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EBA-Guidelines on payment commitments under Directive 2014/49/EU on deposit guarantee schemes

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, appreciates the possibility to comment on the above cited consultation paper and would like to submit the following position:

General Remarks

According to the DGSD (esp. Art 2 (1) 13 DGSD) it is not mandatory that payment commitments are provided by members of the DGS. Insofar, we would propose a stronger flexibility in the guidelines.

In our opinion, the guidelines should not further restrict national implementation of the DGSD, but instead use a “substance over form” - approach: As long as the goals and provisions of the DGSD are met by the DGS in the different member states (in particular by assuring security and rapid availability of payment commitments), it should be possible to take into account specific national features in the course of implementation.

With regard to the specific questions in the consultation paper, please allow us to answer as follows:

Q1: Apart from the admissibility requirements suggested in the present guidelines, which objective criteria do you think could be applied, notably in order to determine the overall amount of payments to be accepted in a given year, or to be applied to individual banks applying for the option? Do you think that there should be a cap (e.g. 30%) on the maximum share of payment commitments which any given bank could provide as part of its contributions in a given year?

We agree that there should not be an automatic right for credit institutions to provide their contributions in the form of payment commitments. However, if a level playing field shall be established, the DGS should be obliged to accept payment commitments if all conditions are

met.

As the payment commitments are organised as an optional right in the DGS-Directive we would like to indicate the following paragraph:

But it should be also recognized that in case where the share of payment commitments of the ex-ante fund already accumulated does not reach the 30% limit, yearly contributions could go beyond a 30% cap. Therefore it might be more reasonable to focus on the individual fund volume accumulated to fix a maximum amount or percentage for payment commitments of individual contributions. Therefore we do not see a reason for an additional annual cap as long as the total share of 30% of payment commitments is met.

Paragraph 8 of the Draft Guidelines reads as follows: “[...]The DGS should implement this mechanism on the basis of non-discriminatory criteria. In particular DGS should not accept more than 30% of a given member’s ex ante contributions to be made in the form of payment commitments.” We do not agree with this provision, since the DGSD does not oppose particular members to contribute more than 30% in the form of payment commitments, as long as the overall amount of payment commitments does not exceed 30%. We also do not understand why this should be relevant in terms of non-discriminatory criteria, as long as the additional financial means are equally distributed among the other members of the DGSD that want to contribute in the form of payment commitments. We ask for deletion of this provision, as it imposes unproportional burdens on DGSs regarding the calculation of contributions.

As DGS can accept payment commitment up to 30 % of the available financial means, on the basis of non discriminatory criteria, the possibility to opt for payment commitments must be open to all member institutes (MI) every year: ie, that this option is open for every MI in every year. This means, that the annual payments of a single MI includes the option to use payment commitments up to 30 % (or a proportionately higher amount, see above) of the annual payment requirement, The reason is, that

- a. the equal right for any single MI is secured by this provision,
- b. the calculation and controlling of payment commitments by the DGS is otherwise unnecessary burdensome and
- c. regarding to Austrian GAAP each of the options of payment of the annual amount has an impact in the p&l.

Q2: Do you agree with these provisions to be included in Payment Commitment Arrangements? Do you think other provisions should be provided?

Multilateral or statutory arrangements should also be sufficient. This solution would still make sure that all provisions in the DGSD are met, in particular the requirement to ensure security and rapid availability of payment commitments. We request to include multilateral or statutory arrangements because we believe that different national company and tax laws require flexibility in order to allow for an optimal structuring.

A payment within 2 working days is challenging. An extension of this deadline should be considered.

Q3: Do you agree that credit institutions should pay in cash the Payment Commitment Amount, when its obligation becomes due, within 2 working days at the latest?

We think that the payment within 2 working days is disproportionate. Payment commitments should be considered to be of the same nature as deposits or investments. Therefore a shorter period for the transformation into cash seems unreasonable.

Part 3 - The Financial Collateral Arrangement:

12 d) v). In order to safeguard the DGS' s creditor position, a Financial Collateral Arrangement should explicitly include the following contractual terms:

The obligation of the credit institutions to pay the Payment Commitment Amount is accelerated so as to be immediately due, at least when:

v) The credit institution is subject to reorganisation measures other than early intervention or crisis management measures, or is being wound up.

We would like to ask for clarification what is meant by the event of an enforcement, in particular the term "reorganisation measures". We would understand only measures regarding Article 51 BRRD (Recovery and reorganisation measures to accompany bail-in). Other internal reorganisation measures should be excluded. These kinds of measures are part of common business activities and are the individual responsibility of any institution. In addition we would like to ask for specification that any other reorganization measure is subject to further negotiations between the DGS and the institutions before the payment commitment amount is paid.

Q4: Do you agree with the option left to the DGS to enter into a Security Financial Collateral Arrangement (full ownership remains with the credit institution) or a Title Transfer Financial Collateral Arrangement (full transfer of ownership)?

We prefer the Security Financial Collateral Arrangement. The ownership shall remain with the credit institution. Anyhow it should be under the responsibility of the DGS to provide for the options.

Q5: Do you think other requirements about the choice of the custodians should be provided under these guidelines?

No - seems absolutely appropriate.

Q6: Do you agree with the criteria on the eligibility of the collateral provided in this Part 6?

Yes, however the chosen criteria should not be too burdensome.

Do you think other requirements should be provided in these guidelines on this issue? Please take our remarks into due consideration.

No.

Q10: Do you agree with the criteria on the haircut provided in Part 7

We question the admissibility of haircuts on low risk assets in general. The DGSD is defining two aspects when it comes to investing the amount meant for deposit insurance, the potential investments within the DGS itself (see Art. 10/7 DGSD) and payment commitments (see Art. 10/3 DGSD in combination with Art. 2/13 and 14 DGS). When comparing both definitions it ends up

with the same potential investments possible. Especially when it comes to “low-risk assets”, the maximum risk that can be taken under both variations, they are linked to the definition at table 1 of Art. 336/1 CRR.

Furthermore the application of haircuts becomes particularly disproportionate in cases where the low risk assets provided as collateral do not consist of debt securities as defined in Art. 336 CRR but of assets that are not affected by any market risks (e.g. deposits).

Do you think there are other requirements which should be provided under these GL about this issue?

No, we do not think there are other requirements which should be provided about this issue.

Q11: Do you agree with the prudential approach suggested? Would you suggest further details on the methodology to be applied, and if so which ones?

We agree with the prudential treatment.

Please take our remarks into due consideration.

Yours faithfully,

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Managing Director
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