

EBA/CP/2015/13

29 July 2015

Consultation Paper

Draft guidelines on cooperation agreements between deposit guarantee schemes under Directive 2014/49/EU

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 29.10.2015. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.



2. Executive summary

1. Deposit Guarantee Schemes Directive (DGSD) stipulates that, in order to facilitate effective cooperation between deposit guarantee schemes (DGSs), the DGSs, or, where appropriate, the designated authorities shall have written cooperation agreements in place.
2. According to the DGSD, where the designated authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to EBA for a binding mediation.
3. These guidelines specify the objectives and minimum content of cooperation agreements between DGSs or, where appropriate, designated authorities, with the aim of ensuring a common and consistent approach to such cooperation agreements across Member States, contributing to strengthening the European system of national DGSs.
4. Furthermore, the guidelines aim to facilitate entry into cooperation agreements between DGSs in order to ensure consistent application of the DGSD throughout the Union and ensure that such agreements include the necessary elements to ensure effective cooperation in case of an institution's failure.
5. In order to avoid the signing of hundreds of bilateral agreements between multiple DGSs within the EU, the guidelines include a multilateral framework cooperation agreement to which the DGSs, or where relevant, the designated authorities, should adhere. The guidelines also allow DGSs, or where relevant, the designated authorities, to enter into bilateral agreements where they intend that these cooperation agreements contain terms which go beyond the level of detail required by these guidelines.
6. These guidelines specify the minimum content in relation to the three key areas to be included in cooperation agreements: modalities for repaying depositors by the host DGS at branches of credit institutions headquartered in other Member States, modalities for the transfer of contributions from one DGS to another in case a credit institution ceases to be a member of a DGS and joins another DGS, and modalities for mutual lending between DGSs.
7. To strike the right balance between the need for flexibility required given the diversity of DGS models on the one hand, and the need for harmonisation and comparability of cooperation agreements across the Single Market on the other, within each of the three key areas specified in the guidelines, these guidelines include minimum core elements to be included in the cooperation agreements, and, where options are available, suggest the preferred approach.
8. Finally, to ensure that depositors in EU branches of institutions headquartered in other Member States are treated similarly to depositors in the home Member State, these guidelines provide further guidance on the sequence and timing of events when the host DGS performs a payout of depositors on behalf of the home DGS.



Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from *[6 months from publication of the translation of the guidelines in all EU official languages on the EBA's website]*.



3. Background and rationale

1. There are about 750 branches of EU credit institutions located in Member States other than the Member State where their headquarter is located. The cross-border nature of many of EU's credit institutions calls for effective cooperation between the relevant authorities to ensure financial stability in the EU, including when one or more of these credit institutions fail and there is a need for the deposit guarantee schemes (DGSs) to payout depositors.
2. Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (hereafter 'Directive 2014/49/EU'), recasting Directive 94/19/EC and its subsequent amendments, was published in the Official Journal on 12 June 2014¹.
3. Pursuant to Article 14(5) of Directive 2014/49/EU, in order to facilitate effective cooperation between DGSs, with particular regard to Article 14 and Article 12 of Directive 2014/49/EU, the DGSs, or, where appropriate, the designated authorities, shall have written cooperation agreements in place.
4. Article 14(5) also requires the designated authority to notify EBA of the existence and the content of such agreements and gives EBA the power to issue opinions in accordance with Article 34 of the EBA Regulation.
5. Finally, Article 14(5) states that if designated authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to EBA for a binding mediation in accordance with Article 19 of the EBA Regulation and EBA shall act in accordance with that Article.
6. The EBA binding mediation in this area is a challenging task for a number of reasons:
 - i. Directive 2014/49/EU sets out broad cooperation principles² but leaves the concrete arrangements³, which are crucial in practice, to cooperation agreements. This means that where parties have not concluded an agreement or where the agreement is silent on a particular issue or subject to further interpretation, the EBA will find little guidance in the existing corpus of law, unless more specific and concrete rules on DGS cooperation have been identified beforehand.
 - ii. Without guidance on the cooperation between DGSs, the DGSs or the designated authorities may conclude very different agreements that may not contain the

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 For example, the responsibility of the home DGS for covering depositors and the role of the host in operationalising payouts.

³ For example, how to exchange information on depositors, IT systems, funding transfer modalities etc.



necessary elements to ensure smooth and legally safe cooperation at the point of failure. This would increase the likelihood of conflicts.

- iii. Lack of convergence would also render the EBA mediation particularly difficult, especially in a situation of emergency, as in case mediation is needed, the EBA would have to reassess the details of each specific agreement and propose an ad hoc solution for the specific conflict without being able to rely on existing set of principles or guidelines.
7. From March to April 2015, the EBA conducted among the designated authorities a survey on existing cooperation agreements. The questionnaire was developed with the aim to allow such authorities to provide examples of existing practices and highlight the most important elements of such agreements.
 8. Taking into account the results of the survey, these guidelines aim to:
 - i. facilitate entry into cooperation agreements between DGSs in order to ensure consistent application of the Directive 2014/49/EU throughout the Union and foster convergence of the European system of national deposit guarantee schemes; and
 - ii. ensure that such agreements include the necessary elements to ensure effective cooperation in case of an institution's failure.
 9. Furthermore, the guidelines could offer useful inspiration as to practical solutions that could be applied in case DGSs or designated authorities fail to conclude an agreement or to the extent a particular aspect is not covered by the agreement.
 10. Finally, in order to avoid the signing of multiple bilateral agreements between multiple DGSs within the EU, the guidelines include a framework multilateral cooperation agreement which the DGSs, or where relevant, the designated authorities, should use. The guidelines allow DGSs, or where relevant, the designated authorities, to enter into bilateral agreements where they intend that these cooperation agreements contain terms which go beyond the level of detail required by these guidelines. Such bilateral agreements should be based on relevant terms set out in Annex 1, as applicable, so far as possible.
 11. These guidelines specify the minimum content in relation to the three key areas to be included in cooperation agreements, pursuant to Article 14(5) of Directive 2014/49/EU:
 - i. Modalities for repaying depositors by the host DGS at branches of credit institutions headquartered in other Member States, pursuant to Article 14(2) of Directive 2014/49/EU;
 - ii. Modalities for the transfer of contributions from one DGS to another in case a credit institution ceases to be a member of a DGS and joins another DGS, including cross-border and domestic transfers, pursuant to Article 14(3) of Directive 2014/49/EU;



- iii. Modalities for mutual lending between DGSs, pursuant to Article 12 of Directive 2014/49/EU.
12. These guidelines do not preclude the DGSs, or where relevant the designated authorities, from including in their cooperation agreements elements beyond the content included in the key three areas outlined above.
13. To strike the right balance between the need for flexibility required given the diversity of DGS models on the one hand, and the need for harmonisation and comparability of cooperation agreements across the Single Market on the other, within each of the three key areas specified in paragraph 11, these guidelines include minimum core elements to be included in the cooperation agreements, and, where options are available, suggest the preferred approach. These guidelines provide deposit guarantee schemes with some flexibility to depart from the preferred approach, where the relevant parties agree, and upon providing proper justification to the EBA.
14. These guidelines have benefited from and have been informed by the work of the European Forum of Deposit Insurers (EFDI), which in 2014 has established four work-streams on cross-border DGS cooperation.
15. In parallel to these guidelines, EFDI is continuing its work on a European standard for cooperation agreements, addressed to a broader set of countries than the guidelines, and with a narrower, albeit more detailed, scope.

4. Draft guidelines

The text of the draft Guidelines that follows includes specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.



EBA/GL-REC/20XX/XX

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Guidelines

draft

on cooperation agreements between
deposit guarantee schemes under
Directive 2014/49/EU



1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁴. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the objectives and minimum content of cooperation agreements between deposit guarantee schemes ('DGSs') or, where appropriate, designated authorities, required to have such cooperation agreements in place in accordance with Article 14(5) of Directive 2014/49/EU.
6. These guidelines aim at ensuring a common and consistent approach to such cooperation agreements across Member States, contributing to strengthening the European system of national DGSs in accordance with Article 26 of the Regulation (EU) No 1093/2010.

Scope of application

7. These guidelines apply in relation to the cooperation agreements that DGSs or, where appropriate, designated authorities, must have in place in accordance with Article 14(5) of Directive 2014/49/EU.
8. Where DGSs are administered by a private company, designated authorities should ensure that these guidelines are applied by such DGSs.
9. Within each of the three key areas to be included in the cooperation agreements and enumerated in paragraph 17, these guidelines specify minimum core elements. Where options are available, the guidelines suggest the preferred approach. However, it may be departed from the preferred approach, where the relevant parties agree, and upon providing proper justification to the EBA. In all three key areas mentioned in the paragraph above, the guidelines also allow DGSs, or where relevant, the designated authorities, to include additional terms provided that the relevant parties agree bilaterally.

Addressees

10. These guidelines are addressed to competent authorities as defined in point (iii) of Article 4(2) of Regulation (EU) No 1093/2010.

Definitions

11. Unless otherwise specified, terms used and defined in Directive 2014/49/EU have the same meaning in these guidelines. In addition, for the purposes of these guidelines, the following definitions apply:



'Single Customer View (SCV)'	means the file containing the individual depositor information necessary to prepare for a repayment of depositors, including the aggregate amount of eligible deposits of every depositor.
'Home DGS'	means the deposit guarantee DGS established in the Member State where a member credit institution has been authorised pursuant to Article 8 of Directive 2013/36/EU.
'Host DGS'	means the deposit guarantee DGS established in the Member State in which territory a member credit institution, authorised in another Member State, has established a branch.
'Member credit institution'	means a credit institution affiliated to a deposit guarantee DGS.
'Relevant DGS'	means a DGS in connection with which, any of the following situations occur: <ul style="list-style-type: none"><li data-bbox="708 1323 1417 1429">(i) A branch of a Home DGS's member credit institution has been established in the territory of the MS of the Host DGS;<li data-bbox="708 1462 1417 1568">(ii) A member credit institution affiliated to one DGS ceases to be a member of such DGS in order to join another DGS; or<li data-bbox="708 1601 1417 1742">(iii) The national legislation transposing the DGS Directive in the jurisdiction of a DGS lending the funds to another DGS allows for such a possibility.



3. Implementation

Date of application

12. These guidelines apply from *[6 months from publication of the translation of the guidelines in all EU official languages on the EBA's website]*

4. Objectives and general approach when establishing cooperation agreements between deposit guarantee schemes

4.1 Objectives of the cooperation agreements

13. in line with Article 14(5) of Directive 2014/49/EU, the objectives of the cooperation agreements should be, to:

- Facilitate an effective cooperation between the DGSs, or where appropriate, the designated authorities; and
- Specify in particular ex-ante various aspects of depositor payouts, transfers of DGS contributions and loans between DGSs, which otherwise would have to be agreed upon very quickly at a time of stress which would divert the DGSs attention and resources away from other difficult decisions.

4.2 General approach to be followed when establishing cooperation agreements

14. DGSs or, where appropriate, designated authorities should adhere to the multilateral framework cooperation agreement ('MFCA') or conclude bilateral cooperation agreements with all other relevant DGSs and, where appropriate, designated authorities in the Union by [6 months from publication of the translation of the guidelines in all EU official languages on the EBA's website].

15. The terms and conditions of the MFCA are those set out in Annex 1 to these guidelines. Where DGSs or, where appropriate, the designated authorities, need to further specify certain elements not covered by the terms and conditions of the MFCA, they may supplement such agreement with bilateral agreements, provided that the terms of those agreements do not contradict the terms and conditions specified in the MFCA.

16. DGSs should only conclude bilateral cooperation agreements where they intend that these cooperation agreements contain terms which go beyond the level of detail required by these guidelines. Such bilateral agreements should be based on relevant terms set out in Annex 1, as applicable, so far as possible.

Question 1: Do you agree that the DGSs, or where relevant the designated authorities, should adhere to the multilateral framework cooperation agreement or conclude bilateral cooperation agreements where they intend that these cooperation agreements contain terms which go beyond the level of detail required by these guidelines? Is there a need for further flexibility?

5. Minimum core elements of the cooperation agreements

17. Pursuant to Article 14(5) of Directive 2014/49/EU, cooperation agreements should, at least, cover the following three key areas:

- i. Modalities for repaying depositors by the host DGS at branches of credit institutions authorised in other Member States pursuant to Article 14(2) of Directive 2014/49/EU;
- ii. Modalities for the transfer of contributions from one DGS to another in case a credit institution ceases to be a member of a DGS and joins another DGS, including cross-border and domestic transfers, pursuant to Article 14(3) of Directive 2014/49/EU;
- iii. Modalities for mutual lending between DGSs pursuant to Article 12 of Directive 2014/49/EU.

18. For each of these three outlined areas, this section includes a list of minimum core elements of the cooperation agreements.

5.1 Modalities for repaying depositors at branches

19. Cooperation agreements between DGSs, or where appropriate, designated authorities, should specify the following modalities for repaying depositors by the host DGS at branches of member credit institutions authorised in other Member States pursuant to Article 14(2) of Directive 2014/49/EU:

a. **notification of unavailability of deposits⁵**

20. The cooperation agreement should specify the content and the process of sending the notification of unavailability of deposits. The agreement should include relevant contact details, including email addresses and phone numbers.

⁵ Defined in Article 2(1)(8) of Directive 2014/49/EU.



21. The home DGS should notify the host DGS, and the designated authority of the host Member State where the DGS is not the designated authority, that the unavailability of deposits has been determined. The notification should also include general information about the institution where the unavailability of deposits has been determined, including an estimate of the magnitude of the expected payout, the amount of covered deposits and number of depositors in the branch, the currency of repayment and any other information the home DGS considers useful for the host DGS in preparation for the payout.
 22. The notification should be transmitted by the home DGS to the host DGS immediately upon determination of unavailability of deposits. The host DGS should receive the notification, ahead of receiving all the necessary information and funds, in order to start preparing for a payout as soon as the notification is received.
- b. exchange of information, including instructions for payment**
23. While Article 4(9) of Directive 2014/49/EU requires DGSs to ensure the confidentiality and the protection of the data pertaining to depositors' accounts and the processing of such data in accordance with Directive 95/46/EC, it should not preclude cooperation agreements from setting more stringent standards provided this is agreed to in the cooperation agreement.
 24. The cooperation agreement should provide for a deadline for the home DGS to send all the relevant information to the host DGS. The deadline should be no later than two days prior to the deadline for providing the funds following the determination of unavailability of deposits in the institution. [See Box 1 for more information]. The home DGS should make every reasonable effort to comply with the deadline. However, in instances where the home DGS is not able to comply with the deadline, for example because it needs additional information from depositors, the home DGS should inform the host DGS of the delay as soon as possible and agree a new deadline.
 25. The home DGS should obtain the SCV in line with domestic deadlines for receiving this information from the credit institution. It should then process the SCV in order to provide the host DGS only with the relevant instructions for payment in a format agreed to between the DGSs and specifying the amounts to be paid out in the currency agreed to in the cooperation agreement. The information to be transmitted from the home DGS to the host DGS should include:
 - The amount to be paid out to each depositor;
 - All the information needed depending on the payout method (for example, addresses of depositors or bank account numbers for electronic transfers).
 26. In case the home DGS does not have all the information needed depending on the method of payout of the host DGS, the home DGS should request the host DGS to collect the necessary additional information. In order for the host DGS to be able to collect additional information necessary for the payout, the home DGS should assist the host DGS by transmitting any



necessary information (for example, depositors' contact details or national identification numbers).

27. The DGSs should inform one another promptly of any updates to the data.
28. The host DGS should strive to ensure that the repayable amount is available as soon as possible, within three days after receiving all the necessary information, instructions and funds from the home DGS.
29. Following the initial payout, the host DGS should inform the home DGS of the payout, including a report on any issues with payouts and assessment of areas of the process and of the cooperation agreement to improve for the future. The host DGS should inform the home DGS regularly about progress in relation to further repayments not bound by the deadline set in section 5.1(d) of these guidelines.

c. modalities for advancing the funds

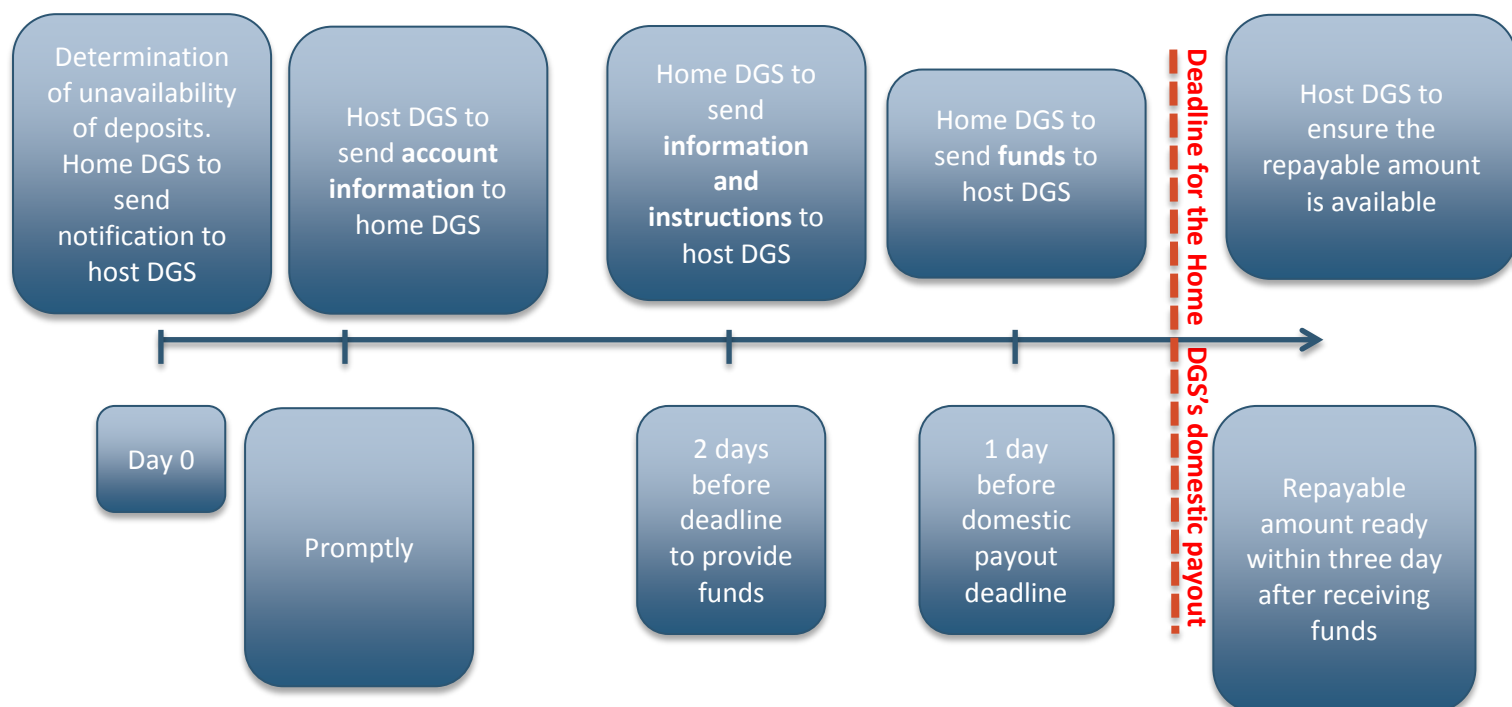
30. The cooperation agreement should provide that, after receiving notification of unavailability of deposits from the home DGS, the host DGS will promptly provide the home DGS with all the necessary information about the accounts to be used for the transfer of funds from the home DGS to the host DGS.
31. The accounts and transfer method chosen should ensure utmost security of the funds and timeliness of the transfer.

Question 2: Do you think there is a need to further specify modalities for advancing the funds and specifying the preferred method?

d. timeline for advancing the funds

32. The cooperation agreement should specify the deadline for providing the necessary funding.
33. The home DGS should provide the host DGS with the necessary funds no later than one day before the deadline for domestic payout after the determination of unavailability of deposits in the institution, including where the home DGS's repayment deadline is longer than seven working days, as allowed under Article 8(2) of Directive 2014/49/EU. [See Box 1 for more info]

Question 3: Do you see any practical impediments to the DGSs meeting the deadlines outlined in subsections 5.1(a), 5.1(b) and 5.1(d)?

Box 1. Timeline for payout in branches.**Partial payouts in the transitional period until 31 December 2023**

34. Where the home DGS's repayment deadline is longer than seven working days because of taking advantage of the transitional provisions in Article 8(2) of Directive 2014/49/EU, the host DGS should inform the depositors, either directly or by advertising in the media, about the possibility of a payout of costs of living upon request.
35. The host DGS should, within one working day, notify the home DGS of a depositor request for a cost of living payout. This notification should include all relevant information, including:
- The identification of the depositor;
 - The date of receiving the request by the host DGS;
 - The amount claimed (if applicable).
36. When a depositor requests a payout of a cost of living amount, either directly to the home DGS or to the host DGS, the home DGS should strive to provide the host DGS with all the necessary information and funds within three working days after receiving the request or being notified by the host DGS, for the host DGS to be able to ensure that depositors have access to an appropriate amount of their covered deposits to cover their costs of living while waiting for full payout.
37. Where the full payout is imminent, the DGSs may agree to forgo partial payout in the interest of ensuring prompt full payout.



e. **treatment of temporary high balances**

38. The process for repaying temporary high balances by the host DGS should happen in the following sequence:

- a. Depositors submit claims, either to host or home DGS;
- b. Where the claims are addressed to the host DGS, that DGS should forward the claim to the home DGS;
- c. Home DGS should verify the claims. The host DGS should lend assistance where necessary, for example in dealing with the language or legal issues stemming from the law in the host DGS's jurisdiction;
- d. Upon verifying the claims, the home DGS should send the necessary information and funds to the host DGS, either as a package with other claims if done in a reasonable timeframe, or individually;
- e. Host DGS should repay the depositors.

39. The cooperation agreement should specify the following aspects:

- a. Home DGSs' deadline, if applicable, for accepting repayment claims from depositors, which the host DGS should communicate to the relevant depositors;
- b. Determination which DGS's temporary high balances repayment deadline and coverage level applies.

f. **currencies used**

40. The cooperation agreement should specify that the currency of the repayment shall be the currency determined under the law of the home DGS and should be communicated by the home DGS to the host DGS.

41. Where the law of the home DGS allows for a choice between several currencies and where that choice includes the option to use the currency of the host DGS, that option should be used. This should minimise the risk of the depositors bearing additional risk of currency exchange rates.

Example 1. If the Polish DGS guarantees repayments in Polish zloty (PLN) irrespective of currency of the account, following a failure of a branch of a Polish bank in the UK, the depositor in the UK will get the money back in PLN. If Polish DGS guarantees repayments in PLN, British pounds (GBP) or Swiss francs (CHF) following a failure of a branch of a Polish bank



in the UK, the UK depositor will get the money back in GBP.

42. Where there is a need for a currency exchange, the rate to be applied should be the rate on the day of the determination of unavailability of deposits in a given institution.
43. The requirement to provide the funds in the currency determined under the law of the home DGS will fall on the home DGS. The home DGS should handle the necessary currency exchange and will bear the necessary costs.

Question 4: Do you think there is a need to further specify what currency ought to be used?

g. handling of correspondence and language used

44. The cooperation agreement should specify that the host DGS will handle communication with depositors, including informing depositors about the determination of unavailability of deposits and the payout.
45. In addition, where the home DGS has the capability to effectively handle communication with depositors in the Member State where the branch is located, including the capability to communicate in the official language or languages of the host DGS, the agreement may provide that depositors will be offered an explicit, additional option to communicate directly with the home DGS. In practice, this means that, for example the letter informing depositors about the institution's failure may include two phone numbers – one to the host DGS and one to the home DGS.
46. The cooperation agreement should specify that the language to be used by DGSs in communicating with the depositors in the context of a repayment is the official language or languages of the host DGS. However, DGSs should not be precluded from answering correspondence addressed to them by depositors in the official language or languages of the home DGS or another language where they have the capability to do so.
47. The cooperation agreement should specify the language to be used in all communication between DGSs, in case of repayment.
48. Communication channels established to communicate with the depositors, and between DGSs, should guarantee sufficient level of confidentiality and security.

Question 5: Do you agree that by default the handling of correspondence should be done by the host DGS with flexibility for DGSs to determine whether the home DGS should actively engage in communication as well, notwithstanding that depositors have the right to contact both?



h. reimbursement of costs of repayment

49. The cooperation agreement should specify the types of costs the home DGS will reimburse the host DGS for, including costs incurred in performing the following tasks:

- a. Communication with depositors, including setting up the necessary infrastructure and hiring staff;
- b. Communication with home DGS, including providing feedback information about claims paid;
- c. Collecting additional information needed for the payout, including setting up the necessary infrastructure and hiring staff;
- d. Translation of documents;
- e. Fees for payment and acquisition of information;
- f. Transaction costs of payouts.

50. The above-mentioned list is non-exhaustive.

51. The cooperation agreement may provide that:

- a. the home DGS shall provide a lump sum amount ahead of the host DGS incurring costs followed by reconciliation of accounts, or
- b. the host DGS shall be reimbursed for costs agreed upon in the cooperation agreement following the payout.

52. The cooperation agreement should specify the general terms of reimbursement. Where the host DGS is reimbursed following the payout, the detail, such as time to reimburse the costs or the applicable interest rate, should be agreed upon no later than 7 days after the initial payout of covered deposits.

Question 6: Do you have any suggestions of what other costs should be subject to reimbursement by the home DGS?

i. right to audit

53. To further reinforce trust in DGSs' ability to perform their function in case of a payout in a branch, prospective parties to the agreement may agree on mutual right of audit of their partner DGS before entering into the agreement, and at any point after the agreement is reached.



54. Such audit, subject to the DGSs' or, where relevant, the designated authorities' agreement, may take the form of, for example, oversight, post-payout review, audit of costs, seconding staff during payout, and may be performed either on-site or done remotely.

j. treatment of delays

55. Any costs arising from delays in the home DGS providing the host DGS with the instructions for payment, the necessary information and the funds, should be borne by the home DGS, including where the delays impose operational costs on the host DGS.

k. liability

56. In accordance with Article 14(2) of the Directive 2014/49/EU, the host DGS shall not bear any liability for any acts done in accordance with the instructions given by the home DGS.

5.2 Modalities for the transfer of DGS contributions and information between DGSs

57. Cooperation agreements between DGSs, or where appropriate, the designated authorities, should specify the following modalities for the transfer of contributions and information from one DGS to another in case a credit institution ceases to be a member of one DGS and joins another DGS, including cross-border and domestic transfers, pursuant to Article 14(3) of the DGS Directive:

l. exchange of information

58. Article 14(5) of Directive 2014/49/EU requires effective exchange of information between DGSs, in accordance with confidentiality and the protection of the data pertaining to depositor's accounts. It also requires processing of data to be done in accordance with Directive 95/46/EC.

59. While the above-mentioned provision ensures a common minimum set of standards of confidentiality and data protection, it does not preclude cooperation agreements from setting more stringent standards provided this is agreed to in the cooperation agreement.

60. Provision of accurate data is a key step in ensuring an effective transfer of information from one DGS to another DGS. The cooperation agreement should specify the deadline for the transferring DGS (the DGS which the institution is leaving) to notify the receiving DGS (the DGS the institution in question wants to join) about the intention of the member credit institution to join the receiving DGS or, where a member credit institution communicates to the receiving DGS its intention to become a member credit institution of such DGS, to notify the transferring DGS in such circumstance. The deadline should be agreed to by the DGSs following:



- the institution notifying the transferring DGS of its desire to join another DGS, where the transferring DGS knows which DGS the institution intends to join,
 - the institution notifying the receiving DGS of its desire to join.
61. The deadline should be set before the institution formally leaves the transferring DGS and joins the receiving one.
62. The information to be transmitted should include any information the transferring DGS and the receiving DGS jointly consider as relevant, including and where available:
- a. Aggregate Information on all the regular contributions (and related deposits) being transferred from one DGS to the other DGS, including, where relevant, aggregate information on deposit flows in the institution for a period agreed to by the DGSs.
 - b. Any audits, assessments and tests previously done on the capability of the institution to produce SCV files and other information requested by the DGS, particularly on the quality of data provided by the institution,
 - c. Any other relevant information, including information on near misses related to that institution.
63. The transferring DGS should not be required to obtain new information for the purpose of transferring it to the receiving DGS. The receiving DGS will have the power to request the most up-to-date information directly from the institution upon accepting it as a member.
64. The transferring DGS should be able to refuse to share information which, due to their sensitive nature, may not be shared under national law.
- m. modalities for transferring the ex-ante funds contributed in the last 12 months and currency of payment**
65. Article 14(3) of Directive 2014/49/EU states that where a credit institution ceases to be member of a DGS and joins another DGS, the contributions paid during the 12 months preceding the end of the membership shall be transferred to the other DGS. Any costs of raising the funds, where for example the transferring DGS has recently made a payout and needs to collect additional funds for the transfer to the receiving DGS, should be borne by the receiving DGS.
66. The receiving DGS should provide the transferring DGS with the account details and any other relevant information to allow the transfer. The chosen accounts, and mode of transfer of funds should ensure utmost security of the funds and timeliness of the transfer.
67. The agreement should acknowledge that the transferring DGS should provide funds in the currency in which the contributions have originally been provided. The receiving DGS is free to decide whether to keep the funds in the currency in which it received the funds or whether



to exchange it. The receiving DGS should bear the costs of any operations related to such exchange.

n. **treatment of payment commitments, including potential transfer of commitments made in the last 12 months**

68. According to paragraph 13(d) of the EBA guidelines on payment commitments to deposit guarantee schemes⁶, where a credit institution ceases to be a member of one DGS and joins another DGS, the transferring DGS should ensure that the financial means corresponding to the 12 months preceding the end of the membership are transferred to the receiving DGS, either by:

- enforcing the commitment and transferring the proceeds to the receiving DGS, or
- reassigning the payment commitments arrangement to the receiving DGS in agreement with the latter and the credit institution.

69. The cooperation agreement should specify the deadline by which the transferring DGS, where relevant in agreement with the credit institution, shall decide which of the two options to pursue. The agreement should not specify the option in advance as the decision will be case-specific.

70. Where the transferring DGS decides to enforce the commitment and transfer the proceeds to the receiving DGS, the provisions laid down in the above section on modalities for advancing the ex-ante funds contributed in the last 12 months should apply.

71. Where the transferring DGS decides not to enforce the payment commitment it should engage with the receiving DGS to establish whether the receiving DGS is willing to accept the reassignment of this payment commitment. The reassignment can only happen when both DGSs agree. Where the receiving DGS refuses reassignment, the transferring DGS should enforce the payment commitment and transfer the funds to the receiving DGS.

o. **timeline for advancing the funds and payment commitments**

72. A membership of a DGS is a necessary condition for an institution being authorised as a credit institution. In addition, the receiving DGS must be able to meet its obligation towards the depositors of the institution from the first day. Therefore, an institution's transfer of membership must happen seamlessly. This implies that the transfer of funds from one DGS to another should happen on the same day as the institution leaving one DGS to join the other DGS. Arranging the transfer on the same day removes the risk of the transferring DGS using the funds contributed by this institution in a payout or resolution after the institution has left the transferring DGS.

⁶ EBA/GL/2015/09.



73. Where the receiving DGS is willing to take the risk of accepting the new institution without receiving the transfer on the same day, it should agree with the transferring DGS the deadline for the transfer.

Question 7: Do you support the flexibility for DGSs to agree to a different deadline for advancing the funds, or should the deadline be stricter?

p. language used

74. The cooperation agreement should specify what language should be used when transmitting information from one DGS to the other DGS.

q. costs of transfer

75. The cooperation agreement should specify that the receiving DGS is responsible for any costs associated with transferring the funds and payment commitments from the transferring DGS, and any other costs associated with the transfer, including translations of requested information. However, where necessary, the costs of raising funds should be borne by the transferring DGS.

r. treatment of delays

76. The cooperation agreement should include a clause specifying that where the delays in the provision of information or funds occurs, any costs arising from the consequences of such delay should be borne by the DGS responsible for the delay.

5.3 Modalities for mutual lending between DGSs

77. The cooperation agreement should outline whether, in line with the law in their jurisdictions, the DGSs agree, in principle, to lend to one another on a voluntary basis.
78. Where the DGSs do not agree to lend to one another, either because of prohibition in their national law, or because of the DGSs' or the designated authorities' decision, the agreement does not need to include any more detail. However, where lending is allowed under national law, the decision not to lend to one another when signing the cooperation agreement should not preclude the DGSs from lending to one another at the point of crisis.
79. Where the DGSs agree to lend to one another the cooperation agreement should specify how many days the DGS receiving a loan request has to reach a decision and what information the DGS asking for a loan should provide. The agreement may include more detail about the repayment deadline and interest rate charged, within the limits outlined in Article 12(2) of Directive 2014/49/EU.



5.4 Effective dispute resolution

80. The cooperation agreement should include a clause stating that any party may refer any dispute about the interpretation of the agreement to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010.



Annex 1 – Multilateral framework cooperation agreement between deposit guarantee schemes and designated authorities in the European Union

MULTILATERAL FRAMEWORK COOPERATION AGREEMENT BETWEEN DEPOSIT GUARANTEE SCHEMES AND DESIGNATED AUTHORITIES IN THE EUROPEAN UNION



*The subscribing deposit guarantee schemes ('DGSs') and designated authorities of the Member States of the European Union,
 Recognising the responsibility of deposit guarantee schemes to protect depositors, and their additional role in contributing to market confidence and financial stability,
 Recognising the importance of cooperation between deposit guarantee schemes within the European Union, in particular, when deposit taking business is carried out on a cross-border basis,
 Having regard to the first subparagraph of Article 14(5) of the Directive 2014/49/EU on deposit guarantee schemes (the 'DGS Directive'), which establishes that 'In order to facilitate an effective cooperation between DGSs, with particular regard to this Article and to Article 12, the DGSs or, where appropriate, the designated authorities, shall have written cooperation agreements in place. Such agreements shall take into account the requirements laid down in Article 4(9)',
 Having regard to the second subparagraph of Article 14(5) of the DGS Directive, which establishes that 'The designated authority shall notify EBA of the existence and the content of such agreements and EBA may issue opinions in accordance with Article 34 of Regulation (EU) No 1093/2010. If designated authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 and EBA shall act in accordance with that Article',
 Conscious of the need to ensure a consistent application of the DGS Directive throughout the Union and avoid the conclusion of an overly complex high number of bilateral agreements between deposit guarantee schemes,*

Have agreed as follows

<p>PART I GENERAL PROVISIONS</p>
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Article 1

Objective of this Multilateral Framework Cooperation Agreement

1. The objective of this Multilateral Framework Cooperation Agreement (the 'Agreement') is, in line with Article 14(5) of the DGS Directive, to facilitate an effective cooperation between DGSs in the European Union, and where appropriate, the designated authorities.
2. In particular, it specifies ex ante various aspects for repayment of depositors at branches, transfers of DGSs' contributions and mutual lending between DGSs, which otherwise would have to be agreed upon very quickly at a time of stress which would divert the DGSs attention and resources away from other difficult decisions.

Article 2

Terms and Definitions

For the purposes of this Agreement, the terms and definitions contained in the DGS Directive shall apply. In addition, the following definitions shall apply:

1. 'Home DGS' means the DGS established in the Member State where a Member Institution has been authorised pursuant to Article 8 of Directive 2013/36/EU.



2. 'Host Designated Authority' means the designated authority of the Member State where the Host DGS is established.
3. 'Host DGS' means the DGS established in the Member State in which territory a Member Institution, authorised in another Member State, has established a branch.
4. 'Member Institution' means a credit institution affiliated to a deposit guarantee DGS.
5. 'Deposit Guarantee Scheme (DGS)' means a DGS introduced and officially recognised in a Member State of the European Union.
6. 'Single Customer View (SCV)' means the file containing the individual depositor information necessary to prepare for a repayment of depositors, including the aggregate amount of eligible deposits of every depositor.

Article 3 Parties to this Agreement

1. This Cooperation Agreement is agreed to by DGSs or, where appropriate, designated authorities, as defined in Article 2(1)(1) and (18) of the DGS Directive. The terms apply to and between all the DGSs and designated authorities who subscribe to the Agreement by signing a letter of adherence to this Agreement included in Appendix III, without any reservation, and sending it to the EBA.
2. The EBA shall not be considered a Party to this Agreement, and any provision thereof shall not create any legal obligations in respect of the EBA.
3. The list of DGSs and designated authorities subscribing to this Agreement is contained in Appendix I to this Agreement and will be available on the EBA's website.
4. Additional DGSs and designated authorities may subscribe to this Agreement from time to time. The EBA will keep that list updated.

PART II REPAYMENT OF DEPOSITORS AT BRANCHES
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Article 4 Applicability of Part II

Part II shall apply bilaterally between a particular Home DGS and a particular Host DGS provided that a branch of a Home DGS's Member Institution has been established in the territory of the Member State of the Host DGS.

Article 5 Notification of unavailability of deposits



1. Upon the Home DGS becoming aware that a relevant administrative authority has made a determination as referred to in point (8)(a) of Article 2(1) of the DGS Directive or a judicial authority has made a ruling as referred to in point (8)(b) of Article 2(1) of that Directive in respect of a DGS's Member Institution having branches in another Member State, the Home DGS shall immediately notify, by any available means, the Host DGS and, where the Host DGS is not the Host Designated Authority, the Host Designated Authority that the unavailability of deposits has been determined and the identity of the affected Member Institution.
2. The notification shall also include:
 - a. general information about the Member Institution in relation to which the determination of unavailability of depositors has been made,
 - b. the currency of repayment,
 - c. an estimate of the magnitude of the amount of the expected payout, including the number of covered deposits and the number of depositors in the branch, and
 - d. any other information the Home DGS considers useful for the Host DGS in preparation for the payout.
3. As soon as the notification is received, the Host DGS shall start preparing for a payout, ahead of receiving all the necessary information and funds.

Article 6 **Instructions for repayment of depositors**

1. The Home DGS shall make every reasonable effort to provide the Host DGS with all necessary information on deposits and depositors in order to make a repayment of depositors on behalf of the Home DGS by no later than three working days prior to the end of the repayment period set out in accordance with the Home DGS's national legislation transposing the DGS Directive.

However, in instances where the Home DGS is not able to comply with the deadline, such as in cases where it needs additional information from depositors, the Home DGS shall inform the Host DGS of the delay as soon as possible and bilaterally agree on a new deadline.
2. For these purposes, the Home DGS shall obtain the SCV in line with domestic deadlines for receiving this information from its Member Institutions.
3. The Home DGS shall then process the SCV in order to provide the Host DGS with the relevant instructions for payment including:
 - a. the amounts to be paid out to each depositor,



- b. all other information needed depending on the method of payout.
4. The instructions for payment shall be provided in the format and with the content specified bilaterally between the Home and the Host DGS.
5. Where the Home DGS does not have all information needed depending on the method of payout of the Host DGS, the Home DGS shall request the Host DGS to collect the necessary additional information and, if needed, assist the Host DGS by transmitting any necessary information.
6. The Home and the Host DGS shall inform one another promptly of any updates to the data.

Article 7 **Repayment of depositors**

1. The Host DGS shall strive to ensure that the repayable amount is available to depositors as soon as possible, within three working days after receiving the instructions for payment from the Home DGS and the necessary funding prior to payout. The repayable amount shall be made available to depositors without a request to the Host DGS being necessary.
2. Following payout, the Host DGS shall communicate to the Home DGS the results of the payout, including a report on any issues encountered with the payouts and assessment of areas of the process and of the cooperation agreement to be improved for the future.

Article 8 **Advance of funds**

1. The Home DGS shall provide the Host DGS with the necessary funding prior to the payout by no later than one working day before the end of the repayment period set out in accordance with the Home DGS's national legislation transposing the DGS Directive.
2. For these purposes, promptly after receiving instructions for payment, the Host DGS shall provide the Home DGS with all the necessary information about the accounts to be used for the transfer of funds from the Home DGS to the Host DGS.
3. Such accounts and the transfer methods used shall ensure utmost security of the funds from the Home DGS to the Host DGS.
4. The funds shall be provided in the currency of repayment specified by the Home DGS to the Host DGS. The Home DGS shall handle the necessary currency exchange and will bear the necessary currency exchange costs.



Article 9

Partial payouts in the transitional period until 31 December 2023

1. Where the Home DGS's repayment deadline is longer than seven working days, as allowed under Article 8(2) of the DGS Directive, the Host DGS shall inform the depositors, either directly or by advertising in the media, about the possibility of a payout of costs of living upon request.
2. The Host DGS shall notify the Home DGS within one working day of a depositor request for a cost of living payout. This notification should refer all relevant information, including:
 - a. The identification of the depositor;
 - b. The date of receiving the request by the Host DGS;
 - c. The amount claimed (if applicable).
3. When a depositor requests a payout of a cost of living amount through a Host DGS, either directly to the Home DGS or to the host DGS, the Home DGS shall strive to provide the Host DGS with all the necessary information and funds within three working days after receiving the request or being notified by the Host DGS, for the Host DGS to be able to ensure that depositors have access to an appropriate amount of their covered deposits to cover their costs of living while waiting for full payout.
4. Where the full payout is imminent, the Home and the Host DGSs may agree to forgo partial payout in the interest of ensuring prompt full payout.

Article 10

Treatment of temporary high balances

1. The Host DGS shall assist the Home DGS with the handling of claims related to temporary high balances in its jurisdiction in the manner prescribed in this Article.
2. Claims related to temporary high balances may be submitted either to the Host or to the Home DGS. Where the claim is submitted to the Host DGS, this DGS shall forward it to the Home DGS.
3. The Home DGS shall verify the claim. Upon request by the Home DGS, the Host DGS shall lend the necessary assistance, such as in dealing with the language or legal issues from the law applicable in the Host DGS's jurisdiction.
4. Upon verifying the claim, the Home DGS shall send the necessary instructions for payment and funds in accordance with Articles 6 and 8 of this Agreement, respectively, either as a package with other claims if done in a reasonable timeframe, or individually.
5. Upon receiving the instructions for payment and the funds, the Host DGS shall repay the depositors accordingly. Articles 7 and 8 shall apply *mutatis mutandis*.



6. For the purposes of this Article, the Home DGS shall communicate the Host DGS, at the time of the notification referred to in Article 5 [notification of unavailability of deposits], with information on any deadline for accepting repayment claims, repayment period and coverage limit, regarding temporary high balances foreseen in national legislation.
7. This Article shall apply without prejudice to the protection granted by the Host DGS when the branch of the Home DGS's Member Institution has joined the Host DGS in order to obtain additional coverage for such deposits.

Article 11 **Currency of repayment**

1. The repayments shall be made by the Host DGS in the currency determined by the Home DGS's national legislation and communicated by the Home to the Host DGS.
2. Where the law of the Home DGS allows choosing between several currencies of repayment and where such choice includes the option to use the currency of the Host DGS, that option shall be used.
3. In accordance with Article 6(4) of the DGS Directive, where there is a need for a currency exchange, the rate to be applied should be the rate on the day of the determination of unavailability of deposits in a given Member Institution.

Article 12 **Handling of correspondence and language used**

1. In accordance with Article 14(2) of the DGS Directive, the Host DGS shall handle communication with depositors at branches in the Host DGS's Member State on behalf of the Home DGS, including informing depositors about the determination of unavailability of deposits and the payout.
2. Where the Home DGS has the capability to effectively handle communication with depositors at branches in the Host DGS's Member State, including the capability to communicate in the official language or languages of the Host DGS, and upon the Home DGS's request to the Host DGS, depositors shall be explicitly offered the option to communicate directly with the Home DGS.
3. The language to be used in communicating with the depositors at the branch in the context of a repayment shall be the official language or languages of the Host DGS. However, this shall not preclude the Host DGS from answering correspondence addressed to it by depositors in the official language or languages of the Home DGS or another language where it has the capability to do so.
4. The language to be used in all communication between the Home and the Host DGS shall be determined by common agreement of both.



5. The communication channels established to communicate with the depositors at branches, and between the Home and the Host DGS shall guarantee sufficient level of confidentiality and security.

Article 13 **Reimbursement of costs**

1. In accordance with Article 14(2) of the DGS Directive, the Home DGS shall compensate the costs incurred by the Host DGS as a consequence of the assistance provided to the Home DGS in accordance with this Part II of the Agreement.
2. The types of costs referred to above shall at least include the costs incurred in performing the following tasks:
 - a. Communication with depositors, including setting up the necessary infrastructure and hiring staff,
 - b. Communication with the Home DGS, including providing feedback information about claims paid,
 - c. Collecting additional information needed for the payout, including setting up the necessary infrastructure and hiring staff,
 - d. Translation of documents,
 - e. Fees for payment and acquisition of information,
 - f. Transaction costs of payouts.
3. The Home and the Host DGSs shall bilaterally agree on whether:
 - a. the Home DGS shall provide a lump sum amount ahead of the Host DGS incurring costs followed by reconciliation of accounts, or
 - b. the Host DGS shall be reimbursed for costs following the payout.
4. Where the Host DGS is reimbursed following the payout, the detail, such as time to reimburse the costs or the applicable interest rate, should be agreed upon between both DGSs by no later than 7 working days after the initial payout.

Article 14 **Right to audit**

1. Subject to subsequent bilateral agreement between Home and the Host DGS or, where relevant, the Home and Host designated authorities, the DGSs shall have the right of audit of the other DGS according to the terms agreed to by both DGSs.



2. Such audit may take the form of, for example oversight, post-payout review, audit of costs, seconding staff during payout, and may be performed either on-site or done remotely.

Article 15

Treatment of delays

1. The Home DGS shall make every reasonable effort to comply with the deadline set out in Article 6 of this Agreement. However, in instances where the Home DGS needs to contact depositors to ask for additional information to calculate the repayment amount or the entitlement to the sum held in an account, the Home DGS shall inform the Host DGS of the reasons for the delay as soon as possible and bilaterally agree on a new deadline.
2. Similarly, the Host DGS shall not bear any liability for any delays in the Home DGS providing it with the instructions for repayment and the necessary funding.
3. Any operational costs caused by the delays referred to in this Article, shall be borne by the Home DGS.

Article 16

Confidentiality and data protection

In accordance with Article 4(9) of the DGS Directive, the Home and the Host DGS shall ensure the confidentiality and the protection of the data pertaining to depositors' accounts. The processing of such data shall be carried out in accordance with Directive 95/46/EC.

Article 17

Liability

In accordance with Article 14(2) of the DGS Directive, the Host DGS shall not bear any liability with regards to acts done in accordance with the instructions given the Home DGS.

<p style="text-align: center;">PART III</p> <p style="text-align: center;">TRANSFER OF DEPOSIT GUARANTEE SCHEMES' CONTRIBUTIONS</p>

Article 18

Applicability of Part III

Part III shall apply in relation to the transfer of DGS contributions between two DGSs, including cross-border and domestic transfers, where a Member Institution affiliated to one DGS ceases to be a member of such DGS (the 'Transferring DGS') in order to join another DGS (the 'Receiving DGS').



Article 19

Exchange of information

1. Within one month upon becoming aware of the intention of a Member Institution to cease to be a member of the Transferring DGS, the Transferring DGS shall notify such circumstance to the Receiving DGS, provided that the Transferring DGS knows the identity of the Receiving DGS.
2. Similarly, where a Member Institution communicates to the Receiving DGS its intention to become a Member Institution of such DGS, the Receiving DGS shall notify such circumstance to the Transferring DGS, provided that the Receiving DGS knows the identity of the Transferring DGS. Such information shall be provided by the Transferring DGS within one month upon such request.
3. The exchange of information referred to in paragraphs 1 and 2 shall take place in any event before the termination of participation of the Member Institution in the Transferring DGS takes effect and joins the Receiving DGS.
4. The information to be communicated referred to in paragraphs 1 and 2 shall include any information that the Transferring DGS and the Receiving DGS jointly consider as relevant, including, where available:
 - a. Aggregate Information on all the regular contributions (and related deposits) being transferred from the Transferring DGS to the Receiving DGS, including where relevant, aggregate information on deposit flows in the Member Institution for a period agreed to by both DGSs.
 - b. Any audits, assessments and tests previously done on the capability of the institution to produce SCV files and other information requested by the Receiving DGS, particularly on the quality of data provided by the Member Institution,
 - c. Any other relevant information, including information on near misses related to that Member Institution.
5. The Transferring DGS shall not be required to obtain new information for the purpose of transferring it to the Receiving DGS.
6. The Transferring DGS shall have the right to refuse to share information which, due to their sensitive nature, may not be shared under national law.

Article 20

Execution of the transfer of contributions

1. In accordance with Article 14(3) of the DGS Directive, the contributions paid during the 12 months preceding the end of the membership shall be transferred by the Transferring DGS to the Receiving DGS.



2. Where the Transferring DGS needs to collect additional funds, for example following a recent payout, to be transferred to the Receiving DGS, any costs of raising such funds, shall be borne by the Transferring DGS.
3. The Receiving DGS shall provide the Transferring DGS with the account details and any other relevant information to allow the transfer of the funds. The chosen accounts, and mode of transfer of funds should ensure utmost security of the funds and timeliness of the transfer.
4. The Transferring DGS shall transfer the funds in the currency in which the contributions had originally been provided to the Transferring DGS. The Receiving DGS shall be free to decide whether to keep the funds in the currency in which it received the funds or whether to exchange them. The Receiving DGS shall bear the costs of any operations related to such exchange.

Article 21 **Treatment of payment commitments**

1. Where a member Institution ceases to be a member of the Transferring DGS and joins the Receiving DGS, the Transferring DGS shall ensure that the payment commitments corresponding to the 12 months preceding the end of the membership in the Transferring DGS are transferred to the Receiving DGS,
 - either by enforcing the payment commitment and transferring the proceeds to the Receiving DGS, or
 - by reassigning the payment commitments arrangement to the Receiving DGS in agreement with the latter and the Member Institution.
2. Within seven working days after first becoming aware of the intention of the Member Institution to cease its membership, the Transferring DGS, where relevant in agreement with the Member Institution, shall decide which of the two options to pursue and shall communicate its decision to the Receiving DGS.
3. Where the Transferring DGS decides to enforce the payment commitments and transfer the proceeds to the Receiving DGS, the provisions laid down in Article 20 on execution of the transfer of contributions shall apply.
4. Where the Transferring DGS decides not to enforce the payment commitments, the Transferring and the Receiving DGS shall engage with each other to establish whether the Receiving DGS is willing to accept the reassignment of the payment commitments. The reassignment shall only take place when both DGSs agree. Where the Receiving DGS refuses the reassignment, the Transferring DGS shall enforce the payment commitments and transfer the funds to the Receiving DGS.



Article 22

Timeline for advancing the funds and payment commitments

1. The transfer of funds from the Transferring DGS to the Receiving DGS shall take place on the same working day as the Member Institution leaving the Transferring DGS joins the Receiving DGS.
2. Where the Receiving DGS accepts to take the risk of accepting the new Member Institution without receiving the transfer on the same working day, both DGSs shall bilaterally agree the deadline for the transfer.

Article 23

Language used

The Transferring and the Receiving DGS shall bilaterally agree on the language used for the transmission of information from one DGS to the other.

Article 24

Costs of the transfer of the funds and payment commitments

1. Any costs associated with transferring the funds and payment commitments from the Transferring DGS, and any other costs associated with the transfer, including translations of requested information, shall be borne by the Receiving DGS. However, where necessary, the costs of raising contributions in the Transferring DGS shall be borne by the Transferring DGS.
2. Without prejudice to paragraph 1, any costs arising from delays in the provision of information or funds in accordance with the Part III of the Agreement shall be borne by the DGS which had to provide such information or funds.

PART IV

MUTUAL LENDING BETWEEN DEPOSIT GUARANTEE SCHEMES

Article 25

Applicability of Part IV

Part IV shall apply to the borrowing between two particular DGSs provided that the national legislation transposing the DGS Directive in the jurisdiction of the DGS lending the funds (the 'Lending DGS') to the other DGS (the 'Borrowing DGS') allows for such possibility and the conditions referred to in Article 12(1) of the DGS Directive have been met.

Article 26

Procedure for the instrumentation of the borrowing

1. Where Parties agree in principal to lend to one another, the Borrowing DGS shall send to the Lending DGS a loan request. The request shall include the following information:



- a. The amount of money requested;
 - b. An undertaking that the Borrowing DGS is not able to fulfil its obligations under Article 9(1) of the DGS Directive because of a lack of available financial means as referred to in Article 10 of that Directive;
 - c. An undertaking that the Borrowing DGS has made recourse to extraordinary contributions referred to in Article 10(8) of the DGS Directive;
 - d. A legal commitment that the borrowed funds will be used in order to pay claims under Article 9(1) of the DGS Directive;
 - e. An undertaking that the Borrowing DGS is not currently subject to an obligation to repay a loan to other DGSs under Article 12 of the DGS Directive;
 - f. An undertaking that the total amount requested does not exceed 0.5 % of covered deposits of the borrowing DGS.
2. The Lending DGS shall communicate its decision to the Borrowing DGS as soon as possible and in any event within seven working days from the date of the loan request.
 3. Within five working days after receiving the communication from the Lending DGS, the Lending DGS and the Borrowing DGS shall formalise such lending agreement.

PART V FINAL PROVISIONS
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Article 27
Relevant contact details

1. The DGSs and the designated authorities shall nominate contact persons who represent them in the activities covered by the present Agreement and communicate them to the EBA.
2. Appendix II to this Agreement contains a list of relevant details of such contact persons, including email addresses and phone numbers. A list with the details of the contact persons will also be kept by the EBA.



Article 28

Supplemental terms

1. The provisions of this Agreement shall not preclude the Parties from entering into bilateral (or multilateral) agreements to provide further practical or detailed implementation of the terms of this Agreement.
2. In the event of any contradiction or inconsistency between the terms of those supplemental terms and the terms of this Agreement, the provisions of this Agreement shall prevail.

Article 29

Amendment procedure

1. This Agreement may be amended in accordance with the following procedure.
2. Any Party may propose an amendment to this Agreement.
3. Any Party proposing an amendment of this Agreement shall notify the EBA of its proposal.
4. The EBA will notify the other Parties to this Agreement of the amendments proposed by any Party to this Agreement.
5. An amendment shall enter into force [30] days after the date on which the EBA has received the last written notification from the Parties confirming their acceptance to the proposed amendments.
6. This Agreement shall be subject to a joint examination by all the Parties to this Agreement following changes in the EU regulatory framework, including Guidelines issued by the EBA in accordance with Article 16 EBA Regulation.

Article 30

Settlement of Disputes

In accordance with Article 14(5) of the DGS Directive, any Party may refer any dispute about the interpretation of this Agreement to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010.

Article 31

Entry into force and Withdrawal

1. This Agreement shall enter into force 30 days after the [6 months from publication of the translation of the guidelines in all EU official languages on the EBA's website] provided that at least three DGSs have subscribed to it in accordance with Article 3.



2. Any Party may at any time withdraw from this Agreement by sending written notification thereof to the EBA at least one month in advance, specifying the effective date of its withdrawal. Withdrawal from this Agreement shall not affect its application among the remaining Parties.

Article 32
New Subscribing DGSs or designated authorities

New DGSs or designated authorities may become Parties to this Agreement by signing the letter of adherence to this Agreement included in Appendix IV, without any reservation, and sending it to the EBA.

Article 33
Confidentiality

The DGSs and designated authorities shall maintain the confidentiality of all information and shall not disclose information to third parties without first obtaining the prior consent of the other Parties.

Article 34
Working language

The working language of this Agreement shall be English. Where necessary, each DGS is responsible for translation into its own language.

Article 35
Publication of the Agreement

All Parties to this Agreement shall publish this Agreement on their respective websites. The EBA will also publish this Agreement and any amendments thereof on its website.



Appendix I

List of DGSs and Designated Authorities subscribing initially to this Agreement

[Include the names of the subscribing deposit guarantee schemes and, where appropriate, designated authorities, as notified to the EBA in accordance with Article 3 of this Agreement]



Appendix II

Contact details



Appendix III
Template of
LETTER OF ADHERENCE TO THE MULTILATERAL FRAMEWORK COOPERATION AGREEMENT
BETWEEN DEPOSIT GUARANTEE SCHEMES AND DESIGNATED AUTHORITIES IN THE EUROPEAN
UNION

To the European Banking Authority

[Date]

[Name of subscribing deposit guarantee scheme or designated authority]

[Address]

Reference is made to the Multilateral Framework Cooperation Agreement (the 'Agreement') between deposit guarantee schemes and designated authorities in the European Union whose terms and conditions have been established in the Annex 1 to the EBA Guidelines on cooperation agreements between deposit guarantee schemes under Directive 2014/49/EU.

The [insert name of subscribing deposit guarantee scheme or designated authority] hereby agrees to the terms of the Agreement as a Party thereof.

Sincerely yours,

[Name of the subscribing deposit guarantee scheme or designated authority]

[Name]

[Title]

Date: _____

Acknowledged:
European Banking Authority

[Name]

[Title]

Date: _____



Appendix IV
Template of
LETTER OF ADHERENCE TO THE MULTILATERAL FRAMEWORK COOPERATION AGREEMENT
BETWEEN DEPOSIT GUARANTEE SCHEMES AND DESIGNATED AUTHORITIES IN THE EUROPEAN
UNION

To the European Banking Authority
[Date]
[Name of subscribing deposit guarantee scheme or designated authority]
[Address]

Reference is made to the Multilateral Framework Cooperation Agreement (the ‘Agreement’) between deposit guarantee schemes and designated authorities in the European Union whose terms and conditions have been established in the Annex 1 to the EBA Guidelines on cooperation agreements between deposit guarantee schemes under Directive 2014/49/EU.

The [insert name of subscribing deposit guarantee scheme or designated authority] hereby agrees to the terms of the Agreement as a Party thereof.

This Letter of Adherence shall become effective and the [insert name of subscribing deposit guarantee scheme or designated authority] shall become a Party to the Agreement as of the date of signature of this Letter of Adherence by the European Banking Authority in acknowledgment on this Letter of Adherence.

Sincerely yours,
[Name of the subscribing deposit guarantee scheme or designated authority]

[Name]
[Title]
Date: _____
Acknowledged:
European Banking Authority

[Name]
[Title]
Date: _____

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

Article 16(2) of the EBA Regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

A. Problem identification

Sudden declines of confidence of depositors in the banking system and large-scale withdrawals of deposits can put the stability of the financial system at risk. To prevent bank runs and confidence crisis, deposit protection schemes (DGS) are set up in all Member States of the EEA.

According to the latest estimate available, covered deposits in the EU amounted to around 7 000 bn EUR (end 2012), two thirds of eligible deposits (10 500 bn) and nearly half of the total deposits (14 650 bn EUR) held with EU credit institutions⁷. For Euro Area monetary financial institutions (MFI), deposits by households and non-financial corporations resident in other Euro Area Member States stood at 655 bn EUR (end of March 2015)⁸. Cross-border deposits account for around 5 % of total non-MFI deposits held at credit institutions in the Euro Area⁹.

At the same time, there are around 700 branches of credit institutions in EU Member States controlled by credit institutions from other EEA Member States. Those types of foreign branches constitute more than 10% of all credit institutions operating in the EU. Depending on the Member State, those branches cover up to 30% of national banking sectors’ total assets¹⁰. The amount of deposits of non-MFI held with foreign banks stood at 2 300 bn EUR in the EU and 1 500 bn EUR in the Euro Area. Those deposit values represent more than 10 % of non-MFI deposits held with banks, for both, the EU and Euro Area as of June 2014¹¹.

Finally, end of 2013, there were 30 credit institutions in the EU identified as globally systemically important (G-SIIs), based on their cross-jurisdictional activity and other assessment indicators¹².

The cross-border nature of many of EU’s credit institutions and their activities calls for effective cooperation between the relevant authorities to ensure financial stability in the EU, including when one or more of these credit institutions fail, the institution is not resolved using tools

⁷ EC: JRC technical report on updated estimates of EU eligible and covered deposits (2014)

⁸ ECB: MFI Balance Sheet Statistics (March 2015)

⁹ ECB: Financial Integration in Europe (2015)

¹⁰ ECB: Banking Structures Report (2014)

¹¹ ECB: Consolidated Banking Data (June 2014)

¹² <http://www.eba.europa.eu/risk-analysis-and-data/global-systemically-important-institutions>



prescribed in Directive 2014/59/EU and in consequence there is a need for the DGS to payout depositors.

Without written cooperation agreements which are, at least to a certain degree harmonised across MS, there is a high risk of conflicts in case of insolvency or resolution of cross-border banking groups¹³¹⁴. Furthermore, lack of harmonisation would lead to less timely and less consistent approach to payouts in branches and transfers between DGS. That is the case because in each case of failure or transfer, the DGSs would need to evaluate the agreement and adjust their actions accordingly. A more harmonised approach offered by the model framework in these guidelines allows for this process to be quicker and more predictable – two crucial features when executing a payout.

B. Policy objectives

At high-level, these guidelines are expected to contribute to financial stability (via cooperation between national DGSs)¹⁵ and the safety of the banking system in general. They should facilitate the functioning of the Single Market for banking services and the protection of depositors in the EU.

More specifically, these guidelines aim to:

- facilitate entry into cooperation agreements between DGSs in order to ensure consistent application of the DGS Directive throughout the Union and foster convergence of the European system of national DGS;
- ensure that such agreements include the necessary elements and commitments (including funding commitments) to ensure effective cooperation in case of an institution failure, and by including a model framework agreement, make the process of entering into such agreements more efficient and more consistent.

Furthermore, the guidelines could offer useful inspiration as to practical solutions that could be applied in case DGSs or designated authorities fail to conclude an agreement or to the extent a particular aspect is not covered by the agreement.

By the harmonisation and comparability of cooperation agreements across the Single Market, they should help the EBA to take a consistent approach to settling disputes. These guidelines should contribute to the Single Market by further strengthening cooperation and trust between DGSs which contributes towards the ease of establishment across the Union.

At the operational level, these guidelines are intended to specify *ex-ante* various aspects of payouts, transfer of contributions from one DGS to another and loans between DGSs.

¹³ JRC: Investigating the Efficiency of EU Deposit Guarantee Schemes (2009)

¹⁴ IADI: Report on Cross-Border Deposit Insurance Issues raised by the Global Financial Crisis (2011)

¹⁵ IADI: Core Principles for Effective Deposit Guarantee Schemes (2014)



C. Baseline scenario and options considered

C.1 Rational for issuing the guidelines

To address the problems identified above, EBA could:

- (i) abstain from additional regulatory intervention on cooperation between DGS (Option 1.1)
- (ii) issue guidelines on its own initiative pursuant to Article 16 of the EBA Regulation (Option 1.2)

C.2 Extent of EBA's mediation power

In case the DGS, or the designated authorities, cannot reach an agreement or if there is a dispute about the interpretation of the cooperation agreement which is necessary to ensure an effective payout of depositors, transfer of contributions or a loan from one DGS to another, the DGSs or the designated authorities may refer the matter to the EBA for binding mediation.

Two options considered include:

- (i) maintaining that the EBA may mediate only where the matter has been referred to the EBA (Option 2.1), or
- (ii) outlining in the guidelines and the cooperation agreements that any disputes should be settled by the EBA (Option 2.2).

C.3 Parties to the agreement

Concerning the scope of application, these guidelines could recommend DGSs, or where relevant the designated authorities, to:

- (i) enter into one multilateral agreement covering all minimum requirements (Option 3.1)
- (ii) enter into bilateral agreements (Option 3.2)
- (iii) enter into a multilateral agreement that covers parts of the requirements but leaving it to the discretion of the DGSs to sign complementary bilateral agreements on technical details, and allow bilateral agreements where they intend to cover elements beyond the scope of these guidelines (Option 3.3).

C.4 Content of the agreements – list of elements

Concerning general content, these guidelines could either include:

- (i) an exhaustive list of obligatory elements (Option 4.1)
- (ii) a list of minimum obligatory elements with flexibility for the parties to add further elements (Option 4.2).

C.5 Content of the agreements – preferred options

Concerning the detail provided on the listed elements, these guidelines could:

- (i) provide no guidance on the preferred option for each listed element (Option 5.1)

- (ii) provide the preferred option with flexibility to depart from it upon providing sufficient justification (Option 5.2)
- (iii) provide prescriptive solutions for each element with no flexibility to depart from them (Option 5.3)

Options concerning minimum obligatory elements of cooperation agreements, several sets of specific technical options are considered.

C.6 Options concerning the payout in branches:

C.6.1) Provision of notifications, information and instructions and funds

- (i) setting of deadlines for the provision of payout-relevant information (Option 6.1.1)
- (ii) abstain from setting deadlines for provision of payout-related information (Option 6.1.2)

C.6.2) Currencies

- (i) not contain any provisions on the currency of payout (Option 6.2.1)
- (ii) stipulate the payout in local currency and exchange rate related costs to be borne by home DGS (Option 6.2.2)

C.6.3) Language used

- (i) not contain any provisions on the language used for payout-related communication (Option 6.3.1)
- (ii) contain provision on language to be used and recommend communication with depositor in usual language (Option 6.3.2)

C.6.4) List of reimbursable costs

- (i) provide a list of reimbursable costs (Option 6.4.1)
- (ii) not contain a list of reimbursable costs (Option 6.4.2)

C.7 Options concerning transfers between DGS:

C.7.1) Provision of information

- (i) abstain from setting deadlines (Option 7.1.1)
- (ii) set deadlines for the provision of information relevant for transfers of contributions (Option 7.1.2)

C.7.2) Content of the information to be transmitted

- (i) elaborate on the content to be transmitted (Option 7.2.1)
- (ii) abstain from elaborating on the content to be transmitted (Option 7.2.2)

C.8 Options concerning lending between DGS:

C.8.1) Willingness to lend

- (i) requiring parties to the agreement to highlight whether in principle they agree to lend (Option 8.1.1)
- (ii) abstain from requiring parties to state whether they in principle agree to lend (Option 8.1.2)



C.8.2) Lending process

- (i) requiring parties to agree on the basic lending process (Option 8.2.1)
- (ii) abstain from requiring parties to agree on the basic lending process (Option 8.2.2)

D. Cost-benefit analysis¹⁶ and preferred options

In April 2015, EBA conducted a special survey amongst national DGSs and designated authorities. 16 Member States responded to that survey (out of which 10 Euro Area Member States). Out of 18 DGSs which answered the questionnaire (for one Member State three DGS responded), 10 do not have any cooperation agreements. The number of agreements for the other DGSs ranges from one (six Member States), over six (one Member State) to “all DGS where there are topping-up arrangements” (one Member State). In addition to these agreements nearly all have signed EFDI’s multilateral Memoranda of Understanding (MoU). There are two types of cooperation agreements in place: legally binding framework contracts or cooperation agreements and MoUs, which are not legally binding. As most DGSs have signed EFDI’s multilateral MoU several DGSs have concluded both types. Three DGSs have cooperation agreements with DGSs outside the EEA and one DGS has high level MoU with DGSs outside the EEA.

Areas mentioned are:

- Rights and duties of participating parties
- Information exchange
- Protection of data, privacy
- Oversight or audit by the home state
- Description of the compensation process (Operational, IT, Financial, Communication, reporting)
- Financial considerations (funds and compensation of costs)
- Stress – tests
- Applicable law

D.1 Rational for issuing the guidelines

Under the baseline scenario, pursuant to Article 14(5) of the DGS Directive, in order to facilitate effective cooperation between DGSs, with particular regard to Article 14 and Article 12 of Directive 2014/49/EU, the DGSs, or, where appropriate, the designated authorities, shall have written cooperation agreements in place. Article 14(5) also requires the designated authority to notify EBA of the existence and the content of such agreements and gives EBA the power to issue opinions in accordance with Article 34 of the EBA Regulation. Finally, Article 14(5) states that if designated authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to EBA for a binding mediation in accordance with Article 19 of the EBA Regulation and EBA shall act in accordance with that Article. The EBA binding mediation in this area is a challenging task for a number of reasons:

- DGS Directive sets out broad cooperation principles but leaves the concrete arrangements, which are crucial in practice, to cooperation agreements. This means that where parties have not concluded an agreement or where the agreement is silent on a

¹⁶ As a background see also EC: Impact assessment accompanying the Directive on Deposit Guarantee Schemes (2010)



particular issue or subject to further interpretation, the EBA will find little guidance in the existing corpus of law, unless more specific and concrete rules on DGS cooperation have been identified beforehand.

- Without guidance on the cooperation between DGSs, the DGSs or the designated authorities may conclude very different agreements that may not contain the necessary elements to ensure smooth and legally safe cooperation at the point of failure. This would increase the likelihood of conflicts.
- Lack of convergence would also render the EBA mediation particularly difficult, especially in a situation of emergency, as in case mediation is needed, the EBA would have to reassess the details of each specific agreement and propose an ad hoc solution for the specific conflict without being able to rely on existing set of principles or guidelines.

With the aim of ensuring a consistent approach to cooperation agreements required under Article 14(5) of Directive 2014/49/EU across Member States, it is proposed that the EBA would adopt own-initiative guidelines on cooperation between DGSs (Option 1.2).

D.2 Extent of EBA's mediation power

Conflicts in the area of payouts of depositors, transfers of contributions or loans between DGSs need to be solved in a speedy manner to satisfy the general objectives of Directive 2014/49/EU. Dispute settlement by national courts concerning DGS cases could be expected to typically take a long time. Also, if bilateral agreements between national DGS are allowed, it is important that dispute settlement follows a harmonised procedure. To ensure a consistent interpretation of agreements, it is conducive to have one body deciding in conflict situations. Similarly, to ensure the effectiveness (enforceability) of the dispute settlement mechanism, and the reliability of the cooperation agreements, a central EU-wide body for dispute settlement seems to be the best solution. On the other hand, Directive 2014/49/EU provides an option for DGS to refer the matter to the EBA in accordance with Article 19. To effectively foster supervisory convergence and consistency within the European system of DGS, and respect provision of Directive 2014/49/EU Option 2.1 is consequently the preferred option. The cooperation agreements should include a clause stating that any dispute, controversy or claim arising out of or relating to the agreement or to the breach thereof, may be settled by the EBA in accordance with Article 19 of the EBA Regulation

D.3 Parties to the agreement

The entry of all DGSs into a single multilateral agreement would rationalise the burden for national DGS and minimise their administrative costs to negotiate multiple bilateral agreements.

Bilateral agreements, on the other hand, would more easily take specific constellations between DGS into account and could be flexibly adapted to changing circumstances. The complexity of such an EU-wide network of bilateral agreements would render conflict resolution in case of cross-border failure of institutions very specific and potentially inconsistent across the EU. Consequently, the intermediate solution of a multilateral umbrella agreement complemented – if



necessary – by a lean system of bilateral agreements appears to be the most efficient one (Option 3.3). This solution would also foster a consistent dispute settlement, facilitating the mediator role of EBA.

D.4 Content of the agreements – list of elements

Given that the majority of DGSs responding to the EBA survey indicates not to have any cooperation agreement in place, it seems to be more efficient to include in these guidelines a list of minimum obligatory elements with possibility to add further elements (Option 4.2). Under this option, the costs of implementation for DGS would be small and the large diversity of situations between national DGS and interconnections between national banking systems could be better addressed.

D.5 Content of the agreements – preferred options

To effectively achieve the objectives stated above, these guidelines need to provide national DGSs with some guidance on the preference of options listed. Otherwise, these guidelines would risk encouraging the conclusion of cooperation agreements which are hardly consistent with each other and where consistent settlement of disputes would prove difficult as each case would be different. However, these guidelines should also reflect the diversity of situations between national DGSs and interconnections between national banking systems. Providing guidance on preferred options with the possibility to depart based on reasoned justification thus appears to be the most efficient option to achieve the objectives stated above (Option 5.2).

D.6 Options concerning the payout in branches:

D.6.1 Provision of notifications, information and instructions and funds

The shortening of the payout delay is one of the major innovations of the new Directive 2014/49/EU. Although it is associated with costs for DGSs and credit institutions, it is expected to significantly benefit the effectiveness of DGSs in preventing bank runs and fostering financial stability¹⁷. To be operationally capable to payout covered depositors, host DGSs depend on notifications, information and instructions and funds to be provided in a very short period of time¹⁸. Therefore, these guidelines should set deadlines for the provision of notifications, information and instructions and funds, to be contained in cooperation agreements between DGS (Option 6.1.1).

D.6.2 Currencies

For the Euro Area, around 97 % of deposits held with MFIs by non-MFIs resident in the Euro Area are denominated in Euro. For deposits held by non-MFIs resident outside the Euro Area with Euro Area MFIs, that proportion of Euro-denomination is only around 50 %. The remaining deposits are mostly denominated in USD (30 %), followed by GBP- (7 %), JPY- (2 %) and CHF- (1%) accounts¹⁹. Similarly, it can be reasonably assumed that a significant proportion of cross-border deposits holdings in the EU – deposits by non-MFIs held with MFI located in a different Member State – is

¹⁷ EFDI: Report on Improvement of Payment Delays to Depositors and Promotion of Best Practices (2008)

¹⁸ EFDI: Report on Development of a Non-Binding Model Agreement on Exchange of Information between DGS (2009)

¹⁹ ECB: Statistics Bulletin – Money, Banking and Other Financial Corporations (May 2015)



denominated in a currency different from the local currency. To foster the Single Market for banking services, it would be beneficial to specify in cooperation agreements that payouts to depositors should as a matter of principle be made in the local currency. Over the last 12 months (June 2015), the daily effective exchange rate of the Euro (normalised at 100) has displayed a standard deviation of around 5. Given that the Euro is floating against a large number of currencies of Member States of the European Economic Area and those bilateral exchange rates are typically more volatile than effectively weighted rates²⁰, there is a significant currency risk associated with cross-border deposits holdings. To effectively achieve the objective of promotion of cross-border provision of deposit accounts requires the exchange rate risk not to be borne by the depositor. Consequently, these guidelines recommend the general payout of depositors in local currency and any exchange rate related costs to be borne by the failed banking group's home DGS (Option 6.2.2).

D.6.3 Language used

To smoothen and speed up the payout process, it is important that communication in general between DGSs involved as well as between DGSs and depositors is easily understood. This holds in particular for written communication with the depositors to be paid out as a lack of effective communication introduces the risk of bank runs. Consequently, these guidelines recommend that in the case of payouts, communication with a given depositor should be in a language usually used for communicating with that depositor with flexibility to also use other languages, where appropriate (Option 6.3.2).

D.6.4 List of reimbursable costs

The European System of DGSs centralises responsibilities only to a certain degree. In particular funding of national DGSs is based on banking group level. Consequently, the responsibility to assume payout-related costs should lie with the home DGS. For the sake of legal clarity and the smoothing and speeding up of any payout process, cooperation agreements should include list of costs to be reimbursed by home to host DGS (Option 6.4.1).

D.7 Options concerning transfers between DGS:

D.7.1 Provision of information

To be able to effectively transfer contributions of an institution requires the exchange of information between DGSs involved²¹. More precisely, the home DGS needs to provide information to the host DGS in case a banking group decides to change DGS. To ensure sufficient funding of national DGSs – taking into account the risk profile of the institutions under its scope – it is necessary to have that information exchanged in a quick manner. Thus, it is recommended to require host DGS to transmit information to home DGS in the case of a change of membership of an institution within a certain period of time (Option 7.1.2).

D.7.2 Content of the information to be transmitted

²⁰ ECB: Statistics Bulletin – Exchange Rates (May 2015)

²¹ EFDI: Report on Development of a Non-Binding Model Agreement on Exchange of Information between DGS (2009)



The minimum mandatory information to be transmitted between DGSs in case of a change of DGS membership of institutions should be highly standardised to facilitate a consistent procedure. For that purpose, the guidelines recommend the host DGS to transmit any information on the institution, including previous SCV files, available at its disposal. (Option 7.2.1).

D.8 Options concerning lending between DGS:

D.8.1 Willingness to lend

Lending between DGSs – although voluntary – is an important element of the new European DGS framework. It is an important element to intensify the cooperation between DGSs. Consequently, these guidelines recommend that where DGS are willing to lend to one another it should be stated in the cooperation agreements, and that initial lack of such agreement should not stop DGS from lending at the point of crisis (Option 8.1.1).

D.8.2 Lending process

Given the importance of the instrument of inter-DGS lending, these guidelines should also include basic characteristics of the lending process where DGSs agree to lend to one another, without, however, specifying any further detail (Option 8.2.1).

E. Conclusion

In general, the requirement to conclude cooperation agreements is stipulated by Directive 2014/49/EU, and as such those costs do not relate to the issuance and content of these guidelines.

The preferred options proposed in these guidelines would create incremental costs and benefits, directly and indirectly for the main stakeholders

- Deposits guarantee schemes
- Credit institutions
- Depositors
- Other safety net participants such as resolution authorities
- Other potential stakeholders and
- Society at large

Firstly, the benefits to the safety of the banking system, depositor protection and effective and consistent cooperation between DGS outweigh any related costs. Consequently, it is recommended to issue these EBA own-initiative guidelines on cooperation agreements.

Secondly, an advanced multilateral framework – with a multilateral umbrella agreement and EBA as recommended mediator – significantly benefits the achievement of consistent and efficient conflict resolution, at the same time rationalising the administrative burden for DGS.

Thirdly, the provision of a minimum list of obligatory elements to be covered by cooperation agreements combined with guidance on preferred technical specifications related to payout, contribution transfer and inter-DGS lending seems to be the effective and efficient approach.



Forth, offering a model agreement that encourages DGS to enter into multilateral agreements should lower the burden for DGSs while increasing the benefits to institutions, depositors and other participants by making the process of payout in particular more efficient and predictable.

Overall, the costs caused by the options proposed for stakeholders affected are expected to be of medium order, but necessary for the effective and efficient functioning of the European System of national DGS and largely exceeded by the benefits to these guidelines' policy objectives.

5.2 Overview of questions for consultation

Question 1: Do you agree that the DGSs, or where relevant the designated authorities, should adhere to the multilateral framework cooperation agreement or conclude bilateral cooperation agreements where they intend that these cooperation agreements contain terms which go beyond the level of detail required by these guidelines? Is there a need for further flexibility?

Question 2: Do you think there is a need to further specify modalities for advancing the funds and specifying the preferred method?

Question 3: Do you see any practical impediments to the DGSs meeting the deadlines outlines in subsections 5.1(a), 5.1(b) and 5.1(d)?

Question 4: Do you think there is a need to further specify what currency ought to be used?

Question 5: Do you agree that by default the handling of correspondence should be done by the host DGS with flexibility for DGSs to determine whether the home DGS should actively engage in communication as well, notwithstanding that depositors have the right to contact both?

Question 6: Do you have any suggestions of what other costs should be subject to reimbursement by the home DGS?

Question 7: Do you support the flexibility for DGSs to agree to a different deadline for advancing the funds, or should the deadline be stricter?