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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 228 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency

Delegations will find attached document COM(2023) 228 final.

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2023/0115 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency

(Text with EEA relevance)

{SWD(2023) 225-226 final} - {SEC(2023) 230 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed amendments to Directive 2014/49/EU[1] (the Deposit Guarantee Schemes Directive or DGSD) are part of the crisis management and deposit insurance (CMDI) legislative package that includes also amendments to Directive 2014/59/EU[2] (the Bank Recovery and Resolution Directive or BRRD) and Regulation (EU) No 806/2014[3] (the Single Resolution Mechanism Regulation or SRMR).

The EU crisis management framework is well-established, however, previous episodes of bank failures have shown that there is need for improvements. The aim of the CMDI reform is to build on the objectives of the crisis management framework and to ensure a more consistent approach to resolution, so that any bank in crisis can exit the market in an orderly manner, while preserving financial stability, taxpayer money and ensuring depositor confidence. In particular, the existing resolution framework for smaller and medium-sized banks needs to be strengthened with respect to its design, implementation and, most importantly, incentives for its application, so that it can be more credibly applied to those banks. Moreover, the depositor protection framework should be improved to ensure a coherent application of rules and a better level playing field, while protecting financial stability, enhancing depositors' confidence and preventing contagion.

Context of the proposal

In the aftermath of the global financial and sovereign debt crises, the EU took decisive actions, in line with international calls for reform, to create a safer financial sector for the EU single market. This included providing the tools and powers to handle the failure of any bank in an orderly manner, while preserving financial stability, public finances and depositor protection. The Banking Union was created in 2014 and is currently made up of two pillars: a Single Supervisory Mechanism (SSM) and a Single Resolution Mechanism (SRM). However, the Banking Union is still incomplete and is missing its third pillar: a European deposit insurance scheme (EDIS)[4]. The Commission's proposal adopted on 24 November 2015 to establish EDIS[5] is still pending.

The Banking Union is supported by a Single Rulebook which, in what concerns the CMDI, is made up of three EU legal acts adopted in 2014: the BRRD, the SRMR and the DGSD. The BRRD defines the powers, rules and procedures for the recovery and resolution of banks,

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1 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149–178).

2 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

3 Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 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 and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

4 Furthermore, there is still no agreement on a credible and robust mechanism for providing liquidity in resolution in the Banking Union, in line with the standard set by international peers.

5 COM/2015/0586 final.

including cross-border cooperation arrangements to tackle cross-border banking failures. The SRMR creates the Single Resolution Board (SRB) and the Single Resolution Fund (SRF) and defines powers, rules and procedures for the resolution of the entities established in the Banking Union, in the context of the Single Resolution Mechanism. The DGSD ensures the protection of depositors and sets-out the rules for the use of DGS funds. The BRRD and the DGSD apply in all Member States while the SRMR applies in Member States participating in the Banking Union.

The 2019 banking package, also known as the 'risk reduction package', revised the BRRD, the SRMR, the Capital Requirements Regulation (CRR[6]) and the Capital Requirements Directive (CRD[7]). These revisions included measures delivering on the EU's commitments made in international fora[8] and took further steps towards completing the Banking Union by providing credible risk reduction measures to mitigate threats to financial stability.

In November 2020, the Eurogroup agreed on the creation and early introduction of a common backstop to the SRF by the European Stability Mechanism (ESM)[9].

The crisis management and deposit insurance (CMDI) reform and the broader implications for the Banking Union

Together with the CMDI reform, a complete Banking Union, including its third pillar, EDIS, would offer a higher level of financial protection and confidence to EU's households and businesses, increase trust and strengthen financial stability as necessary conditions for growth, prosperity and resilience in the Economic and Monetary Union and in the EU more generally. The Capital Markets Union complements the Banking Union as both initiatives are essential to finance the twin transitions (digital and green), step up the international role of the euro and strengthen the EU's open strategic autonomy and its competitiveness in a changing world, particularly considering the current challenging economic and geopolitical environment[10, 11].

In June 2022, the Eurogroup did not agree to a more comprehensive work plan to complete the Banking Union by including EDIS. Instead, the Eurogroup invited the Commission to table more targeted legislative proposals for reforming the EU framework for bank crisis management and national deposit insurance[12].

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6 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337).

7 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338–436).

8 The Basel Committee on Banking Supervision and the Financial Stability Board (FSB). Financial Stability Board (2014 updated version), *Key Attributes of effective resolution regimes for financial institutions* and (2015), *Principles on Loss-absorbing and Recapitalisation Capacity of Globally Systemically Important Banks (G-SIBs) in Resolution, Total Loss-absorbing Capacity (TLAC) Term Sheet*.

9 Eurogroup (30 November 2020), *Statement of the Eurogroup in inclusive format on the ESM reform and the early introduction of the backstop to the Single Resolution Fund*. The implementation will take place over 2022-2024. However, the Agreement Amending the Treaty Establishing the European Stability Mechanism is still pending ratification.

10 European Commission (2020), *Commission Work Programme 2021*, section 2.3, p. 5.

11 European Commission (2023), *Long-term competitiveness of the EU: looking beyond 2030*.

12 Eurogroup (16 June 2022), *Eurogroup statement on the future of the Banking Union.*

In parallel, the European Parliament, in its 2021 annual report on the Banking Union[13], also stressed the importance of completing it with the establishment of EDIS and supported the Commission in putting forward a legislative proposal on the CMDI review. While EDIS was not explicitly endorsed by the Eurogroup, it would make the CMDI reform more robust and would deliver synergies and efficiency gains for the industry. Such a legislative package would be part of the agenda for completing the Banking Union, as emphasised in President von der Leyen's Political Guidelines, which also recalled the importance of EDIS, and as regularly supported by leaders[14].

The objectives of the Deposit Guarantee Schemes Directive (DGSD)

The DGSD harmonised the deposit protection mechanisms across the EU. Deposit protection is key to improve depositors' confidence, strengthen the financial stability of the banking system and safeguard the functioning of the single market. To that end, at least one deposit guarantee scheme (DGS) was set up in every Member State to ensure fast reimbursement of depositors in the event of bank failures (payout) and a harmonised level of protection was set at EUR 100 000. Importantly, DGSs also play a role in banks' crisis management. They can contribute to resolution or finance other measures, thus preserving depositors' access to covered deposits.

Reasons for the proposal

In line with the mandate under Article 19(6) DGSD, the Commission conducted a comprehensive evaluation on how the DGSD performed. Its conclusion confirmed that the DGSD's main components, particularly the standard coverage level of EUR 100 000 per depositor per bank, the minimum target level for DGS funding, and the short timelines for depositor payout, overall, generated positive benefits for depositors.

However, practical experience in applying this framework has shown that there are areas for improvement. These areas concern the scope of depositor protection, the divergent interpretation of conditions for the use of DGS funds for interventions outside the payout of covered deposits, the operational effectiveness and efficiency in the way DGSs work, broad national discretions and options and a need for improved coordination between resolution and deposit insurance safety nets.

As an integral part of the Commission's CMDI legislative review, the DGSD proposal is largely based on the preparatory work and on the recommendations developed by the European Banking Authority (EBA) in its five opinions[15] on the application of the DGSD and takes into account instances where its practical application failed to achieve some of its important objectives or achieved them only partially.

Summary of the Deposit Guarantee Schemes Directive (DGSD) amendments as part of the crisis management and deposit insurance (CMDI) reform

The DGSD proposal covers a range of policy aspects and constitutes a coherent response to the identified problems. It therefore aims to:

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13 European Parliament (2022), *Banking Union – annual report 2021;* the European Parliament has issued a report on the Banking Union every year starting 2015.

14 Euro Summit Meeting (24 March 2023), *Statement of the Euro Summit, meeting in inclusive format*.

15 See the section 3 on collection and use of expertise.

(1) clarify the scope of depositor protection by addressing identified discrepancies to offer EU depositors a harmonised and robust level of protection;

(2) harmonise the least cost test for all types of DGS interventions outside the payout of covered deposits in insolvency, to improve the level playing field and ensure consistency of outcomes when managing bank failures;

(3) improve the functioning of DGSs by simplifying administrative procedures, while improving the transparency of their financial robustness and use of funds;

(4) increase the convergence in DGS practices and among authorities; and

(5) improve cross-border cooperation between DGSs in reimbursing depositors located in other EU Member States, or in case of change of DGS affiliation by banks.

- **Consistency with existing policy provisions in the policy area**

The proposal builds on and strengthens the existing deposit insurance framework set out in the DGSD. To that end, many elements of the proposal follow the work undertaken by the EBA, in cooperation with national DGSs and designated authorities. It proposes amendments to reflect the practical experience gained from the national transposition of EU law and from the application of some provisions, including in the context of the Banking Union. The proposal is initiated in parallel with the reviews of the BRRD and the SRMR to ensure the overall consistency of the EU bank crisis management framework.

- **Consistency with other Union policies**

The proposal builds on the reforms carried out in the aftermath of the financial crisis that led to the creation of the Banking Union and the single rulebook for all EU banks.

By strengthening depositor confidence and financial stability, the proposal contributes to the resilience of the EU banking sector and its ability to support economic recovery following the COVID-19 pandemic, in line with the political objectives of the European open strategic autonomy. More specifically, the proposal also improves consumer protection by harmonising the level and period of protection of specific retail deposits that are short-term and contingent on specific life events (‘temporary high balances’) or by strengthening information disclosure to consumers.

In addition, to mitigate the risk that DGSs reimburse depositors involved in money laundering and terrorist financing (ML/TF) activities, the amendments build on Directive (EU) 2015/849 on anti-money laundering and take into account the direction proposed in the Commission’s legislative package on the EU anti-money laundering/countering the financing of terrorism (AML/CFT) regime, adopted on 20 July 2021.

To strengthen the enforceability of the DGSD rules, the amendments refer to the supervisory powers laid down in Directive 2013/36/EU (Capital Requirements Directive or CRD). This approach enshrines the notion that compliance with DGS requirements is a first-order requirement for all banks and provides ground for the sequencing of events to discipline a bank that would fail to fulfil such obligations.

The amendments also harmonise and clarify the rules applicable to preventive and alternative measures financed by DGS funds. These rules must be appreciated in connection with the

already existing requirements on State aid for financial establishments set out in the Commission's Banking Communication[16].

The amendments also add clarity to the protection of client funds held by non-bank financial institutions in a bank in line with the requirements for segregating client funds as set out in the Payment Services Directive[17], the E-money Directive and Commission Delegated Directive (EU) 2017/593[18]. In view of rapid developments in innovative financial services, the clarification aims at building clients' trust in non-bank financial institutions and in their business continuity if a bank failure occurs.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal amends an existing directive, the DGSD, in particular as regards the improved application of the tools that are already available in the deposit protection framework.

Consequently, the legal basis for the proposal is the same as the legal basis of the original legislative act, namely Article 53(1) of the TFEU on the right of establishment, the same legal basis as the directive being amended. According to EU case law[19], where a legislative act is designed merely as a supplement or a correction of another legislative act, without altering its original goal, the EU legislature is fully entitled to base the latter act on the legal basis of the first act.

• Subsidiarity (for non-exclusive competence)

The amendments to the DGSD comply with the subsidiarity principle. National rules cannot achieve a harmonised level of depositors' protection and a uniform set of rules on funding and functioning of DGSs. EU action is therefore needed to ensure a level playing field across the EU and avoid undue competitive advantages among financial institutions linked to divergent rules on deposits protection. The EBA also underlined this in its opinions on the review of the DGSD.

Moreover, the establishment of banks and the provision of banking services, including deposit taking, can be conducted cross-border. The cross-border nature of banking systems can create many challenges for DGSs (changes of DGS affiliation of a bank, record keeping of clients or cross-border cooperation), which create a need for EU intervention.

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16 Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') Text with EEA relevance; OJ C 216, 30.7.2013, p. 1–15.

17 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance); OJ L 337, 23.12.2015, p. 35–127.

18 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (Text with EEA relevance); OJ L 87, 31.3.2017, p. 500–517.

19 See judgment of 21 June 2018, Poland v Parliament and Council, C-5/16, EU:C:2018:483, p. 49, p. 69 and case-law cited.

Most of the amendments in the proposal update existing EU law, and, as such, concern areas where the EU has already exercised its powers. Several actions in the proposal introduce an additional degree of harmonisation to consistently achieve the objectives defined by the DGSD.

- **Proportionality**

The amendments are proportionate to what is necessary to achieve the objectives of the DGSD.

The amendments establish common requirements to improve and harmonise the level of depositor protection within the EU. However, the proposal does not govern the organisational models, legal structure or internal governance of EU DGSs. Therefore, the established EU deposit insurance set-up relies on, and will continue relying on, a network of national DGSs, organised in line with different models (public DGS, private DGS, institutional protection schemes (IPS)) and types of relationships between the DGS designated authority and the resolution authority (under a same umbrella entity or in distinct institutions).

Moreover, the proposal confers considerable powers to national authorities, starting with the execution of the least cost test that determines the cost-efficiency in the use of DGS funds. Most topics covered by the proposal (on common level of temporary high balances, protection of client funds, protection of public authorities) relate to areas where EU Member States explicitly asked for an EU-wide standard in order to provide more legal certainty in protecting depositors. The mandates for the EBA provided for under the proposal (through guidelines and standards) are limited to the most technical DGSD topics for which a more detailed explanation of requirements is needed.

The proposal also maintains existing provisions that recognise national specificities and ensure a proportionate application of the DGSD rules, e.g. through the choice of national options, the possibility for certain Member States to apply a lower target level or for IPS members to benefit from reduced contributions.

- **Choice of the instrument**

It is proposed that the measures be implemented by amending the DGSD through a directive. The proposed measures refer to or further develop already existing provisions incorporated in this legal instrument. As deposit insurance is closely linked to non-harmonised areas of national law, such as insolvency law, transposition is necessary to best integrate the proposed provisions into national law.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

The CMDI framework was designed to avert and manage the failure of institutions of any size or business model. It was developed with the objectives of maintaining financial stability, protecting depositors, minimising the use of public support, limiting moral hazard, and improving the internal market for financial services. The evaluation concluded that, overall, the CMDI framework should be improved in certain respects.

In particular, the evaluation shows that legal certainty and predictability in managing bank failures remain insufficient. The decision of public authorities on whether to resort to resolution or insolvency may differ considerably across Member States. In addition, safety

nets financed by the industry are not always effective and divergent access conditions to funding in resolution and outside resolution persist. These affect incentives and create opportunities for arbitrage when decisions are made on what crisis management tool to use. Finally, depositor protection remains uneven and inconsistent across Member States in a number of areas.

- **Stakeholder consultations**

The Commission conducted extensive exchanges through different consultation tools to reach out to all stakeholders involved, in order to better understand how the framework performed as well as the possible scope for improvements.

In 2020, the Commission launched a consultation on a combined inception impact assessment and a roadmap aimed at providing a detailed analysis of actions to be taken at EU level and the potential impact of different policy options on the economy, society and the environment.

In 2021, the Commission launched two consultations: a targeted and a public consultation to seek stakeholder feedback on how the CMDI framework was applied and views on possible modifications. The targeted consultation, comprising 39 general and specific technical questions, was available in English only and open from 26 January to 20 April 2021. The public consultation consisted of 10 general questions, available in all EU languages and ran over the feedback period from 25 February to 20 May 2021. A report summarising the feedback to this consultation was published on 07 July 2021[20]. The consultations showed that most respondents considered that deposits of public, including local authorities, should also be protected by the DGS. Most banks and DGSs considered that the current regular information disclosure was sufficient and that no changes were needed. Digital communication was often considered as the most suitable means to save costs.

In addition, the Commission hosted a high-level conference on 18 March 2021 gathering representatives from all relevant stakeholders. The conference confirmed the importance of an effective framework but also highlighted the current weaknesses. Panellists at the conference noted that the DGSD framework would benefit from further harmonisation and a better interplay with the rules set out in the Anti-money laundering directive (AMLD), the Payment services directive and State aid rules. Also, consumer confidence and trust should be reflected in the DGSD review as well as the situation in smaller markets.

Commission staff have also repeatedly consulted Member States on the EU implementation of the CMDI framework and on possible revisions of the BRRD/SRMR and DGSD in the context of the Commission Expert Group on Banking, Payments and Insurance. In parallel to the discussions in the Expert Group, the issues addressed in this proposal were also covered in meetings of the Council's preparatory bodies, namely the Council Working Party on Financial Services and the Banking Union and the High-Level Working Group on EDIS.

Furthermore, during the preparatory phase of the legislation, Commission staff also held numerous meetings (physical and virtual) with representatives of the banking industry and with other stakeholders.

The results of all the above-mentioned initiatives have fed into the preparation of this proposal and the accompanying impact assessment. They have provided clear evidence of the need to update and complete the current rules to best achieve the objectives of the framework.

[20] European Commission (2021), *Consultation Banking Union – review of the bank crisis management and deposit insurance framework*.

Annex 2 of the impact assessment provides the summaries of these consultations and the public conference.

- **Collection and use of expertise**

To support its work on the DGSD review, the Commission issued a comprehensive call for advice to the EBA[21].The EBA responded by submitting five opinions. The first opinion on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes was submitted in August 2019[22]. The second opinion on deposit guarantee scheme payouts was submitted in October 2019[23]. The third opinion on deposit guarantee scheme funding and uses of deposit guarantee scheme funds was submitted in January 2020[24]. The fourth opinion on the treatment of client funds was submitted in October 2021[25]. Additionally, the Commission took into account the 2020 EBA's opinion on the interplay between the EU Anti-money laundering directive and the EU Deposit guarantee schemes directive[26] and the 2021 EBA's biennial opinion on risks of money laundering and terrorist financing (ML/TF) affecting the EU's financial sector[27].

Furthermore, the Commission contracted the Centre for European Policy Studies (CEPS) to provide two reports on deposit insurance, entitled 'Harmonising insolvency laws in the Euro area'[28] and 'Options and national discretions under the DGSD'[29], that were published respectively in December 2016 and November 2019.

In addition to consulting stakeholders, the Commission participated in discussions and exchange of views informing the work of the EBA's task force on deposit guarantee schemes and the Expert Group on Banking, Payments and Insurance.

- **Impact assessment[30]**

This proposal shares its impact assessment (IA) with the proposals reviewing the BRRD and the SRMR, which takes into account the feedback received from stakeholders and the need to address various interconnected issues spanning over three different legal texts. Annex 6 of the IA describes the issues around the current functioning of the DGS, sets out the possible scenarios for its improvement and justifies the policy options retained in the proposed amendments. It concludes that the DGSD has been broadly effective in improving the level of depositor protection across the EU. However, the application of the DGSD safeguards remains uneven among national DGSs, highlighting the need for harmonised rules to address

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21 EBA (October 2021), *Call for advice regarding funding in resolution and insolvency*

22 EBA (August 2019), *Opinion of the EBA on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes*

23 EBA (October 2019) *Opinion of the EBA on deposit guarantee scheme payouts*.

24 EBA (January 2020), *Opinion of the EBA on deposit guarantee scheme funding and uses of deposit guarantee funds.*

25 EBA (October 2021), *Opinion of the EBA on the treatment of client funds under the DGSD*.

26 EBA (December 2021), *Opinion of the EBA on the interplay between the EU Anti-Money Laundering Directive and the EU Deposit Guarantee Scheme Directive*.

27 EBA (March 2021), *Opinion of the EBA on the risks of money laundering and terrorist financing affecting the EU's financial sector.*

28 CEPS (December 2016), *Harmonising insolvency laws in the Euro area*. https://www.ceps.eu/ceps-publications/harmonising-insolvency-laws-euro-area-rationale-stocktaking-and-challenges/

29 CEPS (November 2019), *Options and national discretions under the DGSD and their treatment in the context of a European Deposit Insurance Scheme*.

30 Please see references to SWD(2023)226 (summary sheet of the IA) and SEC(2023)230 (the positive opinion of the Regulatory Scrutiny Board).

divergences that have adverse impacts on depositors. It also highlights the need to clarify the coverage for certain types of depositors.

All policy options take into account the EBA's suggestions and the subsequent feedback received from Member States' experts in the Commission's Expert Group on Banking, Payments and Insurance as well as, where available, other analytical evidence.

The IA highlighted that the assessed policy options would improve the application of deposit insurance across Member States and enhance legal certainty and depositor confidence. They would adequately adapt depositor protection to the recent evolutions and vulnerabilities of the financial ecosystem through specific provisions targeted towards cross-border activities, fintech services and anti-money laundering. They would also facilitate the use of DGS funds outside of the payout of covered deposits through a revised least cost test when such interventions ensure the access of depositors to their deposits in a more cost effective way.

However, by explicitly including certain types of depositors and deposits in the scope of coverage (public authorities, client funds) and further harmonising some rules (minimum level of coverage for temporary high balances, removal of the possibility to deduct liabilities of depositors that have fallen due from the repayable amount), these amendments could have an impact– albeit limited – on the costs for DGSs. Likewise, the changes to the least cost test for the use of DGS for interventions other than for payout could also have a financial impact on DGSs. These costs would be borne by the banking industry through contributions to the DGS and would not affect taxpayers in line with the principle of public money protection laid down in the DGSD.

The IA also confirmed that the EU DGS framework would be more resilient if backed by EDIS. Pooling funds into a shared scheme would strengthen the ability of the deposit insurance system in the Banking Union to cope with high-value payouts and enhance depositor confidence. Although the policy option to set up an EDIS is technically the most robust option, it is not politically feasible at this stage.

The Regulatory Scrutiny Board endorsed the impact assessment following a first negative opinion. To address the comments raised by the Board in relation to the DGS functioning, the impact assessment has been amended to better clarify the links between the EBA advice and the options set out in the IA.

- **Regulatory fitness and simplification**

The proposal should help to reduce the DGS's regulatory and administrative burden by removing certain national options and discretions, applying equal treatment of third country branches and strengthening arrangements for cross-border cooperation between DGSs. By streamlining required disclosures and aligning them with what is necessary for the recipients, the amendments will alleviate the administrative work in implementing DGS requirements.

As regards digital readiness, the proposal builds on the technological and legal advancements to ensure that depositor information is easily accessible, and that the payout process is as swift as possible.

In addition, empowerments for the EBA will allow further adjustments to improve and harmonise even further the practical implementation of the DGSD provisions.

Costs for banks and national authorities would be very limited. Each of the depositor protection enhancements provided for under the DGSD proposal (temporary high balances,

client funds, public authorities) is expected to have a very marginal impact on DGS funds. For instance, in 13 Member States, the amount of client funds constitutes less than 1% of all covered deposits in that Member State. The proposal will therefore preserve the competitiveness of the EU banking sector while boosting the protection offered to EU depositors. Moreover, the potential additional costs – albeit limited – arising from these improvements would be largely offset by the reduced costs for DGSs in performing their daily activities under the reviewed Directive. Indeed, by reducing the number of options, simplifying the mechanisms in place for cross-border cooperation and establishing at EU level a common methodology for least cost test completion, the proposal will free up DGS administrative resources.

Due to an increased role of DGSs in crisis management, the use of their financial means, which are collected from the banking sector, might require more frequent replenishments of their funds. However, in compliance with the least cost test, these measures are allowed only if they are considered as less costly for the DGS than a payout scenario. This approach safeguards its financial resources in the long term.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the EU, in particular the freedom to conduct a business (Article 16), the right to property (Article 17) and consumer protection (Article 38).

4. BUDGETARY IMPLICATIONS

The proposal has no impact on the EU budget. The proposal would require the EBA to develop seven technical standards and six guidelines in addition to those already present in the DGSD. Among these six new instructions for guidelines, three solely aim at codifying in level one text already existing guidelines (stress testing, delineation and reporting of available financial means, cooperation agreements), that were established on the EBA's own initiative. Therefore, these guidelines would not require a significant additional burden of work. The other empowerments provided for under the proposal relate to various topics, covering both very targeted mandates (principle of diversification in low-risk assets) and broader topics (least cost definition).

Considering past and current work on crisis management at the EBA, it is considered that the proposed tasks for the EBA will not require additional positions and can be carried out with current resources.

The delivery of the technical standards is due 12 months after the entry into force of the Directive. This deadline should provide sufficient time for the EBA to develop them taking into account its current resources.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Through regular interactions with the EBA Task Force on Deposit Guarantee Schemes, the Commission assesses the implementation of legal provisions[31] and contributes to harmonise the level of depositor protection across the EU.

As already set out in existing DGSD, national authorities will keep reporting to EBA on the amount of available financial means, alternative funding arrangements and use of DGS funds, which EBA should in turn disclose. The proposal also maintains the periodic and follow-up reviews already foreseen in the original directive, for stress testing of DGSs, criteria for risk-based contributions and re-examination of coverage level.

- **Detailed explanation of the specific provisions of the proposal**

The proposed amendments build on and clarify the mandate of DGSs to better protect deposits in the context of the reimbursement of depositors. They also enhance the role of the DGS outside of situations in which depositors are repaid by the DGS following the failure of a bank for the purpose of bank crisis management with the view to maintain depositor confidence and financial stability. They finally set up specific requirements to simplify the daily activities of DGS and deal with administratively complex situations.

The proposal amends the following provisions of the DGSD:

Considering the enhanced possibilities for the use of DGS for financing preventive measures, transfer strategies in resolution and alternative measures in insolvency, Article 1 ('Subject matter and scope') is amended to clarify that along with the establishment and functioning of the DGS, the coverage and repayment of deposits, and the use of DGS funds for measures to maintain the access of depositors to their deposits also fall within the scope of this Directive. Paragraph 2, point (d) of this article is amended to clarify that branches of credit institution established in third countries are covered by the Directive.

Article 2 sets out terms and definitions that are used for the purpose of this Directive. It is amended to introduce definitions, consistently with the new provisions introduced in the proposal following the EBA's recommendations in its opinions, in particular on clients' funds deposits and anti-money laundering and terrorist financing.

Paragraph 8 of Article 4 is consolidated in the new Article 16a on exchange of information between credit institutions and DGS and reporting by authorities (see below).

In its opinion, the EBA pointed at the divergent implementation of the definition of public authorities. This led to a different scope of protection of deposits across Member States, which in some cases excluded from protection public entities such as schools, hospitals or municipal services, which are not sophisticated depositors. The existing differentiation between public authorities based on their budget and other characteristics creates operational difficulties for credit institutions and DGSs. Therefore, in Article 5, public authorities are no longer excluded from the scope of depositor protection with the objective of harmonising and enhancing their protection. The article also clarifies that deposits related to terrorist financing are excluded from the DGS protection.

[31] The proposal requires Member States to transpose this Directive in their national laws within 18 months from the entry into force of this proposal.

Article 6, which regulates the coverage level of depositor protection, is amended to harmonise the minimum level of protection for temporary high balances, the related protection period and to clarify the scope of protected deposits held in view of real estate transactions.

Considering the divergent interpretations of the existing option related to the deduction from the repayable amount of liabilities of depositors that have fallen due, paragraph 5 of Article 7 is deleted to harmonise the rules for the calculation of the repayable amount. Paragraph 7 is amended to take into account situations where the interest rate is negative.

A new Article 7a on the burden of proof is introduced to clarify the procedural aspect of eligibility or entitlement to the deposits, leaving the burden of proof on depositors and account holders to prove that they are absolutely entitled to the deposits in beneficiary accounts or accounts with temporary high balances.

To give more time to verify the eligibility for repayment and in line with the provision on the burden of proof laid down in Article 7a, Article 8 is amended to allow the DGS to apply a longer period of up to 20 working days in the case of repayment of beneficiary accounts, client funds, and temporary high balances. The cut-off date starts being counted from the date on which a DGS received the complete documentation allowing the examination of claims and verification of conditions for repayment. The amended article also allows the DGS to set a threshold for the repayment of dormant accounts.

A new Article 8a is inserted to ensure that depositors, above a threshold of Euro 10 000, are reimbursed via credit transfers in line with the AML/CFT objectives.

Financial institutions such as investment firms, payment or e-money institutions collect funds from their clients and are required by the sectoral rules to safeguard those funds, including *inter alia* via placing them on segregated accounts with credit institutions. A new Article 8b sets out rules to harmonise the scope of deposit protection for such funds deposited on behalf and for the account of their clients, for the purpose of segregation. The article also details the modalities for the repayment of the account holder or the client and mandates the EBA to develop draft regulatory technical standards for the identification of clients in such cases.

The Commission's proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing[32] requires that financial supervisors cooperate with resolution authorities or designated authorities and inform those authorities of the outcome of customer due diligence measures. A new Article 8c DGSD is introduced in order to avoid the repayment of deposits where the outcome of customer due diligence reveals that there is a suspicion of money laundering or terrorist financing, as well as to ensure a smooth exchange of information between the designated authority and the DGS in these cases. This new provision also establishes withholding arrangements on DGS repayments for payouts of covered deposits entailing money laundering / terrorism financing concerns.

Article 9 DGSD provides that where a DGS makes payments in the context of resolution proceedings, the DGS should have a claim against the relevant credit institution for an amount equal to its payments. That claim should rank *pari passu* with covered deposits. This

[32] European Commission, (July 2021), *Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing COM(2021) 420 final*.

provision does not make a distinction between DGS contribution to an open-bank bail-in resolution (where the bank's entity is preserved and continues its operations) and DGS contributions to the financing of a transfer strategy (sale of business or bridge institution tool and liquidation of the residual entity). The absence of such a distinction may create uncertainty with respect to the existence and the amount of a DGS claim in different scenarios. Therefore, Article 9 is amended to specify that, when DGS funds are used in the context of transfer strategies in resolution or alternative measures in insolvency proceedings, the DGS should have a claim against the residual institution or entity in its subsequent winding-up proceedings under national law. This is justified by the fact that the DGS funds are used in connection to losses that would have otherwise been borne by depositors. This claim should rank at the same level as deposits under national insolvency rules to ensure that the shareholders and creditors left behind in the residual institution or entity effectively absorb the losses of the institution and to improve the possibility of DGS recoveries in insolvency. On the contrary, a DGS contribution to an open-bank bail-in resolution in lieu of covered deposits for the amount by which covered deposits would have been written down or converted, had they been subject to bail-in, should not generate a claim against the institution under resolution, as it would eliminate the purpose of the DGS's contribution.

Article 9, paragraph 3 is amended to harmonise to five years the period during which depositors can make a claim against the DGS.

Article 10 is amended to specify the reference period for the calculation of the target level and the fact that only money directly contributed to the DGS or recovered by the DGS are eligible to fulfil the target level. This clarification is in line with the current rules applicable by virtue of the EBA's guidelines. The objective is to clarify that money collected via loans is not eligible to reach the target level.

Paragraph 4 of Article 10 is deleted as the option to raise the available financial means through the mandatory contributions paid by member institutions to existing schemes of mandatory contributions established by a Member State has not been used in practice.

In line with the EBA opinions, to improve convergence of practices and ensure that funds could be made available to meet the deadline to reimburse depositors, a new paragraph 11 is added to Article 10, providing for flexibility for DGSs to use alternative funding arrangements financed through private sources before using the available financial means and funds collected through extraordinary contributions. Furthermore, such flexibility would allow DGSs to avoid having to immediately raise extraordinary contributions, where raising such contributions would endanger financial stability (e.g. in a systemic crisis). Full flexibility is also needed to enable DGSs to use their funds in the most efficient way and avoid a fire sale of their assets (available financial means) at the point of crisis. At the same time, the provision ensures that funding from public sources could be used only as a last resort.

Additionally, the new paragraph in Article 10 clarifies requirements to ensure the sound management of DGS funds and mandates the EBA to develop guidelines on the diversification of DGS' investment strategy. It also provides for the possibility to place DGS funds in a segregated account at the national central bank or national Treasury. Furthermore, it mandates the EBA to develop regulatory technical standards on the delineation of available financial means for DGSs.

Article 11 is amended to clarify the distinction between preventive and alternative measures. Preventive measures are DGS interventions supporting financially a bank in distress, for

example in the form of guarantees, cash injections, participation in capital increase, before the bank meets the conditions for failing or likely to fail with the objective to preserve its financial soundness. Alternative measures are DGS interventions supporting the transfer of deposits and assets of the failing bank to another bank (e.g., in the form of a cash contribution to fill the gap between assets and deposits, guarantees) in the context of insolvency to preserve the access of depositors to their money.

Article 11a establishes a set of safeguards for preventive measures and allocate the responsibilities among authorities for assessing how preventive measures are applied. This aims at ensuring that the use of these measures is timely, cost-effective and applied consistently across Member States, as improvements to the current situation.

Article 11b provides for the conditions underlying the note with measures that a credit institution commits to undertake to ensure or restore compliance with prudential requirements. Such note of measures should be consulted with the competent authority.

Article 11c establishes requirements for the credit institutions which did not comply with their commitments or fail to repay financial support granted with preventive measures. The EBA is mandated to develop guidelines on the content of the note with measures needed for the efficient implementation of a preventive measure and of the remediation plan.

When using DGS funds for the purpose of alternative measures referred to in Article 11(5), Article 11d provides for the conditions for marketing of the bank's assets, rights and liabilities. This process should be harmonised in order to limit adverse impacts on competition and to facilitate attracting potential buyers. This should also ensure consistency with the transfer tools under the BRRD. In line with the BRRD, the procedures to wind up the residual entity in an orderly manner should be initiated without delay.

A least cost test compares the cost of a DGS intervention to prevent the further deterioration of a bank's financial situation or the DGS cost for the transfer of business to another bank with the cost of a hypothetical scenario of a payout of covered deposits in liquidation. This requirement has been implemented differently across Member States. A new Article 11e clarifies and harmonises the approach to perform the least cost test, which determines the maximum amount a DGS may contribute outside payout, to finance preventive, resolution and alternative measures. A payout of covered deposits in insolvency can generate direct and indirect costs for the DGS and its members. Direct costs correspond to the amount disbursed by the DGS for its payout minus the recoveries from the liquidation proceedings. Indirect costs should take into account the replenishment of the funds spent by the DGS and the additional costs of funding for the DGS linked to the payout. When the least cost test is performed for the purpose of preventive measures, the importance of such measures for the DGS statutory or contractual mandate should also be factored in the calculation of the payout counterfactual. The cost of interventions outside payout should take into account expected earnings, operational expenses and potential losses related to the intervention. The EBA is mandated to develop draft regulatory technical standards specifying the methodology for the least cost test calculation.

Article 14 is amended to clarify that the protection by DGSs also covers depositors located in Member States where their member credit institutions exercise the freedom to provide services. It sets the conditions to give a DGS in a home Member State the possibility to reimburse directly depositors of branches established in another Member State and to allow a DGS in a host Member State to operate as a point of contact for depositors of credit

institutions that exercise the freedom to provide services. The EBA is mandated to develop guidelines on the respective roles of home and host DGSs and on the circumstances and conditions under which a DGS in a home Member State should decide to reimburse depositors of branches located in another Member State. Furthermore, it specifies the rules applicable to the calculation of funds to be transferred when a member institution changes its DGS affiliation from one Member State to another.

Article 15 is amended to require that branches of credit institutions established in third countries join a DGS in a Member State if they want to provide banking services and take eligible deposits in the EU. According to the EBA opinion, the vast majority of third country branches in EU Member States are already members of an EU DGS, either because the third country depositor protection regime is deemed to be non-equivalent or no formal equivalence assessment has been made. Some of the remaining branches were not required to join a respective EU DGS notwithstanding the results of the equivalence assessment showing their depositor protection was not equivalent. In line with the EBA recommendation, this amendment includes this membership requirement and ensures equal protection for depositors in the EU branches of third country banks and in EU banks and their branches in different Member States. This enhances the protection of depositors as it eliminates the risk of having deposits in the EU whose protection by a non-EU DGS would not be up to the EU standards (according to the EBA opinion, among the 74 non-EEA branches in the EU, 5 were not members of an EU DGS). Requiring EU branches of third country banks to join an EU DGS is also in line with one of the main objectives of this review to facilitate the use DGS funds in resolution.

In order to avoid that DGS funds are exposed to economic and financial risks in third countries, a new Article 15a allows DGS coverage of depositors belonging to branches of member institutions located in third countries only if the collected funds are above the minimum target level.

Article 16 is amended to harmonise information which banks have to provide to their clients annually on the protection of their deposits. It also enhances the information requirements for depositors in case of mergers or other major reorganisations of credit institutions, changes of DGS affiliation and unavailability of deposits due to the critical financial situation of banks. Member States are empowered to verify the appropriateness of the information provided to depositors and the EBA is empowered to develop draft regulatory standards for the format and the content of the information sheet and the procedures and the information to depositors, also with reference to client funds deposits and to terrorist financing/money laundering situations.

A new Article 16a is introduced to clarify the rules on reporting and improve the exchange of information from the credit institution to the DGSs and from the DGSs and the designated authorities to the EBA. It is important that the DGS receives from its affiliated institutions at any time and upon request information on deposits it insures. This is necessary for the DGS to operate as requested by this Directive in an effective way. These reporting requirements are derived from existing obligations by banks to ensure immediate identification of deposits or follow from the expansion of depositor protection and therefore, do not contradict the overall objective of reducing the administrative burden on credit institutions. Furthermore, it is important that the EBA is appropriately informed of situations that occur and for which the DGS may intervene in accordance with this Directive, to support the EBA in its tasks of overseeing the financial integrity, stability, and security of the European banking system. The

EBA will be empowered to develop draft implementing technical standards on the template, the procedures and the content of this information.

Member States have to transpose these amendments within two years after the entry into force of the amending Directive. The new rules regarding the application of safeguards on the use of preventive measures by DGSs under Article 11a require organisational changes and gradual building up of operational capacities by DGSs and designated authorities which justify a longer implementation period. Taking into account the specificities of IPSs which are recognised as DGS, this implementation period may be extended further.

2023/0115 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[33],

Having regard to the opinion of the Committee of the Regions[34],

Having regard to the opinion of the European Central Bank[35],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In accordance with Article 19(5) and (6) of Directive 2014/49/EU of the European Parliament and of the Council[36], the Commission has reviewed the application and the scope of that Directive and concluded that the objective of protection of depositors in the Union through the establishment of deposit guarantee schemes (DGSs) has mostly been met. However, the Commission also concluded that there is a need to address the remaining gaps in depositor protection and to enhance the functioning of DGSs, while harmonising rules for DGSs interventions other than payout proceedings.

(2) The failure to comply with the obligations to pay contributions to DGSs or to provide information to depositors and DGSs could undermine the objective of depositor protection. DGSs, or where relevant, designated authorities can apply pecuniary sanctions for late payment of contributions. It is important to improve coordination between DGSs, designated and competent authorities to take enforcement actions against a credit institution that does not comply with its obligations. Although the application of supervisory and enforcement measures by the competent authorities against credit institutions is regulated under national laws and Directive 2013/36/EU

33 OJ C , , p. .
34 OJ C , , p. .
35 OJ C , , p. .
36 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (OJ L 173, 12.6.2014, p. 149).

of the European Parliament and of the Council[37], it is necessary to ensure that designated authorities inform the competent authorities in time about any infringement of obligations of credit institutions under deposit protection rules.

(3) To support further convergence of DGSs' practices and assist DGSs in testing their resilience, the European Banking Authority (EBA) should issue guidelines on the performing of stress tests of DGS' systems.

(4) Pursuant to Article 5(1), point (d), of Directive 2014/49/EU, deposits of certain financial institutions, including investment firms are excluded from coverage by the DGS. However, the funds that those financial institutions receive from their clients and that they deposit in a credit institution on behalf of their clients, in the exercise of the services they offer, should be protected subject to certain conditions.

(5) The range of depositors that are currently protected through repayment by a DGS is motivated by the wish to protect non-professional investors, while professional investors are deemed not to need such protection. For that reason, public authorities have been excluded from coverage. However, most public authorities (which in some Member States include schools and hospitals) cannot be considered to be professional investors. It is therefore necessary to ensure that deposits of all non-professional investors, including public authorities, can benefit from the protection offered by a DGS.

(6) Deposits resulting from certain events, including real estate transactions relating to private residential properties or the payout of certain insurance benefits, can temporarily lead to large deposits. For that reason, Article 6(2) of Directive 2014/49/EU currently obliges Member States to ensure that deposits resulting from those events are protected above EUR 100 000 for at least 3 months, but for no longer than 12 months from the moment the amount has been credited or from the moment when such deposits become legally transferable. To harmonise depositor protection in the Union and to reduce the administrative complexity and legal uncertainty related to the scope of protection of such deposits, it is necessary to align their protection to at least EUR 500 000 for a harmonised duration of 6 months, in addition to the coverage level of EUR 100 000.

(7) During a real estate transaction, the funds can transit through different accounts prior to the actual settlement of the transaction. Therefore, to protect depositors going through real estate transactions in a homogenous manner, protection of temporary high balances should apply to the proceeds of a sale as well as to the funds deposited for a purchase of a private residential property in the short-term.

(8) To ensure timely disbursement of the amount to be repaid by a DGS, and to simplify the administrative and calculation rules, the discretion to take into account due liabilities when calculating the repayable amount should be removed.

(9) It is necessary to optimise the operational capacities of DGSs and to reduce their administrative burden. For that reason, it should be established that when it comes to the identification of depositors that are entitled to deposits in beneficiary accounts or the assessment of whether depositors are eligible for temporary high balances

[37] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

safeguards, it remains the depositors' and account holders' responsibility to demonstrate, by their own means, their entitlement.

(10) Certain deposits may be subject to a longer repayment period because they require DGSs to verify the claim for repayment. To harmonise the rules across the Union, the period for repayment should be limited to 20 working days after the reception of relevant documentation.

(11) The administrative cost related to the repayment of small amounts on dormant accounts can outweigh the benefits for the depositor. It is therefore necessary to specify that DGSs should not be obliged to take active steps to repay deposits held in such accounts below certain thresholds that should be set at national level. The right of depositors to claim such amount should, however, be preserved. In addition, where the same depositor also has other active accounts, DGSs should include that amount in the calculation of the amount to be reimbursed.

(12) DGSs have diverse methods to repay depositors, ranging from cash payouts to electronic transfers. However, to ensure the traceability of the repayment process from DGSs and to stay in line with the objectives of the Union framework on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, depositor reimbursements via credit transfers should be the default payout method when reimbursement exceeds the amount of EUR 10 000.

(13) Financial institutions are excluded from deposit protection. However, certain financial institutions, including e-money institutions, payment institutions and investment firms, also deposit the funds received from their clients in bank accounts, often on a temporary basis, to comply with safeguarding obligations in line with sectorial legislation, including Directive 2009/110/EC of the European Parliament and of the Council[38], Directive (EU) 2015/2366 of the European Parliament and of the Council[39] and Directive 2014/65/EU of the European Parliament and of the Council[40]. Considering the growing role of those financial institutions, DGSs should protect such deposits under the condition that those clients are identified or identifiable.

(14) Clients of financial institutions do not always know which credit institution the financial institution has chosen to deposit their funds. DGSs should therefore not aggregate such deposits with a deposit that the same clients might have in the same credit institution where the financial institution has placed their deposits. Credit institutions may not know the clients entitled to the sum held in the client accounts, or be able to check and record individual data of those clients. Depending on the type and business model of the financial institution, there might be circumstances, where reimbursing the client directly could endanger the account holder. Therefore, DGSs should be allowed to reimburse amounts to a client account opened by the account

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38 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

39 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

40 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

holder in another credit institution for the benefit of each client when certain criteria are met. To avoid the risk of double payment in those situations, any claims clients have in relation to sums held on their behalf by the account holder should be reduced by the amount reimbursed by the DGS to those clients directly. The EBA should therefore develop draft regulatory technical standards to specify the technical details related to the identification of clients for the purpose of repayment, the criteria for repayment to the account holder for the benefit of each client or to the client directly, and the rules to avoid multiple claims for payouts to the same beneficiary.

(15) When reimbursing depositors, DGSs may encounter situations that give rise to money laundering concerns. DGS should therefore withhold the payout to a depositor when notified that a financial intelligence unit has suspended a bank or payment account in accordance with the applicable anti-money laundering rules.

(16) Article 9 of Directive 2014/49/EU provides that where a DGS makes payments in the context of resolution proceedings, the DGS should have a claim against the credit institution concerned for an amount equal to its payments and that claim should rank *pari passu* with covered deposits. That provision does not distinguish between a DGS's contribution when an open-bank bail-in tool is used, and DGS's contribution to the financing of a transfer strategy (sale of business or bridge institution tool) followed by liquidation of the residual entity. To ensure clarity and legal certainty with respect to the existence and amount of a DGS's claim in different scenarios, it is necessary to specify that when the DGS contributes to support the application of the sale of business tool or of the bridge institution tool, or alternative measures, whereby a set of assets, rights and liabilities, including deposits, of the credit institution are transferred to a recipient, that DGS should have a claim against the residual entity in its subsequent winding-up proceedings under national law. To ensure that the shareholders and creditors of the credit institution left behind in the residual entity effectively absorb the losses of that credit institution and improve the possibility of repayments in insolvency to the DGS, the DGS claim should have the same ranking as the depositors' claim. In case the open bank bail-in tool is applied (i.e., the credit institution continues its operations), the DGS contributes in the amount by which covered deposits would have been written down or converted to absorb the losses in that credit institution, had covered deposits been included within the scope of bail-in. Therefore, the DGS's contribution should not result in a claim against the institution under resolution as it would eliminate the purpose of the DGS's contribution.

(17) To ensure convergence of DGS practices and legal certainty for depositors to claim their deposits, and to avoid operational hurdles for DGSs, it is important to set an adequately long period within which depositors can claim the repayment of their deposits, in those cases where the DGS has not repaid depositors within the deadlines laid down in Article 8 of Directive 2014/49/EU in the case of a payout.

(18) Pursuant to Article 10(2) of Directive 2014/49/EU, Member States are to ensure that by 3 July 2024, the available financial means of a DGS reach a target level of 0,8 % of the amount of the covered deposits of its members. To objectively assess whether DGSs fulfil that requirement, a clear reference period should be set to determine the amount of covered deposits and DGSs' available financial means.

(19) To ensure the resilience of DGSs, their funds should derive from stable and irrevocable contributions. Certain sources of DGS financing, including loans and expected recoveries, are too contingent to be accounted as contributions to reach the DGS' target level. To harmonise DGSs' conditions for the fulfilment of their target

level and to ensure that DGSs' available financial means are financed by contributions from the industry, funds that qualify to reach the target level should be distinguished from funds that are considered as complementary sources of financing. Outflows of DGS funds, including foreseeable loan repayments, can be planned and factored in regular contributions from DGS members, and should therefore not lead to a decrease of the available financial means below the target level. It is therefore necessary to specify that, after the target level has been reached for the first time, only a shortfall in DGS' available financial means caused by a DGS intervention (payout, or preventive, resolution or alternative measures) should trigger a six-year replenishment period. To ensure consistent application, the EBA should develop draft regulatory technical standards specifying the methodology for the calculation of the target level by the DGSs.

(20) The available financial means of a DGS should be immediately usable to face sudden events of payout or other interventions. In view of various practices across the Union, it is appropriate to lay down requirements for DGSs' funds investment strategy to mitigate any negative impact on the ability of a DGS to fulfil its mandate. Where a DGS is not competent to set the investment strategy, the authority, or body or entity in the Member State that is responsible for setting the investment strategy should, when setting that investment strategy, also respect the principles regarding diversification and investments in low-risk assets. To preserve full operational independence and flexibility of the DGS in terms of access to its funds, where DGS funds are deposited with the treasury, those funds should be earmarked and placed on a segregated account.

(21) The option to raise the available financial means of a DGS through mandatory contributions paid by member institutions to existing schemes of mandatory contributions established by a Member State to cover the costs related to systemic risk has never been used and should therefore be removed.

(22) It is necessary to enhance depositor protection, while avoiding the need for a fire sale of the assets of a DGS and limiting possible negative pro-cyclical effects over the banking industry caused by the collection of extraordinary contributions. DGSs should therefore be allowed to use alternative funding arrangements that enable them to obtain at any time short-term funding from sources other than contributions, including before using their available financial means and funds collected through extraordinary contributions. Because credit institutions should primarily bear the cost and responsibility for financing DGSs, alternative funding arrangements from public funds should only be used as a last resort.

(23) To ensure adequately diversified investment of DGS funds and convergent practices, the EBA should issue guidelines to provide DGSs with guidance in that respect.

(24) While the primary role of DGSs is the repayment of covered depositors, interventions outside payout can prove more cost-effective for DGSs and ensure uninterrupted access to deposits by facilitating transfer strategies. DGSs may be required to contribute to the resolution of credit institutions. In addition, in some Member States, DGSs may finance preventive measures to restore the long-term viability of credit institutions, or alternative measures in insolvency. While such preventive and alternative measures can significantly improve the protection of deposits, it is necessary to subject such measures to adequate safeguards, including in the form of a harmonised least cost test, to ensure a level playing field and the effectiveness and

cost-efficiency of such measures. Such safeguards should only apply to interventions financed with the DGS's available financial means regulated under this Directive.

(25) Measures to prevent failure of a credit institution through sufficiently early interventions can play an effective role in the continuum of crisis management tools to maintain depositor confidence and financial stability. Those measures can take various forms - capital support measures through own funds instruments (including Common Equity Tier 1 instruments) or other capital instruments, guarantees, or loans. DGSs have had heterogeneous recourse to those measures. To ensure the continuum of crisis management tools and recourse to preventive measures in a manner consistent with the resolution framework and the state aid rules, it is necessary to specify the timing and conditions for their application. Preventive measures are not appropriate for the absorption of incurred losses when the credit institution is already failing or likely to fail and should be used early to prevent deterioration of the financial situation of the bank. Designated authorities should therefore verify whether the conditions for such DGS intervention have been fulfilled. Finally, those conditions for the use of DGS available financial means should be without prejudice to the assessment by the competent authority of whether an IPS fulfils the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[41].

(26) To ensure that preventive measures achieve their objective, credit institutions should be required to prepare a note outlining the measures that they commit to undertake. The preparation of such note should not be too burdensome and time-consuming for the credit institution to ensure the possibility for the DGS to intervene early enough. Therefore, the note accompanying preventive measures should take the form of a sufficiently short explanatory document. Such note should contain all elements which aim at preventing the outflow of funds and strengthening the capital and liquidity position of the credit institution, enabling the credit institution to comply with all the relevant prudential and other regulatory requirements on a forward-looking basis. Such note should therefore contain capital raising measures, including rules on the issuance of rights, the voluntary conversion of subordinated debt instruments, liability management exercises, capital generating sales of assets, the securitisation of portfolios, and earnings retention, including dividend bans and bans on the acquisition of stakes in undertakings. For the same reason, during the implementation of the measures envisaged in the note, credit institutions should also strengthen their liquidity positions and refrain from aggressive commercial practices, and from the repurchasing of own shares or call hybrid capital instruments. Such note should also contain an exit strategy for any support measures received. Competent authorities are best positioned to be consulted on the relevance and credibility of the measures envisaged in the note. To ensure that the designated authorities of the DGS that is requested to finance a preventive measure by the credit institution can assess that all the conditions for preventive measures are fulfilled, the competent authorities should cooperate with the designated authorities. To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a note.

(27) To ensure that credit institutions receiving support from DGSs in the form of preventive measures deliver on their commitments, competent authorities should

[41] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

request a remediation plan from credit institutions that failed to fulfil their commitments. Where a competent authority is of the opinion that the measures in the remediation plan are not capable of achieving the credit institution's long-term viability, the DGS should not provide any further preventive support to the credit institution. To ensure a consistent approach to the application of preventive measures across the Union, the EBA should issue guidelines to assist credit institutions to draft such a remediation plan.

(28) To avoid detrimental effects on competition and on the internal market, it is necessary to lay down that in the case of alternative measures in insolvency, relevant bodies representing a credit institution in the context of national insolvency proceedings (liquidator, receiver, administrator or other) should make arrangements for the marketing of the business of the credit institution or part of it in an open, transparent and non-discriminatory process, while aiming to maximise, as far as possible, the sale price. The credit institution or any intermediary acting on behalf of the credit institution should apply rules that are adequate for the marketing of assets, rights and liabilities that are to be transferred to potential purchasers. In any event, the use of State resources should remain subject to the relevant State aid rules under the Treaty, where applicable.

(29) Since the main aim of DGSs is to protect covered deposits, DGSs should only be allowed to finance interventions other than payouts where such interventions are cheaper than payouts. Experience with the application of that rule ('least cost test') has revealed several shortcomings as the current framework does not detail how to determine the cost of those interventions nor the cost of the payout. To ensure a consistent application of the least cost test across the Union, it is necessary to specify the calculation of those costs. At the same time, it is necessary to avoid excessively stringent conditions that would effectively disable the use of DGS funds for other interventions than payout. When carrying out the least cost assessment, DGSs should first verify that the cost to finance the selected measure is lower than the cost of reimbursement of covered deposits. The methodology for the least cost assessment should take into account the time value of money.

(30) Liquidation can be a lengthy process whose efficiency depends on national judicial efficiency, insolvency regimes, individual bank features, and the circumstances of the failure. For DGS interventions as part of alternative measures, the least cost test should rely on the valuation of the assets and liabilities of the credit institution, laid down in Article 36(1) of Directive 2014/59/EU, and the estimate laid down in Article 36(8) of that Directive. However, the precise evaluation of liquidation recoveries can be challenging in the context of the least cost test for preventive measures, which supposedly happen long before any foreseeable liquidation. Therefore, the counterfactual for the least cost test for preventive measures should be adjusted accordingly, and in any case, the expected recoveries should be limited to a reasonable amount based on recoveries in past payout events.

(31) The designated authorities should estimate the cost of the measure for the DGS, including after the repayment of a loan, a capital injection or the use of a guarantee, net of expected earnings, operational expenses, and potential losses, against a counterfactual based on a hypothetical final loss at the end of the insolvency proceedings, which should take into account recoveries from the DGS as part of a bank's liquidation proceedings. To give a fair and more comprehensive picture of the actual cost of depositors' repayment, the estimation of the loss incurred due to the reimbursement of covered deposits should include costs indirectly related to the

reimbursement of depositors. Such costs should include the cost of replenishment of the DGS and the cost that the DGS might bear due to the recourse to alternative financing. To ensure consistent application of the least cost test, the EBA should develop draft regulatory technical standards on the methodology to calculate the cost of different DGS interventions. To ensure consistency of the methodology for the least cost assessment with the DGS statutory or contractual mandate as regards preventive measures, the EBA should, when developing those draft regulatory technical standards, take into account the relevance of preventive measures in the methodology for the calculation of the payout counterfactual.

(32) To enhance harmonised protection of depositors and specify respective responsibilities across the Union, the DGS of the home Member State should ensure the payout to depositors located in Member States where the credit institutions that are a member of the DGS take deposits and other repayable funds by offering deposit services on cross-border basis without establishment in the host Member State. To facilitate the payout operations and provision of information to depositors, the DGS of the host Member State should be allowed to operate as a point of contact for depositors at credit institutions that exercise the freedom to provide services.

(33) The cooperation between DGSs across the Union is vital to ensure fast and cost-efficient depositors' repayment where credit institutions conduct banking service through branches in other Member States. In view of technological advancements that promote the use of cross-border transfers and remote identification, the DGS of the home Member State should be allowed to make the repayments directly to depositors at branches located in another Member State, provided that the administrative burden and costs are lower than if the repayment would be carried out by the DGS of the host Member State. That flexibility should complement the current cooperation mechanism, requiring the DGS of the host Member State to repay depositors in branches on behalf of the DGS of the home Member State. To preserve depositor confidence in both host and home Member States, EBA should issue guidelines to assist the DGSs in such cooperation, *inter alia* by suggesting a list of conditions under which a DGS of the home Member State could decide to reimburse depositors at branches located in the host Member State.

(34) Credit institutions may change affiliation to a DGS because they move their headquarters to another Member State or convert their subsidiary into a branch or *vice versa*. Article 14(3) of Directive 2014/49/EU requires that the contributions of that credit institution paid during the 12 months preceding the transfer are transferred to the other DGS in proportion to the amount of covered deposits transferred. To ensure that the transfer of contributions to the receiving DGS is not dependent on divergent national rules regarding invoicing or actual date of payment of contributions, the DGS of origin should calculate the amount to be transferred on the basis of contributions due rather than contributions paid.

(35) It is necessary to ensure equal protection of depositors across the Union that cannot be fully guaranteed by an equivalence assessment regime of depositor protection in third countries. For that reason, branches in the Union of a credit institution that has its head office in a third country should join a DGS in the Member State where they perform their deposit-taking activity. That requirement would also ensure consistency with Directives 2013/36/EU and 2014/59/EU that aim to introduce a more robust prudential and resolution frameworks for third country groups providing banking services in the Union. Conversely, it should be avoided that DGSs are exposed to the economic and

financial risks of third countries. Deposits in branches established in third countries by Union credit institutions should therefore not be protected.

(36) Standardised and regular information disclosure enhances awareness of depositors about deposit protection. To align disclosure requirements with technological developments, those requirements should take into account the new digital communication channels whereby credit institutions interact with depositors. Depositors should obtain clear and homogeneous information that explains their deposit protection, while limiting the related administrative burden for credit institutions or DGSs. The EBA should be mandated to develop draft implementing technical standards to specify, on the one hand, the content and format of the depositor information sheet to communicate to depositors on annual basis and, on the other hand, the template information that either DGSs or credit institutions are required to communicate to depositors in specific situations, including mergers of credit institutions, determination that deposits are unavailable, or repayment of client funds deposits.

(37) The merger of a credit institution or the conversion of subsidiary into branch or *vice versa* might affect the key features of depositor protection. To avoid adverse impacts on depositors that would have deposits in both merging banks and whose claim to deposit coverage would be reduced because of changes to DGS affiliation, all depositors should be informed about such changes and should have the right to withdraw their funds without incurring a penalty up to an amount equal to the lost coverage of deposits.

(38) To preserve financial stability, avoid contagion and enable depositors to exercise their rights to claim deposits when applicable, designated authorities, DGSs and credit institutions concerned should inform depositors about deposits becoming unavailable.

(39) To increase transparency for depositors and to promote financial robustness and trust among DGSs when fulfilling their mandate, the current reporting requirements should be improved. Building on the current requirements that enable DGSs to request all necessary information from their member institutions to prepare for payout, DGSs should also be able to request information necessary to prepare for a payout in the context of cross border cooperation. Upon the request from a DGS, member institutions should be required to provide general information about any material cross-border business in other Member States. Likewise, in order to provide the EBA with the suitable range of information on the evolution of the DGSs' available financial means and on the use of those means, Member States should ensure that DGSs inform the EBA on a yearly basis of the amount of covered deposits and available financial means, and notify the EBA about the circumstances that led to the use of DGS funds either for payouts or other measures. Finally, to reflect the strengthened role of DGSs in the bank crisis management which aims to facilitate the use of DGS funds in resolution, DGSs should have the right to receive the summary of resolution plans of credit institutions to increase their general preparedness to make the funds available.

(40) Technical standards in financial services should facilitate consistent harmonisation and adequate protection of depositors across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust the EBA with the development of draft regulatory and implementing technical standards which do not involve policy choices, for adoption by the Commission.

(41) The Commission should, where provided for in this Directive, adopt draft regulatory technical standards developed by the EBA by means of delegated acts pursuant to Article 290 TFEU, in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[42] to specify the following: (a) the technical details related to the identification of clients of financial institutions for payout of client funds deposits, the criteria for repayment to the account holder for the benefit of each client or to the client directly, and the rules to avoid multiple claims for payouts to the same beneficiary; (b) the methodology for the least cost test, and (c) the methodology for the calculation of available financial means qualifying for the target level.

(42) The Commission should, where provided for in this Directive, adopt draft implementing technical standards developed by EBA by means of implementing acts pursuant to Article 291 TFEU, in accordance with Article 15 of Regulation (EU) No 1093/2010 to specify: (a) the content and format of the depositor information sheet, the template for information that either DGSs or credit institutions should communicate to depositors; (b) the procedures to be followed when providing information by credit institutions to their DGS, and by DGSs and designated authorities to EBA, and the templates for providing that information.

(43) Directive 2014/49/EU should therefore be amended accordingly.

(44) To allow branches of credit institutions having their head offices outside the Union that are not members of a DGS established in the Union to join a Union DGS, those branches should be given a sufficient period to take the necessary steps to comply with that requirement.

(45) Directive 2014/49/EU allows Member States to recognise an IPS as a DGS if it fulfils the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 and complies with Directive 2014/49/EU. To take into account the specific business model of those IPSs, in particular the relevance of preventive measures at the core of their mandate, it is appropriate to provide for the possibility of Member States to allow IPSs to adapt to the new safeguards for the application of preventive measures within a 6-year period. This possibly longer compliance period takes into account the timeline for the build-up of a segregated fund for IPS purposes other than deposit insurance as agreed between the European Central Bank, the national competent authority and the relevant IPSs.

(46) To allow DGSs and designated authorities to build up the necessary operational capacity to apply the new rules on the use of preventive measures, it is appropriate to provide for a deferred application of those new rules.

(47) Since the objectives of this Directive, namely to ensure uniform protection of depositors in the Union, cannot be sufficiently achieved by the Member States due to the risks that diverging national approaches might entail for the integrity of the single market but can rather, by amending rules that are already laid down at Union level, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/49/EU

Directive 2014/49/EU is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. This Directive lays down rules and procedures relating to the establishment and the functioning of deposit guarantee schemes (DGSs), the coverage and repayment of deposits, and the use of DGS funds for measures that aim to ensure the access of depositors to their deposits.’;

(b) in paragraph 2, point (d) is replaced by the following:

‘(d) credit institutions, and branches of credit institutions that have their head office outside the Union, that are affiliated to the schemes referred to in points (a), (b) or (c) of this paragraph.’;

(2) in Article 2, paragraph 1 is amended as follows:

(a) in point (3), the introductory wording is replaced by the following:

‘(3) ‘deposit’ means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions habitually carried out by credit institutions in the course of their business, and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:’;

(b) in point (13), the introductory wording is replaced by the following:

‘(13) ‘payment commitment’ means an irrevocable, fully collateralised obligation of a credit institution to pay a DGS a monetary amount when called by that DGS, and where the collateral:

(c) the following points (19) to (23) are added:

(19) ‘resolution authority’ means a resolution authority as defined in Article 2, point (18) of Directive 2014/59/EU;

(20) ‘client funds deposits’ means 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;

(21) ‘Union State aid framework’ means the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;

(22) ‘money laundering’ means money laundering as defined in Article 2, point (1) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] *’;

(23) ‘terrorist financing’ means terrorist financing as defined in Article 2, point (2) [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. **’;

(d) paragraph 3 is replaced by the following:

‘3. Shares in Irish building societies, apart from those of a capital nature covered by Article 5(1), point (b), shall be treated as deposits.’;

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* [Please insert full reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].

** [Please insert full reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final.

(3) Article 4 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. Members States shall ensure that where a credit institution does not comply with its obligations as a member of a DGS, that DGS shall immediately notify the competent authority of that credit institution thereof. Member States shall ensure that the competent authority, in cooperation with that DGS, uses the supervisory powers laid down in Directive 2013/36/EU, and promptly takes all measures to ensure that the credit institution concerned complies with its obligations, including where necessary by imposing administrative penalties and other administrative measures in accordance with the national laws adopted in addition to the implementation of provisions of Title VII, Chapter 1, Section IV, of Directive 2013/36/EU.’;

(b) the following paragraph 4a is inserted:

‘4a. Members States shall ensure that where a credit institution fails to pay the contributions referred to in Article 10 and Article 11(4) within the timeframe specified by the DGS, that DGS shall, for the period of the delay, charge statutory interest rate on the amount due.’;

(c) paragraphs 5 and 6 are replaced by the following:

‘5. Member States shall ensure that the DGS informs the designated authority where the measures referred to in paragraphs 4 and 4a fail to restore compliance by the credit institution. Member States shall ensure that the designated authority assesses whether the institution still fulfils the conditions for a continued membership of the DGS and inform the competent authority of the outcome of that assessment.

6. Member States shall ensure that where the competent authority decides to withdraw the authorisation in accordance with Article 18 of Directive 2013/36/EU, the credit institution ceases to be a member of the DGS. Member States shall ensure that deposits held on the date on which a credit institution ceased to be a member of the DGS continue to be covered by that DGS.’;

(d) paragraph 8 is deleted;

(e) the following paragraph 13 is added:

‘13. By… [OP – please add 36 months after entry into force], the EBA shall develop guidelines on the scope, contents and procedures of the stress tests referred to in paragraph 10.’;

(4) Article 5 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

‘1. The following shall be excluded from any repayment by a DGS:’

(ii) point (c) is replaced by the following:

‘(c) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering and terrorist financing;’;

(iii) point (e) is deleted;

(iv) point (f) is replaced by the following:

‘(f) deposits the holder of which has never been identified pursuant to Article 16 of Regulation (EU) …. [please insert short reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], where those deposits have become unavailable, except where a holder requests payout and proves that the lack of identification was not caused by his or her action;’;

(v) point (j) is deleted;

(b) paragraph 2 is replaced by the following:

‘2. By way of derogation from paragraph 1, point (i), Member States may decide that deposits held by personal pension schemes and occupational pension schemes of small or medium-sized enterprises are included up to the coverage level laid down in Article 6(1).’;

(5) Article 6 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the introductory wording is replaced by the following:

‘In addition to paragraph 1, Member States shall ensure that the following deposits are protected as a minimum to an amount of EUR 500 000 for 6 months after that amount has been credited or from the moment when such deposits become legally transferable’;

(ii) point (a) is replaced by the following:

‘(a) deposits resulting from real estate transactions relating to private residential properties and deposits intended for such transactions, provided that those transactions are concluded in the short term by a natural person, and provided that that natural person can provide documents proving such transaction;’;

(b) the following paragraph 2a is inserted:

‘2a. Member States shall ensure that the coverage level laid down in paragraph 2 supplements the coverage level laid down in paragraph 1.’

(6) Article 7 is amended as follows:

(a) paragraph 5 is deleted;

(b) paragraph 7 is replaced by the following:

‘7. Member States shall ensure that the DGS reimburses interest on deposits which has accrued until, but has not been credited or debited at, the date on which a relevant administrative authority makes a determination as referred to in Article 2(1), point (8)(a), or a judicial authority makes a ruling as referred to in Article 2(1), point (8)(b). The coverage level laid down in Article 6(1) or, in the circumstances referred to in Article 6(2), the coverage level laid down in that paragraph, shall not be exceeded.’;

(7) the following Article 7a is inserted:

‘Article 7a

Burden of proof for deposit eligibility and entitlement

Member States shall ensure that in the cases referred to in Article 6(2) and Article 7(3) a depositor or, where appropriate, an account holder, proves either that the deposits concerned meet the conditions of Article 6(2), or the entitlement to the deposits in the circumstances referred to in Article 7(3).’;

(8) Article 8 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. By way of derogation from paragraph 1, Member States shall allow DGSs to apply a longer repayment period for the deposits referred to in Article 6(2), Article 7(3) and Article 8b, which shall not exceed 20 working days from the date on which those DGSs received the complete documentation they requested from a depositor to examine the claims and verify that the conditions for repayment are met.’;

(b) paragraph 5 is amended as follows:

(i) point (c) is replaced by the following:

‘(c) by way of derogation from paragraph 9, there has been no transaction relating to the deposit during the last 24 months (the account is dormant), except where a depositor also has deposits on another account that is not dormant’;

(ii) point (d) is deleted;

(c) paragraph 8 is deleted;

(d) paragraph 9 is replaced by the following:

‘9. Member States shall ensure that where there has been no transaction relating to the deposit during the last 24 months, DGSs may set a threshold concerning the administrative costs that would be incurred by those DGSs in making such a repayment. DGSs shall not be obliged to take active steps to repay depositors below that threshold. Member States shall ensure that DGSs repay depositors below that threshold where so requested by those depositors.’;

(9) the following Articles 8a, 8b and 8c are inserted:

'Article 8a

Repayment of deposits exceeding EUR 10 000

Member States shall ensure that when amounts to be reimbursed exceed EUR 10 000, DGSs shall reimburse depositors via credit transfers as defined in Article 2, point (20), of Directive 2014/92/EU of the European Parliament and of the Council*.

'Article 8b

Coverage of client funds deposits

1. Member States shall ensure that client funds deposits are covered by the DGSs where all of the following applies:

(a) such deposits are placed on behalf and for the account of clients who are eligible for protection in accordance with Article 5(1);

(b) such deposits are made to segregate client funds in compliance with safeguarding requirements laid down in Union law regulating the activities of the entities referred to in Article 5(1), point (d);

(c) the clients referred to in point (a) are identified or identifiable prior to the date on which a relevant administrative authority makes a determination as referred to in Article 2(1), point (8)(a) or a judicial authority makes a ruling as referred to in Article 2(1), point (8)(b).

2. Member States shall ensure that the coverage level referred to in Article 6(1) applies to each of the clients that meet the conditions laid down in paragraph 1, point (c), of this Article. By way of derogation from Article 7(1), 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.

3. Member States shall ensure that DGSs repay covered deposits either to the account holder for the benefit of each client, or to the client directly.

4. The EBA shall develop draft regulatory technical standards to specify:

(a) the technical details related to the identification of clients for the repayment in accordance with Article 8;

(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.

When developing those draft regulatory technical standards, EBA shall take into account all of the following:

(a) the specificities of the business model of the different types of financial institutions referred to in Article 5(1), point (d);

(b) the specific requirements of the applicable Union law regulating the activities of the financial institutions referred to in Article 5(1), point (d), for the treatment of client funds.

The EBA shall submit those draft regulatory technical standards to the Commission by … [OP – please insert the date= 12 months after the date of entry into force of this Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 8c

Suspension of repayments in case of concerns about money laundering or terrorist financing

1. Member States shall ensure that the designated authority informs the DGS within 24 hours from the moment the designated authority received the information referred to in Article 48(4) of [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] about the outcome of the customer due diligence measures referred to in Article 15(4) of Regulation (EU) …. [please insert short reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. Member States shall ensure that the information exchanged between the designated authority and the DGS is limited to the information that is strictly necessary for the exercise of the DGS' tasks and responsibilities under this Directive and that such exchange of information respects the requirements laid down in Directive 96/9/EC of the European Parliament and of the Council**.

2. Member States shall ensure that DGSs suspend the repayment referred to in Article 8(1) where a depositor or any person entitled to sums held in his or her account has been charged with an offence arising out of, or in relation to, money laundering or terrorist financing, pending the judgment of the court.

3. Member States shall ensure that DGSs suspend the repayment referred to in Article 8(1) for the same duration as laid down in Article 20 of [please insert short reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] where they are notified by the Financial Intelligence Unit referred to in Article 32 of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] that that Unit has decided to suspend a transaction or to withhold consent to proceed with such a transaction, or to suspend a bank or a payment account in accordance with Article 20(1) or (2) of Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final].

4. Member States shall ensure that DGSs are not held liable for any measures taken in accordance with the instructions of the Financial Intelligence Unit. DGSs shall use any information received from the Financial Intelligence Unit for the purposes of this Directive only.

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* Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

** Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).';

(10) in Article 9, paragraphs 2 and 3 are replaced by the following:

'2. Without prejudice to rights they may have under national law, DGSs that make payments under guarantee within a national framework shall have the right of

subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to the DGSs payments made to depositors. DGSs that make a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b), of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5) of this Directive, shall have a claim against the residual credit institution for any loss incurred as a result of any contributions made to resolution pursuant to Article 109 of Directive 2014/59/EU or to the transfer made pursuant to Article 11(5) of this Directive in connection to losses which depositors otherwise would have borne. That claim shall rank at the same level as deposits under national law governing normal insolvency proceedings.

3. Member States shall ensure that depositors whose deposits have not been repaid or acknowledged by the DGS by deadlines laid down in Article 8(1) and (3) can claim the repayment of their deposits within a period of 5 years.';

(11) Article 10 is amended as follows:

(a) paragraph 2, is amended as follows:

(i) after the first subparagraph, the following subparagraphs are inserted:

'For the calculation of the target level referred to in the first subparagraph, the reference period shall be between 31 December preceding the date by which the target level is to be reached and that date.

When determining whether the DGS has reached that target level, Member States shall only take into account available financial means directly contributed by, or recovered from, members to the DGS, net of administrative fees and charges. Those available financial means shall include investment income derived from funds contributed by members to the DGS, but shall exclude repayments not claimed by eligible depositors during payout procedures, and loans between DGSs.';

(ii) the third subparagraph is replaced by the following:

'Where, after the target level referred to in the first subparagraph has been reached for the first time and the available financial means, following a disbursement of DGS's funds in accordance with Article 8(1), and Article 11(2), (3), and (5), have been reduced to less than two-thirds of the target level, DGSs shall set the regular contribution at a level allowing for the target level to be reached within 6 years.';

(b) paragraph 3 is replaced by the following:

'3. The available financial means that the DGS takes into account to reach the target level referred to in paragraph 2 may include payment commitments. The total share of such payment commitments shall not exceed 30 % of the total amount of available financial means raised in accordance with paragraph 2.

The EBA shall issue guidelines on payment commitments laying down criteria for the admissibility of those commitments;'

(c) paragraph 4 is deleted;

(d) paragraph 7 is replaced by the following:

‘7. Member State shall ensure that DGSs, designated authorities, or competent authorities set the investment strategy for the available financial means of DGSs, and that that investment strategy complies with the principle of diversification and investments in low-risk assets.’;

(e) the following paragraph 7a is inserted:

‘7a. Member States shall ensure that DGSs may place all or part of their available financial means with their national central bank or national treasury, provided that those available financial means are kept on a segregated account and that they are readily available for use by the DGS in accordance with Articles 11 and 12.’;

(f) paragraph 10 is deleted;

(g) the following paragraphs 11, 12 and 13 are added:

‘11. Member States shall ensure that in the context of the measures referred to in Article 11(1), (2), (3) and (5), DGSs may use the funds originating from the alternative funding arrangements referred to in Article 10(9) which are not financed through public funds, before using the available financial means and before collecting the extraordinary contributions referred to in Article 10(8). Member States shall ensure that DGSs use alternative funding arrangements financed through public funds only as a last resort.

12. The EBA shall develop draft regulatory technical standards to specify:

(a) the methodology for the calculation of available financial means qualifying for the target level referred to in paragraph 2, including the delineation of the available financial means of DGSs and the categories of available financial means that derive from contributed funds;

(b) the details of the process to reach the target level referred to in paragraph 2 after a DGS has used available financial means in accordance with Article 11.

EBA shall submit those draft regulatory technical standards to the Commission by … [OP – please insert the date = 24 months after the date of entry into force of this Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

13. By… [OP – please insert the date = 24 months after the date of entry into force of this Directive] The EBA shall develop guidelines to assists DGSs with the diversification of their available financial means and on how DGSs could invest in low-risk assets applicable to the available financial means of DGSs.’;

(12) Article 11 is replaced by the following:

‘*Article 11*

Use of funds

1. Member States shall ensure that DGSs use the available financial means referred to in Article 10 primarily to repay depositors in accordance with Article 8 without prejudice to the use of additional financial means collected by DGSs for the fulfilment of mandates other than depositor protection under this Directive.

2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU. Member States shall ensure that resolution authorities determine the amount that a DGS is to contribute to the financing of resolution of credit institutions, after those resolution authorities have consulted the DGS on the results of the least cost test referred to in Article 11e of this Directive.

3. Member States may allow DGSs to use the available financial means for preventive measures as referred to in Article 11a for the benefit of a credit institution where all of the following applies:

(a) none of the circumstances referred to in Article 32(4) of Directive 2014/59/EU are present;

(b) the DGS has confirmed that the cost of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e;

(c) all of the conditions laid down in Articles 11a and 11b are met.

4. Where available financial means are used for preventive measures as referred to in Article 11a, the affiliated credit institutions shall immediately provide the DGS with the means used for such measures, where necessary in the form of extraordinary contributions, where any of the following applies:

(a) the need to repay depositors arises and the available financial means of the DGS amount to less than two-thirds of the target level;

(b) the available financial means of the DGS fall below 25 % of the target level.

5. Where a credit institution is wound up in accordance with Article 32b of Directive 2014/59/EU in order to exit the market or terminate its banking activity, Member States may allow DGSs to use the available financial means for alternative measures to preserve the access of depositors to their deposits, including the transfer of assets and liabilities and a deposit book transfer, provided that the DGS confirms that the cost of the measure does not exceed the cost of repaying depositors as calculated in accordance with Article 11e of this Directive and that all the conditions laid down in Article 11d of this Directive are met.';

(13) the following Articles 11a to 11e are inserted:

'Article 11a

Preventive measures

1. Where Member States allow the use of DGS funds for preventive measures as referred to in Article 11(3), Member States shall ensure that DGSs use the available financial means for the preventive measures referred to in Article 11(3), provided that all of the following conditions are met:

(a) the request of a credit institution for the financing of such preventive measures is accompanied by a note containing measures as referred to in Article 11b;

(b) the credit institution has consulted the competent authority on the measures envisaged in the note referred to in Article 11b;

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

(d) the use of the preventive measures by the DGS is conditional upon the credit institution's commitments to secure access to covered deposits;

(e) the affiliated credit institutions are able to pay the extraordinary contributions in accordance with Article 11(4);

(f) the credit institution complies with its obligations under this Directive and has fully reimbursed any previous preventive measure.

2. Member States shall ensure that DGSs have monitoring systems and decision-making procedures in place that are appropriate for selecting and implementing preventive measures and monitoring affiliated risks.

3. Member States shall ensure that DGSs may implement preventive measures only where the designated authority has confirmed that all the conditions laid down in paragraph 1 have been met. The designated authority shall notify the competent authority and the resolution authority.

4. Member States shall ensure that the DGS which uses its available financial means for capital support measures transfers its holdings of shares or other capital instruments in the supported credit institution to the private sector as soon as commercial and financial circumstances allow.

'Article 11b

Note accompanying preventive measures

1. Member States shall ensure that credit institutions which request a DGS to finance preventive measures in accordance with Article 11(3) present to the competent authority for consultation a note with measures that those credit institutions commit to undertake to ensure or restore compliance with the supervisory requirements applicable to the credit institution concerned and that are laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013.

2. The note referred to in paragraph 1 shall set out actions to mitigate the risk of deterioration of the financial soundness and strengthen the credit institution's capital and liquidity position.

3. Member States shall ensure that in the event of a capital support measure, the note referred to in paragraph 1 identifies all capital raising measures that can be implemented, including safeguards preventing outflows of funds, a forward-looking capital adequacy assessment, and a subsequent determination of the capital shortfall that the DGS has to cover.

4. Member States shall ensure that in the event of a liquidity support measure, the note referred to in paragraph 1 provides for a clearly specified repayment schedule by the credit institution of any funds received as part of the preventive measures.

5. Where relevant, Member States shall ensure that the measures envisaged in the note referred to in paragraph 1 are aligned with the capital conservation plan referred to in Article 142 of Directive 2013/36/EU.

6. Where the Union State aid framework is applicable, Member States shall ensure that the measures envisaged in the note referred to in paragraph 1 are aligned with the restructuring plan that the credit institution is required to submit to the Commission under that framework.

'Article 11c

Remediation plan

1. Member States shall ensure that where the credit institution fails to fulfil the commitments outlined in the note referred to in Article 11b(1), or fails to repay the amount contributed under the preventive measures at maturity, the DGS informs the competent authority thereof without delay.

2. In the situation referred to in paragraph 1, Member States shall ensure that the competent authority requests the credit institution to submit a remediation plan describing the steps the credit institution will take to ensure or restore compliance with supervisory requirements, to ensure its long term viability and to repay the due amount contributed by the DGS to the preventive measure, as well as the associated timeframe.

3. Where the competent authority is not satisfied that the remediation plan is credible or feasible, the DGS shall not grant any further preventive measures to that credit institution.

4. By … [OP – please insert the date = 42 months after the date of entry into force of this Directive] the EBA shall issue guidelines setting elements of the note accompanying the preventive measures referred to in Article 11b(1) and the remediation plan referred to in paragraph 1 of this Article.

'Article 11d

Transparency of marketing process in alternative measures

1. Where Member States allow the use of DGS funds for the alternative measures referred to in Article 11(5), they shall ensure that when DGSs finance such measures the credit institutions market, or make arrangements for the marketing of, the assets, rights and liabilities those credit institutions intend to transfer. Without prejudice to the Union State aid framework, such marketing shall comply with all of the following:

(a) the marketing is open and transparent and does not misrepresent the assets, rights and liabilities that are to be transferred;

(b) the marketing does not favour, nor discriminate between, potential purchasers and does not confer any advantages on a potential purchaser;

(c) the marketing is free from any conflict of interest;

(d) the marketing takes account of the need to implement a rapid solution taking into account the deadline laid down in Article 3(2), second subparagraph, for the determination referred to in Article 2(1), point (8)(a);

(e) the marketing aims at maximising, as much as possible, the sale price for the assets, rights and liabilities concerned.

'*Article 11e*

Least cost test

1. When considering the use of DGS funds for the measures referred to in Article 11(2), (3) or (5), Member States shall ensure that DGSs make a comparison of the following:

(a) the estimated cost for the DGS to finance the measures referred to in Article 11 (2), (3) or (5);

(b) the estimated cost of repaying depositors in accordance with Article 8(1).

2. For the comparison referred to in paragraph 1, the following shall apply:

(a) for the estimation of the costs referred to in paragraph 1, point (a), the DGS shall take into account the expected earnings, operational expenses and potential losses related to the measure;

(b) for the measures referred to in Article 11(2) and (5), the DGS shall base its estimation of the cost of repaying depositors, as referred to in paragraph 1, point (b), on the valuation of the credit institution's assets and liabilities referred to in Article 36(1) of Directive 2014/59/EU and the estimate referred to in Article 36(8) of that Directive;

(c) for the measures referred to in Article 11(2), (3) and (5), when estimating the cost of repaying depositors, as referred to in paragraph 1, point (b), the DGS shall take into account the expected ratio of recoveries, the cost for the replenishment of the DGS that is to be borne by credit institutions that are members of the DGS, and the potential additional cost of funding for the DGS;

(d) for the measures referred to in Article 11(3), when estimating the cost of repaying depositors, the DGS shall multiply the estimated ratio of recoveries calculated in accordance with the methodology referred to in paragraph 5, point b, by 85 %.

3. Member States shall ensure that the amount used to finance the resolution of credit institutions, as referred to in Article 11(2), for the preventive measures referred to in Article 11(3), or for the alternative measures referred to in Article 11(5), does not exceed the amount of covered deposits at the credit institution.

4. Member States shall ensure that the competent and resolution authorities provide the DGS with all information necessary for the comparison referred to in paragraph 1. Member States shall ensure that the resolution authority provides the DGS with the estimated cost of the DGS contribution to resolution of a credit institution as referred to in Article 11(2).

5. The EBA shall develop draft regulatory technical standards to specify:

(a) the methodology for the calculation of the estimated cost referred to in paragraph 1, point (a), which shall take into account the specific features of the measure concerned;

(b) the methodology for the calculation of the estimated cost of repaying depositors referred to in paragraph 1, point (b), including the estimated ratio of recoveries referred to in paragraph 2, point (c);

(c) the way to account, in the methodologies referred to in points (a), (b) and (c), where relevant, for the change of value of money due to potential accrued earnings over time.

For the calculation of the estimated cost of repaying depositors as referred to in paragraph 1, point (b), in the case of preventive measures, the methodology referred to in point (b) shall take into account the importance of preventive measures for the statutory or contractual mandate of the DGS, including IPS referred to in Article 1(2), point (c).

The EBA shall submit those draft regulatory technical standards to the Commission by …[OP – please insert the date= 12 months after the date of entry into force of this Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(14) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that DGSs cover the depositors at branches set up by their member credit institutions in other Member States and depositors located in Member States where their member credit institutions exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU.';

(b) in paragraph 2, the following subparagraph is added:

'By way of derogation from the first subparagraph, Member States shall ensure that a DGS of the home Member State may decide to repay depositors at branches directly where all of the following applies:

(i) the administrative burden and cost of such repayment is lower than the repayment by a DGS of the host Member State;

(ii) the DGS of the home Member State ensures that the depositors are not worse off than where the reimbursement would have been conducted in accordance with the first subparagraph.';

(c) the following paragraphs 2a and 2b are inserted:

'2a. Member States shall ensure that a DGS of a host Member State may, subject to an agreement with a DGS of a home Member State, act as the point of contact for depositors at credit institutions that exercise the freedom to provide services as referred to in Title V, Chapter 3, of Directive 2013/36/EU, and shall be compensated for the costs incurred.

2b. In the cases referred to in paragraphs 2 and 2a, Member States shall ensure that the DGS of the home Member State and the DGS of the host Member State concerned have an agreement in place on the payout terms and conditions, including on the compensation of any costs incurred, the contact point for depositors, the timeline and the payment method.';

(d) paragraph 3 is replaced by the following:

'3. Member States shall ensure 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, with the exception of the extraordinary contributions referred to in Article 10(8).';

(e) the following paragraph 3a is inserted:

'3a. For the purposes of paragraph 3, Member States shall ensure that the DGS of origin transfers the amount referred to in that paragraph within 1 month from the change of DGS membership.';

(f) the following paragraph 9 is added:

'9. The EBA shall issue guidelines on how the EBA sees the respective roles of home and host DGSs as referred to in paragraph 2, first subparagraph, and containing a list of circumstances and conditions under which a DGS of the home Member State should be able to decide to reimburse depositors at branches located in another Member State as laid down paragraph 2, third subparagraph.';

(15) Article 15 is replaced by the following:

'*Article 15*

Branches of credit institutions that are established in third countries

Member States shall require branches of credit institutions that have their head office outside the Union to join a DGS within their territory before they allow such branches to take eligible deposits in those Member States.';

(16) the following Article 15a is inserted:

'*Article 15a*

Member credit institutions that have branches in third countries

Member States shall ensure that DGSs do not cover depositors at branches that have been set up in third countries by their member credit institutions, except where, subject to the approval of the designated authority, those DGSs raise corresponding contributions from the credit institutions concerned.';

(17) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that credit institutions provide actual and intending depositors with the information those depositors need to identify the DGSs of which the credit institution and its branches are members within the Union. Credit institutions shall provide that information in the form of an information sheet prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX of the European Parliament and of the Council [ESAP Regulation]***.

*** Regulation (EU) XX/XXX of the European Parliament and of the Council of dd mm jj establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability.';

(b) the following paragraph 1a is inserted:

'1a. Member States shall ensure that the information sheet referred to in paragraph 1 contains all of the following:

(i) basic information about the protection of deposits;

(ii) contact details of the credit institution as a first point of contact for information on the content of the information sheet;

(iii) coverage level for deposits as referred to in Article 6(1) and 6(2) in EUR or, where relevant, another currency;

(iv) applicable exclusions from DGS protection;

(v) limit of protection in relation to joint accounts;

(vi) reimbursement period in case of the credit institution's failure;

(vii) currency of reimbursement;

(viii) identification of the DGS responsible for protecting a deposit, including a reference to its website.';

(c) paragraph 2 is replaced by the following:

'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, annually. Depositors shall acknowledge the receipt of that information sheet.';

(d) in paragraph 3, the first subparagraph is replaced by the following:

'Member States shall ensure that credit institutions confirm on their depositors' statements of account that the deposits are eligible deposits, including a reference to the information sheet referred to paragraph 1.';

(e) paragraph 4 is replaced by the following:

'4. Member States shall ensure that credit institutions make the information referred to in paragraph 1 available in the language that was agreed by the depositor and the credit institution when the account was opened or in the official language or languages of the Member State in which the branch is established.';

(f) paragraphs 6 and 7 are replaced by the following:

'6. Member States shall ensure that in the case of a merger of credit institutions, conversion of subsidiaries of a credit institution into branches, or similar operations, credit institutions notify their depositors thereof at least 1 month before that operation takes legal effect, unless the competent authority allows for a shorter deadline on the grounds of commercial secrecy or financial stability. That notification shall explain the impact of the operation on the depositor protection.

Member States shall ensure that, where as a result of operations referred to in the first subparagraph, depositors with deposits in those credit institutions will be affected by the reduced deposit protection, the credit institutions concerned notify those depositors that they may withdraw or transfer to another credit institution their eligible deposits, including all accrued interest and benefits, without incurring any penalty up to an amount equal to the lost coverage of their deposits within 3 months following the notification referred to in the first subparagraph.

7. Member States shall ensure that credit institutions that cease to be a member of a DGS inform their depositors thereof at least 1 month prior to such cession.';

(g) the following paragraph 7a is inserted:

'7a. Member States shall ensure that designated authorities, DGSs and credit institutions concerned inform depositors, including by a publication on their websites, of the fact that a relevant administrative authority has made a

determination as referred to in Article 2(1), point (8)(a), or a judicial authority has made a ruling as referred to in Article 2(1), point (8)(b).';

(h) paragraph 8 is replaced by the following:

'8. Member States shall ensure that where a depositor uses internet banking, credit institutions provide the information they have to provide to their depositors under this Directive by electronic means unless a depositor requests to receive that information on paper.';

(i) the following paragraph 9 is added:

'9. The EBA shall develop draft implementing technical standards to specify:

(a) the content and the format of the information sheet, referred to in paragraph 1a;

(b) the procedure to be followed for the provision of, and the content of, the information to be provided in the communications from designated authorities, DGSs or credit institutions to depositors, in the situations referred to in Articles 8b and 8c and in paragraphs 6, 7 and 7a of this Article.

The EBA shall submit those draft implementing technical standards to the Commission by … [OP - please insert date = 12 months after the date of entry into force of this Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.';

(18) the following Article 16a is inserted:

'*Article 16a*

Information exchange between credit institutions and DGS, and reporting by authorities

1. Member States shall ensure that DGSs, at any time and upon request, receives from their affiliated credit institutions all information necessary to prepare for a repayment of depositors, in accordance with the identification requirement laid down in Article 5(4), including the information for the purposes of Article 8(5) and Articles 8b and 8c.

2. Member States shall ensure that credit institutions, upon request of a DGS, provide the DGS of which they are a member information about:

(a) depositors at branches of those credit institutions;

(b) depositors who are recipients of services provided by member institutions on the basis of the freedom to provide services.

The information referred to in points (a) and (b) shall indicate the Member States in which those branches or depositors are located.

3. Member States shall ensure that, by 31 March each year, DGSs inform the EBA of the amount of covered deposits in their Member State on 31 December of the preceding year. By the same date, DGSs shall also report to the EBA the amount of their available financial means, including the share of borrowed resources, payment

commitments and the timeline for reaching the target level in case of use of DGS funds.

4. Member States shall ensure that the designated authorities notify the EBA, without undue delay, about all of the following:

(a) the determination of unavailable deposits pursuant to circumstances referred to in Article 2(1), point (8);

(b) whether any of the measures referred to in Article 11(2), (3) and (5) have been applied and the amount of funds used in accordance with Article 8(1) and Article 11(2), (3) and (5), and, where applicable and once available, the amount of funds recovered, the resulting cost for the DGS and the duration of the recovery process;

(c) the availability and the use of alternative funding arrangements as referred to in Article 10(3);

(d) any DGSs that have ceased to operate or the establishment of any new DGS, including as a result of a merger or of the fact that a DGS started operating on a cross-border basis.

The notification referred to in the first subparagraph shall contain a summary describing all of the following:

(a) the initial situation of the credit institution;

(b) the measures for which the DGS funds have been used;

(c) the expected amount of available financial means used.

5. The EBA shall publish the information received in accordance with paragraphs 2 and 3 and the summary referred to in paragraph 4 without undue delay.

6. Member States shall ensure that the resolution authorities of the credit institutions which are a member of a DGSs provide that DGS, upon request, with the summary of the key elements of the resolution plans as referred to in Article 10(7), point (a), of Directive 2014/59/EU, provided that such information is necessary for the DGS and designated authorities to exercise the obligations referred to in Article 11(2), (3) and (5) and in Article 11e.

7. The EBA shall develop draft implementing technical standards to specify the procedures to be followed when providing the information referred to in paragraphs 1 to 4, the templates for providing that information, and to further specify the content of that information, taking into account the types of depositors.

The EBA shall submit those draft implementing technical standards to the Commission by …. [OP - please insert the date = 12 months after the date of entry into force of this Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.';

(19) Annex I is deleted.

Article 2

Transitional provisions

1. Member States shall ensure that branches of credit institutions that have their head office outside the Union and take eligible deposits in a Member State on … [OP please insert the date = date of entry into force], and that are not members of a DGS on that date, join a DGS in operation within their territories by [OP please insert the date = 3 months after entry into force]. Article 1(15) shall not apply to those branches until [OP please insert the date = 3 months after entry into force].

2. By way of derogation from Article 11(3) of Directive 2014/49/EU, as amended by this Directive, and Articles 11a, 11b, 11c and 11e in relation to preventive measures, until [OP – please insert the date = 72 months after the date of entry into force of this Directive], Member States may allow IPS referred to in Article 1(1), point (c), to comply with the national provisions implementing Article 11(3) of Directive 2014/49/EU as applicable on [OP – please insert the date of entry into force of this Directive].

Article 3

Transposition

1. Member States shall adopt and publish, by … [OP – please insert the date = 24 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

   They shall apply those provisions from … [OP – please insert the date = 24 months after the date of entry into force of this Directive]. However, they shall apply the provisions necessary to comply with Article 11(3), as amended by this Directive, and Articles 11a, 11b, 11c and 11e in relation to preventive measures from … [PO – please insert the date = 48 months after the date of entry into force of this Directive].

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*