



CRISIS MANAGEMENT AND DEPOSIT INSURANCE (CMDI) FRAMEWORK

Summary of EFDI's main recommendations in view of the Trilogue on DGSD Review

European Forum of Deposit Insurers¹

¹ EFDI is the umbrella organization of all public and private Deposit Guarantee Schemes in Europe (several of which are also the National Resolution Authority). The association of European DGSs has no commercial interests and looks at the CMDI files only from the point of view of practitioners with field experience and know-how when it comes to deposit insurance and the resolving of failing banks.

The present paper is the result of the consensus-building process among practitioners and reflect the opinion of the majority of members.

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VERSION MANAGEMENT²

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EXECUTIVE SUMMARY

- EFDI analysis of the CMDI package proposed by the EU Commission (“COM proposal” of April 2023) resulted in a first position paper entitled **Statements from practitioners**, published on the Association's website on 20 October 2023.
- A second paper, **explicitly devoted to the DGSD review**, has been published on the Association's website on 19 March 2024.
- After the publication of the second paper, the **European Parliament** (April 2024) and the **EU Council** (June 2024) **approved their respective mandates** for the opening of the trilogue.
- In this perspective, EFDI has produced this third paper, which aims to briefly summarize EFDI's positions on the main aspects of the proposed texts for the DGSD review.
- Specifically, for **each of the 14 technical aspects deemed most relevant**, a **summary sheet** has been prepared that recalls the various positions on the table and **EFDI's recommendations**.
- To facilitate the analysis of the texts produced so far by the co-legislators, EFDI has published two additional documents, which are intended as useful reference tools. **Annex A** compares the texts proposed by the *Commission, Council and Parliament* with the *current DGSD*, while **Annex B** highlights the differences between the texts proposed by the *Council and Parliament* with the *Commission's proposal*. These annexes can be found on the EFDI website.
- As a final overall consideration, in addition to the recommendations contained in each individual summary sheet, **EFDI again emphasizes** that it is very important to look at the **total amount of work to be done by the EBA** (namely, the EBA Task Force on DGSs) and **explore per single element the real necessity and potential added value of any proposed Guideline/RTS/ITS**. In doing so, EFDI sees the need to carefully follow the two basic principles of subsidiarity and proportionality, so as to avoid unnecessary regulatory burden, possible conflicts with unharmonized national laws and interpretative uncertainties. That being said, EFDI sees many elements where further work done by the EBA can have added value.
- In that vein, EFDI confirms the **willingness and readiness of practitioners to support the Commission and co-legislators** in the technical refinement of the text, especially on those technical aspects that do not seem likely to be controversial per se.

1. Client Funds Deposits (CFD) [Art. 2(1)c/20] , [Art 7(3)] , [Art. 8b]

Current DGSD	COM proposal
<p>No definition of 'client funds deposits' in [Art. 2(1)].</p> <p>[Art. 7(3)] regulates the treatment of deposits held by an account holder that is not entitled to the funds in the account (so called 'beneficiary accounts').</p>	<p>The COM introduces a distinction between beneficiary accounts held by non-financial institutions, still regulated by the unchanged Art. 7(3), and beneficiary accounts held by financial institutions, i.e. 'client funds deposits', as defined under the new proposed Art. 2(1) c / 20).</p>
Council	Parliament
<ol style="list-style-type: none"> 1) Definition of 'client fund deposits' and other aspects same as COM proposal. 2) In addition, the Council clarifies (for both beneficiary accounts and client funds) that: <ol style="list-style-type: none"> a. when determining the covered amount due to the absolutely entitled person the DGS shall not take into account other deposits placed by that person with the same credit institution if that person is identified by the credit institution.' b. Member States shall ensure that DGSs may repay covered deposits either to the account holder for the benefit of each absolutely entitled person, or to the absolutely entitled person directly. 3) Eba shall issue Guidelines to promote convergence (instead of RTS originally proposed by the COM) 	<ol style="list-style-type: none"> 1) Definition of 'client fund deposits' and other aspects same as COM proposal. 2) <i>No payment to the account holder (only client directly).</i>

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by the Council for these articles. In particular, it could in some cases prove problematic if there is no flexibility whatsoever **to pay out to the account holder**. In addition, given the technical implications of these kinds of issues, **guidelines are a much more appropriate tool than RTSs**.*

2. Official recognition, membership and supervision [Art. 4 para. (13)]

Current DGSD	COM proposal
The mandate for the EBA to issue guidelines on the scope, contents and procedures of the stress tests for DGSs is not adequately made explicit.	The COM introduces an explicit provision for this mandate.
Council	Parliament
Same as Commission	Requesting the development of RTS instead of guidelines

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by the COM and the Council for this Article. As a general rule, **RTSs are not an appropriate tool for this type of issue.***

3. Eligibility of deposits [Article 5 para. (1) (2)]

Current DGSD	COM proposal
Deposits by public authorities are excluded.	Covering the deposits by public authorities.
Council	Parliament
Exclusion of central or state governments (precise reference to EU statistical rules, points 2.114 and 2.115 of Annex A of Regulation (EU) No 549/2013 on the European system of national and regional accounts in the European Union), except non-profit institutions controlled by central government or state governments.	Same as COM.

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by the Council for this Article, which **contains important clarifications**. The coverage level will always limit the exposure of the DGS. At the same time schools, hospitals, and libraries would now be covered, while central or state governments do not require protection.*

4. THB regime for intended real estate transactions [Article 6 (2)]

Current DGSD	COM proposal
<p>THB coverage of deposits resulting from real estate transactions relating to private residential properties (not limited to natural persons)</p>	<p>Covering, additionally, deposits intended for real estate transactions relating to private residential properties, provided that those transactions are concluded in the short term by a natural person, and under the condition that the involved natural person can provide documents proving such transaction.</p>
Council	Parliament
<p>Short term defined according to national law.</p> <p>Natural person can provide documents proving that (before failure) such transaction had been or was intended to be concluded in that short term.</p>	<p>Introduction of a cap to THB (2.500 K) and fixed period of 4 month for the transaction (instead of 'short term').</p> <p>Future legislative proposal by the Commission, with a view to possibly reducing the protected amounts of THB, in order to ensure a level playing field across the Union.</p>

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by the Council for this Article, since it sees added value in **clarification of 'the short term'** and on the **criteria for identifying** this type of transaction.*

5. Compensation between deposits and liabilities to determine reimbursement amount – Reimbursement of interest on deposits
[Art. 7 para. (5) and (7)]

Current DGSD	COM proposal
Possibility for the DGSs to offset assets and liabilities towards the bank for the same depositor (according to national law).	Deletion of Art. 7(5), i.e. the possibility left to DGSs to compensate assets and liabilities towards the bank for the same depositor.
Council	Parliament
Maintained possibility of set-off according to national law [Art. 7(5)]	Deletion of Art. 7(5) same as COM proposal. Accepted COM rewording on reimbursement of interest [Art. 7(7)], with the addition of the possibility for the DGS to reduce a possible “exceeding rate” with respect to the “prevailing” market rate.

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by the Council for this Article, since the **status quo has proven useful** and has not given rise to any issues.*

6. Longer repayment period [Art. 8 para. (3), (5)] and Transitional Period [Art. 8 para. (2), (4)]

Current DGSD	COM proposal
<p>Longer repayment period rigidly defined (3 months) for some deposits (beneficiary accounts as per Art. 7.3) and undefined for other deposits, including THBs (as per Art. 8.5).</p> <p>Transitional period of possible repayment beyond 7 days until 12/31/2023.</p>	<p>Longer repayment period of 20 days from the date on which the DGS receives all the requested documentation.</p> <p>This term applies to both beneficiary accounts and client funds, together with all other deposits included in the list in Art. 8(5).</p>
Council	Parliament
<p>Same as COM with some wording adjustments.</p>	<p>Same as COM with the addition [in case of THB as per Art. 6(2) and Beneficiary accounts as per 7(3)] of an “appropriate amount of their covered deposits”, repayable “within five working days” from the request, to cover “the cost of living”.</p>

EFDI RECOMMENDATIONS

EFDI recommends adoption of the text proposed by the Council, adding the deletion of paragraphs 2 and 4 (which referred to the transitional period until 31.12.2023, now outdated). Accordingly, the reference to paragraph 4 still in place in the first subparagraph of paragraph 5 should be deleted.

*It is important to note that **it takes time for a DGS** to establish the **adequacy of documentation received**. The 20 working days period should start **after** the DGS has been able to make the assessment to have (adequately) received all the requested documentation. A deadline could be set to make this assessment.*

7. Money laundering or terrorism financing (Art.8a, Art. 8c)

Current DGSD	COM proposal
<p>Suspension of payment to any person charged with an offence arising out of or in relation to money laundering</p>	<ol style="list-style-type: none"> 1) Substitution of current Art. 8(8) with new Articles 8a and 8c. 2) Extension of the suspension regime to terrorism. 3) The suspension of repayment to persons charged would become compulsory. 4) Obligation to only use credit transfers for compensations over €10,000. 5) Instantaneously process by the DGS of information transmitted by the designated authorities or FIU during a payout.
Council	Parliament
<p>Reintroduced the ability to use other traceable means of payment when credit transfers cannot be used.</p> <p>Added specifications and clarifications (e.g. timely communication to DGS by the Authorities) to the Commission text.</p>	<p>Same as COM</p>

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by the Council for these Articles. The point here is to address the issue of potential money laundering or terrorism financing. Once **traceability is guaranteed**, the preferred (technical) payout method should not matter.*

8. Claims in favor of DGSs in case of a contribution to resolution (Art. 9, par. 2 and 3)

Current DGSD	COM proposal
<p>Where a DGS makes payments in the context of resolution proceedings, the DGS shall have a claim against the relevant credit institution for an amount equal to its payments. That claim shall rank at the same level as <u>covered deposits</u> under national law.</p>	<p>In cases of a DGS contribution in the context of the resolution tools, or of alternative measures, the DGS shall have a claim against the residual credit institution for any loss incurred as a result of its contributions made to resolution or to the transfer made pursuant to Article 11(5) DGSD in connection to losses which depositors otherwise would have borne. That claim shall rank at the same level as <u>deposits</u> under national law governing normal insolvency proceedings.</p> <p>Also, the EU Commission proposes to set a period of 5 years within which depositors can claim the repayment of their deposits.</p>
Council	Parliament
<p>DGS claim against the residual credit institution is equal to “any such contributions”.</p> <p>Such a claim shall rank at the same level as <u>covered deposits</u>.</p> <p>Pay-out duration: 4 years as a minimum.</p>	<p>Essentially similar to COM proposal, with the addition that DGSs’ claim should be equal to “their contribution, provided that the residual credit institution is wound up”</p>

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by the Council, which sets a **shorter pay-out duration (4 years as a minimum)**. In addition, in order not to limit the potential recoveries, the final text should clarify that DGS claim should be not only on the residual credit institution, but also **on the bridge bank or the asset vehicle**.*

9. Available Financial Means (Art.10)

Current DGSD	COM proposal
<p>Not clear what happens after reaching the Target Level for the first time.</p> <p>Not clear that, when determining whether the DGS has reached the target level, Member States shall only take into account available financial means directly contributed by, or recovered from, members to the DGS.</p>	<p>Reference date for the detection of the covered deposits (to be considered when reaching the established Target level) shall be between the target date and 31 December of the previous year.</p> <p>DGSs, Designated authorities, or competent authorities shall set the investment strategy for the available financial means and shall ensure that such strategy complies with the principle of diversification and investments in low-risk assets.</p> <p>Member States shall ensure that DGSs may place all or part of their available financial means with their national central bank or national treasury</p>
Council	Parliament
<p>Essentially similar to the Commission's proposal with some rewording and various clarifications (e.g. Where DGSs are allowed to place all or part of their available financial means with their national central bank or national treasury...Member States shall ensure...)</p>	<p>Essentially similar to the Commission's proposal with some rewording and various clarifications (e.g. "Member States shall ensure that the investment strategy referred to in the first subparagraph of this paragraph complies with the principles laid down in Articles 4, 8 and 10 of Commission Delegated Regulation (EU) 2016/451*").</p>

EFDI RECOMMENDATIONS

There are agreeable aspects in each of the three proposals, and the resulting final text should be adjusted accordingly. EFDI confirms its willingness to support the co-legislators and Commission offices in the technical refinement of the text.

*Above all, EFDI recommends that the way to define the target level and the way to calculate contributions should be aligned. Whether the DGS should use the **amount of covered deposits** at a precise date or as an average for a given period shall be left at its discretion, **strictly consistent with the calculation method** chosen according to the recently reviewed **EBA guidelines on DGS contributions**.*

10. Use of funds and least cost test (Art. 11 , 11a, 11b, 11ba, 11c, 11d, 11e)

Current DGSD	COM proposal
<p>High-level definitions regarding the use of funds for various types of DGS interventions.</p>	<p>The adoption of preventive measures is subject to new conditions, including (i) the drafting of a “note” of the actions to be taken, (ii) the drafting of a “remediation plan”, in case of unsuccessful action, (iii) compliance with the newly regulated “Least Cost Test”.</p> <p>The adoption of alternative measures is subject to new conditions, including (i) the “transparency of marketing process” (with reference to the assets of the failed bank), (ii) compliance with the newly regulated Least Cost Test.</p> <p>New rules are introduced for the calculation of the “Least Cost Test” by DGSs, for the purpose of determining the maximum amount to be financed either in case of resolution or for the adoption of preventive measures and alternative measures.</p> <p>The EBA shall issue guidelines setting elements of the above mentioned “note” accompanying the preventive measures and on the “remediation plan”. In addition, the EBA shall develop draft regulatory technical standards to specify the methodology for the calculation of the “least cost test”.</p>
Council	Parliament
<p>Essentially similar to the Commission's proposal in overall approach, with some important reformulations and various clarifications.</p>	<p>Essentially similar to the Commission's proposal in general approach, but with aspects of detail that appear overly rigid for a Level 1 text.</p>

EFDI RECOMMENDATIONS

*EFDI suggests considering, as a general rule, the adoption of the **resolution procedure only in cases where there is a serious risk** that a possible direct intervention by the national DGS is more expensive for the DGS itself and does not prove adequate to ensure financial stability (including burden sharing and moral hazard evaluations) **in that given context**.*

*In general, EFDI expresses a **preference for the Council's proposed text**, subject to the **need for important refinements to streamline some aspects** that are overly prescriptive and have the potential to undermine the effectiveness of preventive interventions, **especially for IPSs**.*

*The final text should provide an appropriate level of flexibility for applying either the insolvency or resolution regime. **Fictively changing in a rigid way** certain outcomes within the least cost test does not appropriately reflect true (least) costs and does not help to achieve resolution objectives. EFDI confirms its **willingness to support the co-legislators and Commission offices** in the technical refinement of the text.*

11. Cross Border Compensation [Art. 14 para. (2), (2a), (9)]

Current DGSD	COM proposal
Cross-border compensation only through host DGS	Opening the possibility for Home DGS to perform a cross-border compensation. Two conditions for the completion made by the Home DGS itself: <ul style="list-style-type: none"> a. the administrative burden and cost of such repayment is lower than the repayment by a DGS of the host DGS, b. Home DGS ensures that the depositors are not worse off than where they are reimbursed by the Host DGS.
Council	Parliament
Substantially similar to COM text	Substantially similar to COM text

EFDI RECOMMENDATIONS

*EFDI recommend that **the condition of "lower administrative burden and costs" for the Home DGS** to be allowed to directly compensate depositors at branches in another MS **should be deleted**. Provided that depositors are not worse off, it should be up to the Home DGS to make that decision (even if costs are higher, the Home DGS may have good reasons to prefer the direct compensation, as a potentially prompter compensation process and a better protection of financial stability).*

Flexibility is required. In particular, the involvement of the Host DGS in the compensation of passported depositors should be triggered by the Home DGS decision. At the same time, the cooperation of the Host DGS should also be voluntary.

*EFDI confirms its **willingness to support the co-legislators and Commission offices** in the technical refinement of the text.*

12. Transfer of contributions (Art. 14, par. 3)

Current DGSD	COM proposal
<p>The DGSD currently</p> <ul style="list-style-type: none"> (i) provides for contributions "paid" during the last 12 months, (ii) does not set a time period within which to make the transfer, (iii) provides for a transfer of contributions also in the case of transfers between DGSs within the same Member State, (iv) prevent the transfer of contributions if the bank has been excluded from the originating DGS 	<p>The EU Commission proposes that, where a credit institution ceases to be member of a DGS and joins a DGS of another Member State, or if some of the credit institution's activities are transferred to a DGS of another Member State, the DGS of origin shall transfer to the receiving DGS the contributions "due" for the last 12 months preceding the change of DGS membership</p>
Council	Parliament
<p>Reference to DGSs and not to Member States in case of transfer (as in the current DGSD).</p>	<p>EBA shall develop draft regulatory technical standards to specify the methodology for the calculation of the amount to be transferred to ensure a neutral impact of the transfer on the financial situation of both DGSs relative to the risks they cover.</p>

EFDI RECOMMENDATIONS

*EFDI supports both (i) the request of the Council to **maintain refence to DGSs and not to Member States** in case of transfer and (ii) the text proposed by the Parliament calling for the **EBA to develop RTSSs**, which is the **most appropriate tool in this specific field** to ensure a neutral impact of the transfer on the financial situation of both DGSs **relative to the risks they cover**. The reference to the **12-month period is not appropriate** as it does not reflect the amount of risk transferred, especially now that target levels have been reached.*

13. **Depositor information by credit institutions** [Article 16 para. (1), (2), (3), (4), (8), Annex I]

Current DGSD	COM proposal
<p>Content of the information sheet in a specific ANNEX.</p> <p>Before entering into a contract on deposit-taking, depositors shall acknowledge the receipt of the information received through the template set out in Annex I.</p> <p>The information sheet set out in Annex I shall be provided to the depositor at least annually.</p>	<p>Definition of core contents for the depositor information sheet in level 1 text.</p> <p>Mandate for EBA to develop RTS for specification of these contents and format of the sheet.</p> <p>No changes of current rules when depositors must be informed but now obligation for banks to collect from all depositors an annual acknowledgment of the receipt of the information sheet.</p>
Council	Parliament
<p><i>"Each time there is any change to the information provided or at least every five years. Credit institutions shall require that depositors acknowledge the receipt of that information sheet when they enter into such contract"</i></p>	<p><i>"2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking and, subsequently, each time there is any change to the information provided. Depositors shall acknowledge the receipt of that information sheet, unless the information is made publicly available."</i></p>

EFDI RECOMMENDATIONS

*EFDI supports the text proposed by Parliament. Depositor information is very important and the Parliament's text provides the **most balanced and practical solution** to the tradeoff between full information and the amount of documentation to be provided.*

14. Information from member banks to DGSs [Art. (16a) Art. 7(6)]

Current DGSD	COM proposal
Only high-level guidance on reporting (Article 16a is not present in the current DGSD)	<p>EBA shall develop draft implementing technical standards (ITS) to specify the procedures to be followed when providing the information, the templates for providing that information, and to further specify the content of information, with reference to:</p> <ol style="list-style-type: none"> 1) SCV files (from CI to DGS) 2) depositors at branches of member institutions and depositors who are recipients of services provided on the basis of freedom to provide services (from CI to DGS) 3) reporting on cover deposits and available financial means (from DGS to EBA) 4) reporting on DGS's interventions (from designated authorities to EBA)
Council	Parliament
Essentially similar to the Commission's proposal, but excludes from the EBA ITS item 2 in the list above	Essentially similar to the Commission's proposal, with the addition of a few further requests .

EFDI RECOMMENDATIONS

EFDI supports the idea of a harmonized reporting framework for the flow of information from DGSs/designated authorities to the EBA (items 3 and 4 in the list above).

*On the contrary EFDI believes that **technical details** on the exchange of information from credit institutions to DGSs **are not suited for level 1 text, nor level 2 text**.*

***ITSs are not appropriate tools for the procedures, templates and contents of the SCV files, involving considerable risks and costs implications**³.*

*For this reason, EFDI **supports the exclusion made by the Council of item 2** in the list above from the EBA ITS and strongly **recommends replacing the EBA ITSs provided for item 1** in the list above **into EBA guidelines**, a tool which is better suited to handle the complexity of the technical issues at hand.*

³ SVC-files display deep and complex national specificities and could only be built at a national level, having already incurred significant costs and efforts by both banks and DGSs. Changing and trying to harmonize SCV requirements would involve considerable technical risks and administrative, financial and IT challenges. Indeed, DGSs have worked with banks to develop the appropriate IT structures and adjust and improve them over ten years of checks and readjustments for both the DGS and its member institutions, in line with the regular controls performed by DGSs over them.