



EBA/GL/2016/02

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Final Report

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



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1. Executive summary

1. Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (Directive 2014/49/EU) stipulates that, in order to facilitate effective cooperation between deposit guarantee schemes (DGSs), the DGSs, or, where appropriate, the designated authorities, shall have written cooperation agreements in place.
2. According to Directive 2014/49/EU, where the designated authorities or DGSs cannot reach an agreement, or if there is a dispute about the interpretation of an agreement, either party may refer the matter to the EBA for a binding mediation.
3. These guidelines specify the objectives and minimum content of cooperation agreements between DGSs or, where appropriate, designated authorities, with the aim of ensuring a common and consistent approach to such cooperation agreements across Member States, contributing to strengthening the European system of national DGSs.
4. Furthermore, the guidelines aim to facilitate entry into cooperation agreements between DGSs in order to ensure the consistent application of Directive 2014/49/EU throughout the European Union and to ensure that such agreements include the necessary elements to ensure effective cooperation in the event of an institution's failure.
5. In order to avoid the signing of hundreds of detailed bilateral agreements between multiple DGSs within the EU, the guidelines include a multilateral framework cooperation agreement to which the DGSs, or, where relevant, the designated authorities, should adhere. The guidelines also allow DGSs, or, where relevant, the designated authorities, to enter into bilateral or multilateral agreements where they intend that these cooperation agreements contain terms which go beyond the level of detail required by these guidelines.
6. These guidelines specify the minimum content in relation to the three key areas to be included in cooperation agreements as outlined in Directive 2014/49/EU: modalities for repaying depositors by the host DGS at branches of credit institutions headquartered in other Member States, modalities for the transfer of contributions from one DGS to another in case a credit institution ceases to be a member of a DGS and joins another DGS, and modalities for mutual lending between DGSs.
7. To strike the right balance between the need for flexibility required given the diversity of DGS models on the one hand, and the need for harmonisation and comparability of cooperation agreements across the Single Market on the other, within each of the three key areas specified in the guidelines, these guidelines include minimum core elements to be included in the cooperation agreements, and, where options are available, suggest the preferred approach.



8. Finally, to ensure that depositors in EU branches of institutions headquartered in other Member States are treated similarly to depositors in the home Member State, these guidelines provide further guidance on the sequence and timing of events when the host DGS performs a payout of depositors on behalf of the home DGS.

Next steps

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



2. Background and rationale

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

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

² For example, the responsibility of the home DGS for covering depositors and the role of the host in operationalising payouts.

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



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

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



cross-border and domestic transfers, pursuant to Article 14(3) of Directive 2014/49/EU;

iii. modalities for mutual lending between DGSs, pursuant to Article 12 of Directive 2014/49/EU.

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



Guidelines

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



1. Compliance and reporting obligations

Status of these guidelines

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

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA of whether they comply or intend to comply with these guidelines, or otherwise must provide reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2016/02'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in accordance with Article 16(3).

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



2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the objectives and minimum content of cooperation agreements between DGSs or, where appropriate, designated authorities, required to have such cooperation agreements in place in accordance with Article 14(5) of Directive 2014/49/EU⁵.
6. These guidelines aim to ensure a common and consistent approach to such cooperation agreements across Member States, contributing to strengthening the European system of national DGSs in accordance with Article 26 of Regulation (EU) No 1093/2010.

Scope of application

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

Addressees

10. These guidelines are addressed to competent authorities as defined in point (iii) of Article 4(2) of Regulation (EU) No 1093/2010⁶.

Definitions

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

⁵ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

⁶ Designated authorities as defined in Article 2(1)(18) of Directive 2014/49/EU.



‘Home DGS’	the DGS established in the Member State in which a member credit institution has been authorised pursuant to Article 8 of Directive 2013/36/EU.
‘Host DGS’	the DGS established in the Member State in which territory a member credit institution, authorised in another Member State pursuant to Article 8 of Directive 2013/36/EU, has established a branch.
‘Member credit institution’	a credit institution affiliated to a DGS.
‘Relevant DGSs’	<p>the DGSs in connection with which any of the following situations occur:</p> <ul style="list-style-type: none">(i) a branch of a home DGS’s member credit institution has been established in the territory of the Member State of the host DGS;(ii) a member credit institution affiliated to a DGS ceases to be a member of such DGS in order to join another DGS; or(iii) the national legislation transposing the DGS Directive in the jurisdiction of a DGS lending the funds to another DGS allows for such a possibility.
‘Single customer view (SCV)’	the file containing the individual depositor information necessary to prepare a repayment to depositors, including the aggregate amount of eligible deposits of every depositor.



3. Implementation

Date of application

12. Competent authorities should implement these guidelines by [6 months from the date of publication of the translation of the guidelines in all EU official languages on the EBA's website]



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

4.1 Objectives of the cooperation agreements

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

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

4.2 General approach to be followed when establishing cooperation agreements

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

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

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



5. Minimum core elements of the cooperation agreements

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

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

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

5.1 Modalities for repaying depositors at branches

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

a. Notification of unavailability of deposits

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

21. The home DGS should notify the host DGS, and the designated authority of the host Member State in which the DGS is not the designated authority, that a situation of unavailability of deposits, as defined in Article 2(1)(8) of Directive 2014/49/EU, has occurred. The notification should also include general information about the institution where the unavailability of deposits has occurred, including an estimate of the magnitude of the expected payout, the amount of covered deposits and number of eligible depositors in the branch, the currency of repayment and any other general information that the home DGS considers useful for the host DGS in preparation for the payout.



22. The notification should be transmitted by the home DGS to the host DGS immediately upon determination of unavailability of deposits. The host DGS should receive the notification, ahead of receiving all the necessary information and funds, in order to start preparing for a payout as soon as the notification is received.

b. Exchange of information, including instructions for payment

23. While Article 4(9) of Directive 2014/49/EU requires DGSs to ensure the confidentiality and the protection of the data pertaining to depositors' accounts and the processing of such data in accordance with Directive 95/46/EC⁷, it should not preclude cooperation agreements from setting more stringent standards, provided this is agreed to in the cooperation agreement.

24. Cooperation agreements should provide a deadline by which the home DGS should send all the necessary information for the preparation of a repayment of depositors to the host DGS. The deadline should be no later than two working days of the Member State of the home DGS prior to the deadline for making the repayable amount available to domestic depositors, including where the home DGS's repayment deadline is longer than seven working days, following the determination of unavailability of deposits in the institution. The home DGS should make every reasonable effort to comply with the deadline. However, the home DGS may defer the transfer of information in instances in which, in spite of all reasonable efforts, the home DGS is not able to comply with the deadline, due to the need to obtain additional information on deposits and depositors, or because its internal processes make it impossible to obtain the information within the deadline or to process the host depositors' information within the deadline without significantly delaying the process for domestic payout. In such instances, the home DGS should inform the host DGS of the delay as soon as possible and agree on a new estimated deadline which should not be later than the deadline for transferring the funds pursuant to paragraph 33.

25. The home DGS should obtain the SCV in line with domestic deadlines for receiving this information from the credit institution. It should then process the SCV in order to provide the host DGS with only the relevant instructions for payment in a format agreed between the DGSs and specifying the amounts to be paid out in the currency agreed in the cooperation agreements. The information to be transmitted from the home DGS to the host DGS should include:

- the amount to be paid out to each depositor;
- all the information needed depending on the payout method (for example, addresses of depositors or bank account numbers for electronic transfers).

26. In the event that the home DGS does not have all the information needed, depending on the method of payout of the host DGS, the home DGS should ask the host DGS to collect the

⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).



necessary additional information. In order for the host DGS to be able to collect additional information necessary for the payout, the home DGS should assist the host DGS by transmitting any necessary information (for example, depositors' contact details or national identification numbers).

27. The DGSs should inform one another promptly of any updates to the data.
28. The host DGS should strive to ensure that the repayable amount is available to depositors as soon as possible, within three working days of the Member State of the host DGS after receiving all the necessary information, instructions and funds from the home DGS, without a request to the home or the host DGS being necessary.
29. Following the initial payout, the host DGS should inform the home DGS in a documented manner of the results of the payout, including the distribution and making of payments to depositors, a report on any issues encountered with payouts and an assessment of areas of the process and of the cooperation agreement to improve in the future. The host DGS should inform the home DGS regularly about progress in relation to further repayments made after the expiration of the deadline set out in paragraph 28.

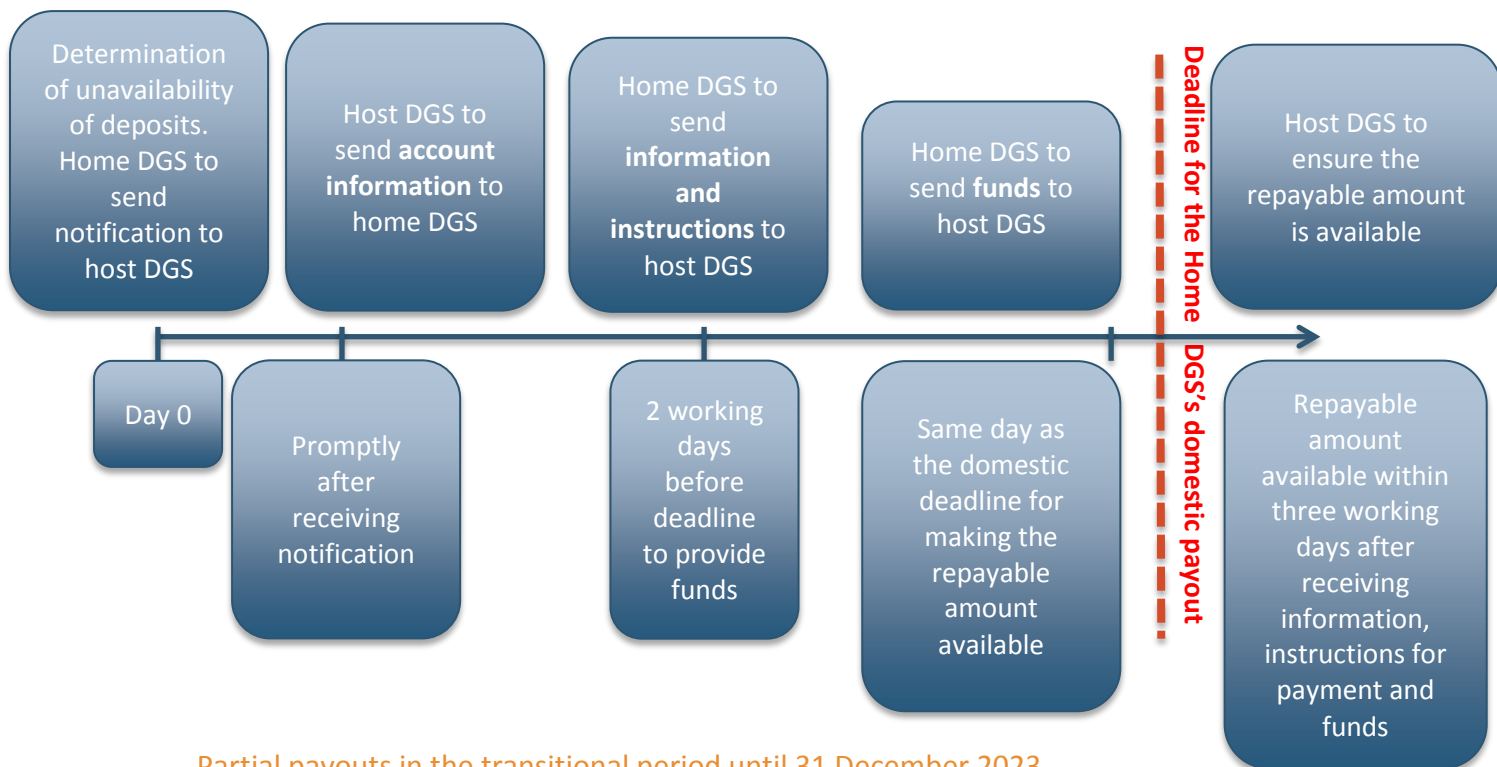
c. Modalities for advancing the funds

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

d. Timeline for advancing the funds

32. Cooperation agreements should specify the deadline for providing the necessary funding.
33. The home DGS should provide the host DGS with the necessary funds no later than the day on which the repayable amount should be made available to domestic depositors after the determination of unavailability of deposits in the institution, including where the home DGS's deadline for making the repayable amount available is longer than seven working days, as allowed under Article 8(2) of Directive 2014/49/EU.
34. Any funds advanced in excess to the host DGS should be refunded to the home DGS by no later than three working days of the Member State of the host DGS after the finalisation of the payout.

Figure 1. Timeline for payout in branches



Partial payouts in the transitional period until 31 December 2023

35. Where the home DGS's deadline for making the payout amount repayable is longer than seven working days, the host DGS should inform the depositors, either directly or by advertising in the media, about the possibility of a payout of costs of living upon request.
36. The host DGS should, within one working day, notify the home DGS of a depositor request for a cost of living payout. This notification should include all relevant information, including:
 - a. the clear and complete identification of the depositor, including the relevant account details;
 - b. the date of receiving the request by the host DGS;
 - c. the amount claimed (if applicable).
37. When a depositor requests a payout of a cost of living amount, either directly to the home DGS or to the host DGS, the home DGS should strive to provide the host DGS with all the necessary information and funds within five working days of the Member State of the home DGS after receiving the request or being notified by the host DGS, for the host DGS to be able to ensure that depositors have access to an appropriate amount of their covered deposits to cover their costs of living while waiting for full payout.
38. Where the full payout is imminent, or where a partial payout would significantly delay the full payout process, the DGSs may agree to forgo partial payout in the interest of ensuring prompt full payout.



e. Treatment of temporary high balances

39. Cooperation agreements should outline the process for repaying temporary high balances by the host DGS, which should happen in the following sequence:

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

40. Supplementary bilateral or multilateral cooperation agreements should also specify the following aspects:

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

f. Currencies used

41. Cooperation agreements should specify that the currency of the repayment shall be the currency determined under the law of the home DGS and should be communicated by the home DGS to the host DGS.

42. Where the law of the home DGS allows for a choice between several currencies and where that choice includes the option to use the currency of the host DGS's Member State, that option should be used primarily. Where practical, and legally allowed, upon agreement between DGSs, the repayable amount may be available in multiple currencies.

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



in GBP. However, where the host DGS has the capability to make payouts in several currencies, and where contracts with depositors or the information provided to them in accordance with Directive 2014/49/EU allowed payouts in CHF, depositors who had accounts in Swiss francs could be repaid in francs.

43. Where there is a need for a currency exchange, the rate to be applied should be the spot rate published by the central bank of the home DGS's Member State on the day of the determination of unavailability of deposits in a given institution.
44. The necessary funding referred to in paragraphs 32–34 should be provided in the currency of repayment determined under the law of the home DGS pursuant to paragraphs 41 and 42. The home DGS should handle the necessary currency exchange and bear the necessary currency exchange costs.

g. Handling of correspondence and language used

45. Cooperation agreements should specify that the host DGS will handle communication with depositors on behalf of the home DGS, including informing depositors about the determination of unavailability of deposits and the payout by the host DGS on behalf of the home DGS.
46. In addition, where the home DGS has the capability to effectively handle communication with depositors in the Member State in which the branch is located, including the capability to communicate in the official language or languages of the host DGS's Member State, the agreement may provide that depositors will be offered an explicit, additional option to communicate directly with the home DGS. In practice, this means, for example, that the letter informing depositors about the member credit institution's failure may include two phone numbers – one for the host DGS and another for the home DGS.
47. Cooperation agreements should specify that the language to be used by DGSs in communicating with the depositors in the context of a repayment is the official language or languages of the host DGS's Member State. However, both home and host DGSs should not be precluded from answering correspondence addressed to them by depositors in the official language or languages of the home DGS's Member State or another language where they have the capability to do so, or communicating in those languages with depositors who have accepted to receive information in a given language.
48. The home and the host DGSs or, where relevant, the designated authorities, should use English to communicate with one another, unless they agree bilaterally to use another language in their communication.
49. Communication channels established to communicate with the depositors, and between the home and the host DGSs, should guarantee sufficient levels of confidentiality and security.



h. Reimbursement of costs of repayment

50. Cooperation agreements should specify the types of costs that the home DGS will reimburse the host DGS for, including, but not limited to, costs incurred in performing the following tasks attributable to the payout:

- a. communication with depositors, including setting up the necessary infrastructure, hiring staff and media publications;
- b. communication with the home DGS, including providing feedback information about claims paid;
- c. collection of additional information needed for the payout, including setting up the necessary infrastructure and hiring staff;
- d. translation of documents;
- e. acquisition of information;
- f. transaction costs of payouts;
- g. relevant legal costs.

51. Eligible costs incurred by the host DGS should meet the following criteria:

- a. be necessary for carrying out the payout;
- b. be actual, reasonable, justified and comply with the principle of sound financial management;
- c. be identifiable, in particular, being recorded in the accounting records of the host DGS and backed by effective supporting evidence.

52. Cooperation agreements may provide that:

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

53. Where the host DGS is reimbursed following the payout, reimbursement details, such as time to reimburse the costs or the applicable interest rate, should be agreed upon no later than seven days after the initial payout of covered deposits.



i. Right to audit

54. To further reinforce trust in DGSs' ability to perform their function in the case of a payout in a branch, prospective parties to the agreement may agree on a mutual right of audit of their partner DGS's activities related to the payout before entering into the cooperation agreement, and at any point after the agreement is reached.
55. Such an audit, subject to the DGSs' or, where relevant, the designated authorities' agreement, may take the form of, for example, oversight, post-payout review, audit of costs and seconding staff during payout, and may be performed either on-site or remotely. Parties to the agreement may agree to allow the home DGS to conduct an audit of the host DGS's activities related to the payout paid for by the home DGS.

j. Treatment of delays

56. Any costs arising from delays in the home DGS providing the host DGS with the instructions for payment, the necessary information and the funds, should be borne by the home DGS, including where the delays impose operational costs on the host DGS.
57. Where the delay is attributable to the host DGS's actions, the host DGS should bear the costs arising from this delay.

k. Liability

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

l. Review of the arrangements to operationalise payouts

59. The home and the host DGS may bilaterally agree that, on a case-by-case basis and no earlier than three months from the notification of unavailability of deposits, they will review the functioning and scope of the practical arrangements and infrastructure needed for proportionate, continued operationalisation of payouts by the host DGS in accordance with this section 5.1, making the necessary adjustments to it.

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

60. Cooperation agreements between DGSs, or where appropriate, the designated authorities, should specify the following modalities for the transfer of contributions and information from one DGS to another in the event that a credit institution ceases to be a member of one DGS and joins another DGS, including cross-border and domestic transfers, pursuant to Article 14(3) of Directive 2014/49/EU:



m. Exchange of information

61. Article 14(6) in connection with Article 4(9) of Directive 2014/49/EU requires effective exchange of information between DGSs, in accordance with confidentiality and the protection of data pertaining to depositors' accounts. It also requires processing of data to be done in accordance with Directive 95/46/EC.
62. While the abovementioned provision ensures a common minimum set of standards of confidentiality and data protection, it does not preclude cooperation agreements from setting more stringent standards, provided that this is agreed to in the cooperation agreements.
63. The provision of accurate data is a key step in ensuring an effective transfer of information from one DGS to another. Cooperation agreements should specify the deadline for the DGS which the member credit institution is leaving (transferring DGS) to notify the DGS the member credit institution in question wants to join (receiving DGS) about the intention of the member credit institution to join the receiving DGS or, where a member credit institution communicates to the receiving DGS its intention to become a member credit institution of such DGS, to notify the transferring DGS of such circumstance. The deadline referred to above should begin from the date on which:
 - the member credit institution notifies the transferring DGS of its desire to join another DGS, where the transferring DGS knows which DGS the institution intends to join; or
 - the member credit institution notifies the receiving DGS of its desire to join.
64. The deadline should be set before the institution formally leaves the transferring DGS and joins the receiving one.
65. The information to be transmitted should include anything that the transferring DGS and the receiving DGS jointly consider as relevant, including and where available:
 - a. aggregate information on all the regular contributions (and related deposits) being transferred from one DGS to the other DGS, including, where relevant, aggregate information on deposit flows in the member credit institution for a period agreed to by both DGSs;
 - b. any audits, assessments and tests previously done on the capability of the institution to produce SCV files and other information previously requested by the transferring DGS, particularly on the quality of data provided by the member credit institution;
 - c. any other relevant information, including information on near misses related to that member credit institution.



66. The transferring DGS should not be required to obtain new information for the purpose of transferring it to the receiving DGS. The receiving DGS will have the power to request the most up-to-date information directly from the institution upon accepting it as a member.

67. The transferring DGS should be able to refuse to share information which, due to its sensitive nature, may not be shared under national or EU law.

n. **Modalities for transferring the regular contributions paid during the 12 months preceding the end of the membership and currency of payment**

68. Any costs of raising the funds by the transferring DGS, where, for example, the transferring DGS has recently made a payout and needs to collect additional funds for the transfer to the receiving DGS, should be borne by the transferring DGS.

69. The receiving DGS should provide the transferring DGS with the account details and any other relevant information to allow the transfer of contributions. The chosen accounts and funds transfer method should ensure the utmost security of the funds and the timeliness of the transfer.

70. Cooperation agreements should acknowledge that the transferring DGS will provide funds in the currency in which the contributions have originally been provided. The receiving DGS should bear the costs of any operations related to currency exchange.

o. **Treatment of payment commitments, including potential transfer of commitments made in the last 12 months**

71. According to paragraph 13(d) of the EBA guidelines on payment commitments to deposit guarantee schemes⁸, where a credit institution ceases to be a member of one DGS and joins another DGS, the transferring DGS should ensure that the financial means corresponding to the 12 months preceding the end of the membership are transferred to the receiving DGS, either by:

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

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

⁸ EBA/GL/2015/09.



73. Where the transferring DGS decides to enforce the commitment and transfer the proceeds to the receiving DGS, the provisions laid down in the above section on modalities for advancing the regular contributions paid during the last 12 months preceding the end of membership should apply.
74. Where the transferring DGS decides not to enforce the payment commitments, it should engage with the receiving DGS to establish whether the receiving DGS is willing to accept the reassignment of those payment commitments. The reassignment may happen only when both DGSs agree. Where the receiving DGS refuses reassignment, the transferring DGS should enforce the payment commitments and transfer the proceeds to the receiving DGS.

p. Timeline for transferring the contributions

75. A membership of a DGS is a necessary condition for a credit institution being allowed to take deposits. In addition, the receiving DGS must be able to meet its obligations towards the depositors of the member credit institution from the first day. Therefore, a credit institution's transfer of membership should happen seamlessly. This implies that the transfer of contributions from one DGS to another should happen on the same day on which the member credit institution leaving one DGS joins the other DGS. Arranging the transfer on the same day also removes the risk of the transferring DGS using the funds contributed by this institution in a payout or resolution after the member credit institution has left the transferring DGS.
76. Where the receiving DGS is willing to take the risk of accepting the new member credit institution without receiving the transfer on the same day, it should agree the deadline for the transfer with the transferring DGS.

q. Language used

77. The DGSs should communicate in English when transmitting information from one DGS to the other DGS, unless they agree bilaterally that another language will be used.

r. Costs associated with the transfer of contributions

78. Cooperation agreements should specify that the receiving DGS is responsible for any costs associated with transferring the contributions (whether funds or payment commitments) from the transferring DGS, and any other costs associated with the transfer, including translations of requested information. However, where necessary, the costs of raising funds should be borne by the transferring DGS.

s. Treatment of delays

79. Cooperation agreements should include a clause specifying that where delays in the provision of information or funds occur, any costs arising from the consequences of such delays should be borne by the DGS responsible for the delays.



5.3 Modalities for mutual lending between DGSs

80. The cooperation agreement should outline whether, in accordance with the law in their respective jurisdictions, the relevant DGSs agree, in principle, to lend to one another on a voluntary basis.
81. Where the DGSs do not agree to lend to one another, either because their national law does not allow them to lend to other DGSs, or because of the DGSs' or the designated authorities' decision, the agreement should not include any more detail. However, where the DGSs are allowed to lend under their national law but decided against lending, the decision not to lend to one another should not preclude the DGSs from lending to one another at the point of crisis.
82. Where the DGSs intend to lend to one another, the cooperation agreement should specify in how many working days the DGS receiving a loan request has to reach a decision and what information the DGS asking for a loan should provide. The agreement may include more detail about the repayment deadline and interest rate charged, under the conditions set out in Article 12(2) of Directive 2014/49/EU.

5.4 Effective dispute resolution

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



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

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



*The subscribing deposit guarantee schemes (DGSs) and, where appropriate, designated authorities of the Member States of the European Union,
Recognising the responsibility of DGSs to protect depositors, and their additional role in contributing to market confidence and financial stability,
Recognising the importance of cooperation between DGSs within the European Union, in particular, when deposit-taking business is carried out on a cross-border basis,
Having regard to the first subparagraph of Article 14(5) of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (Directive 2014/49/EU), which establishes that ‘In order to facilitate an effective cooperation between DGSs, with particular regard to this Article and to Article 12, the DGSs or, where appropriate, the designated authorities, shall have written cooperation agreements in place. Such agreements shall take into account the requirements laid down in Article 4(9),
Having regard to the second subparagraph of Article 14(5) of Directive 2014/49/EU, which establishes that ‘The designated authority shall notify EBA of the existence and the content of such agreements and EBA may issue opinions in accordance with Article 34 of Regulation (EU) No 1093/2010 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 (Regulation (EU) 1093/2010). If designated authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to EBA in accordance with Article 19 of Regulation (EU) 1093/2010 and EBA shall act in accordance with that Article’,
Conscious of the need to ensure a consistent application of Directive 2014/49/EU throughout the European Union and avoid the conclusion of a high number of overly complex bilateral agreements between deposit guarantee schemes,*

Have agreed as follows

PART I GENERAL PROVISIONS

Article 1

Objective of this Multilateral Framework Cooperation Agreement

1. The objective of this Multilateral Framework Cooperation Agreement (the Agreement) is, in accordance with Article 14(5) of Directive 2014/49/EU, to facilitate an effective cooperation between DGSs and, where appropriate, the designated authorities, in the EU.
2. In particular, it specifies *ex ante* various aspects for repayment of depositors at branches, transfers of DGSs' contributions and mutual lending between DGSs, which otherwise would have to be agreed upon very quickly at a time of stress which would divert DGSs' attention and resources away from other difficult decisions.



Article 2

Terms and definitions

For the purposes of this Agreement, the terms and definitions contained in Directive 2014/49/EU shall apply. In addition, the following definitions shall apply:

1. 'Home DGS' means the DGS established in the Member State in which a Member Institution has been authorised pursuant to Article 8 of Directive 2013/36/EU.
2. 'Host Designated Authority' means the designated authority of the Member State where the Host DGS is established.
3. 'Host DGS' means the DGS established in the Member State in which territory a Member Institution, authorised in another Member State pursuant to Article 8 of Directive 2013/36/EU, has established a branch.
4. 'Member Institution' means a credit institution affiliated to a DGS.
5. 'Deposit guarantee scheme (DGS)' means a DGS introduced and officially recognised in a Member State of the European Union.
6. 'Single customer view (SCV)' means the file containing the individual depositor information necessary to prepare for a repayment of depositors, including the aggregate amount of eligible deposits of every depositor.

Article 3

Parties to this Agreement

1. This Agreement is agreed to by DGSs and, where appropriate, designated authorities, as defined in Article 2(1)(1) and (18) of Directive 2014/49/EU, respectively. The terms apply to and between all the DGSs and designated authorities who subscribe to this Agreement by signing a letter of adherence to it included in Appendix I, without any reservation, and sending it to the EBA.
2. The EBA shall not be considered a Party to this Agreement, and any provision thereof shall not create any legal obligations in respect of the EBA.
3. The list of DGSs and designated authorities subscribing to this Agreement will be available on the EBA's website.
4. Additional DGSs and designated authorities may subscribe to this Agreement from time to time. The EBA will keep that list updated.





PART II

REPAYMENT OF DEPOSITORS AT BRANCHES

Article 4

Applicability of Part II

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

Article 5

Notification of unavailability of deposits

1. Upon the Home DGS becoming aware that a relevant administrative authority has made a determination as referred to in point (8)(a) of Article 2(1) of Directive 2014/49/EU or a judicial authority has made a ruling as referred to in point (8)(b) of Article 2(1) of that Directive in respect of a DGS's Member Institution having branches in another Member State, the Home DGS shall immediately notify, by any available means, the Host DGS and, in addition, where the Host DGS is not the Host Designated Authority, the Host Designated Authority, that the unavailability of deposits has been determined and the identity of the affected Member Institution.
2. The notification shall also include:
 - a. general information about the Member Institution in relation to which the determination of unavailability of depositors or the ruling referred to in paragraph 1 has been made,
 - b. the currency of repayment,
 - c. an estimate of the magnitude of the amount of the expected payout, including the number of covered deposits and the number of eligible depositors in the branch, and
 - d. any other general information the Home DGS considers useful for the Host DGS in preparation for the payout.
3. As soon as the notification is received, the Host DGS shall start preparing for a payout, ahead of receiving all the necessary information and funds.
4. Promptly after receiving the notification of unavailability of deposits, the Host DGS shall provide the Home DGS with all the necessary information about the accounts to be used for the transfer of funds from the Home DGS to the Host DGS.
5. Such accounts and the transfer method used shall ensure the utmost security of the funds from the Home DGS to the Host DGS.



Article 6

Instructions for repayment of depositors

1. The Home DGS shall make every reasonable effort to provide the Host DGS with all necessary information on deposits and depositors in order to make a repayment to depositors on behalf of the Home DGS by no later than two working days of the Member State of the Home DGS prior to the end of the repayment period set out in accordance with the Home DGS's national legislation transposing Directive 2014/49/EU.

However, the home DGS may defer the transfer of information where, in spite of all reasonable efforts, the Home DGS is not able to comply with the deadline, due to the need to obtain additional information on deposits and depositors to calculate the repayment amount or the entitlement to the sum held in an account, or because its internal processes make it impossible to obtain the information within the deadline or to process the host depositors' information within the deadline without significantly delaying the process for domestic payout. In such instances, the Home DGS shall inform the Host DGS of the delay as soon as possible and bilaterally agree on a new estimated deadline, which shall be no later than the deadline for transferring the funds pursuant to Article 8(1).

2. For these purposes, the Home DGS shall obtain the SCV in line with domestic deadlines for receiving this information from its Member Institutions.
3. The Home DGS shall then process the SCV in order to provide the Host DGS with the relevant instructions for payment including:
 - a. the amounts to be paid out to each depositor;
 - b. all other information needed depending on the method of payout (for example, addresses of depositors or bank account numbers for electronic transfers).
4. The instructions for payment shall be provided in the format and with the content specified bilaterally between the Home and the Host DGS.
5. Where the Home DGS does not have all information needed depending on the method of payout of the Host DGS, the Home DGS shall request the Host DGS to collect the necessary additional information and, if needed, assist the Host DGS by transmitting any necessary information.
6. The Home and the Host DGS shall inform one another promptly of any updates to the data.

Article 7

Repayment of depositors

1. The Host DGS shall strive to ensure that the repayable amount is available to depositors as soon as possible, within three working days of the Member State of the host DGS after receiving all the necessary information, instructions for payment and funding from the Home DGS prior to payout.



The repayable amount shall be made available to depositors without a request to the Home or the Host DGS being necessary.

2. Following the initial payout, the Host DGS shall communicate to the Home DGS in a documented manner the results of the payout, including the distribution and making of payments to depositors, a report on any issues encountered with the payouts and an assessment of areas of the process and of the Agreement or its supplemental terms to be improved for the future.
3. The Host DGS shall regularly communicate to the Home DGS in a documented manner about progress in relation to further repayments made after the expiration of the deadline set out in paragraph 1.

Article 8 Advance of funds

1. The Home DGS shall provide the Host DGS with the necessary funding prior to the payout no later than on the day when the repayable amount should be made available to domestic depositors after the determination of the unavailability of deposits in the Member Institution in accordance with the Home DGS's national legislation transposing the Directive 2014/49/EU.
2. The funds shall be provided in the currency of repayment pursuant to paragraphs 1 and 2 of Article 11. The Home DGS shall handle the necessary currency exchange and bear the necessary currency exchange costs.
3. Any funds advanced in excess to the Host DGS shall be refunded by it to the Home DGS no later than three working days of the Member State of the Host DGS after the finalisation of the payout.

Article 9 Partial payouts in the transitional period until 31 December 2023

1. Where the Home DGS's deadline for making the repayable amount available is longer than seven working days, as allowed under Article 8(2) of Directive 2014/49/EU, the Host DGS shall inform the depositors, either directly or by advertising in the media, about the possibility of a payout of costs of living upon request.
2. The Host DGS shall, within one working day, notify the Home DGS of a depositor request for a cost of living payout. This notification shall include all relevant information, including:
 - a. the clear and complete identification of the depositor, including relevant account details;
 - b. the date of receiving the request by the Host DGS;



- c. the amount claimed (if applicable).
3. When a depositor requests a payout of a cost of living amount through a Host DGS, either directly to the Home DGS or to the Host DGS, the Home DGS shall strive to provide the Host DGS with all the necessary information and funds within five working days of the Member State of the Home DGS after receiving the request or being notified by the Host DGS, for the Host DGS to be able to ensure that depositors have access to the appropriate amount of their covered deposits to cover their costs of living while waiting for full payout, in accordance with the Home DGS's national law.
4. Where the full payout is imminent, or where a partial payout would significantly delay the full payout process, the Home and the Host DGSs may agree to forgo partial payout in the interest of ensuring prompt full payout.

Article 10 **Treatment of temporary high balances**

1. The Host DGS shall assist the Home DGS with the handling of claims related to temporary high balances in its jurisdiction in the manner prescribed in this article.
2. Claims related to temporary high balances may be submitted either to the Host or to the Home DGS. Where the claim is submitted to the Host DGS, this DGS shall forward it to the Home DGS.
3. The Home DGS shall verify the claim. Upon request by the Home DGS, the Host DGS shall lend the necessary assistance, such as in dealing with the language or legal issues from the law applicable in the Host DGS's jurisdiction.
4. Upon verifying the claim, the Home DGS shall send the necessary instructions for repayment of depositors and funds, either as a package with other claims if done in a reasonable timeframe, or individually. For these purposes, Articles 6 and 8 shall apply accordingly.
5. Upon receiving the instructions for payment and the funds, the Host DGS shall repay the depositors. For this purpose, Article 7 shall apply accordingly.
6. For the purposes of this article, the Home DGS shall communicate to the Host DGS, at the time of the notification referred to in Article 5, any information on deadlines for accepting repayment claims, repayment period and coverage limit, regarding temporary high balances set out in the Home DGS's national legislation. The Host DGS shall communicate this information to the depositors.

Article 11 **Currency of repayment**

1. The repayments shall be made by the Host DGS in the currency determined by the Home DGS's national legislation and communicated by the Home to the Host DGS.



2. Where the law of the Home DGS allows choosing between several currencies of repayment, and where such choice includes the option to use the currency of the Host DGS's Member State, that option shall be used primarily. Where practical, and legally allowed, the Home and the Host DGS may bilaterally agree to make the repayable amount available in multiple currencies.
3. Where there is a need for a currency exchange, the rate to be applied shall be the spot rate published by the central bank of the Home DGS's Member State on the day of the determination of unavailability of deposits in a given Member Institution.

Article 12

Handling of correspondence and language used

1. In accordance with Article 14(2) of Directive 2014/49/EU, the Host DGS shall handle communication with depositors at branches in the Host DGS's Member State, including informing depositors about the determination of the unavailability of deposits and the payout by the Host DGS on behalf of the Home DGS.
2. Where the Home DGS has the capability to effectively handle communication with depositors at branches in the Host DGS's Member State, including the capability to communicate in the official language or languages of the Host DGS's Member State, and upon the Home DGS's request to the Host DGS, depositors shall be explicitly offered the additional option to communicate directly with the Home DGS.
3. The language to be used in communicating with the depositors at the branch in the context of a repayment shall be the official language or languages of the Host DGS's Member State. However, this shall not preclude both Home and Host DGSs from answering correspondence addressed to them by depositors in the official language or languages of the Home DGS's Member State or another language where they have the capability to do so, or to communicate in those languages with depositors who have accepted to receive information in a given language.
4. The language to be used in all communication between the Home and the Host DGS shall be English, unless they bilaterally agree to use a different language.
5. The communication channels established to communicate with the depositors at branches, and between the Home and the Host DGS shall guarantee a sufficient level of confidentiality and security.

Article 13

Reimbursement of costs

1. In accordance with Article 14(2) of Directive 2014/49/EU, the Home DGS shall compensate the costs incurred by the Host DGS attributable to the assistance provided to the Home DGS in accordance with Part II of this Agreement.



2. The types of costs referred to above shall include, but shall not be limited to, the costs incurred in performing the following tasks:
 - a. communication with depositors, including setting up the necessary infrastructure, hiring staff and media publications;
 - b. communication with the Home DGS, including providing feedback information about claims paid;
 - c. collection of additional information needed for the payout, including setting up the necessary infrastructure and hiring staff;
 - d. translation of documents;
 - e. acquisition of information;
 - f. transaction costs of payouts;
 - g. relevant legal costs.
3. Eligible costs incurred by the Host DGS shall meet the following criteria:
 - a. be necessary for carrying out the payout;
 - b. be actual costs, reasonable, justified and comply with the principle of sound financial management;
 - c. be identifiable, in particular be recorded in the accounting records of the host DGS and backed by effective supporting evidence.
4. The Home and the Host DGSs shall bilaterally agree on whether:
 - a. the Home DGS shall provide a lump sum amount, based on estimates, ahead of the Host DGS incurring costs followed by reconciliation of accounts; or
 - b. the Host DGS shall be reimbursed for costs incurred following the payout.
5. Where the Host DGS is reimbursed following the payout, reimbursement details, such as time to reimburse the costs or the applicable interest rate, shall be agreed upon between the Home and the Host DGS by no later than seven working days of the Member State of the host DGS after the initial payout.



Article 14 Right to audit

1. Subject to subsequent bilateral agreement between the Home and the Host DGS or, where relevant, the Home and the Host designated authorities, the DGSs shall have the right of audit of the other DGS's activities related to the payout according to the terms agreed to by both DGSs.
2. Such an audit may take the form of, for example, oversight, post-payout review, audit of costs and seconding staff during payout, and may be performed either on-site or remotely. In particular, the Home DGS may request the Host DGS to conduct an audit of the Host DGS's activities related to the payout paid for by the Home DGS.

Article 15 Treatment of delays

1. Any costs arising from delays in the Home DGS providing the Host DGS with the instructions for payment, the necessary information and the funds, shall be borne by the Home DGS, including where the delays impose operational costs on the Host DGS.
2. Where the delay is attributable to the Host DGS's actions, the Host DGS shall bear the costs arising from this delay.

Article 16 Confidentiality and data protection

In accordance with Article 14(4) in connection with Article 4(9) of Directive 2014/49/EU, the Home and the Host DGS shall ensure the confidentiality and the protection of the data pertaining to depositors' accounts. The processing of such data shall be carried out in accordance with Directive 95/46/EC.

Article 17 Liability

In accordance with Article 14(2) of Directive 2014/49/EU, the Host DGS shall not bear any liability with regard to acts undertaken in accordance with the instructions given the Home DGS.

Article 18 Review of the arrangements to operationalise payouts

The Home and the Host DGS may bilaterally agree that, on a case-by-case basis and no earlier than three months from the notification of unavailability of deposits, they will review the functioning and scope of the practical arrangements and infrastructure needed for proportionate, continued operationalisation of payouts by the host DGS in accordance with Part II of this Agreement, making the necessary adjustments to it.



PART III

TRANSFER OF DEPOSIT GUARANTEE SCHEMES' CONTRIBUTIONS

Article 19

Applicability of Part III

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

Article 20

Exchange of information

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



6. The Transferring DGS shall have the right to refuse to share information which, due to its sensitive nature, may not be shared under national or EU law.

Article 21

Execution of the transfer of contributions

1. In accordance with Article 14(3) of Directive 2014/49/EU, the contributions paid during the 12 months preceding the end of the membership of a Member Institution, with the exception of the extraordinary contributions under Article 10(8) of that Directive, shall be transferred by the Transferring DGS to the Receiving DGS.
2. Where the Transferring DGS needs to collect additional funds, for example following a recent payout, to be transferred to the Receiving DGS, any costs of raising such funds shall be borne by the Transferring DGS.
3. The Receiving DGS shall provide the Transferring DGS with the account details and any other relevant information to allow the transfer of the funds. The chosen accounts, and funds transfer method, shall ensure utmost security of the funds and timeliness of the transfer.
4. The Transferring DGS shall transfer the funds in the currency in which the contributions had originally been provided to the Transferring DGS. The Receiving DGS shall bear the costs of any operations related to currency exchange operations.

Article 22

Treatment of payment commitments

1. Where a member Institution ceases to be a member of the Transferring DGS and joins the Receiving DGS, the Transferring DGS shall ensure that the Member Institution's payment commitments to this DGS corresponding to the 12 months preceding the end of the membership in the Transferring DGS are transferred to the Receiving DGS either
 - by enforcing the payment commitments and transferring the proceeds to the Receiving DGS; or
 - by reassigning the payment commitments arrangements to the Receiving DGS in agreement with the latter and the Member Institution.
2. Within seven working days of first becoming aware of the intention of the Member Institution to cease its membership, the Transferring DGS, where relevant in agreement with the Member Institution, shall decide which of the two options to pursue and shall communicate its decision to the Receiving DGS.



3. Where the Transferring DGS decides to enforce the payment commitments and transfer the proceeds to the Receiving DGS, the provisions laid down in Article 21 on execution of the transfer of contributions shall apply.
4. Where the Transferring DGS decides not to enforce the payment commitments, the Transferring DGS shall engage with the Receiving DGS to establish whether the Receiving DGS is willing to accept the reassignment of the payment commitments. The reassignment shall take place only when both DGSs agree. Where the Receiving DGS refuses the reassignment, the Transferring DGS shall enforce the payment commitments and transfer the funds to the Receiving DGS.

Article 23

Timeline for transferring the contributions

1. The transfer of contributions (whether funds or payment commitments) from the Transferring DGS to the Receiving DGS shall take place on the same day as the Member Institution leaving the Transferring DGS joins the Receiving DGS.
2. By way of exception to paragraph 1, where the Receiving DGS accepts to take the risk of accepting the new Member Institution without receiving the transfer on the same day, both DGSs shall bilaterally agree the deadline for the transfer.

Article 24

Language used

The Transferring and the Receiving DGS shall communicate in English, unless they agree bilaterally to use another language for the transmission of information from one DGS to the other.

Article 25

Costs associated with the transfer of contributions

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



PART IV

MUTUAL LENDING BETWEEN DEPOSIT GUARANTEE SCHEMES

Article 26

Applicability of Part IV

Part IV shall apply to the borrowing between two DGSs provided that the national legislation transposing Directive 2014/49/EU in the jurisdiction of the DGS lending the funds (the Lending DGS) to the other DGS (the Borrowing DGS) allows for such possibility and the conditions referred to in Article 12(1) of Directive 2014/49/EU have been met.

Article 27

Procedure for the instrumentation of the borrowing

1. Where the Lending and the Borrowing DGSs intend to lend to one another, the Borrowing DGS shall send to the Lending DGS a loan request. The request shall include the following:
 - a. the amount of money requested;
 - b. a statement indicating that the Borrowing DGS is not able to fulfil its obligations under Article 9(1) of Directive 2014/49/EU because of a lack of available financial means as referred to in Article 10 of that Directive;
 - c. a statement indicating that the Borrowing DGS has made recourse to extraordinary contributions referred to in Article 10(8) of Directive 2014/49/EU;
 - d. a legal commitment that the borrowed funds will be used in order to pay claims under Article 9(1) of Directive 2014/49/EU;
 - e. a statement indicating that the Borrowing DGS is not currently subject to an obligation to repay a loan to other DGSs under Article 12 of Directive 2014/49/EU;
 - f. a statement indicating that the total amount requested does not exceed 0.5% of covered deposits of the Borrowing DGS.
2. The Lending DGS shall communicate its decision to the Borrowing DGS as soon as possible and in any event within seven working days of the Member State of the Lending DGS from the date of the loan request.
3. Within five working days of the Member State of the Receiving DGS receiving the communication from the Lending DGS, the Lending DGS and the Borrowing DGS shall formalise such a lending agreement.



PART V FINAL PROVISIONS

Article 28 Relevant contact details

The DGSs and the designated authorities shall nominate contact details of persons who represent them in the activities covered by the present Agreement, including email addresses and phone numbers, and communicate them to the EBA. A list with the details of the contact persons will be kept by the EBA.

Article 29 Supplemental terms

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

Article 30 Amendment procedure

1. This Agreement may be amended in accordance with the following procedure.
2. Any Party may propose an amendment to this Agreement.
3. Any Party proposing an amendment of this Agreement shall notify the EBA of its proposal.
4. The EBA will notify the other Parties to this Agreement of the amendments proposed by any Party to this Agreement.
5. An amendment shall enter into force 30 days after the date on which the EBA has received the last written notification from the Parties confirming their acceptance to the proposed amendments.
6. This Agreement shall be subject to a joint examination by all the Parties to this Agreement following changes in the EU regulatory framework, including guidelines issued by the EBA in accordance with Article 16 of Regulation (EU) 1093/2010.



Article 31 Settlement of disputes

In accordance with Article 14(5) of Directive 2014/49/EU, any Party may refer any dispute about the interpretation of this Agreement to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010.

Article 32 Entry into force and withdrawal

1. This Agreement shall enter into force on the [seven months from publication of the translation of the guidelines in all EU official languages on the EBA's website], provided that at least three DGSs have subscribed to it in accordance with Article 3.
2. Any Party may at any time withdraw from this Agreement by sending written notification thereof to the EBA at least one month in advance, specifying the effective date of its withdrawal. Withdrawal from this Agreement shall not affect its application among the remaining Parties.

Article 33 New subscribing DGSs or designated authorities

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

Article 34 Confidentiality

Without prejudice to the information to be provided to the relevant Member Institution for the purposes of this Agreement, the Parties to this Agreement shall maintain the confidentiality of all information exchanged in connection with this Agreement and shall not disclose it to third parties without obtaining the prior consent of the Party that provided the information. This article shall not prevent the Parties to this Agreement from sharing such information where permitted by applicable legislation or required by competent, designated or resolution authorities, the EBA and other relevant administrative authorities having jurisdiction over them.

Article 35 Working language

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

Article 36 Publication of the Agreement

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



Appendix I

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

To the European Banking Authority

[Date]

[Name of subscribing deposit guarantee scheme or designated authority]

[Address]

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

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

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

Sincerely yours,

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

[Name]

[Title]

Date: _____

Acknowledged:
European Banking Authority

[Name]

[Title]

Date: _____



6. Accompanying documents

6.1 Draft cost-benefit analysis / impact assessment

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

A. Problem identification

Sudden losses of confidence of depositors in the banking system and large-scale withdrawals of deposits can put the stability of the financial system at risk. To prevent bank runs and confidence crises, DGS are set up in all Member States of the European Economic Area (EEA).

According to the latest estimate available, covered deposits in the EU amounted to around EUR 7 000 billion (at the end of 2012), two-thirds of the eligible deposits (EUR 10 500 billion) and nearly half of the total deposits (EUR 14 650 billion) held with EU credit institutions⁹. For Euro Area monetary financial institutions (MFIs), deposits by households and non-financial corporations resident in other Euro Area Member States stood at EUR 655 billion (at the end of March 2015)¹⁰. Cross-border deposits account for around 5% of total non-MFI deposits held at credit institutions in the Euro Area¹¹.

At the same time, there are around 750 branches of credit institutions in EU Member States controlled by credit institutions from other EEA Member States. These types of foreign branches constitute more than 10% of all credit institutions operating in the EU. Depending on the Member State, those branches cover up to 30% of national banking sectors’ total assets¹². The amount of non-MFI deposits held with foreign banks stood at EUR 2 300 billion in the EU and EUR 1 500 billion in the Euro Area. Those deposit values represent more than 10% of non-MFI deposits held with banks, for both the EU and Euro Area as of June 2014¹³.

Finally, at the end of 2013, there were 30 credit institutions in the EU identified as globally systemically important (G-SIIs), based on their cross-jurisdictional activity and other assessment indicators¹⁴.

The cross-border nature of many of the EU’s credit institutions and their activities calls for effective cooperation between the relevant authorities to ensure financial stability in the EU,

⁹ EC: JRC technical report on updated estimates of EU eligible and covered deposits (2014).

¹⁰ ECB: MFI Balance Sheet Statistics (March 2015).

¹¹ ECB: Financial Integration in Europe (2015).

¹² ECB: Banking Structures Report (2014).

¹³ ECB: Consolidated Banking Data (June 2014).

¹⁴ <http://www.eba.europa.eu/risk-analysis-and-data/global-systemically-important-institutions>



including when one or more of these credit institutions fail. In such cases, the institution is not resolved using tools prescribed in Directive 2014/59/EU¹⁵ and, consequently, there is a need for the DGS to pay out to depositors.

Without written cooperation agreements which are, at least to a certain degree, harmonised across Member States, there is a high risk of conflicts in the event of insolvency or resolution of cross-border banking groups¹⁶¹⁷. Furthermore, lack of harmonisation would lead to a less timely and less consistent approach to payouts in branches and transfers between DGS. This is the case because in each case of failure or transfer, the DGSs would need to evaluate the agreement and adjust their actions accordingly. A more harmonised approach offered by the multilateral framework cooperation agreement in these guidelines allows for this process to be quicker and more predictable – two crucial features, particularly when executing a payout.

B. Policy objectives

These guidelines are expected to contribute to financial stability (via cooperation between national DGSs)¹⁸ and the safety of the banking system in general. They should facilitate the functioning of the Single Market for banking services and the protection of depositors in the EU.

More specifically, these guidelines aim to:

- facilitate entry into cooperation agreements between DGSs in order to ensure the consistent application of Directive 2014/49/EU¹⁹ throughout the EU and to foster convergence of the European system of national DGS;
- ensure that such agreements include the necessary elements and commitments (including funding commitments) to ensure effective cooperation, particularly in the case of an institution failure, and by including a multilateral framework cooperation agreement, make the process of entering into such agreements more efficient and more consistent.

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

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

¹⁵ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

¹⁶ JRC: Investigating the Efficiency of EU Deposit Guarantee Schemes (2009) .

¹⁷ IADI: Report on Cross-Border Deposit Insurance Issues raised by the Global Financial Crisis (2011).

¹⁸ IADI: Core Principles for Effective Deposit Guarantee Schemes (2014).

¹⁹ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on DGSs.



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

C. Baseline scenario and options considered

C.1 Rationale for issuing the guidelines

To address the problems identified above, the EBA could:

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

C.2 Extent of the EBA's mediation power

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

Two options considered include:

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

C.3 Parties to the agreement

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

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

C.4 Content of the agreements – list of elements

Concerning general content, these guidelines could include:

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



C.5 Content of the agreements – preferred options

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

- (i) provide no guidance on the preferred option for each listed element (Option 5.1);
- (ii) provide the preferred option with flexibility to depart from it in specified circumstances (Option 5.2); or
- (iii) provide prescriptive solutions for each element with no flexibility to depart from them (Option 5.3).

Concerning minimum obligatory elements of cooperation agreements, several sets of specific technical options were considered:

C.6 Options concerning the payout in branches:

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

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

C.6.2) Currencies

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

C.6.3) Language used

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

C.6.4) List of reimbursable costs

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

C.7 Options concerning transfers between DGS:

C.7.1) Provision of information

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

C.7.2) Content of the information to be transmitted

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

C.8 Options concerning lending between DGS:

C.8.1) Willingness to lend



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

C.8.2) Lending process

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

D. Cost-benefit analysis²⁰ and preferred options

In April 2015, the EBA conducted a special survey among national DGSs and designated authorities. A total of 16 Member States responded to that survey (of which 10 were Euro Area Member States). Of the 18 DGSs which answered the questionnaire (for 1 Member State, 3 DGSs responded), 10 do not have any cooperation agreements. The number of agreements for the other DGSs ranges from 1 (6 Member States), over 6 (1 Member State), to 'all DGS where there are topping-up arrangements' (1 Member State). In addition to these agreements, nearly all have signed EFDI's multilateral Memoranda of Understanding (MoU). There are two types of cooperation agreements in place: legally binding framework contracts or cooperation agreements and MoU, which are not legally binding. As most DGSs have signed EFDI's multilateral MoU, several DGSs have concluded both types. Three DGSs have cooperation agreements with DGSs outside the EEA and one DGS has high-level MoU with DGSs outside the EEA.

Areas mentioned are:

- rights and duties of participating parties
- information exchange
- protection of data, privacy
- oversight or audit by the home state
- description of the compensation process (operational, IT, financial, communication, reporting)
- financial considerations (funds and compensation of costs)
- stress tests
- applicable law.

D.1 Rationale for issuing the guidelines

Under the baseline scenario, pursuant to Article 14(5) of Directive 2014/49/EU, in order to facilitate effective cooperation between DGSs, with particular regard to Article 14 and Article 12 of Directive 2014/49/EU, the DGSs, or, where appropriate, the designated authorities, shall have written cooperation agreements in place. Article 14(5) also requires the designated authority to notify the EBA of the existence and the content of such agreements and gives the EBA the power to issue opinions in accordance with Article 34 of the EBA Regulation. Finally, Article 14(5) states

²⁰ As a background see also EC: Impact assessment accompanying the Directive on Deposit Guarantee Schemes (2010).



that if designated authorities or DGSs cannot reach an agreement, or if there is a dispute about the interpretation of an agreement, either party may refer the matter to the EBA for a binding mediation in accordance with Article 19 of the EBA Regulation and the EBA shall act in accordance with that article. The EBA binding mediation in this area is a challenging task for a number of reasons:

- Directive 2014/49/EU sets out broad cooperation principles but leaves the concrete arrangements, which are crucial in practice, to cooperation agreements. This means that where parties have not concluded an agreement or where the agreement is silent on a particular issue or subject to further interpretation, the EBA will find little guidance in the existing corpus of law, unless more specific and concrete rules on DGS cooperation have been identified beforehand.
- Without guidance on the cooperation between DGSs, the DGSs or the designated authorities may conclude very different agreements that may not contain the necessary elements to ensure smooth and legally safe cooperation at the point of failure. This would increase the likelihood of conflicts.
- Lack of convergence would also render the EBA mediation particularly difficult, especially in a situation of emergency; for example, in the event that mediation is needed, the EBA would have to reassess the details of each specific agreement and propose an ad hoc solution for the specific conflict without being able to rely on an existing set of principles or guidelines.

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

D.2 Extent of the EBA's mediation power

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

D.3 Parties to the agreement



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

Bilateral agreements, however, would more easily take specific links between DGSs into account and could be flexibly adapted to changing circumstances. The complexity of such an EU-wide network of bilateral agreements would render conflict resolution in the case of cross-border failure of institutions very specific and potentially inconsistent across the EU. Consequently, the intermediate solution of a multilateral umbrella agreement complemented – if necessary – by a lean system of bilateral agreements appears to be the most efficient one (Option 3.3). This solution would also foster a consistent dispute settlement, thereby facilitating the mediation role of the EBA.

D.4 Content of the agreements – list of elements

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

D.5 Content of the agreements – preferred options

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

D.6 Options concerning the payout in branches:

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

The shortening of the payout deadline is one of the major innovations of the new Directive 2014/49/EU. Although it is associated with costs for DGSs and credit institutions, it is expected to significantly benefit the effectiveness of DGSs in preventing bank runs and fostering financial stability²¹. To be operationally capable to pay out covered depositors, host DGSs depend on notifications, information, instructions and funds to be provided in a very short period of time²². Therefore, these guidelines should set deadlines for the provision of notifications, information, instructions and funds, to be contained in cooperation agreements between DGSs (Option 6.1.1).

²¹ EFDI: Report on Improvement of Payment Delays to Depositors and Promotion of Best Practices (2008).

²² EFDI: Report on Development of a Non-Binding Model Agreement on Exchange of Information between DGS (2009).



D.6.2 Currencies

For the Euro Area, around 97% of deposits held with MFIs by non-MFIs resident in the Euro Area are denominated in euros. For deposits held by non-MFIs resident outside the Euro Area with Euro Area MFIs, that proportion of euro-denomination is only around 50%. The remaining deposits are mostly denominated in USD (30%), followed by GBP (7%), JPY (2%) and CHF (1%) accounts²³. Similarly, it can be reasonably assumed that a significant proportion of cross-border deposits holdings in the EU – deposits by non-MFIs held with MFIs located in a different Member State – is denominated in a currency different from the local currency. To foster the Single Market for banking services, it would be beneficial to specify in cooperation agreements that payouts to depositors should, as a matter of principle, be made primarily in the local currency. Over the last 12 months (June 2015), the daily effective exchange rate of the Euro (normalised at 100) has displayed a standard deviation of around 5. Given that the euro is floating against a large number of currencies of EEA Member States and that those bilateral exchange rates are typically more volatile than effectively weighted rates²⁴, there is a significant currency risk associated with cross-border deposits holdings. To effectively achieve the objective of promoting the cross-border provision of deposit accounts, the exchange rate risk should not be borne by the depositor. Consequently, these guidelines recommend the general payout of depositors primarily in local currency with some flexibility for the DGSs and any exchange rate-related costs to be borne by the failed banking group's home DGS (Option 6.2.2).

D.6.3 Language used

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

D.6.4 List of reimbursable costs

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

²³ ECB: Statistics Bulletin – Money, Banking and Other Financial Corporations (May 2015).

²⁴ ECB: Statistics Bulletin – Exchange Rates (May 2015).



D.7 Options concerning transfers between DGSs

D.7.1 Provision of information

To be able to effectively transfer an institution's contributions requires the exchange of information between the DGSs involved²⁵. More precisely, the home DGS needs to provide information to the host DGS in case a banking group decides to change DGS. To ensure sufficient funding of national DGSs – taking into account the risk profile of the institutions under its scope – it is necessary to have that information exchanged in a quick manner. Therefore, it is recommended that the host DGS transmits information to the home DGS in the case of a change of membership of an institution within a certain period of time (Option 7.1.2).

D.7.2 Content of the information to be transmitted

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

D.8 Options concerning lending between DGSs

D.8.1 Willingness to lend

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

D.8.2 Lending process

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

E. Conclusion

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

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

- DGSs
- credit institutions
- depositors

²⁵ EFDI: Report on Development of a Non-Binding Model Agreement on Exchange of Information between DGS (2009).



- other safety net participants such as resolution authorities
- other potential stakeholders and
- society at large.

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

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

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

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

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



6.2 Views of the Banking Stakeholder Group (BSG)

Overall, the BSG supports the draft guidelines. It sees them as a step towards a more consistent system of DGSs and as strengthening depositor confidence in these schemes. These features are crucial, in particular in the case of cross-border payouts.

The BSG welcomed the EBA approach to providing the minimum core elements which should be included in the cooperation agreements, which provides consistency but also accommodates the diversity of DGS models. The BSG agrees that some discretion is needed but not at the cost of necessary harmonisation.

The BSG also welcomed the EBA's approach of general cooperation agreement in the form of the multilateral framework cooperation agreement supplemented by bilateral agreements. The BSG recognised that this prevents unnecessary complexity and facilitates the exercise of all relevant supervisory tasks on a cross-border basis.

The BSG stated that the draft guidelines are sufficiently clear on the modalities for advancing the funds, but queries whether an extra day should be allowed for the funds sent by the home DGS to reach the host DGS.

In relation to deadlines for cross-border payout, the BSG showed support for what is proposed in the draft guidelines, but queried whether the fact that the text explicitly allows for the cross-border payout to take longer than domestic payout would not be contrary to the principle of equal treatment of depositors in the EU.

The BSG agreed with the EBA's proposed approach to which currency ought to be used, and further suggested that the risk of currency fluctuations should be minimised.

The BSG agreed with the draft guidelines on the issue of which language ought to be used, and also supported the deadline for transferring past contributions from one DGS to another.

Finally, the BSG queried whether there is a need to allow DGSs to determine whether the home DGS will provide funds to cover the host DGS's costs before, or after the payout. They suggested that it might be easier to offer just one option.

The EBA response

The EBA welcomes BSG comments and broad support for the draft guidelines. Specific comments relating to the BSGs' suggested amendments have been considered in the table below, together with other comments from respondents to the consultation.



6.3 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 29 October 2015. A total of 15 responses were received, of which 12 were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them, if deemed necessary.

In many cases, several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments and the EBA's analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

There is overall support for the draft guidelines, including using the multilateral framework cooperation agreement supplemented by further bilateral agreements, and the timelines for payout. The main points raised by the respondents with regard to the draft guidelines are as follows.

Signatories of the agreement

A number of respondents raised questions about which authority should sign the agreement or, by asking related questions, highlighted the need to clarify this issue. More specifically, respondents suggested that it is not clear whether agreements should be signed by the DGS, by the designated authorities where different from the DGSs, or by both the DGSs and the designated authorities.

The agreements should be signed by the DGSs, or, where appropriate, the designated authorities in accordance with Article 14(5) of Directive 2014/49/EU.

Content of the agreement

Many respondents queried whether there is a need to include modalities for transfer of contributions, and/or modalities for lending in the agreements, or more specifically, in the bilateral agreements.

In the EBA's view, Article 14(5) of Directive 2014/49/EU is clear that all three key areas as suggested in the guidelines are a necessary part of the cooperation agreements. Therefore, the



proposed multilateral framework cooperation agreement includes all three parts, which narrows down the number of issues which need to be covered in bilateral agreements and, therefore, makes the process easier and more efficient for the parties signing the agreement.

Payout deadlines

Many respondents questioned the proposed timeline for cross-border payout. In some instances, opposition to the deadlines was based on a misunderstanding of the process as proposed in the draft guidelines, or did not provide a clear reason why a cross-border payout should take significantly longer than a domestic payout.

The proposed draft guidelines already reflect the fact that the process of cross-border payout is more complex. The deadlines outlined for the home DGS are similar to those the home DGS would need to follow in a domestic payout. For a domestic as well as a cross-border payout, the home DGS needs to get the necessary information from the institution and prepare the necessary funds. The EBA does not see a clear reason why getting the necessary information and funds should take significantly longer than in a domestic setting.

However, the EBA staff recognises that where there is a cross-border payout the home DGS will also need to make a domestic payout at the same time. If the deadlines for having funds ready are not aligned, two parallel processes may need to be run, which may make the situation more complex and the process longer. Hence, the deadlines are now aligned in the guidelines.

Technical comments

Finally, respondents provided a number of technical suggestions related to issues such as currency and language used or the content of reimbursable costs.

Where the suggestions pointed out a logical error, or provided further insight based on practical knowledge, and where these suggestions did not contradict the aims of these guidelines, the EBA made the necessary amendments.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Dispute resolution	Three respondents stated that disputes may arise which are not about 'interpretation of the agreements', for example, if funding paid is wilfully misused or recklessly lost. A home DGS would want to seek redress in domestic courts. Suggestion that the host law should be applicable with a high bar for liability, possibly noting wilful misconduct or gross negligence.	The EBA recognises that there may be other areas in which DGSs may have reason to contest cooperation agreements other than as a result of 'interpretation'. However, the EBA does not consider it to be necessarily suitable for inclusion in the multilateral agreements. In those cases, Article 14(5) of Directive 2014/49/EU, which confers the EBA a binding mediation role, shall apply accordingly so that either party may refer the matter to the EBA in accordance with Article 19 of the EBA Regulation. Furthermore, since the agreements respond to a statutory or institutional cooperation, the EBA will usually make a proportional application of the obligations included in the agreement. Therefore, it is more suitable for DGSs to agree any supplementary conditions in supplementary bilateral or multilateral arrangements.	No amendment.
Liability	Four respondents called for inclusion of a provision to protect employees who act in good faith.	The EBA understands the desire to remove the risk of legal challenge against individuals where they may be jointly and severally liable. However, DGSs may not use the agreement in order to contract out of their statutory obligations according to Directive 2014/49/EU.	No amendment.
Delaying implementation	One respondent stated that the implementation date of six months for these guidelines should be	Delays in the implementation of Directive 2014/49/EU by some Member States	No amendment.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	extended to 18 months because many Member States have still not implemented Directive 2014/49/EU.	should not in themselves postpone the implementation deadline for other regulatory products.	
EBA mandate	One respondent was concerned that Directive 2014/49/EU does not give the EBA the mandate to establish binding guidelines but only to include recommendations.	The EBA guidelines are non-binding instruments. Furthermore, there is no need for a special mandate to develop guidelines. Article 16 of Regulation (EU) No 1093/2010 empowers the EBA to issue own-initiative guidelines. In this context, we also refer to recital 26 of that regulation which states that in areas not covered by technical standards, the EBA should have the power to issue guidelines on the application of EU law. Accordingly, the EBA guidelines on cooperation agreements are issued on its own initiative.	No amendment.
Relevant authorities	One respondent asked if the reference to designated authorities implies that the Central Bank and the Financial Supervisory Authority should be informed of the agreement. They are concerned that DGSSs and designated authorities do not have clear lines of communication.	Article 2(1)(18) of Directive 2014/49/EU clearly states the definition of the designated authority. Member States should consider this in relation to their specific situations.	No amendment.
	One respondent asked for more information on the role of other safety net participants, and requested rephrasing of the paragraph into several sentences to make it clearer.	The roles of other safety net participants will differ between Member States, and idiosyncratic responsibilities should be determined by Member States.	No amendment.
	One respondent requested the addition of ‘as agreed upon in the bilateral agreement’ into Article 6(1) of the MFCA.	There is already a provision for this.	No amendment.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	One respondent, in relation to Article 6(3)(b), asked if there should be a reference to ‘all other information in the bilateral agreements’?	No need to add, given the inclusion of the wording suggested above.	No amendment.
	One respondent stated, in relation to Article 6(6), that data updates should be avoided and SCV files should be tested before payout.	SCV data will sometimes need to be updated as a result of settlements and reconciliation. Cross-border stress testing of SCV files should assist in this respect.	No amendment.
	One respondent suggested deletion of Article 19(6) – they believe that Directive 95/46/EC notes that Member States should share such data.	The guidelines do not interfere with the requirements of Directive 95/46/EC, and the EBA does not see a need to delete the reference.	No amendment.
	One respondent suggested removing the second sentence of paragraph 4 in Article 20 of the MFCA.	The EBA agrees with the suggestion.	Removed ‘The Receiving DGS shall be free to decide whether to keep the funds in the currency in which it received the funds or whether to exchange them’.
	One respondent was concerned that safety net participants and the failing bank should not be considered third parties and so Article 34 should include the following wording: ‘including other safety net participants’.	Article 34 aims to ensure that no party to the agreement, and thus neither the DGS nor the designated authority, reveals confidential information to third parties. In this case, the failing institution should not be considered a third party and so there is no need to mention the institution. However, the EBA acknowledges that the confidentiality requirement should extend also to	Amended Article 34 accordingly.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
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other safety net participants who might be informed about the case.

Responses to questions in Consultation Paper EBA/CP/2015/13

<p>Question 1.</p> <p>Multilateral vs. bilateral approach (general)</p>	<p>Nine respondents support the idea of a multilateral agreement setting general principles and leaving the determination of specifics to the bilateral agreements.</p> <p>One respondent opted for the bilateral agreements instead of the multilateral one, as, in their view, only bilateral agreements can take into consideration the variety of DGSs' specific circumstances. Multilateral agreement is hard to amend due to changes in specific DGSs. The respondent suggested that the relationship between two DGSs needs two agreements – each DGS can be home and host. Furthermore, they proposed that the EBA should provide the general template for a bilateral agreement. The respondent also proposed to address the transfer of contributions in a separate agreement.</p> <p>Four respondents underlined the need for different approach for the payout, mutual lending and transfer of contributions. They suggested focusing on the reimbursement area.</p> <p>Two respondents stated that mutual lending and transferring contribution did not need further specification.</p>	<p>The majority of respondents support the idea of a MFCA setting general principles and leaving the determination of further detail for the bilateral agreements.</p> <p>Article 14(5) of Directive 2014/49/EU requires the inclusion of mutual lending and transfer of contributions in the cooperation agreement.</p> <p>The MFCA provides a common base, with flexibility for further bilateral or multilateral specification. The MFCA can cover modalities for the transfer of contributions and lending between DGSs where signatories of the agreement agree not to lend. Including these topics within the MFCA narrows down the number of issues which need to be covered in bilateral agreements, and, therefore, makes the process easier and more efficient.</p> <p>The proposed MFCA reflects that the three areas covered by the agreement require a different approach. For that reason, the transfer of contributions, and the mutual lending in particular, are defined at a very general level.</p> <p>The MFCA includes lending as required by Article 14(5) of Directive 2014/49/EU but also reflects the flexibility of the directive not to use</p>	<p>No amendment.</p>
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Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Two respondents argued for not including mutual lending in the agreement as it is not obligatory in accordance with Directive 2014/49/EU.</p>	<p>lending. Therefore, further specification of mutual lending is only necessary on a bilateral basis where parties to the agreement agree to lend to one another.</p>	
<p>Question 1. Multilateral vs. bilateral approach (level of detail)</p>	<p>Three respondents declared the need for more flexibility in the multilateral agreement.</p> <p>One respondent argued for less flexibility and utmost clarity and consistency.</p> <p>One respondent stated a need to agree on a unified format for the SCV file.</p>	<p>The EBA addressed calls for specific changes suggested by these three respondents elsewhere in the document.</p> <p>Specifying a unified format of the SCV file is beyond the scope of these guidelines. Where parties to the agreement see a need to agree on a common format, they may do so in the bilateral agreement.</p>	<p>No amendment.</p>
<p>Question 2. Level of detail in advancing funds is a payout</p>	<p>Nine respondents declared no need for further specification for advancing funds.</p> <p>One respondent argued for further specification including the following conditions:</p> <ul style="list-style-type: none"> - separate bank account for money from the home DGS; - electronic transfer of money; - bank for the account should be agreed by the home/host (the home would have influence on the host choice but respecting objective limitations put on the host DGS, e.g. by the host law); - right to audit for the home DGS regarding the bank chosen by the host DGS to keep the money from the home DGS. <p>One respondent sees the need for further</p>	<p>The majority of respondents do not see the need to provide further detail regarding advancing funds.</p> <p>Taking into consideration that the transferred amounts are likely to be large, an electronic transfer seems to be the most obvious solution. While the idea of keeping the funds in a separated account is an interesting one, we suggest leaving it up to the host DGS.</p> <p>Disputes about the place in which the host DGS will keep the money from the home DGS can seriously disrupt the payout process. The payout process is by definition quick. This means that the host DGS will keep the money in the chosen institution for only a relatively short time. The EBA considers the connected risk low. The decision over where to keep the money should be made by the host DGS with the</p>	<p>No amendment.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>specification for detail such as the ‘account structure’ in the bilateral agreement.</p> <p>One respondent declared that the preferred method for advancing the funds should not be set in advance.</p>	<p>same care as for its domestic payouts.</p> <p>The right to audit is a matter for a bilateral agreement between the parties signing the agreement and does not need to be specified further in the guidelines.</p>	
<p>Question 2.</p> <p>Host DGS payout prior to receiving funds from the home DGS</p>	<p>Two respondents proposed that it should be clarified that the host DGS will not start the payout prior to receiving the funds from the home DGS. The host DGS will have no liability in the absence of the prior funding from the home DGS.</p>	<p>Article 14(2) of Directive 2014/49/EU states that the home DGS is obliged to provide ‘the necessary funding prior to pay-out’. Thus, there is no obligation on the host DGS to start reimbursement without the home DGS’s funds. Consequently, no liability arises in respect of the host DGS. However, for financial stability reasons and the need to protect depositors, the host DGS is not barred from using its own funds to reimburse depositors in an institution protected by the home DGS.</p>	<p>No amendment.</p>
<p>Question 3.</p> <p>Payout timelines</p>	<p>Six respondents underlined that the proposed timeline could not fit all cooperation situations. Some proposed a principle of equal treatment for the home and host depositors in a cross-border payout. Some respondents argued that cross-border reimbursement as proposed in the draft guideline could disturb the domestic payout process.</p> <p>Five respondents argued that the drafted deadlines are too short and are not in line with Directive 2014/49/EU. They proposed to leave the deadlines for the bilateral agreements.</p> <p>Some respondents proposed a cross-border payout</p>	<p>The proposed draft guidelines already reflect the fact that the process of cross-border payout is more complex. The deadlines outlined for the home DGS are similar to what the home DGS would need to follow in a domestic payout. However, the EBA recognises that where there is a cross-border payout the home DGS will also need to make a domestic payout at the same time. If the deadlines for having funds ready are not aligned, it may mean the need to run two parallel processes which may make the situation more complex and the process longer. Hence, the deadlines are now aligned in the guidelines.</p>	<p>Paragraph 33 and Article 8 of the MFCA amended accordingly.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>deadline of 14 working days or 20 working days.</p> <p>Two respondents stated that the time for the host DGS to make the payout following receiving the funds and depositor data prior is too short for the host DGS.</p>	<p>The suggested proposal of equal treatment of depositors in a home institution and a host branch would suggest adhering to the same deadlines for both, which contradicts respondents' objections to the proposed deadlines as being too strict.</p> <p>The EBA recognises that in some instances it might be impossible to get the necessary data within five working days, as the domestic process for getting the information is geared towards the seven working days payout deadline, without an interim step. The EBA proposed some drafting to reflect such situations.</p>	
	<p>One respondent suggested that the home DGS should inform the host DGS in advance.</p>	<p>It is recognised that early notice is valuable to help ensure that payout timeframes are met and DGSs can start to consider how they may best plan in the event of a payout including testing data transfer mechanisms, communication channels and external support processes. However, there are considerable, potential negative consequences of transfer of sensitive information and, therefore, we do not consider it appropriate to require DGSs to exchange information before the determination of unavailability of deposits.</p>	<p>No amendment.</p>
<p>Question 3.</p> <p>Partial payout in a cross-border reimbursement</p>	<p>Three respondents underlined that Directive 2014/49/EU does not require partial payout in the event of a cross-border failure.</p> <p>One respondent stated that the decision concerning partial payout should be up to the</p>	<p>Directive 2014/49/EU allows deferral of partial payout in the event of cross-border payout, in a similar manner that it allows for deferral of cross-border payout in general. It does not remove the possibility entirely. The draft guidelines acknowledge the possibility of partial payout but also stipulate</p>	<p>No amendment.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>home DGS and not the home/host agreement.</p> <p>Some respondents also pointed out issues with the deadlines when the DGS is using the Directive 2014/49/EU-mandated transitional period for introducing the seven working day deadline.</p>	<p>that DGSs may forgo partial payout when full payout is imminent. The rationale is that DGSs should avoid a situation whereby the partial payout hinders, or significantly delays the full payout.</p>	
<p>Question 3.</p> <p>Reimbursement of certain types of deposits</p>	<p>Two respondents stated that according to Directive 2014/49/EU some deposits (other than temporary high balances and beneficiary account) can be reimbursed later. They suggested updating the guidelines with a reference to such a situation.</p>	<p>Indeed, Directive 2014/49/EU allows longer reimbursement times for certain types of deposits and there is no need to duplicate these provisions in the guidelines.</p>	<p>No amendment.</p>
<p>Question 3.</p> <p>Temporary high balances</p>	<p>Two respondents supported the idea of the host DGS assisting the home DGS with the handling of temporary high balances (THB) claims. The decision to whom to send the claims should be made by the home/host agreement and not by the depositors. There is no need to treat THB in a different way.</p>	<p>The guidelines should not limit to whom the depositors can submit their claims. As the home and host DGSs must be in very close cooperation in a cross-border payout, there should be no problem in processing claims sent either to the home or to the host DGS.</p>	<p>No amendment.</p>
<p>Question 4.</p> <p>Currency of host reimbursement</p>	<p>Five respondents agree with the host currency being the default option, except where home legislation does not permit. Seven respondents stated that no restriction is needed, as Directive 2014/49/EU provides the necessary guidance.</p> <p>One respondent further added that there should not be any binding stipulation of use of the host currency, as this may disadvantage a depositor with an alternative currency if the home DGS would allow payout in this currency. However, a</p>	<p>The EBA believes that specifying the host currency, where allowed under national law, will protect depositors and ensure the best outcome. The guidelines are sufficiently clear and do not restrict what is required under national legislation – host currency is default only when there is a choice. Article 6(4) of Directive 2014/49/EU provides the basis for this.</p> <p>However, the text has been amended to include the ‘primarily’ which opens the possibility also to make</p>	<p>Paragraph 42 amended as follows:</p> <p>‘Where the law of the home DGS allows for a choice between several currencies and where that choice includes the option to use the currency</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	balance should be sought between the interests of the DGS and the depositor.	payout in other currencies; in principle, this will be limited to some specific cases in which the host DGS has the capability to make the payout in multiple currencies and the accounts are not in the currency of the host DGS's Member State.	of the host DGS's Member State, that option should be used primarily. '
	One respondent suggested that the guidelines should specify that the exchange rate should be the official ECB rates published in the EU official journal.	The EBA agrees that it is sensible to specify the official rate; however, given that the case might be about various currencies we suggested the home state's central bank's spot rate.	Paragraph 43 amended as follows: 'Where there is a need for a currency exchange, the rate to be applied should be the rate published by the central bank of the home DGS's Member State on the day of the determination of unavailability of deposits in a given institution.'
	One respondent noted that the currency exchange risk should be minimised where possible.	It is not necessary to include this provision. In a crisis event, any extra burden on DGSs to consider other factors, such as risk of currency fluctuations, risks delaying the payout.	No amendment.
Question 5.	A total of 11 respondents agree that depositors should communicate with the host DGS in the host language as intended in Article 14.	The EBA welcomes the support for the principles in the guidelines.	No amendment.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Some respondents suggested that the host DGS should be responsible for any translation with costs reimbursed by the home scheme. This should not stop any direct communication from the home DGS, and flexibility can be provided for in the bilateral agreements.	Translation is already included in the key costs for consideration.	No amendment.
	Two respondents noted that during payout the home DGS should be authorised to provide additional information as they hold all the relevant information – the home and the host should be able to freely set the terms of the cooperation. When dealing with non-claims-related matter the home DGS should not be required to use the host’s language.	Article 6 of the MFCA already provides for the home DGS to provide all necessary information. Article 12(3) of the MFCA clearly states that this is only in the ‘context of a repayment’ which relates to the claims handling process.	No amendment.
	One respondent suggested that the home and host should decide on the language – some DGSs are public authorities and certain information is required to be provided by the home DGS and cannot be delegated.	The draft guidelines already provide flexibility for the home and host to agree specifics in the bilateral agreements.	No amendment.
	One respondent noted that the depositor should not have the option to choose whether to contact the home or the host DGS.	Depositors have the right to contact both the home and the host DGS. On a practical level, it is not viable to stop customers from contacting the home DGS and, therefore, a flexible model will ensure that both the home and the host DGSs are prepared.	No amendment.
Question 6	One respondent noted that where the host incurs costs which are attributable to the relevant failure it should be able to charge the home DGS the	Article 14(2) of Directive 2014/49/EU stipulates that the home DGS shall compensate the host DGS for costs incurred in a payout. There is no need to	No amendment.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>relevant proportion of the cost. The home DGS should be under an obligation to accept the costs with the host ensuring that they endeavour to get competitive prices.</p>	<p>further specify this issue in the guidelines. DGSs can agree bilaterally to include estimates for the various activities in their agreements so that they can be aware of and understand likely future costs.</p>	
	<p>One respondent agreed with the non-exhaustive nature of the list.</p>	<p>The EBA welcomes such feedback.</p>	<p>No amendment.</p>
	<p>One respondent would like an exhaustive list of costs which will ensure transparency. The respondent also asked if we could we agree a cap on the additional costs.</p>	<p>It is difficult to have an exhaustive list of costs, as these will vary depending on the differing nature of the DGSs. Setting a cap would be inappropriate as costs will vary between cases.</p>	<p>No amendment.</p>
	<p>Four respondents suggested that the multilateral agreement sets a general principle of reimbursement of all costs attributed to the activities of the host in payout – list of costs could be included in the bilateral agreements.</p>	<p>The guidelines already include a high-level general principle in Article 13(1) of the MFCA and include costs incurred as a consequence of the assistance provided. More detail over and above the list included can be included in the bilateral agreements. The text has been further clarified to make it clear that only costs related to the payout should be reimbursed.</p>	<p>Inserted new paragraph 51: ‘Eligible costs incurred by the host DGS should meet the following criteria: be necessary for carrying out the payout; be actual, reasonable, justified and comply with the principle of sound financial</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			management; be identifiable, in particular, being recorded in the accounting records of the host DGS and backed by effective supporting evidence.'
	One respondent suggested that it should be left to DGSs to bilaterally broaden the list.	The guidelines already allow for this.	No amendment.
	One respondent wanted to include the costs of hiring staff or support services companies. The respondent also wanted to ensure that over expense/expenditure is limited by the host.	These costs are already identified in the MFCA under Article 13(2)(c). DGSs have the opportunity to further specify expectations relating to costs in their bilateral agreements.	No amendment.
	One respondent noted that the host DGS should not have to provide any funds for costs attributed to the payout and wanted a clear statement that the host can refuse to make a payout if a significant proportion of costs are not provided for. Advances should be calculated on the basis of an estimate.	Directive 2014/49/EU is clear that the home DGS must provide funding prior to payout. These guidelines allow for flexibility for the DGSs to agree transferring funds to cover the costs of payout, either as lump sum prior to the payout or as a full reconciliation after the payout. Indeed, lump sum advances should be based on estimates and we propose to clarify this further in the text.	Text amended as follows: '[...] the Home DGS shall provide a lump sum amount, based on estimates, ahead of the Host DGS incurring costs followed by reconciliation of accounts, or [...]']'.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	One respondent suggested including account management, systems changes, AML and sanction checking and legal advice.	Systems changes are included in 'infrastructure' costs and the EBA consider that account management is included in Article 13(2)(f) of the MFCA costs of payout. AML work should be completed by the individual credit institutions and the host DGS will not have the relevant information to complete these checks. Sanction checks may be performed either by the home or the host DGS and it is up to the parties to agree which authority should do it.	No amendment.
	One respondent noted that there should be an emphasis on ensuring that ordinary operating costs should not be the subject of reimbursement as opposed to expenses directly related to the depositor reimbursement process. List of costs could be included in the bilateral rather than multilateral agreements.	Article 13(1) of the MFCA is clear that the costs are incurred by the host 'attributable to the assistance provided', which means that normal costs are not in scope.	No amendment.
	One respondent suggested that there should be only one option, not <i>ex ante</i> and <i>ex post</i> options. This will avoid having to reach an agreement at time of stress.	Agreement should be reached in the bilateral or supplementary multilateral agreements which will avoid having to do this in time of stress. The EBA sees no need to limit it to just one option.	No amendment.
	Many respondents suggested that if the list of costs is retained in the multilateral agreements, legal costs should be added.	The EBA agrees that this should be included in the list.	Amended the text of the guidelines and the MFCA to include 'relevant legal costs'.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 7.	<p>Eight respondents support flexibility so DGS can agree bilaterally. Past contributions should not be a prerequisite for acceptance of credit institution as a member (two weeks should be acceptable).</p> <p>Two respondents stated that the deadline needs to be strict – the transfer should happen on the day, otherwise this carries liquidity risk.</p> <p>Another respondent preferred a deadline of the same working day and freedom for the receiving DGS accepting the risk, with both agreeing bilaterally the deadline of the transfer.</p>	<p>The EBA agrees that it would be useful to include the timelines and conditions of any transfer in the bilateral agreement, but there is no need to provide further guidance in the guidelines.</p>	No amendment.
	<p>One respondent stated that when flexibility is allowed, conditions applying in an exemption should be clearly defined and sanctions for non-transfer be spelt out.</p>	<p>The EBA agrees that it would be useful to include the timelines and conditions of any transfer in the bilateral agreement, but there is no need to provide further guidance in the guidelines.</p>	No amendment.
	<p>One respondent stated that liquidation will possibly create some costs to the home DGS – the receiving DGS should cover these costs at least to the extent that the amount is kept in a central bank account for six months.</p>	<p>Directive 2014/49/EU is clear that the costs of transfer should be met by the transferring DGS.</p>	No amendment.
	<p>Two respondents stated that the guidelines do not specify whether all contributions collected in the last 12 months should be transferred. <i>Ex post</i>/exceptional contributions should be excluded as noted in Directive 2014/49/EU – but also any fraction that is linked to the financing of a crisis</p>	<p>Directive 2014/49/EU states that the last 12 months’ contributions should be included. It does not allow for further exemptions and, therefore, the EBA has no flexibility to change the requirements.</p>	No amendment.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>event.</p> <p>One respondent would want total contributions to be included not just last 12 months' contributions, as this will create funding imbalances for DGSs.</p>		
	<p>One respondent stated that there should be exceptions where the DGS fund is empty because of recent payouts.</p>	<p>Directive 2014/49/EU is clear that even if the fund is empty the past 12 months' contributions should be transferred.</p>	<p>No amendment.</p>
	<p>One respondent stated that the requirement should not apply to the contributions made by deposit-takers to 'existing schemes of mandatory contributions'. This is not within the control of the DGS – should it also make clear that it does not apply to contributions in the period prior to the rule coming into force?</p>	<p>Directive 2014/49/EU is not flexible. It would be up to Member States who make use of the existing mandatory contribution provision to consider the requirements under Directive 2014/49/EU.</p>	<p>No amendment.</p>
	<p>One respondent stated that there should always be a minimum advance warning for transferring (six months), as this provides time for the orderly liquidation of assets and no fire sale risk.</p>	<p>Directive 2014/49/EU provides for a six-month notice for credit institutions leaving a DGS.</p>	<p>No amendment.</p>
<p>Other questions and issues raised</p>			
<p>Cross-border payout: notification of unavailability of deposits</p>	<p>Two respondents stated that the information provided to the host DGS informing it of the unavailability of deposits should be sent by the home DGS or, where most relevant, the designated authority. Consequently, the information transmitted along the notification could be by the</p>	<p>In the interest of time, the information should be sent by the home DGS or the home designated authority to the host DGS and the host designated authority.</p>	<p>No amendment.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	home DGS or designated authority directly to the host DGS.		
Cross-border payout: transferring information	One respondent stated that in a payout, transferred information is not available on the day of the determination of unavailability of deposits but only after receiving the SCV file.	The draft guideline refers to ‘general information’ provided on the day of the determination of unavailability of deposits. This means that there is no expectation for detailed information, but rather information determining the expected scale of the operation. This kind of information is necessary for the host DGS to start preparation for the reimbursement.	No amendment.
Cross-border payout: transferring information	One respondent stated that the guidelines might be clarified to say that the bilateral agreements will provide details of the information needed by the host DGS.	Parties to the bilateral agreement are free to specify further detail of the information to be provided and so there is no need to further state this in the guidelines.	No amendment.
Cross-border payout: separating depositors in home and host	One respondent stated that many DGSs receive one SCV file without separation into depositors in the home and the host DGSs.	Even where the institution provides the home DGS with one SCV file for all depositors, the home DGS has to be prepared to process it to separate home and host depositors. This is an indispensable step in producing a payment instruction file to be transferred to the host DGS.	No amendment.
Cross-border payout: length of payout process	Three respondents stated that the whole payout can take many years. To avoid a situation in which the host DGS is keeping on its infrastructure, there is a need to determine the time since the reimbursement is made by the home DGS itself.	The EBA considers that any decision to transfer responsibility for payout should be taken by DGSS following their consideration of the specific nature of individual cases and should be made at the time required. The guidelines have been amended accordingly.	Introduced new paragraph 59: ‘The home and the host DGS may bilaterally agree that, on a case-by-case basis and no earlier than



EBA analysis

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			<p>three months from the notification of unavailability of deposits, they will review the functioning and scope of the practical arrangements and infrastructure needed for proportionate, continued operationalisation of payouts by the host DGS in accordance with this section 5.1, making the necessary adjustments to it.’</p>
<p>Cross-border payout: delays in obtaining additional information</p>	<p>One respondent stated that where the home DGS must collect additional information from depositors, it cannot inform the host DGS about the time of reimbursement as this will often depend on third parties (depositors providing the right information, etc.)</p>	<p>The EBA agrees that it would not always be possible to give a date for the provision of information. It is important that the DGSs agree the estimated deadline for the provision of information. The guidelines provide the flexibility for DGS to agree bilaterally the new deadlines; however, further clarity has been provided for in the guidelines.</p>	<p>Paragraph 24 and Article 6(1), amended for clarity: ‘new deadline’ changed to ‘new estimated deadline’ for the provision of information.</p>
<p>Cross-border payout:</p>	<p>One respondent argued for a requirement to notify</p>	<p>It is agreed that notifying depositors of a delay</p>	<p>No amendment.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
notification of delays	depositors of any delay.	should be considered but it is often difficult to justify additional communication costs if the delay is not going to be meaningful and when it is not known for how long a delay may continue. Delays will be case specific and it would be up to the home and the host DGSs to consider whether it was appropriate to notify depositors at the point of any known delay.	
Cross-border payout: Requesting payout	Two respondents stated that the text should clarify that no request should be necessary to receive payout – either to the home DGS or to the host DGS.	This is a helpful clarification.	Article 7(1) amended as follows: ‘[...] without a request to the Home or the Host DGS being necessary.’
Cross-border payout: lump sum or reimbursement of expenses	Four respondents stated that an option should be given to the host DGS to obtain a lump sum prior to payout – time and modalities for payout shall be set before any payout. One respondent suggested that 50% provided upfront with further top-ups when the host notifies that the funds are nearly exhausted.	Flexibility is provided for in the guidelines, enabling DGSs to agree bilaterally how reimbursement should be managed. We do not consider that further prescription is warranted but DGSs are able to agree further level of specificity in their bilateral agreements.	No amendment.
Cross-border payout: Temporary high balances top-up	One respondent stated that, given that the draft guidelines require the determination of the level of protection for THBs, the host DGS’s level could apply.	The level and the deadlines for THB in the cooperation agreement refer to those in the home DGS’s jurisdiction and have a purely informational role. They are not subject to negotiations and, therefore, in a cross-border payout the home DGS’s level and deadlines apply.	



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Cross-border payout: costs of delays	One respondent stated that the costs of delays caused by the home DGS are borne by that DGS. Similarly, the costs caused by the host’s delays should be borne by the host. The host DGS shall not bear any liability in the event that it acts in accordance with the home DGS’s instructions. Similarly, the home DGS should not bear any liability for any erroneous acts by the host DGS.	The EBA agrees with the need to clarify that costs arising from delays caused by the host DGS should be borne by the host DGS.	Article 15 of the MFCA amended as follows: ‘Where the delay is attributable to the Host DGS’s actions, the Host DGS shall bear the costs arising from this delay.’
Cross-border payout: language of communication	Two respondents suggested that the guidelines unnecessarily restrict the language used in communication with depositors to host DGS’s only – this should be broadened to say ‘home and host’.	The EBA does not see the need to allow the home DGS to send further information to depositors in the host DGS’s Member State in a language other than the official language of the host DGS. If a need to provide further information arises, it seems sensible to channel this information through the host DGS.	No amendment.
Cross-border payout: right to audit	Three respondents stated that it should be possible for the host DGS to provide an external audit report to the home DGS – where not included the home DGS can ask the host DGS to employ an external auditor at the home’s expense. One of these respondents further stated that the host DGS should provide the home DGS with its independent external audit report without delay. One respondent called for the right to audit to be mandatory and not subject to bilateral agreements but limited to financial audit during and after	The right to audit is a matter for a bilateral agreement between the parties signing the agreement and does not need to be specified further in the guidelines. Seconding staff is already included in the guidelines as an option subject to the parties’ agreement.	Paragraph 55 and Article 14 of the MFCA has been amended accordingly.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>payout.</p> <p>One respondent stated that the current text on right to audit goes too far – an alternative is for the home to second a representative to the host DGS, eliminating the need for a right to audit.</p>		
Transfer of contributions: provision of information	One respondent stated that the additional information provided from one DGS to another in the context of the institution moving from one DGS to another may cause the receiving DGS to reject the institution’s application for coverage.	The draft guidelines allow flexibility to the DGSs to agree what information to share. The draft guidelines are not the place to restrict the potential impact of robust information.	No amendment.
Transfer of contributions: provision of information	Two respondents stated that certain information sharing is not required – quality of SCV files is irrelevant as Member States have different SCV requirements, knowledge of near misses is not necessarily information that the DGSs have and is relevant for the competent authorities who have to liaise in the transfer anyway.	The EBA understands that certain information has no direct read-across between Member States. However, the guidelines provide for the consideration bilaterally of where this information may be relevant and this should then enable DGSs to determine the relative importance of data and other information and provide it or not depending on the nature of the information. Practical solutions and relevant information categories can be indicated in bilateral agreements.	No amendment.
Transfer of contributions: payment commitments	One respondent asked if the receiving DGS could specify first whether it is ready to receive the reassignment of payment commitments and corresponding securities and in what format. Then the transferring DGS could review what its options are.	For consistency, it is more appropriate to maintain the two options rather than allowing too much flexibility in the guidelines.	No amendment.

