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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency - *Mandate for negotiations with the European Parliament*

2023/0115 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

PUBLIC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Having regard to the opinion of the European Central Bank[3],

Acting in accordance with the ordinary legislative procedure,

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[1] OJ C , , p. .
[2] OJ C , , p. .
[3] OJ C , , p. .

Whereas:

(1) In accordance with Article 19(5) and (6) of Directive 2014/49/EU of the European Parliament and of the Council[4], the Commission has reviewed the application and the scope of that Directive and concluded that the objective of protection of depositors in the Union through the establishment of deposit guarantee schemes (DGSs) has mostly been met. However, the Commission also concluded that there is a need to address the remaining gaps in depositor protection and to enhance the functioning of DGSs, while harmonising rules for DGSs interventions other than payout proceedings.

(2) The failure of credit institutions to comply with their obligations to pay contributions to DGSs or to provide information to depositors and DGSs could undermine the objective of depositor protection. DGSs, or where relevant, designated authorities should charge statutory interest rate on the amount of contributions due for late payment of contributions. It is important to improve coordination between DGSs, designated and competent authorities to take enforcement actions against a credit institution that does not comply with its obligations. Although the application of supervisory and enforcement measures by the competent authorities against credit institutions is regulated under national laws and Directive 2013/36/EU of the European Parliament and of the Council[5], it is necessary to ensure that DGSs, or where relevant, designated authorities inform the competent authorities in time about any infringement of obligations of credit institutions under deposit protection rules.

[4] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (*OJ L 173, 12.6.2014, p. 149).*

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

PUBLIC

(3) To support further convergence of DGSs' practices and assist DGSs in testing their resilience, the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[6] (EBA) should issue guidelines on the performing of stress tests of DGS' systems.

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

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

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[6] 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).

PUBLIC

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

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

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

PUBLIC

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

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

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

PUBLIC

(13) Financial institutions are excluded from deposit protection. However, certain financial institutions, including e-money institutions, payment institutions and investment firms, also deposit the funds received from their clients in bank accounts, often on a temporary basis, to comply with safeguarding obligations in line with sectorial legislation, including Directive 2009/110/EC of the European Parliament and of the Council[7], Directive (EU) 2015/2366 of the European Parliament and of the Council[8] and Directive 2014/65/EU of the European Parliament and of the Council[9]. Considering the growing role of those financial institutions, DGSs should protect such deposits under the condition that those clients are identified or identifiable.

PUBLIC

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

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

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

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

To avoid the risk of double payment in those situations, any claims clients have in relation to sums held on their behalf by the account holder should be reduced by the amount reimbursed by the DGS to those clients directly. The EBA should therefore develop guidelines promote convergence in the specification of the coverage of client funds deposits, including the identification of clients for the purpose of repayment, the criteria for repayment to the account holder for the benefit of each client or to the client directly, and the rules to avoid multiple claims for payouts to the same beneficiary.

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

(16) Article 9 of Directive 2014/49/EU provides that where a DGS makes payments in the context of resolution proceedings, the DGS should have a claim against the credit institution concerned for an amount equal to its payments and that claim should rank *pari passu* with covered deposits. That provision does not distinguish between a DGS's contribution when an open-bank bail-in tool is used, and DGS's contribution to the financing of a transfer strategy (sale of business or bridge institution tool) followed by liquidation of the residual entity.

PUBLIC

To ensure clarity and legal certainty with respect to the existence and amount of a DGS's claim in different scenarios, it is necessary to specify that when the DGS contributes to support the application of the sale of business tool or of the bridge institution tool, or alternative measures, whereby a set of assets, rights and liabilities, including deposits, of the credit institution are transferred to a recipient, that DGS should have a claim against the residual entity in its subsequent winding-up proceedings under national law. To ensure that the shareholders and creditors of the credit institution left behind in the residual entity effectively absorb the losses of that credit institution and improve the possibility of repayments in insolvency to the DGS, the DGS claim should have the same ranking as the depositors' claim. In case the open bank bail-in tool is applied (i.e., the credit institution continues its operations), the DGS contributes in the amount by which covered deposits would have been written down or converted to absorb the losses in that credit institution, had covered deposits been included within the scope of bail-in. Therefore, the DGS's contribution should not result in a claim against the institution under resolution as it would eliminate the purpose of the DGS's contribution.

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

PUBLIC

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

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

PUBLIC

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

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

(22) It is necessary to enhance depositor protection, while avoiding the need for a fire sale of the assets of a DGS and limiting possible negative pro-cyclical effects over the banking industry caused by the collection of extraordinary contributions. Member States should therefore have the option to allow its DGSs to use alternative funding arrangements that enable them to obtain at any time short-term funding from sources other than contributions, including before using their available financial means and funds collected through extraordinary contributions. Because credit institutions should primarily bear the cost and responsibility for financing DGSs, alternative funding arrangements from public funds should only be used as a last resort. This should not prevent the use of short-term loans from public sources before other alternative funding arrangements in exceptional circumstances to ensure timely repayment to depositors.

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

PUBLIC

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

(25) Measures to prevent failure of a credit institution through sufficiently early interventions can play an effective role in the continuum of crisis management tools to maintain depositor confidence and financial stability. Those measures can take various forms - capital support measures through own funds instruments (including Common Equity Tier 1 instruments) or other capital instruments, guarantees, or loans. DGSs have had heterogeneous recourse to those measures. To ensure the continuum of crisis management tools and recourse to preventive measures in a manner consistent with the resolution framework and the state aid rules, it is necessary to specify the timing and conditions for their application.

Preventive measures are not appropriate for the absorption of incurred losses when the credit institution is in resolution and should be used early to prevent deterioration of the financial situation of the credit institution. Designated authorities, or where relevant institutional protection schemes (IPSs), should therefore confirm whether the conditions for such DGS intervention have been fulfilled. Finally, those conditions for the use of DGS available financial means should not be considered by the competent authority as a current or foreseen material, factual or legal obstacle to the immediate transfer of funds in the context of Article 113(6) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[10].

PUBLIC

(26) To ensure that preventive measures achieve their objective, credit institutions should be required to prepare a concise note focused on the information necessary to confirm that the conditions to grant preventive measures are satisfied. The preparation of such note should not be too burdensome and time-consuming for the credit institution to ensure the possibility for the DGS to intervene early enough. Therefore, the note accompanying preventive measures should take the form of a sufficiently short explanatory document. In addition, to ensure their long-term viability, credit institutions should be required to prepare a plan that should contain all elements which, where relevant, aim at preventing the outflow of funds and strengthening the capital and liquidity position of the credit institution, enabling the credit institution to comply with all the relevant prudential and other regulatory requirements on a forward-looking basis. Such plan should therefore contain, where relevant, capital raising measures, including rules on the issuance of rights, the voluntary conversion of subordinated debt instruments, liability management exercises, capital generating sales of assets, the securitisation of portfolios, and earnings retention, including dividend bans and bans on the acquisition of stakes in undertakings.

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

For the same reason, during the implementation of the measures envisaged in the plan, credit institutions should also strengthen their liquidity positions and refrain from aggressive commercial practices, and from the repurchasing of own shares or call hybrid capital instruments. Such plan should also contain an exit strategy for any support measures received. Competent authorities are best positioned to be consulted on the relevance and credibility of the measures envisaged in the plan. To facilitate this process, the competent authorities should cooperate with the designated authorities and, where relevant, the DGS.

PUBLIC

(27) To ensure that credit institutions receiving support from DGSs in the form of preventive measures deliver on their commitments, competent authorities should request a remediation plan from credit institutions that, without valid grounds, failed to fulfil their commitments. Where a competent authority is of the opinion that the measures in the remediation plan are not capable of achieving the credit institution's long-term viability, the DGS should not provide any further preventive support to the credit institution.

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

(29) While the main aim of DGSs is to protect covered deposits through the payout, they also indirectly contribute to preserve financial stability and to protect the real economy, being one of the pillars of the financial safety net. Experience with the application of the 'least cost test' rule has revealed several shortcomings as the current framework does not detail how to determine the cost of those interventions nor the cost of the payout. To ensure a consistent application of the least cost test across the Union, it is necessary to specify the calculation of those costs. At the same time, it is necessary to avoid excessively stringent conditions that would effectively disable the use of DGS funds for other interventions than payout. When carrying out the least cost assessment, DGSs should be able to opt for the intervention that minimises the cost for depositors, for instance by financing interventions other than payout. The methodology for the least cost assessment should take into account the time value of money.

(30) Liquidation can be a lengthy process the efficiency of which depends on national judicial efficiency, insolvency regimes, individual bank features, and the circumstances of the failure. However, the precise evaluation of liquidation recoveries can be challenging in the context of the least cost test for measures other than payout. Therefore, the counterfactual for the least cost test for measures other than payout should be adjusted accordingly, and in any case, the expected recoveries should be limited to a reasonable amount based on recoveries in past payout events.

(31) To ensure consistent application of the least cost test, the EBA should develop draft regulatory technical standards on the methodology to calculate the cost of different DGS interventions, taking into due account the national specificities, including with reference to the recovery rate. To ensure consistency of the methodology for the least cost assessment with the DGS statutory or contractual mandate as regards preventive measures, the EBA should, when developing those draft regulatory technical standards, take into account the relevance of preventive measures in the methodology for the calculation of the payout counterfactual.

PUBLIC

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

PUBLIC

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

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

PUBLIC

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

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

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

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

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

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

(41) The Commission should, where provided for in this Directive, adopt draft regulatory technical standards developed by the EBA by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU), in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council to specify the following: the methodology for the least cost test and the methodology for the calculation of available financial means qualifying for the target level.

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

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

PUBLIC

(44) Directive 2014/49/EU allows Member States to recognise an IPS as a DGS if it fulfils the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 and complies with Directive 2014/49/EU. To take into account the specific business model of those IPSs, in particular the relevance of preventive measures at the core of their mandate and their proven functioning with positive effects on depositor confidence and financial stability, it is appropriate to provide for the possibility of Member States to keep the respective provisions of Directive 2014/49/EU for a prolonged period of time. The provisions of Directive 2014/49/EU must be interpreted in light of the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 in order to avoid that the requirements of Article 11 and 11a through 11e of this Directive contradict the conditions set out in Article 113(7) of Regulation (EU) No 575/2013. This possibly longer compliance period takes into account the timeline for the build-up of a segregated fund for IPS to fulfil mandates other than those covered under this directive.

PUBLIC

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

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

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/49/EU

PUBLIC

Directive 2014/49/EU is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

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

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

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

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

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

(c) the following points are added:

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

PUBLIC

(20) ‘client funds deposits’ means funds that account holders that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 deposit in the course of their business with a credit institution for the account of their clients;

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

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

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

(d) paragraph 3 is replaced by the following:

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

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

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

PUBLIC

(3) Article 4 is amended as follows:

(a) paragraph 4 is replaced by the following:

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

PUBLIC

(b) the following paragraph 4a is inserted:

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

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

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

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

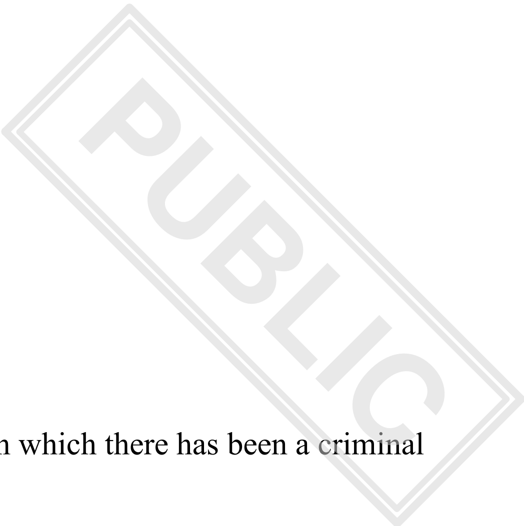
(d) paragraph 8 is deleted;

(e) the following paragraph 13 is added:

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

PUBLIC

(4) Article 5 is amended as follows:


PUBLIC

(a) paragraph 1 is amended as follows:

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

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

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

‘(d**)** deposits made by financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013, except for client funds deposits that are covered pursuant to Article 8b(1);’

(iii) point (e) is deleted;

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

‘(f) deposits the holder of which has never been identified pursuant to Article 16 of Regulation (EU) …. [please insert short reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, where those deposits have become unavailable, except where a holder requests payout and the credit institution or the DGS cannot prove that the lack of identification was caused by the account holder’s actions or failure to act and provided that the identity of the depositor has been verified before the payout.;’;

(v) point (j) is replaced by the following:

‘(j) deposits by central or state governments, as defined under points 2.114 and 2.115 of Annex A of Regulation (EU) No 549/2013 on the European system of national and regional accounts in the European Union, except non-profit institutions controlled by central government or state governments;’

PUBLIC

(b) paragraph 2 is replaced by the following:

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

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

(5) Article 6 is amended as follows:

(a) paragraph 2 is amended as follows:

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

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

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

‘(a) deposits resulting from real estate transactions by a natural person relating to private residential properties and deposits intended for such transactions, provided that those transactions have been or are intended to be concluded in the short term as defined by national law, and provided that that natural person can provide documents proving that before the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or on which a judicial authority makes a ruling as referred to in point (8)(b) of Article 2(1), such transaction had been or was intended to be concluded in that short term;’;

(b) the following paragraph 2a is inserted:

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

(6) Article 7 is amended as follows:

(-a) Paragraph 3 is replaced by the following:

‘3. Where the account holder is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or a judicial authority makes a ruling referred to in point (8)(b) of Article 2(1).

PUBLIC

In the case of funds held by an account holder on behalf of an absolutely entitled persons in a separate account for professional purposes as defined by national law, and where those funds are insulated in accordance with national law in the interest of that person against the claims of other creditors of the account holder, when determining the covered amount due to the absolutely entitled person, the DGS shall not take into account other deposits placed by that person with the same credit institution if that person is identified by the credit institution.'

Member States shall ensure that DGSs may repay covered deposits either to the account holder for the benefit of each absolutely entitled person, or to the absolutely entitled person directly.

(a) the first subparagraph of paragraph 5 is replaced by the following:

'5. Member States may decide that the liabilities of the depositor to the credit institution that have fallen due on or before the date on which a relevant administrative authority makes a determination as referred to in point (8)(a) of Article 2(1) or when a judicial authority makes a ruling as referred to in point (8)(b) of Article 2(1) are deducted from the total amount of that depositor's eligible deposits to the extent the set-off is possible under the statutory and contractual provisions governing the contract between the credit institution and the depositor.';

(b) paragraph 7 is replaced by the following:

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

(7) the following Article 7a is inserted:

'Article 7a

Burden of proof for deposit eligibility and entitlement

PUBLIC

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

(8) Article 8 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) paragraph 5 is amended as follows:

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

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

(ii) point (d) is deleted;

(c) paragraph 8 is deleted;

(d) paragraph 9 is replaced by the following:

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

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

PUBLIC

‘Article 8a

Repayment of deposits exceeding EUR 10 000

Member States shall ensure that, when amounts to be reimbursed exceed EUR 10 000, DGSs shall, where possible, reimburse depositors via credit transfers as defined in Article 4, point (24) of Directive 2015/2366 of the European Parliament and of the Council or, where such credit transfers are not possible, via means of payment, other than payment in cash, that ensure traceability of reimbursed funds.

PUBLIC

‘Article 8b

Coverage of client funds deposits

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

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

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

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

2. Member States shall ensure that the coverage level referred to in Article 6(1) applies to each of the clients that meet the conditions laid down in paragraph 1, point (c), of this Article. By way of derogation from Article 7(1), when determining the repayable amount for an individual client, the DGS shall not take into account the aggregate fund deposits placed by that client with the same credit institution.

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

PUBLIC

4. The EBA shall by … [PO please insert the date = 12 months from the date of entry into force of this amending Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote convergence in the specification of the coverage of client funds deposits:

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

(b) the criteria under, and the circumstances in which the repayment is to be made to the account holder for the benefit of each client or to the client directly;

(c) the rules to avoid multiple claims for payouts to the same beneficiary.

When developing those guidelines, EBA shall take into account all of the following:

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

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

PUBLIC

Article 8c

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

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

2. Member States shall ensure that DGSs suspend the reimbursement of the repayable amount where a depositor or any person entitled to sums held in his or her account has been charged with an offence arising out of, or in relation to, money laundering or terrorist financing, pending the judgment of the court. Member States should ensure that such information is communicated in a timely manner by the relevant authorities to the DGS.

3. Member States shall ensure that DGSs suspend the reimbursement of the repayable amount referred to in Article 8 for the same duration as laid down in Article 20 of [please insert short reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final] where they are informed by the credit institution or designated authority that the Financial Intelligence Unit referred to in Directive (EU) [please insert reference – proposal for a Anti-Money Laundering Directive repealing Directive (EU) 2015/849 - COM(2021) 423 final]*** has suspended any transaction, account or business relationship related to the concerned depositor.

PUBLIC

4. Member States shall ensure that DGSs are not held liable for any suspension undertaken in accordance with paragraphs 2 and 3.

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

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

*** [Please insert full reference – proposal for Anti-Money Laundering Regulation repealing Directive (EU) 2015/849 - COM(2021) 423 final].';

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

'2. Without prejudice to rights they may have under national law, DGSs that make payments under guarantee within a national framework shall have the right of subrogation to the rights of depositors in winding-up or reorganisation proceedings for an amount equal to the DGSs payments made to depositors. DGSs that make a contribution in the context of the resolution tools referred to in Article 37(3), point (a) or (b), of Directive 2014/59/EU, or in the context of measures taken in accordance with Article 11(5) of this Directive, shall have a claim against the residual credit institution for any such contributions. That claim shall rank at the same level as covered deposits under national law governing normal insolvency proceedings in accordance with Article 108(1) of Directive 2014/59/EU.'

PUBLIC

3. Member States shall ensure that depositors whose deposits have not been repaid or acknowledged by the DGS by the deadlines laid down in Article 8(1) and (3) can claim the repayment of their deposits within a period of 4 years at minimum from the date that a relevant administrative authority has made a determination as referred to in Article 2(1), point (8)(a), or a judicial authority has made a ruling as referred to in Article 2(1), point (8)(b).';

(11) Article 10 is amended as follows:

(a) paragraph 2, is amended as follows:

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

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

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

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

PUBLIC

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

(b) paragraph 3 is replaced by the following:

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

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

(c) paragraph 4 is deleted;

(d) paragraph 7 is replaced by the following:

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

PUBLIC

(e) the following paragraph 7a is inserted:

'7a. Where DGSs are allowed to place all or part of their available financial means with their national central bank or national treasury, Member States shall ensure that those available financial means are separated from other funds for accounting purposes and that they are readily available for use by the DGS in accordance with Articles 11 and 12.'

(f) paragraph 10 is deleted;

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

11. Member States may allow the DGS to use the funds originating from the alternative funding arrangements referred to in Article 10(9) which are not financed or guaranteed through public funds, before using the available financial means, before collecting the extraordinary contributions referred to in Article 10(8) and before alternative funding arrangements financed or guaranteed through public funds, that shall be used as a last resort.

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

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

PUBLIC

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

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

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

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

(12) Article 11 is replaced by the following:

'

PUBLIC

PUBLIC

Article 11

Use of funds

1. Member States shall ensure that DGSs use the available financial means referred to in Article 10 primarily to repay depositors in accordance with Article 8.

2. Member States shall ensure that DGSs use the available financial means to finance the resolution of credit institutions in accordance with Article 109 of Directive 2014/59/EU.

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

(a) the resolution authority has not taken any resolution action under Article 32 of Directive 2014/59/EU;

(c) all of the conditions laid down in Article 11a are met.

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

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

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

PUBLIC

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

6. The compliance with this Article and Articles 11a to 11e shall not be considered as a current or foreseen material, factual or legal obstacle to complying in whole or in part with the requirements of Article 113(7) of Regulation (EU) No 575/2013.

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

'Article 11a

Preventive measures

PUBLIC

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

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

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

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

(f) the credit institution complies with its obligations under this Directive and where applicable under any previous post preventive measures plan or remediation plan, including any reimbursement obligations.

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

3. Member States shall ensure that DGSs that are not IPS as referred to in Article 1(2), point (c), may implement preventive measures only where the designated authority has confirmed that all the conditions laid down in paragraph 1 have been met. The designated authority shall notify the competent authority and the resolution authority.

For DGSs that are IPS as referred to in Article 1(2), point (c), the DGS may implement preventive measures only where the DGS has confirmed to the designated authority that all the conditions laid down in paragraph 1 have been met and that the preventive measures note satisfies all the conditions laid down in the statutory rules of the DGS.

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

5. Member States shall ensure that the supported credit institution is subjected to more stringent risk monitoring by the competent authority and greater verification rights for the DGS.

PUBLIC

‘Article 11b

Preventive measures note accompanying the request for preventive measures

1. Member States shall ensure that credit institutions which request a DGS to finance preventive measures in accordance with Article 11(3) submit to the DGS and the designated authority a preventive measures note containing the core information referred to in paragraph 1a. The DGS or the designated authority shall communicate the preventive measures note to the competent authority.

1a. The preventive measures note referred to in paragraph 1 shall include at least a preliminary diagnosis of the factors and problems that caused the financial deterioration, a confirmation that no resolution action has been taken, the commitment to secure access to covered deposits and a preliminary assessment of the suitability of the recovery options that could mitigate the risk of deterioration of the financial soundness and strengthen the credit institution’s capital and liquidity position.

PUBLIC

‘Article 11ba

Post preventive measures plan

PUBLIC

1. Member States shall ensure that, within six months after the preventive measures have been granted, the supported credit institution or the DGS submit to the competent authority a post preventive measures plan containing the information as referred to in paragraph 3.

2. The competent authority may extend the period in paragraph 1, up to a maximum of eight months after the preventive measures have been granted.

3. Member States shall ensure that the post preventive measures plan contains the measures that the supported credit institution commits to undertake to ensure or restore compliance with the supervisory requirements applicable to the credit institution concerned and that are laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013.

4. The post preventive measures plan shall include at least:

a) in the event of a capital support measure, an identification of capital raising measures that can be implemented, including a forward-looking capital adequacy assessment, and a subsequent analysis of the capital shortfall covered by the DGS;

b) in the event of a liquidity support measure, a repayment scheme by the credit institution of any funds received as part of the preventive measures, including safeguards preventing further outflows of funds.

5. Where a capital conservation plan, established in accordance with Article 142 of Directive 2013/36/EU, applies to the credit institution, Member States shall ensure that the measures envisaged in the post preventive measures plan referred to in paragraph 1 are aligned with that capital conservation plan.

6. Where the Union State aid framework is applicable, Member States shall ensure that the measures envisaged in the post preventive measures plan referred to in paragraph 1 are aligned with the restructuring plan that the credit institution is required to submit to the Commission under that framework. When a restructuring plan is required, the period specified in paragraphs 1 and 2 may be prolonged by two months.

7. The competent authority and, where relevant, the DGS shall assess the post preventive measures plan. Where relevant, the competent authority or the DGS respectively notifies the institution of its concerns and requires the amendment of the plan in a way that addresses those concerns.

8. The designated authority or the DGS shall assess the repayment scheme. Where relevant, the designated authority or the DGS notifies the institution of its concerns and requires the amendment of the scheme in a way that addresses those concerns.

9. Following the notification referred to in paragraph 7, the credit institution shall submit an amended post preventive measures plan to the competent authority and, where relevant, the DGS without undue delay. The competent authority and, where relevant, the DGS shall assess the amended post preventive measures plan and shall notify the institution within one month whether it is satisfied that the post preventive measures plan, as amended, addresses the concerns notified or whether further amendment is required.

PUBLIC

10. Following the notification referred to in paragraph 8, the credit institution shall submit an amended repayment scheme to the designated authority or the DGS without undue delay. The designated authority or the DGS shall assess the amended repayment scheme and shall notify the institution within one month whether it is satisfied that the repayment scheme, as amended, addresses the concerns notified or whether further amendment is required.

PUBLIC

'*Article 11c*

Remediation plan

1. Member States shall ensure that, where the credit institution fails to fulfil the commitments outlined in the preventive measures note referred to in Article 11b or the post preventive measures plan referred to in Article 11ba, the competent authority or where relevant the DGS informs the designated authority thereof without delay.

1a. Member States shall ensure that, where the credit institution does not comply with its reimbursement obligations, the designated authority or the DGS informs the competent authority thereof without delay.

2. In the situation referred to in paragraphs 1 and 1a, Member States shall ensure that the competent authority requests the credit institution:

a) either to revise the post preventive measures plan referred to in Article 11ba, when due to changed circumstances it is reasonable to revise the post preventive measures plan to allow the credit institution to restore its long-term viability;

b) or to submit a remediation plan describing the steps the credit institution will take to ensure or restore compliance with supervisory requirements, to ensure its long-term viability and to ensure the repayment of funds received, when there is no valid ground for not being compliant with the initial post preventive measures plan.

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

'Article 11d

Transparency of marketing process in alternative measures

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

PUBLIC

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

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

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

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

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

'*Article 11e*

Least cost test

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

PUBLIC

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

(b) the estimated cost for the DGS of repaying depositors in accordance with Article 8 and under the condition referred to in paragraph 2, point (b1)(ii), the estimated losses that deposits referred to in Article 108, paragraph 1, point (b) and (c) of Directive 2014/59/EU would have borne in the liquidation of the entity under normal insolvency proceedings.

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

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

(b1) for the estimation of the costs referred to in paragraph 1, point (b):

a) when estimating the cost for the DGS of repaying depositors in accordance with Article 8, the DGS shall take into account the expected ratio of recoveries, the cost for the replenishment of the DGS that is to be borne by credit institutions that are members of the DGS, and the potential additional cost of funding and operational expenses for the DGS. When estimating the cost of repaying depositors, the DGS shall multiply the expected ratio of recoveries by 85 %;

PUBLIC

b) when estimating the losses for deposits referred to in Article 108, paragraph 1, point (b) and (c) of Directive 2014/59/EU, the DGS shall take into account the expected ratio and timeline of recoveries. The DGS shall only take these losses into account provided that the access to these deposits is fully maintained when applying the measures referred to in Article 11(2), (3) or (5).

(c) for measures referred to in Article 11(2), the assessment shall be based on the valuation of the credit institution's assets and liabilities referred to in Article 36(1) of Directive 2014/59/EU and the estimate referred to in Article 36(8) of that Directive;

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

For the calculation of the counterfactual referred to in paragraph 1, point (b), in the case of preventive measures, the methodology referred to in point (b) shall take into account the importance of preventive measures for the statutory or contractual mandate of the DGS, including DGSs that are IPS as referred to in Article 1(2), point (c), as well as the value of a jointly used corporate trademark.

PUBLIC

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

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

(b) the methodology for the calculation of the cost for the DGS and the losses that deposits referred to in Article 108, paragraph 1, point (b) and (c) of Directive 2014/59/EU would have borne in the liquidation of the entity under normal insolvency proceedings including the expected ratios of recoveries referred to in paragraph 2, point (b), (i) and (ii);

(c) the way to account, in the methodologies referred to in paragraph 2 points (a) and (b), where relevant, for the change of value of money due to potential accrued earnings over time.

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

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

PUBLIC

(13a) In Article 13, the first subparagraph of paragraph 2 is replaced by the following:

2. DGSs may use their own risk-based methods for determining and calculating the risk-based contributions by their members. The calculation of contributions shall be proportional to the risk of the members and shall take due account of the risk profiles of the various business models, including the potential recourse to Article 109(2b) of Directive 2014/59/EU for the resolution of one of its members. Those methods may also take into account the asset side of the balance sheet and risk indicators, such as capital adequacy, asset quality and liquidity.

(14) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

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

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

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

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

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

(d) paragraph 3 is replaced by the following:

'3. Member States shall ensure that where, a credit institution ceases to be member of a DGS and joins another DGS, or if some of the credit institution's activities are transferred to another DGS, the DGS of origin shall transfer to the receiving DGS the contributions due for the last 12 months preceding the change of DGS membership or transfer of activities, in proportion to the amount of covered deposits transferred, with the exception of the extraordinary contributions referred to in Article 10(8).';

(e) the following paragraph 3a is inserted:

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

(f) the following paragraph 9 is added:

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

(15) Article 15 is replaced by the following:

‘Article 15

Branches of credit institutions that are established in third countries

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

(16) the following Article 15a is inserted:

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‘*Article 15a*

Member credit institutions that have branches in third countries

Member States shall ensure that DGSs do not cover depositors at branches that have been set up in third countries by their member credit institutions.

In derogation of the first subparagraph, Member States may provide that DGSs cover depositors at branches that have been set up in third countries by their member credit institutions under the condition that those DGSs raise corresponding contributions from the credit institutions concerned and subject to the approval of the designated authority.

(17) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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(b) the following paragraph 1a is inserted:

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

(i) basic information about the protection of deposits;

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

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

(iv) applicable exclusions from DGS protection;

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

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

(vii) currency of reimbursement;

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

(c) paragraph 2 is replaced by the following:

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‘2. Member States shall ensure that credit institutions provide the information sheet referred to in paragraph 1 before they enter into a contract on deposit-taking, and, subsequently, each time there is any change to the information provided or at least every five years. Credit institutions shall require that depositors acknowledge the receipt of that information sheet when they enter into such contract.*’*

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

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

(e) paragraph 4 is replaced by the following:

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

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

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

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Member States shall ensure that, where, as a result of operations referred to in the first subparagraph of this paragraph, depositors with deposits in those credit institutions will be affected by the reduced deposit protection, the credit institutions concerned notify those depositors that they may withdraw or transfer to another credit institution their eligible deposits, including all accrued interest and benefits, without incurring any penalty up to an amount equal to the lost coverage of their deposits, including with respect to the coverage levels provided under Article 6(2), within 3 months following the notification referred to in the first subparagraph.

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

(g) the following paragraph 7a is inserted:

'7a. Member States shall ensure that designated authorities, DGSs and credit institutions concerned inform depositors, including by a publication on their websites, of the fact that a relevant administrative authority has made a determination as referred to in Article 2(1), point (8)(a), or a judicial authority has made a ruling as referred to in Article 2(1), point (8)(b).';

(h) paragraph 8 is replaced by the following:

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

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(i) the following paragraph 9 is added:

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

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

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

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

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

(18) the following Article 16a is inserted:

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‘Article 16a

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

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

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

(a) depositors at branches of those credit institutions;

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

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

3. Member States shall ensure that, by 31 March of each year, DGSs inform the EBA of the amount of covered deposits in their Member State on 31 December of the preceding year. By 31 March of each year, DGSs shall also report to the EBA the amount of their available financial means as at 31 December of the preceding year, including the share of borrowed resources, payment commitments and the timeline for reaching the target level in case of use of DGS funds.

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

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

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

(c) the alternative funding arrangements available and their actual use as referred to in Article 10(9);

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

The notification referred to in the first subparagraph, point (b), shall contain a summary describing all of the following:

(a) the initial situation of the credit institution;

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

(c) the expected amount of funds used.

5. The EBA shall publish the information received in accordance with paragraph 3 without undue delay.

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

7. The EBA shall develop draft implementing technical standards to specify the procedures to be followed when providing the information referred to in paragraphs 1, 3 and 4, the templates for providing that information, and to further specify the content of that information, taking into account the types of depositors.

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

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

(19) Annex I is deleted.

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Article 2

Transitional provisions

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

2. By way of derogation from Article 11(3) of Directive 2014/49/EU, as amended by this Directive, and Articles 11a, 11b, 11ba, 11c and 11e of Directive 2014/49/EU as regards to preventive measures, until 31 December 2032 or [OP – please insert the date = 72 months after the date of entry into force of this amending Directive], whichever is the latest, Member States may allow IPS referred to in Article 1(1), point (c), to comply with the national provisions implementing Article 11(3) of Directive 2014/49/EU as applicable on [OP – please insert the date of entry into force of this amending Directive].

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Article 3

Transposition

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

They shall apply those provisions from … [OP – please insert the date = 24 months after the date of entry into force of this amending Directive]. However, they shall apply the provisions necessary to comply with Article11(3) of Directive 2014/49/EU, as amended by this Directive, and Articles 11a, 11b, 11c and 11e of Directive 2014/49/EU as regards preventive measures from … [PO – please insert the date = 48 months after the date of entry into force of this amending Directive].

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

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

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Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament

For the Council

The President

END

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