

EFDI Position Paper

Payouts with cross-border implications:

- **Passporting and cooperation between DGSs**
- **Possibility for Home DGSs to compensate directly depositors at branches in another EEA Member State**

VERSION MANAGEMENT¹

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Executive Summary

The increase in the use of cross border services in banking, recent experiences of real payout cases, and issues put forward by practitioners and authorities have led to more attention being paid to the reimbursement of depositors in other jurisdictions.

The current Directive on deposit guarantee schemes ("DGSD") sets forth the coordination between deposit guarantee schemes ("DGSs") within the EU. One of its main rules is the obligation that depositors at branches set up by credit institutions in another Member State are repaid by a DGS in the host Member State, on behalf and in accordance with the instructions of the Home DGS.

However, current provisions do not seem to capture all the challenges that cross border operations can pose for DGSs in a payout, as a number of real cases have proved, such as (i) the reimbursement of passported depositors, which is not contemplated in the DGSD, or (ii) the fact that the reimbursement by the Host brings complexities to the process (transfer of information and funds from Home to Host DGS, need of coordination activities, divergences between the scope of data that is available to the Home DGS and the data requirements of the Host DGS for their payment mechanism) which in certain circumstances can delay the whole process and not be in the benefit of depositors.

The EU Commission presented in April 2023 a proposal for a review of the CMDI framework, including a revised DGSD. This proposal, still under discussion, incorporates some provisions for these scenarios:

1. The default solution for the repayment of depositors at branches in host Member States would be the reimbursement by the Host DGS, as set forth in the current DGSD.
2. However, the Home DGS may decide to repay depositors at branches directly where all of the following applies: (i) the administrative burden and cost of such repayment is lower than the repayment by the Host DGS, and (ii) the Home DGS ensures that depositors are not worse off than if the reimbursement had been performed by the Host DGS.
3. Member States shall ensure that the Host DGS may, subject to an agreement with the Home DGS, act as the point of contact for depositors at credit institutions that exercise the freedom to provide services (passporting).
4. Home DGSs and Host DGSs should have an agreement in place on the payout terms and conditions, including on the compensation of any costs incurred, the contact point for passported depositors, the timeline and the payment method.
5. The EBA shall issue Guidelines on the roles of Home and Host DGSs, containing a list of circumstances and conditions under which the Home DGS should be able to decide to reimburse depositors directly at branches in another Member State.

In relation to proposals on passporting, EFDI members express the following views:

- a) The inclusion in the COM proposal of the possibility of involving the Host DGS in a compensation case of passported depositors is a positive and useful step forward in the area of depositors' compensation and cooperation among DGSs. However, EFDI members identified a number of aspects that need to be taken into account when the

CMDI proposal will be discussed further, and formulated concrete suggestions for improving the amendments to the DGSD.

- b) The provisions should provide sufficient flexibility regarding potential home host cooperation for passported depositors, in order to consider the circumstances of the case at hand. Both in terms of whether or not the Host DGS should be involved, where it should be up to a Home DGS to make the request and for the Host DGS to decide whether to respond positively or not, as to what extent a Host DGS could be involved.
- c) In order to address these concerns, the proposed DGSD text could be amended as follows: *"2a. Member States shall ensure that a DGS of a host Member State may **voluntarily decide, on the request of and** subject to an agreement with a DGS of a home Member State, to **provide support in a payout event with respect to depositors at credit institutions that exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU, and shall be compensated for the costs incurred.**"*
- d) Information exchange between the DGSs and preparation are key. DGSs should inform each other about significant changes which they are aware of in the number of deposits and depositors via passported services, in case such information is available to the DGS. And, based on this, DGSs should initiate the necessary preparatory steps. To facilitate this exchange of information, the issue of the identification of such deposits should be resolved.
- e) The COM could also consider whether it would be convenient to extend the possibility for the Home and Host DGS to collaborate, on a voluntary basis for the latter and subject to a request from the Home DGS, also in relation with depositors living in the Host Member State even if they have not been acquired by the credit institution by means of passporting.

In relation to the proposals regarding the direct compensation by the Home DGS of depositors at branches:

- a) In general, EFDI members would consider making use of the option to compensate directly depositors at branches in another Member State in certain situations. It can be argued that, in some instances, direct compensation could imply simpler procedures and higher speed in the completion of the reimbursement process, which result in a benefit for depositors.
- b) Considering the function of the deposit guarantee (protection of depositors and reinforcement of financial stability), EFDI members believe that the main criterion to allow Home DGSs to compensate Host depositors directly should be that depositors should not be worse off.
- c) The condition of lower costs and administrative burden should be deleted: among other justifications, even if the costs are higher, the Home DGS may have good reasons to compensate Host depositors directly (in particular, a prompter and more efficient reimbursement of depositors), and only the Home DGS should be entitled to decide what costs are acceptable to compensate Host depositors, as it is the case of other business decisions as the level of salaries, IT investment, etc.
- d) EFDI members demand flexibility for the Home DGSs to decide about compensating directly Host depositors. Whether direct compensation is preferred, depends on the specific features of the payout event and the circumstances at that moment in time.
- e) Given potential challenges in relation to communication with Host depositors (for example due to language barriers) and the interpretation of local law, EFDI members consider that some form of cooperation with the Host DGS might be beneficial in case

the Home DGS decides to compensate depositors directly. In such a case, the DGSs could agree that the Host DGS would still be involved in the reimbursement of Host depositors. Also here, there should be room for flexibility and adaptability to the specific situation.

- f) EFDI members are of the view that the Home DGS should inform (and, if so needed, involve) the Host DGS immediately once it has made the decision to reimburse Host depositors directly.
- g) EFDI members agree that the EBA Guidelines could give further explanation to how DGSs should assess whether the condition of "Host depositors not worse off" is met, as provided in the proposal (the Guidelines could list and elaborate on elements to be taken into account by the Home DGS to make its assessment).
- h) Since EFDI members oppose including the criterion of the lower administrative burden and cost in the level 1 text, they do not see a need to include this aspect in the Guidelines.

Introduction

The increase in the use of cross border services in banking, recent experiences of real payout cases, and issues put forward by practitioners and authorities have led to more attention being paid to the reimbursement of depositors in other jurisdictions.

Directive 2014/49/EU on deposit guarantee schemes² (“DGSD”) sets forth the coordination between deposit guarantee schemes (“DGSs”) within the EU. One of its main rules is the obligation that depositors at branches set up by credit institutions in another Member State are repaid by a DGS in the host Member State, on behalf and in accordance with the instructions of the Home DGS.

However, current provisions do not seem to capture all the challenges that cross border operations can pose for DGSs in a payout.

Firstly, the growing use by credit institutions authorised in a member state of the provision to freely offer services in another member state without further authorization (“passport services”) has brought to the table issues that, maybe, had previously been overlooked in EU regulation. More precisely, the provisions on cross-border cooperation between DGSs set forth by the DGSD do not mention passported services³, while some DGSs have indicated that this practice could increase the complexity and challenges for a prompt reimbursement.

Secondly, a number of practitioners defend that, under certain circumstances, a direct compensation by the Home DGS may be more efficient than the currently required participation of the Host DGSs.

Real payout cases have also proved (some of) these challenges, and the EU Commission (“COM”) has incorporated in its bank Crisis Management and Depositor Insurance (CMDI) proposal for a revised DGSD⁴ a number of new specific provisions on payouts with cross border connotations. Those provisions adopt, in part, recommendations presented by the EBA in an Opinion issued in 2019⁵. This Opinion includes the contribution of a number of EFDI members, which participated in its development through the TFDGS.

In brief, the EBA recommendations and conclusions were:

1. Possibility for the Home DGS to reimburse depositors at branches in Host Member States:
 - a. The requirement that the payout is performed by the Host DGS on behalf of the Home DGS should be maintained as the default method.
 - b. However, the DGSD should be amended to provide restricted flexibility for the Home DGS to repay depositors at branches in Host Member States directly, in certain circumstances and under certain conditions.
 - c. The overarching condition for that flexibility should be that depositors are repaid in a way that is at least as easy as under the default method.
 - d. Although not a recommendation in itself, the EBA advocated that, also if the Home DGS is to compensate depositors directly, both DGSs should be in close contact and Host DGS may be part of the process (for instance, the Host DGS

² [Directive 2014/49 on Deposit Guarantee Schemes](#)

³ Although the DGSD does prescribe that If a credit institution operates directly in another Member State without having established branches, the information shall be provided in the language that was chosen by the depositor when the account was opened (Article 8(7)(b)).

⁴ [EU Commission proposal for a revised DGSD](#)

⁵ [EBA Opinion on DGS Payouts.pdf \(europa.eu\)](#)

could provide assistance to the Home DGS with the communication with depositors or translations).

- e. The EBA highlighted that it is well placed to develop the list of circumstances and conditions under which such restricted flexibility should be available, and invited the COM to confer the corresponding mandates to the EBA.
2. Passported services without having established branches:
 - a. There is a need to provide further clarity in the DGSD in relation to the treatment of depositors using passported services.
 - b. This issue is complex, and any option to introduce the same treatment of depositors using passported services and depositors when there is a branch would entail considerations of treatments of other types of depositors too.
 - c. The EBA is best placed to consider this topic further before deciding how best to treat such cases.

The proposal of the COM is, at the time of publication of this paper, still being discussed in the EU Council and Parliament. This proposal reaffirms explicitly (although it is already an obligation for DGSs) that depositors located in Member States where their credit institutions exercise the freedom to provide services are included in the protection of DGSs. It also captures the substance of the recommendations presented by the EBA, but also incorporates additional provisions:

1. As proposed by the EBA, the default solution for the repayment of depositors at branches in host Member States is the reimbursement by the Host DGS.
2. The Home DGS may decide to repay depositors at branches directly where all of the following applies: (i) the administrative burden and cost of such repayment is lower than the repayment by the Host DGS, and (ii) the Home DGS ensures that depositors are not worse off than if the reimbursement had been performed by the Host DGS.

The first of these conditions (lower administrative burden and cost) was not part of the recommendations of the EBA, but was added by the COM in its proposal.

3. Member States shall ensure that the Host DGS may, subject to an agreement with the Home DGS, act as the point of contact for depositors at credit institutions that exercise the freedom to provide services.

As in the previous paragraph, the COM went a step forward compared to the EBA, which in its Opinion had not set a precise recommendation. Subject to further check with the COM, the proposal does not appear to set a new obligation for DGSs, but rather ensures that the framework allows for a cooperation between DGSs also when a credit institution operates in another Member State by means of passporting.

4. Home DGSs and Host DGSs should have an agreement in place on the payout terms and conditions, including on the compensation of any costs incurred, the contact point for depositors, the timeline and the payment method.
5. The EBA shall issue Guidelines on the roles of Home and Host DGSs, containing a list of circumstances and conditions under which the Home DGS should be able to decide to reimburse depositors directly at branches in another Member State.

This paper presents the views of EFDI members on these topics and the conclusions that can be drawn from their analysis. It also incorporates recommendations that EU legislators may take into consideration in the discussions and negotiations on a revised DGSD.

Chapter 1: Methodology

In order to investigate its members' views on the CMDI proposals in relation to passported services and direct compensation by the Home DGS for branches, EFDI launched a survey in the Summer of 2023. This survey served as a basis for further analysis of and discussions about the CMDI proposals among EFDI members.

The survey contained several closed and open questions regarding:

- the member's views on the proposals presented by the EU COM,
- if they had any relevant real-life experiences,
- potential challenges and areas for collaboration during payout for passported deposits, and
- their willingness to consider direct compensation to depositors at branches in other Member States and potential benefits of doing so.

A total of 21 DGSs⁶ responded to the survey, among which:

- 18 DGSs from EU jurisdictions,
- 2 DGSs from EEA non-EU jurisdictions,
- 1 DGS from a non-EU/EEA jurisdiction.

The initial survey results were discussed by members of the EFDI Cross Border Working Group (CBWG) in September 2023. In February 2024, the CBWG discussed the analysis based on the survey results and the draft conclusions, and a revised draft was submitted in March 2024 to EFDI EU Committee for discussion. The final draft was submitted for the decision of the EU Committee on 13 May 2024.

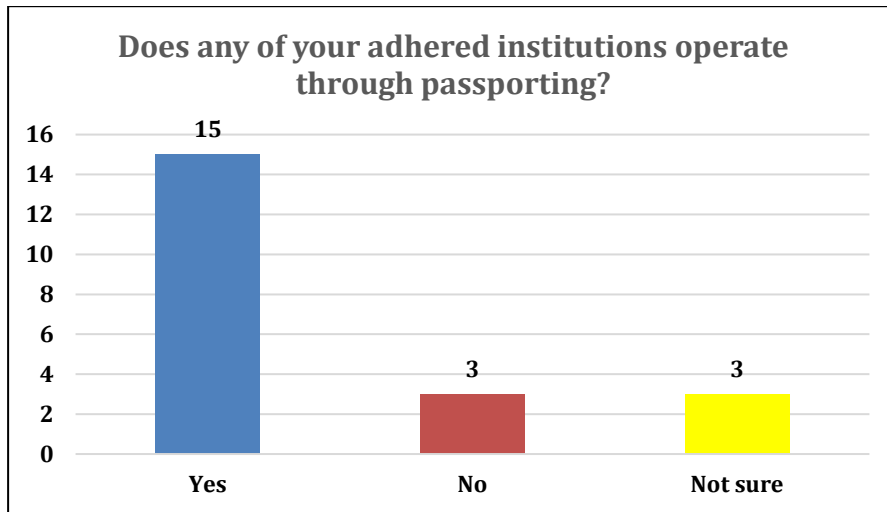
Chapter 2: Passporting and cooperation between DGSs

2.1 Main findings from the survey on passporting

2.1.1 Passported services is a widespread phenomenon

70% of the respondents to the survey reported that they have member institutions which operate through the freedom of services. Three respondents have had a DGS payout for one of those institutions since the recast DGSD.

⁶ Responding DGSs: BE, BU, CZ, DE-EdB, EL, ES, FI, FR, GI, IR, IT-FITD, LI, LT, LU, LV, NL, NO, PL, PO, RO, SE

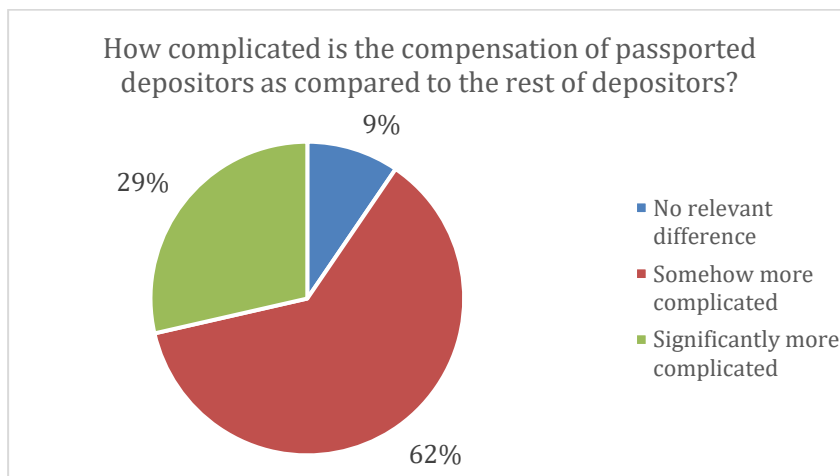


Responding DGSs provided their views on the reimbursement of depositors of credit institutions which operate under the freedom of services (“passporting depositors”) as well as on the terms of the proposal of the COM.

2.1.2 Challenges for the compensation of passported depositors

DGSs who experienced real-life cases with a cross border dimension were asked to report whether the compensation of passported depositors had been more complicated. The DGSs that did not have a real-life payout case with a cross border dimension were asked if they think the compensation of these depositors would be more complicated compared to the compensation of other depositors.

Although experience is limited (only 3 respondents report to have performed payouts with this type of depositors, see box 1 for a study of one of these cases), more than 90% of DGSs (19 out of 21) consider that compensating passported depositors involves particular challenges, with almost 30% stating that it is “significantly more complicated”.



The survey revealed several challenges in the compensation of passported depositors which make it more complicated than that of the rest of depositors. EFDI members tend to focus their attention on communication, including the contact with depositors and issues caused

by the use of different languages. At the same time, the understanding of legal provisions, usually focused on particular cases such as deceased depositors/inheritances or THBs, are an area of concern.

Issue	% DGSs
Preferred language of the depositor	89%
Differences in the legislation of the country of the depositor	79%
Contacting the depositors	74%
Payment method	53%
Other	26%

Box 1: Real experience with the compensation of depositors via passported services (the Netherlands, 2022)

On Friday 22 April 2022, Amsterdam Trade Bank (ATB) was declared bankrupt at its own request by the Amsterdam District Court. De Nederlandsche Bank (DNB), responsible for the DGS in the Netherlands, subsequently activated the DGS for ATB. At the time of the bankruptcy, ATB had over 23,000 active account holders; € 673 million of their deposits were covered by the Dutch DGS. Most of these account holders lived in the Netherlands, while more than 5,500 lived in Germany. ATB was active in Germany via passported services.

The payout to the depositors living in Germany revealed specific challenges during the payout process, in the area of operations, communications and applicable local law.

I. Operations

Depositors living in the Netherlands could logon to an online payout portal to provide the contra account to which DNB could transfer compensation. They could access the portal with their Dutch digital identity (DigiD). German customers of ATB do not have a Dutch DigiD. Instead, they could use a form to provide an account number where DNB could transfer the compensation. DNB sent letters in German with a form to these depositors on working day 1 after the DGS activation. The forms were also downloadable on the DNB website. Depositors could submit the form by post or online via an online Webform that was made available on the 3rd working day after the bankruptcy. The forms were then processed by DNB staff and the compensation disbursed through the DGS payout application. This process required manual handling by DGS staff. The case demonstrated the importance of expanding the DGS payout portal to include other login options so that account holders without DigiD also have access. In this way, less manual handling is required, resulting in a more efficient payout process. In 2021, DNB launched a tender for a digital identity verification service. This functionality was still under development at the time of ATB's bankruptcy.

II. Communications

On the day of activation of the DGS, on the request of DNB, the German private DGS published a brief statement on its website about the payout case, redirecting German ATB customers to the website of DNB.

DNB sent special, customized letters to the German depositors. This was possible because these depositors were identifiable in the failed bank's SCV file. Credit institutions in the Netherlands need to mark among others: (i) the country where the deposit is held, (ii) the address of the depositor including country, and (iii) if this is the case, the fact that the deposit is held in another Member State while no branches are established in that Member State and, if this is the case, the Member State and the language chosen by the depositor at the time of account opening (this is a specific marking for passported services).

These customized letters were sent in the German language. Approximately 100 depositors residing outside of the Netherlands and Germany received letters in English. All communication, such as press releases and the website pages for account holders, were provided in three languages: Dutch, German and English. After payout, the formal personalized decision letters were sent in Dutch, with either a German or English cover letter providing the translation of the decision letter. English translation was done inhouse and took about one working day. German translation was performed by an external service provider and took usually approximately five working days. This posed some challenges. In addition, it was challenging to find and make available sufficient call center employees that were fluent in German.

III. Applicable local law

DNB dedicated special attention to DGS compensation for those entitled to the deposits of deceased customers. In particular, German inheritance law governed who was entitled to the balances in relevant accounts of deceased German customers. This posed challenges on the analysis of those cases. DNB consulted the German private DGS on an informal basis to discuss the interpretation of the German inheritance law.

2.2 Discussion of the CMDI proposal regarding passporting

EFDI members welcome the inclusion in the COM proposal of the possibility of cooperation between DGSs in the compensation of passported depositors. However, they also identified a number of aspects that need to be taken into account when the CMDI proposal will be discussed further, and formulated concrete suggestions for improving the amendments to the DGSD.

2.2.1. Exploring the need to amend the DGSD

Responding DGSs are open to the possibility to have some level of involvement of the Host DGS in case where passported depositors need to be compensated, if the situation requires so and on the request of the Home DGS. Similarly, the support from the Host DGS should be provided by the latter on a voluntary basis.

Generally speaking, the involvement of the Host DGS should be in the benefit of depositors and should not create unneeded complexities and administrative burden in the compensation process.

EFDI members discussed whether or not it is necessary to include in the DGSD the option that the Host DGS acts as a point of contact on behalf of the Home DGS. An argument against including it in the DGSD is that the possibility already exists, as nothing prevents DGSs to set bilateral agreements or bilateral cooperations to that end. However, arguments for including it in the DGSD are that it provides more comfort to have some level of home-host cooperation for it the reimbursement of passported deposits and it provides a basis for making further agreements and preparations between DGSs.

2.2.2 Exploration of what could fall under "act as the point of contact"

EFDI members consider that contacting depositors, posting information for depositors and the public, and assisting in the translation of documentation could be understood as to be in scope of the expression "acting as the point of contact".

However, DGSs also discussed that, potentially, other activities could also fall under that expression. In addition, they discussed whether acting as a point of contact should be done on either a more reactive basis (i.e. the Home DGS provides basic information to the Host DGS, which stands ready to answer any questions of the Host depositors), or whether this should be done on a more proactive basis (i.e. the Host DGS opens a specific webpage, opens a call center, or sends letters on behalf of the Home DGS).

Some DGSs understood that also "assisting the Home DGS in the interpretation of legal provisions" and for around a third of respondents even "compensating depositors on behalf of the Home DGS" could fall under "point of contact".

What actions could be included under the expression "act as the point of contact"?	
Posting information on behalf of the Home DGS	95%
Contacting the depositor	90%
Assisting the Home in the translation of documentation	81%
Assisting the Home in the interpretation of legal provisions	52%
Compensating depositors on behalf of the Home DGS	38%
Other	10%

A recent real-life case (see box 1) showed that three types of challenges were experienced with the repayment of depositors via passported services, namely: operations, communication, and applicable local law. These challenges could potentially be (partially) resolved by some level of involvement of the Host DGS.

Firstly, the challenges with the *communication*, in particular the language barriers, could be resolved when the Host DGS acts as point of contact. It should be noted that, in the case described in box 1, the level of involvement of the Host DGS was not a point of consideration at the time of the payout event, because of several reasons. Firstly, the DGS had time to prepare the communication in the German language in the run-up to the failure of the bank. In addition, the respective Host DGS was at the time of the payout occupied with another payout event. Also, the relatively small presence of the failed institution in the Host country led to zero media attention or questions from depositors in Germany. In this case, the level of cooperation between Home and Host DGS, where in the area of communications, the Host DGS placed a statement on its website, was sufficient.

To conclude, EFDI members are of the view that different activities could fall under "act as the point of contact". The survey showed that expectations from DGSs differ and the circumstances of a specific payout case should also be taken into account.

In order to prevent disruptions as a consequence of those different expectations, DGSs could engage in going concern to agree on the terms of the support that the Host DGS, on a

voluntary basis, would provide to the Home DGS if the latter decides to request the assistance of the Host DGS in a payout with passported depositors.

2.2.3 Potential role of the Host DGS

EFDI members were also asked to precise what actions, in principle, they would be requesting as "Home DGS", from "Host DGSs".

As a "Home" DGS, what would you in principle be requiring from the "Host" DGS?	
Posting information on behalf of the Home DGS on the "Host" DGS website and potentially media or other channels	76%
Assisting the Home DGS in the translation of documentation	71%
Assisting the Home DGS in the interpretation of legal provisions	52%
Contacting the depositor and submitting communications on behalf of the Home DGS	48%
Compensating depositors on behalf of the Home DGS	33%
Other	10%

DGSs considered that, in principle, they might request the cooperation of partner DGSs in informing depositors and public, as well as assistance in the translation of documents.

DGSs also discussed other activities, as assisting the Home DGS in the interpretation of legal provisions or compensating depositors on behalf of the Home DGS.

In general, DGSs want to preserve the primary role of the Home DGS in the compensation of passported depositors, but also stand ready to cooperate as Host DGSs.

Notwithstanding this, a significant number of DGSs have not made an ex ante definite decision on this. Based on the survey, this is particularly the case for contacting depositors (38% report not to have decided whether they would request this action to be carried out by the Host DGS), but also for the assistance in the interpretation of legal provisions and in the compensation of depositors itself (29%). This suggests that such decision would be made, at least by several DGSs, on a case by case basis.

Some of these activities can be recognized in the challenges described in box 1 above.

2.2.4 Benefits and disadvantages of support by the Host DGS

As a whole, EFDI members are of the view that bilateral cooperation for the compensation of passported services should not be made a mandatory requirement (which seems to be also the approach followed by the COM in its proposal for a review of the CMDI).

EFDI members promote cooperation between DGSs and acknowledge its substantial benefits, also in order to address the challenges posed in the reimbursement of passported depositors. As previously discussed, support by the Host DGS in the contact and communication with host depositors can be particularly helpful for a Home DGS.

Notwithstanding this, and as helpful as it can be, this does not imply that the support from the Host DGS comes without complexities and consumption of resources, as developed in the next section of this paper. Also, it is worth mentioning that while the number of branches stays generally limited for each credit institution, the number of Member States in which credit institutions are active via passported services can be very high (up to the whole European Union, as has been reported by certain DGSs in the abovementioned survey). For the Home DGS, managing simultaneous multiple bilateral cooperations, while being busy reimbursing domestic depositors, could be as if it was handling as many crises at the same time.

In any case, there is no solution such as the support of the Host DGS when the Home DGS has to handle cross-border compensations outside the EU. Then, all EU DGSs must also rely on their own resources and build their systems, to be able to cope with cross-border compensations by themselves.

Nevertheless, whether or not there is merit in asking support of the Host DGS in the actual reimbursement of host depositors, strongly depends on the specific circumstances and on the payout methods applied by both DGSs. The Home DGSs could balance the benefits expected from the involvement of the Host DGS with the possible higher procedural complexities and/or administrative burden which such involvement usually implies.

Therefore, EFDI members are of the view that the provision in the DGSD should leave room for flexibility for the Home DGS to decide whether to ask a Host DGS to provide any assistance in the payout case.

At the same time, cooperation from the Host should be on a voluntary basis. This allows for sufficient flexibility on the Host DGS' side, given any circumstances. For example, the Host DGS might already be occupied with another payout or an intervention on its own, or another ongoing H2C cooperation, or a cyberattack etc. Also, the availability of sufficient and/or specific human resources might play a role in the Host DGSs availability and willingness to contribute. Finally, also reputational aspects might influence the Host DGSs willingness to cooperate in the case.

To sum up, EFDI members are committed to a field of bilateral cooperation for the reimbursement of passported depositors, which should remain open and can then be defined on a case-by-case basis between the Home DGS and the Host DGS.

Recommendations:

*a) DGSs recommend that the legislation allows for sufficient flexibility to consider the circumstances of the case at hand. In addition, it should primarily be up to a Home DGS to decide whether and to what extent a Host DGS could be requested to be involved. To an involvement of a Host DGS, it is necessary to conclude a corresponding cooperation agreement, and it should be again up to a Home DGS to identify in time a situation in which, in potential event of a payout, it would be appropriate to involve a Host DGS, under this latter's one consent. This could be done by amending the proposed level 1 text as follows: "2a. Member States shall ensure that a DGS of a host Member State may **voluntarily decide, on the request of and** subject to an agreement with a DGS of a home Member State, to **provide support in a payout event with respect to** depositors at credit institutions that exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU, and shall be compensated for the costs incurred."*

b) Information exchange between the DGSs and preparation are key. If a Home DGS determines that a certain credit institution from its country acquires a significant number of depositors from another country through passporting, such

Home DGS should ensure that potential Host DGS partners are informed and necessary preparatory steps are taken for the possible involvement of a Host DGS as a point of contact (for example in the cooperation agreements and the performance of stress tests between DGSs). In addition, DGSs should inform each other about significant changes they are aware of in the number of deposits and depositors via passported services in case such information is available to the DGS (see next section).

2.2.5 Challenges related to the identification of depositors onboarded through passporting

It is crucial that DGSs should inform each other about (significant changes in) the number of depositors onboarded on the basis of passporting in another Member State, in order to initiate the necessary preparatory steps for the potential involvement of the Host DGS. However, for most DGSs, it is difficult to identify depositors who have been onboarded based on passporting. Most SCV files do not contain any data on the method of onboarding and effectively it is possible to distinguish only between domestic and foreign depositors (and regarding foreign depositors, a distinction can further be made between those who have a delivery address in the Home DGS's country and those abroad). In fact, most credit institutions do not make this distinction in their administrations. Credit institutions usually do not "mark" passported depositors or "the language that was agreed by the depositor and the credit institution when the account was opened" in their customer files.

One DGS explained that it has agreed with its member institutions to apply a pragmatic solution for such cases in the SCV file. In this approach, the country of residence in combination with whether or not the credit institution is active via passported services in a certain Member State, are decisive for including a specific marking for passported services.

The issues for the compensation of passported depositors and depositors who were not acquired by the credit institution through passporting but are residents in another Member State are, to some extent, comparable. The COM could also consider whether it would be convenient to extend the possibility for the Home and Host DGS to collaborate, on a voluntary basis for the latter and subject to a request from the Host DGS, also in relation with depositors living in the Host Member State even if they have not been acquired by the credit institution by means of passporting.

Recommendation:

a) in case the CMDI amendment to the DGSD would be adopted, further analysis needs to be done on how to address the issue of a swift and correct identification of passported deposits, for the benefit of the exchange of information about such deposits by DGSs, with the ultimate goal the quick and correct compensation of such deposits. Such analysis could be performed by EFDI and / or the EBA.

2.3 Conclusions regarding passporting

Based on the survey and the discussions by the DGS within EFDI, the following can be concluded:

- a) The inclusion in the COM proposal of the possibility of involving the Host DGS in a compensation case of passported depositors is a positive and useful step forward in the area of depositors' compensation and cooperation among DGSs. However, EFDI members identified a number of aspects that need to be taken into account when the CMDI proposal will be discussed further, and formulated concrete suggestions for improving the amendments to the DGSD.

- b) The provisions should provide sufficient flexibility regarding potential home host cooperation for passported depositors, in order to consider the circumstances of the case at hand. Both in terms of whether or not the Host DGS should be involved, where it should be up to a Home DGS to make the request and for the Host DGS to decide whether to respond positively or not, as to what extent a Host DGS could be involved.
- c) In order to address these concerns, the proposed DGSD text could be amended as follows: "2a. Member States shall ensure that a DGS of a host Member State may **voluntarily decide, on the request of and** subject to an agreement with a DGS of a home Member State, to **provide support in a payout event with respect to depositors at credit institutions that exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU, and shall be compensated for the costs incurred.**"
- d) Information exchange between the DGSs and preparation are key. DGSs should inform each other about significant changes which they are aware of in the number of deposits and depositors via passported services, in case such information is available to the DGS. And, based on this, DGSs should initiate the necessary preparatory steps. To facilitate this exchange of information, the issue of the identification of such deposits should be resolved.
- e) The COM could also consider whether it would be convenient to extend the possibility for the Home and Host DGS to collaborate, on a voluntary basis for the latter and subject to a request from the Home DGS, also in relation with depositors living in the Host Member State even if they have not been acquired by the credit institution by means of passporting.

Chapter 3: Possibility for Home DGSs to compensate directly depositors at branches in another EEA MS

3.1 Main Findings from the survey on direct compensation to depositors at branches in another Member State

The survey asked whether DGSs have real-life experience with cross border payouts and if they would you consider in future payouts making use of the provision contained in the COM proposal for a new DGSD (possibility for the Home DGS to compensate directly Host depositors).

Only one of the 21 responding DGSs reported to have had a reimbursement case with depositors at branches in another Member State. Responses from this DGS do not show significant deviations with the rest of responding DGSs in the survey.

All responding DGSs would consider making use of the provision to directly compensate depositors at branches in another Member State contained in the proposal for a new DGSD. The survey investigated what could be the underlying arguments for a Home DGS to consider the direct reimbursement of Host depositors.

The most frequently mentioned reasons are a “simpler procedure to perform the payout” and the “potential higher speed in completing the reimbursement” (20 and 19 respondents respectively out of 21), while a majority of respondents (15 out of 21) also replied that they would expect “lower cost for the Home DGS”.

Reasons for the Home DGS to compensate directly	
Simpler procedure to perform the payout	95%
Potential higher speed in completing reimbursement	90%
Lower cost for the Home DGS	71%
Home DGS not expected to have problems in communicating with depositors	52%
Home DGS not expected to have problems in interpreting legal provision of the Host MS	29%
Other	5%

3.2 Discussion of the CMDI proposal regarding branches

3.2.1. Potential challenges related to home-host cooperation

The DGSs discussed that a payout by the Host DGS on behalf of the Home DGS (“home-host cooperation”) is more complex than a pure domestic payout, because additional steps in the process have to be made, and more stakeholders need to be involved. Think of the generation of a Payout Instructions File (PIF) for the Host DGS(s), the transfer of the PIF and the payout funds to the Host DGS, the continuous reporting on the reimbursement process through additional PIFs and Payment Status Reports (PSRs), the collaboration on communication tools to ensure consistent messaging and the overall cooperation and coordination between the DGSs.

Although there is limited experience with real life cross border cooperation, these additional complexities are confirmed by the stress tests that were performed by the DGSs. The higher level of complexity is recognized in the DGSD by the fact that DGSs may defer repayment if the amount to be repaid is to be paid out by the DGS of the host Member State (Article 8(5)(e) DGSD).

The DGSs discussed that simpler procedures often mean simpler payouts, which likely lead to fewer errors. This is in the interest of both the depositors and the DGS. The same applies to potential higher speed in completing the reimbursement. This is in everyone's interest and, particularly, it is in the benefit of depositors to have as little disruption in the access to their funds as possible. Therefore, DGSs are of the view that direct compensation by the Home DGS could be in the benefit for the depositor, which should be the main priority for the direct reimbursement by a Home DGS.

This is without prejudice to the view held by many DGSs that some form of collaboration from the Host DGS could still be beneficial for the payout process.

3.2.2. Elements to be part of the criteria to allow the Home DGS to directly compensate depositors at branches located in another Member State

In the discussions about the proposed amendments to the DGSD, the DGSs distinguished between (i) the reasons that would play a role for the Home DGS when considering and opting for the direct reimbursement of depositors at a branch in a Host Member State and (ii) the conditions or criteria under which the Home DGS might decide to do so that should be included in the applicable regulation.

Regarding the first aspect, the survey asked, as described above, the DGSs if certain elements are part of the reasons which make DGSs consider making use of the provision to reimburse host depositors directly. Examples of these elements are: a potential higher speed in completing the reimbursement, a simpler procedure to perform the payout, lower costs for the Home DGS, and that the Home DGS is not expected to have problems in communicating with depositors or with interpreting legal provisions of the Host Member State.

Regarding the second aspect, the survey asked DGS which elements should be part of the criteria to allow the Home DGS to compensate directly depositors at branches located in another Member State. 95% of the responding DGSs answered that the payment method used by the Home DGS should be suitable for cross-border transactions.

Actually, this was the only criterion shared by a majority of DGSs. Other explored options as potential criteria were a "small number of depositors at branches located in the jurisdiction of the Host DGS", lower costs for the Home DGS, or the Home DGS ability to communicate in the official language of the jurisdiction of the Host DGS. However, none of this was perceived by DGSs as a criterion to be included in the regulation, even though the Home DGS might take them into consideration when deciding whether to use the provision to compensate Host depositors directly.

The overarching theme that DGSs discussed based on these answers is that the direct reimbursement by the Home DGS should not lead to negative results for the Host depositors.

The DGSs are of the view that, while lower costs could potentially be one of the reasons for the Home DGS to opt for the direct reimbursement of Host depositors, it should not be considered as a criterion in legal texts for the direct reimbursement. The DGSs argue that (i) it is always the Home DGS who will bear the costs, regardless of whether the payout is performed by the Home or Host DGS, (ii) even if the costs are higher, the Home DGS may have good reasons to compensate Host depositors directly (in particular, a prompt and more efficient reimbursement of depositors), (iii) only the Home DGS should be entitled to decide what costs are acceptable to compensate Host depositors, as it is the case of other

business decisions as the level of salaries, IT investment, etc., (iv) it is difficult to estimate beforehand the costs of a payout, and DGSs should rather focus on the preparations of a potential payout in the run-up phase, and (v) the comparison between the administrative burden and costs of the potential payout by different DGSs is difficult since prices differ between Member States.

Therefore, DGSs are of the view that the condition that “the administrative burden and cost of such repayment is lower than the repayment by a DGS of the host Member State” should be removed from the proposed level 1 text.

3.2.3. Potential challenges in relation to communication with Host depositors and the interpretation of local law

The survey also showed that about half of the respondents see communication with depositors at branches in another Member State as a challenge. This is in line with the arguments in favour of the possibility to allow the Host DGS to act as a point of contact in case of passported services (see Chapter 2 of this paper).

One third of respondents mentioned as a reason to compensate depositors at branches in another Member State the expectation of *not* having issues with the interpretation of legal provisions in the Host Member State. In fact, for the majority of depositors to be reimbursed in a compensation case, the determination of the repayable amount would require no or very basic interpretation of the legal provisions in the Host Member State. Interpretation of the Host Member State’s legal provisions would only be required in very specific cases, such as in the case of deceased depositors or in case local legal provisions apply to specific local products. In that case, the Home DGS could still reimburse depositors directly, but ask some assistance from the Host DGS, as discussed in the previous chapter on passported services.

These last findings are consistent with comments given by several respondents, who indicate that some form of cooperation from the Host DGS might be beneficial also if the Home DGS decides to compensate depositors directly.

Accordingly, even if the Home DGSs decides to make use of the provision included in the COM proposal for a revised DGSD to compensate depositors directly, the Host could still participate in the payout process.

Under this scenario, it seems sensible that the involvement of the Host DGS follows a pattern not too different from that described in Chapter 2 for passported depositors (cooperation on a voluntary basis).

However, we should not forget that the default solution for the compensation of Host depositors under the COM proposal would still be the reimbursement by the Host DGS. If a Home DGS considers the possibility of making use of the option to compensate Host depositors directly, it should advise the Host DGS of this assessment and convey the decision to the Host DGS swiftly. This would prevent that resources of the Host DGS are inefficiently allocated to actions which in the end will be performed by the Home DGS and distracted from other functions which may need prioritisation at that moment (either for the role that the Host DGS may actually play in that payout or for other internal tasks).

In this respect, the preparation and coordination of DGSs in “business as usual” conditions, ahead of the failure of a credit institution, has proved to be essential. The Home DGS could make an internal assessment of the branches that its adhered institutions have in other Member States. If the features of a credit institution allow the Home DGS to estimate in advance that in a payout it would probably compensate depositors directly, the exchange of this information could be part of the preparation that the Home and Host DGSs carry out in business-as-usual situations.

Recommendations:

- a) *Given challenges in relation to communication with Host depositors (for example due to language barriers) and the interpretation of local law, DGSs recommend that some form of cooperation with the Host DGS might be beneficial in case the Home DGS decides to compensate depositors directly. In such a case, the DGSs could agree that the Host DGS would still be involved in the payout of Host depositors. Also here, there should be room for flexibility and adaptability to the specific situation.*
- b) *DGSs are of the view that the Home DGS should inform (and, if so needed, involve) the Host DGS immediately once it has made the decision to reimburse Host depositors directly.*

3.2.4 Issuance of EBA Guidelines to elaborate on the condition to allow the Home DGS to directly compensate depositors at branches located in another Member State

The proposal for a revised DGSD sets forth that the EBA shall issue Guidelines to determine whether the conditions under which the Home DGS can compensate depositors directly (namely, (i) the administrative burden and cost for the Home DGS is lower than when repayment is made by the Host DGS, and (ii) depositors are not worse off under the repayment of the Home DGS) are met.

Regarding the first aspect, DGSs are of the view that the criterion of the lower administrative burden and cost should be removed, as elaborated under section B above. Therefore, DGSs do not see a need to include it in the Guidelines.

Regarding the second aspect, DGSs underline that the Guidelines should list and elaborate on elements to be taken into account by the Home DGS to make its assessment, and should offer a support to help DGSs determining in which cases depositors would be worse off or not (the Guidelines could not address, through a direct determination of cases, the diversity and complexity of real-life situations). This could potentially be done by amending (or possibly repealing) the existing EBA Guidelines on cooperation agreements between deposit guarantee schemes (EBA/GL/2016/02).

Recommendations

- a) *EFDI members agree that the EBA issues guidelines on the elements to be taken into account by the Home DGS when making the determination about whether depositors would be worse off if it decides to reimburse directly depositors at branches located in another Member State.*
- b) *At the same time, EFDI members do not see any need to elaborate on the condition that the administrative burden and cost of such repayment should be lower, since EFDI members are against having such a condition in place.*

3.2 Conclusions on direct compensation to depositors at branches in another Member State

- a) In general, EFDI members would consider making use of the option to compensate directly depositors at branches in another Member State in certain situations. It can be argued that, in some instances, direct compensation could imply simpler procedures and higher speed in the completion of the reimbursement process, which result in a benefit for depositors.

- b) Considering the function of the deposit guarantee (protection of depositors and reinforcement of financial stability), EFDI members believe that the main criterion to allow Home DGSs to compensate Host depositors directly should be that depositors should not be worse off.
- c) The condition of lower costs and administrative burden should be deleted: among other justifications, even if the costs are higher, the Home DGS may have good reasons to compensate Host depositors directly (in particular, a prompt and more efficient reimbursement of depositors), and only the Home DGS should be entitled to decide what costs are acceptable to compensate Host depositors, as it is the case of other business decisions as the level of salaries, IT investment, etc.
- d) EFDI member demand flexibility for the Home DGS to decide about compensating directly Host depositors. Whether direct compensation is preferred, depends on the specific features of the payout event and the circumstances at that moment in time.
- e) Given potential challenges in relation to communication with Host depositors (for example due to language barriers) and the interpretation of local law, EFDI members consider that some form of cooperation with the Host DGS might be beneficial in case the Home DGS decides to compensate depositors directly. In such a case, the DGSs could agree that the Host DGS would still be involved in the reimbursement of Host depositors. Also here, there should be room for flexibility and adaptability to the specific situation.
- f) EFDI members are of the view that the Home DGS should inform (and, if so needed, involve) the Host DGS immediately once it has made the decision to reimburse Host depositors directly.
- g) DGSs agree that the EBA Guidelines could give further explanation to how DGSs should assess whether the condition of "Host depositors not worse off" is met, as provided in the proposal (the Guidelines could list and elaborate on elements to be taken into account by the Home DGS to make its assessment).
- h) Since they oppose including the criterion of the lower administrative burden and cost in the level 1 text, EFDI members do not see a need to include this aspect in the Guidelines.

Chapter 4: Overall conclusions regarding both proposals

The following conclusions can be drawn from the practitioners' views on the COM proposals regarding cross border reimbursement cases, for both branches and passported services:

- a) EFDI members express an interest and willingness to collaborate in payouts with cross border implications, both for branches as passported services.
- b) Possibilities incorporated in the CMDI proposal should help to promote and enhance cooperation, but need adjustments.
- c) Although the COM proposals seem to be contradictory (i.e. the possibility of less cooperation for branches, versus more cooperation for passported services), in fact they are complementary: the proposals would give DGSs the flexibility to apply the option best suitable for the situation.
- d) Flexibility is required: no over regulation (in the form of level 1 text and/or EBA Guidelines) because there should be room for adaptation to the specific circumstance of the payout case.
- e) The condition that depositors should not be worse off (which, as a consequence, reinforces financial stability) should be the only criterion of decision in legal texts.