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## Deposit Guarantee Schemes Directive

### AFME comments in view of the trilogues

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14 October 2013

#### Introduction

The Association for Financial Markets in Europe (AFME) represents a broad array of European and global participants in the wholesale financial markets. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME welcomes the recommencement of the negotiations to enhance the Deposit Guarantee Scheme (DGS) framework within the EU through the Deposit Guarantee Schemes Directive (DGSD). AFME is very supportive of the objective of establishing credible, harmonised deposit insurance throughout the EU. Deposit insurance is vital to increase confidence amongst depositors and avoid bank runs. It can also play a role in assisting with the effective resolution of deposit-funded banks.

In order for DGSs to be effective, depositors must have confidence in them.<sup>1</sup> DGSs must therefore be credible, reliable and understood. We support efforts to clarify eligibility, improve communications to depositors, and to ensure access to adequate sources of funding. The DGSD should also be consistent with the BCBS/IADI Core Principles for Effective Deposit Insurance Systems (“Core Principles”) to ensure compliance with global standards.

#### Eligibility criteria and coverage

We support the harmonisation of the eligibility criteria for deposit insurance. This is necessary for a level playing field within the Single Market and to provide greater clarity to depositors. Harmonisation should also support the objectives of the Bank Recovery and Resolution Directive (BRRD) and greater cross-border cooperation, as concerns regarding differential treatment of depositors in different Member States should be removed. Flexibility for different eligibility in different Member States should therefore be minimised.

The application of set-off should be clarified. Depositors should be entitled to set off their credit and debit balances provided that they are entitled to do so under national insolvency laws. It is unclear whether or not a depositor with eligible deposits in excess of €100,000 and liabilities to the bank would be able to set off their liabilities against the uninsured element of their deposit before the DGS applies set-off and this should be clarified.

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<sup>1</sup> As emphasised by Paul Tucker, The role of deposit insurance in building a safer financial system, 25 October 2012: <http://www.bankofengland.co.uk/publications/Documents/speeches/2012/speech614.pdf>

## Objectives and use of DGS

We suggest that clear objectives of DGSs should be set out in the directive, with the primary objective being to maintain continued access to insured deposits. This would enhance confidence in DGSs and increase clarity amongst depositors as to how DGSs would operate. It would also comply with Core Principle 3.

We support the ability for DGSs to have flexible uses beyond paying out depositors in insolvency provided that such use results in the least cost solution for the DGS. DGSs should be able to use their funds to support a transfer of insured deposits to a purchaser of an institution in resolution where this results in lower losses for the DGS than a liquidation. This would support greater confidence in DGSs, minimise disruption to depositors by maintaining access to deposits and minimise the impact on financial stability.

However, we are concerned that the proposed texts proposing general uses such as “early intervention” and “prevention and support” measures conflict with the clear recovery and resolution framework set out in the BRRD. The uses of the DGS must be consistent with the BRRD framework, avoid creating moral hazard and focus on the objectives of maintaining access to deposits and minimising losses to the DGS. Use of the DGS should therefore be restricted to the resolution phase: assisting with the transfer of insured deposits to a purchaser or bridge institution where this is the least costly option for the DGS and contributing under Article 99 of the BRRD; and paying out on insolvency.

## Time period for payouts

We support the objective of minimising the time period for DGSs to make payments to insured depositors upon insolvency to support confidence in the DGS. However, a balance needs to be struck between ensuring that insured depositors are paid out as quickly as possible and the practicalities of assessing and making payments to depositors. We suggest as a practical solution for the DGS to be legally obliged to make payouts “as soon as possible”, but with a backstop date of “within 20 days”. DGSs would then be free to set a target timeframe for payout within a shorter period, but would not be subject to legal claims if for practical reasons they were unable to make a payout within a shorter timeframe.

## Funding

We agree that for depositors to have confidence in DGSs, they must be seen to be adequately funded and that a level of ex ante and ex post funding is appropriate. However, the proposed levels of ex ante funding required should be reduced to reflect the consensus under the BRRD for insured deposits to be given priority in the creditor hierarchy. It should also reflect recent substantial increases in capital requirements, the proposed requirement for institutions to hold a minimum amount of loss absorbing capacity and the regulatory reform programme since the directive was proposed as these factors should significantly reduce the likelihood of the DGS suffering losses. Accordingly we support the Council’s proposed target level of 0.5% of covered deposits and oppose requirements for higher ex ante funds.

The target level of ex ante funding should be based on covered deposits as this reflects the liabilities that are insured. We therefore oppose the Parliament’s proposal to enable Member States to base the target level on eligible rather than covered deposits as this does not reflect the risk to the DGS.

We support the proposed amendments to permit part of the fund's available financial means to be in the form of payment commitments backed by collateral and propose that the maximum proportion of commitments of the available financial means should be increased, in particular to assist those DGSs which will need to transition from ex post funding.

We support the harmonisation of the contribution assessment methodology to ensure a level playing field for banks within the Single Market and accordingly oppose flexibility for Member States to set different criteria for contributions.

A risk-based approach should be taken to the assessment of contributions. This should be based upon the risk of failure of the institution, which would be consistent with contributions being analogous to the premium for deposit insurance and therefore based on probability of default and the loss to the DGS given default. It would also reduce moral hazard, as required by Core Principle 2.

### Information-sharing and publicity

We support the proposal for information sharing between DGSs, provided that confidentiality is maintained, as this should assist with cross-border resolution and is required by Core Principle 7. We support the Council's proposed inclusion of Article 3(5b) clarifying the need to protect confidentiality.

We also support greater publicity of deposit insurance and provision of information to depositors. This is necessary to enhance understanding amongst depositors as emphasised by Core Principle 12.

### Supervision of DGS

We support the proposed requirement for DGSs to be subject to supervision and stress tests of their systems, backed up by EBA peer reviews. This should enhance confidence in the system.

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We very much hope that you find this analysis helpful and we would be very pleased to provide you and your staff with any additional information you might require. Please do not hesitate to contact any of us via the details listed below.

Yours sincerely,

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