

POSITION PAPER



ESBG response to Commission consultation on the review of the Directive 94/19/EC on Deposit Guarantee Schemes

ESBG Register ID 8765978796-80

July 2009



The European Savings Banks Group (ESBG) welcomes the opportunity to comment on the upcoming review of the Directive on Deposit Guarantee Schemes.

ESBG would like to comment on the specific questions raised in the consultation paper:

Need for revision of the current DGS framework

Answer to question 1:

ESBG considers that the recent revision of the DGS with the final text published on 13 March 2009 represents an adequate response to the immediate challenges of the crisis situation. The increased coverage level, the reduced payout delay and the abandoning of co-insurance can be seen as an important contribution to the strengthening of depositors' confidence and to the enhancement of financial stability.

The Parliament and the Council identified a series of other issues that should be further analyzed by the European Commission, which should, if appropriate, present legislative proposals by the end of 2009. ESBG underlines that Parliament and Council have identified areas to be analyzed and not automatically to be reviewed. ESBG believes that it is difficult to give a general answer whether the current framework needs to be revised; rather each issue needs to be analyzed carefully and whereas, regarding some issues, action might be necessary, this is in ESBG's view not the case for all issues identified by the Parliament and the Council.

Appropriateness of the coverage levels

Answer to questions 2 and 3:

The majority of ESBG Members considers that minimum harmonisation, as it already exists, is useful and necessary, as it allows a fair level of protection of depositors all over Europe. Notwithstanding this consideration they agree with an increase of the coverage level to 100.000 euro (option b), which ensures a high level of coverage all over Europe. A maximum harmonization would, however, not sufficiently take into account that the economic circumstances vary from Member State to Member State, and that a certain amount has a different meaning in each Member State. More importantly, the majority of ESBG Members believes that existing systems should not be weakened (through a mandatory reduction of the amount of coverage), as this would be counterproductive for consumer confidence and could endanger financial stability. Finally, in any case they consider that a full harmonization of the amount of coverage would only be justified if its absence would lead to competitive distortions. It is not clear to them that this would be the case with the minimum harmonization envisaged.

On the other hand, some ESBG Members expressed concerns as regards the competitive distortion that diverging coverage levels are provoking. Therefore they are in favor of a fixed 100.000 euro coverage level in order to prevent abnormal shifts between countries and institutions and avoid distortions to competition. In their opinion, even if most depositors are already covered by 100,000€ a higher legal coverage in particular for foreign branches, might provoke confusion and unjustified shifts between institutions. Those Members conclude that full harmonization would be the best sample for a real single European financial market.

ESBG expects the Commission to prepare a very detailed impact assessment on this point, before taking any decisions as regards this question.

Differences in level of coverage

Answer to question 4: Except from some anecdotal information on very well informed customers who engaged in splitting their deposits on a national level in autumn 2008, ESBG has no empirical prove or evidence that depositors have on a large scale shifted money to banks covered by unlimited guarantees. The situation fully stabilized a little later, with the decisions taken by the national governments to raise the coverage levels. This may support the adequacy of an increased coverage level to minimum 100.000 euro.

In ESBG's view the decision on whether to split up or not deposits should be neither encouraged nor prevented; this is a free choice of the informed depositor.

Calculation of the coverage level

Answer to question 5: This problem should be dealt with thorough and complete information to depositors.

Exemptions from a fixed coverage level

Answer to question 6: In ESBG's view it is of utmost importance for depositors that DGS' governing rules are easily understandable so that no exemption should deviate from the coverage level. By opening the door to specific national products for social considerations, the risk to have 27 specific regimes covering social considerations appears.

Answer to question 7: In ESBG's view temporary high account balances should not be covered, as such coverage would be associated with a number of practical problems, e.g. obstacle to a fast and efficient payout process. Therefore ESBG considers that there should be no obligatory full reimbursement of temporarily increased account balances which goes beyond the coverage level. ESBG recommends that the focus should lie on information to depositors and financial education.

Mutual guarantee schemes and voluntary DGS

Answer to question 8: ESBG advocates that voluntary schemes should not be integrated into the Directive. Such schemes are based on a contract and constitute an added value to Deposit Guarantee Schemes, fulfilling complementary tasks. In particular they play an important role in early warnings (for more details please see below).

For mutual schemes the Deposit Guarantee Schemes Directive of 1994 valids the existence of such schemes. The 2009 revision is clearly confirming in Recital 8 the co-existence of several schemes (mutual **and** voluntary schemes).

The existing mutual guarantee schemes and voluntary schemes do not lead to competitive distortions, e.g. in Austria *Haftungsverbund* only 0,76% of all depositors of all the affiliates would benefit from an additional coverage above 100.000 euro.

Furthermore, with respect to information, ESBG stresses that in order to be effective in assuring financial stability, any protection measures in the financial system depend on a clear and informed picture of all safety-net players. Proper information is inevitable to contribute to public confidence and- as a consequence- financial stability. However, misleading information and/ or advertisement do not foster consumer confidence and should be banned accordingly.

ESBG adds below some additional information on the Austrian system, the *Haftungsverbund* and the German mutual guarantee scheme.

A voluntary scheme - in form of the Austrian savings banks cross guarantee scheme *Haftungsverbund* - is solely based on a private contract/ agreement between participating institutions and exist either irrespective of or as a supplement to the Directive on Deposit Guarantee Schemes. In fact, the voluntary scheme does not replace the existing statutory deposit guarantee scheme in which all Austrian savings banks are required to participate and contribute by law as well.

The *Haftungsverbund* only serves as an additional safety net for customer deposits of participating institutions by providing a coverage going beyond the current minimum level of € 50.000.-.

The main purpose of the voluntary scheme *Haftungsverbund* is the detection of and the early warning on business risks to affiliated institutions. This is to ensure that if any of its members experience any financial problems the difficulties are recognized as early as possible and the members receive timely support. Such help may take the form of guarantees and the provision of loans or equity capital. Close cooperation in the development and sale of banking products and the day-to-day business management to generate economies of scale for all participating members is another distinct feature of the *Haftungsverbund*. This in turn assures economic survival of small and medium sized regional banks and consequently secures products and market diversity for customers. In doing so, this scheme contributes enormously to a stable financial market by ensuring solvency of participating savings banks and - as a side effect - enables the broadest possible protection of customer deposits.

In general, the alleged competitive distortion needs to be questioned, as - per definition - a distortion could only occur if there is an asymmetry of competitive conditions. So far, neither the Commission in its questionnaire nor other market participants have provided concrete data or specific reasons verifying these assumptions. Quite on the contrary: as regards the additional voluntary deposit protection, no asymmetry of competitive conditions between market participants has been identified, particularly with respect to banking and competition regulation.

Based on a private agreement, the *Haftungsverbund* has supported mandatory measures in the decentralized banking sector in Austria in many ways for many years, with the clear goal to protect banks themselves and their depositors. On the other hand, the possibility under the Austrian banking law for the creation of the voluntary scheme is not discriminating any entity (as provided for in the "Keck-Formula") and according to the EU-Law any optional, self-financed and legal agreement under the private law that is targeted on the distribution should not be publicly governed. Further, after a possible harmonization of the mandatory coverage level to €100.000, maintaining any voluntary scheme would not lead to competitive distortions, because only about 0,76% of all depositors of all affiliates of *Haftungsverbund* in Austria would benefit from this additional coverage level (99,24% of depositors' savings are less than €100,000).

Whereas every other guarantee scheme according to the Commission's policy would offer a harmonized coverage of €100.000, the Austrian voluntary scheme would provide customers with an additional coverage level, coming together with other features described above. This additional coverage level in fact has to be regarded as a clear benefit for depositors. The effect of this voluntary system is therefore not a competitive distortion but rather a competitive advantage, which can in principle be achieved by every market player participating in similar private agreements. There are no restrictions whatsoever in this regard. In addition we would like to point out the apparent inconsistency between question 8 and 21, where the Commission explicitly advocates what should be banned under question 8.

The German mutual guarantee schemes, which exist for savings and cooperative banks, do not lead to competitive distortion either. The current crisis shows that big banks of systemic importance are protected and rescued by the state measures ("too big to fail"), while this does not apply to smaller and medium-sized credit institutions due to a lack of systemic relevance. A mutual safeguard is the only way to achieve a comparable protection for small and medium-sized credit institutions.

Furthermore the mutual guarantee helps to prevent insolvencies, and thus provides a contribution to financial stability.

An additional advantage of mutual guarantee schemes consists in the stabilization of the small credit institutions' markets, such as savings banks, being the only present institutions in economically underdeveloped regions providing financial services; in case these credit institutions would disappear, the access to finance for consumers (including small and medium-sized enterprises) would be limited. In addition, the insolvency of credit institutions could cause pecuniary difficulties,

in particular for small and medium-sized enterprises. In the worst case, which is most likely, the insolvency of a credit institution could cause insolvencies of small and medium-sized enterprises. In conclusion, the existence of mutual guarantee schemes of savings banks is of major importance, as savings banks are often the only financial providers for small and medium-sized enterprises.

Scope of the products covered

Answer to question 9: ESBG considers that structured deposits are investment products which do not fall under the Deposit Guarantee Schemes Directive, but rather under the Investor Compensation Schemes Directive.

Answer to question 10: ESBG is in favor of including registered/ nominal debt certificates in the scope of the Directive. In this context, ESBG supports a full harmonization, which will deliver legal clarity.

Answer to question 11: ESBG is also in favor of including accounts in non EU-currencies, as far as the exchange rate considered is that of the date of the failure of the credit institution of the deposit. Again, ESBG support a full harmonization, which will deliver legal clarity.

Scope of covered depositors

Answer to question 12: ESBG is in favor of harmonizing the list of eligible depositors contained in Annex I of the Directive.

Answer to question 13: In ESBG's view enterprises in the financial sector should not be eligible, since they have a better insight of the market and therefore can take more informed decisions. This also applies to big non-financial companies.

Answer to question 14: ESBG has no evidence as regards whether a covered amount of 100.000 euro is relevant for authorities on a central or local level. Nevertheless it seems to be rather insufficient for certain medium to large local authorities.

Answer to question 15: ESBG advocates for the non eligibility of depositors having a relationship with the failed bank for reasons of good corporate governance.

Answer to question 16: In ESBG's view and under reference to the Anti-Money Laundering Directive it is not possible to open accounts anonymously.

Answer to question 17: ESBG is in favor of option b "include certain categories of companies or enterprises but exclude others in a harmonized way", underlining the importance of a common definition of this category. The definition should take into account related definitions already used in other Directives.

Fragmentation of DGS

Answer to question 18-20: ESBG opposes to the idea of a pan-European DGS (contained in question 18), as this would dangerously divide responsibilities and risks.

Differences in national schemes do in ESBG's view not constitute a weakness of the current state of play, as it is more important that each scheme is strong and safe. The national schemes are close to customers, which strengthens customers' confidence. In ESBG's view this approach should be maintained, as it has also the important advantage of attributing local responsibility and social control. Finally, ESBG would like to question whether the creation of a Community scheme could be achieved by a change in the Deposit Guarantee Schemes Directive maintaining Art. 47(2) of the Treaty as the legal basis or whether such a change would exceed the mandate of Art. 47 (2). In

addition, ESBG questions whether a Community scheme could be justified according to the principles of subsidiarity and proportionality.

With view to the proposed structures of a potential pan-EU DGS (see question 19) ESBG clarifies that it disagrees with all the options, and that it is in particular concerned about a single entity (option a) and a 28th regime (option b), as these would be a radical disruption with the current approach including its advantages outlined above.

ESBG is opposed to all the options as regards the scope of a potential pan- EU DGS mentioned in question 20, but it warns in particular against the possible creation of a scheme which would apply to cross-border banks only (options b and c). In ESBG's view this would lead to competitive distortions by creating an uneven playing field, attributing to large cross-border institutions the "credibility" of an EU scheme whereas the "smaller" national schemes would be responsible for small and medium-sized domestic institutions. ESBG would like to highlight as well that for all options a strict cost-benefit analysis would need to be conducted, taking duly into account that with all these options the EU would lose the important element of local responsibility and social control.

Limited powers of Deposit Guarantee Schemes

Answer to question 21: ESBG would prefer to retain the current approach (option a), which leaves it up to the Member States to decide whether DGS should have other functions than paying out.

ESBG, however, recognizes that some sort of involvement of DGS in crisis prevention would be helpful and could serve to anticipate or mitigate a future crisis.

Insufficient depositor information

Answer to question 22: ESBG agrees that information to depositors is crucial. ESBG does, however, not consider necessary to create a template for standardized information to be annexed to the Directive. ESBG refers to its joint EBIC response to the EFDI consultation on the draft report on improving information about DGS coverage to consumers¹. ESBG believes that the area of consumer information is an area in which self-regulatory measures can deliver a valuable contribution to achieve an enhanced level of consumer awareness. ESBG reiterates its support for a Best Practice code to provide information on DGS in the single market and its willingness to assist developing such a code.

Answer to question 23: See ESBG's answer to question 4.

Answer to question 24: In ESBG's view the current approach should be retained (option a). Please see also answer to question 22.

Answer to question 25: ESBG fully supports that depositors need to be properly informed. ESBG believes that there can be several ways to achieve this goal, and is therefore in favor of individual agreements between DGS about who informs depositors (option c).

Set-off arrangements

Answer to question 26: A number of ESBG Members have gathered experiences with set-off, which has so far been positive. This being said, ESBG would like to stress that additional time is necessary to perform such an operation. Therefore set-off is not compatible with a very short payout delay.

¹ http://www.eubic.org/Position%20papers/EBIC%20response%20on%20DGS%20information_final.pdf

Payout delay/ payout modalities

Answer to question 27: ESBG supports the current approach, i.e. 4 to 6 weeks from end 2010 onwards (option a), which it considers as ambitious but realistic. ESBG highlights that no further reduction would be manageable. In this context ESBG would like to describe the different steps following the determination by the competent authorities and preceding the payout:

- a. Close the bank. The new board in the bank under administration, the administration board, must close the bank. No payment from the bank will be executed without permission of the Bank inspectorate.
- b. Stop all the transactions. All the transactions from and to the bank will be stopped. The bank will be taken out of the common payment system, also electronic payment systems. The cardholders with debit card may not longer use their card.
- c. Stop interest calculation. The calculation of interests on the deposits will be stopped, although the interest on the loans will continue.
- d. Identification of customers. The customers must be identified, which includes private clients, corporate clients (including SMEs) and local governments/ authorities. The availability and quality of the relevant data needs to be ensured.
- e. Identification of deposits. It is necessary to identify every customer's deposit account. The treatment of each account might be different. The difference between the covered deposits and non-distributable deposits might be paid out to the depositors.
- f. Payout. The scheme needs to pay out, but there are different options how to organize this operation:
 - Directly paying out by a check or by cash
 - Payout through another bank
 - The customer after getting a credit/ debt balance sheet goes to another bank and asks to move some or all his accounts from the administration bank to this bank. This is the safest solution because the customer first gets a letter and then must identify himself at another bank. This solution would take some time because the new bank must ask the administration bank to move the customer's accounts. The payout from the DGS or the administration bank would also take some time because DGS have to control the data, and the payout must be executed through another bank which is member of the payment system.
- g. Liquidity of the DGS. It is necessary for the scheme to get the money which shall be paid out to the depositors. This might be done by realizing shares or bonds, realizing other assets or by borrowing money from the Central Bank or in the markets. Although it may take some time it might be done parallel to the identification procedure.

Answer to question 28: ESBG does not believe that alternative solutions are necessary. In particular, ESBG highlights that a short payout delay (as outlined under option a, question 27) decreases the need for an emergency payout. ESBG would also like to stress that an emergency payout is difficult to put in place for practical reasons (please refer to the section "payout delay"). Furthermore ESBG considers that the political assurance of a reimbursement of deposits is more important than a very short payout. Finally, ESBG would like to highlight that the obligation to sell the assets of the scheme quickly could have a negative impact on capital markets, especially in the case of big schemes.

Answer to question 29: As regards the currency of payment (point b), ESBG considers useful to refer to the same currency as the deposits were paid in. As regards interest payments (point c), ESBG is in favor of paying interest that has not been credited at the time of failure.

Answer to question 30: In line with the answer to question 12, ESBG would in principle go for option g (harmonizing the eligibility criteria).

Answer to question 31: No comment.

Answer to question 32: ESBG notes that information by default when triggering of DGS becomes likely would have the advantage that DGS could better prepare their possible intervention. ESBG, however, clarifies that the involvement of DGS does not mean that DGS shall take over supervisory tasks.

Answer to question 33: ESBG agrees to the importance of a well functioning information exchange between banks and schemes. A voluntary common interface to quickly exchange information could be a way forward.

Answer to question 34: The situation differs from country to country. Therefore ESBG believes that the exact manner how to prove the capacity of dealing with payout situations should not be fixed, while it needs to be ensured that the result is there, i.e. schemes should be able to demonstrate this capacity. Therefore ESBG considers that the current approach of requiring stress testing (option a) should be retained. In addition, EFDI should pursue its practice of peer reviews (option d).

Topping up:

Answer to question 35: No comment.

Lack of efficient cross-border cooperation between DGS

Answer to question 36: ESBG support the ideas related to DGS in a host country acting as a single point of contact for depositors at a branch in the host country.

Funding mechanism and level playing field

Answer to question 37: No comment.

Contributions to DGS not adjusted to the risk incurred by banks

Answer to question 38: Safe and sound schemes on national level do not necessarily require the existence of risk-based contributions. Currently risk-based contributions are applied in a number of Member States, whereas the functioning of risk-based contributions is diverging considerably between these Member States. In ESBG's view harmonisation seems therefore difficult and complex.

Furthermore, it needs to be considered that in schemes, which do not rely on risk-based contributions, the introduction of such systems could lead to difficulties, especially for smaller institutions, resulting in an additional administrative and financial burden. Therefore ESBG concludes that there should be no common EU approach in this area and that it should be up to Member States to decide whether they want to apply risk-based contributions or not.

Differences between funding mechanisms

Answer to question 39: Moving towards more harmonization of funding mechanisms would in ESBG's view require sufficiently long transition periods, as in the ongoing crisis situation procyclical effects shall be avoided. While the principal characteristic of funding mechanism might be harmonized on EU level, some details of the layout of the mechanisms should remain in the discretion of Member States.

Short-term financing or long-term borrowing in case of need may be accepted to complement the funding when a critical situation arises.

Any other issues

Answer to question 40: No further comments.



About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of € 967 billion (1 January 2008). It represents the interest of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG Members are typically savings and retail banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their region. ESBG Member banks have reinvested responsibly in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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Published by ESBG. July 2009