenever the text refers to the minimum target level, it also refers to the potentially reduced minimum target level envisaged in Article 10(6) of the DGSD.

26. Subsequently, the survey asked respondents, if they saw merit in changing elements, what would be a better target level basis and why (e.g. total liabilities/total deposits/other), and what would be a more appropriate target level percentage. The responses received were as follows:

    - Four respondents from four Member States provided an answer to this question, in relation only to the appropriate target level percentage:

        - Two respondents from two Member States considered that the minimum target level in the DGSD should be revised. One of them mentioned the figure of 1% and explained that this had been the percentage in that Member State before the 2013 bail-in of deposits. The other respondents thought that the appropriate target level percentage in the DGSD would be 6% of covered deposits.

        - Two respondents from two Member States answered that the target level percentage should be 1.5%, and close to 2% to cover at least the depositors of the smallest bank, respectively. Both respondents considered that these would be appropriate target levels for their jurisdictions but not necessarily appropriate for the minimum target level specified in the DGSD.

27. Finally, the survey asked respondents 'If since the implementation of the revised DGSD there were cases of DGS payouts in your jurisdiction, what were the DGS recovery rates in liquidations? Given the likely lack of data, where available, please include data/forecasts from ongoing liquidations.' The responses received were as follows:

    - Eighteen respondents from fifteen Member States reported that they had not had any DGS payouts since the implementation of the revised DGSD.

    - Thirteen respondents from twelve Member States reported having experienced DGS payouts since the implementation of the revised DGSD, of which:

        - Three respondents from three Member States reported recovery rates of 100%. One of these respondents further explained that it had had two payout cases since the implementation of the revised DGSD and that both had a recovery rate of 100%.

        - One respondent explained that it had experienced two payout cases, in each of which 100% of the payout amount had been funded using the failed institution's assets.

        - One respondent reported recovery rates of 80% for the last two payout events.

        - One respondent reported recovery rates between 65% and 77% for previous payouts following the failures of credit unions. For ongoing liquidations, it was not possible to forecast the final recovery rates.

  - One respondent reported that liquidation procedures for credit unions are still ongoing but that current recovery rates amount to up to 60%.

  - Two respondents from one Member State reported recovery rates ranging from less than 1% to 32% for the cases for which data are readily available. After the costs of the insolvency procedure (including realising assets such as the loan book), recoveries from credit union defaults to date have generally been low.

  - Two respondents from two Member States reported that there had been one payout event but that the insolvency proceedings were still in process. One respondent added that it forecasted a recovery rate of 30%.

  - One respondent reported having experienced 14 failures (11 credit unions and 3 credit institutions) since the implementation of the DGSD. All liquidation processes are still ongoing, making it hard to predict the final recovery rates.

  - Two respondents reported ongoing payout cases in which the liquidation process had not yet begun.

- One respondent reported that the most recent payout experienced was prior to the implementation of the revised DGSD. It is now in the final stage of the liquidation procedure. The current recoveries equal 75% of the DGS payout. It is estimated that the final recovery rate will be around 95%.

- Another respondent reported that the most recent payout experienced was prior to the implementation of the revised DGSD. The current expectation for the final recovery rate is around 20% of the DGS payout.

28. In view of the requirement set out in Article 19(6)(a) of the DGSD, the EBA identified two potential issues that should be assessed:

    i. the appropriateness of covered deposits as a basis for calculating the target level;

    ii. whether or not the current target level of 0.8% should be amended, and, if so, which factors should be taken into account when determining a new target level percentage.

Target level basis

29. Given that no respondent suggested that there would be merit in changing the current target level basis for covered deposits, and given that there are no other known reasons why it might need to change, the EBA did not analyse this issue in more detail and the impact of any potential changes was not assessed. There was no need to consider using a similar approach to that employed in the report on the target level basis for resolution financing arrangements.

Target level percentage

30. For the majority of the respondents to the survey, the current target level for the available financial means of the DGS in their Member State is 0.8% of covered deposits. Six Member States have a target level higher than the minimum required by the DGSD. Two Member States do not have a maximum target level and intend to collect funds indefinitely. Two respondents reported a reduced minimum target level of 0.5%.

31. The majority of respondents to the survey reported that in their view the current target level of 0.8% is adequate. A sizeable minority of Member States and DGSs stated that the target level should be higher, mentioning figures of 1%, 1.3%, 1.5%, 2%, and 6%. Some respondents did not specify what the precise percentage should be but mentioned that a review of the target level could be considered.

32. The EBA considers that the choice of the most appropriate minimum target level may be one of the more fundamental regulatory choices within the DGSD. Therefore, the EBA decided to focus on reporting current approaches across Member States and outlining respondents' views concerning the current minimum target level percentage of 0.8% (as well as the reduced minimum target level of 0.5%), without attempting to analyse what the most appropriate minimum target level should be. Instead, the EBA briefly assessed what methodology should be applied and which factors should be taken into account should the Commission consider proposing a different target level in the future.

33. Currently, the DGSD allows Member States to choose to use a reduced minimum target level, subject to the Commission's approval, under Article 10(6). However, the DGSD does not specify the deadline for the Commission to provide the approval. The EBA considered that this lack of clarity may mean that the Commission does not make the necessary decision for a prolonged period of time.

Options to address the issues identified

Target level basis

34. In the light of the survey results, the only option considered was to maintain covered deposits as the target level basis.

Target level percentage

35. Concerning the target level percentage, the EBA did not attempt to make a proposal for revision. However, the EBA considered the methodology and factors that should be taken into account should the Commission consider amending the minimum target level.

36. The EBA discussed if, in addition to the basis of covered deposits, other factors could be reflected when setting the target level percentage. The EBA identified a number of important factors that could be taken into account in determining the appropriate minimum target level required by the DGSD, including the following mix of qualitative and quantitative factors:

- the amounts of DGS funds used in real-life cases of payouts;
- DGS recovery rates, which are affected by the BRRD superpreference for covered deposits in the creditor hierarchy;
- resolution authorities' approach to resolution, including the loss-absorbing capacity of individual DGS members;
- the availability of failure-prevention measures to the DGS;
- different market structures and different types of institutions;
- exchange rate risks due to the mismatch between the currency used for the coverage level (the euro) and the currency of repayment, which may not be the euro.

37. Specifically, with regard to DGS recovery rates, the EBA analysed the reasons for the reported differences in recoveries across Member States, as outlined in the summary of survey responses. Based on discussions with relevant authorities, the EBA observed that in general recovery rates tend to be high, and low recovery rates (below 50%) tend to occur in relation to the failures of smaller, less complex types of institutions. Those institutions tend to have smaller pools of assets, and therefore the legal costs of achieving a higher recovery rate may outweigh the value to be recovered.

38. The EBA also arrived at the view that, to provide clarity on the expected timeline for the approval of a reduced minimum target level, pursuant to Article 10(6) of the DGSD, the Commission should consider specifying an appropriate deadline in the DGSD or providing clarity on the timeline for the assessment by other means.

39. The EBA came to the view that it is very difficult to clearly determine if a quantitative approach based on modelling should be preferred over a purely qualitative method when assessing the most appropriate target level. The EBA concluded that it is necessary to consider a mix of qualitative and quantitative factors.

Conclusions

40. The EBA arrived at the view that it does not seem necessary to make amendments to the DGSD in relation to the target level basis, and therefore proposes to the Commission that covered deposits be retained as the target level basis.

41. The EBA concluded that it does not seem necessary to amend the target level in the DGSD, and therefore proposes to the Commission that the current minimum target level of 0.8% and the current threshold for the reduced minimum target level of 0.5% be retained.

42. However, the EBA proposes to the Commission that, should it decide to amend the target level, the following factors should be taken into account:

- the amounts of DGS funds used in real-life cases of payouts since the implementation of the recast DGSD;
- DGS recovery rates, which are affected by the BRRD superpreference for covered deposits in the creditor hierarchy
- resolution authorities' approach to resolution, including the loss-absorbing capacity of individual DGS members;
- the availability of failure-prevention measures to the DGS;
- different market structures and different types of institutions;
- exchange rate risks due to the mismatch between the currency used for the coverage level (the euro) and the currency of repayment, which may not be the euro.

43. The EBA proposes to the Commission that, to provide clarity on the expected timeline for the approval of a reduced minimum target level under Article 10(6) of the DGSD, the Commission should consider specifying an appropriate deadline in the DGSD or providing clarity on the timeline for the assessment by other means.

3.1.2. Contributions after reaching the minimum target level

Legal basis and background

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

    Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again.

    If, 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, the regular contribution shall be set at a level allowing the target level to be reached within six years.

    The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this Article.

    Member States may extend the initial period referred to in the first subparagraph for a maximum of four years if the DGS has made cumulative disbursements in excess of 0.8% of covered deposits.'

45. Article 11(5) of the DGSD states: '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 alternative measures, where necessary in the form of extraordinary contributions, where:

(a) The need to reimburse 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.'

Methodology, data sources and their limitations

46. The survey circulated to the DGSDAs and DGSs included one question related to collecting contributions after the target level of 0.8% is reached.

Main findings, issues identified and analysis

47. The survey circulated to the DGSDAs and DGSs asked respondents 'Does the law in your jurisdiction require regular collection of DGS contributions after the target level of 0.8% is reached? Please explain whether the purpose of this collection of DGS contributions would be to maintain the level of fund resources at the target level or to grow the fund beyond the target level.' The responses received were as follows:

- Seventeen respondents from twelve Member States reported that they do not raise contributions above the target level of 0.8%.
    - Of these, four respondents from four Member States explained that contributions are raised after the target level of 0.8% is reached only in order to maintain the fund's resources at the target level in relation to increases in the deposit base. In the case of one respondent, the contributions are raised further but a lower rate is applied.
    - In addition, one respondent from one Member State explained that, once the target level of 0.8% has been reached for the first time, the DGS has to collect contributions from its member institutions in order to achieve the target level again within a certain time period.
- Six respondents from six Member States reported that contributions are raised after the minimum target level of 0.8% is reached, for example in order to reach national target levels that are higher than 0.8%, varying from 1% to 2.6% of covered deposits. One respondent reported that according to national law it is possible to suspend the collection of contributions on the basis of a decision of the supervisory board of the fund if the assets of the sectoral fund constitute at least 0.8% of the amount of the covered deposits. The collection of contributions must be suspended if the assets of the sectoral fund constitute 5% of the amount of the covered deposits.
- Four respondents from four Member States reported that the DGS may decide about the level of contributions collected by it.
- Four respondents from three Member States reported that according to the national law the obligation to make DGS contributions is not dependent on the target level. Therefore, payment

of contributions to the DGS remains mandatory even if the target level has been reached. Two respondents from one Member State reported that, since the fund already exceeds the 0.8% target level, the aim of the collection procedure is to cover the administrative expenses incurred by the fund.

- One respondent reported that the legislator views the fee to the DGS as an insurance fee, which is why there is no maximum target level set for the DGS and contributions are raised continuously.

48. The results of the survey reveal that currently there are different approaches to raising contributions after the 0.8% target level has been reached. A number of Member States have set a national target level above 0.8%, treating the harmonised target level of 0.8% as a minimum threshold. Other respondents indicate that they will continue raising contributions after the target level has been reached in order to keep up with the anticipated increase in the deposit base in their Member State. A substantial number of respondents indicated that they do not raise contributions at all after the target level has been reached.

49. The EBA discussed that there may potentially be level playing field issues when institutions in some Member States continue to pay contributions to the DGS fund in perpetuity, while in other Member States, once the target level is reached, they would only potentially contribute to replenish the fund to its minimum level. These different approaches also create issues in relation to the current methodology for determining the amount of previous DGS contributions to be transferred from one DGS to another when a credit institution changes its DGS affiliation.[7] Therefore, the EBA briefly considered if there would be merit in restricting DGS contributions raised above the target level (and thus making the current minimum target level a mandatory target level based upon maximum harmonisation) to alleviate potential level playing field issues.

50. However, the following arguments against such a restriction were identified:

- Contributions to DGS funds are only one of many factors that credit institutions consider when deciding in which Member State to locate themselves, and the risk of the contributions being the leading cause of regulatory arbitrage is therefore assumed to be limited.

- Where contributions are collected after the target level has been reached, this has been done for the purpose of depositor protection, ensuring that sufficient funds are available to effect a prompt DGS payout, intervention or contribution to resolution.

- The very different structures of banking sectors across the EU justify the possibility for DGSs to collect contributions above the minimum target level. In some Member States where there

[7] The EBA opinion on eligibility of deposits, coverage level and cooperation between DGSs published in August 2019 analysed the impact of the current methodology for determining the amount of DGS contributions to be transferred between DGSs when a credit institution changes its DGS affiliation, including in cases where one DGS continues to collect contributions above the minimum target level and another does not. The opinion proposed to the Commission amending the current methodology to address this, and other issues discussed in detail in that opinion.

are few credit institutions, there are no, or almost no, institutions that hold less than 0.8% of covered deposits. In turn, that means that there are markets in the EU where the available financial means of 0.8% would on their own be insufficient for the failure of even the smallest institution in that market. On the other hand, in other Member States, particularly where there are many credit institutions, the vast majority of them hold less than 0.8% of covered deposits in those markets.

51. On balance, the EBA concluded that there seems to be no need to restrict the collection of DGS contributions after the target level has been reached. It should be noted that this is an important topic and that the EBA has not performed an extensive analysis at this stage. However, the specific issue that different approaches to collecting contributions above the minimum target level creates in relation to the transfer of DGS contributions between DGSs should be addressed, as proposed in the EBA opinion on eligibility of deposits, coverage level and cooperation between DGSs published on 8 August 2019.

Options to address the issues identified

52. The only option considered by the EBA was to retain the current provisions in the DGSD, which set a minimum target level but do not restrict Member States from continuing to raise contributions above it.

Conclusions

53. The EBA proposes to the Commission that there is no need to amend the DGSD to introduce restrictions on the collection of DGS contributions after the minimum target level has been reached.

3.1.3. Raising contributions when available financial means fall below the target level

Legal basis and background

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

    Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again.

    If, 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, the regular contribution shall be set at a level allowing the target level to be reached within six years.

    The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this Article.

Member States may extend the initial period referred to in the first subparagraph for a maximum of four years if the DGS has made cumulative disbursements in excess of 0.8% of covered deposits.'

55. Article 11(5) of the DGSD states: '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 alternative measures, where necessary in the form of extraordinary contributions, where:

    (a) the need to reimburse 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.'

56. Article 19(3) of the DGSD states: 'Until the target level has been reached for the first time, Member States may apply the thresholds in Article 11(5) in relation to the available financial means.'

Methodology, data sources and their limitations

57. The survey circulated to the DGSDAs and DGSs did not include questions in relation to the collection of contributions when available financial means fall below the target level. However, in the course of preparing this report, relevant authorities raised it as an important issue that potentially could be clarified in the revised DGSD.

Main findings, issues identified and analysis

58. The EBA analysed whether or not the current text of the DGSD is sufficiently clear in relation to the pace of resuming contributions once the amount of available financial means falls below the minimum target level, due to a payout, deposit growth, investment returns, changes in the exchange rates or other economic circumstances.

59. The EBA concluded that it is clear that once available financial means fall below the minimum target level, the fund needs to be replenished. The EBA also arrived at the view that the current text in the DGSD is clear that if the amount of available financial means has been reduced to less than two thirds of the minimum target level, the fund needs to be replenished within six years. However, the DGSD does not stipulate how quickly the fund needs to be replenished if the amount of available financial means falls below the target level by less than one third of the minimum target level. Therefore, the EBA discussed if there would be merit in providing more clarity on when the collection of contributions needs to resume and by when the minimum target level needs to be reached again in such cases.

60. The EBA considered that the drawback of the current lack of clarity is that, in theory, a DGS could take longer to replenish the fund if the available financial means fell below the target level by less than one third than if the available financial means fell below the target level by more than one third (because in that case the DGSD provides a deadline). It could also be seen as logically inconsistent that there is a deadline only for some and not for other circumstances. On the other hand, the EBA

considered that, given that the lack of clarity is related to cases where the drop in funds is less significant, there might be a less immediate need to be prescriptive, particularly given that, in any case, DGSs are obliged to replenish the fund back to the minimum target level. Finally, thus far, there have been no cases that would raise concerns in this regard, even though one third of DGSs in the EU have already reached the minimum target level, and so there is little merit in proposing a solution at this stage.

61. The EBA arrived at the view that, even though there is a lack of clarity in such circumstances, there would be limited value in being more precise about cases in which the fall in DGS funds is less significant.

Options to address the issues identified

62. Following discussions with relevant authorities, and the current lack of real-life experience, the option considered by the EBA is not to propose any amendments to the DGSD.

Conclusions

63. The EBA proposes to the Commission that there is no need to amend the DGSD with regard to clarifying the collection of contributions when available financial means fall below the target level by less than one third of the minimum target level.

3.1.4. DGSs’ access to DGS funds

Legal basis and background

64. The DGSD does not contain an explicit provision on DGSs’ access to DGS funds; however, Article 10(4) of the DGSD relates to this topic. It states: ‘Notwithstanding paragraph 1 of this Article, a Member State may, for the purpose of fulfilling its obligations thereunder, raise the available financial means through the mandatory contributions paid by credit institutions to existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure, and resolution of institutions.

    DGSs shall be entitled to an amount equal to the amount of such contributions up to the target level set out in paragraph 2 of this Article, which the Member State will make immediately available to those DGSs upon request, for use exclusively for the purposes provided for in Article 11.

    DGSs are entitled to that amount only if the competent authority considers that they are unable to raise extraordinary contributions from their members. DGSs shall repay that amount through contributions from their members in accordance with Article 10(1) and (2).’

Methodology, data sources and their limitations

65. The survey circulated to the DGSDAs and DGSs included two questions related to DGSs’ control of DGS funds.

Main findings, issues identified and analysis

66. The survey circulated to the DGSDAs and DGSs asked respondents 'Does the DGS in your jurisdiction have full control and access to the DGS *ex ante* funds?' The responses received were as follows:

    - Twenty-eight respondents from twenty-four Member States reported that the DGS in their jurisdiction had full control of and access to the DGS available financial means.

    - Five respondents from four Member States reported that the DGS in their jurisdiction did not have full control of and access to the DGS available financial means. One respondent explained that its jurisdiction had opted to use an existing system of mandatory contributions (the Bank Levy, which is a government tax).

67. Subsequently, the survey asked, if respondents reported that they did not have full control of and access to the available financial means, because the DGS needs to request access to the funds from another authority or for any other reason, how it was ensured that available financial means could be accessed early enough for a timely payout. The responses received were as follows:

    - One respondent reported that the DGS needed budgetary approval (a legislative procedure) in order to gain access to the funds.

    - Another respondent reported that the Deposit Guarantee Fund, which was a public entity established by law, had been instructed by the Minister of Finance to hold the *ex ante* DGS funds in a current account at the Treasury (treasury banking). Arrangements are in place with the State Treasury Agency to ensure that funds are made available within 24-48 hours from notification by the Deposit Guarantee Fund.

    - Finally, yet another respondent explained that its Member State had opted to use an existing scheme of mandatory contributions (the 'Bank Levy', which is a government tax), which implied that the DGS was entitled to borrow these funds from the Treasury in case of a payout event. Operational arrangements are in place to ensure that the DGS has access to such funds where needed. The Treasury acknowledges the DGS's entitlement to such funds as described in Article 10(4), second paragraph, subject to the condition set out in Article 10(4), third paragraph, of the DGSD.

68. Based on the survey results, the EBA explored the case of one Member State that availed itself of the option under Article 10(4) of the DGSD to use as DGS funds the mandatory contributions paid by credit institutions to existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure and resolution of institutions. As the DGS in that Member State has never requested access to these funds for the purpose of a DGS payout, the EBA concluded that there was no practical experience of a DGS using mandatory contributions paid by credit institutions to existing schemes of mandatory contributions in line with Article 10(4) of the DGSD. In consequence, there is no practical evidence regarding

whether or not this mechanism would be sufficiently robust in a payout, and so there are no empirical grounds for proposing any changes.

69. However, the EBA is of the view that this form of funding could create, and in some instances may have contributed to, delays in relation to transfers of previous contributions from one DGS to another, because if the funds of existing schemes of mandatory contributions are held by the state, such a transfer would constitute a transfer of state funds to a DGS in another Member State.

70. The EBA arrived at the view that the impact of the current provisions under Article 10(4) of the DGSD should be considered further in the wider context of transfers of DGS contributions.

71. In addition, the EBA discussed the issue of DGSs having full control and access to the DGS available financial means in the context of the authority that is responsible for setting the investment strategy, which is dealt with in Section 3.7.

Options to address the issues identified

72. Given the survey results and discussions with relevant authorities, the only option considered was not to propose any amendments to the DGSD regarding DGSs' control of DGS funds, including where a Member State avails itself of the option to use mandatory contributions paid by credit institutions to existing schemes of mandatory contributions, in accordance with Article 10(4) of the DGSD. However, the EBA is of the view that the provisions under Article 10(4) of the DGSD should be considered further in the context of future amendments in relation to transfers of DGS contributions when a credit institution changes its DGS affiliation.

Conclusions

73. The EBA proposes to the Commission that there is no need to amend the DGSD regarding DGSs' control of DGS funds, including where a Member State avails itself of the option to use mandatory contributions paid by credit institutions to existing schemes of mandatory contributions under Article 10(4) of the DGSD. However, current provisions under Article 10(4) of the DGSD should be considered further in the context of future amendments in relation to transfers of DGS contributions when a credit institution changes its DGS affiliation.

3.1.5. Repayment of previous contributions

Legal basis and background

74. Paragraph 40 of the EBA guidelines on methods for calculating contributions to deposit guarantee schemes states: 'Where, subsequently to a call for contributions, data related to some institutions would require an update (for example, in order to correct accounting errors) the DGS should be able to postpone the adjustment to the next call for contributions.'

75. Articles 10(2) and 10(6) of the DGSD, quoted in Section 3.1.1, are relevant here too.

76. Article 14(3) of the DGSD provides that, if a credit institution ceases to be member of a DGS and joins another DGS, the contributions paid during the 12 months preceding the end of the membership, with the exception of the extraordinary contributions under Article 10(8), shall be transferred to the other DGS. If some of the activities of a credit institution are transferred to another Member State and thus become subject to another DGS, the contributions of that credit institution paid during the 12 months preceding the transfer, with the exception of the extraordinary contributions in accordance with Article 10(8), shall be transferred to the other DGS in proportion to the amount of covered deposits transferred.

Methodology, data sources and their limitations

77. The survey did not include any questions related specifically to the repayment of already paid DGS contributions to the credit institutions. However, in the course of preparing this report, relevant authorities raised it as an important issue that could be clarified in the revised DGSD.

Main findings, issues identified and analysis

78. The EBA is of the opinion that the DGSD currently does not seem to include any provisions concerning the repayment of already paid DGS contributions to the contributing institutions. The EBA analysed current practices across Member States and if in their jurisdictions DGSs currently repay contributions in the following circumstances:

    - when an institution is no longer affiliated with the DGS (other than when it changes its affiliation to another DGS);
    - when there has been an error in the calculation of DGS contributions;
    - when available financial means have increased above the minimum target level (because of changes to the covered deposit base or changes to membership of the DGS, or for other reasons);
    - when the DGS contribution system is stock-based, rather than flow-based, which implies possible reimbursements to member institutions (e.g. when their covered deposits decrease or their risk factors improve, all things being equal);
    - when recoveries from failed institutions provide the DGS with funds to repay *ex post* contributions, or other reasons.

79. The relevant authorities reported different approaches to the repayment of DGS contributions:

    - Three DGSs from three Member States are explicitly not allowed to repay contributions.

- Seven DGSs from seven Member States[8] [9] [10] are explicitly allowed to repay contributions in certain cases, and national legislation does not specify whether this is or is not allowed in other cases.

- Five DGSs from five Member States reported that in their jurisdiction national legislation does not specify the approach in any circumstance, and so the decision is made on a case-by-case basis.

80. Furthermore, the EBA considers that the EBA guidelines on methods for calculating contributions to deposit guarantee schemes allow, when there is an error in the calculation of DGS contributions, for a correction to be incorporated in the next round of DGS contributions, instead of repaying contributions to those who contributed too much.

81. Given that the DGSD appears to be silent on the issue of repayment, and there are different approaches across the EU, the EBA discussed if there was a need to provide greater clarity in relation to repayment, including whether or not repayment should be allowed, and if so in what circumstances. The EBA identified the following arguments in favour of providing greater clarity in relation to the repayment of DGS contributions:

    - It would ensure a consistent and harmonised approach across the EU, with equal treatment for institutions across Member States.

    - It would be consistent with the proposals to align the treatment of cash contributions and payment commitments, as discussed in Section 3.6 on payment commitments.

    - If the clarification were to state that the repayment of previous contributions was allowed, it would allow DGSs to hold precisely the desired amount of available financial means. This would not restrict DGSs' power to raise contributions above the minimum target level, but it would allow the possibility of repaying some contributions if the DGS had more available financial means than intended, for example because of recoveries exceeding the expected levels or changes in the amounts of covered deposits.

82. The EBA identified the following arguments against providing greater clarity:

    - Even though there is currently a diversity of approaches to the repayment of previous DGS contributions across Member States, it is unlikely to cause level playing field issues for the following reasons:

[8] According to administrative law in one Member State, incorrect contributions have to be paid back; if there is an error in the calculation of DGS contributions, it is corrected when the error is discovered. The miscalculated parts of the contributions are repaid through statutory compensation schemes.

[9] In one Member State, where an institution no longer holds covered deposits, a repayment is made in proportion to that institution's contribution for that year from the point of exit to the end of the calendar year.

[10] Payment commitments are repayable in one Member State when there is an excess of payment commitments (e.g. due to a decrease in the deposit base). Payment commitments are also repayable to the bank when there is a merger of two banks.

  - Repayment of contributions upon an institution leaving a DGS would be unlikely to be a relevant factor in that institution's decision about where to be located or whether or not to change its DGS affiliation, and, if it was transferring to another Member State, provisions concerning transfers would apply.
  - Differing approaches to repaying contributions above the minimum target level or *ex post* contributions do not create a level playing field issue in themselves because contributions above the minimum target level are not harmonised. Furthermore, in Section 3.1.3 of this report, the EBA concludes that flexibility to raise contributions above the minimum target level is beneficial and should be retained.

- It could be argued that the most relevant scenario in which a DGS would consider repaying contributions to credit institutions is when it holds available financial means above the minimum target level. It could be argued that, by being silent on this, the DGSD allows the repayment of such contributions, as long as the minimum target level is maintained. Therefore, there is no need to introduce any changes because DGSs already have the power to repay such contributions.

83. The EBA arrived at the view that, despite differences across Member States, the EBA has not identified a clear need to harmonise the approach to the repayment of contributions.

Options to address the issues identified

84. Given that the EBA concluded that the differences in approaches to the repayment of contributions do not seem to create level playing field or other issues, the only option considered was to propose no change to the current framework.

Conclusions

85. The EBA proposes to the Commission that, despite different approaches to the repayment of DGS contributions across the EU, there appears to be no clear need to provide greater clarity in the DGSD on this matter.

3.2. Definition of available financial means

Legal basis and background

86. Article 2(1)(12) of the DGSD states that 'available financial means' means cash, deposits and low-risk assets which can be liquidated within a period not exceeding that referred to in Article 8(1) and payment commitments up to the limit set out in Article 10(3).

87. Article 10(1) of the DGSD states: 'Member States shall ensure that DGSs have in place adequate systems to determine their potential liabilities. The available financial means of DGSs shall be proportionate to those liabilities. DGSs shall raise the available financial means by contributions to be made by their members at least annually. This shall not prevent additional financing from other sources.'

88. Article 10(4) of the DGSD reads as follows: 'Notwithstanding paragraph 1 of this Article, a Member State may, for the purpose of fulfilling its obligations thereunder, raise the available financial means through the mandatory contributions paid by credit institutions to existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure, and resolution of institutions.

    DGSs shall be entitled to an amount equal to the amount of such contributions up to the target level set out in paragraph 2 of this Article, which the Member State will make immediately available to those DGSs upon request, for use exclusively for the purposes provided for in Article 11.

    DGSs are entitled to that amount only if the competent authority considers that they are unable to raise extraordinary contributions from their members. DGSs shall repay that amount through contributions from their members in accordance with Article 10(1) and (2).'

89. Article 10(8) of the DGSD states: 'If the available financial means of a DGS are insufficient to repay depositors when deposits become unavailable, its members shall pay extraordinary contributions not exceeding 0.5% of their covered deposits per calendar year. DGSs may in exceptional circumstances and with the consent of the competent authority require higher contributions.'

90. Recital 34 of the DGSD states: 'It is necessary that the available financial means of DGSs amount to a certain target level and that extraordinary contributions may be collected. In any event, DGSs should have adequate alternative funding arrangements in place to enable them to obtain short-term funding to meet claims made against them. It should be possible for the available financial means of DGSs to include cash, deposits, payment commitments and low-risk assets, which can be liquidated within a short period of time. The amount of contributions to the DGS should take due account of the business cycle, the stability of the deposit-taking sector and existing liabilities of the DGS.'

Methodology, data sources and their limitations

91. The survey circulated to the DGSDAs and DGSs included one question related to the definition of available financial means.

Main findings, issues identified and analysis

92. The survey circulated to the DGSDAs and DGSs asked respondents 'Is the definition of available financial means specified further in your jurisdiction, beyond the definition included in Article 2(12) of the DGSD? If yes, please outline the additional provisions in your jurisdiction and which concrete funds are included.' The responses received were as follows:

   - Thirty-two respondents from twenty-six Member States reported that the national definition of available financial means did not go beyond the definition in Article 2(12) of the DGSD.
   - One respondent reported that the definition of available financial means had been further specified in its jurisdiction, as follows: 'Funds of the deposit guarantee scheme in banks are defined as: sums for use held in the guarantee fund of banks and in the statutory fund after deducting the value of tangible assets and intangible assets, and the amount of payment commitments. Funds of the deposit guarantee system in credit unions are defined as: sums held for use in the guarantee fund of credit unions and the amount of payment commitments.'

93. The EBA discussed further potential issues arising in relation to the definition of available financial means, more specifically whether or not available financial means include any assets or funds coming from financing sources other than the contributions from institutions and payment commitments, such as:

   - funds borrowed by a DGS;
   - administrative fees;
   - funds recovered in an insolvency process;
   - income from DGS investment activities;
   - unclaimed repayments.

Calculation of the available financial means and treatment of funds borrowed by a DGS

94. Concerning funds borrowed by a DGS, the discussions showed that the majority of DGSs consider that such funds would not count towards the available financial means, because in their view Article 10(1) of the DGSD clearly states that DGSs are to raise available financial means through member institutions' contributions (a source-based perspective).

95. A minority of DGSs considered that such funds would count towards the available financial means, because in their view Article 2(1)(12) of the DGSD must be interpreted as meaning that the level of available financial means is calculated by taking the sum of all assets satisfying the definition (an asset-based perspective). In consequence, borrowed resources are part of the available financial means. It should be noted that this does not necessarily imply that these DGSs would prefer to use borrowed resources ahead of the funds contributed by their members.

96. These responses also show that, concerning the calculation of available financial means, there are two perspectives on how a DGS should determine its available financial means (partly because there is no common reporting standard):

    - From the first perspective (the source-based perspective), it is the source that determines if particular assets of the DGS (cash, deposits, low-risk assets and payment commitments) should count towards the available financial means of that DGS. The source-based perspective is supported by Article 10(1) of the DGSD, which states that DGSs are to raise available financial means through member institutions' contributions. From the source-based perspective, questions arise, when calculating the current available financial means, about the treatment of borrowed funds, administrative fees, other sources of funds and the sequence in which assets are used.

    - From the second perspective (the asset-based perspective), it is only the existence (and not the source) of the asset that determines if that asset of the DGS (cash, deposits, low-risk assets and payment commitments) should count towards the available financial means of that DGS. The asset-based perspective is based on the perception that, if an asset is available to the DGS and complies with the definition in Article 2(1)(12) of the DGSD, it is part of the available financial means (i.e. the available financial means are the sum of all assets satisfying the definition). From the asset-based perspective, questions arise about safeguarding compliance with Article 10(1) of the DGSD and about avoiding confusion about the level of available financial means that result from member institutions' contributions, for example because borrowed funds would be taken into account.

97. The EBA considered that the key innovation introduced by the recast DGSD was the requirement to have *ex ante* funds built up by means of *ex ante* contributions from the industry. Therefore, a harmonised and clear understanding of the key concept of available financial means is of the utmost importance. The fact that there are differences across Member States in relation to the interpretation of the concept of available financial means shows that the current text may not be sufficiently clear. For the purpose of the analysis presented in Section 3.3 on extraordinary contributions and alternative funding arrangements, this report takes the source-based approach to the definition.

Administrative fees

98. The EBA then discussed the approach to administrative fees. Discussions showed that such fees are:

- not included in the definition of available financial means in the majority of Member States;
- included in the definition of available financial means in some Member States.

99. One of the Member States where administrative fees are included in available financial means explained that when raising contributions from the industry it includes the administrative fees in the contributions (making the contributions adequately higher to meet the minimum target level and cover administrative expenses) and considers them to be part of the DGS's available financial means when they are first raised. In that Member State, as the DGS incurs administrative costs, the amount of available financial means decreases throughout the year, and so the amount reported to the EBA as the end of year figure, in practice, does not include the administrative fee element, which, by that point, has been spent. Another respondent clarified that while it raises separate administrative fees, if at the end of the year there is an excess of or a shortfall in funds collected to cover administrative fees, that excess or shortfall is considered to be part of the DGS's available financial means. The EBA considered that, in both these Member States, including the administrative fees in the available financial means is immaterial, and so such treatment does not seem to create level playing field issues between DGSs.

Other sources of funds

100. Concerning funds recovered in an insolvency, the EBA found that most DGSs currently would, and should, consider such recovered funds to be part of their available financial means. However, one DGS indicated that it would use recovered funds to replenish its available financial means, and would repay the amount above the DGS's funding target level to the member institutions.

101. Concerning income from investment activities, nearly all DGSs would include such income in their available financial means. However, at least three DGSs would not automatically consider investment returns and/or interest earned to count towards the available financial means; in their cases, whether or not such income becomes available financial means is subject to a decision by the DGS.

102. Finally, concerning unclaimed repayments (rights to compensation against the DGS), nearly all DGSs would not deduct such unclaimed funds from the available financial means before they were claimed. However, one DGS stated that it would deduct such amounts from its available financial means.

Options to address the issues identified

Funds borrowed by a DGS

103. The EBA considered if there would be merit to clarifying the current text of the DGSD further to ensure that the approach to borrowed funds is harmonised across the EU. The EBA considers that different interpretations of such a key concept are highly undesirable, as they could create level playing field issues (because some DGSs could avoid having to raise contributions from their member institutions up to the minimum target level, by securing a loan up to the minimum target level and

raising contributions to cover interest payments only) and could be seen as subverting the purpose of available financial means raised through mandatory contributions.

104. On this basis, the EBA agreed that the DGSD should be clarified to unequivocally state that borrowed funds or low-risk assets stemming from or being financed by borrowed resources should not be included in a DGS's calculation of its available financial means (and thus do not count towards the minimum target level). The EBA agreed that before such a clarification is introduced, there may also be a need to provide an interpretation of current provisions in this respect, for example by means of the EBA Q&A tool, and/or to provide further guidance by means of another EBA legal instrument.

Administrative fees and other sources of funds

105. The EBA considered if there was a need to amend the DGSD to ensure a harmonised approach in relation to the treatment of administrative fees, funds recovered in an insolvency, income from investment activities and unclaimed repayments. The EBA agreed that the DGSD might need to be clarified. Alternatively, clarity concerning how such elements relate to available financial means and whether or not they should be included in a DGS's calculation of its available financial means could be provided by means of an EBA legal instrument on the calculation of and reporting on available financial means.

Conclusions

106. The EBA proposes to the Commission that the DGSD be amended to unequivocally state that funds or low-risk assets stemming from or being financed by borrowed resources should not be included in a DGS's calculation of its available financial means (and so do not count towards the minimum target level). The EBA also proposes that before such a clarification is introduced into the DGSD there may also be a need to provide an interpretation of current provisions in this respect, for example by means of the EBA Q&A tool or another EBA legal instrument.

107. The EBA proposes to the Commission that there may be a need to clarify the DGSD in relation to the treatment of administrative fees, funds recovered in an insolvency, income from investment activities and unclaimed repayments. Alternatively, clarity concerning how such elements relate to available financial means and whether or not they should be included in a DGS's calculation of its available financial means could be provided by means of an EBA legal instrument on the calculation of and reporting on available financial means.

3.3. Extraordinary contributions and alternative funding arrangements

3.3.1. Current approach to extraordinary contributions and alternative funding arrangements

Legal basis and background

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

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

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

    Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again.

    If, 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, the regular contribution shall be set at a level allowing the target level to be reached within six years.’

109. Article 2(1)(12) defines ‘available financial means’ as ‘cash, deposits and low-risk assets which can be liquidated within a period not exceeding that referred to in Article 8(1) and payment commitments up to the limit set out in Article 10(3)’.

110. Article 10(8) of the DGSD states: ‘If the available financial means of a DGS are insufficient to repay depositors when deposits become unavailable, its members shall pay extraordinary contributions not exceeding 0.5% of their covered deposits per calendar year. DGSs may in exceptional circumstances and with the consent of the competent authority require higher contributions.

    The competent authority may defer, in whole or in part, a credit institution’s payment of extraordinary *ex-post* contributions to the DGS if the contributions would jeopardise the liquidity or solvency of the credit institution. Such deferral shall not be granted for a longer period than six months but may be renewed upon the request of the credit institution. The contributions deferred pursuant to this paragraph shall be paid when such payment no longer jeopardises the liquidity or solvency of the credit institution.’

    ‘Extraordinary contributions’ are not defined further in the DGSD.

111. Article 10(9) of the DGSD requires that 'Member States shall ensure that DGSs have in place adequate alternative funding arrangements to enable them to obtain short-term funding to meet claims against those DGSs'. 'Alternative funding arrangements' are not defined further in the DGSD.

112. Article 12(1) of the DGSD states that 'Member States may allow DGSs to lend to other DGSs within the Union on a voluntary basis' provided that certain conditions are met, including that, in line with Article 12(2), 'the borrowing DGS must repay the loan within five years' and, in line with Article 12(3), that 'the contributions levied by the borrowing DGS are sufficient to reimburse the amount borrowed and to re-establish the target level as soon as possible'.

113. Recital 27 of the DGSD states: 'It is necessary to harmonise the methods of financing of DGSs. On the one hand, the cost of financing DGSs should, in principle, be borne by credit institutions themselves and, on the other, the financing capacity of DGSs should be proportionate to their liabilities. In order to ensure that depositors in all Member States enjoy a similarly high level of protection, the financing of DGSs should be harmonised at a high level with a uniform *ex-ante* financial target level for all DGSs.'

114. Recital 34 of the DGSD states: 'It is necessary that the available financial means of DGSs amount to a certain target level and that extraordinary contributions may be collected. In any event, DGSs should have adequate alternative funding arrangements in place to enable them to obtain short-term funding to meet claims made against them. It should be possible for the available financial means of DGSs to include cash, deposits, payment commitments and low-risk assets, which can be liquidated within a short period of time. The amount of contributions to the DGS should take due account of the business cycle, the stability of the deposit-taking sector and existing liabilities of the DGS.'

115. Article 24(4) of Commission Delegated Regulation (EU) 2015/61, on the liquidity coverage ratio (LCR) requirement for credit institutions, states:

> By way of derogation from paragraph 1, from 1 January 2019 competent authorities may authorise credit institutions to multiply by 3% the amount of the stable retail deposits referred to in paragraph 1 covered by a deposit guarantee scheme in accordance with Directive 2014/49/EU up to a maximum level of EUR 100 000 as specified in Article 6(1) of that Directive, provided that the Commission has confirmed that the officially recognised deposit guarantee scheme meets all of the following criteria:
>
> (a) the deposit guarantee scheme has available financial means, as referred to in Article 10 of Directive 2014/49/EU, raised *ex ante* by contributions made by members at least annually;
>
> (b) the deposit guarantee scheme has adequate means of ensuring ready access to additional funding in the event of a large call on its reserves, including access to

extraordinary contributions from member credit institutions and adequate alternative funding arrangements to obtain short-term funding from public or private third parties;

(c) the deposit guarantee scheme ensures a seven working day repayment period as referred to in Article 8(1) of Directive 2014/49/EU from the date of application of the 3% outflow rate.

116. Article 109(5) of the BRRD, 'Use of deposit guarantee schemes in the context of resolution', states: 'Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years.'

Methodology, data sources and their limitations

117. The survey circulated to the DGSDAs and DGSs included two questions related to extraordinary contributions and four questions related to alternative funding arrangements.

118. It should be noted that this chapter on extraordinary contributions and alternative funding arrangements has been written on the assumption that available financial means must come from contributions from DGSs' own members, and so cash, deposits and low-risk assets borrowed by a DGS from any source, including commercial entities, the state or another DGS, are not considered available financial means, and thus do not count towards the DGS fund's target level. The topic of the current definition of available financial means is explored in more detail in Section 3.2 of this report.

Main findings, issues identified and analysis

Extraordinary contributions

119. The survey circulated to the DGSDAs and DGSs asked respondents 'What are the arrangements in place to ensure that extraordinary contributions are raised and transferred to the DGS account sufficiently quickly and what is the envisaged timeline to obtain them?' The responses received were as follows:

- Regarding whether or not there are special arrangements in place for collecting extraordinary contributions:
    - Ten respondents from nine Member States reported that there were arrangements in place. Four respondents from three Member States explained that the method for calculating extraordinary contributions for each credit institution was clearly specified in national legislation to speed up the process. Another respondent reported that, in order to ensure that such extraordinary contributions are paid quickly, it requires credit

institutions to hold free cash sufficient to pay extraordinary contributions towards the payout of a medium-sized bank. Another respondent clarified that the rules regarding extraordinary contributions are set out in the same legal acts as rules regarding regular contributions.

- Regarding the authority who determines the extraordinary contributions:
  - Ten respondents from nine Member States reported that the DGS determines the amount and date of the extraordinary contributions.
  - One respondent reported that the Council of Ministers determines the level of extraordinary contributions, the calculation and payment modalities.
  - One respondent reported that the national bank is responsible for setting contributions, and that there is no written agreement between the DGS and the national bank to ensure that extraordinary contributions are raised quickly enough for the DGS to use them for repayment.
  - Two respondents from one Member State reported that the DGS fund, the central bank and the government are involved in the process.
- Regarding the timeline for the payment of extraordinary contributions:
  - Thirteen respondents from eleven Member States reported that they expected that contributions will be raised within the payout period of seven working days. One respondent reported that the regulation provides for a shorter decision-making process if extraordinary contributions are to be raised. Moreover, a simplified calculation method can be implemented (the *ex post* contributions can be computed as a percentage of the last *ex ante* contributions). Another respondent explained that the law enables the DGS to raise advance payments towards extraordinary contributions, which can be raised within seven working days. One respondent reported that there is a certain degree of risk, as the central bank determines the individual contributions from each credit institution and the only deadline set in legislation is the time limit for settlement, with none for the duration of the decision-making process. Another respondent explained that the national legislation, an ordinance of the central bank, enables the DGS to raise advance payments towards the extraordinary contributions, which can be raised within seven days.
  - Four respondents from four Member States reported that the timelines are dependent on the specific circumstances.
  - One respondent from one Member State reported that it currently assumes that extraordinary contributions cannot be collected within the seven working day payout period.

120. Second, the survey asked respondents 'Do you have practical experience with [credit institutions'] payment of extraordinary contributions? If so, (i) how quickly did you manage to raise them; (ii) what was the % of the covered deposits of the *ex post* contributions and (iii) did you experience any difficulties?' The responses received were as follows:

- Thirty-one respondents from twenty-five Member States reported having no practical experience with raising extraordinary contributions. Of these respondents:
  - One respondent reported that the process was to be tested in the future.
- Three respondents from three Member States reported having practical experience with raising extraordinary contributions. Of these respondents:
  - One respondent reported that the payment of extraordinary contributions had been tested in a funding stress test, in which the DGS managed to raise extraordinary contributions equal to 0.5% of covered deposits in two to three days, and no difficulties were experienced.
  - Another respondent explained that, as a DGS, it had not raised any extraordinary contributions, but it had done so for the purpose of the resolution fund. The extraordinary contributions were 0.05% of covered deposits and were paid on the same day that credit institutions received a letter specifying the amount. No difficulties were experienced.
  - One respondent reported that, in its most recent experience of raising extraordinary contributions (in 2013), the contributions had amounted to 0.276% of covered deposits. The respondent clarified that the DGS had set the amount to be paid and had determined the schedule for the provision of these extraordinary contributions in four payments within 2.5 years. Credit institutions had been required by the DGS to make the first payment within the first two months of the DGS's decision.

Alternative funding arrangements

121. The survey circulated to the DGSDAs and DGSs asked respondents 'Are alternative funding arrangements, as per Article 10(9), in place in your Member State?' The responses from DGSDAs and/or DGSs on this question were as follows:

- Twenty-one respondents from nineteen Member States reported having alternative funding arrangements in place.
- Thirteen respondents from ten Member States reported having no alternative funding arrangements in place at the time of the publication of this report.

122. Subsequently, the survey asked respondents 'If yes, what is the nature and status of these alternative funding arrangements? Are there any costs involved to maintain these alternative funding measures?' The responses received were as follows:

- Seven respondents from six Member States reported that they had multiple arrangements in place.
  - One respondent explained that it could issue debt securities or draw upon a credit line from the state.
  - One respondent reported that it could be granted a loan from the DGS's other departments, obtain funding internally within the competent authority, use a liquidity backstop facility from the central bank and, finally, obtain funding through private measures in the credit market.
  - One respondent reported that it could take loans from credit institutions or other persons, fulfil the obligations of the sectoral fund using another sectoral fund, or apply for a state loan or a state guarantee for a loan taken by the fund.
  - One respondent reported that the DGS had the right to borrow funds from the government, commercial banks and other DGSs (under signed cooperation agreements). In addition, deposit compensation can be paid from the mandatory reserves of equity of insurance undertakings.
  - One respondent reported that there were a commercial credit facility and a credit line agreement with the Ministry of Finance in place. If, in exceptional circumstances, more funding were needed, the central bank could be asked to step in as a last resort.
  - Two respondents from one Member State reported having both a formally agreed process to request a credit line from the state and a commercial credit facility with private banks in place.
- Five respondents from five Member States reported that they had a commercial credit facility with private banks in place.
- Four respondents from four Member States reported that they could draw upon a credit line from the state;
- One respondent from one Member State reported that funds could be borrowed from the central bank. There would be some costs involved in that funding, as loans are interest-bearing.
- One respondent reported that it had a bond issuance programme.

- One respondent reported that it had a formally agreed lending agreement with another IPS.

- One respondent reported that the DGS could oblige credit institutions to lend the missing assets to the DGS. The share to be lent by each deposit credit institution was determined pro rata based on its share of the deposit guarantee contributions. There were no costs to maintaining this arrangement.

123. The survey asked respondents 'Have alternative arrangements in line with Article 10(9) been used in your jurisdiction in a payout since the implementation of the revised DGSD?'. Of the respondents who reported having alternative funding arrangements in place:

- Twenty respondents from sixteen Member States reported not having used alternative funding arrangements since the implementation of the revised DGSD.

- Two respondents from two Member States reported having used alternative funding arrangements since the implementation of the revised DGSD.

124. The survey then asked respondents 'If the answer to the question above is "yes", please explain what these arrangements were.' Of the respondents who had used alternative funding arrangements since the implementation of the revised DGSD:

- One respondent explained that loans came from the World Bank and the European Bank of Restructuring and Development, used to refinance an outstanding loan from the Ministry of Finance. The new loans received a state guarantee. The funds from the initial loan were used to cover the DGS's obligations to depositors, following an older payout event.

- One respondent reported that the DGS had signed a repo agreement with one of the private banks in its Member State in order to help the DGS with short-term funding for a payout that the DGS needed to make. The amount would be repaid from the following year's cash contribution.

125. The EBA assessed the results of the survey in the light of the requirement to have adequate alternative funding arrangements in place. The responses to the survey show that, across Member States, different funding sources and mechanisms have been chosen as, in their view, adequate alternative funding arrangements. The DGSDAs/DGSs where such arrangements are not in place explained that they had encountered problems in securing such arrangements, including:

- issues with assessing the DGS's creditworthiness;

- the costs of establishing such arrangements;

- the reluctance of other authorities, be they central banks or national governments, to provide certainty that a credit line would be available.

126. In relation to both extraordinary contributions and alternative funding arrangements, the EBA is of the view that, given

- the importance of extraordinary contributions and alternative funding arrangements to ensure that depositors are protected and, on the other hand,

- limited practical experience in activating such arrangements,

it is necessary to ensure that extraordinary contributions can be raised and alternative funding arrangements accessed when needed.

Options to address the issues identified

127. The EBA considered how to ensure that extraordinary contributions can be raised and alternative funding arrangements accessed when needed. The EBA observed that this issue is already being assessed in the context of the EBA's development of a methodology for the assessment of compliance with the conditions set out in Article 24(4) of the Delegated Regulation on the LCR,[11] and so at this point there is no need to make separate proposals in this report.

128. Thus, the EBA arrived at an agreed view that at this point there is no need to propose an amendment to the DGSD in relation to ensuring that extraordinary contributions can be raised and adequate alternative funding arrangements accessed when needed. This is the case in particular because the issues mentioned in paragraph 125 with regard to establishing adequate alternative funding arrangements do not seem to stem directly from lack of clarity or issues with the DGSD. Furthermore, the methodology for an assessment of if a DGS has 'ready access to additional funding in the event of a large call on its reserves, including access to extraordinary contributions from member credit institutions and adequate alternative funding arrangements to obtain short-term funding from public or private third parties' is in the process of being developed by the EBA in the context of the application of Article 24(4) and (5) of the Delegated Regulation on the LCR. It will be important to reflect DGSDAs'/DGSs' views in the development of that methodology and to ensure consistency with other EBA legal instruments, such as the EBA guidelines on stress testing of DGSs, as the methodology to be developed in the context of the Delegated Regulation on the LCR will affect the assessment of the adequacy of DGSs' funding arrangements in the context of the DGSD.

Conclusions

129. The EBA proposes to the Commission that at this point there is no need to amend the DGSD in relation to ensuring that extraordinary contributions can be raised and alternative funding arrangements accessed when needed.

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[11] In accordance with Article 24(5) of the Delegated Regulation on the LCR, the Commission shall seek the opinion of the EBA on the conformity of the relevant DGS with the conditions set out in Article 24(4)(a), (b) and (c).

3.3.2. Sequence of use of different funding sources

Legal basis and background

130. Articles 10(1), 10(2), 10(8), 10(9) and recitals 27 and 34 of the DGSD and Article 24(4) of the Delegated Regulation on the LCR, quoted in Section 3.1.1, are relevant for this subsection.

Methodology, data sources and their limitations

131. The survey circulated to the DGSDAs and DGSs included two questions related to extraordinary contributions and four questions related to alternative funding arrangements, as reported in Section 3.1.1. The survey did not include specific questions in relation to the sequence in which different funding sources are used.

Main findings, issues identified and analysis

Clarity on the hierarchy/sequence for using different funding sources

132. As outlined in the previous section, responses to the survey showed that some respondents consider that extraordinary contributions cannot be accessed within just a few days. Based on this observation, the EBA analysed the hierarchy or sequence of use of different funding sources: available financial means, extraordinary contributions and alternative funding arrangements.

133. Based on the responses to the survey, and discussions with relevant authorities, the EBA observed that in some Member States authorities apply a rigid sequence of using available financial means first, followed by meeting the obligation to raise extraordinary contributions, followed by raising funds by means of alternative funding arrangements, if still necessary. Others apply full flexibility, including by using alternative funding arrangements ahead of available financial means.

134. The EBA arrived at the view that currently the DGSD indicates that *ex post* contributions must be raised when available financial means are insufficient to repay depositors when deposits become unavailable; however, current practices across the EU suggest that there are different interpretations of whether there is (full) flexibility or a (clear) sequence in which different sources of DGS funding should be used.

Options to address the issues identified

Optimal use of different funding sources

135. The EBA then analysed whether there should be (full) flexibility or a (clear) sequence. The focus of the analysis was on the role of alternative funding arrangements, and whether they should be:

- Option 1 – a backstop if available financial means and extraordinary contributions are depleted/not available; or

- Option 2 – available as a source of funding ahead of available financial means and extraordinary contributions, and not only as a source of short-term liquidity.

136. The EBA first considered arguments in favour of the first option, which would require that available financial means be used first, followed by extraordinary contributions; only if funds were still insufficient for a payout would the DGS be allowed to access funds by means of alternative funding arrangements. These arguments included:

i. The rationale for having (and using) available financial means ahead of extraordinary contributions is to avoid procyclical contributions immediately following a credit institution's failure, which could indicate a wider issue in the market.

   A counterargument is that using alternative funding arrangements would not undermine this rationale, because the repayment schedule could be adapted to the situation in the market, and could allow more flexibility to avoid a procyclical impact on other institutions.

ii. Using available financial means ensures that all institutions, including the failed credit institution, have participated financially in each failure. Using alternative funding arrangements in the form of a loan (usually with short-term maturity, as referred to in the DGSD, but without preventing DGSs from obtaining long-term funding) could in theory mean that, where there are multiple failures, the failed institution does not contribute financially to its own failure, depending on whether the repayment of the loan is done using existing available financial means or further contributions (to which the failed institution would no longer contribute). For example, that would be the case if a DGS had already reached the minimum target level (and no contributions were being collected because the available financial means were above the target level), a new institution (A) became a member of the DGS, another institution (B) failed and available financial means were not used for the payout but, instead, alternative funding arrangements were used. If institution A then failed, and the repayment of alternative funding arrangements started only after credit institution A had failed, A would not have contributed to its own failure, which would go against the 'polluter pays' principle.

   A counterargument is that, even when available financial means are used first, it is possible to envisage a situation in which a credit institution does not contribute in the event of its own failure; this is much more likely than the abovementioned scenario in which alternative funding arrangements are used first. For example, this would be the case if a DGS had reached the minimum target level (and there were no contributions because the available financial means were above the target level), and a new institution joined and then failed before any further contributions were raised. In that situation, using alternative funding arrangements ahead of available financial means would not undermine the principle that each institution should have to contribute in the event of its own failure.

iii. Unrestricted permission to use alternative funding arrangements ahead of other funding sources would favour the use of alternative funding arrangements over available financial means. That is

because Article 10(2) of the DGSD requires available financial means to be replenished within a period of six years when they are reduced to two thirds of the target level, while such provisions would not apply to alternative funding arrangements. In consequence, using alternative funding arrangements first would offer more flexibility than using available financial means first. Therefore, the requirements attached to the use of available financial means first in accordance with Article 10(2) of the DGSD could be bypassed and thus undermined.

iv. Ensuring that available financial means are used first creates certainty and ensures that at the point of crisis the DGS focuses on preparing for the payout as opposed to analysing whether liquidating its assets or drawing on alternative funding arrangements is the most optimal way to use its resources at that particular moment.

A counterargument is that DGSs are already required to have alternative funding arrangements in place and so at the point of crisis existing arrangements could be activated without the need for negotiations or detailed analysis.

v. Using alternative funding arrangements in the form of a loan from the state shifts the risk with regard to the repayment of that loan onto the state, and thus the taxpayer, which runs against the principle enshrined in the current DGSD (recital 27) that the cost of financing DGSs should be borne by credit institutions themselves and the principles of the EU state aid framework. Using alternative funding arrangements in the form of a loan from the state ahead of available financial means and extraordinary contributions puts the risk on the state ahead of the industry.

A counterargument is that alternative funding arrangements do not need to be in the form of a loan from the state and that, in any case, the state may be seen as the ultimate backstop for the DGS.

vi. Clear permission to use alternative funding arrangements ahead of other funding sources would disincentivise Member States from collecting contributions above the minimum target level, even where they consider that the current minimum is not adequate, as most if not all institutions in their jurisdictions hold more than 0.8% of covered deposits, and the minimum amount prescribed in the DGSD would not be sufficient in the event of most payouts or any payout.

A counterargument is that Member States are free to collect contributions above the minimum target level.

137. The EBA then considered the following arguments in favour of the second option, namely full flexibility for DGSs to use funds accessed by means of alternative funding arrangements ahead of other funding sources:

i. The flexibility to use alternative funding arrangements could provide an additional tool to ensure that depositors are protected and financial stability is maintained, because funds could be made available to meet the deadline to reimburse depositors, maintaining trust in the DGSD.

Furthermore, such flexibility would allow DGSs to avoid having to immediately raise extraordinary contributions (even though Article 10(8) allows for a six-month deferral of such contributions) where raising such contributions would endanger financial stability (e.g. in a systemic crisis). Finally, such flexibility does not mean that alternative funding arrangements would always be used ahead of available financial means.

A counterargument is that, from this perspective, such flexibility could be useful only when available financial means and/or *ex post* contributions could not be accessed/used/raised sufficiently quickly, and so there is no need to provide for alternative funding arrangements to be used ahead of available financial means and/or *ex post* funds when they are available. It is sufficient to ensure that where available financial means and/or *ex post* funds are not available, it is possible to access funds by means of alternative funding arrangements.

ii. Full flexibility is needed because it would allow a DGS to use its funds in the most efficient way and avoid a fire sale of its assets (available financial means) at the point of crisis. More specifically, it would allow the DGS to borrow funds – from the state, central bank or a private sector institution, depending on the scenario – and repay them following an optimal plan for liquidating its available financial means over a longer period, based on a cost–benefit analysis. It could also offer the flexibility needed to design an optimal plan for raising contributions, taking into account the loan repayment plan.

A counterargument is that available financial means are by definition 'cash, deposits and low-risk assets which can be liquidated within a period not exceeding [the deadline to make depositors' funds available]' and should be invested in a low-risk and sufficiently diversified manner that should ensure that liquidating them in all but the most severe crisis scenario would not lead to 'fire sale' prices. Therefore, in most cases, using 'cash, deposits or low-risk assets' would be cheaper than a commercial loan unless, for instance, the return on available financial means is higher than the interest rate on alternative funding arrangements, or the alternative funding arrangements are understood as referring to a subsidised loan from the state,[12] or in a specific case in which waiting until available financial means assets reach maturity and in the meantime securing a loan is more favourable than liquidating available financial means assets immediately.

iii. Using alternative funding arrangements instead of available financial means makes no difference because, when funds are needed for a payout, whether available financial means are used first followed by alternative funding arrangements or alternative funding arrangements are used first and then repaid using available financial means, the outcome is the same. It could also be argued that the schedule for repaying the loan is not prescribed in the DGSD, thus allowing the DGS to optimise the repayment schedule, without the requirement to do so within six years, as is currently prescribed in relation to the replenishment of the available financial means, if they fall below a certain level.

[12] Subject to the EU state aid framework.

A counterargument is that this argument can be seen as highlighting a disadvantage as well, as it could indicate that a DGS could appear to be well funded because currently available financial means do not reflect any loans the DGS has taken. In reality, the DGS could have a loan even higher than the amount of its available financial means and still report to the EBA that it was fully funded. Clearly prescribing in the DGSD that alternative funding arrangements can be used ahead of available financial means could make this scenario more prevalent and so undermine the purpose of the current provisions in the DGSD requiring that available financial means be replenished within a specified time. Moreover, the rule enshrined in Article 10(2) of the DGSD (which requires available financial means to be replenished when they fall short of the target level or below two thirds of it) could also be undermined. Overall, that would lead to different methods of financing DGSs, against the stated objective of the DGSD of harmonising those funding methods and the principle that institutions, rather than taxpayers, should finance DGSs.

iv. By using alternative funding arrangements first, the DGS keeps its full available financial means in reserve to face another possible crisis.

   A counterargument is that, although using alternative funding arrangements first maintains available financial means, it also creates a liability for the DGS. Furthermore, these available financial means could be pledged and so may no longer be available, depending on the type of loan.

v. The issue of clearly and transparently reporting DGSs' assets and liabilities (i.e. borrowed funds) could be resolved by requiring DGSDAs to also report the amounts of outstanding loans/debt to the EBA, in addition to reporting DGSs' available financial means; therefore, a lack of transparency is not a valid argument against allowing the use of alternative funding arrangements ahead of available financial means.

138. Given that there are numerous arguments in favour of different approaches, the EBA developed a numerical example to further test the impact that they would have (see Table 1). The numerical example includes a number of simplifications and is based on certain assumptions (outlined below), but it is a useful tool to draw distinctions between different approaches, even if in real-life cases the effects of different approaches could differ from those identified based on the examples used.

139. As a starting point, the analysis presents a case of a median DGS with EUR 400 million in available financial means upon reaching the 0.8% target level, assuming that this DGS is precisely at 0.8% in Year 0.

Table 1. Different approaches to funding a DGS payout

One medium-sized payout (0.6%) in Year 0, disregarding recoveries

	AFM first system				AFA first system				AFA first but definition of AFM reflects the liability in the form of the loan				
	Available financial means	Contributions from the institutions that year in February	Loan		Available financial means	Contributions from the institutions that year in February	Loan of €240 m, 12 years		AFM reflecting the loan	Available cash contributions	Contributions from the institutions that year in February	Loan of €240 m, 12 years	Recov-eries
Year 0, Day 1	0.80%	–	–	–	0.80%	–	–	–	0.80%	0.80%	–	–	–
Year 0, Day 2	0.20%	0.10%	–	–	0.80%	–	–0.60%	–	0.20%	0.80%	0.10%	–0.60%	–
Start of Year 1	0.30%	0.10%	–	–	0.80%	0.05%	–0.55%	–	0.30%	0.80%	0.10%	–0.50%	–
Start of Year 2	0.40%	0.10%	–	–	0.80%	0.05%	–0.50%	–	0.40%	0.80%	0.10%	–0.40%	–
Start of Year 3	0.50%	0.10%	–	–	0.80%	0.05%	–0.45%	–	0.50%	0.80%	0.10%	–0.30%	–
Start of Year 4	0.60%	0.10%	–	–	0.80%	0.05%	–0.40%	–	0.60%	0.80%	0.10%	–0.20%	–
Start of Year 5	0.70%	0.10%	–	–	0.80%	0.05%	–0.35%	–	0.70%	0.80%	0.10%	–0.10%	–
Start of Year 6	0.80%	–	–	–	0.80%	0.05%	–0.30%	–	0.80%	0.80%	–	–	–

One medium-sized payout (0.6%) in Year 0 with recoveries of 80% in Year 3

	AFM first system				AFA first system				AFA first but definition of AFM reflects the liability in the form of the loan				
	Available financial means	Contributions from the institutions that year in February	Loan	Recoveries of 80% in Year 3	Available financial means	Contributions from the institutions that year in February	Loan of €240 m, 12 years	Recov-eries of 80% in Year 3	AFM reflecting the loan	Available cash contributions	Contributions from the institutions that year in February	Loan of €240 m, 12 years	Recov-eries of 80% in Year 3
Year 0, Day 1	0.80%	–	–	–	0.80%	–	–	–	0.80%	0.80%	–	–	–
Year 0, Day 2	0.20%	0.10%	–	–	0.80%	–	–0.60%	–	0.20%	0.80%	0.10%	–0.60%	–
Start of Year 1	0.30%	0.10%	–	–	0.80%	0.05%	–0.55%	–	0.30%	0.80%	0.10%	–0.50%	–
Start of Year 2	0.40%	0.10%	–	–	0.80%	0.05%	–0.50%	–	0.40%	0.80%	0.10%	–0.40%	–
Start of Year 3	0.98%	–	–	0.48%	0.80%	0.02%	–	0.48%	0.98%	0.98%	–	–	0.48%
Start of Year 4	0.98%	–	–	–	0.80%	–	–	–	0.98%	0.98%	–	–	–
Start of Year 5	0.98%	–	–	–	0.80%	–	–	–	0.98%	0.98%	–	–	–
Start of Year 6	0.98%	–	–	–	0.80%	–	–	–	0.98%	0.98%	–	–	–

One large payout (1.2%) in Year 0

	AFM first system				AFA first system				AFA first but definition of AFM reflects the liability in the form of the loan				
	Available financial means	Contributions from the institutions that year in February	Loan		Available financial means	Contributions from the institutions that year in February	Loan of €480 m, 12 years		AFM reflecting the loan	Available cash contributions	Contributions from the institutions that year in February	Loan of €480 m, 12 years	
Year 0, Day 1	0.80%	–	–	–	0.80%	–	–	–	0.80%	0.80%	–	–	–
Year 0, Day 2	0.00%	0.20%	–0.40%	–	0.80%	0.10%	–1.20%	–	–0.40%	0.80%	0.20%	–1.20%	–
Start of Year 1	0.13%	0.20%	–0.33%	–	0.80%	0.10%	–1.10%	–	–0.20%	0.80%	0.20%	–1.00%	–
Start of Year 2	0.26%	0.20%	–0.26%	–	0.80%	0.10%	–1.00%	–	0.00%	0.80%	0.20%	–0.80%	–
Start of Year 3	0.40%	0.20%	–0.20%	–	0.80%	0.10%	–0.90%	–	0.20%	0.80%	0.20%	–0.60%	–
Start of Year 4	0.53%	0.20%	–0.13%	–	0.80%	0.10%	–0.80%	–	0.40%	0.80%	0.20%	–0.40%	–
Start of Year 5	0.66%	0.20%	–0.07%	–	0.80%	0.10%	–0.70%	–	0.60%	0.80%	0.20%	–0.20%	–
Start of Year 6	0.80%	0.20%	–	–	0.80%	0.10%	–0.60%	–	0.80%	0.80%	–	–	–

One large payout (1.2%) in Year 0 with recoveries of 80% in year 5

	AFM first system				AFA first system				AFA first but definition of AFM reflects the liability in the form of the loan				
	Available financial means	Contributions from the institutions that year in February	Loan	Recoveries of 80% in Year 5	Available financial means	Contributions from the institutions that year in February	Loan of €480 m, 12 years	Recov-eries of 80% in Year 5	AFM reflecting the loan	Available cash contributions	Contributions from the institutions that year in February	Loan of €480 m, 12 years	Recov-eries of 80% in Year 5
Year 0, Day 1	0.80%	–	–	–	0.80%	–	–	–	0.80%	0.80%	–	–	–
Year 0, Day 2	0.00%	0.20%	–0.40%	–	0.80%	0.10%	–1.20%	–	–0.40%	0.80%	0.20%	–1.20%	–
Start of Year 1	0.13%	0.20%	–0.33%	–	0.80%	0.10%	–1.10%	–	–0.20%	0.80%	0.20%	–1.00%	–
Start of Year 2	0.26%	0.20%	–0.26%	–	0.80%	0.10%	–1.00%	–	0.00%	0.80%	0.20%	–0.80%	–
Start of Year 3	0.40%	0.20%	–0.20%	–	0.80%	0.10%	–0.90%	–	0.20%	0.80%	0.20%	–0.60%	–
Start of Year 4	0.53%	0.20%	–0.13%	–	0.80%	0.10%	–0.80%	–	0.40%	0.80%	0.20%	–0.40%	–
Start of Year 5	1.56%	–	–	0.96%	0.96%	–	–	0.96%	1.56%	1.56%	–	–	0.96%
Start of Year 6	1.56%	–	–	–	0.96%	–	–	–	1.56%	1.56%	–	–	–

One large payout (1.2%) in Year 0 and one medium-sized payout (0.6%) in Year 3 with recoveries of 80% in Year 5

	AFM first system				AFA first system				AFA first but definition of AFM reflects the liability in the form of the loan				
	Available financial means	Contributions from the institutions that year in February	Loan	Recoveries of 80% in Year 5	Available financial means	Contributions from the institutions that year in February	Loan of €480 m, 12 years	Recov-eries of 80% in Year 5	AFM reflecting the loan	Available cash contributions	Contributions from the institutions that year in February	Loan of €480 m, 12 years	Recov-eries of 80% in Year 5
Year 0, Day 1	0.80%	–	–	–	0.80%	–	–	–	0.80%	0.80%	–	–	–
Year 0, Day 2	0.00%	0.20%	–0.40%	–	0.80%	0.10%	–1.20%	–	–0.40%	0.80%	0.20%	–1.20%	–
Start of Year 1	0.13%	0.20%	–0.33%	–	0.80%	0.10%	–1.10%	–	–0.20%	0.80%	0.20%	–1.00%	–
Start of Year 2	0.26%	0.20%	–0.26%	–	0.80%	0.10%	–1.00%	–	0.00%	0.80%	0.20%	–0.80%	–
Start of Year 3	0.40%	0.20%	–0.20%	–	0.80%	0.10%	–0.90%	–	0.20%	0.80%	0.20%	–0.60%	–
Start of Year 4	0.00%	0.20%	–0.20%	–	0.20%	0.10%	–0.80%	–	–0.20%	0.20%	0.20%	–0.40%	–
Start of Year 5	0.96%	–	–	0.96%	0.46%	0.10%	–	0.96%	0.96%	0.96%	–	–	0.96%
Start of Year 6	0.96%	–	–	–	0.56%	0.10%	–	–	0.96%	0.96%	–	–	–

NB: AFA, alternative funding arrangements; AFM, available financial means.

140. The numerical example includes three approaches to the sequence of using available financial means and alternative funding arrangements (disregarding the role of extraordinary contributions for simplicity):

    i. using available financial means first before using a loan (the loan is used only when there are no available financial means left) and replenishing the fund to 0.8% in six years with equal amounts used to repay the loan and replenish the fund (available financial means first);
    ii. using a loan first and repaying the loan in 12 years (alternative funding arrangements first);
    iii. using a loan first and repaying the loan in 12 years, but the loan is reflected in the calculation of available financial means and so requires the DGS to reach the target level in six years (alternative funding arrangements first with amended concept).

141. The numerical example includes five scenarios:

    i. payout of 0.6% with no recoveries;
    ii. payout of 0.6% with recoveries of 80% in Year 3;
    iii. payout of 1.2% with no recoveries;
    iv. payout of 1.2% with recoveries of 80% in Year 5;
    v. payout of 1.2% with recoveries of 80% in Year 5, with an additional payout of 0.6% in Year 3.

142. The numerical example highlights differences between the three approaches in relation to:

- the extent to which expected recoveries can be reflected in the replenishment of available financial means or repayment of funds accessed by means of alternative funding arrangements;
- the possibility of 'overshooting' the minimum target level of 0.8%;
- transparency in relation to the DGS's funding;
- the level of DGS funding in case of multiple failures in a given time period.

143. The EBA analysed the features of the three different options, with a focus on the differences relating to the four aspects listed in the paragraph above (see Table 2).

Table 2. Summary of the features of the three analysed approaches to DGS payouts

Approach to DGS payouts	Key features of the given approach to DGS payouts
1. Using available financial means first (available financial means first)	• Fund replenished more quickly than when using a loan longer than six years, and as quickly as under the alternative funding arrangements first with amended definition approach • DGS may be better able to handle multiple failures before recovering funds in an insolvency because the DGSD requires the fund to be replenished within six years and so available financial means may be replenished more quickly than under the alternative funding arrangements first approach, which places no restrictions on the time for the repayment of the loan • Available financial means clearly show the DGS's assets and liabilities • DGS may need to liquidate its assets in less favourable market circumstances (illiquid markets) • While using available financial means first does not exclude the possibility of adjusting the pace of contributions in anticipation of recoveries (as long as they materialise within six years), such flexibility is restricted • Recoveries may lead to the 'overshooting' of the target level • Using available financial means first and consequently reporting a lower amount of available financial means may raise concerns with the public
2. Using alternative funding arrangements first (alternative funding arrangements first)	• Offers flexibility for DGSs to optimise the speed of contributions in expectation of recoveries • Limited scope for 'overshooting' the target level • Available cash is maintained for other payouts (assuming it is not pledged as collateral for the loan), but if it is then used in a second payout the overall amount of DGS funds is lower • DGS reports being fully funded, which may be reassuring to depositors • Available financial means do not reflect the DGS's liabilities • Offers flexibility to optimise the pace of contributions in expectation of recoveries, leading to lower amount of available financial means if another payout happens and available financial means are used for the second payout before recoveries are achieved • Size of the loan is substantial, even for a median DGS (in the hundreds of millions)
3. Using alternative funding arrangements first, but with an amended concept of available financial means	• Fund replenished more quickly than under the alternative funding arrangements first approach • The possibility of 'overshooting' the target level may be more limited than under the available financial means first approach but is potentially higher than under the alternative funding arrangements first approach • Available cash maintained for other payouts • Available financial means reflect the DGS's assets and liabilities • DGS may report negative available financial means despite having cash contributions, which can be confusing for the public • Size of the loan is substantial, even for a median DGS (in the hundreds of millions)

144. Based on the arguments presented above, and further observations based on the numerical example presented in this report, the EBA considered further whether there should be (full)

flexibility or a (clear) sequence in which DGS funding sources (available financial means, extraordinary contributions, alternative funding arrangements) should be used, including with regard to using alternative funding arrangements ahead of available financial means. More specifically, in the light of the potential drawbacks or issues that such flexibility could create, the EBA analysed further whether or not (full) flexibility should be accompanied by conditions, namely:

- a restriction on the maturity of loans accessed by means of alternative funding arrangements;
- a requirement for a cost–benefit analysis;
- a requirement for a repayment plan.

Reflecting expected recoveries in future contributions

145. Taking the features of the different options outlined in Table 2 as a starting point, the EBA analysed the challenges of estimating recoveries following a payout and in particular to what extent it is possible to estimate the amount and the timing of recoveries. This is important because a key advantage of using alternative funding arrangements first as opposed to using available financial means first is being able to freely adjust the pace of the repayment of the loan, avoiding current restrictions applicable to the replenishment of available financial means.

146. The EBA considered the following advantages of full flexibility to adapt the pace of repaying the loan to the expected amount of recoveries:

- limits the possibility of 'overshooting' the minimum target level, which may mean a lower burden on credit institutions;
- flexibility to postpone potentially procyclical contributions from the industry;
- assessment of potential recoveries can be done on a case-by-case basis, so the pace of repaying a loan can be adapted to each case separately in a targeted manner.

147. The EBA considered the following concerns in relation to adapting contributions to expected recovery rates:

- Assessing the amount of expected recoveries may be difficult due to limited practical experience of bank insolvencies since the implementation of the BRRD and the DGSD.
- Assessing the time when expected recoveries will be achieved may be even more difficult, not only because of limited experience but also because of the idiosyncrasies of individual cases.

- The more widespread the crisis, the more difficult it becomes to assess the expected amount and the timing of recoveries.

Restrictions on the maturity of loans accessed by means of alternative funding arrangements

148. The EBA also analysed the merit of including in the DGSD restrictions on the maturity of loans accessed by means of alternative funding arrangements, with a particular focus on restrictions on the maturity of loans from commercial entities.

149. The numerical example presented in Table 1 shows that a restriction on the maturity of a loan similar to the requirement to replenish available financial means within six years when more than one third of the available financial means have been used would have the effect of generally shortening the period by which the DGS would have available financial means at the minimum target level without any liabilities. This is particularly relevant where a DGS faces multiple payouts before it recovers funds in an insolvency. The numerical example shows that if a DGS were to use alternative funding arrangements without a requirement in the DGSD to repay it within six years, it might take out a longer loan and schedule the repayment path in expectation of future recoveries, which in the event of another DGS payout might leave it less well funded than if it were required to repay the loan within six years.

150. The EBA analysed this example and the issue of restrictions on the maturity of a loan more broadly. The EBA considered the following risks posed by no restrictions on the maturity of loans accessed by means of alternative funding arrangements (other than loans between DGSs, which have not been considered in detail in this report, and in relation to which the DGSD already specifies that the loan must be repaid within five years):

    - shortfall of funds in case of multiple DGS payouts when using alternative funding arrangements with a repayment plan linked to the expected recoveries;
    - the possibility that a DGS would have a perpetual loan that is never repaid for the purpose of avoiding raising funds from the industry to repay it (this potential risk is applicable mainly to loans from the state).

151. On the other hand, the EBA considered that the flexibility to be able to choose the most appropriate maturity of the loan would have the following benefits:

    - The flexibility would allow DGSs to set the most appropriate repayment plan for a particular scenario, particularly when DGS payouts are significant and repaying the loan in six years would have a material, procyclical effect on the rest of the industry, with a possible impact on financial stability.
    - There is only a limited risk that a DGS would use a loan with a long maturity where there was no need to do so because:
        - in practice the use of such loans would be accompanied by a cost–benefit analysis;

- o the entity providing the loan would provide only a loan that was viable;
- o using a loan with a long maturity is costly.

152. At this point in the analysis, the EBA arrived at a preliminary view that, for the abovementioned reasons, if the DGSD were to be clarified to the effect that alternative funding arrangements can be used ahead of available financial means, there would seem to be no merit in introducing a restriction on the deadline for the funds accessed by means of alternative funding arrangements to be repaid. However, to alleviate some of the concerns about such flexibility, the EBA discussed whether or not such flexibility (if it were to be clearly outlined in the DGSD) should be accompanied by further conditions, such as a requirement to conduct a cost–benefit analysis of using such an option to ensure that it offers a more optimal use of DGS funds and a requirement to accompany the use of such an option with a repayment plan to help to ensure that the loan is repaid.

Conditions for using alternative funding arrangements ahead of available financial means

Cost–benefit analysis

153. The EBA analysed if the DGS/DGSDA should conduct a cost–benefit analysis on the use of different funding options, and what such a cost–benefit analysis should include, based on current best practices. The EBA also considered whether or not there was a need to enshrine such a requirement in the DGSD, given that it is something that DGSs/DGSDAs would do, without an explicit requirement in the directive.

154. The EBA also discussed that there is a risk that a need to conduct a cost–benefit analysis could hinder an efficient payout, if it were to draw the authorities' resources away from the task of making depositors' funds available to them.

155. In addition, the EBA analysed if such a cost–benefit analysis should be done only when using alternative funding arrangements ahead of available financial means, or whenever DGS funds are used. On the one hand, it could be argued that it would be necessary only when using alternative funding arrangements first, because in practice such an approach would most likely be an exception. On the other hand, it could be argued that each time funds are used there is a need to decide which funding source to employ and that therefore, implicitly, such an assessment must be done in all cases.

156. The EBA arrived at the view that if the DGSD were to be amended to clearly allow flexibility to use alternative funding arrangements ahead of available financial means, when using alternative funding arrangements first the DGS/DGSDA should be required take into account the costs and benefits of the different funding options to ensure optimal use of DGS funds. The EBA arrived at the view that this would ensure that an assessment took place but would not prevent DGSs/DGSDAs from choosing the most appropriate form of assessment and would not require it to be done in every case in which DGS funds were used. In consequence, the EBA concluded that there was no need to further specify what such an assessment should include.

Repayment plan

157. To alleviate concerns about DGSs becoming permanently indebted, the EBA analysed whether or not there should be a requirement to conduct an assessment of the expected amount of recoveries and the time it would take to achieve such recoveries and, based on this, to set out a repayment plan reflecting this assessment, based on current best practices.

158. An argument against the introduction of a requirement to introduce such a repayment plan is that the authorities would have a repayment plan in place anyway, and so there is no need to enshrine it in the DGSD. Another argument against it is that it is not necessary to explicitly require that such a plan should include an assessment of recoveries, because predicting the amount of expected recoveries and the time by which they can be realised is challenging.

159. Arguments in favour of such a requirement are that a repayment plan would need to be prepared in any case, and so a requirement to do so would merely enshrine what is already part of best practice. A repayment plan can also be beneficial from auditing and transparency perspectives.

160. The EBA arrived at the view that if the DGSD were to be amended to clearly allow flexibility to use alternative funding arrangements ahead of available financial means, using alternative funding arrangements first should be accompanied by a requirement for the DGS/DGSDA to develop a plan for financing the expected repayment of the funds accessed by means of alternative funding arrangements, taking into account the information available to the DGS/DGSDA. However, acknowledging the difficulty of assessing potential recoveries, the EBA concludes that it is up to the DGSs/DGSDAs to determine the form of and the level of detail in such a repayment plan.

Transparency in relation to DGSs' financial position and reflecting liabilities in the definition of available financial means

161. The EBA analysed the consequences of including a DGS's liabilities (stemming from the use of alternative funding arrangements or other borrowed resources) in the definition of available financial means, as in the third approach in the numerical example, in order to give a fuller picture of a DGS's funding than that provided when only the available financial means are known, thus increasing transparency and comparability between DGSs. The EBA is of the view that including liabilities in the definition of available financial means has a significant impact: indirectly, it puts a restriction on the maximum maturity of a loan by bringing alternative funding arrangements under the current requirement to replenish available financial means within six years (once the amount falls below two thirds of the minimum target level). From an accounting perspective, this approach would also conflate the cash position, and thus assets, with liabilities. This indirect impact would contradict the conclusion reached in the section on restrictions on the maturity of loans accessed by means of alternative funding arrangements, where the EBA argued that there should be no time restriction on loan maturity. Therefore, the EBA concludes that clarity in relation to DGSs' liabilities should be

achieved through a more direct method than including them in the definition of available financial means.

162. The EBA arrived at the view that the opinion should propose that a DGS's liabilities should not be incorporated into the definition of available financial means, as this would contradict the proposal in relation to the deadline for the repayment of funds accessed by means of alternative funding arrangements.

163. The EBA discussed ways to address the issue that, currently, available financial means include cash, low-risk assets and payment commitments but may or may not include borrowed resources (as highlighted by the different interpretations of the definition of available financial means across Member States), and the definition does not reflect if the DGS has any liabilities (i.e. loans), which would be particularly relevant if a DGS were to use alternative funding arrangements ahead of its available financial means.

164. The EBA identified the following benefits of reporting on and publishing DGSs' available financial means (understood as not taking into account borrowed cash and low-risk assets), borrowed resources (cash and low-risk assets accessed by means of alternative funding arrangements or borrowed from other DGSs) and liabilities (the amounts of loans):

- It would provide clarity and transparency in relation to DGSs' financial position.
- It would facilitate an overview of DGS funding across the EU and comparisons of different DGSs without the risk that DGSs using available financial means for a payout would appear to be underfunded in comparison with those using alternative funding arrangements first and maintaining their available financial means.
- At least in some instances, DGSs' liabilities are already reported in their annual statements, so this information is already public; however, the requirement to report the data and publish them would make the expectation more explicit and the information accessible.
- At least in some Member States, there is interest in such information from the public and DGSs are approached by journalists to provide such information. There is no good reason to keep this information confidential, so it is better to be fully transparent.
- Finally, trust in a DGS could be undermined if it became clear that, despite reporting high amounts of available financial means, the DGS was not reporting its liabilities (i.e. the amount of its loans).

165. The EBA also considered arguments that there was no clear merit in publishing this information, because:

- it could undermine trust in DGS protection;

- it could lead to financial stability concerns if a DGS were shown to have a negative balance;
- reporting the full amount of a liability, even if it had a long maturity period, would not be an accurate way of reflecting a DGS's liability in the short term.

166. Finally, the EBA analysed what should be the extent of the reported and published information on a DGS's liabilities. The EBA considered whether it would require the publication of DGSs' full balance sheets – as this information is already publicly available in most, if not all, cases – or whether the publication of such extensive information would make comparisons between DGSs unclear; furthermore, in some instances, especially where a DGSDA is merged with a resolution authority, separating the DGS parts would be challenging.

167. The EBA arrived at the view that that, to ensure transparency in relation to DGS funding, Member States should be required to inform the EBA by 31 March each year, including for the purpose of publication, of the amount of not only covered deposits and available financial means (not including borrowed cash and low-risk assets) but also, separately, borrowed cash and low-risk assets, and any liabilities stemming from the use of alternative funding arrangements. It could be explored further in the context of the potential EBA legal instrument on the calculation and reporting of available financial means (as proposed in Section 3.2 on the definition of available financial means) whether to provide the possibility for DGSs to also provide brief additional information, for example on expected recoveries. Finally, the EBA also agreed that it was important to emphasise that covered deposits remain covered irrespective of the amount of available financial means, borrowed resources and liabilities a DGS has at any given point, and this will be clearly communicated by the EBA when publishing such data on the EBA website.

168. The EBA is of the view that, in this regard, borrowed resources to be reported should be understood as funds accessed by means of alternative funding arrangements, loans from other DGSs and other potential sources of funding, excluding operational liabilities (e.g. salaries or rents), as these funds are not used to reimburse depositors.

Conclusions

169. The EBA proposes to the Commission that the DGSD should be clarified to establish whether or not there is a hierarchy or sequence in which different funding sources (i.e. available financial means, extraordinary contributions and alternative funding arrangements) should be used by DGSs, because the current provisions of the DGSD are interpreted differently across the EU.

170. The EBA agreed that if the Commission were to clarify the DGSD as proposed above, it should consider various arguments, such as those in favour of allowing DGSs the flexibility to use any of the available funding sources, including using alternative funding arrangements ahead of available financial means. The EBA agreed that, if the DGSD were to be amended to clearly allow the flexibility to use alternative funding arrangements ahead of available financial

means, using alternative funding arrangements first should be accompanied by conditions and restrictions, such as the following:

- At least when using the alternative funding arrangements first, the DGS/DGSDA must take into account the costs and benefits of different funding options. Such a condition would ensure that an assessment was done, but it would not prevent the DGS/DGSDA from choosing the most appropriate form of assessment, and would not require it to be done in every case in which DGS funds were used. In consequence, there would be no need to further specify what such an assessment should include.

- The use of alternative funding arrangements first should be accompanied by a requirement for the DGS/DGSDA to develop a plan for financing the expected repayment of the funds accessed by means of those alternative funding arrangements, taking into account the information available to the DGS/DGSDA. However, acknowledging the difficulty of assessing potential recoveries, it should be up to the DGS/DGSDA to determine the form of and the level of detail in such a repayment plan.

171. The EBA also concluded that if the Commission were to amend the DGSD to clarify that alternative funding arrangements can be used ahead of available financial means there would be no merit in introducing a restriction on the deadline for the funds accessed by means of alternative funding arrangements to be repaid (except in the case of loans between DGSs, which the DGSD states must be repaid within five years).

172. Finally, in line with the proposal set out in Section 3.2 on the definition of available financial means, the EBA proposes to the Commission that DGSs' liabilities should not be included in the reported amount of available financial means, as this would contradict the proposal in relation to the deadline for the repayment of funds accessed by means of alternative funding arrangements.

173. However, in order to ensure transparency in relation to DGS funding, Member States should be required to inform the EBA by 31 March each year, including for the purpose of publication, not only of the amount of covered deposits and available financial means (not including borrowed cash and low-risk assets) but also of any borrowed cash and low-risk assets stemming from the use of alternative funding arrangements, or other funding sources, as well as the liability of the DGS, to be understood as the amount of outstanding loans (but excluding operational liabilities). Given this, the EBA has concluded that the DGSD should be amended accordingly.

174. It could be explored further in the context of the potential EBA legal instrument on the calculation and reporting of available financial means (as proposed in Section 3.2 on the definition of available financial means) whether or not to provide the possibility for DGSs to also provide brief additional information, for example on expected recoveries.

175. The EBA also agreed that it was important to emphasise that covered deposits remain covered irrespective of the amount of available financial means, borrowed resources and liabilities a

DGS has at any given point, and this will be clearly communicated by the EBA when publishing such data on the EBA website.

3.4. The use of DGS funds for interventions other than payouts

Legal basis and background

176. Article 11(1) of the DGSD states: 'The financial means referred to in Article 10 shall be primarily used in order to repay depositors pursuant to this Directive.'

177. Article 11(2) of the DGSD states: 'The financial means of a DGS shall be used in order to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. The resolution authority shall determine, after consulting the DGS, the amount by which the DGS is liable.'

178. Article 11(3) of the DGSD states: 'Member States may allow a DGS to use the available financial means for alternative measures in order to prevent the failure of a credit institution provided that the following conditions are met:

   (a) the resolution authority has not taken any resolution action under Article 32 of Directive 2014/59/EU;

   (b) the DGS has appropriate systems and procedures in place for selecting and implementing alternative measures and monitoring affiliated risks;

   (c) the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the DGS;

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

   (e) the use of alternative measures by the DGS is linked to commitments by the credit institution being supported with a view to securing access to covered deposits;

   (f) the ability of the affiliated credit institutions to pay the extraordinary contributions in accordance with paragraph 5 of this Article is confirmed in the assessment of the competent authority.

   The DGS shall consult the resolution authority and the competent authority on the measures and the conditions imposed on the credit institution.'

179. Article 2(1)(40) of the BRRD defines 'resolution action' as 'the decision to place an institution or entity referred to in point (b), (c) or (d) of Article 1(1) under resolution pursuant to Article 32 or 33, the application of a resolution tool, or the exercise of one or more resolution powers'.

180. Article 11(4) of the DGSD states: 'Alternative measures as referred to in paragraph 3 of this Article shall not be applied where the competent authority, after consulting the resolution

authority, considers the conditions for resolution action under Article 27(1) of Directive 2014/59/EU to be met.'

181. Article 11(6) of the DGSD states: 'Member States may decide that the available financial means may also be used to finance measures to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of national insolvency proceedings, provided that the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the credit institution concerned.'

182. Recital 3 of the DGSD states: 'This Directive constitutes an essential instrument for the achievement of the internal market from the point of view of both the freedom of establishment and the freedom to provide financial services in the field of credit institutions, while increasing the stability of the banking system and the protection of depositors. In view of the costs of the failure of a credit institution to the economy as a whole and its adverse impact on financial stability and the confidence of depositors, it is desirable not only to make provision for reimbursing depositors but also to allow Member States sufficient flexibility to enable DGSs to carry out measures to reduce the likelihood of future claims against DGSs. Those measures should always comply with the State aid rules.'

183. Recital 16 of the DGSD states: 'It should also be possible, where permitted under national law, for a DGS to go beyond a pure reimbursement function and to use the available financial means in order to prevent the failure of a credit institution with a view to avoiding the costs of reimbursing depositors and other adverse impacts. Those measures should, however, be carried out within a clearly defined framework and should in any event comply with State aid rules. DGSs should, inter alia, have appropriate systems and procedures in place for selecting and implementing such measures and monitoring affiliated risks. Implementing such measures should be subject to the imposition of conditions on the credit institution involving at least more stringent risk-monitoring and greater verification rights for the DGSs. The costs of the measures taken to prevent the failure of a credit institution should not exceed the costs of fulfilling the statutory or contractual mandates of the respective DGS with regard to protecting covered deposits at the credit institution or the institution itself.'

184. Article 2(1)(28) of the BRRD defines 'extraordinary public financial support' as 'State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) or of a group of which such an institution or entity forms part'.

185. Article 32(4) of the BRRD, which determines the circumstances in which an institution must be deemed to be failing or likely to fail, in paragraph (d), states that 'extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms:

(i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;

(ii) a State guarantee of newly issued liabilities; or

(iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in point (a), (b) or (c) of this paragraph nor the circumstances referred to in Article 59(3) are present at the time the public support is granted.

In each of the cases mentioned in points (d)(i), (ii) and (iii) of the first subparagraph, the guarantee or equivalent measures referred to therein shall be confined to solvent institutions and shall be conditional on final approval under the Union State aid framework. Those measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future.

Support measures under point (d)(iii) of the first subparagraph shall be limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the European Central Bank, EBA or national authorities, where applicable, confirmed by the competent authority.'

186. Article 32(b) of the revised BRRD states: 'Member States shall ensure that an institution or entity referred to in points (b), (c) or (d) of Article 1(1) in relation to which the resolution authority considers that the conditions in Article 32(1)(a) and 32(1)(b) are met, but a resolution action is not in the public interest in accordance with point (c) of Article 32(1), shall be wound up in an orderly manner in accordance with the applicable national law.'

187. Article 109(1) of the BRRD states: 'Member States shall ensure that, where the resolution authorities take resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for:

(a) when the bail-in tool is applied, the amount by which covered deposits would have been written down in order to absorb the losses in the institution pursuant to point (a) of Article 46(1), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or

(b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.

In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.

When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (b) of Article 46(1).

Where it is determined by a valuation under Article 74 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 75.'

188. Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) states: 'Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.'

189. Article 108(3) of the TFEU states: 'The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.'

190. Communication 2013/C 216/01 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 (the Banking Communication) states in paragraph 15 that: 'The Crisis Communications clearly spell out that even during the crisis the general principles of State aid control remain applicable. In particular, in order to limit distortions of competition between banks and across Member States in the single market and address moral hazard, aid should be limited to the minimum necessary and an appropriate own contribution to restructuring costs should be provided by the aid beneficiary. The bank and its capital holders should contribute to the restructuring as much as possible with their own resources. State support should be granted on terms which represent an adequate burden-sharing by those who invested in the bank.'

191. According to paragraph 63 of that communication, interventions by deposit guarantee funds to reimburse depositors in accordance with Member States' obligations under the DGSD do not constitute state aid. However, the use of those or similar funds to assist in the restructuring of credit institutions may constitute state aid. While the funds in question may derive from the private sector, they may constitute aid to the extent that they come within the control of the state and the decision as to the funds' application is imputable to the state. The Commission

is to assess the compatibility of state aid in the form of such interventions under the communication.

192. Some relevant cases in which a DGS performed an intervention other than a DGS payout include the following.

- Banca Tercas (July 2014):[13] in this case, the Commission did not allow the use of DGS funds for failure prevention, as this would have failed to comply with the applicable state aid framework, because, as outlined in the Commission press release:

    - Italy did not present a restructuring plan, so the Commission was not able to evaluate if the aided entity could return to long-term viability. This is notwithstanding the efforts that Banca Popolare di Bari may have made after its acquisition.

    - Although Banca Tercas's existing shareholders were fully written down at the time, subordinated creditors did not make any contribution to the cost of restructuring, as is required under burden-sharing principles.

    - No measures were implemented that would have sufficiently limited the distortion of competition created by the aid.

  In that case, the Commission also concluded that the private DGS (FITD) acted on behalf of the Italian state and so it could not be concluded that the funds to be used to finance the failure-prevention measure were private.

- Banca Romagna Cooperativa (July 2015): in this case, the Commission considered the use of DGS funds to transfer the credit institution's assets and liabilities in the context of national insolvency proceedings to be state aid compliant because, as outlined in the Commission press release:

    - The transfer of the bank's assets and liabilities, including deposits to Banca Sviluppo, ensured the transferred activities' long-term viability within the new entity.

    - Equity and subordinated debt were not transferred but remained with the entity in liquidation, which meant that shareholders and junior bondholders fully contributed, and thus the burden-sharing principle was respected.

- The Commission approved the 'Italian scheme for the liquidation of small banks' (i.e. banks with total assets of less than EUR 3 billion), which allowed Italy, for a limited period of 12 months, to use DGS funds to support the transfer of a failing bank's assets and liabilities to another bank under national insolvency proceedings. Similar plans had previously been approved for Croatia, Denmark, Ireland and Poland.

[13] See the reference to General Court ruling on this case below.

- Banca del Fucino (July 2019): in this case, the Italian DGS (IDPF) intervened to prevent the failure of the credit institution in line with Article 11(3) of the DGSD. The DGS intervened by providing guarantees on the subscription to the capital increase of the bank up to EUR 30 million as part of a business plan that also involved another Italian credit institution, Banca Igea.

- Nord/LB (December 2019): in this case, the Commission allowed, as state aid compliant, the use of the funds of an IPS (officially recognised as a DGS) up to EUR 0.76 billion as part of a wider direct investment of EUR 2.8 billion to prevent the failure of the institution. As outlined in the Commission press release, the Commission 'found that the planned measures are carried out on market terms, meaning that the State receives a remuneration in line with what a private operator would also accept in the same circumstances. Therefore, the measures involve no State aid within the meaning of EU rules.'[14]

- Banca Carige (December 2019): in this case, the Italian DGS (IDPF) intervened to prevent the failure of the credit institution. The DGS intervened by acquiring a qualifying holding in the credit institution for a total amount of over EUR 700 million in the context of a wider restructuring plan arranged by the temporary administrator to solve the bank's crisis, which also involved a cooperative Italian banking group (Cassa Centrale Banca).

193. On 19 March 2019, the General Court provided its judgment in joined cases T-98/16, *Italy* v *Commission*; T-196/16, *Banca Popolare di Bari SCpA* v *Commission*; and T-198/16 *Fondo interbancario di tutela dei depositi* v *Commission* (the *Tercas* ruling). The judgment provides an insight into the application of DGS alternative measures in connection with state aid rules. It should be noted that the cases of Banca Tercas and Banca Romagna Cooperativa predate the recast DGSD and its current requirements on funding (Article 10 DGSD) and use of funds (Article 11 DGSD).

For the purpose of this chapter on failure prevention measures, the press release[15] summarising the *Tercas* ruling mentioned in the previous paragraph[16] states: 'With regard to the requirement that the aid must be imputable to the State, the Court notes that, in a situation in which the measures adopted for the benefit of Tercas were taken by a private entity, namely the FITD, the Commission had to have sufficient evidence to conclude that those measures were taken under the actual influence or control of the public authorities and that, accordingly, they were, in fact, imputable to the State. In the present case, the Commission did not have sufficient evidence to reach such a conclusion. Indeed, the case-file contains a great number of items of evidence indicating that the FITD acted independently when it adopted the measures for the benefit of Tercas.'

[14] https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6684

[15] https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-03/cp190034en.pdf

[16] At the time of publication of this opinion, the English version of the General Court ruling on case T-98/16 was not yet available.

It continues: 'The Court considers, first, that the authority conferred on the FITD by Italian law is simply to reimburse depositors (up to a maximum of €100 000 per depositor), as part of a system of guaranteeing deposits, where a bank which is a member of the consortium is placed under compulsory liquidation. Outside that context, the FITD does not operate on the basis of a public mandate imposed by Italian law. The support measures adopted for the benefit of Tercas therefore have a different purpose from that of the guarantee deposit system in a case entailing compulsory liquidation and do not constitute the fulfilment of a public mandate.'

Furthermore, the Court observes: 'the Commission has failed to prove that other Italian public authorities were involved in the adoption of the measures at issue. In that connection, the Court notes that the FITD is a consortium governed by private law which acts, in accordance with its statute, "on behalf of and in the interests of the members of the consortium". Moreover, its management bodies are appointed by the general meetings of the FITD and are, like that body, made up solely of representatives of the banks which are members of the consortium.'

In addition, 'As regards the requirement concerning the financing of the measure adopted through State resources, the Court concludes that the Commission has failed to establish that the funds granted to Tercas by way of support measures by the FITD were controlled by the Italian public authorities. The Court states, in that regard, that the measures adopted by the FITD for the benefit of Tercas originated in a proposal initially made by BPB and subsequently taken up by Tercas, in accordance with the statute of the FITD, using funds provided by the banks that are members of the FITD, and in the interest of the members of the FITD, since granting aid to Tercas was less costly than implementing the statutory guarantee in favour of Tercas's depositors in the event that it was placed under compulsory liquidation.'

194. In relation to the *Tercas* ruling, it should be noted that the European Commission decided to appeal against the judgment of the General Court before the Court of Justice.[17]

The appeal states: 'The Commission considers that the judgment under appeal is based on incorrect legal considerations and distortion of the facts, which irremediably invalidate its findings and the operative part of the judgment. The Commission raises two grounds of appeal:

- In the first place, the Commission claims that the General Court infringed Article 107(1) of the TFEU for two reasons:
  - the General Court erred as regards the burden of proof to be discharged by the Commission in order to establish that the conditions concerning imputability and State resources were met, by requiring the Commission to demonstrate positively the existence of a dominant influence on the part of the public authorities, at every stage of the procedure which led to the adoption of the measures in question, over

17 http://curia.europa.eu/juris/document/document.jsf?text=&docid=216205&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8873673

the entity granting the aid, solely on account of the fact that the latter is a private entity;

- o the General Court erred as regards the burden of proof to be discharged by the Commission in order to establish that the conditions concerning imputability and State resources were met, by examining and assessing the various evidence produced by the Commission in the decision at issue piecemeal, without considering it as a whole and without taking into account its broader context.

- In the second place, the findings of the General Court are further vitiated by serious material inaccuracies concerning the facts and the interpretation of the relevant Italian law which are clearly apparent from the case-file.'

Methodology, data sources and their limitations

195. The survey circulated to the DGSDAs and DGSs included four questions related to failure-prevention measures.

Main findings, issues identified and analysis

196. The survey circulated to the DGSDAs and DGSs asked respondents if the use of measures under Article 11(3) of the DGSD was allowed in their jurisdiction. The responses to the survey show that:

    - Fourteen respondents from fourteen Member States reported that the use of measures under Article 11(3) was allowed in their jurisdiction. However, among these respondents two Member States clarified that the use of such measures was allowed only by IPSs; one respondent reported that a scheme predating the recast DGSD had been continued. That scheme is mostly there to effect alternative measures in accordance with Article 11(6) of the DGSD, but it also has some similarities with the tool envisaged by Article 11(3). The scheme is not state aid approved and has not been used in the last six years.

    - Fifteen respondents from fourteen Member States reported that the use of such measures was not allowed in their jurisdiction.

197. The survey then asked respondents 'If yes, how is it ensured that the measures in line with Article 11(3) are consistent with the orderly winding-up proceedings in the banking sector?' The responses to the survey show that:

    - Four respondents from three Member States reported that relevant authorities such as the competent authority and the resolution authority are involved.

    - Four respondents from three Member States pointed out that alternative measures are always applied before winding-up proceedings start. In other words, if a preventive measure is adopted by the authorities that does not trigger an insolvency procedure.

- Two respondents from two Member States reported that this is ensured by means of specific requirements or conditions. Of those respondents:
  - One respondent explained that, since 2019, registered IPS/DGS have been allowed to take alternative measures. The law allows the fund to support IPS members within certain limits and providing certain requirements are met. In particular, (i) the systems have to be capable of handling the necessary organisational procedures, (ii) the costs of the help have to be lower than the amount of support given and (iii) all other means referred to in Article 113 of Regulation EU No 575/2013 have already been used.
  - One respondent reported that the DGS may use the available financial means for alternative measures after consulting with the competent authority and only after certain conditions are met. These six conditions are set out in a national regulation.
- One respondent reported that the DGS may intervene in a preventive manner on the proposal of the competent authority where deposits are likely to be unavailable in the short term (to allow the orderly discontinuation or restructuring of a troubled institution before it fails). The national law in that Member State intends to favour the takeover of the institution benefiting from the intervention or the run-off of its activities. These scenarios are the most probable options for the DGS to select given its private governance and its economic interest in minimising its exposure. The DGS can also require, during its intervention, a change in ownership of the credit institution or full/partial sale.
- One respondent reported that it is ensured prior to and through the approval process for the use of alternative measures.
- One respondent explained that such measures facilitate the restoration of the bank's viability and preserve business continuity while protecting the bank's depositors and clients, ensuring a high level of public confidence in the banking system and avoiding the risks of a bank run or growing panic (which may result when a bank's liquidation is started). Furthermore, due to the least cost principle (i.e. that the cost of such an intervention must not exceed that of fulfilling the DGS's statutory and contractual mandate – see also below), such an intervention may result in a reduction in the overall cost to the financial system as a whole, since the least cost condition ensures that a crisis in a bank is always managed at a lower cost for the DGS than the reimbursement of depositors.

  The national law implementing the DGSD expressly provides that the DGSs may use their available financial means for interventions to prevent banks' failure, in accordance with the conditions and limits laid down by law, as long as the ability to do so is envisaged in their statutes, which must contain detailed terms and conditions for such measures.

In this respect, the DGS's statute provides that – in relation to each intervention – the DGS must specify:

(i) the commitments of the bank supported in terms of more stringent risk monitoring, including to ensure depositors' access to covered deposits;

(ii) the compliance by the bank with those commitments;

(iii) the compliance with the least cost criterion (according to which the costs of such measures must not exceed the costs of fulfilling the statutory or contractual mandate of the DGS).

In addition, the preventive measures shall be applied only if the competent authority has assessed that (a) neither a resolution action has been taken nor the conditions for resolution are met; (b) the bank supported is able to pay the extraordinary contributions. Under the DGS's statute, the DGS adopts appropriate procedures and systems to select the type of intervention, perform it and monitor the relevant risks. The interventions are loans, guarantees, acquisition of temporary shares or assets, liabilities, companies, business units, relationships or other technical forms of intervention. Similar provisions are set out in the DGS's statute.

- One respondent explained that both alternative measures and winding-up procedures are regulated by the same act.
- One respondent reported that it is ensured by the fact that the legal provisions cited are fully in line with the BRRD and DGSD.
- One respondent reported that the alternative measures provided for in the national legislation could be applied when the normal operation of the member institution was compromised or a solvency problem had been identified. However, the DGS can in any case make its support to a member institution conditional on the explicit acceptance by the latter of the set of management and other rules that the fund deems necessary to correct the situation that gave rise to the need for support.

  In addition, when the seriousness of the situation justifies it, the DGS can also provide support on the condition of the acceptance by the member institution of the monitoring of its activities by a representative of the fund who is empowered to prevent the implementation of any of the member institution's decisions.

  However, regardless of the application of alternative measures, if an institution fulfils the requirements for the application of resolution measures or for winding up under normal insolvency proceedings, those measures or decisions should be taken.

198. The survey then asked respondents if measures in line with Article 11(3) had been used in their Member State since the implementation of the revised DGSD. The responses to the survey show that:

- At the time of conducting the survey, all sixteen respondents from thirteen Member States who reported that the use of measures in line with Article 11(3) was allowed in their jurisdiction reported that such measures had not been used since the implementation of the revised DGSD. After the survey responses had been submitted, there were cases in Italy and Germany in which DGS funds (or, in the German case, the funds of an IPS officially recognised as a DGS) were used for failure prevention, but, because the cases were brought to the EBA's attention shortly before the publication of this opinion, they have not been analysed by the EBA in detail.

199. Finally, the survey asked respondents 'If alternative measures in line with Article 11(3) have been used in your Member State following the implementation of the revised DGSD, please describe what they were and how the measures taken complied with Article 11(3) of the DGSD.' The responses to the survey show that:

- Since, at the time of conducting the survey, all sixteen respondents from thirteen Member States reported that such measures had not been used, all respondents considered the question not applicable. After the survey responses had been submitted, there were cases in Italy and Germany in which DGS funds (or, in the German case, the funds of an IPS officially recognised as a DGS) were used for failure prevention, but, because the cases were brought to the EBA's attention shortly before the publication of this opinion, they have not been analysed by the EBA in detail.

200. The EBA considered that, even though in the past DGS funds have been used numerous times for failure prevention, and the authorities that have used DGS funds for this purpose considered it to be useful, there has been very limited practical experience of applying such tools since the transposition of the recast DGSD. Therefore, the EBA's discussions focused on the implications of the General Court ruling of 19 March 2019 in the *Tercas* case (currently appealed and awaiting a final ruling on the appeal), which annulled the European Commission's previous decision that using DGS funds would constitute state aid, 'as [the Commission] concluded, incorrectly, that the measures granted to Tercas entailed the use of State resources and were imputable to the State'.[18] While the ruling is highly relevant, it should be noted that the judgment was also based on the lack of sufficient evidence provided by the Commission and that it predates the recast DGSD, so its implications may not translate directly to the current framework. Finally, at the time of publication of this report, the case is ongoing, as the Commission has appealed the General Court's ruling.

201. Given that the case is ongoing, the EBA discussed the topic of using DGS funds for failure prevention based on the 19 March 2019 ruling of the General Court. More broadly, the EBA also discussed the links between the DGSD and the Commission's Banking Communication on

[18] https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-03/cp190034en.pdf

the application, from 1 August 2013, of state aid rules to support measures in favour of banks in the context of the financial crisis. The EBA also discussed the links between relevant provisions in the DGSD and the BRRD.

202. More specifically, the EBA considered that:

- The General Court's ruling in the *Tercas* case could have an impact on the legal statutes and/or governance of DGSs, because it states: 'the FITD does not operate on the basis of a public mandate imposed by Italian law. The support measures adopted for the benefit of Tercas therefore have a different purpose from that of the guarantee deposit system in a case entailing compulsory liquidation and do not constitute the fulfilment of a public mandate.'

- It is not entirely clear to DGSDAs/DGSs how to assess if:

  - 'the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the DGS', as required when using DGS funds in line with Article 11(3) of the DGSD, and whether this provision refers to the gross amount that the DGS would use to reimburse depositors or to the net amount taking into account expected recoveries, and if any other costs should also be reflected;

  - 'the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the credit institution concerned', as required when using DGS funds in line with Article 11(6) of the DGSD.

- The interaction between Article 11(3) of the DGSD and Article 32(4)(d) of the BRRD means that is not entirely clear when the use of DGS's funds for failure prevention qualifies as 'extraordinary financial public support' (i.e. state aid, according to Article 2(1)(28) of BRRD). Article 32(4)(d) determines that the use of 'extraordinary financial public support' would necessarily lead to 'fail or likely to fail' status, except in certain cases. Therefore, if the use of DGS funds for failure prevention were to be considered 'extraordinary public support', this measure to prevent failure would, paradoxically, require the authorities to deem that the institution was failing or likely to fail. While that determination would not necessarily lead to the resolution or the orderly winding down of the institution (because for that to happen the resolution authorities would also need to determine that there was no private sector or supervisory remedy), it is not clear if in practice it would not constrain DGSs' ability to use the tool in cases where the use of such funds constitutes state aid. Therefore, there may be merit in clarifying in the EU framework that the use of DGS funds for failure prevention would not in itself trigger the determination that the institution was failing or likely to fail. If the EU framework were clarified to that effect, a subsequent question to consider would be which authority would be required to assign losses to ensure burden sharing (where this is required by state aid rules).

- It appears that there is an error in Article 11(4) of the DGSD, which includes a cross-reference to the conditions for resolution action under Article 27(1) of the BRRD, while in the BRRD these conditions are outlined in Article 32.

- The wording of Article 11 of the DGSD should be clarified to ensure that measures mentioned in Article 11(3) are referred to as 'preventive measures' and those in Article 11(6) are referred to as 'alternative measures', because currently the measure under Article 11(3) is referred to as an 'alternative measure', which could create confusion about the purpose of such measures.

Options to address the issues identified

203. In the light of the facts that:

- there is very limited experience of using DGS funds in line with Article 11(3) and/or (6) of the DGSD, and

- the highly relevant court case in relation to the Tercas bank is ongoing,

the EBA arrived at the following preliminary findings, subject to the outcome of the *Tercas* case:

- Subject to the outcome of the Commission's appeal in the *Tercas* case, the EBA invites the Commission to consider if there is a need to amend the Banking Communication and the potentially different consequences for DGSs depending on their legal status and/or governance structure.

- There is a need to provide more clarity on how to assess that:

    - 'the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the DGS' (as per Article 11(3));

    - 'the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the credit institution concerned' (as per Article 11(6)).

  There is also a need for more clarity on what kind of costs should be taken into account in the abovementioned assessments (only direct or also indirect costs – and what costs constitute indirect costs), particularly because the current lack of clarity poses the risk that different authorities will take different approaches to the least cost assessment; such clarifications should be made in a legal product that provides sufficient legal certainty for DGSs.

- There is a need to clarify the EU framework to ensure that the use of DGS funds in line with Article 11(3) does not in itself cause the determination that the institution is failing or likely to fail, and, if the EU framework is clarified to that effect, it should be considered

if there is a need for greater clarity in relation to which authority is required to assign losses to ensure burden sharing (where this is required by state aid rules).

- The incorrect cross-reference to Article 27 of the BRRD in Article 11(4) of the DGSD should be amended to refer to Article 32 of the BRRD.

- The wording of Article 11 of the DGSD should be clarified to ensure that measures mentioned in Article 11(3) are referred to as ‘preventive measures’ and those in Article 11(6) are referred to as ‘alternative measures’.

Conclusions

204. The EBA proposes the following:

- Amendments should be made to ensure that there is more clarity on how to assess that:

    - ‘the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the DGS’ (as per Article 11(3));

    - ‘the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the credit institution concerned’ (as per Article 11(6)).

  Furthermore, more clarity is needed on what kind of costs should be taken into account in the abovementioned assessments (only direct or also indirect costs – and what costs constitute indirect costs). Such clarifications should be made in a legal product that provides sufficient legal certainty for DGSs.

- The EU framework should be clarified to the effect that the use of DGS funds in line with Article 11(3) does not in itself cause the determination that the institution is failing or likely to fail. If the EU framework is clarified to that effect, the Commission should consider further if there is be a need for greater clarity in relation to which authority is required to assign losses to ensure burden sharing (where this is required by state aid rules).

- The incorrect cross-reference to Article 27 of the BRRD in Article 11(4) of the DGSD should be amended to refer to Article 32 of the BRRD.

- Article 11 of the DGSD should be amended to ensure that measures mentioned in Article 11(3) are referred to as ‘preventive measures’ and those in Article 11(6) are referred to as ‘alternative measures’.

205. Subject to the outcome of the Commission’s appeal in the *Tercas* case, the EBA invites the Commission to consider if there is a need to amend the Banking Communication and the potentially different consequences for DGSs depending on their legal status and/or governance structure.

3.5. The use of failed institutions' assets for DGS payouts

Legal basis and background

206. The DGSD does not explicitly provide for the possibility of using or a legal requirement to use the failed institution's assets for a DGS payout.[19] However, there are some provisions that may be relevant to this topic in the DGSD, as set out below.

207. Article 9(2) of the DGSD requires that the DGS shall have the right of subrogation to the rights of depositors in winding-up or reorganisation proceedings for an amount equal to their payments made to depositors with the same ranking level as covered deposits under national law governing normal insolvency proceedings as defined in the BRRD.

208. Article 10(1) of the DGSD requires DGSs to raise the available financial means by contributions to be made by their members at least annually. This shall not prevent additional financing from other sources.

209. Recital 14 of the DGSD underlines that the key task of a DGS is to protect depositors and that DGSs should be used primarily to repay depositors.

210. Recital 27 of the DGSD states that it is necessary to harmonise the methods of financing of DGSs.

211. Recital 37 of the DGSD emphasises that deposit protection is an essential element in the completion of the internal market and an indispensable complement to the system of supervision of credit institutions on account of the solidarity it creates among all the institutions in a given financial market in the event of the failure of any of them.

Methodology, data sources and their limitations

212. The survey circulated to the DGSDAs and DGSs included two questions related to the use of the failed institution's assets for a DGS payout.

Main findings, issues identified and analysis

213. The survey circulated to the DGSDAs and DGSs asked respondents 'Does the legislation in your Member State provide for a possibility or legal requirement of a payout using the failed institution's assets?'

- Two respondents from two Member States reported that the legislation in their Member State provides for the possibility of performing a DGS payout using the failed institution's assets. One respondent explained that this tool could be used only for the payout in advance of 'privileged' deposits.

[19] Using the failed institution's assets for a DGS payout means using the institution's cash or converting its assets into cash to making the repayable amount available in the currency indicated in Article 6(4) of the DGSD.

- Thirty-one respondents from twenty-five Member States reported that the legislation in their Member State does not provide for the possibility of performing or a legal requirement to perform a DGS payout by using the failed institution's assets.

214. The survey subsequently asked, if the answer was 'yes', 'Please outline which authority is responsible for the decision to use this option or requirement, in what circumstances the tool can be/has been used and what is assessed when deciding whether to use this possibility. Please also describe your specific experience if you have used this option/would have liked to use this option in specific circumstances encountered during the payout?' Of the respondents that answered 'yes' to the previous question:

- One respondent reported that the DGS is responsible for the decision to use this option, and for the DGS it is preferable to use the failed institution's assets to finance the payout. It reported having experience of two payout cases in which 100% of the payout was from the failed bank's assets.

- The other respondent reported that the Court of Justice is responsible for determining the maximum amount of advance payments to 'privileged creditors'. It reported having no practical experience with this provision due to a lack of payout cases.

215. Finally, the survey asked, if the answer to the first question was 'yes', 'How is it ensured that such a payout does not undermine the creditor hierarchy?' Of the respondents that answered 'yes' to the first question:

- One respondent reported that covered depositors and the DGS are in the same position in the creditor hierarchy (first).

- The other respondent reported that, according to national law, covered deposits are in the second class in the bankruptcy claims hierarchy for banks, just after claims relating to employees, social security, taxes and the like. Theoretically, there could be a significant amount of covered deposits that could be paid out directly from the failed bank using this 'payment in advance' provision, thus preserving the available financial means of the DGS.

216. The survey responses show that only one respondent has experience with using the failed institution's assets to pay out depositors. One other respondent reported that such an approach would be legally allowed in its jurisdiction for advance payouts of privileged deposits and another reported considering including such a possibility in national law.

217. The Member State that reported having experience with applying such a tool explained that it is explicitly allowed in national law. Since 2007, it has had four practical cases of using the failed institution's assets to pay out depositors including one case since the adoption of the recast DGSD. In all cases, the cause of the failure of the institution was not financial (due to insolvency issues) but due to qualitative failures, namely operational fraud and AML and management

incompliance. The Member State reported that the failed institutions had had sufficient liquid assets to enable DGS payouts to depositors without using DGS funds.

218. The EBA arrived at the view that using the failed institution's assets to pay out depositors is an interesting concept and that there is merit in exploring this tool further.

219. The EBA identified the following considerations relating to using the failed institution's assets for a DGS payout:

- The DGS's available financial means are maintained for other cases, as opposed to the DGS using its available financial means for a payout and only recovering all or some of its funds in an insolvency process in the future. On the other hand, only in a limited number of specific cases could the payout be financed in full using the failed institution's assets, because, in most instances, the failed institution would have faced liquidity issues and only a limited amount of highly liquid assets would be available for a DGS payout (and so the DGS would need to use its funds for the remaining part of the payout).

- It may help to limit any procyclical effects, as no extraordinary contributions are needed, and available financial means, which would need to be replenished, are not used.

- It could facilitate a quick payout, because there is no need, or a limited need, to liquidate the DGS's assets, and/or raise extraordinary contributions, and/or access alternative funding arrangements. On the other hand, the failed institution's assets may not be accessible quickly, so the tool may not always be useful even if there is liquidity in the failed institution.

- It could be more cost-effective, for example by limiting the costs of the DGS taking part in the insolvency process (legal costs, hiring external consultants). On the other hand, there is a need to consider the potential discount at which the failed institution's highly liquid assets can be liquidated at such short notice, as opposed to in a longer insolvency process, which might make it preferable to use other funding sources.

- It could be argued that using the failed institution's assets in the first instance is closer to the 'polluter pays' principle, and so is preferable to using funds contributed by other credit institutions (even though the amount of liquidity used for the payout would most likely match what the DGS could recover in an insolvency process if that tool were not used).

- It would need to be ensured that the tool did not upset the creditor hierarchy and did not put the DGS above the most senior creditors, such as the tax authorities and/or the failed institution's employees. In the Member State that already has such a tool in national legislation, covered depositors and the DGS are second in the creditor hierarchy, below liquidation expenses including the employees' unpaid salaries. A potential solution to contemplate for cases in which the national provisions include

creditors above the DGS in the hierarchy could be that the liquidator could receive from the DGS the resources needed to repay such creditors, up to the amount of the failed institution's assets captured by the DGS. Alternatively, it could be arranged for the claims of creditors above the DGS in the creditor hierarchy to be deducted from the amount of the failed institution's assets available to the DGS to finance a payout.

- An important aspect is links to national insolvency laws, which are currently not substantially harmonised across the EU regarding this matter; the introduction of such a tool may require much broader changes in national laws than simply the incorporation of an amended article of the DGSD.

- In a limited number of cases, it may happen that, following a DGS payout, an institution may still continue in a particular form, and so applying this tool and drawing on the institution's assets may lead to its failure where otherwise it could continue operating. This could be the case because the DGS payout could result from a court order such as a suspension of payments issued before the start of the insolvency process. One Member State reported that a member institution continued operating until the court ordered the liquidation. Therefore, the fundamental rights to property and to the freedom to conduct a business, and the proportionality principle, should be carefully taken into consideration.

- The potential use of the failed institution's assets could make it more difficult to clearly communicate to the market and the depositors the source of funds used to protect their deposits (although it would not change the fact that deposits were protected). On the other hand, communicating that the institution's funds were being used for a payout could be seen as a positive sign for the market, because DGS funds were not used and thus maintained for future cases.

220. Based on discussions with relevant authorities, the EBA concludes that there is merit to considering exploring further introducing into the DGSD the possibility of using the failed institution's assets for a DGS payout, taking into account national insolvency laws and the fundamental rights to property and to the freedom to conduct a business, and the principle of proportionality.

Options to address the issues identified

221. Based on discussions with relevant authorities, the option considered was to propose that the Commission consider exploring further explicitly introducing the possibility of using the failed institution's assets for a DGS payout into the DGSD.

Conclusions

222. The EBA proposes to the Commission that there is merit in exploring further the introduction into the DGSD of a tool for using the failed institution's assets for a DGS payout. When carrying out the relevant impact assessment, the Commission should take into account national

insolvency laws (and the feasibility of harmonising on this matter), the fundamental rights to property and to the freedom to conduct a business, and the principle of proportionality.

3.6. Payment commitments

Legal basis and background

223. Article 2(1)(13) of the DGSD defines 'payment commitments' as 'payment commitments of a credit institution towards a DGS which are fully collateralised providing that the collateral: (a) consists of low risk assets; (b) is unencumbered by any third-party rights and is at the disposal of the DGS'.[20]

224. Article 10(3) of the DGSD states: 'The available financial means to be taken into account in order to reach the target level may include payment commitments. The total share of payment commitments shall not exceed 30% of the total amount of available financial means raised in accordance with this Article. In order to ensure consistent application of this Directive, EBA shall issue guidelines on payment commitments.'

225. The EBA guidelines on payment commitments under Directive 2014/49/EU on deposit guarantee schemes (EBA/GL/2015/09) 'provide terms to be included in the contractual or statutory arrangements under which a credit institution provides payment commitments to a DGS, as well as the criteria for eligibility and management of the collateral'.

226. In paragraph 8, the guidelines specify that the abovementioned limit of 30% means that 'the DGS should not accept more than 30% of a given member's ex-ante contributions in the form of payment commitments'.

227. In paragraphs 31-33, the guidelines state: 'the prudential treatment of payment commitments should aim to ensure there is a level playing field and mitigate the procyclical effect of such commitments depending on their accounting treatment. Where the accounting treatment results in the payment commitment being fully reflected on the balance sheet (as a liability), or results in the collateral arrangement being fully reflected in the profit and loss statement, there should be no need to apply an ad hoc prudential treatment to mitigate the procyclical effects. Where, in contrast, the accounting treatment results in the payment commitments and the collateral arrangement remaining off balance sheet, within the supervisory review and evaluation process (SREP), competent authorities should assess the risks to which the capital and liquidity positions of a credit institution would be exposed, should the DGS call this institution to pay its commitment in cash, and exercise the appropriate powers to ensure that the procyclical effect is mitigated by additional capital/liquidity requirements.'

228. Article 70(3) of Regulation (EU) No 806/2014 (the Single Resolution Mechanism Regulation (SRMR)) states: 'The available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in

[20] The definition of payment commitments in the French translation of the DGSD states that the collateral must be at the free disposal of the DGS ('soit à la libre disposition du SGD'), whereas the English version only mentions that the collateral is at the disposal of the DGS.

Article 76(1). The share of those irrevocable payment commitments shall not exceed 30% of the total amount of contributions raised in accordance with this Article.'

229. Article 70(4) of the SRMR states that 'the duly received contributions of each entity referred to in Article 2 shall not be reimbursed to those entities'.

230. Article 7(3) of Council Implementing Regulation (EU) 2015/81 (the Implementing Regulation) states that 'the irrevocable payment commitments of an institution that no longer falls within the scope of Regulation (EU) No 806/2014 are cancelled and collateral backing these commitments is returned'.

231. Recital 16 of the same regulation states: 'Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 should in no manner affect the financial capacity and the liquidity of the Fund. Irrevocable payment commitments should be called for only in case of a resolution action involving the Fund. During the initial period, under normal circumstances, the Board should allocate the use of irrevocable payment commitments evenly among institutions requesting it. These payment commitments should be fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes of the use of the Fund.'

Methodology, data sources and their limitations

232. The survey circulated to the DGSDAs and DGSs included five questions related to payment commitments.

Main findings, issues identified and analysis

233. The survey circulated to the DGSDAs and DGSs asked respondents if payment commitments were allowed in their jurisdiction, and if so up to what percentage. The responses to the survey show that:

- Twenty-six respondents from twenty-two Member States replied that payment commitments are allowed in their jurisdiction. Of those:
    - Twenty-three respondents from nineteen Member States answered that the limit is 30%.
    - One respondent did not specify what the limit is. The respondent explained that payment commitments were allowed until 1 March 2019.
    - One respondent replied that as of 2018 it applies a maximum level of 63.5% with the intention of progressively lowering the proportion of payment commitments to 30% by 2024.
    - Five respondents from two Member States specified that it is up to the DGS to decide the percentage up to 30%.

- Seven respondents from six Member States reported that in their jurisdiction provisions concerning payment commitments have not been adopted, including one that explained that the non-application is because the target has already been reached.

234. The survey asked respondents 'Does your DGS currently have payment commitments? If yes, up to what percentage?' The responses to the survey show that:

- Twenty-six respondents from twenty-four Member States stated that their DGSs currently do not have payment commitments.

- Seven respondents from five Member States replied that their DGSs currently have payment commitments. Of those:

    - Five respondents from three Member States replied that the percentage of payment commitments is currently up to 30%.

    - One respondent declared that this percentage is equal to 29%.

    - One respondent answered that it is equal to 4.3%.

    - One respondent explained that the percentage of payment commitments is 69% because the 2018 contributions have not yet been taken into consideration in the calculation.

235. The survey subsequently asked those respondents who currently have payment commitments to outline the assets they accept as collateral (e.g. cash, treasury bills, IFI bonds, etc.). The responses to the survey show that:

- Eleven respondents from nine Member States considered the question applicable to them and provided an answer, of which:

    - Five respondents from five Member States replied that only cash is accepted as collateral. Of those, three respondents from three Member States replied that collateral eligibility conditions have been defined although payment commitments are currently not used in their jurisdiction.

    - Four respondents from three Member States explained that they accept cash and low-risk debt securities such as covered bonds and treasury bills. Of those, one respondent explained that collateral eligibility conditions have been defined although payment commitments are currently not used in its jurisdiction.

    - One respondent reported that it accepts only treasury bonds, money bills and/or bonds issued by the national bank as collateral.

    - One respondent reported that it accepts only treasury bonds.

236. The survey then asked respondents how the payment commitments are secured. The responses to the survey show that:

- Eleven respondents from nine Member States considered the question applicable to them and provided an answer reporting that the payment commitments are secured with an arrangement/contract/agreement between the DGS and its members. Of those:
  - Four respondents from four Member States reported that collateral security conditions have been defined although payment commitments are currently not used in their jurisdiction.
  - One respondent further clarified that cash is deposited directly in the DGS in addition to the arrangement to secure the commitments.

237. Finally, the survey asked respondents who administers the payment commitment collateral. The responses to the survey show that:

- Eleven respondents from nine Member States considered the question applicable to them and provided an answer, of which:
  - Seven respondents from seven Member States replied that the payment commitments are administered by the DGS itself. Among those, three respondents from three Member States reported that management conditions have been defined although payment commitments are currently not used in their jurisdiction.
  - Three respondents from one Member State answered that the payment commitments are jointly administered by the central bank and the DGS.
  - One respondent specified that payment commitments would be administered by a depository bank, by means of a standard service for financial intermediaries (triparty collateral management). This respondent explained that management conditions have been defined although payment commitments are currently not used in its jurisdiction.

238. In addition to the responses to the above questions, three respondents from three Member States provided the following additional comments:

- One respondent specified that the DGS can seize the cash collateral immediately if necessary.
- One respondent stated that it did not consider that there was any demand from the institutions for this form of contribution.
- One respondent stressed that payment commitments are an appropriate and reasonable instrument for meeting the requirement for available financial means.

239. The survey showed that there is a variety of approaches to payment commitments among Member States:

- Some Member States have chosen not to use the option to allow payment commitments.
- In some Member States, payment commitments are legally allowed but not used.
- In some Member States, payment commitments are legally allowed and used.

240. Different approaches exist not only between Member States but even within Member States where there is more than one DGS.

241. The EBA considered different reasons for the choice of different approaches to payment commitments across the EU, including:

- economic reasons, because payment commitments are of limited value for small credit institutions due to the costs of administering them but may be valuable to some institutions, particularly the bigger ones;
- potential operational reasons and costs both for the institutions and the DGSs.

242. The EBA investigated if there are known cases of a DGS calling a payment commitment when funding is needed. The EBA is not aware of any of such cases. Therefore, the EBA found no empirical basis for an assessment of the impact of using payment commitments on the availability of DGS funds. Consequently, the EBA is not in a position to analyse whether the current flexibility to raise up to 30% of available financial means using payment commitments, or the different processes used to secure payment commitments, are appropriate or not.

243. The EBA assessed if differences in the approach to payment commitments could create level playing field issues. The EBA considers it unlikely that a credit institution would choose where to be located based on the approach to DGS payment commitments, so in this sense payment commitments are unlikely to have a significant impact on the level playing field. However, the EBA observed that the approach to DGS payment commitments could mean that institutions in different Member States are treated differently, and that depends on whether or not payment commitments are allowed, to what extent they are allowed and also other factors, such as their accounting and prudential treatment. As noted in the legal basis subsection above, paragraphs 31-33 of the EBA guidelines on payment commitments to DGSs already provide guidance in relation to the prudential treatment of payment commitments.

Irrevocability of payment commitments

244. The EBA then considered the fact that the DGSD does not clearly stipulate that payment commitments are irrevocable. However, the definition under Article 2(1)(13) of the DGSD requires the 'payment commitment' to be 'fully collateralised', the collateral being 'at the

disposal of the DGS'. In addition, the EBA guidelines on payment commitments refer to such commitments as irrevocable, which means that there is an 'irrevocable and collateralised obligation' on the credit institution to 'pay the Payment Commitment Amount at the DGS's request within the deadline set in the arrangement'. The EBA then observed that the Implementing Regulation refers to payment commitments as irrevocable but also stipulates that they can be 'cancelled and collateral backing these commitments … returned' when 'an institution … no longer falls within the scope of Regulation (EU) No 806/2014 [the SRMR]'.

245. The EBA discussed the fact that the lack of an explicit reference to the irrevocability of payment commitments in the DGSD, unlike in the SRMR and the Implementing Regulation, could lead to confusion. Therefore, the EBA concluded that greater clarity would be desirable.

Cancellation of payment commitments and their accounting and prudential treatment

246. The EBA considered that the DGSD and the EBA guidelines are silent on whether or not payment commitments provided to the DGS can be cancelled and collateral backing these commitments returned to the credit institution, as specified in the provisions of the Implementing Regulation. In the light of this observation, the EBA considered further the current approaches to the cancellation of payment commitments across the EU. Discussions with DGSDAs/DGSs showed that the approach to the cancellation of payment commitments differs across Member States, as in some jurisdictions payment commitments:

- are cancellable in certain circumstances (e.g. when the institution stops its banking activities), or where a DGS uses a stock-based contributions system;
- are not cancellable but can be transferred from one institution to another in the event of a merger under certain circumstances;
- are not cancellable or would not be cancellable if they were used.

247. The EBA considers that that the decision concerning the cancellation of payment commitments could influence their accounting treatment (i.e. whether they are treated by the institutions as liabilities or contingent liabilities), which could in turn influence their prudential treatment (i.e. whether they are reflected in capital requirements or are off-balance-sheet and require specific analysis on the part of the supervisor to provide for a capital and liquidity treatment). As noted earlier in this section, the EBA guidelines on payment commitments to DGSs provide some guidance on the prudential treatment of payment commitments, depending on their accounting treatment.

248. In consequence, the EBA then analysed the accounting treatment of payment commitments across Member States, and whether they are treated by the institutions as liabilities or contingent liabilities. The EBA observed differences in this area also:

- In some Member States, payment commitments are or would be treated as liabilities.

- In some Member States, payment commitments are or would be treated as contingent liabilities.
- One Member State stated that it depends on the accounting standards applied (IFRS or GAAP) and the likelihood that payment commitments will be used.

249. The EBA also analysed the prudential treatment of payment commitments across the EU and whether payment commitments are reflected in capital or liquidity requirements or are off-balance-sheet and require specific analysis on the part of the supervisor to provide for a capital and liquidity treatment.[21] Based on discussions with relevant authorities, the EBA observed differences in this regard, too:

- In some Member States, payment commitments are reflected in capital requirements or would be reflected if they were used.
- Payment commitments themselves are not reflected in capital requirements in one Member State, but the cash collateral held by the DGS is reflected, with a lower impact than a cash contribution. This is the case because cash collateral posted by a credit institution is considered to be subordinated debt (entailing the usual capital requirements), while cash contributions directly impact equity capital.
- In one Member State, the treatment depends on whether an institution is supervised by the European Central Bank or not.
- In one Member State, the treatment depends on the probability of a call on payment commitments.

250. The EBA arrived at the view that there are inherent differences in the accounting treatment because of the options to use national GAAP or IFRS standards. The EBA arrived at the view that the EBA guidelines on payment commitments already set out the prudential treatment depending on the accounting treatment and therefore it seems that it does not need to be clarified further. However, the EBA concluded that the DGSD should be clarified in relation to whether payment commitments are cancellable or not and, if they are cancellable, in what circumstances.

Approach to collateral

251. The survey shows that DGSs accept different instruments as collateral, with some respondents accepting only cash, some cash and bonds, some only bonds and some also accepting other instruments. The EBA arrived at the view that different approaches are allowed under the

[21] Q&A 2015_2222 states: 'Pursuant to Article 4(3) of the DGS Directive, a credit institution authorised in a Member State pursuant to Article 8 of Directive 2013/36/EU shall not take deposits unless it is a member of an officially recognised deposit guarantee scheme. Therefore the funding obligations resulting from membership, including contributions, in the form of cash or payment commitments to a DGS, should be regarded as operating expenses which, according to Article 28(2) of the Commission Delegated Regulation (EU) No 2015/61 (DR), should be multiplied by 0% [0% being the applicable outflow rate for the purposes of calculating the LCR].'

DGSD and the EBA guidelines on payment commitments and that this does not seem to create any issues.

252. The survey shows that DGSs use different approaches to secure collateral, with most respondents using security financial collateral arrangements, and a few using other options, including title transfer financial collateral arrangements. The EBA is of the view that different approaches are allowed under the DGSD and the EBA guidelines on payment commitments and that this does not seem to create any issues.

Options to address the issues identified

Irrevocability of payment commitments

253. The EBA considered that there is a need to align the terminology in relation to payment commitments in the EU framework. Given that the term 'irrevocable payment commitments' is already used in the context of resolution funds, and in the EBA guidelines on payment commitments, the EBA is of the opinion that it should be used consistently in the DGSD, too. The EBA concludes that the term 'payment commitment' should be defined as 'an irrevocable obligation of a credit institution towards a DGS to pay a monetary amount when the payment commitment is called and which is fully collateralised provided that the collateral: (a) consists of low-risk assets; and (b) is unencumbered by any third-party rights and is at the disposal of the DGS'.

Cancellation of payment commitments and their accounting and prudential treatment

254. The EBA observed that the DGSD is silent on the cancellation of payment commitments, which in turn may have an impact on their accounting treatment, which in turn has an impact on their prudential treatment. Therefore, the EBA concluded that the DGSD should clarify whether payment commitments are cancellable or not and, if so, in which circumstances or conditions.

255. The EBA arrived at the view that the DGSD should be clarified to state whether payment commitments are cancellable upon a decision by the DGS or not. The EBA then considered the following arguments in favour of clarifying that payment commitments could be cancelled upon a decision by the DGS in some circumstances:

- It would align the approach to payment commitments under the DGSD and the Implementing Regulation, which states in Article 7(3) that the irrevocable payment commitments of an institution that no longer falls within the scope of Regulation (EU) No 806/2014 are cancelled and collateral backing these commitments is returned.

- It would allow the DGSs to align their approach to payment commitments with their approach to cash contributions (noting that, in Section 3.1.5, the EBA proposes that 'despite different approaches to the repayment of DGS contributions across the EU, there appears to be no clear need to provide further clarity in the DGSD on this matter').

- It would defeat the purpose of payment commitments if it were less advantageous for institutions to use payment commitments than cash contributions.

256. On the other hand, allowing payment commitments to be cancelled upon a decision by the DGS and associated collateral to be returned to the credit institutions could potentially increase differences in the accounting treatment of such contributions, because in some jurisdictions the possibility that payment commitments could in some instances be cancelled and collateral returned would warrant a more favourable accounting treatment, while that might not be the case in other jurisdictions. This, in turn, could create an unequal playing field, with institutions in some Member States benefiting from more favourable treatment than institutions in other Member States. A counterargument is that accounting treatments may already differ, and clarification that payment commitments can be cancelled upon a decision by the DGS and collateral returned would introduce more consistency. Furthermore, a more favourable accounting treatment does not necessarily lead to a more favourable prudential treatment.

257. The EBA arrived at the view that DGSs should have the possibility to apply the same approach both to payment commitments and to cash contributions given that both constitute available financial means.

Conclusions

258. The EBA proposes aligning the terminology in relation 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'. The EBA also proposes that the DGSD should clarify that the term 'irrevocable payment commitment' is defined as 'an irrevocable obligation of a credit institution towards a DGS to pay a monetary amount when the payment commitment is called and which is fully collateralised provided that the collateral: (a) consists of low risk assets; and (b) is unencumbered by any third-party rights and is at the disposal of the DGS'.

259. The EBA proposes that the DGSD should be amended to clarify that in circumstances where DGS contributions made by credit institutions can be returned upon a decision by the DGS to the credit institution, the same approach should be allowed in relation to the cancellation of payment commitments upon a decision by the DGS, with the collateral pledged by credit institutions for the purpose of payment commitments being returned.

260. Any future changes to the provisions on payment commitments would require careful consideration to avoid undesirable consequences in relation to payment commitments already in place.

3.7. Investment strategy

Legal basis and background

261. Article 10(1) of the DGSD states: ‘DGSs shall raise the available financial means by contributions to be made by their members at least annually. This shall not prevent additional financing from other sources.’

Article 10(4) of the DGSD states: ‘Notwithstanding paragraph 1 of [Article 10], a Member State may, for the purpose of fulfilling its obligations thereunder, raise the available financial means through the mandatory contributions paid by credit institutions to existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure, and resolution of institutions.’

262. Article 10(7) of the DGSD states: ‘The available financial means of DGSs shall be invested in a low-risk and sufficiently diversified manner.’

263. Recital 34 of the DGSD states: ‘It is necessary that the available financial means of DGSs amount to a certain target level and that extraordinary contributions may be collected. In any event, DGSs should have adequate alternative funding arrangements in place to enable them to obtain short-term funding to meet claims made against them. It should be possible for the available financial means of DGSs to include cash, deposits, payment commitments and low-risk assets, which can be liquidated within a short period of time. The amount of contributions to the DGS should take due account of the business cycle, the stability of the deposit-taking sector and existing liabilities of the DGS.’

264. Recital 35 of the DGSD specifies that ‘DGSs should invest in low-risk assets’.

265. Article 2(14) of the DGSD states that ‘low-risk assets’ means items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013 (the Capital Requirements Regulation (CRR)) or any assets that are considered to be similarly safe and liquid by the competent or designated authority. The first category of assets in the table in Article 336 of the CRR are ‘Debt securities which would receive a 0% risk weight under the Standardised Approach for credit risk’. The second category are ‘Debt securities which would receive a 20% or 50% risk weight under the Standardised Approach for credit risk and other qualifying items as defined in paragraph 4’.

3.7.1. Responsibility for investment strategy

Methodology, data sources and their limitations

266. The survey circulated to the DGSDAs and DGSs included five questions related to investment strategy. Three questions, including one specifically on responsibility for the investment strategy, are presented in this section, while the answers to the other two questions will be addressed in the subsequent sections.

Main findings, issues identified and analysis

267. The survey circulated to the DGSDAs and DGSs asked respondents 'Does your DGS have an investment strategy in place?' The responses received were as follows:

- Twenty-eight respondents from twenty-three Member States reported that the DGS had an investment strategy in place. Of these:
  - One respondent explained that the investment strategy had been adopted before the Deposit Guarantee Fund had been instructed by the Minister of Finance to hold its balances in an account with the state (the Treasury). The investment strategy is no longer applicable given the instruction from the Ministry of Finance.
  - Another respondent clarified that the legislature in its Member State had opted to use an existing system of mandatory contributions (the Bank Levy, which is a government tax). However, there is an investment strategy in place in relation to the funds raised annually from the compensation levy for deposit failures expected in the same financial year.
- Four respondents from four Member States reported that the DGS did not have an investment strategy in place. Of these:
  - One respondent explained that the contributions were transferred to the state's budget each year.
  - Two respondents reported that the available financial means were kept in a current account at the central bank.

268. The survey then asked respondents what the investment strategy was based on. The responses received were as follows:

- Twenty respondents from sixteen Member States reported that the investment strategy was based on national legislation.
- Ten respondents from nine Member States reported that the DGS, for example its Supervisory Board or the board of the fund, determined the investment strategy.
- Three respondents from three Member States indicated that this question was not applicable to them, since they did not have an investment strategy.

269. The survey subsequently asked respondents to explain who decides on the investment strategy and how the investment strategy is decided on (i.e. in terms of engagement with relevant stakeholders, internal governance, etc.). The responses received were as follows:

- Twenty-four respondents from twenty Member States reported that the Management Board or the Supervisory Board of the DGS (or the DGSDA or the DGS fund, where different from the DGS) decided on the investment strategy. Of these:
  - One respondent explained that the Management Board was assisted in the design and implementation of the strategy by a consultative committee composed of asset management experts.
  - One respondent reported that the DGS reported quarterly to the Ministry of Finance about its investments.
  - One respondent reported that the board of the Deposit Guarantee Fund decides upon the investment strategy, within the limitations set by the Ministry of Finance in the context of treasury banking. The Deposit Guarantee Fund can decide between holding money with the government in a current account and holding it with the government in term deposits (with early termination clauses).
  - One respondent explained that the Board of Directors of the DGS consists of member banks' representatives, representatives of the central bank and representatives of the competent supervisory authority.
  - One respondent reported that the rules for investing are specified in internal resolutions approved by the DGS Management Board and presented to the DGS's Council annually. The Asset Management Committee makes investment decisions in accordance with the investment policy and establishes investment limits.
  - One respondent explained that the board of the fund comprises three members: a board member of the central bank, a representative of the Ministry of Finance and a member appointed by Caixa Central.
- One respondent explained that, since the DGS is run by the Central Bank, it is the Director of Financial Operations of the Central Bank, or the individual to whom he has delegated responsibility, who is responsible for the development, maintenance and review of the DGS fund's investment policy. An assessment of the investment policy is carried out on an annual basis by the Central Bank's Organisational Risk Division.
- One respondent reported that, for one DGS in its Member State, an investment committee has been established since November 2015, composed of five experts from the member banks who support the DGS in defining the investment policy and relevant asset allocation. Investments are carried out by the central bank by virtue of the mandate given to it by the DGS, based on the indications contained in the investment policy defined by the DGS. For another DGS in its Member State, following a decision of the board of the DGS, one of the three cooperative banking groups is temporarily in charge of the consultancy service for the management of the DGS's financial resources. In addition, there is a technical committee that proposes the investment policy to be

approved by the board and supervises the policy execution and adequacy through ad hoc meetings on a bimonthly basis, or more frequently when needed.

- One respondent reported that, in accordance with the law, the investment strategy is agreed between the fund and the central bank. In practice, the investment strategy is proposed by the risk management team of the fund and approved by both the board of the central bank and the board of the fund. The risk department of the central bank also typically advises on this decision. The board of the fund comprises three members: a board member of the central bank, a representative of the Ministry of Finance and a member appointed by the national banking association.

- One respondent reported that, in accordance with the law, the investment strategy is endorsed by the DGS Supervisory Board and approved by the Board of Directors of the national bank.

- One respondent reported that mainly the legislature decides on the investment strategy. The legislation specifies that the National Debt Office is to place received fees in national state bonds or in accounts held by the National Debt Office. The National Debt Office has established a policy based on the national legislation. The National Debt Office's policy determines which state bonds are allowed.

270. The EBA discussed these different approaches, and in particular one Member State where the investment strategy is set by the DGS, but which in practice is constrained by another entity (the Ministry of Finance), which has instructed the DGS to transfer DGS available financial means to an account held by the state. In this case, the DGS has a legal responsibility to set the investment strategy but, effectively, another entity overrides this competence of the DGS.

271. The EBA discussed whether or not the DGSD should stipulate that the entity[22] responsible for the management of the available financial means is also responsible for setting the investment strategy (note that this would still leave open the possibility for the investment strategy for which the entity is responsible to subsequently be executed by a (third-party) asset manager).

272. Arguments in favour of stipulating that the entity responsible for managing the available financial means is also responsible for setting the investment strategy are:

- It would ensure that the investment strategy is set by the entity responsible for managing the available financial means, thus unequivocally ensuring that it is set in line with the aims of the DGSD to increase 'the stability of the banking system and the protection of depositors' (recital 3 of the DGSD) and existing provisions in relation to investment strategy in Article 10(7) of the directive. Where the entity managing the available financial means and the entity setting the strategy have different aims and/or

[22] In this context, the term 'entity' is meant to allow a broad interpretation, including, but not limited to, DGSs and DGSDAs.

mandates, there is a potential risk that the investment strategy could be set to achieve aims other than the quoted objectives of the DGSD.

- Ensuring that the investment strategy is set by the entity responsible for managing the available financial means would contribute to the DGS having full control of and access to its available financial means. Otherwise, it could be argued that there is a potential risk that the investment strategy could be set to achieve aims other than those set out in the DGSD, thus failing to ensure that funds will be available to the DGS when needed.

273. Arguments against stipulating that the entity responsible for managing the available financial means is also responsible for setting the investment strategy are:

- It could be argued that one entity could be responsible for managing the available financial means and another authority could be responsible for setting the investment strategy and they would have the same aims and mandates; the sole fact that they are different entities does not create an issue as long as their aims and mandates in relation to depositor protection are aligned with the DGSD.

- There is a need to retain some flexibility in relation to which entity can perform which task, to reflect the provisions in Article 10(4) where there are existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure and resolution of institutions (e.g. bank levies).

274. Based on discussions with relevant authorities, the EBA concluded that it is suboptimal if there is a misalignment between the aims of the DGSD and of the entity that is responsible for managing the funds on the one hand and the entity setting the investment strategy on the other. However, whether the two tasks are performed by one or more entity is not an issue in itself. Furthermore, the EBA concluded that it is also suboptimal for national law to allow interference in the investment strategy by another entity (e.g. through instructions to transfer funds) for purposes other than those set out in recital 3 of the DGSD.

Options to address the issues identified

275. Based on the arguments above, the EBA considered how to ensure that the management of the available financial means and the investment strategy are performed to achieve the same aims stemming from the DGSD. This can be achieved by:

- entrusting the DGS with performing both tasks; or

- entrusting an entity other than the DGS with both tasks; or

- where the management of the available financial means and the investment strategy are performed by different entities, ensuring that both tasks are performed in line with the aims of the DGSD.

276. The EBA agreed that all of those approaches are valid, and that there is no need to prevent Member States from deciding that the two tasks should be performed by different entities. However, to ensure that these tasks are performed in line with the aims of the DGSD, there is merit in clarifying in the DGSD that the investment strategy should be set by an entity with a mandate in line with the DGSD, chosen by the Member State, and that the investment strategy set by that entity should be in line with the objectives of the DGSD, and any further national legal specifications that are part of the transposition of the DGSD into national law, and not subject to other objectives or additional restrictions. This would ensure that the entity (or entities) responsible for setting the investment strategy and managing the available financial means can perform its (or their) tasks without interference or having restrictions imposed on it (or them) by other entities, to mitigate the risk of the DGS being unable to fully perform its mandate of depositor protection.

Conclusions

277. The EBA proposes that the Commission clarify in the DGSD that:

- When it is not the DGS that sets the investment strategy, Member States should designate an entity with a mandate in line with the DGSD to be entrusted with setting the investment strategy.
- That entity should set the investment strategy in line with the objectives set out in recital 3 of the DGSD and the requirements under Article 10(7) of the directive, and any further national legal specifications that are part of the transposition of the DGSD into national law, and the investment strategy should not be subject to other objectives or additional restrictions, to mitigate the risk of the DGS being unable to fully perform its mandate of depositor protection.

3.7.2. Requirement to invest funds in low-risk assets

Methodology, data sources and their limitations

278. The survey circulated to the DGSDAs and DGSs included one question related to the requirement to invest funds in low-risk assets.

Main findings, issues identified and analysis

279. The survey circulated to the DGSDAs and DGSs asked respondents ‘How does your DGS ensure that funds are invested in low-risk assets?’ The responses received were as follows:

- Nine respondents from nine Member States reported that funds are invested exclusively, or almost exclusively in national debt. One of the respondents further clarified that, in accordance with statutory requirements, the investment portfolio includes only government and central bank securities. The investment policy of the DGS is drawn up paying special attention to the safety of the securities portfolio and the

financial liquidity of the fund. Once these two criteria are fulfilled, emphasis is placed on the optimal profitability of the portfolio. The securities portfolio has a structure that ensures a certain volume of maturing bonds in the short term.

- Four respondents from three Member States reported that the fund is deposited at the national central bank.

- Seven respondents from six Member States reported that funds are invested according to the investment plan or policy set by the Board of Directors or the DGS. For example, one respondent explained that such an investment policy establishes the eligible asset classes, the minimum rating for eligibility of issuers and counterparties, the maximum modified duration of issues (dependent on the credit risk of the issuer) and market and credit risk budgets (maximum allowed value at risk and market value at risk). One respondent reported that the investment strategy is to invest only in highly liquid/low-risk Danish government and mortgage covered bonds.

- Four respondents from three Member States reported that assets are managed by professional asset managers within given constraints and guidelines.

- Two respondents from two Member States reported that the investment strategy is based on Article 336 of the CRR.

- One respondent reported that the DGS has an internal control system to monitor the investments of the DGS.

- One respondent explained that the DGS's investments are made with the primary objective of ensuring liquidity, preserving capital and minimising counterparty, concentration, liquidity and interest rate risks; resources are invested in highly liquid instruments, with a yield to maturity not lower than the interest rate for overnight deposits fixed by the European Central Bank. The policy provides for limits related to issuers, asset classes, ratings, maturity, and duration of portfolio that aim to ensure that resources are invested in low-risk and diversified assets. Specifically, the DGS's policy envisages investing resources mainly in government bonds in the EU area and from supranational issuers, all denominated in euros, applying maximum concentration limits. The other DGS offices carry out daily monitoring of policy constraints. Purchases of financial instrument issues are allowed if some conditions are met (e.g. denominated in euros; eligible for refinancing with the European Central Bank; having a minimum working capital and a minimum credit rating, different in base of the issuer).

- One respondent explained that funds are in an account with the state (treasury banking).

- One respondent explained that the DGS fund is invested in highly liquid instruments and issuers with a high credit rating with the primary objective of ensuring liquidity and

preserving capital. The investment strategy's purpose is liquidity and preservation of capital but also minimisation of concentration, liquidity and interest rate risks.

280. The survey shows that different respondents define low-risk assets in different ways: some by reference to instruments defined as low risk in the CRR, some by reference to a narrower list of instruments.

281. The EBA discussed the fact that the DGSD already provides a definition of what constitutes low-risk assets, with a cross-reference to CRR. While the EBA discussed some drawbacks concerning currently applicable sovereign debt risk weights, and the restrictions on the types of assets that DGSs can invest in because of the cross-reference to the CRR, the EBA arrived at the view that the currently applicable definition, per se, does not seem to raise issues from a DGS perspective, and that this report is not the right place to explore which assets should or should not be considered low risk. Therefore, the EBA arrived at the view that there is no need to assess the requirement to invest funds in low-risk assets further.

Options to address the issues identified

282. The only option considered by the EBA was to retain the DGSD as it stands in relation to the requirement to invest funds in low-risk assets, but to propose that the Commission consider further whether or not the definition of a low-risk asset linked to Article 336 in the CRR is adequate.

Conclusions

283. The EBA proposes to the Commission that it does not seem necessary to introduce amendments to the DGSD in relation to the requirement to invest funds in low-risk assets. However, the EBA invites the Commission to consider further whether or not the definition of a low-risk asset linked to Article 336 in the CRR is adequate.

3.7.3. Requirement to ensure sufficient diversification

Methodology, data sources and their limitations

284. The survey circulated to the DGSDAs and DGSs included one question related to the requirement to ensure sufficient diversification.

Main findings, issues identified and analysis

285. The survey circulated to the DGSDAs and DGSs asked respondents 'How does your DGS ensure that funds are invested in a sufficiently diversified manner? Which are the criteria?' The responses received were as follows:

- Fifteen respondents from eleven Member States have explicit rules on investing DGS funds in instruments with different issuers and/or in different asset classes and/or with specific ratings and/or maturities.

- Ten respondents from ten Member States stated that funds are invested exclusively, or almost exclusively, in national debt. One respondent further clarified that the bond portfolio of the DGS includes only securities issued by the state treasury, and that flows are diversified to be matched to expenditures.

- One respondent from one Member State reported that funds are invested in various states' sovereign debt and supranational organisations' debt (in the understanding that references in the opinion to 'national' debt imply that the DGS invests only in the sovereign debt of their respective country).

- Two respondents from two Member States reported that they hold cash with their central bank. In addition, two respondents from two Member States reported that funds are placed with the central bank as a backup in case investing in other assets is (temporarily) not possible because conditions are not right.

- One respondent from one Member State reported that it holds the funds at the Bank of England, which is not by definition classified as the central bank of Gibraltar.

- Two respondents from one Member State reported that the investment strategy relates only to funds held to cover compensation costs arising in the same financial year. The DGS has a number of different accounts across institutions.

- One respondent reported that this survey question was not applicable, because the contributions are transferred to the state's budget.

- One respondent explained that, since funds are deposited with the state (treasury banking), there is no diversification.

286. One respondent reported that an investment strategy document has been adopted, which stipulates specific securities and deposits in which it is permitted to invest, as well as investment limitations. Based on the survey responses and discussions with relevant authorities, the EBA identified three potential issues:

    i. in a number of cases, funds are invested exclusively or almost exclusively in national debt, and it is arguable whether that strategy ensures sufficient diversification or not;

    ii. in a few cases, funds are deposited with the central bank or the treasury, which also might not be considered a sufficiently diversified investment strategy;

    iii. whether or not there is a need to review the investment strategy regularly and if the investment strategy should be communicated to other parties such as the DGSDA or the EBA.

Ensuring adequately diversified investments

287. Based on the observation that in a number of cases funds are invested exclusively or almost exclusively in national debt, despite the requirement to ensure sufficient diversification, the EBA discussed the rationale for requiring that DGS funds should be invested in a sufficiently diversified manner. The following arguments in favour of the requirement have been identified:

    - to ensure that funds are available when needed in a crisis, irrespective of the situation in the market for a particular type of instrument;
    - in particular where funds are invested in national debt, to break the nexus between banking and sovereign crises.

288. Arguments against the need to ensure that DGS funds are invested in a sufficiently diversified manner are that:

    - DGSs/DGSDAs should have the liberty to choose the most appropriate investment strategy based on their situation;
    - if funds are invested exclusively or almost exclusively in national debt, the investment strategy could still ensure sufficient diversification in terms of date of issuance, maturity and rating.

289. Based on these arguments, the EBA arrived at the view that there is a strong case for ensuring that funds are invested in a sufficiently diversified manner. The EBA also found that the current requirement to ensure sufficient diversification, and what constitutes sufficient diversification, are interpreted differently across the EU. The EBA then discussed what factors could be considered when setting an investment strategy that ensures sufficient diversification of DGS funds, based on current DGS practices. The EBA arrived at the view that the main factors, based on those listed by the respondents to the survey, are who the issuer of an instrument is and its asset class, maturity and rating, taking into account the need to manage the liquidity of the fund and the riskiness of the assets.

Placing most or all DGS funds with the central bank or the state

290. The EBA discussed the rationale for placing most or all DGS funds with a central bank. The EBA concluded that this approach could be seen as more secure than most, if not all, other investment strategies, and would thus meet the objective of ensuring that funds are available when needed. In addition, placing the funds with the central bank could be an appropriate solution where investing in other assets is (temporarily) not possible because of market conditions. Therefore, the EBA decided that the DGSD should not prohibit such an investment strategy based on the requirement to ensure sufficient diversification.

291. The EBA notes that one respondent reported the practice of transferring all funds to a non-segregated account with the state and that such an approach means that, technically, the required investment strategy leads to no diversification of available financial means.

Regular review and communication of the investment strategy

292. The EBA also discussed the need for a regular review of the investment strategy. The EBA concluded that the investment strategy should be reviewed regularly to ensure relevance; indeed, this is already standard practice.

293. Finally, the EBA discussed whether or not there is a need to communicate the investment strategy to the DGSDA (where the DGS is not also the DGSDA) and/or the EBA. The argument in favour of communicating the investment strategy to the DGSDA and/or the EBA is that the DGSDA supervises the DGS and so needs to be informed about the investment strategy. The EBA identified that an argument against such communication could be that it is unclear what would be the purpose: seeking approval for or just informing about the investment strategy.

Options

Ensuring adequately diversified investments

294. The EBA assessed how to ensure that DGS funds are invested in a sufficiently diversified manner. The EBA discussed two options:

   i. amend the DGSD to oblige the relevant authority to **ensure** that diversification based on a set list of factors (in terms of issuer, asset class, maturity and rating) is reflected and implemented in the investment strategy; or

   ii. amend the DGSD to oblige the relevant authority setting the investment strategy to **consider** such factors when setting the strategy, without a requirement to ensure diversification in relation to each of the four factors as long as it ensures 'sufficient diversification'.

295. The EBA is of the view that obliging relevant authorities to ensure that these factors (issuer, asset class, maturity and rating) are reflected and implemented in the investment strategy would:

- ensure that relevant authorities reflect those factors in the investment strategy and thus lower the probability that funds will not be available when needed;
- introduce greater clarity on what is meant by diversification and ensure more harmonisation across Member States.

296. The arguments against the first option, and thus in favour of the more flexible second option, are as follows:

- Ensuring diversification in relation to the listed factors does not in itself necessarily ensure that the investment strategy is the most appropriate, so there is no need for a strict requirement in relation to those factors.
- Relevant authorities should also be able to take into account national idiosyncrasies, such as the need to manage currency risk when setting the strategy, and so they should be able to choose the most relevant mix of factors to consider.

297. The EBA arrived at the view that the second option, requiring that certain factors (issuer, asset class, maturity and rating) should be considered by the relevant authority when setting the investment strategy, but with flexibility to choose a strategy that meets the current requirements of the DGSD, seems to be more appropriate. In practice, this would imply that the authority would be obliged to demonstrate that it had considered the four factors, including justifying why it chose not to reflect them in the investment strategy. The EBA also concluded that there was no need to provide further precise requirements or thresholds in relation to specific factors because many different strategies, with a different mix of factors, can be pursued. As a result, the EBA concluded that the DGSD should be amended. The amendment should not imply that the authority is obliged to **ensure** that diversification is achieved for each of the four factors but that the authority is obliged to **consider** them.

Placing most or all DGS funds with the central bank

298. Since the EBA arrived at the view that placing most or all funds with the central bank should be allowed, but the current DGSD provisions may not be sufficiently clear that this strategy can be regarded as sufficiently diversified, the EBA considered one option to amend the DGSD in this regard.

299. The option discussed was to amend the DGSD to explicitly allow placing most or all DGS funds with a central bank, and to clarify that in that case the requirements regarding a sufficiently diversified investment strategy are fulfilled, but without giving the impression that placing DGS funds with a central bank is the default or preferred investment strategy.

Regular review and communication of the investment strategy

300. In relation to the regular review and communication of the investment strategy, the option considered was to propose no amendment to the DGSD, because:

- Regular review of investment strategies is already a standard practice.
- DGSs that are not DGSDAs already communicate the investment strategy to DGSDAs, even though the DGSD does not require them to do so, because it is part of the DGSDAs' supervision of DGSs.
- There do not seem to be clear reasons for communicating the investment strategy to the EBA.

Conclusions

301. The EBA proposes that the Commission amend the DGSD to require that the entity/entities responsible for determining the investment strategy for DGS funds should **consider** if the investment strategy will achieve sufficient diversification in terms of issuer, asset class, maturity and rating, taking into account the need to manage the liquidity of the fund and the riskiness of the assets. However, this amendment should not imply that the entity/entities is/are obliged to **ensure** that diversification is achieved for each of the four factors.

302. The EBA proposes that the Commission amend the DGSD to clarify that placing most or all of a DGS's available financial means with a central bank is allowed, despite the requirement to ensure sufficient diversification.

303. With regard to whether or not DGSs should be obliged to periodically review the investment strategy and to communicate the investment strategy to the DGSDA and/or the EBA, the EBA concluded that there was no need to introduce these requirements into the DGSD.

3.8. Assessment of the impact of risk-based contributions on different business models

Legal basis and background

304. Article 13(1) of the DGSD states: 'The contributions to DGSs referred to in Article 10 shall be based on the amount of covered deposits and the degree of risk incurred by the respective member. Member States may provide for lower contributions for low-risk sectors which are regulated under national law. Member States may decide that members of an IPS pay lower contributions to the DGS. Member States may allow the central body and all credit institutions permanently affiliated to the central body as referred to in Article 10(1) of Regulation (EU) No 575/2013 to be subject as a whole to the risk weight determined for the central body and its affiliated institutions on a consolidated basis. Member States may decide that credit institutions pay a minimum contribution, irrespective of the amount of their covered deposits.'

305. Article 13(2) of the DGSD states: 'DGSs may use their own risk-based methods for determining and calculating the risk-based contributions by their members. The calculation of contributions shall be proportional to the risk of the members and shall take due account of the risk profiles of the various business models. Those methods may also take into account the asset side of the balance sheet and risk indicators, such as capital adequacy, asset quality and liquidity. Each method shall be approved by the competent authority in cooperation with the designated authority. EBA shall be informed about the methods approved.'

306. Article 13(3) of the DGSD states: 'In order to ensure consistent application of this Directive, EBA shall, by 3 July 2015, issue guidelines pursuant to Article 16 of Regulation (EU) No 1093/2010 to specify methods for calculating the contributions to DGSs in accordance with paragraphs 1 and 2 of this Article. In particular, it shall include a calculation formula, specific indicators, risk classes for members, thresholds for risk weights assigned to specific risk classes, and other necessary elements. By 3 July 2017 and at least every five years thereafter, EBA shall conduct a review of the guidelines on risk-based or alternative own-risk-based methods applied by DGSs.'

307. Article 19(6) of the DGSD states: 'By 3 July 2019, the Commission, supported by EBA, shall submit to the European Parliament and to the Council a report on the progress towards the implementation of this Directive. That report should, in particular, address:

    (a) the target level on the basis of covered deposits, with an assessment of the appropriateness of the percentage set, taking into account the failure of credit institutions in the Union in the past;

    (b) the impact of alternative measures used in accordance with Article 11(3) on the protection of the depositors and consistency with the orderly winding up proceedings in the banking sector;

(c) the impact on the diversity of banking models;

(d) the adequacy of the current coverage level for depositors; and

(e) whether the matters referred to in this subparagraph have been dealt with in a manner that maintains the protection of depositors.

By 3 July 2019, EBA shall report to the Commission on calculation models and their relevance to the commercial risk of the members. When reporting, EBA shall take due account of the risk profiles of the various business models.'

308. The EBA guidelines on methods for calculating contributions to DGSs (EBA/GL/2015/10) specify methods for calculating contributions to DGSs. The guidelines contribute to providing incentives to institutions to operate under a less risky business model. To that end, the guidelines set out principles on the risk component of the calculation method.

Methodology, data sources and their limitations

309. The initial survey circulated to the DGSDAs and DGSs did not include any questions related to the impact of risk-based contributions (RBC) on business models. To perform a qualitative assessment of the impact of introducing DGS risk-based method as specified in the EBA guidelines on business models of the DGS-affiliated institutions, a separate survey with six questions was circulated to DGSs and DGSDAs on 7 March 2019. The EBA received 25 responses from 22 Member States.

310. For the purpose of the quantitative assessment, the EBA collected information on credit institutions' DGS contributions and amounts of covered deposits in each jurisdiction. In addition, the EBA used a separate dataset held by it, which categorises institutions according to their business model;[23] the data included information on credit unions as a separate business model that had not originally been included in that dataset.

311. The EBA aimed to analyse the following key questions:

- How do current DGS risk-based methods impact different business models (quantitative part)?
- What are the key factors driving potentially different impacts on different business models (qualitative part)?
- How does the introduction of risk-based methods affect business models, if at all (qualitative)?

[23] The precise methodology for categorising credit institutions is outlined in this EBA staff paper, and the analysis in this report took it as a given.

Main findings, issues identified and analysis

Qualitative assessment

312. The separate survey circulated to the DGSDAs and DGSs asked respondents 'Did the DGS in your Member State collect risk-based contributions prior to the implementation of the revised DGSD?' The responses to the survey show that:

- Thirteen respondents from eleven Member States reported that they collected RBC prior to the implementation of the revised DGSD.

- Thirteen respondents from twelve Member States reported that they did not collect RBC prior to the implementation of the revised DGSD.

313. The survey then asked if respondents had observed any impact in terms of institutions changing or adapting their business models following the introduction of the risk-based method as set out in the EBA guidelines on methods for calculating contributions to DGSs. The responses to the survey show that:

- Twenty-two respondents from nineteen Member States reported that they had not observed such an impact. One of those respondents further stated that, in its view, the RBC methodology provided in the current EBA guidelines is too complex to make it predictable to institutions, and the amounts contributed by the institutions in comparison with other costs are too small to be taken into consideration within institutions' internal risk assessments and policies.

- One respondent stated that the introduction of the RBC method increased the incentive for institutions to improve their risk profile and increased institutions' interest in how their profile influences their annual contributions, but did not specify if and how business models had been adapted.

314. The survey then asked respondents whether or not the risk-based method as set out in the EBA guidelines adequately proxies the commercial risk of the affiliated institutions (where commercial risk is to be understood in a broad sense, as the riskiness of the institution). The responses to the survey show that:

- Seventeen respondents from fifteen Member States reported that the method adequately proxies such risk.

- Two respondents from two Member States stated that the method did not adequately proxy commercial risk because market risk was not reflected adequately and some qualitative risk factors, such as business model evaluation, were not given sufficient weight. They argued that there might be a need for more flexibility on the current 25% to accurately capture risk.

- Two respondents from two Member States stated that it was difficult to assess if the method adequately proxied commercial risk, because (a) it was not entirely clear what was meant by risk, and it could mean many things, and (b) further assessment was required and the respondent was in the process of developing a model to test this proposition.
- One respondent further commented that the method could be simplified.
- One respondent reported that the assessment was done on data from the approved financial statements, which might not always accurately reflect the institution's current situation.

315. The survey then asked respondents 'In your view, are there business models that are more affected by the introduction of the risk-based contributions than others? If yes, please describe which business models are affected disproportionally, and why?' The responses to the survey show that:

- Fifteen respondents from fifteen Member States replied that there were no business models that were affected more than others. Of these respondents, one commented that institutions using the standard method when calculating risk exposure amounts/risk-weighted assets tended to be affected more than institutions using the internal ratings-based method.
- Four respondents from four Member States replied that there were some business models that were affected more than others:
  - One respondent considered that smaller institutions tended to receive higher ARWs but that there was no material correlation between ARWs and business models.
  - One respondent performed an analysis that showed that, following the implementation of the EBA guidelines, the risk scores of local banks in cooperative groups generally decreased, while they increased for commercial banking groups, most less significant institutions and third-country branches, and some other types of institutions.
  - One respondent stated that institutions with a large deposit base seemed to have been affected more.
  - One respondent reported that the change in the contribution basis had led to a substantial increase in contributions from deposit-funded banks (mostly cooperative banks) and a decrease in contributions from non-deposit-funded banks (banks without covered deposits do not pay contributions to deposit guarantee fund).

- Three respondents from three Member States replied that they did not have the information they would need to provide an answer.
- One respondent replied that the question was not applicable because all the members of the DGS had the same business model.

316. The survey subsequently asked respondents 'If you consider that in your Member State some business models are impacted disproportionally, what are the key factors driving potentially different impacts on different business models? The responses to the survey show that:

- Twenty-two respondents from nineteen Member States replied that the question was not applicable to them because such impacts had not been identified.
- One respondent stated that it was challenging to assess which specific indicators drive potentially different impacts because the indicators are correlated.

317. Finally, the survey asked if respondents had any other comments on the link between RBC and the risk profile of business models. The responses to the survey show that:

- Two respondents from two Member States reported that risks stemming from money-laundering issues have not been adequately captured by the methodology so far.
- One respondent stated that the different size of the member institutions may lead to disproportionate premiums or discounts for smaller institutions, which are difficult to explain, when the risk classification of large institutions changes.
- One respondent commented that a bank which went bankrupt in 2016 received one of the highest ARWs that year, so the risk-based method and indicators used seem to adequately reflect the riskiness of credit institutions.
- One respondent suggested that the weighting of some indicators should be subject to a more thorough assessment.
- One respondent clarified that their national approach provides for higher reduction of contributions for members of an IPS. This option is implemented by reducing the final ARW of each IPS member by 50%.
- Two respondents from one Member State explained that the EBA guidelines on RBC have not been implemented, but that both DGSs in their Member State have available financial means above the minimum target level already and there are no contributions being raised. However, they acknowledged that, even if no contributions are envisaged, a revised method for determining and calculating RBC should be in place to be used in case it becomes necessary, and they aim to do so in 2020. Currently, in that respondent Member State, the amount of the periodical contributions of each credit institution is based on the average amount of monthly credit balances of deposits over the previous

year, covered by the DGSs, and the credit institution's risk profile based on one indicator.

318. In relation to whether or not the risk-based method as set out in the EBA guidelines adequately proxies the commercial risk of the affiliated institutions, the EBA observed that the responses to the survey show that the risk-based method adequately proxies the commercial risk of DGS member institutions, but that it would be useful to see the results of any further analysis performed by individual DGSDAs/DGSs who are currently developing further tests. The method is subject to regular review in accordance with Article 13(3) of the DGSD, and in the course of future reviews it could be checked if the method could be made simpler, with a particular focus on the possible correlation between different indicators.

319. The EBA assessed the additional comments provided in the survey responses and arrived at the view that these points should be outlined in the report, but that there is no need to propose any immediate changes to the DGSD or the EBA guidelines on methods for calculating contributions to DGSs. However, they should be revisited in the context of future reviews of the EBA guidelines on the calculation of contributions to DGSs.

320. The EBA arrived at the view that the results of the qualitative survey on the impact of the risk-based method on different business models did not uncover any issues requiring amendments to the DGSD or other elements of the DGS framework. However, the results of the qualitative assessment should be assessed alongside the quantitative analysis of bank-level data to provide a more comprehensive picture of the potential impact of the risk-based method (as set out in the EBA guidelines on methods for calculating contributions to DGSs) on business models of DGS member institutions.

Quantitative assessment

321. To complement the qualitative assessment presented above, the EBA conducted further quantitative analysis, to provide a more comprehensive picture of the potential impact of the risk-based method as set out in the EBA guidelines on business models of DGS member institutions.

322. The quantitative assessment allows the EBA to analyse:

- if different business models are affected differently by the current risk-based methods, and if there are different impacts across Member States,
- what are the drivers behind potentially diversity impacts, and
- if the introduction of the risk-based methods (RBC) has had a discernible impact on business models adopted by institutions in comparison with non-risk-based contributions (n-RBC) being in place.

323. To that effect, the EBA analysed the potential link between RBC and business models on the basis of:

- information on credit institution's DGS contributions and amounts of covered deposits, and

- a separate dataset held by the EBA, which categorised institutions according to their business model, including credit unions as a separate business model that was not originally used in that dataset.

Dataset

324. In total, the dataset included 3 910 institutions, which are members of 19 EU DGSs.

325. To maintain the confidentiality of the bank-level data, the data has been anonymised by:

- removing credit institutions' names, LEI codes, amounts of covered deposits and amounts of previous DGS contributions,

- replacing Member States'/DGSs' names with randomly assigned codes (from 1 to 19), and not stating which DGSs are and which ones are not included in the sample,

- dividing institutions into quartiles and presenting them as 'small' (equal to or smaller than the 25th percentile in comparison with other members of that DGS), 'large' (bigger than the 75th percentile) or 'medium' (those that fall between large and small), thus, for each DGS, categorising a quarter of institutions as small, a quarter as large and half as medium,

- removing DGSs that have fewer than 12 member institutions, because the abovementioned categorisation would create groups of three or fewer institutions.

326. Thus, the final dataset used by the EBA to perform the analysis included:

- the percentage by which RBC are different from what n-RBC would have been if they were only based on covered deposits,

- the business model classification, to test if the difference in contributions is correlated with the business model, and

- an anonymised DGS code, to test if the impact is significantly different between DGSs.

327. The size and diversification of the sample aimed to ensure a representative level for the banking industry. However, it is important to note that the data should be interpreted carefully, because of the following limitations and characteristics:

- The dataset did not include all the credit institutions from all Member States.

- Differences in the frequency of DGS contributions across the EU mean that the dataset on DGS contributions relates to different time periods (respondents were asked to submit information on the most recent contributions).

- The dataset on business models related to the end of 2015, which leads to some temporal inconsistencies, as it cannot be ruled out that a credit institution classified as having a particular business model at the end of 2015 may have changed its business models in the following years. However, the risk of such inconsistencies is assumed to be generally low, as institutions are not generally expected to change their business model frequently.

- The number of institutions per business model varies from 10 to 1 665, and 7 out of 12 business models have a population of fewer than 100 institutions. These two facts influence the statistical outcome of the survey results. Furthermore, the business models included in the category 'other specialised banks & Islamic finance & public development banks & CCP' are too heterogeneous to draw clear conclusions.

- The EBA guidelines on methods for calculating contributions to DGSs leave some discretion in relation to the categorisation of institutions based on risk, and so how much of an impact on contributions the level of riskiness has. This discretion also means that there are differences in this regard between Member States.

- in addition, under paragraph 72, the EBA guidelines on methods for calculating contributions to DGSs allow the option that a DGS, which can use failure-prevention measures, could apply the risk-weighted assets of the institution in the RBC formula, which can significantly impact the difference between RBC and n-RBC for some institutions.

- A minimum contribution threshold is allowed in the current framework, which means that institutions with very small amounts of covered deposits may be contributing a proportionally high amount, not because of risk, but because of the minimum threshold.

- The starting point for comparing RBC with n-RBC lacks a uniform view on the inherent risk of each standardised business model.

328. The deviations in terms of contribution amounts considered in this dataset have not been weighted on the basis of the covered deposits held by each institution (i.e. the results of the analysis do not take into account in detail whether or not the results are driven by the size of the institutions for each business model, nor are nominal effects on individual credit institutions (e.g. their profitability) considered).

329. Finally, when interpreting the results it is important to bear in mind that the reduction shown for credit institutions categorised under one business model leads to an increase in contributions for those categorised under other business models (because the authorities set the amount to be collected in a given period from the member credit institutions).

General findings

330. Table 3 shows the aggregated arithmetic average percentage by which RBCs are different from what n-RBC would have been if based only on covered deposits, by business model for the credit institution in the sample.

Table 3. The percentage by which risk-based contributions are different from what non-risk-based contributions would have been if based only on covered deposits, by business model

	The percentage by which risk-based contributions are different from what non-risk based contributions would have been, <=											
Business model	<-100%	from -100% to -75%	from -75% to -50%	from -50% to -25%	from -25% to -5%	from -5% to 5%	from 5% to 25%	from 25% to 50%	from 50% to 75%	from 75% to 100%	>100%	number of banks
Consumer credit banks (including automotive banks)	0%	0%	0%	10%	17%	40%	12%	17%	2%	0%	2%	42
Co-operative banks / savings and loans associations	0%	0%	15%	30%	23%	12%	13%	4%	1%	0%	1%	1.665
Credit union	1%	2%	10%	1%	36%	30%	18%	0%	1%	1%	0%	774
Cross-border universal bank	0%	0%	0%	14%	12%	46%	19%	7%	2%	0%	2%	59
Custodian institutions (including CSDs, that are subject to CSDR)	0%	0%	3%	16%	39%	32%	3%	6%	0%	0%	0%	31
Local universal bank	0%	0%	0%	12%	15%	46%	16%	8%	1%	0%	1%	274
Merchant & Leasing&factoring	1%	3%	3%	12%	17%	38%	13%	5%	0%	0%	8%	93
Mortgage banks not taking retail deposits - Pass through financing & Pass through financing (not mortgage banks)	0%	0%	0%	30%	10%	30%	20%	0%	0%	0%	10%	10
Mortgage banks taking retail deposits - building societies and other mortgage banks	0%	0%	2%	1%	19%	55%	15%	4%	1%	0%	2%	98
Other specialised banks & Islamic finance & Public development banks & CCP	0%	1%	4%	20%	26%	36%	10%	2%	0%	0%	1%	155
Private banks	0%	0%	0%	11%	54%	29%	3%	3%	0%	0%	0%	93
Savings banks	0%	0%	10%	50%	13%	12%	10%	4%	1%	0%	0%	616
All banks	**0%**	**0%**	**10%**	**24%**	**24%**	**22%**	**14%**	**4%**	**1%**	**0%**	**1%**	**3.910**

331. The analysis shows that, for about one quarter of the institutions in the sample, RBC do not change their contributions by more than 5% in comparison with what they would have been under the n-RBC approach, while for the majority of institutions (66%) the difference in contributions is between 5% and 50%. Furthermore, the majority of institutions in the sample (around 80%) had contributed an amount similar or smaller than they would have done under the non-risk-based approach, of which the majority contributed less than they would have otherwise (68% of the whole sample). Among the institutions that contributed less under RBC than they would have under n-RBC, the average reduction was around 28% and the median was 9%. Subject to further analysis, this seems to suggest that the incentive structure of the RBC-formula has the desired effect, as it seems to lower contributions for institutions with a lower risk profile, irrespective of their business model.

332. Only a small fraction (around 1%) of the credit institutions in the sample paid a contribution that differed from what it would have been under n-RBC by more than ±100% of the hypothetical n-RBC contribution. As contributions cannot be lower by more than 100% but can be higher by more than 100%, the majority of these institutions pay higher risk based contributions than they would have under n-RBC. This result seems to further strengthen the finding that the risk-based elements, implemented by the DGS in accordance with the relevant EBA guideline, are adequately calibrated and risk sensitive enough to ensure that credit institutions categorised as riskier pay an appropriately higher contribution to the DGS. Business model analysis shows that these extreme results are mainly driven by business models with relatively low covered deposit volumes (e.g. Merchant & Leasing & factoring etc.), but with a tendency for higher inherent commercial risk.

Business model-specific findings

333. In the next step, the EBA analysed the differences between RBC and n-RBC for each of the 12 business models. The results, summarised in Table 3, show that, while there are some differences, no business model seems to be clearly and significantly more impacted by the RBC approach than other business models. In general, for 10 of the 12 business models, for the majority of institution the RBC are different by no more than 25% in comparison with n-RBC. In addition, the results also show that 87% of the banks are in a range of ±50% of contributions under the RBC and n-RBC methods. This indicates that the RBC is on the one hand risk based and on the other hand still driven by the covered deposits volume as one main factor. However, it also shows that some trends are observable, in relation to both particular business models as well as certain institutions (see Table 4).

Table 4. Summary of the impact of RBC on different business models

Business model	**Impact of RBC in comparison with n-RBC**
'Consumer credit banks'	**Higher contributions** This business model shows a trend for higher RBCs (21% of the institutions pay contributions higher by more than 25% contribution) compared with the average of 6% for the whole sample. This could be driven by a higher commercial risk of this specific product-centric business model than more diversified business models (e.g. universal banking, which is more diversified due to loans with a physical collateral, payment services etc.).
'Mortgage banks not taking retail deposits — Pass through financing & Pass through financing (not mortgage banks)':	**Higher contributions** This business model includes a high proportion of institutions (10%) with RBCs higher by more than 100% in comparison with n-RBCs. The average proportion for the whole sample is 1%. Such extreme results could stem from a low level of covered deposits in relation to a higher commercial risk, from a DGS perspective.
'Merchant & Leasing & factoring'	**Higher contributions from some institutions and lower from others** In comparison with other business models, the merchant & leasing & factoring institutions group shows diverse results. This business model has the largest share of institutions with contributions different by more than 75% in comparison with n-RBC reduction. More specifically, 4% of institutions in this group have contributions lower by more than 75% and 8% have contributions higher by more than 75%, while the averages for the whole sample are 1%.
'Local universal banks' and 'Cross-border universal banks'	**Same contributions** In the sample of local universal banks, after disregarding two extreme outliers, on average such institutions contribute 1% more under the RBC method in comparison with the n-RBC approach. In the sample of cross-border universal banks, the corresponding figure is 4%. Thus, the results suggest that of all the business models, universal banks are affected the least by the RBC approach.
'Savings banks' and 'Co-operative banks/savings and loans associations'	**Lower contributions** Savings banks and cooperative banks/savings and loans associations tend to have lower RBCs in comparison with the average of all credit institutions. Overall, 60% of savings banks and 45% of cooperative banks/savings and loans associations pay

	RBC contributions that are 25% or lower than their n-RBC.[24] The corresponding average number for the other business models (not including 'Savings banks' and 'Co-operative banks/savings and loans associations') is 14%. The reasons could be the tendency to a higher granularity in the portfolios and the locally oriented focus of these two business models. As many as 88% of cooperative banks and 75% of savings banks are members of two (different) DGSs (among a panel of 19 DGSs). This concentration is not observed in the other business model category and should be taken into consideration while assessing the above figures.
'Private Banks'	**Lower contributions** Among private banks, the vast majority of institutions (86%) pay RBC contributions lower than under the n-RBC approach; the average reduction of contribution for these banks is 9% and so below the overall average in the sample (28%).
'Credit unions'	**Lower contributions** In this group, most institutions (61%, 473 out of the 774 institutions) benefit from a reduced contribution under the RBC approach. The average reduction is 28%, in line with the average reduction in the whole sample. In four of out of five DGSs that have credit unions as their members, on average RBC contributions are lower than n-RBC. It would appear that this result is at first glance counterintuitive given that, since the introduction of the DGSD, nearly half of failures in the EU were of credit unions. On the other hand, it could be the case that the weakest credit unions exited the market, and the ones remaining are, in general, less risky than other types of credit institutions. The scope of this analysis does not allow us to answer this question conclusively. Thus, the result would seem to warrant further analysis of why credit unions are, in general, deemed to be less risky.

334. The quantitative analysis of the available data shows that there are differences in how different business models are affected by the RBC method. However, the results are not surprising, as it is sensible to assume that different business models have different inherent riskiness. Therefore, the results of the analysis do not, in themselves, mean that there is strong evidence that certain business models are unduly penalised by or, on the other hand, benefit from the current implementation of the RBC across Member States. Thus, the results, combined with the results of the qualitative analysis, suggest that there is no need to propose any immediate action or amendment to the existing framework. However, a more robust analysis of the impact of RBC on business models should be undertaken in the context of the next review of the EBA guidelines on the calculation of contributions to DGSs by 3 July 2022 in line with paragraph 13(3) of the directive, with a particular focus on credit unions.

Options to address the issues identified

335. In the light of the outcomes of the qualitative and quantitative assessments, the only option considered by the EBA was to propose no amendments to the DGSD.

336. However, the EBA considered that the points addressed in the responses to the survey should be revisited and a more robust analysis of the impact of RBC on business models should be

[24] Irrespective of this reduction for institutions with these business models, the contributions from all institutions altogether have to be collected in such a manner that the required target level is reached.

undertaken in the context of future reviews of the EBA guidelines on methods for calculating contributions to DGSs.

Conclusions

337. The EBA considers that there is no need to amend the DGSD or other elements of the DGS framework. However, the EBA arrived at the view that the outcomes of the analysis could be revisited in the context of the next review of the EBA guidelines on methods for calculating contributions to DGSs to be completed by 3 July 2022, in line with paragraph 13(3) of the directive, with a particular focus on credit unions.

3.9. Contributions from third-country branches

Legal basis and background

338. Recital 11 of the DGSD states: 'In principle, this Directive requires every credit institution to join a DGS. A Member State admitting branches of a credit institution having its head office in a third country should decide how to apply this directive to such branches and should take account of the need to protect depositors and maintain the integrity of the financial system. Depositors at such branches should be fully aware of the guarantee arrangements which affect them.'

339. Recital 36 of the DGSD states: 'Contributions to DGSs should be based on the amount of covered deposits and the degree of risk incurred by the respective member. This would allow the risk profiles of individual credit institutions to be reflected, including their different business models. It should also lead to a fair calculation of contributions and provide incentives to operate under a less risky business model. In order to tailor contributions to market circumstances and risk profiles, DGSs should be able to use their own risk-based methods. In order to take account of particularly low-risk sectors which are regulated under national law, Member States should be allowed to provide for corresponding reductions in the contributions while respecting the target level for each DGS. In any event, calculation methods should be approved by competent authorities. The European Supervisory Authority (European Banking Authority) ("EBA"), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (11) should issue guidelines for specifying methods for calculating contributions.'

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

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

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

    'Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again.

    'If, 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, the regular contribution shall be set at a level allowing the target level to be reached within six years.

'The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this Article.

'Member States may extend the initial period referred to in the first subparagraph for a maximum of four years if the DGS has made cumulative disbursements in excess of 0.8% of covered deposits.'

342. Article 13(1) of the DGSD states that 'the contributions to DGSs referred to in Article 10 shall be based on the amount of covered deposits and the degree of risk incurred by the respective member'.

343. Article 13(2) of the DGSD states: 'DGSs may use their own risk-based methods for determining and calculating the risk-based contributions by their members. The calculation of contributions shall be proportional to the risk of the members and shall take due account of the risk profiles of the various business models. Those methods may also take into account the asset side of the balance sheet and risk indicators, such as capital adequacy, asset quality and liquidity.

'Each method shall be approved by the competent authority in cooperation with the designated authority. EBA shall be informed about the methods approved.'

344. Article 15(1) of the DGSD states: 'Member States shall check that branches established in their territory by a credit institution which has its head office outside the Union have protection equivalent to that prescribed in this Directive.

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

Methodology, data sources and their limitations

345. The survey circulated to the DGSDAs and DGSs included four questions related to raising contributions from third-country branches. During the course of preparing the report, an additional survey was performed to assess the materiality of contributions from third-country branches, with the aim of analysing if differences across Member States lead to level playing field issues.

Main findings, issues identified and analysis

346. The survey circulated to the DGSDAs and DGSs asked respondents 'Do branches of institutions from third countries (i.e. non-EU) contribute to your DGS fund?' The responses to the survey show that:

- Thirteen respondents from eleven Member States reported that branches of institutions from third countries contribute to their DGS fund.

- Seventeen respondents from fourteen Member States reported that branches of institutions from third countries do not contribute to their DGS fund. Of these:
  - Thirteen respondents from twelve Member States explained that there are no third-country branches affiliated to the DGS. Of these respondents, six explained that currently there are no third-country branches affiliated to the DGS in their jurisdiction, but if there were any they would have to contribute to the DGS fund. One respondent reported that third-country branches cannot not be members of the DGS because it is a DGS for associated agricultural credit institutions.
  - Three respondents from two Member States reported that third-country branches are exempted from DGS contributions.
  - One respondent clarified that the third-country branch operating in its jurisdiction did not have covered deposits at the moment of reporting, and would only start contributing when it started taking covered deposits.

347. The survey then asked respondents 'If yes, is the method used to calculate their contributions different? In such case please explain why this is the case.' The responses to the survey show that:

- Ten respondents from eight Member States reported that the same method as for its member institutions is used to calculate contributions of third-country branches, but that a different risk category is used due to missing data and non-equivalence of the supervisory framework applied for those credit institutions. Of these:
  - Three respondents from two Member States explained that the average risk category is used for third-country branches.
  - One respondent explicated that the highest risk category is used for third-country branches.
- Eight respondents from eight Member States reported that they use the same method to calculate contributions of third-country branches as for their member institutions.

348. The survey asked respondents 'If yes, briefly describe, where applicable, how the method used to calculate their contributions differs from the method applicable to other institutions affiliated to the DGS, including what indicators used are different.' The responses to the survey show that:

- Four respondents from three Member States reported that the contributions from third-country branches are non-risk-based in contrast to the contributions from domestic credit institutions.

- Three respondents from three Member States reported that proxies are used for the individual risk scores, due to missing data and non-equivalence of the supervisory framework applied for those credit institutions:
    - One respondent from one Member State reported that third-country branches are ranked in the highest risk category when risk-adjusting their contributions.
    - One respondent explained that individual risk scores for the risk indicators leverage ratio, CET1 ratio, risk-weighted assets to total assets ratio and return on equity ratio of third-country bank branches are formed as the arithmetic mean of the individual risk scores of the same indicators of the four credit institutions with the closest individual risk assessment to that of the respective bank branch for the indicators return on assets, NPL ratio and the unencumbered assets to covered deposits ratio.
- Two respondents from one Member State reported that all non-EEA branches are rated as average in terms of risk, for the purposes of the RBC methodology, because prudential risk data from non-EEA branches of the kind specified by the EBA guidelines are not systematically collected for third-country branches.
- One respondent reported that, if there are no financial indicators available to apply the standard method, alternatively a simplified approach can be applied. The simplified approach is mainly based on covered deposits volume;
- One respondent reported that two indicators are not available: LCR and leverage ratio.

349. The survey asked respondents 'If yes, are the indicator values assessed on a solo or on consolidated basis, or are they estimates? Only six respondents regarded this question as applicable and provided an answer:

- Four respondents from four Member States reported assessing the indicator values on a solo basis.
- One respondent reported the use of estimates for the indicator values.
- One respondent reported that, for some branches that benefit from a capital waiver, some indicator values are based on the data provided for the direct parent entity on a consolidated basis.

350. In March-April 2019, the EBA performed an additional survey to assess the materiality of contributions from third-country branches. Responses to this survey show that, at the moment the survey was conducted:

- The highest numbers of branches were reported by the UK (84), France (22), Denmark (21), Germany EdB (19), Cyprus (14) and Luxembourg (13). Of the 11 Member States (in relation to which respondents also provided further information on the contributions)

where there are third-country branches, 7 reported at least some contributions from these third-country branches, while in the 4 others there were no recent contributions from such branches or domestic institutions.

- Among the eight respondents where contributions from third-country branches were raised such contributions constituted between 0.49% and 0.01% of all contributions (i.e. domestic credit institutions contributed between 99.51% and 99.99% of all DGS contributions). One of the respondents, without specifying the percentage, reported that a third-country branch within the jurisdiction makes a material annual contribution to its *ex ante* fund, in the context of the overall DGS contributions collected by that DGS. While the dataset does not include information from some Member States with potentially many third-country branches, or no contributions from such branches are raised in Member States where there are relatively many, the data seem to show that contributions from third-country branches are in almost all cases immaterial as a proportion of all contributions to the DGS funds.

- Of the 24 respondents (disregarding the UK response, as the question was not applicable in this instance), 13 reported that credit institutions from their jurisdiction have branches in the UK. Of the 13 respondents where credit institutions from their jurisdiction have branches in the UK, in 9 Member States such branches contributed to their DGS fund. Among those nine respondents where branches located in the UK contributed to the EU-27 DGS fund, such contributions constituted between 0.17% and 0.02% of all contributions to the fund in a given year. While the dataset does not include some Member States where the number of credit institutions with branches in the UK may be relatively high, the dataset seems to show that contributions from such branches is immaterial. This is relevant because such branches may be required to join the UK DGS upon the withdrawal of the UK from the EU, and will no longer contribute to the EU-27 DGSs.

351. During the drafting of the opinion, the EBA asked UK authorities about the number of branches of UK credit institutions operating in the EEA states, as well as the volume of covered deposits held in such branches, and the total annual contributions to the DGSs from such branches. Information concerning the amount of covered deposits in such branches was not readily available and therefore it was not possible for the EBA to assess the materiality of such branches' DGS contributions. Such information could be important, because after the withdrawal of the UK from the EU such branches may become third-country branches, in which case, in line with the EBA opinion on deposit protection issues stemming from the withdrawal of the UK from the EU, they will join the EU-27 DGSs.

352. The EBA observed that, based on the data submitted by respondents to the survey, in almost all cases it seems that the proportion of contributions from third-country branches to the EU DGSs is immaterial and therefore it can be concluded that differences between Member States in the approach to how such contributions are calculated are unlikely to create material level playing field issues.

353. In addition, the EBA arrived at the view that the issue might need to be revisited in the future depending on the number of branches of UK credit institutions in the EU-27 after the UK's withdrawal from the EU.

Options to address the issues identified

354. In the light of the responses to the surveys and discussions with relevant authorities, the option considered by the EBA was to propose no amendments to the DGSD with regard to contributions from third-country branches.

Conclusions

355. The EBA proposes to the Commission that, given the current immateriality of contributions from third-country branches in almost all cases, there is no need to propose amendments to the DGSD. However, the topic may need to be revisited in the future, particularly after the UK's withdrawal from the EU.

3.10. Reporting of data

Legal basis and background

356. Article 10(10) of the DGSD states: 'Member States shall, by 31 March each year, inform EBA of the amount of covered deposits in their Member State and of the amount of the available financial means of their DGSs on 31 December of the preceding year.'

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

Methodology, data sources and their limitations

358. The survey circulated to the DGSDAs and DGSs included five questions related to the reporting of data. The related and highly relevant topics of what the definition of available financial means should include, and the reporting of borrowed resources and DGS's liabilities, are addressed in Section 3.2 on the definition of available financial means and Section 3.3 on extraordinary contributions and alternative funding arrangements.

Main findings, issues identified and analysis

359. The survey circulated to the DGSDAs and DGSs asked respondents 'Is the following data collected in your jurisdiction and at what frequency?' Subsequently, the survey asked 'Which authority collects the data?' Both questions were asked with regard to covered deposits, eligible deposits, non-eligible deposits and total deposits. Responses to these survey questions are provided in Tables 5 and 6 below.

Table 5: Frequency of DGS data collection

Type of deposit	Monthly	Quarterly	Semi-annually	Annually	Not regularly collected
Covered deposits	6 respondents from 6 Member States	17 respondents from 16 Member States	2 respondents from 2 Member States	8 respondents from 6 Member States	n/a
Eligible deposits	5 respondents from 5 Member States	14 respondents from 14 Member States	2 respondents from 2 Member States	3 respondents from 3 Member States	9 respondents from 7 Member States
Non-eligible deposits	4 respondents from 4 Member States	8 respondents from 8 Member States	1 respondent	3 respondents from 3 Member States	15 respondents from 12 Member States
Total deposits	6 respondents from 6 Member States	13 respondents from 13 Member States	3 respondents from 3 Member States	5 respondents from 5 Member States	6 respondents from 5 Member States

Table 6: Authority collecting the DGS data

Type of deposit	DGSDA	DGS	Competent authority	Multiple authorities
Covered deposits	7 respondents from 7 Member States	19 respondents from 14 Member States	4 respondents from 4 Member States	3 respondents from 3 Member States[25]
Eligible deposits	5 respondents from 5 Member States	14 respondents from 13 Member States	3 respondents from 3 Member States	3 respondents from 3 Member States[26]
Non-eligible deposits	7 respondents from 7 Member States	5 respondents from 5 Member States	2 respondents from 2 Member States	3 respondents from 3 Member States[27]
Total deposits	4 respondents from 4 Member States	8 respondents from 7 Member States	12 respondents from 11 Member States[28]	1 respondent[29]

[25] Of these respondents, one reported that covered deposits are collected by the DGSDA, DGS, NCA and NRA. Another respondent explained that the DGSs and NCA collect these data quarterly and the DGSDA annually. One respondent reported that there are two reports per year: one to the DGSDA and one to the DGS.

[26] Of these respondents, one reported that eligible deposits are collected by the DGSDA, DGS and NCA. One respondent reported that these data are collected by the NCA and DGS together. One respondent reported that there are two reports per year: one to the DGSDA and one to the DGS.

[27] Of these respondents, one reported that non-eligible deposits are collected by the DGSDA, DGS and NCA. One respondent reported that these data are collected by the NCA and DGS together. One respondent reported that there are two reports per year: one to the DGSDA and one to the DGS.

[28] One of the respondents reported that total deposits are collected by the Central Bank.

[29] The respondent reported that there are two reports per year: one to the DGSDA and one to the DGS. Although member institutions do not report total deposits to the DGS, it is possible to calculate a proxy for this figure with the eligible and non-eligible deposits amounts. Furthermore, the DGSDA may also use supervisory and statistical reporting to calculate the total deposits figure.

360. Finally, the survey asked respondents 'In your view, has the publication of covered deposits and *ex ante* funds data by the EBA had any impact in your jurisdiction? If yes, please provide examples.' The responses to the survey show that:

- Twenty-one respondents from eighteen Member States reported that the publication has had no impact in their jurisdiction, or that they are not aware of any impact;
- Ten respondents from seven Member States reported that the publication had an impact in their jurisdiction:
  - Six respondents from three Member States reported that the publications resulted in some negative publicity in the media;
  - Two respondents from two Member States stated that the publication had set their member institutions' expectations in relation to future DGS contributions;
  - One respondent reported that the number of questions the DGS had received from other DGSs, rating institutions and analysts from different financial institutions had increased, although the data were already published on the DGS's own website; those questions were mainly about the target level and the annual calculation of fees;
  - Another respondent reported that the media had cited the data.

361. The results of the survey show that, currently, there are different approaches to the frequency of data collections, what data are collected, and which authority collects them in a given Member State. The responses to the survey also show that the impact of the publication of covered deposits and available financial means is limited.

362. The EBA assessed the reasons why some data are not collected in a number of Member States. Based on discussions with relevant authorities, the EBA observed that this is not because the authorities encountered legal obstacles or opposition from the industry, but because it was not deemed to be necessary to have such data.

363. The EBA also assessed whether or not DGSDAs/DGSs had encountered any obstacles or issues with sharing the data where it is collected by different authorities in a Member States. The EBA did not identify any issues.

364. The EBA observed that the submission of the data to the EBA does not always happen by the 31 March deadline, and analysed if there are any specific reasons for this. Based on discussions with relevant authorities, no specific issues were identified, except from the situation described by one Member State, which explained that delays stemmed from the timing of when the final accounts are approved, an issue that has now been resolved.

The impact of the publication of covered deposits and available financial means data by the EBA

365. Based on the survey results, the EBA assessed the impact of the publication of covered deposits and available financial means data. The EBA observed that the impact reported in the survey is immaterial. However, the EBA noted that the differences in DGS target levels between Member States might be confusing for the members of the public and the media, specifically when a Member State applies a target level different from 0.8% — for example because it has a lower target level as per Article 10(6) of the DGSD, has a higher nationally set target level, or has a minimum target level but intends to raise contributions indefinitely.

Reporting timelines and the assessment of reaching the target level

366. Finally, the EBA identified that it is currently unclear in the DGSD on what basis it will or could be assessed whether or not a DGS has reached the minimum target level as required in Article 10(2) of the DGSD, given that the deadline for reaching the target level is 3 July 2024, whereas the data to be collected and notified to the EBA each year are as of 31 December. It is therefore currently unclear if the assessment of whether or not the minimum target level is reached based has to be based on data as of 31 December 2023, 31 December 2024 or 3 July 2024, which would require an additional data collection. This lack of clarity arises in cases where a DGS intends to reach the minimum target level for the first time in 2024. In cases where it reaches the minimum target level earlier (e.g. in 2022), this opinion assumes that the DGS would be able to report that it has done so, based on relevant data for that date.

Options to address the issues identified

The impact of the publication of covered deposits and available financial means data by the EBA

367. In order to avoid potential confusion among members of the public and the media if the target level is different from 0.8%, the only option considered by the EBA is that an explanation of the underlying reasons should be provided. The EBA arrived at the view that, if the target level published on the EBA website is different from 0.8% of covered deposits, it should be clarified on the website why this is the case. For example, where the reported target level is 0.5%, it should be clarified that, if applicable, this is pending the granting of the derogation by the European Commission, in line with Article 10(6) of the DGSD, and that target levels above 0.8% are set by the relevant national authorities. Similarly, where the minimum target level is 0.8% but the DGS has a different, national target level, or intends to raise contributions indefinitely, this should be noted on the website.

Reporting timelines and the assessment of reaching the target level

368. The EBA is of the view that there is a need for a pragmatic solution for the current mismatch between the reporting reference date for covered deposits and the deadline to reach the target level for cases where a DGS intends to reach the target level for the first time in 2024.

369. The EBA considered the option of requiring an additional data collection to deal with the mismatch of reporting dates and the assessment of whether or not the target level has been reached on 3 July 2024. However, contributions are collected at different frequencies within the Member States, which makes it impossible to ensure that the available financial means are exactly 0.8% of covered deposits by 3 July 2024. It could occur that covered deposits increase after the last collection of contributions before the target level deadline (thereby decreasing the coverage ratio until subsequent contributions restore the ratio). Moreover, some DGSs raise contributions at a monthly or quarterly basis and might have set up their funding path towards the target level taking into account the possibility of raising contributions up to 3 July 2024. Therefore, the EBA concluded that the determination of whether or not the target level has been reached should be based on covered deposits data with a reference date set by the DGSDA or DGS no earlier than 31 December 2023 and no later than 3 July 2024, in cases where the DGS intends to reach the target level for the first time in 2024. The EBA proposes to amend the DGSD to this effect.

Conclusions

370. The EBA proposes to the Commission that there is a need to amend the DGSD, specifying that, where a DGS intends to reach the target level for the first time in 2024, the determination of whether or not the target level has been reached, in accordance with Article 10(2) of the DGSD, should be based on covered deposits data with a reference date set by the DGSDA or DGS no earlier than 31 December 2023 and no later than 3 July 2024.

4. Conclusions

371. This report provides the analytical background to the proposals set out in the EBA opinion on DGS funding and uses of DGS funds, and presents a number of proposals for the Commission to consider when preparing a report on the implementation of the DGSD, and if and when preparing a proposal for a revised DGSD.

372. To fully deliver on the EBA's mandate conferred on the EBA under Article 19(6) of DGSD, and further outlined in the Commission's Call for Technical Advice from the EBA sent on 6 February 2019, this report should be considered by the Commission alongside two other EBA opinions and the corresponding analytical reports, on eligibility of deposits, coverage level and cooperation between DGSs and DGS payouts. The EBA notes that this opinion, as well as the other two opinions, aim to present an expert view from a depositor protection perspective, but do not include a thorough impact assessment from all the relevant perspectives, so, where appropriate, the EBA proposes that more analysis may be warranted.

5. Annex

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

Target level			
Question number	**DGSD article number**	**Question**	**Answer**
1	10(2)	Taking into account your past experience with failures, what are your views regarding the current target level as concerns (a) its current basis on the covered deposits; (b) appropriateness of the percentage set? Do you think there is merit in changing those two elements?	*Free text*
2	10(2)	If yes, what would be a better target level basis and why (e.g. total liabilities/total deposits/other)? What should be the appropriate target level percentage?	*Free text*
Additional comments		*Free text*	

Target level and funding			
Question number	**DGSD article number**	**Question**	**Answer**
1	10(2)	What is the target level of your DGS?	*Free text*
2	10(2)	Does the law in your jurisdiction require regular collection of DGS contributions after the target level of 0.8% is reached? Please explain whether the purpose of this collection of DGS contributions would be to maintain the level of fund resources at the target level or to grow the fund size beyond the target level.	*[Yes/No]*
3	10(2)	Taking into account your past experience with failures, what are your views regarding the current target level as concerns (a) its current basis on the covered deposits; (b) appropriateness of the percentage set? Do you think there is merit in changing those two elements?	*Free text*
4	10(2)	If yes, what would be a better target level basis and why (e.g. total liabilities/total deposits/other)? What should be the appropriate target level percentage?	*Free text*
5	10(2)	If since the implementation of the revised DGSD there were cases of DGS payouts in your jurisdiction, what were the DGS recovery rates in liquidations? Given the likely lack of data, where available, please include data/forecasts from ongoing liquidations.	*Free text*
6	10(4)	Does the DGS in your jurisdiction have full control and access to the DGS *ex ante* funds?	*[Yes/No]*
7	10(4)	If no, because the DGS needs to request access to the funds from another authority or any other reason, how is it ensured that funds can be accessed early enough for a timely payout?	*Free text*
8	2(12)	Is the definition of available financial means specified further in your jurisdiction, beyond the definition included in Article 2(12) of the DGSD? If yes, please outline the additional provisions in your jurisdiction and which concrete funds are included.	*Free text*
Additional comments		*Free text*	

Alternative funding arrangements			
Question number	**DGSD article number**	**Question**	**Answer**
1	10(9)	Are alternative funding arrangements, as per Article 10(9), in place in your Member State?	*[Yes/No]*
2	10(9)	If yes, what is the nature and status of these alternative funding arrangements? Are there any costs involved to maintain these alternative funding measures?	*[Formally agreed credit line from the state, formally agreed credit line from central bank, commercial agreement with private banks, formally agreed lending arrangements with other DGSs, other (please specify)]*
3	10(9)	Have alternative arrangements in line with Article 10(9) been used in your jurisdiction in a payout since the implementation of the revised DGSD?	*[Yes/No]*
4	10(9)	If the answer to the question above is 'yes', please explain what these arrangements were.	*Free text*
Additional comments		*Free text*	

Extraordinary contributions			
Question number	**DGSD article number**	**Question**	**Answer**
1	10(8)	What are the arrangements in place to ensure that extraordinary contributions are raised and transferred to the DGS account sufficiently quickly and what is the envisaged timeline to obtain them?	*Free text*
2	10(8)	Do you have practical experience with payment of extraordinary contributions? If so, (i) how quickly did you manage to raise them; (ii) what was the % of the covered deposits of the *ex post* contributions and (iii) did you experience any difficulties?	*Free text*
Additional comments		*Free text*	

Failure-prevention measures			
Question number	**DGSD article number**	**Question**	**Answer**
1	11(3)	Is the use of alternative measures as per Article 11(3) of the DGSD allowed in your jurisdiction?	*[Yes/No]*
2	11(3)	If yes, how is it ensured that the alternative measures are consistent with the orderly winding-up proceedings in the banking sector?	*Free text*
3	11(3)	Have alternative measures in line with Article 11(3) been used in your Member State since the implementation of the revised DGSD?	*[Yes/No]*
4	11(3)	If alternative measures in line with Article 11(3) have been used in your Member State following the implementation of the revised DGSD, please describe what they were and how the measures taken complied with Article 11(3) of the DGSD.	*Free text*
Additional comments		*Free text*	

Investment strategy			
Question number	**DGSD article number**	**Question**	**Answer**
1	10(7)	Does your DGS have an investment strategy in place?	*[Yes/No]*
2	10(7)	What is the investment strategy based on?	*[National legislation/DGS or other authority's established and explicit policy/other (please specify)]*
3	10(7)	Explain who decides on the investment strategy and how the investment strategy was decided, i.e. in terms of engagement with relevant stakeholders, internal governance, etc.?	*Free text*
4	10(7)	How does your DGS ensure that funds are invested in low-risk assets?	*Free text*
5	10(7)	How does your DGS ensure that funds are invested in a sufficiently diversified manner? Which are the criteria?	*Free text*
Additional comments		*Free text*	

Payment commitments			
Question number	**DGSD article number**	**Question**	**Answer**
1	10(3)	Are payment commitments allowed in your jurisdiction? If yes, up to what percentage?	*Free text*
2	10(3)	Does your DGS currently have payment commitments? If yes, up to what percentage?	*Free text*
3	10(3)	If yes, please outline the assets you accept as collateral (e.g. cash, treasury bills, IFI bonds etc.)	*Free text*
4	10(3)	How are the payment commitments secured?	*Free text*
5	10(3)	Who administers the payment commitment collateral?	*Free text*
Additional comments		*Free text*	

Payout process (use of failed institution's assets)			
Question number	**DGSD article number**	**Question**	**Answer**
5	8(1)	Does the legislation in your Member State provide for a possibility or legal requirement of a payout using the failed institution's assets?	*[Yes/No]*
6	8(1)	If the answer to question F5 is 'yes', please outline which authority is responsible for the decision to use this option or requirement, in what circumstances the tool can be/has been used and what is assessed when deciding whether to use this possibility? Please also describe your specific experience if you have used this option/would have liked to use this option in specific circumstances encountered during the payout?	*Free text*
7	8(1)	If the answer to question F5 is 'yes', how is it ensured that such a payout does not undermine the creditor hierarchy?	*Free text*

The impact of the introduction of the DGS risk-based method as per the EBA guidelines on business models of the DGS-affiliated institutions[30]		
Question number	**Question**	**Answer**
1	Did the DGS in your Member State collect risk-based contributions prior to the implementation of the revised DGSD?	*[Yes/No]*
2	Have you observed any discernible impact on the institutions changing or adapting their business models following the introduction of the risk-based method as outlined in the EBA guidelines? If 'yes', please answer questions (a) and (b). If 'no' please continue to question 3.	*[Yes/No]*
	a. How did the introduction of DGS risk-based methods affect business models of the affiliated institutions?	*Free text*
	b. How did these business models change or adapt to the new risk-based method?	*Free text*
3	In your view, does the risk-based method as per the EBA guidelines adequately proxy the commercial risk of the affiliated institutions? Commercial risk is to be understood in a broad sense, as the riskiness of the institution. If 'no', please explain why.	*Free text*
4	In your view, are there business models that are more affected by the introduction of the risk-based contributions than others? If yes, please describe which business models are affected disproportionally, and why.	*Free text*
5	If you consider that in your Member State some business models are impacted disproportionally, what are the key factors driving potentially different impacts on different business models?	*Free text*
6	Do you have any other comments on the link between risk-based contributions and the risk profile of business models? If yes, please explain.	*Free text*
Additional comments	*Free text*	

Contributions			
Question Number	**DGSD Article number**	**Question**	**Answer**
1	10(1)	Do branches of institutions from third countries (i.e. non-EU countries) contribute to your DGS fund?	*[Yes/No – they are exempted/not applicable because there are no third-country branches affiliated to the DGS in my jurisdiction]*
2	13(1)	If yes, is the method used to calculate their contributions different? If so, please explain why this is the case.	*Free text*
3	13(2)	If yes, briefly describe, where applicable, how the method used to calculate their contributions differs from the method applicable to other institutions affiliated to the DGS, including what indicators used are different.	*Free text*
4	13(2)	If yes, are the indicator values assessed on a solo or on a consolidated basis, or are they estimates?	*[Solo basis/consolidated basis/estimates/not applicable]*
Additional comments		*Free text*	

[30] Survey for the purpose of the qualitative assessment.

Number of third-country branches, their DGS contributions, and the amounts of covered deposits they hold			
Question Number	**Question**	**Branches of third-country credit institutions in your jurisdiction**	**Branches of credit institutions from your Member State in the UK***
1	Number of:	*[Number]*	*[Number]*
2	Volume of covered deposits held by:	*[In thousands, local currency]*	*[In thousands, local currency]*
3	Total annual DGS contributions from:	*[In thousands, local currency]*	*[In thousands, local currency]*
4	Total annual DGS contributions from all entities affiliated to the DGS	*[In thousands, local currency]*	
Additional comments (optional)		*Free text*	
*** UK authorities are be asked to provide information on branches of UK credit institutions in the EEA**			

Reporting of data				
Question Number	**DGSD Article number**	**Question**	**Answer**	**Question Number**
	10(10)		Is the following data collected in your jurisdiction and at what frequency?	Which authority collects the data?
1	10(10)	Covered deposits	*[Yes, annually/Yes, semi-annually/Yes, quarterly/Yes, monthly/Not collected]*	*[DGS/DGS designated authority/competent authority/resolution authority/other (please specify)]*
2	10(10)	Eligible deposits	*[Yes, annually/Yes, semi-annually/Yes, quarterly/Yes, monthly/Not collected]*	*[DGS/DGS designated authority/competent authority/resolution authority/other (please specify)]*
3	10(10)	Non-eligible deposits	*[Yes, annually/Yes, semi-annually/Yes, quarterly/Yes, monthly/Not collected]*	*[DGS/DGS designated authority/competent authority/resolution authority/other (please specify)]*
4	10(10)	Total deposits	*[Yes, annually/Yes, semi-annually/Yes, quarterly/Yes, monthly/Not collected]*	*[DGS/DGS designated authority/competent authority/resolution authority/other (please specify)]*
5	10(10)	In your view, has the publication of covered deposits and *ex ante* funds data by the EBA had any impact in your jurisdiction? If yes, please provide examples.	*Free text*	
Additional comments		*Free text*		

EUROPEAN BANKING AUTHORITY

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