EFDI. EUROPEAN FORUM OF DEPOSIT INSURERS

# DGS Coverage of Client Fund Deposits and Beneficiary Accounts

This is a policy paper and reflects the opinions of the DGSs which participated in the Surveys on the treatment of Client Funds and Beneficiary Accounts circulated among EFDI members on 11 September 2023 and 22 April 2024.

Prepared by: Mr Loucas Arminiotis (Deposit Guarantee Scheme - Cyprus). Reviewed by: i) Mrs Christiana Argyridou-Dimitriou (Deposit Guarantee Scheme - Cyprus) ii) Mrs Renata Kadlecova (Deposit Guarantee Scheme - Czech Republic), iii) Mr G. Peter Nagy (Deposit Guarantee Scheme - Hungary).

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European Forum of Deposit Insurers (EFDI), Rue de la Presse 4, 1000, Brussels (Belgium) Belgium 1000, Registration Number: BCE 0892.945.871. Email secretariat@efdi.eu/ Tel: +34 605 790 858

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## Introduction

The protection of deposits is an essential tool in mitigating against the risk of bank runs and a key policy feature for ensuring financial stability. Uncertainty with regard to depositors' funds could result in panic and potential adverse effects, not only in the bank which is facing financial difficulties, but also across the banking sector.

In view of the costs of the failure of a credit institution to the economy as a whole and its adverse impact on the confidence of depositors and, subsequently, financial stability, the European Parliament and the European Council published on 16 April 2014 Directive 2014/49/EU on deposit guarantee schemes ("DGSD")[2]. The DGSD which was transposed and put into force by all Member States by 16 April 2015 protects each depositor's funds maintained with credit institutions operating in Member States up to €100.000 provided that such deposits do not fall in the categories of deposits that are explicitly exempted from coverage in accordance with Article 5 of the DGSD.

In some instances, the protection of particular accounts is not clear to the DGS community and other stakeholders, which follow heterogeneous practices regarding their treatment. Such particular accounts relate to accounts maintained with credit institutions of which the beneficiary to the account is other than the person on whose name the account is maintained i.e. the account holder. In an attempt to promptly and accurately tackle the issue of repaying such accounts, Article 7(3) of the DGSD provides that "where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or a judicial authority makes a ruling referred to in point (8)(b) of Article 2(1). Where several persons are absolutely entitled, the share of each under the arrangements subject to which the sums are managed, shall be taken into account when the limit provided for in Article 6(1) is calculated."

This type of deposits relates to funds maintained at a person's account with a credit institution where the account holder is usually a legal person responsible to safeguard and manage such funds on behalf of one or multiple beneficiaries (i.e. the ultimate beneficiaries[3]). The account holder, the deposits of whom may be explicitly excluded from coverage by the DGS in accordance with Article 5 of the DGSD (such as a financial institution), is not entitled to sums held in the account and is responsible to repay such funds to the ultimate beneficiaries based on their contractual relationship terms.

[2] Link: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049
[3] Ultimate beneficiary: The person entitled to the funds in an account. This person could differ from the person on whose name the account is maintained (account holder).

Currently, the treatment of this type of accounts widely varies among different DGSs in the European Union mainly because the DGSD is inconspicuous regarding their treatment. The lack of harmonised interpretation and treatment of such deposits led to various discussions within the DGS community and has also been examined in the past by the European Banking Authority ("EBA") which dealt with this matter in two set of its Opinions analysed in the next Chapter of this paper.

In an attempt to clarify the treatment of these accounts, the European Commission's proposal for the amendment of the DGSD as part of the crisis management and deposit insurance (CMDI) legislative package that includes also amendments to Directive 2014/59/EU[4] and Regulation (EU) No 806/2014[5] defines Client Funds Deposits ("CFD") as "funds that account holders that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 deposit in the course of their business with a credit institution for the account of their clients". The CMDI[6] proposal suggests, inter alia, that the EBA should issue regulatory technical standards specifying the technical criteria for providing the repayment of CFD.

In order to accurately reflect the arguments for and against raised by different stakeholders and policy makers, this paper distinguishes these deposits into the following three categories:

i. Client Funds' Deposits ("CFD") as defined in the CMDI. In relation with the above definition, the account holder is a financial institution other than a credit institution (bank), such as an investment firm, a payment institution, an e-money institution or an asset management company.

ii. Client Beneficiary Accounts ("CBA"): Client accounts maintained at an institution of the financial sector that do not explicitly fit into the CMDI CFD definition as the account holders are not financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013, but, for instance a credit institution.

iii. Beneficiary Accounts ("BA"): All accounts of which the person on whose name the account is maintained (account holder) is not the person absolutely entitled to the sums held in an account (ultimate beneficiary) i.e. the funds to the account do not belong to the account holder but to the ultimate beneficiary. Several types of account holders may appear here, such as notaries, lawyers, real estate agencies or travel agencies. It is noted that in some accounts there might be more than one level of holders involved until identifying the ultimate beneficiary.

[4] Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive or BRRD).
[5] Regulation 806/2014/EU establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund (Single Resolution Mechanism Regulation or SRMR).
[6] The proposal for a Crisis Management and Deposit Insurance Framework by the European Commission on 18 April 2023. Link: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2250

The EBA first dealt with this issue in its Opinion on DGS eligibility, coverage and cooperation between DGSs issued in 2019[7] focussing on cases of client funds where the account holder is a financial institution[8], a credit institution or an investment firm[9]. It subsequently issued in 2021 the EBA Opinion on the treatment of Client Funds under the DGSD[10], dealing specifically with the matter of client fund deposits (CFD and CBA). In its Opinions, the EBA highlighted that in general it is unclear to the DGS whether the intention of the DGSD is to exclude ultimate beneficiaries from DGS coverage given the lack of articulation between Article 7(3) of the DGSD mentioned above (extension of coverage to beneficiaries), and Article 5(1)(a) of the DGSD, which explicitly excludes from DGS coverage deposits that credit institutions 'make on their own behalf and for their own account', without a similar wording in relation to deposits placed by other types of entities excluded from coverage, i.e. financial institutions and insurance companies.

The EBA argued that this type of accounts should be protected, applying what is called the "see-through approach" (provided that the ultimate beneficiaries are eligible depositors under the DGSD). A relevant recommendation was made in the EBA Opinion on the treatment of client funds under DGSD. Some stakeholders in favour of separately protecting beneficiaries in CFD and CBA support that a separate coverage for CFD and CBA should be introduced in order to limit the risk of failure for the account holder, to ensure consistency of beneficiaries' treatment irrespective of who the account holder is and to safeguard ultimate beneficiaries' deposits who are often unaware and have no say as per the institution at which their funds are placed. These stakeholders argue that CFD and CBA should not be linked to any other deposits those persons maintain with the credit institutions, and hence offered separate coverage. Some DGSs also propose that separate coverage is offered for each CFD and CBA with distinct account holders. On the contrary, the ineligibility of account holders already mentioned, as well as the fact that limited AML and identification checks are applied to CFD and CBA are given as arguments against the coverage of such client accounts. In any case, stakeholders stress the necessity to segregate client funds from its own deposits the professional account holder may have under its own name. The main points for and against protecting these accounts are analysed in detail in this paper.

EFDI position paper on the CMDI framework with focus on the DGSD review published on 19 March 2024 supported that beneficiary accounts held by financial

[7] Link: https://extranet.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?retry=1

[8] Financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

[9] Investment Firms as defined as defined in point (1) of Article 4(1) of Directive 2004/39/EC on markets in financial instruments.

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

institutions (i.e. CFD as per the above definitions) shall be treated as any other beneficiary accounts i.e. apply the "see-through" approach. It also emphasises the importance to maintain clarity for depositors and to prevent administrative overburdening of banks and the DGS and argues that the "see-through" approach should be regulated at national level, in order to avoid conflicts with existing legislations which are not harmonized. EFDI does not consider client funds and beneficiary accounts' regime as topics to be further harmonized through the issuing of texts other than the proposed level 1, amended to allow a national regulation of the see-through approach.

The objective of this paper is to analyse the current approach of DGSs with regard to the coverage of CFD and CBA as well as beneficiary accounts and outline the EFDI members' response to the CMDI proposal.

# Chapter 1 – Summary of the EBA Opinions and CMDI Proposal

## 1.1 EBA Opinions

In its Opinion on DGS eligibility, coverage and cooperation between DGS published in 2019 and the Opinion on the treatment of client funds under the DGSD published in 2021, the EBA presented a comprehensive analysis of the pros and cons associated with providing coverage to Client Funds' Deposits in general (i.e., CFD and CBA). In its most recent Opinion, EBA concluded that "in principle client funds placed by entities which are currently excluded from coverage under Article 5(1) of the DGSD"[11] should be covered subject to particular conditions, the main reason being that the clients (ultimate beneficiaries) are not themselves excluded from coverage under Article 5(1) of the DGSD.

The EBA Opinion on DGS eligibility, coverage and cooperation between DGSs published in 2019 focuses on particular types of client fund deposits held by financial institutions (including payment institutions and e-money institutions) and investment firms (as well as credit institutions) and analyses in detail the pros and cons of protecting such client fund deposits. The EBA Opinion on the treatment of client funds under the DGSD published in 2021, which deals with all types of client funds placed by entities which are currently excluded from coverage under Article 5(1) of the DGSD, makes specific recommendations on the treatment of such deposits and provides relevant arguments in a more summarised format.

The pros in favour of applying the see-through approach to client accounts deposits (CFD and CBA), highlight critical considerations for financial stability, competitive fairness, and compliance with existing EU legislation. This includes the mitigation of risks to the ability of client account holders such as investment firms and financial institutions to return safeguarded money in the event of a credit institution's failure, preventing potential contagion effects and threats to financial stability. Additionally, applying the see-through approach ensures competitive equality between credit institutions, investment firms and financial institutions which is considered especially important since credit institutions can offer payment services, and/or investment services. Furthermore, the see-through approach aligns with EU legislation and safeguarding requirements within other directives, such as Directive (EU) 2015/2366 on payment services in the internal market ("PSD2"), Directive 2014/65/EU on markets in financial instruments ("MiFID II") and Directive 2015/849/EC on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("e-Money Directive"), that establish specific protection for clients' money held by licensed institutions. Another argument raised in that manner relates to the difficulty of using customer motivation for

[11] Related client fund accounts are those where the account holders fall in the following categories of deposits included in Article 5(1) DGSD: i. Other credit institutions, ii. Financial institutions, iii. Investment firms, iv. Collective investment undertakings, v. Pension and Retirement funds, and vi. Public authorities.

placing funds with a particular entity as the determining factor of what is and what is not an investment decision.

On the flip side, the cons associated with the application of the see-through approach raise concerns. In particular, there is a debate about whether client funds placed by a customer with an investment firm should be covered, given the voluntary nature of investment decisions and the associated awareness of risks. The analysis also points out that coverage of client funds as deposits at a credit institution offers more protection than alternative safeguarding methods allowed under EU law. These considerations reflect the complexities involved in balancing enhanced protection for depositors with practical and regulatory challenges.

Moreover, some important findings stemming from the EBA analysis and assessment performed for the purposes of drafting the Opinion on the treatment of client funds under the DGSD are the following:

- "There is a lack of harmonisation in relation to the treatment of client funds across the European Economic Area, and no uniform approach to the treatment of client funds even within Member States, as in half of the Member States, coverage depends on the type of entity that places the deposit".

- "The limited data that are available, allowed the EBA to arrive at the view that the inclusion of client funds in the coverage of DGSs would probably have a small impact on the overall amount of covered deposits in nearly all Member States, either because the amounts of client funds relative to covered deposits appear to be small, or because they are already covered, or both. In consequence, given the estimation that the changes in covered deposits would be limited, the EBA has arrived at the view that, currently, the estimated impact on the level of DGS contributions would probably be small, too".

- "EBA opines that the coverage of client funds would not likely make a significant difference to current safeguarding practices. That is because placing client funds with credit institutions seems to be the dominant safeguarding method in nearly all MSs for which relevant responses were submitted irrespective of the treatment by the DGS".

In view of the above, the EBA Opinion on the treatment of client funds under the DGSD recommends the following:

1. Introduce in the DGSD a definition for client funds.

2. Clarify in the DGSD that client funds deposited with a credit institution which are placed by entities that are currently excluded from coverage under Article 5(1) of the DGSD (the Opinion makes specific reference to client funds where the account holder is a credit institution, payment institution, e-money institution and an investment firm), are covered by a DGS in case the credit

institution holding client funds were to fail provided that: a) such deposits are placed on behalf of clients who are not themselves excluded from coverage under Article 5(1), b) such deposits are deposited for the purpose of segregating them from the account holders' own funds as required by law and c) such clients are identifiable.

3. Clarify in the DGSD that, where national law allows, DGSs are free to choose whether to reimburse funds in beneficiary accounts directly to the ultimate beneficiaries or to the beneficiary account of the account holder in another credit institution.

4. Ensure that client funds are taken into account when calculating contributions to DGS funds.

### 1.2 CMDI Proposal

As mentioned in the introductory Section, the crisis management and deposit insurance (CMDI) legislative package, published on 18 April 2023, includes amendments to Directive 2014/59/EU (the Bank Recovery and Resolution Directive or BRRD), Regulation (EU) No 806/20143 (the Single Resolution Mechanism Regulation or SRMR) and Directive 2014/49/EU (the Deposit Guarantee Schemes Directive or DGSD) [12].

Among the proposed amendments to the DGSD, the European Commission introduced specific amendments relating to the protection of client fund deposits of non-bank financial institutions, that were heavily driven from issues raised in the two aforementioned EBA Opinions as well as the recommendations included in the EBA Opinion on the treatment of client funds under the DGSD published in 2021.

In particular, the revised DGSD proposal introduces the following definition for client fund deposits: "funds that account holders that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 deposit in the course of their business with a credit institution for the account of their clients".

The main provisions relating to Client Fund Deposits are included in the proposed new Article 8b of DGSD3 and are the following:

- Client Funds Deposits (as defined therein) are covered by the DGS if: a) the beneficiary is not explicitly excluded based on Article 5(1) DGSD, b) deposits are made to segregate client funds, and c) the beneficiaries are identified or identifiable prior to the DGS activation date.

[12]This proposal is available in the following link: EUR-Lex - 52023PC0228 - EN - EUR-Lex (europa.eu)

- When determining the repayable amount for an individual client, the DGS shall not take into account the aggregate fund deposits placed by that client with the same credit institution i.e. separate coverage from personal deposits.

- DGSs may choose to repay covered deposits either to the account holder for the benefit of each client, or to the client (beneficiary) directly.

- EBA shall develop draft regulatory technical standards[13] to specify: a) the technical details related to the identification of clients for the repayment in accordance with the proposed Article 8 of the CMDI proposal; (b) the criteria under, and the circumstances in which the repayment is to be made to the account holder for the benefit of each client or to the client directly; (c) the rules to avoid multiple claims for payouts to the same beneficiary.

Subsequently, during the review of the CMDI proposal, the European Council[14] and European Parliament[15] proposed some amendments to article 8b of DGSD3. The most relevant change identified is the one addressed by the European Parliament in paragraph 3 indicating that the repayment of the covered deposits must be made directly to the client, and therefore, leaves no room for discretion to DGS to choose between the account holder and the client[16].

### 1.3 EFDI position paper on the CMDI framework

On 19 March 2024, EFDI published a position paper on the CMDI framework focussing on the DGSD review. The paper analyses a series of topics, one of which is the issue of client funds, and makes specific recommendations.

In its analysis, the paper lists the pros and cons from the CMDI proposal for applying the see-though approach to the ultimate beneficiaries of client funds where the account owner is a financial institution (i.e. CFD as defined in the CMDI proposal and this paper). The pros include the possibility to apply the so called 'see-through approach' on beneficiary accounts held by non- eligible depositors in mandatory segregated accounts, the reduction of possible contagion effects in case of bank failure, uniform interpretations of rules established by the DGSD and the acknowledgement of national options. On the flip side, cons of the CMDI proposal include that it contradicts to the EBA's Task Force on DGS view that DGS eligibility and coverage level should not be based on the characteristics of the account holder (financial institution or not), would lead to additional administrative costs for banks and DGSs in case of excessive regulation and that incurs the risk of imbalance

[13] EBA Regulatory Technical Standards are legally binding and directly applicable to all Member States legal acts which specify particular aspects of an EU legislative text (Directive or Regulation) and aim at ensuring consistent harmonization in specific areas. The EBA develops draft RTS which are finally endorsed and adopted by the European Commission. On the contrary, EBA Guidelines are not legally binding as Member States may avail from adopting them if they adequately explain to the EBA the reasons i.e. "comply or explain principle".
[14] Link: st10825-ad02.en24 (europa.eu)
[15] Link: TA (europa.eu)
[16] More precisely, paragraph 3 of art. 8b DGSD3 sets forth: "*Member States shall ensure that DGSs' repayments of covered deposits are made to the client directly*"

between uniformity of rules and possibly conflicting national unharmonized legislation.

In view of the above, EFDI members make the following recommendations:

1. In line with the EBA opinion on "Eligibility" (see Recommendations #2 and #3), no distinction should be made between beneficiary accounts held by financial institutions and other beneficiary accounts, in order not to deprive "indirect depositors" from the benefit of a "see-through" approach on other accounts (e.g. notaries, lawyers etc.)

2. Ensure clarity and uniformity of interpretation, but within an appropriate range of national options, based on the following key elements (i) avoid conflicts with non-harmonised national legislation (ii) facilitate operational choices that minimise administrative costs for banks and DGSs (iii) consider that some DGSs would like to explore options for an alternative safeguard at national level.

3. No further harmonization of this topic through the issuing of texts other than the proposed level 1 text, amended to allow a national regulation of the see-through approach is considered necessary.

Moreover the paper welcomes the proposed amendment which states that when determining the repayable amount for an individual client, the DGS shall not aggregate the (possibly unknown) beneficiary accounts of that client with the other fund deposits placed with the same credit institution as well as the proposed amendment which allows DGSs to repay covered deposits either to the account holder for the benefit of each client, or to the client directly.

# Chapter 2 – Surveys on the treatment of Client Funds and Beneficiary Accounts

## 2.1 Description of the surveys

On 11 September 2023, EFDI launched a Survey[17] with the aim of exploring EFDI members' approach to client funds' coverage. On 22 April 2024, a second survey with supplementary questions was circulated, aiming to obtain additional information on the topic as well as to clarify some aspects which were not obvious from responses to the first survey questions. In particular, the surveys focused on the concerns and issues detected in relation to this matter and the DGS community's reaction to the CMDI proposal for a holistic protection of client funds and issuance of relevant EBA Regulatory Technical Standards ("RTS").

The Survey circulated in September 2023 was completed by 18 EFDI Members from countries of the European Economic Area whereas the Survey circulated in April 2024 was completed by 10 EFDI Members from EU Member States. Both surveys consisted of the following two sections:

(i) Current experience with the coverage treatment of CFD, CBA and BA.
(ii) CMDI proposal for Coverage of CFD

## 2.2 Analysis of survey launched in September 2023

### 2.2.1 Section A of the Survey: Current practice regarding the coverage treatment of Client Funds Deposits, Client Beneficiary Accounts and Beneficiary Accounts

Section A of the Survey consisted of 12 questions that aimed to capture the current practice of DGS regarding the coverage treatment of CFD, CBA and BA. These included challenges encountered and potential safeguards taken, in order to prevent multiple payments and/or payouts exceeding the coverage limit.

This part of the Survey was completed by 15 EFDI members. Three (3) respondents did not complete Section A as they do not currently provide coverage to client funds.

The major conclusions driven from the Survey are as follows:

- Having in mind also the outcome of a relevant clarification question included in the survey circulated in April 2024, it is concluded from the survey results that the majority of DGSs cover all different types of BA (includes both CFD, CBA and BA) evident in their jurisdiction provided that the absolute beneficiary to the account is eligible for compensation (i.e. does not fall in the exemption categories of Article 5 of the DGSD) and irrespective of who the account holder is.

[17] The questions of the Survey circulated in September 2023 are included in the Annex of this paper.

This is not the case for three DGSs as one DGS does not cover CFD of financial institutions (i.e. client funds placed with a credit institution by, for example, an e-money institution or a payment institution), one DGS covers only client accounts of investment firms and trust accounts and one covers only CBA of lawyers, notaries, private bailiffs, and insurance brokers.

- DGSs include eligible CFD, CBA and BA in their Single Customer View ("SCV") [18] files. This is particularly important as the inclusion of these accounts in the SCV file means that such accounts are identified and give an indication to the DGS regarding its associated maximum exposure. It also ensures that such funds are taken into consideration when calculating credit institutions' contributions to the DGS.

- The vast majority of DGSs take into account CFD, CBA and BA when calculating contributions to the DGS. Of these, most DGSs take into account the share of each beneficiary to the account if available or the whole amount deposited in the account if the beneficiaries' shares are not known. A small minority of DGSs take into account the entire amount of the account in all instances.

  It is noted that in accordance with the EBA Guidelines (revised) on methods for calculating contributions to deposit guarantee schemes under Directive 2014/49/EU (EBA/GL/2023/02), repealing and replacing Guidelines EBA/GL/2015/10[19], the amount maintained in beneficiary accounts are taken into consideration when calculating contributions to DGSs as prescribed in paragraphs 23 and 24 of the said Guidelines.

- Having in mind the outcome of a relevant clarification question included in the second survey circulated in April 2024, we note that most DGSs which protect CFD, CBA and BA, take into account the shares of each beneficiary from such deposits when calculating their compensation amount. This means that such shares are added to other deposits the same person maintains with the institution and the total amount is capped to €100.000 for compensation purposes.
  It is noted that this is not the case for a small minority of DGSs which enforce a separate coverage limit for the amounts arising from these deposits. This means that if the same person is beneficiary in multiple CFD accounts, CBA and/or BA maintained at a credit institution, this person is entitled to compensation up to €100.000 in each account with distinct account holders. These amounts are not added to other deposits of a different nature (e.g.,

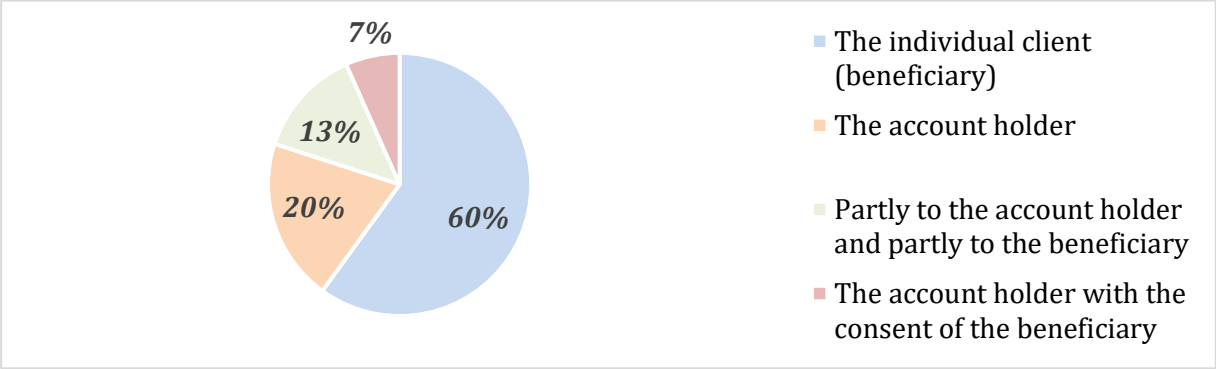
[18] As defined in the EBA Guidelines on stress tests of deposits guarantee schemes under Directive 2014/49/EU issued on 24 May 2016, Single Customer View files (SCVs) are files "containing the individual depositor information necessary to prepare for a repayment by a Deposit Guarantee Scheme (DGS), including the aggregate amount of eligible deposits of every depositor".
[19] Source: https://www.eba.europa.eu/sites/default/files/document_library/Publications/Guidelines/2023/1052023/Final%20report%20of%20the%20revised%20GL%20on%20DGS%20contributions.pdf

saving accounts) maintained by the same beneficiary at the institution which are separately protected up to €100.000.

- The repayment period for all beneficiary accounts is extended for a period of up to three (3) months in almost all jurisdictions and in accordance with the discretion provided in paragraph 3 of Article 8 of the DGSD.

- The vast majority of DGSs pay the compensation amount stemming from CFD, CBA or BA directly to the beneficiary of the account. On the contrary, a minority of DGSs pay such compensation amount to the account holder.

**Chart 1: Who receives the compensation by the DGS:**




- The majority of the DGSs that do not separately protect CFD, CBA or BA have arrangements in place to prevent payouts to depositors exceeding the coverage limit. Such arrangements are specified both in national legislation and DGS rules and in general they target all type of accounts where the beneficiary is not the account holder.

### 2.2.2 Section B of the Survey: CMDI proposal for Coverage of Client Funds Deposits

Section B of the Survey consisted of six (6) questions that aimed to capture EFDI members' reactions to specific sections of the CMDI proposal on the coverage of client fund deposits as defined in the CMDI and the proposal therein for the EBA issuing Regulatory Technical Standards ("RTS") on the subject.

This part of the Survey was completed by all 18 EFDI members and the major conclusions derived from the answers received are as follows:

- The vast majority of DGSs welcome the coverage of CFD explicitly mentioned in the CMDI proposal (i.e. client funds the account holder of which is a financial institution). The main arguments raised in that regard include:

- CFD have a higher relevance for financial stability and are regulated to a higher detail than other sectors (i.e. beneficiary accounts where account holders are notaries, travel agencies, etc).

- It abolishes the difficulty of using customer motivation for placing funds with a particular entity as the determining factor of what is and what is not an investment decision.

Nevertheless, and taking into account the DGSs replies to a similar question raised in the second survey, this observation shall not be presumed as that, other types of client funds (i.e. CBA and BA), shall not be covered by DGSs. The survey results suggest that DGSs support the protection of all types of client funds irrespective of who the account holder is (i.e. apply the see-through approach). The main arguments raised include:

- Applying the see-through approach at all instances ensures competitive equality between various types of beneficiary accounts maintained by institutions competing in the same business (e.g., payment services for banks and payment institutions) as ultimate beneficiaries are treated equally irrespective of the type of the account holder.

- Protection of all types of client accounts could avoid potential contagion effects to the said account holders caused by beneficiaries ending their business relationship with these entities which could eventually threaten financial stability.

- The see-through approach aligns with EU legislation and safeguarding requirements within other directives, such as Directive (EU) 2015/2366 on payment services in the internal market ("PSD2"), Directive 2014/65/EU on markets in financial instruments ("MiFID II") and Directive 2015/849/EC on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("e-Money Directive"), that establish specific protection for clients' money held by licensed institutions.

Some DGSs which don't support the CMDI proposal for including within the DGS protection, client accounts where the account holders are financial institutions raise arguments such as:

- Protection of CFD would potentially increase covered deposits' amounts and hence liability for DGS as well as contributions since the covered deposits are the main determinant for contributions.

  Opposite to this statement, it can be observed that some of the results included in EBA's Opinion on the treatment of client funds contradict this statement. In accordance with the results of the EBA survey conducted

for the purposes of developing the said EBA opinion, in 13 Member States (of a total of 19 participants to the survey) the amount of client funds constitutes (or is estimated to constitute) less than 1% of all covered deposits in that Member State and of the remaining 6 Member States the said amount is higher than 10% in only one jurisdiction. Moreover, despite the fact that it is explicitly mentioned in the EBA opinion that it is not possible to draw robust conclusions concerning the materiality of client funds across the EU, the EBA expresses the view that the inclusion of client funds in the coverage of DGSs would probably have a small impact on the overall amount of covered deposits in nearly all Member States, either because the amounts of client funds relative to covered deposits appear to be small, or because they are already covered, or both. In consequence, the estimated impact on the level of DGS contributions would probably be small, too.

- It is argued that client fund accounts whose holders are either regulated or non-regulated professionals (other than credit institutions and investment firms) should not be protected. Such extension may have consequences in terms of fairness between clients of banks and clients such as e-money users, investors, payment service users, unit holders, policy holders which are not depositors and should therefore not benefit from a deposit guarantee financed by member banks. It is argued by some DGS that their national legislation provides that, for example, for beneficiaries of client funds of Payment institutions (PIs) or E-money institutions (EMIs), which fall within the financial institution definition and their client funds are therefore DGS eligible according to the CMDI proposal, the account holder is responsible for providing documentation to the DGS. However PIs and EMIs have no obligation to generate a Single Customer View file or to determine which clients are eligible in accordance with Article 5 DGSD so best-case scenario is that their clients are "identifiable", in the sense that PIs / EMIs have identified them and are able to transmit the identities of clients to the bank at its request. Moreover the significantly large size of some PIs/EMIs that have segregation accounts at the failed bank, poses an additional task and risk for a DGS. In a nutshell, the lack of level-playing field between the obligations falling on banks and the obligations falling on other regulated and non-regulated entities regarding client due diligence for the purposes of the deposit guarantee would have consequences on the operational tasks of a DGS especially considering the number of eligible clients that such entities (e.g.: PIs, EMIs, insurance companies).

  On the contrary, it is argued that including beneficiaries into the scope of coverage for financial institutions and other institutions establish a level-playing field for all account holders and does not lead to cover account holders but their clients, as "indirect depositors". The extension is also manageable as account holders are not asked to provide a proper Single

Customer View and are regulated entities submitted to obligations in terms of accountings and identification of customers and customers' claims towards themselves. The issue of the determination of the eligibility of ultimate beneficiaries can also be handled (refer to section 2.3). Lastly, the extension of coverage is needed, as the ultimate beneficiary who deposits its funds with such entities, is often unaware as to which institution the account holder places the funds and is also unable to affect the holder's decision.

- Account holders who maintain client accounts (such as financial institutions) have the professional knowledge and expertise to protect themselves and their CFD (i.e. using escrow/custody accounts) against the risk of default of the credit institution at which the account is held.

  On the contrary, escrow or custody accounts do not ensure that beneficiaries could be compensated within the timelines prescribed by the DGSD. This entails the risk for account holders of failing themselves as a consequence of the failure of the credit institution.

- Half of the respondents envisage obstacles for institutions in identifying customers in CFD and CBA and/or providing information to the bank/DGS whereas the rest of the respondents do not envisage any such obstacles. However, it is not clear from the survey results whether DGSs consider that some of the obstacles mentioned in their responses aren't applicable in the case of BA that, as per Article 7(3) DGSD, are DGS protected provided that the ultimate beneficiary is eligible.

  Some of the obstacles mentioned include:

  - Financial institutions, as well as other entities which maintain client accounts in the course of their businesses, tend to pool their clients' funds to multiple client fund accounts at the same or in multiple banks. These may cause operational issues and complications such as the identification of customers and determining their receivables.

    In an attempt to tackle this issue, it is noted that Article 8(b) of the revised DGSD included in the CMDI proposal requires that in order for the clients to be DGS protected they have to be identified or identifiable prior to the date on which deposits are rendered unavailable. Also, it is argued that simple rules could be set for multiple client fund accounts such as a split pro rata client cash assets.

  - Differences in regulations which govern the operations and obligations of banks and those of other regulated and non-regulated entities regarding client due diligence.

On the contrary, it is argued that different regulations emerge from the diversification between markets. Each sector has its own set of due diligence regulations (if any) and depositor protection only takes place in the case of banks.

- Issues arising due to lack of DGS-related obligations to generate SCV files for some client fund holders (i.e. payment institutions, electronic money institutions, insurance companies). For example, reliability of data, regarding identification of customers and determination of their receivables. DGSs have to verify the eligibility of payment institutions' or electronic money institutions' clients within 20 working days from the date on which the DGS receives the complete documentation requested.

  However, there is no absolute need for an SCV for these account holders as the difficulty for aggregating clients' cash to each client seems more manageable than for banks. Also, the eligibility issue may be managed in another way (refer to Section 2.3)

- The issue as to whom compensation stemming from CFD and CBA shall be paid to was also raised, as well as other related criteria and circumstances that should be taken into consideration.

  The vast majority of respondents favour the payment of compensation to the account holder in contrast with a minority that prefers paying compensation to the depositor (ultimate beneficiary of the account) directly. This observation can be interpreted as desire to change existing processes, as it is opposite to the current process most EFDI members have in place, which, as noted in Section A, is to pay compensation stemming from a CFD and a CBA to the beneficiary directly.

  Nevertheless, taking into account the DGSs replies to a similar question raised in the second survey, it would be safe to conclude that DGSs support the proposal included in the revised DGSD which allows DGSs to decide to repay covered deposits either to the account holder for the benefit of each client or to the client (ultimate beneficiary) directly. An approach that as described in Section 1.2 of this paper contradicts the European Parliament's proposal for making the repayment of the covered deposits for client fund deposits directly to the client rather than account holder.

  The main arguments used in favour of paying compensation to the account holder include that this approach would avoid going concern implications for the account holder (minimizes risk of contagion) and minimises the potential breach of the contractual relationship between account holder and the beneficiary (minimizing legal risk). Notwithstanding the fact that a financial institution with a significantly large number of clients would clearly be unable in practice to recover compensations directly paid to its clients (if

compensated to the ultimate beneficiary), the beneficiary will have no obligation to return the funds to the account holder nor would the account holder have any legal right to claim them. Moreover, a compensation in the hands of the account holder is more practical and could lead to faster and simplified repayment, with less administrative work and less disruption. Lastly, no DGS seems to have in place a procedure to ensure that providing payments directly to beneficiaries won't affect the client's contractual relationship with the account holder.

On the contrary, some EFDI members envisage legal risks associated with the repayment of compensation to the account holder related to or stemming from:

a) The fact that the person who is absolutely entitled to compensation shall be covered by the guarantee. Therefore, paying the compensation to the account holder entails legal risk for the DGS if the account holder for any reason does not transfer the compensation to the beneficiary of the account i.e. it is more robust in legal terms to repay the beneficiary. Opposite to this, it is argued that the compensation is not a compensation of the account holder, but a compensation of beneficiaries within the hands of the account holder, something that national regulations can easily make clear. Furthermore, the DGSD only states that beneficiaries shall be covered but doesn't specify that such coverage is provided via direct payments made to them.

b) The risk of fraud. It is argued that the risk of fraud is pragmatic since a significant part of the verification lies on the account holder i.e. risk of fraud arising from submitting inaccurate data/information to the DGS/bank. DGSs should ensure (either directly or indirectly through credit institutions) that data submitted from the account holder are up to date, accurate and properly verified. In addition, this actually justifies that account holders of client funds and other beneficiary accounts should be, one way or another, regulated entities.

c) Inability of the account holder to perform AML checks and identification processes at the same level as the credit institutions. This entails the risk that a DGS ends up reimbursing persons that were not subject to the same level of AML checks and identification processes compared to the rest of the clients of the credit institution (refer to Section 2.3 for a discussion on this point).

- Some EFDI members also suggested main reporting rules to ensure that institutions provide reliable clients' data to the DGS. These include the introduction of such provisions into EU and/or national legislation, have same reporting rules applicable as other bank deposits for which AML and

identification checks are performed and have the covered deposits, including CFD data, audited.

- Moreover, there was a general consent that returning part of the compensation to the account holder and part of it to the beneficiary, would unnecessarily complicate the compensation or in some cases won't even be possible.

- The survey also dealt with the possible risk for a DGS of making payments to a client of a CFD or CBA exceeding the coverage limit which seems to be evident for some DGSs. EFDI members were asked to suggest ways which will limit such risk. Some of the proposals included the introduction of relevant legislative provisions that would empower DGS to have access to CFD and CBA information and enforce preventive and follow-up verifications, the development of relevant IT-systems able to run checks based on unique identifiers. Moreover, stemming from the results of a similar question raised in the second survey launched in April 2024, it was concluded the majority of DGS have arrangements in place to prevent payments to the depositor that exceed the coverage limit and this includes reporting obligations to account holders stemming both from legislative provisions and DGS rules and other in-house arrangements such as software designed and developed to prevent such incidents. It was concluded that this risk is sufficiently addressed by most DGSs while some DGS do not consider that this risk exists in their jurisdiction.

- Regarding the CMDI proposal for the issuance of an EBA tool on this topic and in particular the issuance of EBA Regulatory Technical Standards (EBA RTS), a relevant clarification question was included in the second survey circulated in April 2024. One concludes that the majority of DGSs are in favour or do not object to an EBA tool on this matter that would provide clarity and guidance for DGS. However, of those, only a subset is in favour or see merit of a binding EBA tool on this topic such as EBA RTS that would specify in more detail the aspects set out in a new DGSD Directive (DGSD3) for the coverage and payout of CFD. The DGSs supporting the issuing of EBA RTS believe that it would lead to harmonisation of DGS practices, eliminate level playing field concerns, standardise procedures and ensure consistency and transparency in handling client funds, promoting trust and confidence in the financial industry. This is not supported by previous EBA Opinions above, and the majority of the DGSs support or do not object to the involvement of EBA in providing guidance on the matter, if this provided via a different tool that is more flexible, such as EBA Guidelines[20], which member states may choose not to adopt providing valid explanations. Main arguments raised in favour of issuance EBA Guidelines on this subject are the following:

[20] Member States should apply the guidelines issued by the EBA unless they provide sufficient justification to the EBA that the guidelines are not appropriate in their case or that a different approach is more suitable.

- The EBA guidelines can be designed to mitigate conflicts with non-harmonized national legislation and to reduce administrative burden for banks and DGSs.
-
- Some issues may need guidance in order to avoid very different approaches within the EU and obtain clarification of procedures to be followed. EBA Guidelines are a suitable tool for this, instead of a non-flexible provision such as Regulatory Technical Standards.

A minority of DGSs do not consider that an EBA tool is necessary as they consider that this would infringe the subsidiarity principle[21] and do not see the need for further regulation in this field. One of the arguments raised in that regard is that that the "see-through" approach should be regulated at national level in order to avoid conflicts with existing legislations which are not harmonized. In contrast, another DGS argued that such aspects should be specified in Level 1 text.

### 2.3 Analysis of survey launched in April 2024

The survey was completed by 10 EFDI Members from countries of the European Union. The main conclusions driven of the second survey are the following:

- Account holders of eligible client accounts are subject to particular regulations in the vast majority of jurisdictions. Such regulations require particular types of entities (i.e. EMIs, investment firms) to identify their clients and maintain records of the data relating to them and report them to the bank at regular intervals or on request. A DGS clarified that companies with legal obligation to keep books, follow the entity principle, meaning that beneficiary accounts should be segregated to own accounts.

- DGS were asked to share their views regarding the clarification of coverage of Client funds deposits (CFD) as per the CMDI proposal which provides that with regard to client accounts, DGS coverage shall only be available to client funds where the account holder is a financial institution.

  One respondent answered that they fully support the CMDI proposal in its current format i.e. providing DGS coverage to client funds deposits where the account holder is an entity falling under the definition of financial institution (excluding banks and investments firms), and subject to specific conditions therein. This DGS argued that client funds of financial institutions have a higher relevance for financial stability and are regulated to a higher detail than other sectors (i.e. beneficiary accounts where account holders are notaries, travel agencies etc). Moreover, the DGS supported that lower regulation may lead to arbitrage.

[21] https://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity

The remaining DGSs do not support the CMDI proposal regarding CFD for one or more of the following reasons:

i. The vast majority of DGS supported that no distinction should be made between beneficiary accounts held by financial institutions and other beneficiary accounts, in order not to deprive "indirect depositors" from the benefit of a "see-through" approach on other accounts (e.g. notaries, lawyers etc.). In particular these DGSs are of the view that all types of client accounts should be DGS protected provided that the absolute beneficiary to the account is DGS eligible for compensation and as long as the following conditions prescribed in the revised DGSD apply: (a) such deposits are made to segregate client funds in compliance with safeguarding requirements laid down in Union law regulating the activities of these entities; (b) the clients are identified or identifiable prior to the date on which deposits are rendered unavailable; (c) such deposits are placed on behalf and for the account of clients who are eligible for DGS protection). This view is in line with the current practice applied to client accounts as already mentioned in this paper.

ii. The vast majority of DGSs do not support the CMDI proposal on client accounts on the grounds that shares from CFD and CBA should be treated without a separate coverage when calculating the compensation amount. That is, apply the "see-through" approach, add the beneficiaries' shares to other deposits placed with the same credit institution by the same client and have the compensation amount capped at €100.000 (as provided in the current Article 7(3) of the DGSD).

   We note that in accordance with the proposed new Article 8b paragraph 2 of the CMDI proposal, a separate coverage of €100.000 is applied to clients of CFD. The said provision provides that the DGS shall not take into account the aggregate fund deposits placed by that client with the same credit institution. Therefore, this coverage is different from the coverage that the same person is entitled to from other deposits that the person maintains with the institution in their name.

iii. A minority of DGSs do not support the CMDI proposal on the ground that the revised DGSD should explicitly state that the share of a beneficiary in each CFD with distinct account holders is protected separately up to €100.000, i.e. shares of beneficiaries from CFD with distinct account holders should not be aggregated.

iv. One DGS highlighted EFDI recommendations on this subject which include that it is important to maintain clarity for depositors and to

prevent administrative overburdening of banks and the DGS, that the "see-through" approach should be regulated at national level in order to avoid conflicts with existing legislations which are not harmonized and that client funds is not a topic to be further harmonized through the issuing of texts other than the proposed Level 1.

### 2.4. Other client fund related issues raised by EFDI members

Other arguments raised by EFDI members are along the following lines:

- Explore other ways of protecting CFD such as the granting of a right of separation (RoS) to the beneficiaries of CFD and CBA in case the credit institution fails. The RoS (which can also appear as "ring-fenced accounts") is possible in some jurisdictions and also foreseen in EU regulation for certain financial institutions[22], outside the deposit insurance scope. It also allows for the funds in question to be promptly returned to the customer and not dealt with in liquidation. Related to the topic of this paper, such a RoS could be explored for funds placed in a credit institution by a non-bank financial institution on behalf of its customers.

  A RoS would imply that funds are not submitted to the DGSD's prescription and, in case of failure of the credit institutions they will be immediately (i) transferred to a solvent credit institution by an authority empowered to do so (the usual case) or (ii) repaid to the account holder.

  The following scenarios provide insight as to how the RoS works in different types of cases and its effect on DGS:

  a) Scenario A, a customer holds €50.000 and the coverage limit is €100.000: in this case, granting a RoS would allow a faster settlement and will not in itself reduce the recovery rate of the rest of the creditors as well as the DGS, as long as the rate of recovery of other creditors stays equal to 100%; €50.000 "leave" the insolvency estate, but (as those funds would not be covered by the DGS), the DGS does not have to disburse such amount.

  b) Scenario B, a customer holds €120.000 and the coverage level is €100.000: in this case, a RoS will allow an immediate settlement of the client account and mitigation of risks of contagion, although it reduces the rate of recovery of the DGS when the rate of recovery is below 100%. Under DGS coverage, the DGS would disburse €100.000 (coverage level), while the insolvency estate would include the €120.000. Assuming that there are no creditors with a higher rank, the DGS would recover the €100.000 it paid for the customer, and the excess of €20.000 would remain in the insolvency estate and can also reach the DGS. With the

[22] E.g. Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009

RoS, the DGS would not disburse any amount and preserve its resources for the rest of the payout, but the €120.000 would "leave" the insolvency estate.

The survey requested EFDI Members to explicitly express their views on the RoS. Half of the respondents see merit in exploring alternatives such as the RoS in an attempt to tackle this challenging issue and emphasize the need for more analysis in order to reach solid conclusions. Main points expressed by EFDI Members on this alternative are the following:

i. RoS could bring simplification of processes (less subjects, limited bank's reporting), reduce the operational burden on the DGS during payout (i.e. fewer cases of eligible depositors, transactions, verifications) and overall costs thereby leading to a faster and complete settlement of the client account for the complete settlement of client account holders and also for the reimbursement of other depositors; but as this might cause de facto priority of separated funds in insolvency, further analysis of the relevant EU legislation is needed.

ii. This may facilitate expedited and comprehensive settlement of the client account of financial institutions as compared with the settlement of the client account by the DGS, which prevents contagion risks arising from client funds of non-bank financial institutions and alike thereby enhancing the continuity of business of the account holders (i.e. financial institutions) and safeguarding financial stability.

iii. Such a figure is already foreseen in EU regulation for other creditors but not related to the DGS coverage. An argument against the RoS because of this privilege should be matched against the benefit of the protection of financial stability and the consideration of existing comparable figures in the EU regulation, the fact that the establishment of a creditor hierarchy already offers a "privilege" for some creditors over others, and also the current provisions that grant a privilege to some deposits/depositors (e.g. expanded coverage level of Temporary High Balances).

iv. The RoS preserves the liquidity of the DGS in what regards the credits of non-bank financial institutions customers, reinforcing its financial capability to compensate the payment of insured deposits.

EFDI Members which don't see any merit in exploring the RoS as an alternative different to DGS coverage for the protection of Client Fund Deposits, expressed the following arguments:

i. Financially speaking, as a transfer under a separation right regime uses the failing institution's liquid assets, these assets are not available

for all other creditors. DGS is among the main parties influenced by this situation due to its senior ranking in the creditors' hierarchy compared to other creditors. This reduces the recovery rate of the DGS in insolvency proceedings, sole exception being cases where the recovery rate is 100% after the beneficiary accounts benefitting from the RoS have been settled in such a way. Therefore, the transfer is made mainly at the DGS's expenses (and other creditors with junior ranking). In addition, DGSs lose the volume of contributions they would have raised otherwise on the client funds accounts of all their member banks, which impacts their financial resources and liquidity ahead of the failure.

ii. The RoS is equivalent to creating a specific category of deposits which would be more protected than others, but outside the deposit insurance framework and with a higher privilege than other deposits (by contrast with Temporary High Balances, for instance). Asides all repercussions this may have, it also comes with the following drawbacks:

   a. It raises competitive issues, for instance between banks and payment institutions, the clients of which would benefit from a protection over €100.000 if the bank where the account fails.

   b. There would be no reason for not applying such a regime to other kinds of deposits which would be seen, for any good reason, as deserving a better and swifter protection (e.g., deposits of small and medium enterprises, low income-population, low balances), outside the deposit insurance system (coverage, regulation, contributions), but at the expenses of the deposit insurance system when the recovery rate is below 100% as explained above.

iii. There is no need for a RoS to get the same outcome, i.e. a transfer of the whole balance of the beneficiary account to "another institution, regardless of the coverage level. If the regulation were to be adjusted to consider such a transfer as beneficial for financial stability reasons, DGSs could be allowed to do this by themselves, as swiftly than through a RoS. In addition, if the DGSs were still required to perform checks that would not be required for a RoS, the interest of the holders of those beneficiary accounts is to provide the DGS with the needed data to shorten the compensation process.

iv. To ensure that the separation right would correctly address financial stability issues for beneficiary accounts' holders, clarifications must be brought as for how the system would work if the failing bank's liquid assets are not sufficient to finance the transfer for the benefit of the account holder.

- Distinguish first-degree and second-degree regulation, which cannot be the same. Depositor protection rules cannot be applied the same way for "direct" depositors and ultimate beneficiaries of client funds and alike. Feasibility, legitimacy, proportionality and consistency should also be embarked in the regulation and its implementation.

  A key distinction in the implementation of the beneficiary accounts regime could be that a see-through approach is applied to beneficiary accounts but not to a beneficiary account, which would be itself the beneficiary of a beneficiary account. This regime should be limited to the first-level account holder and not extend further. Criticism of this arrangement from some DGSs arises from concerns about inequality among beneficiaries. It is argued that the deciding factor for DGS protection should be the eligibility of the ultimate beneficiary, whether they are part of a first-degree or multi-degree beneficiary account, in line with the DGSD (i.e., not falling within the exemption categories of Article 5(1) DGSD). The distinction between "direct" depositors and "beneficiaries" should not determine protection. Furthermore, while a chain of beneficiary accounts may create an administrative burden, this should not be used as a justification for disregarding the DGS eligibility criteria.

  Another envisaged difference relates to the eligibility requirements: first, to reflect that account holders are not necessarily submitted to the same regulation as banks; second, to take into account that a potential ineligibility under banking regulation's criteria does not prevent non-bank institutions from any repayment obligation vis-à-vis their own customers.

  For instance, no regulation prevents a travel agency from booking a journey for an ineligible person under the DGSD. Not compensating that customer's share in the travel agency's beneficiary account just penalizes the agency in spite it has not done anything wrong, and while it still must provide for the service that was booked. For financial institutions, even if they have more KYC and AML obligations than travel agencies, it can also be supported that the DGS should not be charged at the last minute with checks and controls that other authorities (i.e. AML authorities) could have performed in advance or can perform afterwards. DGSs that do not share this view argue that not seeking to find the ultimate beneficiary in order to decide whether a DGS compensation is paid, could mean that ineligible beneficiaries could turn into eligible provided that the account is opened by an intermediate party (or a chain of intermediate parties). Therefore, such DGS support that see-through approach shall be applied at all instances.

  As a whole, while eligibility issues raise quite serious challenges in the context of beneficiary accounts' treatment, some DGSs argue that the need and

legitimacy for applying eligibility rules at indirect depositors' degree could be challenged per se.

- DGSD3 should also include a beneficiary account definition (not included in the CMDI proposal) as the introduction of a definition for CFD in isolation may lead to misinterpretations.

## Conclusions

The survey results revealed a nuanced stance among DGSs regarding the proposed Article 8b in the CMDI proposal, which suggests the provision of DGS coverage to clients funds of financial institutions maintained in the course of their business, including client funds of payment institutions (PIs) and Electronic money institutions (EMIs), provided that certain criteria are met. **The majority of DGSs express support for providing DGS coverage to** such **client accounts**, however, it is generally supported that the DGS coverage shall not be limited only to the cases where the account holder falls under the financial institution definition. In particular, **the majority of EFDI members argue that in principle similar coverage must be available to all client funds irrespective of who the account holder is** and whether excluded from DGS coverage because it falls in the categories of deposits of Article 5(1) of the DGSD (as recommended by EBA in its opinion on the treatment of client funds under DGSD).

**EFDI Members express a preference for repaying covered deposits of client funds to the owner of the account but welcome the flexibility** introduced via the CMDI proposal for Member States to choose to repay covered deposits to the owner of the account or the ultimate beneficiary of the account. Main arguments raised in favour of paying to the account holder include that such a repayment method is more simplified and practical and it minimizes concerns about potential legal risks associated with paying the beneficiary directly, such as the risk of fraud and breaching the contractual relationship between the holder and the beneficiary, besides also potential insolvency risks for the account holder arising in terms of business continuity. In this vein, the amendments made by the European Parliament making mandatory the compensation to ultimate beneficiaries does not seem to be the most suitable solution. DGSs in favour of paying compensation directly to the beneficiary of the account raise concerns about the account holder's inability to perform AML checks and identification.

**EFDI members also favour the proposal for allowing separate compensations**, one for the shares of the beneficiaries stemming from client fund accounts and one for the aggregate fund deposits the beneficiary maintains with the same credit institution.

Regarding the **technical aspects of identifying customers and providing information to banks or DGSs**, half of the DGSs participating in the survey foresee obstacles. These obstacles include **operational complications**, concerns about the **reliability of data**, issues related to certain CFD holders like payment institutions, electronic money institutions and insurance companies. On the flip side, the remaining DGSs do not anticipate significant obstacles, indicating **confidence in the ability of institutions to navigate these challenges** or solutions to circumvent these possible issues. These DGSs argue that any potential envisaged obstacles would probably simulate to those applicable for other BA which DGSs anyway currently handle.

In terms of **preventing against the risk of the payment of compensations exceeding the coverage limits** and **establishing reporting rules**, DGS practitioners emphasize **the importance of clear policies** in terms of **client data audit** and additional **disclosure of information to banks**, **calculation rules**, and **IT-system developments**.

The survey also delves into the question of whether there is a need for the European Banking Authority (EBA) to issue Regulatory Technical Standards (RTS) specifying in more detail the aspects set out in DGSD3 for the coverage and payout of CFD. **Most DGSs express support or do not object to the provision of some form of guidance by the EBA**, emphasizing the importance of clarity in navigating the complexities of including CFD into DGS coverage. Of those, a limited minority agree that this guidance should take the form of a non-flexible EBA tool such as EBA RTS as provided in the CMDI proposal which DGS must comply with, whereas the **vast majority considers that it should be in the form of a more flexible EBA tool such as EBA Guidelines** which DGS may choose not to adopt if not applicable to their specific case. A minority of DGSs are not in favour of the issuance of an EBA tool on this topic citing concerns about the infringement of the subsidiarity principle and the potential clash with unharmonized national specificities.

In conclusion, the surveys' results paint a comprehensive picture of the diverse perspectives and considerations among DGSs regarding the inclusion of CFD in DGS coverage. The responses reflect a balancing act between expanding coverage to offer enhanced protection and addressing the associated challenges and complexities to ensure effective implementation. The nuanced nature of the feedback emphasizes the need for collaboration with authorities to strike a balance between safeguarding the interests of account holders, beneficiaries, and the stability of the financial system as a whole.

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## Annex - Survey questions

| A. | Current experience with the coverage treatment of Client Funds Deposits | | Answer | Comment |
|---|---|---|---|---|
| Only those DGSs that are currently providing coverage to Client funds will reply to this part of the questionnaire. Others, please, go directly to the second part. | | | | |
| 1 | Are client funds deposits by the following covered by your DGS? | a. Electronic money issuers | | |
| | | b. Payment institutions | | |
| | | c. Asset Management companies/Portfolio Management Companies | | |
| | | d. Other | | |
| 2 | Does this coverage apply also to other types of beneficiary accounts? | a. Insolvency practitioners/liquidators | | |
| | | b. Bailiffs/Enforcement officers | | |
| | | c. Lawyers | | |
| | | d. Notaries | | |
| | | e. Real estate agents | | |
| | | f. Travel agents | | |
| | | g. Other | | |
| 3 | Are the clients identified or identifiable prior to the "date of failure"? | a. Identified | | |
| | | b. Identifiable | | |
| | | c. Other | | |
| 4 | Does your DGS repay covered deposits to the account holder for the benefit of each beneficiary or to the beneficiary directly? | a. To the account holder | | |
| | | b. To the individual client (beneficiary) | | |
| | | c. Part of the compensation can be returned to the account holder and part directly to the client (e.g. depending on the type of institution) | | |
| | | d. Other | | |
| 5 | Do you apply separate coverage limit for such accounts or are those funds included in the general EUR 100 000 limit? | a. Yes, there is a separate coverage limit | | |
| | | b. No, the account balance is included in the general 100 000 EUR limit | | |
| 6 | Is the payout period extended for such accounts? Are there any differences in payout period due to the type of account holder? | a. The payout period is extended | | |
| | | a. The payout period is not extended | | |
| | | b. There is a difference in payout period due to the type of account | | |
| 7 | Are such accounts included in the SCV file? | a. The accounts are included in the SCV file and reported to DGS for stress | | |

| A. | Current experience with the coverage treatment of Client Funds Deposits | | Answer | Comment |
|---|---|---|---|---|
| | | test exercises and for payout events | | |
| | | b. The accounts are included in the SCV file, but reported to the DGS only in the case of payout events | | |
| | | c. The accounts are not included in the SCV file | | |
| 8 | Are individual clients having funds on those accounts reported to the DGS by banks or by account holders directly? | a. Individual clients are reported to DGS by banks | | |
| | | b. Individual clients are reported to DGS by account holders | | |
| 9 | Do you have a reporting rules in place to ensure that institutions provide reliable data for each client? | a. Reporting rules are specified in legislation | | |
| | | b. Reporting rules are specified by the DGS | | |
| 10 | Do you have any arrangements in place to prevent multiple payouts or payouts exceeding the coverage limit? | a. Yes, such arrangements are specified in legislation or DGS rules | | |
| | | b. No | | |
| 11 | Can you please inform us of any particular procedures for identifying these clients? Is identification a part of the DGS's responsibility or the banks'? | a. Banks are responsible for submitting clients' data to the DGS | | |
| | | b. Individual institutions are responsible for submitting clients' data to the DGS | | |
| | | c. Individual depositors have to provide data to the DGS | | |
| | | d. Other | | |
| 12 | Are client funds taken into account for calculating contributions to DGS? If yes, please provide more details how this is effected. | a. Yes | | |
| | | b. No | | |

| B. | CMDI proposal for Coverage of Client Funds Deposits | | YES / NO | Comment |
|---|---|---|---|---|
| Art. 8b CMDI proposes that the EBA issues regulatory technical standards specifying the technical criteria for providing the repayment of Client funds deposits. We would like to hear from DGSs what are their views on those aspects. | | | | |
| 1 | Further expansion of coverage of | Do you support proposed Article 8b providing coverage for Client funds held by other professionals as well (e.g. | | |

| B. | CMDI proposal for Coverage of Client Funds Deposits | | YES / NO | Comment |
|---|---|---|---|---|
| | Client funds deposits. | lawyers, accountants, real estate agents, insurance firms etc) who under related professional rules are required to maintain client funds segregated to their own? | | |
| 2 | Technical details related to the identification of clients for the repayment. | Do you see any obstacles for the institutions not to be able to identify their customers and/or providing such information to the bank/DGS (depending on the case)? | | |
| 3 | Criteria under and circumstances in which the repayment is to be made to the account holder for the benefit of each beneficiary or the beneficiary directly. | a.1. Do you have a preference to pay compensation to the account holder? What are the reasons behind? | | |
| | | a.2. Do you have a preference to pay compensation to the client directly? What are the reasons behind? | | |
| | | b. Do you envisage any possible legal risks arising from any of the two options based on your national legal framework? | | |
| | | c. If you will be providing payments directly to the client, do you have a procedure to be in place to ensure that this does not affect the client's contractual relationship with the account holder? | | |
| | | d. What criteria and circumstances might be applied to the reimbursement process of such accounts? | | |
| 4 | Rules to avoid multiple claims for payout to the same beneficiary. | a. What reporting rules can be applied to ensure that institutions provide reliable data for each client? | | |
| | | b. Could part of the compensation be returned to the account holder and part directly to the client (e.g. depending on the type of institution)? | | |
| | | c. How can a DGS prevent multiple payouts or payouts exceeding the coverage limit? | | |
| 5 | EBA Regulatory Technical Standards. | Do you consider that it is necessary for the EBA to issue Regulatory technical standards specifying in more detail the aspects set out in DGSD3 for the coverage and payout of Client funds deposits? | | |
| 6 | Other | Are there any other issues that you would like to raise? | | |