Options and national discretions under the Deposit Guarantee Scheme Directive and their treatment in the context of a European Deposit Insurance Scheme

FINAL REPORT

A study prepared by CEPS in collaboration with Milieu Consulting SPRL for the European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union

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Abstract

In the European Union, the Deposit Guarantee Schemes Directive[1] adopted in 2014 sets out rules and procedures to ensure depositor protection and is a key step towards harmonisation of deposit insurance in the European Union. It contains 22 national options and discretions (NODs) which Member States may apply to reflect specific national circumstances.

The purpose of this study is to assess the respective national implementations of the NODs, including their practical impact on depositor protection, and to propose policy recommendations regarding their possible treatment under the European Deposit Insurance Scheme, under the assumption that the latter would take the form of a full insurance scheme.

The analysis of the NODs is based on extensive surveys and interviews with representatives of national deposit guarantee schemes and authorities, including national competent authorities, central banks, Ministries of Finance, and banks. Based on the above analysis of the NODs, this study proposes alternative approaches for 12 NODs and full harmonisation for 3 NODs. It also recommends that 2 NODs could be retained in their current form while 5 NODs could be eliminated.

Résumé

Au sein de l'Union Européenne, la directive relative aux systèmes de garantie des dépôts (SGD) [2] adoptée en 2014 définit les règles et procédures visant à garantir la protection des déposants et constitue une étape essentielle vers l'harmonisation de la garantie des dépôts dans l'Union Européenne. La directive contient vingt-deux options et facultés nationales (OPTION) que les États membres peuvent appliquer pour refléter des situations nationales spécifiques.

Le but de cette étude est d'évaluer ces options et facultés nationales, y compris leur impact pratique sur la protection des déposants. Cette étude vise également à formuler des recommandations de politique générale sur leur traitement éventuel dans le cadre de la mise en place d'un système européen de garantie des dépôts, en supposant toutefois que ce dernier prenne la forme un système de garantie complet.

L'analyse des options et facultés prévues par le droit de l'Union repose sur des enquêtes et des entretiens approfondis avec des représentants des systèmes de garantie des dépôts nationaux, des autorités nationales compétentes, des banques centrales, des ministères des finances et des banques. Sur la base de cette analyse, cette étude propose des approches alternatives pour douze OPTIONS ainsi qu'une harmonisation complète pour trois OPTIONS. Elle recommande également de conserver deux OPTIONS sous leur forme actuelle, tandis que cinq OPTIONS pourraient être éliminées.

[1] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

[2] Directive 2014/49/UE du Parlement européen et du Conseil du 16 avril 2014 relative aux systèmes de garantie des dépôts

1 Introduction

The first Deposit Guarantee Schemes Directive (DGSD) was adopted in 1994. Targeted amendments were introduced in 2009 in order to ensure a uniform coverage level of EUR 100 000. A recast DGSD adopted in 2014 significantly strengthened depositor protection by requiring faster pay-outs, more robust funding and increased information disclosure. The recast DGSD also contains a transitional provision whereby the European Commission should '*submit a report, and, if appropriate, a legislative proposal to the European Parliament and the Council setting out how DGSs operating in the Union may cooperate through a European scheme to prevent risks arising from cross-border activities and protect deposits from such risks'*.

Common deposit insurance constitutes one of three pillars of the Banking Union. While the first two pillars, i.e. the Single Supervisory Mechanism (SSM)[3] and the Single Resolution Mechanism (SRM)[4] are operational, the Commission proposal for a Regulation to establish deposit insurance for the Banking Union[5] of November 2015 did not gain sufficient support in the Council and the European Parliament to progress further than the technical level, revealing differences of opinion about how to implement the longer-term Banking Union vision[6].

A European Deposit Insurance Scheme (EDIS) would be an essential basis for trust in the single currency as every depositor should have full confidence that deposits enjoy the same level of protection, regardless of where the account is held. In the absence of EDIS, depositor protection remains national, delivered by national deposit guarantee schemes (DGSs) and funds.

In practice, DGSs can perform three functions. First, they protect depositors. Second, DGSs are meant to limit the possibility of systemic bank runs and thus increase banking stability. Third, they can allow a bank to be resolved and, hence, minimise the costs for taxpayers. In the EU, the first and second functions have been at the core of the DGS system.

The rationale for the DGSD was that national DGSs, which are the essential counterpart to the prudential supervision of banks operating in the same financial market in the event that one of them fails, exhibit a minimum degree of harmonisation. Under the DGSD, each Member State is required to introduce laws to ensure i) that one or more DGSs are set up on their territory and that all banks are required to join them and, ii) a harmonised level of protection of EUR 100 000 per depositor per bank. The harmonised protection of depositors is built around 4 criteria: coverage, identification of beneficiaries, swift repayment and funding of the scheme. According to the DGSD:

- The limit of EUR 100 000 per depositor per bank applies to the aggregated accounts of one depositor at the same bank. For joint accounts (e.g. belonging to a couple), the limit applies to each depositor.
- DGSs protect deposits of individuals and companies irrespective of their size.

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[3] Council Regulation (EU) No. 1024/2013.

[4] Under the Regulation (EU) No. 806/2014, the European Central Bank assumes the role of a single supervisor of the significant banks in the Banking Union. National supervisory authorities still play a role for less significant banks. The Single Resolution Board manages the Single Resolution Fund (SRF) and it is tasked to ensure a smooth resolution of financially distressed banks, with the minimum possible impact on taxpayers' money and the overall European economy.

[5] Proposal of a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme (EDIS), COM (2015) 586 final, 24.11.2015.

[6] European Commission (2017), Communication to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on Completing the Banking Union.

- Repayment deadlines are gradually reduced from the current 20 working days to 7 in 3 phases: i) 15 working days from 2019, ii) 10 working days from 2021 and, iii) 7 working days from 2024. Member States are free to introduce faster pay-outs more quickly.
- To ensure more robust financing, DGSs are required to raise *ex ante* contributions from banks, reflecting individual banks' risk profiles, i.e. riskier banks must pay more. By 3 July 2024, the available financial means of a DGS must reach a target level of at least 0.8 % of the amount of the covered deposits of its members. Combining the fire power of all EU DGSs, this corresponds to about EUR 65 billion based on the total covered deposits in the EU at the end of 2018. The majority of the funds (EUR 48.5 billion) belongs to national DGSs in the Banking Union.

The DGSD has been a key step in reducing the differences between Member States. Nevertheless, it still leaves some room for discretion at national level. In addition, the DGSD contains several national options and discretions (NODs) and Member States may choose to apply some or all of them if they deem it appropriate to reflect their respective national circumstances. In the context of this study, in total 22 NODs have been identified and analysed as to how they are applied and/or used, and in terms of their practical impact.

These NODs can be categorised into three groups: NODs relevant for (i) the coverage and the pay-out procedure, (ii) contributions and the available financial means and (iii) transitional provisions (see Table 1.1).

Table 1.1 Overview of NODs in the DGSD

NOD	National option and discretion	DGSD
	Coverage level and pay-out procedure	Article
1	Coverage of pension schemes	5(2)(a)
2	Deposits held by small local authorities	5(2)(b)
3	Exclusion of deposits to pay off a loan on private immovable property	5(3)
4	Temporary high balances relating to certain transactions	6(2)
5	Old-age provision products and pensions	6(3)
6	Treated as single depositor	7(2)
7	Set-off of depositor liabilities	7(5)
8	Exclusion of deposits fulfilling a social purpose	7(8)
9	Longer repayment period for certain deposits	8(3)
10	Deadline on validity of repayment claims	9(3)
	Contributions and available financial means	
11	Payment commitments	10(3), para. 1
12	Contributions into existing mandatory schemes	10(4), para. 1,2
13	Financing of failure prevention measures	11(3)
14	Financing of measures to preserve access of covered deposits	11(6)
15	Voluntary lending between DGSs	12(1)
16	Lower contributions for low-risk sectors	13(1) 2nd subpara

NOD	National option and discretion	DGSD
17	Lower contributions for members of IPSs	13(1) 3rd subpara
18	Use of a uniform risk-weights for banks affiliated to central bodies	13(1) 4th subpara
19	Minimum contribution	13(1) 5th subpara
20	Participation by branches from outside the EU	15(1) 2nd subpara
	Transitional provisions	
21	Repayment periods longer than 7 working days	8(2)
22	Coverage of deposits until the maturity date	19(1)

Source: European Commission

In practice, the NODs should address the specificities of each individual Member State. However, specific discretions can impair the proper functioning of the Single Market, pose risks to the financial stability of the EU and lead to distortion in the scope and level of depositor confidence, as well as impact the level of funds available for pay-outs. Therefore, they must be adequately justified and, some of them, potentially redesigned.

The remainder of the study first provides a brief overview of the different forms of a possible EDIS in Chapter 2 and of the methodology used for the assessment of the NODs in Chapter 3.

The core of the study is the analysis of the NODs set out in Chapters 4, 5 and 6, which focuses on (i) the application of each individual NOD in practice, (ii) its impact in different Member States on the risk profile of the national DGS, the level playing field, depositor confidence and relevance of the NOD in each Member State, and (iii) the assessment of a reasonable way forward for each option in the context of an EDIS that takes the form of a full insurance scheme.

Finally, Chapter 7 draws the main conclusions from the assessment of all the NODs and provides an overview of the recommended policy mix in the context of EDIS.

2 A European Deposit Insurance Scheme

The overarching goal of the three pillars of the Banking Union (common supervision, resolution and deposit insurance) is to break the 'doom loop' link between the banks and domestic governments, whereby failing banks lead to a failing state and unsustainable public debt leads to insolvent banks, as exposed in the European sovereign debt crisis in 2009.

The Banking Union project is not yet completed. As DGSs remain national, domestic government budgets also remain exposed to risks in case domestic banks fail, as ultimate guarantors of the national DGSs.

A European Deposit Insurance Scheme (EDIS) is key to breaking this loop between the banks and their sovereigns. The experience of the US where the Federal Deposit Insurance Corporation (FDIC), responsible for both deposit insurance and resolution, proved to be a powerful and effective tool in dealing with bank failures, confirms this logic.

However, in the EU, the political consensus is far from being reached. One of the main arguments against a common insurance fund is the need to reduce risk in the banking system before designing mechanisms for risk sharing. Some of these risks are seen as associated with differences in the insolvency frameworks, in the legal and tax systems[7], but also in the structure of the national banking sectors. In particular, differences in the level of concentration of the sector, the existence of stakeholder banks (cooperatives, savings and public banks), and the presence of third country branches and subsidiaries can lead to different probabilities of pay-out and losses in case of a pay-out across Member States.

To address the divergent concerns, various forms of a common deposit insurance scheme for the Banking Union members have been explored and proposed. They can be categorised as four options:

- Full insurance scheme;
- Co-insurance scheme;
- Re-insurance scheme;
- Mandatory lending scheme.

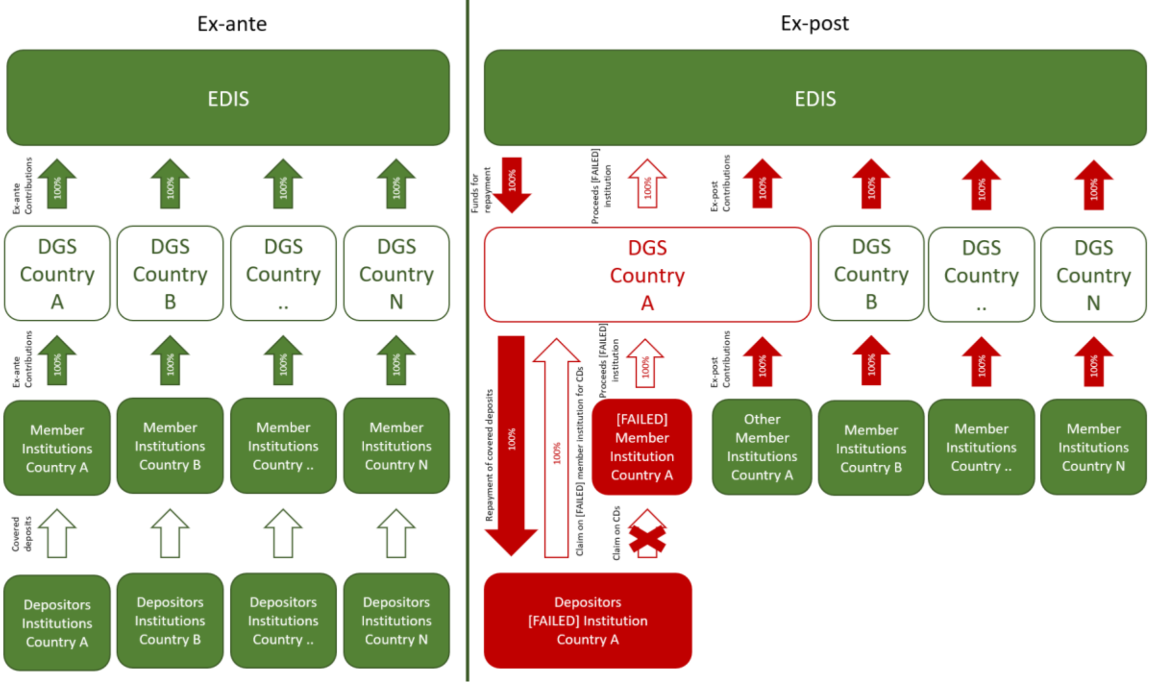
[7] See for instance A. De Aldisio, G. Aloia, A. Bentivegna, A. Gagliano, E. Giorgiantonio, C. Lanfranchi and M. Maltese (2019), Towards a framework for orderly liquidation of banks in the EU, Notes on Financial Stability and Supervision, Banca D'Italia.

2.1 Full insurance scheme

A full insurance scheme provides a full funding of the liquidity needs of the DGSs and covers all losses arising from a pay-out event or a request to contribute to resolution.[8] Under this scheme, the funds of the DGSs are merged into EDIS, but the national schemes still exist for the actual collection of funds and pay-out procedures. Pooled funds would be collected directly from the member institutions by the national DGSs. A common fund would manage such funds to ensure uniform and rapid governance in the event of a crisis.

The contribution to the common fund is calculated based on the risk of the domestic (not Banking Union) banking system that contributes via the national DGS.

Figure 2.1 Graphic illustration of full insurance scheme



Note: The figure above shows the (simplified) financial relations of EDIS and the national DGSs under a full insurance scheme. The figure on the left-hand side illustrates the relations during normal times, i.e. before a pay-out event, while the figure on the right-hand side illustrates the situation in a regular pay-out event, i.e. no preventive or alternative measures. In this exemplary case, a member institution in country A failed. Only the actors financially involved have been included in the graphic illustration.

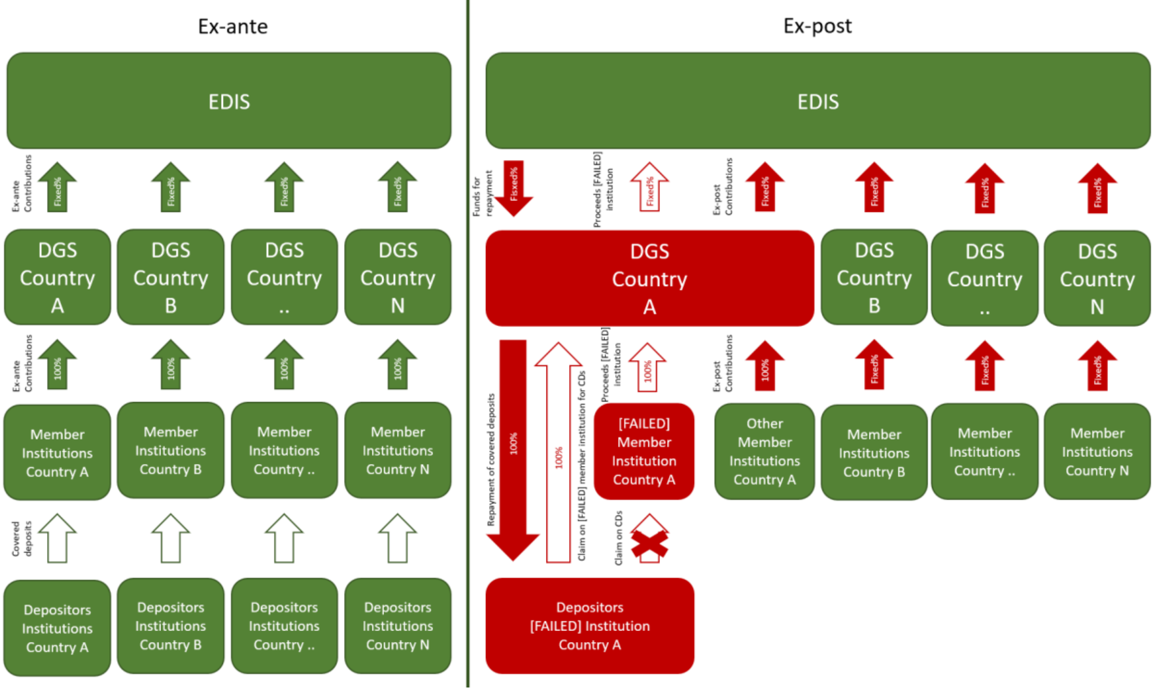
Source: CEPS elaboration

[8] While liquidity provisions take place immediately, losses are typically known only sometime after the pay-out event, in some cases even years, once the process of the recovery is concluded.

2.2 Co-insurance scheme

Under this scheme, DGSs remain national and each of them would contribute to a common fund from the 'first euro'. This means that unlike re-insurance (see below), where national resources must be depleted first, the common fund participates (in a given share) to the provisions of the DGS . Indeed, national DGSs transfer part of the contributions collected from the member institutions to the central fund. Participating DGSs can request both liquidity and loss cover from the pooled funds in the event of a pay-out or contribution to resolution. The pooled funds and the national DGS should cover the same percentage of the loss.

Figure 2.2 Graphic illustration of co-insurance scheme



Note: The figure above shows the (simplified) financial relations of EDIS and the national DGSs under a co-insurance scheme. The figure on the left-hand side illustrates the relations during normal times, i.e. before a pay-out event, while the figure on the right-hand side illustrates the situation in a regular pay-out event, i.e. no preventive or alternative measures. In this exemplary case a member institution in country A failed. Only the actors financially involved have been included in the graphic illustration.

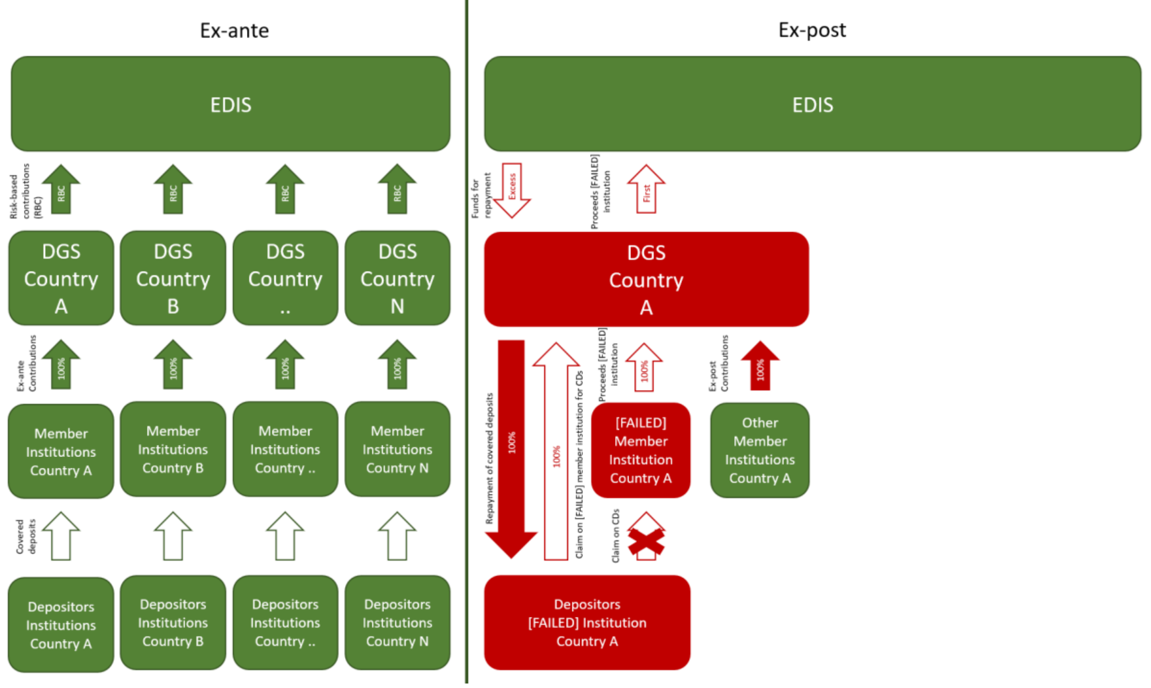
Source: CEPS elaboration

2.3 Re-insurance scheme

Under this scheme, DGSs would remain national and each of them would contribute to a common fund. Re-insurance implies that the access to the pooled funds can only be possible once the resources of the national DGS have been depleted. National DGSs would collect funds through the transfer of part of the risk-based contributions collected from the member institutions. A common fund would manage the pooled funds to ensure uniform and rapid response in the event the common fund is called upon.

The contribution to the common fund is calculated based on risk of the domestic (not Banking Union) banking system that contributes via the national DGS.

Figure 2.3 Graphic illustration of re-insurance scheme



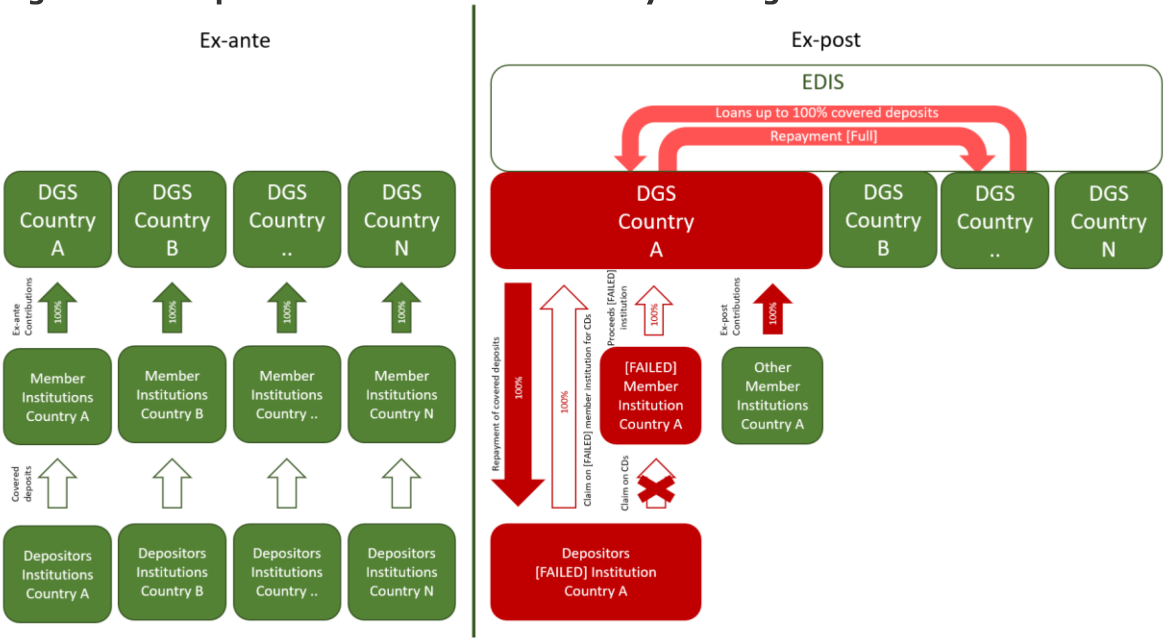
Note: The figure above shows the (simplified) financial relations of EDIS and the national DGSs under a re-insurance scheme. The figure on the left-hand side illustrates the relations during normal times, i.e. before a pay-out event, while the figure on the right-hand side illustrates the situation in a regular pay-out event, i.e. no preventive or alternative measures. In this exemplary case a member institution in country A failed. Only the actors financially involved have been included in the graphic illustration.

Source: CEPS elaboration

2.4 Mandatory lending scheme

Under this scheme, an EDIS would be based on the system of mandatory lending between the national DGSs. Funds would be disbursed in the form of loans with a given maturity and potentially carry interest payment. The DGS funds would remain at national level, with procedures for the collection and use of disbursed funds. The maximum amount to be disbursed by each national DGS could be quantified based on total covered deposits of the lending DGSs, with possible caps to ensure the national DGSs retain enough funds for their prospective pay-outs.

Figure 2.4 Graphic illustration of mandatory lending scheme



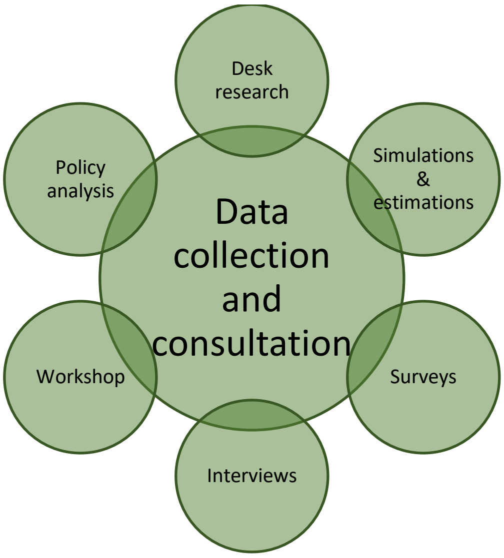
Note: The figure above shows the (simplified) financial relations of EDIS and the national DGSs under a mandatory lending scheme. The figure on the left-hand side illustrates the relations during normal times, i.e. before a pay-out event, while the figure on the right-hand side illustrates the situation in a regular pay-out event, i.e. no preventive or alternative measures. In this exemplary case a member institution in country A failed. Only the actors financially involved have been included in the graphic illustration.

Source: CEPS elaboration

3 Methodology

This chapter provides an overview of the various data collection tools and the stakeholder consultation involved in the analysis of the NODs (see Figure 3.1). The tools include i) desk research, ii) simulations and estimations, iii) surveys, iv) stakeholder interviews, v) a validation workshop and, vi) policy analysis.

Figure 3.1 Overview of the data collection and consultation methods



Source: CEPS elaboration

The following stakeholders were consulted to inform the sections regarding the motivation, relevance and impact of NODs as well as their treatment in the context of EDIS:

- The **national DGSs** are key stakeholders for this study. In the EU, there is generally one DGS per country. However, Germany has 4 DGSs and Austria, Cyprus, Italy, Lithuania, Poland and Portugal each have 2 DGSs;
- The **Ministries of Finance** across the EU Member States were consulted because they are responsible for the transposition of NODs;
- The **Single Resolution Board (managing the Single Resolution Fund - SRF)** may require contribution from a DGS in the context of a resolution and provides important insights as regards the similarities between the DGS and the SRM (e.g. irrevocable payment commitments, the least-cost test);
- The **European Banking Authority** provides common guidelines for the calculation of banks' contributions to the DGS and use of payment commitments. Moreover, the EBA is also an important source of information, publishing annual statistics on the total covered deposits and available financial means as well as notifications of DGS interventions;
- The **European Central Bank** and the **National Competent Authorities** are part of the single supervisory mechanism and have a central role in the prevention of bank failures; and,
- **Member institutions of national DGSs (banks)** provide the deposit accounts covered by the national DGSs and contribute to these DGSs to benefit from the DGS' guarantee. To enable the calculation of contributions and pay-outs, member institutions must provide data to the DGS.

The consultation strategy used for different stakeholder groups, i.e. participation in a survey, interviews and validation workshop, considered the different role of each of these stakeholders in the use of the NODs and their knowledge of specific aspects of the NODs, as well as other practical considerations.

3.1 Desk research

A thorough desk research was necessary for a well-grounded and evidence-based analysis which was also used as a basis for the preparation of the well-informed consultation strategy.

The desk research was carried out by national experts who identified all relevant documents based on common guidelines and template in order to systematise the information collected. They focused on the legal analysis, targeted literature review, collection of publicly available data and policy analysis. Firstly, all the legislative acts relative to the transposition and implementation of 22 NODs in the DGSD were reviewed and analysed across all 28 Member States. The aim was to obtain a comprehensive overview of their implementation at national level. A similar exercise was also carried out for the US, to explore whether provisions similar to those included in the NODs exist in the context of the Federal Deposit Insurance Corporation (FDIC).

Secondly, the following documentation was also reviewed: a conformity assessment of the DGSD in the Member States, most up-to-date legal, policy and academic research relevant for assessing the impact of the application NODs across Member States. This included: annual reports and websites of national DGSs, banking supervisory authorities and resolution authorities, information published by the International Association of Deposit Insurers (IADI), IMF working papers, ECB reports and EBA deposit guarantee schemes data and most importantly, publicly available data concerning pay-out events as well as specific features of Member States' banking systems. This required intensive searching of quantitative information dispersed over many websites.

The analysis of the implementation and use of NODs across Member States considered the motivation and rationale underpinning their use and the specific national context in each Member State. The study team also highlighted both the divergences in understanding NODs and commonalities in approaches chosen by each Member State, and specific issues encountered by the national authorities in implementation.

The results of the desk research are referred to throughout the study for a comparative analysis of each NOD.

3.2 Simulations and estimations

Simulations and estimations have been applied whenever accurate information about the quantitative impact of the NODs was not available or insufficient, e.g. where the necessary information to analyse the NODs could not be retrieved from the primary (collected by CEPS for the purposes of the study) or secondary data sources (e.g. existing databases) and no or only fragmented information could be inferred from practical experiences so far.

In practice, simulation and estimation techniques are used and tailored for the respective NODs in the analysis; particularly in the case of the NOD dealing with temporary high balances (THBs). The need for such approach is justified by the concurring lack of information and high potential relevance, since this NOD has high importance for depositor confidence.

The methodology for the used simulations and estimations are described in the sections presenting the results. The output of the simulations and estimations are used to assess the relative importance of each NOD across Member States and compared to other NODs.

3.3 Surveys among banks and DGSs

Two additional surveys were conducted to fill information gaps that the desk research could not complete. The two surveys targeted national DGSs and banks, respectively. Their objective was to collect the information, mostly of quantitative nature and assess the impact of the NODs.

31 DGSs from 27 EU Member States took part in one survey: only Croatia did not participate, while four German DGSs and the two Italian DGSs did. The survey was tailored to cover all NODs relevant from the perspective of a DGS. 48 banks took part in the other survey. They provided information about their contributions and covered deposits across 20 Member States. The survey for banks was tailored to cover the NODs relevant from the point of view of member institutions.

The results of the surveys have primarily been used for determining: i) whether the NODs are considered for the calculation of risk-based contributions; ii) the overall importance of each NOD expressed in percentage of covered deposits; and iii) the potential relevance of each NOD across Member States.

3.4 Stakeholder interviews

Two rounds of interviews have been conducted, first at the initial stage of the research to focus on the transposition of the Directive and the practical experience, to complement the information acquired by the national experts through desk research and second, semi-structured interviews at a later stage of the project, to contribute to the assessment of the impact of the NODs and policy options.

The large majority of the initial interviews (in total 31[9]) were conducted by phone, while a few were conducted in person or in writing. At a later stage, interviews (in total 20[10]) were mostly conducted by phone, and only few in person and in writing in order to (i) clarify the practical experience with the NOD; (ii) gather missing information assess the impact of specific NODs under the criteria within the scope of the study; and (iii) evaluate the effectiveness of the different policy options when assessing the NODs in the context of EDIS.

A common guideline was prepared to carry out the semi-structured interviews. The guideline was designed flexibly enough to allow for exploring and probing specific issues that came up during the analysis and adapted to focus on the relevant NODs in each Member State and for each stakeholder consulted. The interviews were used throughout the study to complete factual information regarding the NODs and to conduct the impact analysis and the policy analysis.

3.5 Validation workshop

A validation workshop was organised at CEPS premises to present both factual information and an analysis of selected NODs as well as to collect feedback for the purposes of the optimal policy mix. 14 stakeholders participated, representing national

[9] This includes 7 interviews with Ministries of Finance, 10 with DGSs, 7 with national central banks and 7 with national competent authorities.

[10] This includes 13 interviews with DGSs, 3 with member institutions, 1 with national competent authority, 1 with a Ministry of Finance, EBA, and SRB respectively.

DGSs, national competent authorities, member institutions, the ECB (SSM), the SRB, and DG FISMA.

The workshop focused on eight selected NODs considered highly important in terms of impact and country relevance. For each of them, following a short presentation by the research team, experts provided useful views to validate the main findings on the relevance of the selected NODs, the need to integrate/complement the information collected and on the feasibility of a number of policy options. This clarified the weighting of each of the selected policy options.

3.6 Policy analysis

The policy analysis constituted the last step in the process. 4 possible policy options were formulated for each NOD: i) retaining the NOD in its current form, which is considered the baseline policy option, ii) eliminating the NOD, iii) an alternative option is formulated taking into account the limits and the strengths of other policy options, and the specific experience of Member States in their implementation, and, iv) full harmonisation of the NOD in the context of EDIS, which is assumed to take the form of a full insurance scheme.

Each policy option was then examined and evaluated according to four criteria drawn from the better regulation framework: efficiency, effectiveness, coherence and subsidiarity.

Overall, the policy analysis builds on the information and analysis obtained in the preceding stages of the project.

3.7 Limitations

The major difficulty encountered in the assessment of applicable legislation at national level was public information being unavailable. In practice, besides the legal transposition of the NOD, there is almost no information available about the implementation of the NODs, their use in practice and their impact. In several organisations, only senior officials with long experience know the rationale and technical aspects of the NODs. In some Member States, national experts could only access limited information (particularly in the case of Croatia, Germany and Portugal).

In addition, the transposing legislation is often worded in a generic manner without any details on the expected practical implementation. The absence of pay-outs in many Member States since the implementation of the DGSD added to the uncertainty about how Member States would envisage using the NOD in practice. In several cases, implementing regulations have not yet been developed to inform the administrative and operational aspects.

Furthermore, a list of pay-outs, following bank failures, that have occurred so far is available on the EBA website, but this list is incomplete. More detailed information on pay-outs was difficult to obtain and a careful review of reports and websites, available only in the national language, was necessary.

Lastly, given the high degree of specificity of the topics, not all stakeholders surveyed and interviewed had sufficient knowledge to respond to the questions asked, as they did not always have a full picture on all the NODs. In some cases, this required arranging interviews with additional specialised personnel within the same organisation.

These limitations were partially addressed by two additional quantitative surveys targeting DGSs and banks and additional interviews, which proved successful in filling the information gaps. However, as it was also confirmed during the validation workshop with high-level experts, quantitative information on some of the NODs appears unavailable.

4 Coverage level and pay-out procedure

This section provides a comprehensive overview of all NODs related to the coverage level and pay-out procedure. It does so by: i) assessing the implementation of the NOD across Member States; ii) estimating the impact of the NOD on the risk profile of the national DGS, impact on the level playing field, impact on depositor confidence and relevance for Member States; and, iii) identifying options in the context of EDIS to assess whether the NOD should be retained, eliminated, partially harmonised or fully harmonised.

4.1 NOD 1 – Coverage of pension schemes

Summary: NOD 1 - Coverage of pension schemes				
DGSD [Article 5(2) a]				
Member States may ensure that the deposits held by personal pension schemes and occupational pension schemes of small or medium-sized enterprises are protected up to EUR 100 000 as laid down in Article 6(1) DGSD.				
Transposed into national law [5 Member States]				
Cyprus, Ireland, Luxembourg, Portugal and the United Kingdom				
Practical experience so far [2 Member States]				
Cyprus and Ireland				
Importance				
Up to 1.4 % of covered deposits[11]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	-	-/+	+	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+/-**	+/-	+	-
Efficiency	**-**	+	+	-
Coherence	**-**	+	+/-	+
Subsidiarity	**+**	-	-	-

[11] Based on actual or estimated amounts provided by 5 member institutions in the Member States that have transposed the NOD in their national legislation, the share of deposits covered under this NOD is likely to be insignificant. The deposits concerned range between 0.0% and 0.34% of the total covered deposits in the respective Member States. However, if one also considers Member States that have not transposed the NOD, the amounts can be higher, up to 1.4% of covered deposits of particular institutions. In practice, it cannot be ruled out that that there are member institutions of which the concerned deposits account for a higher share of covered deposits.

4.1.1 Implementation across Member States

5 Member States[12] have transposed this option. This could suggest that these countries are particularly concerned about the protection of pension schemes of small or medium-sized enterprises (SMEs)[13] and consider that bank deposits play a major role in such schemes' investment strategies in the case of SMEs.

4.1.1.1 Motivations to transpose and use the NOD

The main reasons for protecting deposits created from personal pension schemes and occupational pension schemes of SMEs are the importance of pension funds for old-age income provision and the financial illiteracy of SMEs.

In Cyprus, following the financial crisis of 2012-2013, people became concerned over losses of pension schemes. SMEs are often very small and do – in general – not have expertise in investing; they therefore tend to resort to deposits. Their protection is important as part of a wider social policy, beyond depositor confidence. For these reasons, Cyprus opted to use the full NOD and cover personal and occupational pension schemes operated by SMEs.

Similarly, Luxembourg chose to guarantee those pensions schemes as part of a general objective of enhanced protection for the savings of individuals with low pensions, which is often the case of small SMEs. However, the amount of deposits concerned is relatively small, as they do not cover investment products but only cash deposits.

In the UK, the following pension schemes are eligible for protection under the DGSD: small self-administered schemes, occupational pension schemes of SMEs, stakeholder pension schemes, and personal pension schemes. The UK also decided that certain types of pensions, including the occupational pension schemes of SMEs and money purchase schemes (which is a form of personal pension scheme), are to be compensated on the basis of each beneficiary of the pension, who has a separate entitlement to the compensation.

Ireland decided to cover self-administered pension schemes (SSAPs) because they are small-scale (12 or fewer members), usually managed by an individual and are not investment vehicles. Unlike in other pension schemes, members invest the money themselves instead of investing in a life insurance or via an asset manager.

Portugal limited the scope of protection to personal and occupational pension funds whose members are SMEs. The NOD was never used but in the event of a pay-out, the scheme (neither the SMEs nor the individuals) would receive the compensation. The DGS would have to make a case-by-case assessment on the eligibility based on the Single Customer View (SCV). The DGS would rely on information from member institutions that are required to identify the schemes holding the deposits and mark them as covered. However, only some of the deposits are considered in the calculation of contributions to the DGS.

[12] i.e. Cyprus, Ireland, Luxembourg, Portugal, and the UK.

[13] SMEs would be defined as per Recommendation 2003/361/EC of 6 May 2003 of the Commission, i.e. enterprises with less than 250 employees and turnover of less than EUR 50 million or a balance sheet total below EUR 43 million.

4.1.1.2 Practical experience with the NOD so far

No information is available about the use of the NOD in a pay-out. However, some banks in Ireland and Cyprus reported that they include such deposits in the calculation of covered deposits.

4.1.2 Impact of the NOD

The NOD to extend the protection to certain pension schemes mainly impacts the risk profile of the DGS and the depositor confidence. The NOD could have a slight negative impact on the level playing field and its relevance differs substantially across Member States.

4.1.2.1 Risk profile of the national DGS

The extended coverage would imply an increased exposure of the DGS for which there is no adequate contribution. Based on the data provided by member institutions in different Member States, which have transposed the NOD but also those that did not, the size of these deposits ranges between 0.0 % and 1.4 % of covered deposits in these institutions.

In practice, DGS have little information about this category of deposits, while some member institutions own more accurate data than others when tracking the schemes.

For example, according to the DGS in Portugal, the monitoring of the covered deposits did not highlight any substantial change in the amounts after the adoption of the NOD (which did not exist before). For the Portuguese member institutions, the NOD does not lead to any additional deposits covered. In addition, while only some of them indicated that the NOD is considered in the calculation of the risk-based contribution, others either did not know or considered that the NOD is not reflected in the calculation.

4.1.2.2 Level playing field

Such small schemes are unlikely to move to another Member State, which would offer better protection. The NOD seems closely linked to each particular Member State. While the impact on the level playing field across the EU would appear limited, the impact on the level playing field between member institutions within the same Member State would depend on whether the latter consistently considers such deposits in the calculation of the contributions.

4.1.2.3 Depositor confidence

The extended protection to additional categories of deposits increases depositor confidence in the financial system in particular in view of the importance of pension savings when administered by non-professionals. Like NODs 2 and 4, this NOD aims to protect vulnerable depositors, which in rare events can be exposed to shocks with very negative impact.

4.1.2.4 Relevance for respective Member States

In the absence of available data, it is difficult to assess the relevance in each country. The relevance depends primarily on the extent that personal pension schemes and occupational pension schemes of SMEs are used and the investment policy of these schemes. Indeed, these kinds of pension products can be held with a bank, but also insurance companies, asset managers and pension funds. Moreover, when the funds belonging to the schemes are held with a bank, the scope of the coverage is important. In Cyprus and the UK, the higher scope of protection could imply larger covered amounts.

4.1.3 Options in the context of EDIS

Given the specificity of the pension schemes under protection and the general lack of data regarding this NOD transposed in only few Member States, the alternative (Option 3) seems the most sensible. This option considers (i) maintaining the coverage of these pension schemes, (ii) including these deposits in the covered deposits to determine the risk-based contributions and (iii) extending the coverage for occupational pension schemes of SMEs. Indeed, for these occupational pension schemes of SMEs, which combine contributions from several individuals, the individual holders are currently collectively covered up to EUR 100 000. This alternative option considers repaying each individual holder up to EUR 100 000. It would ensure that, on the one hand, the pension savings of potentially financially illiterate SMEs are protected, and on the other hand, that there is no difference in the coverage between personal and occupational pension schemes from the point of view of the private individual. Moreover, these deposits would be considered like regular covered deposits, in both the coverage and the risk-based contributions. In this context, this would not impact EDIS in terms of potential increased administrative burden or financial exposure because (i) the deposits would be reflected in the calculation of contributions and (ii) the settlement of depositor claims would remain in the competence of national DGS.

4.1.3.1 Option 1: Retain in current form

This option considers maintaining the current NOD, i.e. the deposits that are held by personal and occupational pension schemes of SMEs would continue to be protected up to EUR 100 000 in the Member States that transposed this NOD.

Effectiveness: Retaining the NOD in its current form would accommodate the country-specific objectives to extend DGS protection to deposits held by certain pension schemes of SMEs. The impact on the risk profile of the DGS would be limited, if such deposits are properly identified and reflected in the risk-based contributions.

Efficiency: Maintaining the implementation and the use of the NOD in the Member State that chose to apply the NOD is the most efficient way to achieve the objective of protecting such deposits. This is due to existing local knowledge of the DGS about the SMEs concerned and the existing practices of domestic banks. With EDIS in place, there would be limited impact on potential complexity and administrative burden as the deposits would be still identified by the national DGS in the same way as other deposits.

Coherence: Retaining the NOD in its current form would have limited impact on the coherence of the regulatory framework under EDIS. The NOD is only applied in a few countries, where the volume of covered deposits and hence, financial exposure is impacted; yet, any negative impact would be mitigated if such deposits are consistently reflected in the risk-based contributions.

Subsidiarity: Given the limited application of this NOD, specific to only a few Member States, retaining this option would also appear sensible from a subsidiarity perspective.

4.1.3.2 Option 2: Eliminating

This option considers eliminating the NOD in order to exclude deposits held by personal and occupational pension schemes of SMEs from the regular coverage.

Effectiveness: Eliminating this NOD would mean lowering protection to a specific category of deposits. With EDIS in place, this option could be justified by potentially lowering financial exposure for EDIS. However, eliminating this NOD would affect depositor confidence.

Efficiency: This would increase the efficiency of the overall functioning of EDIS in terms of achieving a uniform level of depositor confidence across the EU.

Coherence: Coherence of the regulatory framework across countries would increase by further reducing the existing fragmentation concerning few countries in terms of depositor protection.

Subsidiarity: With EDIS in place, eliminating this NOD could be perceived as negatively impacting the subsidiarity principle relative to the pre-existing situation in Member States where the NOD was applied.

4.1.3.3 Option 3: Alternative

Under this option, the NOD could distinguish between personal and occupational pension schemes of SMEs when considering the limit of EUR 100 000: unlike the personal scheme, occupational pension schemes of SMEs, which combine contributions from several individuals, could be compensated by repaying each individual holder up to EUR 100 000 in addition to its regular coverage. If the NOD is applied in a Member State, the deposits should always be added to the covered deposits, to determine the base for the risk-based contributions.

Effectiveness: This option under EDIS would contribute to effectiveness in achieving the objective of enhanced depositor confidence in the same way as the NOD, which extends the scope of protection to a specific category of depositors saving for old age. In the case of occupational schemes with many members (up to 250[14]), the EUR 100 000 of total coverage would otherwise result in a very small entitlement for each individual member in the event of a pay-out. Such an approach would impact the risk profile of the DGS, whose exposure would be increased, unless such deposits were already identified as deposits with absolute entitlement and reflected in risk-based contributions.

Efficiency: The distinction between personal and occupational schemes would not have a significant impact on the efficiency of the system, relative to the option of retaining the NOD in its current form. On the one hand, since the same principle is applied across all Member States, the process would be easier; on the other hand, in the event of a pay-out the identification of the members of the scheme could be more burdensome.

Coherence: This option would strengthen the coherence of the system with a view to achieving a uniform level of depositor protection.

Subsidiarity: This option would not limit the ability of Member States to decide not to protect such deposits. Given the limited transposition, overall, of the NOD,subsidiarity is likely to be negatively affected.

[14] SMEs should be defined as per Recommendation 2003/361/EC of 6 May 2003 of the Commission, i.e. enterprises with less than 250 employees and turnover of less than EUR 50 million or a balance sheet total below EUR 43 million.

4.1.3.4 Option 4: Full harmonisation

This option considers harmonising the NOD across Member States, which means that any personal pension schemes and occupational pension schemes of SMEs would be covered up to EUR 100 000.

Effectiveness: The full harmonisation of the NOD under EDIS would likely contribute to effectiveness in achieving the objective of enhancing depositor confidence in the financial system. However, the implementation would be challenging due to differences in the pension system. In addition, it would lead to higher costs for the DGS in the event of a pay-out.

Efficiency: The application of this NOD in all Member States would be burdensome by requiring the member institutions to either indicate *ex ante* the account of the occupational scheme as a beneficiary account or identify the absolute entitlement of (members of) pension schemes and the corresponding amount of covered deposits. Finally, the identification of the covered deposits could be more burdensome, when the pension schemes do not use separate accounts.

Coherence: This option would strengthen coherence under EDIS in terms of achieving a uniform level of depositor protection. However, differences in the relevant pension schemes are likely to persist and impact the overall coherence of the system.

Subsidiarity: This option would limit the ability of Member States to decide whether or not such additional deposits should be protected. The Member State would still have the scope to decide which pension schemes can operate in their system. Given the limited transposition, overall, of the NOD, subsidiarity would likely be negatively affected.

4.2 NOD 2 – Deposits held by small local authorities

Summary: NOD 2 - Deposits held by small local authorities				
DGSD [Article 5(2) b]				
Member States may ensure that the deposits held by local authorities with an annual budget of up to EUR 500 000 are protected up to EUR 100 000 as specified in Article 6(1) of the DGSD.				
Transposed into national law [7 Member States]				
Croatia, Czechia, Hungary, Latvia, Portugal, Spain and the United Kingdom				
Practical experience so far [1 Member State]				
Czechia				
Importance				
Up to 0.1 % of covered deposits[15]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	-	+/-	+	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating [Recommended]**	**Option 3: Alternative**	**Option 4: Full harmonisation**
Effectiveness	**+/-**	+/-	+	+
Efficiency	**-**	++	+	+
Coherence	**-**	++	+/-	-/+
Subsidiarity	**+**	-	-	-

4.2.1 Implementation across Member States

7 Member States transposed this NOD into national legislation.

There is no common definition of local authority across the EU, nor a clear definition of the relevant local authorities in each country. However, based on national sources and on the Council of Europe, in general the notion refers to counties, provinces, municipalities and city and town councils.

In the UK, the notion of local authority includes County or Shire Council, and a District, Borough or City Council and they are usually responsible for a range of services for

[15] The amount of deposits covered under this NOD is based on the estimated and actual amounts provided by member institutions in the Member States transposed the NOD in national law. In total, five member institutions provided amounts covered under this NOD, ranging between 0.00% and 0.11% of their covered deposits.

both individuals and business-like health services, social services, education, waste disposal, roads, etc. In the UK, there are 466 local authorities in total.

In Spain, the notion refers to the government and administration powers exercised by the 'local entities', namely municipalities (8 117) and provincial councils or other forms of supra-municipal bodies.

In Portugal, local authorities consist of 308 municipalities and 3 091 sub-municipalities/parishes (freguesias).

In Hungary, the local authorities refer to municipalities (3 175), cities, cities with county rank, capital city districts and counties.

In Czechia, local authorities correspond to 6 250 municipalities.

In Croatia, local authorities correspond to 429 municipalities, 106 towns and 21 cities.

In Latvia, local authorities correspond to 110 municipalities and 9 cities.

In view of the above, local authorities can be quite numerous. In Czechia, about 68 % of the 6 250 municipalities (i.e. municipalities with less than 2 000 inhabitants) had a budget below the limit of EUR 500 000 in 2014. In Spain, more than 600 local authorities are covered by the DGS. By contrast, in Latvia, although the NOD seems to have been introduced as a result of political pressure by the local governments, no local governments appear to have an annual budget below the EUR 500 000 threshold.

4.2.1.1 Motivations to transpose and use the NOD

This NOD intends to support small local authorities with limited budget, in view of the importance of their public functions. Therefore, the main underlying objective of this NOD seems to be the fulfilment of a social objective, rather than depositor confidence or stability of the financial system per se.

In Hungary, deposit protection is also extended to budgetary agencies of the local governments. The reason is to avoid that the freezing or loss of their deposits could hinder the exercise of the local authorities' public functions, which are often outsourced to their budgetary agencies, i.e. agencies set up by the local authorities themselves and financed from local budget.

In Portugal, this NOD (similarly to NOD 1 and 4) is intended to ensure proper protection of authorities to avoid any large impact on citizens who rely on the services such authorities provide. By contrast, the importance for the financial system as a whole is considered marginal.

In the UK, as a number of small parish and town councils are likely to fall within the scope of the NOD, it was considered beneficial to ensure their protection in the event of bank failure[16].

4.2.1.2 Budget threshold

The threshold of EUR 500 000 is calculated in different ways across the Member States that have transposed this NOD. Most of these Member States also provide guidance as to how to interpret this concept.

[16] See Consultation Paper 15/15, Depositor and dormant account protection — further amendments April 2015.

In Czechia, in order to identify local authorities, the limit of EUR 500 000 is based on their tax revenues instead of turnover. This is considered more appropriate than taking into account the budget of the territorial unit, which may fluctuate significantly over time. In particular, even small municipalities may have a higher budget, e.g. in connection with receiving a donation or subsidising a larger investment event, such as liquidation of damage after natural disasters. Every year, local authorities must demonstrate that their tax revenues are not above EUR 500 000, taking into account the different taxes, including physical and legal persons' income tax, VAT and real estate tax. The threshold is applied to the tax revenues in the previous two calendar years. In addition, the local authority must apply for a certificate of guarantee from the bank, because such deposits would be eligible for repayment upon the issuance of the certificate. The Ministry of Finance includes on its website information about tax income of all individual municipalities, so it is easy for the banks and the national DGS to check which authorities meet the tax revenue criterion.

The Bank of Spain also maintains a list of local authorities eligible for the coverage. The list is regularly updated based on the budget of the preceding year for the first three quarters of the year and the budget of the current year for the fourth quarter. Member institutions must use this information to notify the DGS about such deposits and must reflect them in their contributions. The criteria provisionally used for drawing up the list are as follows[17]: i) only those local entities that are classified as public administrations (local corporations subsector) have been included; ii) individual budgets of each main local entity and of each of its subsidiaries classified as public administrations (not consolidated) have been used; iii) for local entities with public accounts, the amount of initial forecasts, including both financial and non-financial forecasts, have been considered as 'budget'; and, iv) in the case of local entities classified as public administrations subject to private accounting, the net turnover has been used as a proxy for the budget.

In the UK, banks are required to take reasonable steps to check whether depositors qualify as small local authority depositors (with an annual budget of up to EUR 500 000) at least on an annual basis. According to the Financial Services Compensation Scheme (FSCS), the banks can rely on a 'reasonable estimate of their budget' provided by the local authorities themselves to identify which local authorities fall under the DGS. This information is then submitted in the Single Customer View (SCV) to the DGS and supervisory authorities (PRA). When it is not possible to determine if a local authority is eligible, i.e. if it is not possible to determine whether the budget is under EUR 500 000, the bank should treat it as a public authority, hence not eligible under the deposit guarantee scheme[18].

In Croatia, the relevant threshold refers to the annual budget of the previous calendar year, calculated according to the Act on Budget.

In Latvia, the annual budget is calculated based on the planned expenses for the current year.

In Portugal, there is no list of relevant authorities and no specific recommendations exist as to how to calculate the budget. Member institutions are required to check the eligibility and mark the deposits of eligible small local authorities as 'covered'. The latter have signalled to the DGS the difficulty of tracking relevant authorities, not least due to the volatility of the budget indicator. There are currently exchanges between the DGS and the national central bank on how to overcome these practical challenges. In the

[17] Bank of Spain, Methodological note on Deposits constituted by local entities with a budget equal to or less than EUR 500 000.

[18] FSCS Guide to Single Customer View, updated on 27 March 2017, p. 28.

event of a pay-out, the DGS will assess the entitlement to the repayment of covered deposits based on the Single Customer View.

4.2.1.3 Practical experience with the NOD so far

In Czechia, the NOD was used in 2016 and some of the local authorities were repaid. In order to be eligible, the local authorities had to apply for repayment to the DGS, which examined whether they did not exceed the tax income threshold in line with the law. By contrast, Latvia and Portugal have not used the NOD in pay-out events. No information is available in relation to other Member States.

4.2.2 Impact of the NOD

By extending deposit protection to small local authorities, this NOD could negatively affect the risk profile of the DGS and positively impact the confidence of depositors and in the financial system.

4.2.2.1 Risk profile of the national DGS

The extended coverage could imply an increased risk for the DGS unless such increased exposure of the DGS is properly considered in the calculation of contributions.

Overall, it seems that in the Member States that transposed the NOD, deposits of small local authorities are in principle considered in the calculation of the contributions. This is clearly the case in Spain, where banks include such deposits in the calculation of risk-based contributions. In practice, where small local authorities are easily identifiable and the system in place enables their prior identification, banks mark their deposits as covered and contribute to the DGS accordingly. However, where the budget is close to the threshold or the set of relevant authorities is subject to changes from one year to another, such deposits may be more difficult to identify. As a result, the volume of covered deposits as a basis for calculation of contributions may be either underestimated or overestimated.

In terms of the additional volume of the covered deposits, the available information is limited. In Spain, based on the reporting of some member institutions and the calculation of the DGS, the eligible deposits of small local authorities range between 0.03 % and 0.11 % of covered deposits.

In Portugal, in the absence of more detailed information available to the DGS about such category of deposits, the amount could range between 0.01 % and 0.08 % of covered deposits based on information provided by some member institutions.

For the UK, no information about the amounts is available. However, given that member institutions also have to identify such deposits, it is reasonable to assume that such deposits, whenever clearly identified are marked as covered and reflected in the calculation of the institutions' contributions.

Overall, given the budget criterion, the set of relevant authorities may vary over time. In practice, the identification of the relevant covered deposits for the calculation of contribution could be difficult, possibly leading to underestimating them in the contributions. In addition, in the absence of an *ex ante* list of eligible authorities, repayments would not be automatic in the event of pay-out. It would be for the local authorities to demonstrate their eligibility and for the DGS to assess it. This usually affects both the eligibility and the timing of repayment. The impact of the NOD on the risk profile of the DGS would be negative, unless there are good practices that ensure such deposits are included in the calculation of contributions.

4.2.2.2 Level playing field

This NOD is unlikely to affect the level playing field at cross-border level because local authorities are not likely to move their deposits to another country with a higher deposit protection.

4.2.2.3 Depositor confidence

The main purpose of extending protection to additional categories of deposits is to protect the functioning of local authorities and make sure they can perform their public purpose. Overall, this NOD increases the confidence of depositors, and more generally that of citizens and taxpayers in the financial system that protects deposits based on tax revenues for public purposes.

4.2.2.4 Relevance for respective Member States

Based on the available data, the NOD is relevant in Spain and Portugal. However, the total size of such deposits is around or less than 0.1 % of the total covered deposits of the member institutions, and all, or at least part of, the deposits are included in the calculation of the contributions.

In the UK, although data are not available, the total number of local authorities is small, compared to other countries. This makes the number of relevant small local authorities even less important.

Czechia appears as the Member State where the NOD is most relevant as it has a very large number of small local authorities. Based on 2014 data, about 4 500 local authorities were in principle eligible for deposit protection. However, the formal procedure requiring a specific certificate in order to benefit from the guarantee, which has to be repeated every year, is likely to lower the number of eligible applications in a potential pay-out. It also appears that the DGS does not have information about the increased exposure linked to such deposits, because it does not receive information from the banks in order to distinguish the specific categories of deposits covered. However, the procedure to issue the certificate for the guarantee implies that member institutions should have full information about such deposits and should include them in the calculation of contributions.

4.2.3 Options in the context of EDIS

Eliminating the NOD would appear as the most sensible policy option under EDIS, because the NOD is transposed in a small number of Member States and, in terms of volume of affected covered deposits, has a low materiality. This would imply that the importance of the NOD is not widely shared across the EU and possibly that the need to fulfil the objective of protecting the public function does not compensate for the operational challenges linked to identification of such authorities.

However, even if retained, the NOD would not impact EDIS in terms of potential increased administrative burden or financial exposure (i) as long as the deposits were reflected in the calculation of contributions and (ii) the settlement of depositor claims remained in the competence of national DGS. To this end, a common definition of relevant local authorities, namely the type of authority and the size (budget, tax revenue, etc.) could be required to better ensure a level playing field and in order to reflect such covered deposits as accurately as possible in the risk-based contributions. However, finding a common definition could likely face significant challenges given Member State specificities in terms of territorial governance.

4.2.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD. This means that the local authorities with an annual budget of up to EUR 500 000 in the concerned Member States would continue to be protected by the DGS.

Effectiveness: This option would preserve the effectiveness for Member States that value the objective of protecting small local authorities.

Efficiency: This option would also preserve the efficiency of achieving the objective of protecting deposits of small local authorities. This is due to existing knowledge of the DGS about the authorities concerned. The NOD would not impact EDIS provided that they i) have workable ways how to identify the small authorities, ii) reflect their deposits in the risk-based contributions, and iii) settlement of depositor claim remains in the competence of national DGS.

Coherence: This option generally contributes to fragmentation in deposit protection. However, it would not negatively affect the coherence of the regulatory framework under EDIS if such deposits are reflected in the risk-based contributions. This would depend on good governance practices ensuring that such local authorities are identifiable.

Subsidiarity: Given the degree of the country specificity and the limited application across Member States, leaving the application of this provision at the level of the concerned Member State would be the most reasonable policy option from a subsidiarity perspective.

4.2.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. This would mean that local authorities with an annual budget up to EUR 500 000 would be excluded from depositor protection.

Effectiveness: This option would decrease depositor protection in the Member States concerned. However, in terms of volume of covered deposits affected, the materiality of the NOD is low. Therefore, with EDIS in place, it is reasonable to argue that eliminating this NOD could be justified by higher exposure to EDIS because of an increased volume of covered deposits. The impact on EDIS would in any case be neutral as long as such deposits are properly identifiable and reflected in the risk-based contributions. The administrative burden would decrease at the level of the DGS with no impact on EDIS because the national DGS remains responsible for assessment and repayment of individual claims.

Efficiency: This option would likely increase the efficiency of the overall functioning of EDIS in terms of lesser financial exposure. From the perspective of national DGS and member institutions, there would no longer be a need to identify the local authorities within the scope of the NOD.

Coherence: Coherence of the regulatory framework across countries would increase due to further reduced fragmentation.

Subsidiarity: This option would impact subsidiarity in those Member States that currently apply the NOD.

4.2.3.3 Option 3: Alternative

This policy option would complement Option 1 (retain in current form) by proposing the following targeted modifications: the threshold of EUR 500 000 would apply to an annual budget of local authorities, where a local authority is defined as a municipality and parish and the budget is measured as annual tax income. It would also require national competent authorities to keep an updated list of the relevant small local authorities that benefit from DGS protection so as to facilitate the identification of eligible deposits and the calculation of contributions.

Effectiveness: This option would contribute to effectiveness in achieving the objective of greater depositor confidence and of protecting the public function. It would ensure the social objective, while limiting the impact on the risk profile of the DGS.

Efficiency: The definition of the relevant local authority could simplify the application of the NOD to ensure its proper reflection in the risk-based contributions. With EDIS in place, there would be no impact on the assessment of the claims by EDIS, because the repayment of claims to individual depositors in a pay-out would remain within the competence of national DGS. Indeed, the national DGS and member institutions would still have to identify the local authorities within the scope of the NOD.

Coherence: This option would maintain fragmentation (because small authorities would be covered only in some Member States), but reinforce the external coherence by improving the processes of identifying the authorities within the scope.

Subsidiarity: This option could, to some extent, limit the ability of Member States to decide which local authorities are eligible. Given the limited transposition and the differences in the transposition, the NOD is in general considered of limited importance for Member States.

4.2.3.4 Option 4: Full harmonisation

This policy option considers extending the current provision to all Member States. Subject to the political support for such an approach, the key challenge of full harmonisation would be a clear and common definition of a small local authority.

Effectiveness: Similarly to the alternative option, the full harmonisation of the NOD under EDIS could be favourable in view of the objective of achieving a uniform level of depositor protection, enhancing taxpayer/depositor confidence and protecting the public function. However, the actual implementation could be challenging in the absence of a common identification of the small authorities across countries. In addition, it would be critical to ensure that such deposits are easily identifiable and reflected in the risk-based contributions in order to avoid any negative impacts on the risk profile of the DGS.

Efficiency: In the absence of a clear definition of the relevant small local authorities, the application of the NOD could be conducive to legal uncertainty and administrative burden, in addition to higher costs for the national DGS or EDIS in case of a pay-out.

Coherence: This option would strengthen coherence under EDIS in terms of achieving a uniform level of depositor protection. Finding a common definition of small local authorities would be beneficial in addressing differences between Member States and the current low coherence of the system.

Subsidiarity: This option would limit the ability for Member States to exclude small local authorities from the coverage. Given the limited transposition of the NOD, overall subsidiarity would likely be affected under this option.

4.3 NOD 3 – Exclusion of deposits to pay off a loan on private immovable property

Summary: NOD 3 – Exclusion of deposits to pay off a loan on private immovable property				
DGSD [Article 5(3)]				
Member States may provide that deposits that may be released in accordance with national law only to pay off a loan on private immovable property are excluded from repayment by a DGS.				
Transposed into national law [3 Member States]				
Belgium, France and the Netherlands				
Practical experience so far [1 Member State]				
The Netherlands				
Importance				
Up to approximately 22 % of covered deposits[19]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	-	+/-	+/-	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+**	-	+	-
Efficiency	**+**	-	+	+/-
Coherence	**+**	-	++	+
Subsidiarity	**+**	-	+	-

4.3.1 Implementation across Member States

Only Belgium, France and the Netherlands have transposed the provision to exclude deposits that may be released only to pay off a loan on private immovable property from covered deposits. However, based on the responses from DGSs and banks, the NOD seems only to be used in the Netherlands.

The transposition of the NOD is linked to financial products that integrate both a loan on immovable property and deposits collected to repay a loan at a later stage. The late

[19] The importance is based on a simulation of the amount that deposits under this NOD could reach in the Netherlands, if these mortgages were not terminated beforehand. The simulation assumes that the EUR 200 billion in mortgages were all issued at the end of 2012, have a maturity of 30 years, the mortgage holders save the entire amount up to maturity and the total covered deposits continue to grow at the average rate of the past three years in the coming decades.

repayment was beneficial because of a preferential tax regime for interests on property loans, taking into account that the interest rate on both the loan and deposits are the same. Otherwise, it would be more interesting for both the customers and member institutions to settle the loan and deposits immediately or earlier as in other Member States.

4.3.1.1 Motivations to transpose and use the NOD

The motives behind this NOD are specific financial products tailored to suit the specificities of the national tax system.

The relevant Member States that have transposed this NOD in their national law, had specific financial products that existed before the implementation of DGSD and had also been excluded from the DGS coverage.

The deposits excluded based on this NOD are automatically settled with the loan component in the financial product in case of a bank failure. Consequently, in normal circumstances, these deposits would not be returned in cash to the depositors.

4.3.1.2 Definition of deposits

The Belgian government considered that the deposit received to repay a loan on a private immovable property granted by the member institution or by another institution holding the deposit is not a normal bank deposit, but a separate service that is secondary to the main activities of the member institutions of accepting deposits and providing loans. The sum on the account is placed as a security for a loan and is not a normal deposit, as these deposits finance a specific loan.

France is following a broad interpretation of this NOD. Deposits pledged as security to ensure the successful completion of a transaction, such as the repayment of a loan or the completion of a securities transaction, are not protected by the DGS. When the holder of such pledges and guarantees recovers the free disposal of the funds (e.g. when the loan is fully repaid), the funds become deposits that fall within the scope of the guarantee by the DGS. The funds constituting a pledge or a guarantee of a commitment in force towards the member institution include mortgages and mutualised guarantees on loans. In France, the mutualised guarantee on loans is used more frequently than mortgages. In this mechanism, the funds of the borrower are paid to a guarantee company as a contribution, in proportion to the amount of its loan. The general exclusion of pledge and guarantees shall be waived as soon as the holder recovers the use of the funds, i.e. when the secured debt is repaid.

The Netherlands used to have a specific type of account: 'bank savings deposit for private property' (*bankspaardeposito eigen woning*), a regime falling under the Income Tax Act 2001. They have been sold in the period between 2008 and 2012 to save money over the years for the purpose of paying off a mortgage loan. Upon acquisition (purchase) of private property a person would obtain a mortgage loan which would be repaid with deposits collected up to the end of the contract with a maturity of 30 years. About 550 000 of accounts had been opened by households at the end of 2018 with saving deposits to (partially) finance private real estate.

At present, such accounts are no longer available on the market as the tax regime for the deduction of interest on mortgages changed in 2013. Under this tax regime, which continues to apply for mortgages issued before 2013, the interest payments on the full mortgage loan could be deducted from the personal income that forms the base for the personal income tax calculations. This encouraged mortgage holders not to repay any of the mortgage loan until its maturity. Instead, the holders of the bank savings deposit for private property kept the same amount of mortgage until the end of the contract, instead of immediate or progressive repayment. They pay the same interest rate on the mortgage loan and receive the same interest on their deposits. However, as they can deduct the interest payments from their personal income for income tax purposes, they effectively pay less interest than they receive on their deposits.

Importantly, the mortgage and savings of these types of accounts are explicitly linked in the contract for a 'bank saving deposits for private property' account. This means that there is no possibility of withdrawing the deposit other than through the execution of the mortgage. In addition, in order to ensure that the deposit is never paid out, the law on fiscal supervision includes a provision stating that **in the event of bank failure, the deposit is automatically set off against the linked acquisition debt**. The automatic set-off of the loan and the deposit takes place *ex lege* when the Dutch DGS triggers the pay-out. Hence, only where the deposit savings are higher than the actual mortgage, the DGS would cover the surplus as an eligible deposit in the event of a pay-out[20].

4.3.1.3 Practical experience with the NOD so far

Based on the information received from DGSs and banks, the Netherlands seems to be the only Member State with practical experience with this NOD.

Interestingly, although no new mortgages of this type are issued, the amount of deposits under this NOD is growing. This is because such deposits are accumulated over the duration of the loan – typically 30 years – before the loan is repaid. According to the Dutch statistical office, there were about EUR 200 billion of mortgages with a savings component outstanding in 2016 (equivalent to about 40 % of covered deposits under the Dutch DGS at the end of 2018[21]). It is difficult to say precisely how much deposits in these products represent. According to the estimations from the Dutch central bank and the Dutch statistical office, the amount ranges between EUR 18.5 billion and EUR 80 billion (between 4 % and 16 % of covered deposits). This amount is likely to grow in the coming years. Based on a simple simulation we calculate that the deposits in these products could be equivalent to up to 22 % of covered deposits in the Netherlands[22].

None of the DGSs in the Member States that have transposed the NOD into national law have been confronted with pay-out events since the adoption of the 2014 DGSD.

4.3.2 Impact of the NOD

Such deposits are used to set off specific loans and are not protected by the DGS. Excluding deposits that are made to repay a loan on private immovable property does not increase the risk for the national DGS, does not distort the level playing field and has limited impact on depositor confidence. The NOD remains relevant for the Netherlands, as the covered amounts are still growing. The NOD is likely to become less relevant in the long term as the products expire, though in quite a distant future due to the long maturity of the loans.

[20] Explanatory memorandum of 24 June 2011 for Amendment of the Financial Supervision Act to implement Directive no. 2009/110/EC, p. 3.

[21] CBS (2017), Zijn de hypotheken in Nederland hoog?

[22] The simple simulation assumes that the EUR 200 billion in mortgages were all issued at the end of 2012, have a maturity of 30 years, there are no terminations, the mortgage holders save the entire amount up to maturity and the covered deposits continue to grow with the average of the past three years (about 2.7% per year).

4.3.2.1 Risk profile of the national DGS

As deposits made to repay a loan on private immovable property do not constitute a risk for the DGS, exclusion of these deposits is likely to increase the risk profile of the national DGS. The exclusion of the deposits is likely to have no influence on repayments in pay-out events, as these deposits will be settled beforehand. However, in the absence of the NOD, these deposits would be included as covered deposits, which would increase the contributions to the DGS.

4.3.2.2 Level playing field

The level playing field does not appear to be distorted. It could, however, be argued that the exclusion of deposits to repay a loan on private immovable property could give an advantage to domestic member institutions that do not have to contribute to the DGS for these deposits, whereas member institutions in other Member States would. In practice, there are no or limited amounts of these deposits in other Member States.

Moreover, the advantage of a lower contribution to the DGS is reduced due to the higher contributions to the SRF. Indeed, the deposits, excluded from the covered deposits because of this NOD, are included within the calculation base for the contributions to the SRF.[23]

4.3.2.3 Depositor confidence

Depositor confidence is likely to be unaffected under this NOD. Depositors are made aware that their deposit savings are used to repay the property-related loans and will not be protected by the DGS.

4.3.2.4 Relevance for respective Member States

Although these types of products are no longer sold, the NOD remains relevant in the Netherlands up to 2042 because of the long maturity of the loans. The deposits covered under this NOD could at some point in time be equivalent to up to 20 % of the covered deposits.

It is unlikely that the NOD becomes relevant for other Member States, as the issuance of new products including deposits to repay property related loans is disincentivised under the post-crisis legislation. Hence, both the resolution mechanism and the leverage ratio require member institutions with larger balance sheets to contribute more or hold more capital respectively. The SRF contribution and the capital requirement will increase when the repayment of loans with deposits at the same bank is delayed.

4.3.3 Options in the context of EDIS

In the Netherlands, there is an important volume of deposits which will continue to be used to repay outstanding loans on private immovable property to maximise the benefits from fiscal measures meant to stimulate home ownership. Therefore, Option 3 seems the most sensible to enable the Netherlands to phase-out such deposits.

In any case, there is no reason to consider these deposits as covered deposits under EDIS as, in case of failure, they would be set off against the loan.

[23] The contributions to the SRF are based on non-covered deposit liabilities.

4.3.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD. Accordingly, the deposits held to pay off loans on immovable property would continue to be excluded from the covered deposits.

Effectiveness: The exclusion of deposits that are to repay a loan on private immovable property decreases the amount of covered deposits. This means that they are not reflected in the contributions to the DGS fund and in the financial means available. However, there are good arguments to retain the current option. First, such deposits are not covered by the DGS. Second, this option does not weaken the base for the contribution to the DGS fund because such deposits are incremental. In the absence of any preferential tax system, the deposits would be used for either immediate or early repayment of the loan.

Efficiency: This option is less costly for the member institutions as they do not have to reflect such deposits in the calculation of contributions and in terms of administrative burden, because they can consider fewer accounts in this calculation.

Coherence: This option preserves coherence because the deposits would also not be repaid to the depositor under normal circumstances (no pay-out event) and would be automatically settled in case of failures. In those situations, the exclusion does not affect depositor protection or risk for the DGS compared to Member States where there are no such deposits.

In addition, retaining deposits for later instead of immediate repayment as promoted under this NOD increases the size of bank balance sheets. This is penalised under the current rules on capital requirements (leverage ratio) and resolution mechanism (contribution based on covered deposits and other liabilities). However, the aim of these measures is not to limit the size of member institutions per se, but to reduce the risk-taking of member institutions, which is not affected by the NOD. The NOD can thus also be considered consistent with the objectives of other financial policies.

Subsidiarity: The subsidiarity principle applies in this case, as only Member States with specific regimes can incentivise financial products that collect savings rather than facilitate early repayment of mortgage loans.

4.3.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD.

Effectiveness: Under this option, such deposits would have to be included within the scope of DGS protection. This would increase the amount of covered deposits and would be reflected in a higher risk-based contribution and make more financial means available. However, as there is no pay-out for the deposits under the NOD, it will not impact the pay-outs of the DGS.

Efficiency: This option would reduce efficiency. The member institutions would have to consider more accounts for the calculation of the covered deposits. Importantly, the deposits on the accounts can be sizeable and often held jointly, which makes it more complicated to determine the covered amounts.

Coherence: This option does not appear beneficial for deposit protection as the account holders would also not be able to claim the deposits in the absence of the NOD. This option does not contribute to the objectives of the other financial regulations. Indeed, the NOD encourages the extension of bank balance sheets, but this option does not imply additional risks for the member institutions because the loans are fully covered by savings.

Subsidiarity: This NOD is relevant in the Netherlands in the long term. Such deposits would continue to account for a substantial share of total deposits (equivalent to up to 20 % of Dutch DGS covered deposits) due to maturity dates up to 2042.

4.3.3.3 Option 3: Alternative

This policy option considers phasing out the NOD over time. This would mean that only deposits that are currently held to pay off loans on immovable property can be excluded from the covered deposits. The provision would expire after a certain phase-out period that will last till 2042.

The impact of this alternative option might in practice be the same as under Option 1. This option would primarily ensure that there would not be any new deposits to pay off a loan on private immovable property.

4.3.3.4 Option 4: Full harmonisation

This policy option considers extending the NOD to all Member States. This would mean that EDIS would not cover deposits that can be offset by loans integrated in the same financial products. Moreover, in the current low-interest environment it has become even less attractive for member institutions to issue products that would fall within the scope of this NOD. The vast majority of Member States do not have tax systems in place that would encourage similar long-term saving over early repayment of mortgage loans.

In practice full harmonisation would not represent any added value as compared to the policy option retaining the NOD in its current form (Option 1) because these products currently exist in only one Member State.

4.4 NOD 4 – Temporary high balances relating to certain transactions

Summary: NOD 4 – Temporary high balances relating to certain transactions				
DGSD [Article 6(2)]				
In addition to the coverage of EUR 100 000, Member States shall ensure that the following deposits are protected above EUR 100 000 for at least three months and no longer than 12 months after the amount has been credited or from the moment when such deposits become legally transferable: a) deposits resulting from real estate transactions relating to private residential properties; b) deposits that serve social purposes laid down in national law and are linked to life events of a depositor such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death; c) deposits that serve purposes laid down in national law and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction.				
Transposed into national law [28 Member States]				
a) Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom b) All Member States excluding Finland, Estonia and the Netherlands c) All Member States excluding Finland, Estonia and the Netherlands				
Practical experience so far [2 Member States]				
Belgium and Spain				
Importance				
Up to 10 % of covered deposits[24]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	--	-	++	+/-
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+**	+/-	++	+
Efficiency	**-**	+	+/-	+
Coherence	**-**	-	++	+
Subsidiarity	**+**	-	-	-

[24] The importance of the THBs is based on a simulation for all Member States of the Temporary High Balances (THBs) created from primary residential property transactions according to the current implementation. In fact, the THBs range between 0.5% of covered deposits in Croatia to 10.1% of covered deposits in Lithuania. Importantly, this figure does not account for the deposits that could be covered also by the regular coverage (EUR 100,000 per depositor per member institution) and is for all Member States additional to the current level of covered deposits. This is true with one exception for Spain that in principle already accounts for the THBs in the covered deposits. See section on the size of the THBs and Annex 1 for more details.

4.4.1 Implementation across Member States

The THBs are not a 'pure' national option or discretion (NOD). Under Article 6(2) (and Recital 26) DGSD, Member States are required to ensure a higher level of coverage related to deposits from certain transactions or serving certain social or other purposes. However, Member States retain discretion in terms of duration and scope of protection. While the duration can be between 3 and 12 months, the list of specific transactions is not exhaustive but, instead, associated with the following types of events: i) real estate transactions to private residential properties; ii) life events; and, iii) payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

The application of the NOD should take into account the significance of the protection for depositors and the living conditions in the Member State concerned. In all such cases, State aid rules should be complied with.

Almost all Member States transposed provisions for the three types of events of Article 6(2) DGSD. The only exceptions are Estonia, Finland and the Netherlands, which have only implemented the option covering real estate transactions Article 6(2)(a) DGSD.

Almost all Member States do not take into account the THBs in the amount of covered deposits for the calculation of the contributions (Spain is the only exception).

4.4.1.1 Motivations to transpose and use the NOD

When deciding on the extra coverage for THBs, all Member States had to strike the right balance between the need for protection taking into account the circumstances targeted by THBs, e.g. the life events, and related additional costs for the DGS.

Setting of the higher coverage

Many Member States have justified setting the extra coverage by referring broadly to their domestic living conditions standards[25], real estate prices[26], or the average amount of the deposits serving social purposes (i.e. severance payments, disability severance pay, death benefits, employee pension plans, etc. – Czechia, Romania, Poland).

While some set a higher additional coverage for events linked to depositor protection, others prioritise social purposes. In the latter case, the objective is to prevent the beneficiaries from becoming dependent on the social aid system and to protect the minimum standard of living.

Some Member States decided in favour of unlimited coverage by setting up no specific ceiling for their THBs. The justifications used included differences in local real estate prices or, in case of events under for Article 6(2)(b) and (c) DGSD, the very significance of the covered event for the depositor. For example, France and the UK set up a general ceiling for THBs, except for compensation of personal injuries or incapacity[27].

Additionally, Member States transposed the options with a view to ensuring a level playing field with other Member States (Greece, Ireland, Romania). To ensure the

[25] Bulgaria, Cyprus, Luxembourg and Slovakia justified the additional coverage by referring to their domestic living conditions standards.

[26] Austria, Belgium, Estonia, Lithuania, Latvia, Luxembourg, the Netherlands, the UK and Sweden justified the additional coverage by referring to their real estate prices.

[27] The unlimited coverage is based on the presumption that a compensation for personal injuries exceeding EUR 500 000 should take into account a severe disability of the beneficiary and justifies coverage of the whole amount.

competitiveness of their domestic banking sector, those Member States aligned the amount of their additional coverage with that of their neighbours.

Duration of protection

The protection should be temporary. It should ensure that depositors have enough time to disperse their funds (e.g. take investment decisions) and that depositors' proof of origin of the deposits and the link to THB events is not too complicated[28]. In some Member States, the duration was determined in consultation with the member institutions that play an important role in the implementation of the THBs (Estonia) or based on the average time during which the THBs are usually spent or diversified (Hungary). The duration also depends on whether member institutions are under the obligation to identify and inform the DGS of the nature, purposes and amount on the covered deposits (Lithuania).

Scope of protection

While a majority of Member States have taken up all the events mentioned in the DGSD, some Member States have limited the application of THBs to specific events. For example, marriage is not included amongst the events covered because the Member States understand the NOD as a means to protect depositors in relation to life events that makes them vulnerable, either from a personal or financial perspective, or because money received as a marriage gift is not taxed and the additional protection could, according to some of the DGSs, encourage money laundering.

4.4.1.2 Coverage level

The amount of extra coverage varies significantly from about EUR 130 000 to EUR 2 500 000. The following 6 Member States have no upper limit: Finland, Italy, Portugal, Slovakia, Slovenia and Spain.

Some Member States have set different coverage limits depending on the type of events. Denmark and Lithuania have higher limits for deposits resulting from real estate transactions. In Denmark, while the general extra coverage amounts to EUR 150 000, real estate transactions are covered up to EUR 10 000 000 taking into account the high risk with regard to non-commercial real estate transactions and the consequences both for the real estate market and also financial stability if such risks were not covered. In Lithuania, real estate transactions are covered up to EUR 300 000 as compared to EUR 200 000 for other types of events.

France uses the limit of EUR 500 000 and the UK, with the limit of GBP 1 000 000 (EUR 1 120 000) uses one limit for all events, except for unlimited coverage in case of compensation for physical injury[29].

Table 4.1 Temporary high balances: Coverage

Country	Coverage
Austria	Up to EUR 500 000
Belgium	Up to EUR 500 000

[28] This is applicable to France, Lithuania, Latvia, the Netherlands and Poland.

[29] Accordingly, the DGS will repay the whole amount of such a compensation.

Country	Coverage
Bulgaria	Up to BGN 250 000 (EUR 127 823)
Croatia	Up to EUR 130 000
Cyprus	Up to EUR 150 000 (currently under review)
Czechia	Up to EUR 200 000
Denmark	EUR 150 000 to EUR 10 000 000 (real estate transactions)
Estonia	Up to EUR 170 000
Finland	No limit
France	EUR 500 000 to unlimited (personal injury)
Germany	Up to EUR 500 000
Greece	Up to EUR 400 000
Hungary	Up to EUR 150 000
Ireland	Up to EUR 1 000 000
Italy	No limit
Latvia	Up to EUR 200 000
Lithuania	Up to EUR 200 000 to EUR 300 000 for real estate transactions
Luxembourg	Up to EUR 2 500 000 (max cumulated amount)
Malta	Up to EUR 500 000
Poland	Up to EUR 100 000
Portugal	No limit
Romania	Up to EUR 200 000
Slovakia	No limit
Slovenia	No limit
Spain	No limit
Sweden	Up to EUR 471 750
The Netherlands	Up to EUR 500 000
UK	Up to GBP 1 000 000 (EUR 1 120 000) to unlimited (personal injury or incapacity)

Source: CEPS-Milieu elaboration

Member States have different approaches as to the calculation of the extra coverage. Some consider the maximum aggregate amount in case of multiple events (e.g. Belgium, Greece, Latvia and Luxembourg), while others do not aggregate the amounts and consider each event separately (e.g. Malta, UK). In the case where Member States have indicated an aggregate amount for THBs, the principle of aggregation of the deposits does not always apply to the three categories of THBs[30] in the same way. For example, in Belgium, the maximum additional guarantee applies to the cumulative total of the THBs, except for deposits resulting from real estate transactions (Article 6(2)(a) DGSD), for which the guarantee applies independently.

[30] Article 6(2)(a), (b) and (c) DGSD.

4.4.1.3 Deposits serving real estate transactions

All Member States cover deposits resulting from transactions related to private residential properties.

14 Member States[31] use the general wording of the DGSD and do not limit the coverage to particular types of residential property e.g. primary versus secondary residential property, or to a particular type of operations (only sale, only purchase or both).

Some Member States only consider the purchase of a new residence for personal use as a THB (i.e. Finland) or only the sale of residential property belonging to the depositor (i.e. France). In some Member States, the THB for real estate transactions applies only to the sale or purchase of real estate used as a principal residence (i.e. Belgium, Malta and the UK).

In addition, some Member States have further specified the scope of the extended coverage. In Denmark, the real estate transactions cover deposits of the purchase price, sales proceeds and deposits of proceeds of loans for mortgage, deposit of the purchase price in accordance with the prior purchase agreement as under the agreement financed or to be financed by mortgage bonds or covered bonds. In Hungary, the real estate transactions include both the sale of residential property, lease rights and right of tenancy. In Greece, expropriation of real estate is also covered along with sale. In Ireland, only the deposits and payments related to a private residential property are covered. In Luxembourg, the real estate transactions include those relating to private residential property (main and secondary residences), as well as compensation received for claims incurred in respect of private residential property (fire, floods, etc.). Poland covers only sale transactions of residential property, including additional specifications linked to the national framework (e.g. perpetual usufruct or cooperative rights of ownership). In Slovenia, sale and purchase transaction include also subsidies for young family first-time home seekers[32] and all real estate transactions involved in state or municipality sponsored affordable housing programmes. The UK also provides for a negative definition of THBs: general savings for the purchase of a property, including deposits for stamp duty and associated legal fees are outside the scope of THB, while purchase of land for the construction of the main residence is covered.

4.4.1.4 Deposits serving social purposes

Under Article 6(2)(b) DGSD, deposits associated with life events are protected as a THB in all Member States, except for Estonia, Finland and the Netherlands. Both the Netherlands and Estonia have concluded that there are no special types of deposits that would fall within the scope of the letters (b) and (c) of the NOD and, hence, did not transpose those provisions.

Other Member States either transposed the provisions literally, without further specification[33], or decided on an exhaustive list of the covered events[34], or finally, defined more specifically the types of events covered[35]. Accordingly, DGSs from the first category of Member State usually have more discretion as to the types of deposits falling within the scope of the additional coverage as compared to second and third categories. Certain Member States also added other types of events, such as birth and care

[31] I.e. Austria, Cyprus, Croatia, Germany, Italy, Latvia, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

[32] This is regulated under the law governing the National Housing Saving Scheme.

[33] E.g. Austria, Bulgaria, Croatia, Italy, Luxembourg, Spain and Sweden.

[34] E.g. Cyprus, Czechia, Greece, Ireland and UK.

[35] E.g. Belgium, Malta and Slovakia.

dependency (e.g. Germany), or excluded specific ones, such as marriage, divorce, dismissal (e.g. Romania), retirement and invalidity (e.g. Lithuania).

Some Member States limit the scope of THBs to specific types of accounts which serve social purposes by definition, without particularly linking them to specific life events: either by directly listing the types of payments (e.g. retirement benefit in France), social purposes protected (e.g. THB relating to social benefit payments determined by legal acts intended for social objectives in Latvia and Slovenia) or by referring to legal grounds in national legislation (e.g. Denmark, Poland and Portugal). Note that for Portugal, under the new law, additional legal acts will have to be adopted to specify the types of social purposes to be covered.

Table 4.2 setting out a list of covered events demonstrates the difference across Member States. Marriage is the least covered event and no Member State limits the coverage to just one event.

Table 4.2 THBs - Events and payments triggering additional coverage

Country	Marriage	Divorce	Retirement	Dismissal/ redundancy	Invalidity	Death	Other	Comment
Austria	X	X	X	X	X	X		
Belgium			X	X	X	X (non-heritage)		Only one-time exceptional payments are covered
Bulgaria	X	X		X	X	X		Covers only natural persons
Croatia	X	X	X	X	X	X	Illness	
Cyprus			X	X	X	X		Covers natural and moral persons
Czechia		X	X (single settlement)	X	X	X	Illness	
Denmark		X	X	X	X	X		Covers both legal and natural persons
Estonia								
Finland								
France	X	X	X	X		X		
Germany	X	X	X	X	X	X	Illness, care and birth	
Greece		X	X	X	X	X		
Hungary			X	X				Covers only natural persons
Ireland	X	X	X	X	X	X		
Italy		X	X	X	X	X		

Country	Marriage	Divorce	Retirement	Dismissal/ redundancy	Invalidity	Death	Other	Comment
Latvia			X	X	X		Other social benefits payments and payments determined by legal acts intended for other social objectives	Covers only natural persons
Lithuania						X		Covers only natural persons
Luxembourg	X	X	X	X	X	X		
Malta		X		X (unfair/ redundancy)		X		
Poland		X	X	X	X	X		
Portugal			X	X	X		Other deposits that serve social purposes	There is no legislation stating which types of social purposes are covered
Romania			X		X	X		
Slovakia	X	X	X	X	X	X		
Slovenia		X		X	X	X	Illness, natural disasters and other catastrophic events	
Spain	X	X	X	X	X	X		

Country	Marriage	Divorce	Retirement	Dismissal/ redundancy	Invalidity	Death	Other	Comment
Sweden		X (property)	X	X	X	X	Illness	
The Netherlands								
UK		X	X	X (unfair/redundancy)	X	X	Illness, sale of house boats and other mobile homes (primary residence)	
Total	**9**	**18**	**21**	**23**	**21**	**22**		

Note: The *X* in italic indicates that the coverage is determined based on the authors' interpretation of the legal provision.

Source: CEPS-Milieu elaboration

4.4.1.5 Duration

Member States opted for a duration of either 3, 6, 9 or 12 months. (See Table 4.3).

Table 4.3 THBs - Maximum duration

Duration	Member States
3 months	Bulgaria, Croatia, Czechia, France, Hungary, Latvia, the Netherlands, Poland, Spain
6 months	Belgium, Cyprus, Denmark (B and C), Estonia, Finland, Germany, Greece, Ireland, Lithuania, Malta, Slovenia, the UK
9 months	Italy
12 months	Austria, Denmark (A), Luxembourg, Portugal, Romania, Slovakia, Sweden

Source: CEPS-Milieu elaboration

In most Member States[36], the duration starts running after the amount has been credited and from the moment when such deposits become legally transferable. In 10 Member States[37], the duration starts running from the date the amount has been credited.

3 Member States use different approaches. In Estonia, the starting date is the date of the transfer of the real estate related funds. In Hungary, the transposing legislation refers to ‘prior to the commencement date of the compensation’, which is somewhat ambiguous. Slovenia refers to the date on which a depositor acquired a claim (credited) against a bank.

4.4.1.6 Pay-out procedure

Member States are obliged to set up procedures to allow depositors to claim THBs. In some Member States, the deposits are identified *ex ante*. They must either be held at separate accounts to be eligible (i.e. Hungary) or are registered/identified (Denmark and Spain). In these cases, THBs are subject to repayment within 7 working days together with the deposits covered under the regular coverage up to EUR 100 000.

In Hungary, the THBs are only eligible when placed in a special account opened with the member institution. The little attention paid to these special accounts suggests that most depositors may be unaware of the existence of such accounts as a condition for eligibility for a THB (and, it could be surmised, in view of little interest from the banks to advertise them). Due to this restriction, depositors might be unable to claim any THBs. In Denmark, banks are not required to report information related to THBs to authorities on a continuous basis. However, they must be prepared to determine the THBs within 24 hours after a potential failure. The member institutions have each defined their own set of rules, in the event of failure, to identify THBs, account holders and customer groups. If the information is included, THB deposits can be reimbursed

[36] E.g. Austria, Belgium, Bulgaria, Croatia, Cyprus, Ireland, Italy, Luxembourg, Malta, Poland, Romania, Slovakia, Spain, Sweden and the UK. In Cyprus, it is explicitly provided that the duration starts at either of two moments as set out in the DGSD, whichever is earlier. Malta specifies that the starting date is from the latest of the first date on which the THBs are credited to the account of the depositor, the first date on which the THBs are credited to another account on behalf of a person; and the first date on which the THBs become legally transferable to the depositor.

[37] I.e. Czechia, Denmark, Finland, France, Germany, Greece, Latvia, Lithuania, the Netherlands and Portugal.

immediately. If not, depositors must file a formal request to the DGS with supporting documents.

In most Member States, the depositor must make a claim to the DGS to receive a THB. Such requests are necessary where the eligible amounts are not pre-identified (i.e. Austria, Belgium and Czechia). For example, in Austria the depositor will have to provide the agreement from the seller or buyer to prove the THB is related to a real estate transaction. Such supporting documents will help the DGS to ascertain the duration (start and end date of the real estate transaction) and the scope of coverage.

Member States also apply different standards of information disclosure on the THB provision. In some Member States, depositors are pro-actively informed in a pay-out event. In others, the information is available on the website or only in legislative provisions.

The claim handling period for THBs could in principle be the same as for regular deposit claims. However, the pay-out period could often be longer than 7 working days where the DGS must assess the validity of the claim (Czechia, Lithuania, etc.). For this, the provisions for a longer repayment period can be used (See NOD 9). For example, in Czechia, depositors must file a claim via the website within two months after receiving the notification from the national central bank.

According to some DGSs, the claims under the NOD could complicate the pay-out procedure and increase the administrative costs related to the pay-outs. Two approaches are used: one based on *ex ante* identification of the THBs and the other based on handling of the depositors' claims *ex post*. In the former system, the burden is primarily on the member institutions as they need to obtain information on the origin and purpose of deposits, which is often difficult to obtain. The latter system can be burdensome for DGSs when assessing the eligibility of such claims. Moreover, some DGSs feared that depositors with balances above EUR 100 000 might submit any kind of claim, which would increase their administrative burden.

4.4.1.7 Deposits related to payment of insurance benefits under Article 6(2)(c) DGSD

Deposits associated with payment of insurance benefits or compensation for criminal injuries or wrongful conviction are protected as a THB in all Member States, excluding Estonia, Finland and the Netherlands. However, there are significant differences between Member States, with regard to both the scope of coverage and the amount covered.

Most Member States did not include any additional restriction regarding insurance payments or compensation of victims of crime or wrongful conviction[38] or specifically included compensation for all types of damages (legal, moral, material or corporal) (Belgium, France, etc.). Ireland and Greece have not limited the covered amounts of compensation of victims of crimes. They cover the full amount of the compensation of personal injuries (e.g. in Ireland) or compensation of injuries caused by tort (e.g. in Greece). In Slovenia and Poland, compensation for wrongful conviction also applies to non-pecuniary/non-material damages. Lithuania covers all stages of criminal proceedings (including pre-trial stage) for compensation in case of wrongful conviction. Sweden includes payments related to any fault or negligence in the exercise of governmental authority.

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[38] E.g. Austria, Belgium, Bulgaria, Croatia, Cyprus, Germany, Greece, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Spain, Sweden.

While most Member States cover any kind of compensation linked to a wrongful conviction, some Member States have restricted it to certain types of insurance or compensation payments. For example, in Czechia, the coverage is limited to insurance claims caused by a criminal offences and payments of compensation to victims for harm or recovery of unjust enrichment caused by a criminal offence, and compensation for harm caused by a decision on custody, punishment or protective measures. In the UK, benefits payable under insurance contracts are limited to personal injury or incapacity claims. In Denmark, only deposits made in accordance with specific statutory provisions are covered. Italy has also limited the coverage of wrongful compensation of victims to unjust detention, but has included indirect damages resulting from a criminal offence in the coverage. Lithuania has restricted compensation to natural persons that are victims of violent crimes. 8 Member States[39] have excluded insurance payments.

In most Member States, this THB would be subject to the same ceiling and timeframe as the other THBs[40]. Unlimited coverage would also apply to the compensation for personal injuries in France and the UK and/or for a wrongful conviction in France, Poland and the UK[41].

In turn, some Member States have lowered the amount of guarantee compared to Article 6(2)(a) DGSD. In Belgium, the maximum additional guarantee for Article 6(2)(b) and (c) DGSD applies to the cumulative total of these deposits. In Denmark, the maximum guarantee is EUR 150 000 for Article 6(2)(b) and (c) DGSD, compared to EUR 10 000 000 for Article 6(2)(a) DGSD. In Lithuania, the maximum amount of the guarantee is EUR 100 000, lower than for Article 6(2)(a) DGSD. Indeed, the level of the coverage for this NOD is, in general, relatively limited in Lithuania.

Table 4.4 THBs - Events and payments triggering additional coverage

Country	Insurance benefits	Compensation payment for criminal injuries	Compensation payment for wrongful conviction	Comment
Austria	X	X	X	
Belgium	X	X	X	Covers all type of damages, including material, corporal or moral damages
Bulgaria	X	X	X	Covers only natural persons
Croatia	X	X	X	
Cyprus	X	X	X	Covers natural and moral persons
Czechia		X	X	
Denmark		X	X	
Estonia				
Finland				

[39] I.e. Czechia, Denmark, France, Lithuania, Latvia, Malta, Poland and Slovenia.

[40] E.g. Austria, Bulgaria, Croatia, Cyprus, Czechia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

[41] Italy, Portugal, Slovakia, Slovenia, Spain and Sweden apply unlimited coverage.

Country	Insurance benefits	Compensation payment for criminal injuries	Compensation payment for wrongful conviction	Comment
France		X (damage caused to the depositor)	X	Covers any damage, legal, physical or moral
Germany	X	X	X	
Greece	X	X	X	
Hungary	X	X	X	Covers only natural persons
Ireland	X	X	X	
Italy	X	X	X	
Latvia		X	X	Payment of insurance benefits were not included, but this should be shortly rectified by a corrigendum
Lithuania		X	X	Covers only natural persons
Luxembourg	X	X	X	
Malta		X	X	
Poland		X	X	
Portugal	X	X	X	
Romania	X	X	X	
Slovakia	X	X	X	
Slovenia		X	X	
Spain	X	X	X	
Sweden	X	X	X	Also covers payments related to any other fault or negligence in the exercise of governmental authority
The Netherlands				
UK	X (personal injury or incapacity)	X	X	
Total	**17**	**25**	**25**	

Source: CEPS-Milieu elaboration

4.4.1.8 Practical experience with the NOD so far

Only a few Member States[42] have had pay-outs since the adoption of the DGSD. However, only Belgium has dealt with a THB in a pay-out. Potential explanations for such a small number of THB-repayments could include the following: (i) most pay-out events involved rather small member institutions; (ii) more or less strict assessment of the THB claims by the DGS; (iii) sufficient level of the regular coverage; (iv) additional protection from IPSs and voluntary deposit insurance schemes; and also (v) limited awareness among depositors about THB protection.

In Belgium, this NOD was used in the Optima Bank case in June 2016, which had, at the time of the intervention, already been in resolution for about two years. This might have reduced the likelihood of THB repayments, as the depositors would not have transferred large amounts of money to a failing institution. In this case, the DGS dealt with a total of 2 000 claims, out of which 3 related to THBs. Two THB claims were found to be eligible. The contested claim of about EUR 500 000 was related to a real estate transaction, but did not come straight from the sale of a house. The total eligible claims for THBs amounted to EUR 400 000, equivalent to about 0.015 % of the total pay-out amount.

In Czechia, there was only one pay-out event after the transposition of the DGSD. The small First Czech Russian Bank failed in October 2016 and the DGS received 6 claims under THB provisions. None of the claims were considered eligible for pay-out. The main reason for the rejections was that the money was not deposited at the account in the failed bank within three months before the pay-out event. Another motivation for some rejections was that the claims were transferred from accounts at another bank to the failed bank, i.e. not directly from the account of a purchaser.

Some Member States[43] confirmed specifically that they did not apply the NOD in the pay-out procedures occurring after the entry into force of the DGSD. No THBs were reimbursed for instance in Luxembourg, because the DGS did not recognise any right to a higher compensation. In Lithuania, no depositor claimed a THB compensation, which could be explained by the fact that the large majority of THBs would likely be covered under the regular deposit coverage of EUR 100 000 and due to limited awareness of the provision.

Spain is the only Member State that takes THBs into account in the calculation of the DGS contribution (see pay-out procedure).

4.4.2 Impact of the NOD

The coverage of THBs increases the risk profile of the DGS particularly where it is not reflected in DGS contributions. In view of the significant fragmentation between Member States, its impact on the level playing field is relatively negative. In turn, the NOD is important for the depositor confidence and reflects national specificities.

4.4.2.1 Risk profile of the national DGS

The vast majority of DGSs do not account for THBs in their total covered deposits in the calculation of the contributions. By contrast, the Spanish DGS is the only one asking

[42] E.g. Belgium, Croatia, Cyprus, Czechia, Estonia, Hungary, Ireland, Lithuania, Luxembourg, Malta, Poland and the UK.

[43] E.g Cyrpus, Luxembourg, Lithuania, Malta and Poland. Poland experienced pay-outs during the period between 2014 and 2016 but had not covered any THB under the DGSD.

member institutions to include THBs in covered deposits. Therefore, it could be concluded that the covered deposits reported to the EBA are underestimated[44].

We argue that THB pay-outs are likely to vary across Member States as shown in the simulation below (see size of the THBs). Moreover, in Member States such as Austria (savings banks) and Germany, THB claims are not considered as an issue for member institutions of IPSs. The IPSs and voluntary schemes ultimately cover amounts above EUR 100 000 because they operate with a view to avoid a pay-out with the use of preventive and alternative measures.

The incidence of THBs is relative, particularly in view of current experience that shows many rejections of THB claims. Moreover, based on the experience of several DGSs, THBs require an assessment when the deposit qualifies for a higher coverage and the repayment period can be rather long. In this sense, the impact on the liquidity risk of the DGS is likely to be limited.

[44] Most Member States do not anticipate the need to back potential pay-outs associated with THBs.

Box 1. Size of the THBs for primary residential property

The information about the incidence of THBs is very limited, difficult to compare and there is uncertainty about the quality of the information available. Information on THBs on an ongoing basis is available in Denmark (bank-level) and Spain (Member State-level), but the methodology for the calculation of the amounts of THBs is either not disclosed or a large share of member institutions is not covered. There is also some limited information on THBs in pay-out events. However, only smaller member institutions were concerned and the conditions under which the pay-outs occurred also differed. Moreover, in some pay-out events, depositors' claims under the THB provisions were in any case rejected.

For the purpose of qualifying the importance of THBs across Member States, the simulation model covers only primary residential property transactions (Article 6(2)(a) DGSD) as this is the only THB provision adopted in all Member States. Its amount corresponds to the majority of funds covered based on the expert interviews and the limited information available on the various types of THBs. Deposits related to real estate transactions are in principle the most relevant as they are the largest and the most frequent.

The simulation model aims to approach as close as possible to the actual size of THBs (currently not observed). Such a model is by definition a simplification of reality. The amounts and assumptions are based as far as possible on actual data from statistical offices and other public sources. However, public information is extremely limited on some elements such as the time that deposits originating from residential property sales remain on the account of the seller. These assumptions, for which there is no (public) information available, as well as the policy options are discussed in the remainder of this section to understand the sensitivity and potential consequences for the amounts of eligible THBs[45].

The model considers the number of *transactions*, residential *property prices*, *share of deposits* used for the purchase or obtained from the sale, and *period* during which the deposits are held on the account. The model estimates THBs for 2017/18, which might impact the results somewhat as the number of property transactions and property prices in many Member States change over time. The model considers three types of properties (detached houses, semi-detached houses, and flats), three types of regions (cities, towns and suburbs, and rural areas) and three broad types of actors (first-time buyers, second or multiple-time buyers, and sellers) to capture the main known dynamics in property markets and depositor behaviour. The methodology is described in detail in Annex 1.

Main findings of the model

- The THBs are estimated to range between 0.5 % of covered deposits in Croatia and 10.1 % of covered deposits in Lithuania. The EU weighted average is equivalent to 4.6 % of covered deposits (Figure 4.1). This means that if THBs were included for the calculation of the contributions, the total amount of covered deposits would increase by 4.6 %.

- With EDIS in place, if the implementation of the NOD were harmonised within the EU (maximum coverage level of EUR 500 000, coverage of buyers and sellers, and up to 6 months after/before transaction) there would be larger differences in THBs between Member States. This means that Member States with higher potential THBs are relatively more restrictive in their implementation than Member States with lower potential THBs.

[45] There are some assumptions underlying the model that are likely to hold for the large majority of the Member States, but not necessarily all. For instance, the model assumes that all the residential property transactions are performed through bank transfers (no cash) and that the bank transfers the mortgage loan directly to the buyer or notary.

The EU weighted average would be equivalent to 5.6 % of covered deposits (Figure 4.2).

- In practice, depositors would likely claim substantially lesser amounts of THBs, as a large part of the THBs could potentially already be covered under the regular depositor insurance coverage up to EUR 100 000 per depositor per member institution.

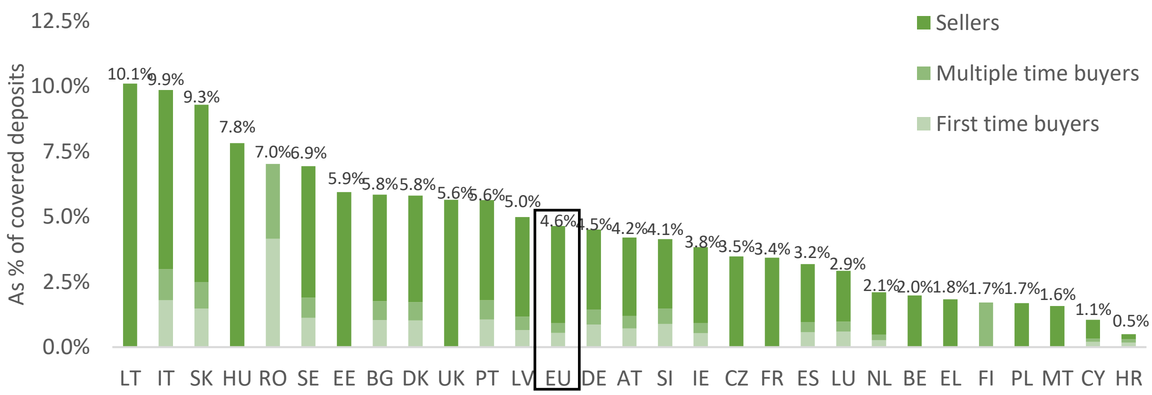
- The settings of the coverage level and the coverage duration have a strong impact on the amounts of THBs.

Results of the model

Estimates suggest that THBs vary largely across Member States in view of different national circumstances, including the transposition of the NOD. Figure 4.1 shows the estimates for THBs due to primary residential property transactions across Member States based on the current implementation.

The differences between Member States due to duration (between 3 and 12 months), amount of coverage (EUR 100 000 to unlimited) and scope of protection, i.e. eligible persons (first-time buyers, second and multiple-time buyers, and/or sellers) are also addressed in the model. However, the model does not consider the differences in claims procedures (quasi-automatic vs. need to file a request) and specific requirements related to THBs only applied in a small number of Member States (e.g. special account for THBs[46]).

Figure 4.1 THBs – current implementation



Notes: This figure shows the THBs across Member States and the EU average weighted by the share of covered deposits. The THBs are estimated based on the current implementation of THB provisions in Article 6(2)(a) DGSD, considering the maximum coverage level, eligible persons, and duration of the THBs.

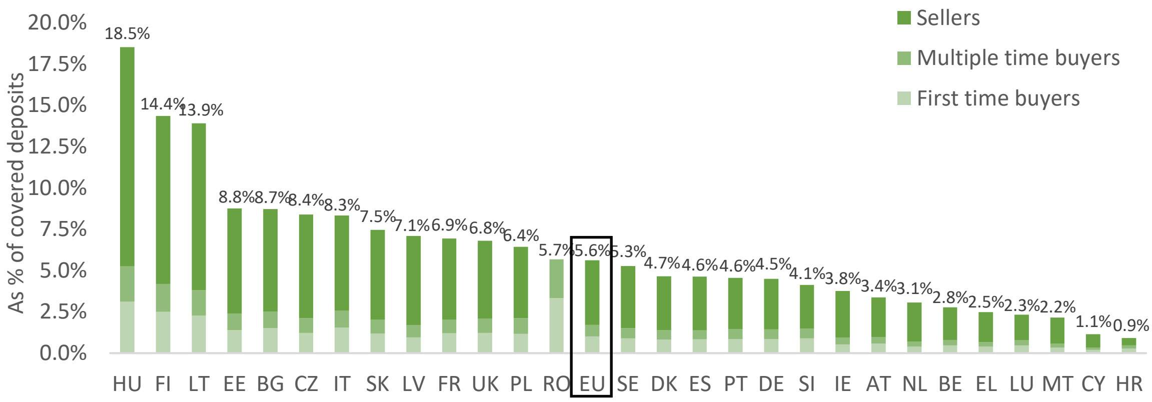
Source: CEPS estimates based on model specified in Annex 1

The differences in THBs between Member States become more pronounced when the same implementation is assumed for all Member States. Figure 4.2 shows the estimates for THBs due to primary residential property transactions across Member States assuming the median implementation for all Member States: deposits related to both purchase and sales transactions, up to EUR 500 000, for a period up to 6 months. The estimated THBs range between 0.9 % of covered deposits in Croatia and 18.5 % of covered deposits in Hungary. The EU weighted average is equivalent to 5.6 % of covered

[46] These approaches could be likely to discourage depositors from claiming THB protection and, hence, reduce the effective amount of covered deposits.

deposits, about 1.6 % higher than that based on the current implementation. This means that Member States with higher potential THBs are relatively more restrictive in the transposition.

Figure 4.2 THBs – median implementation across actors

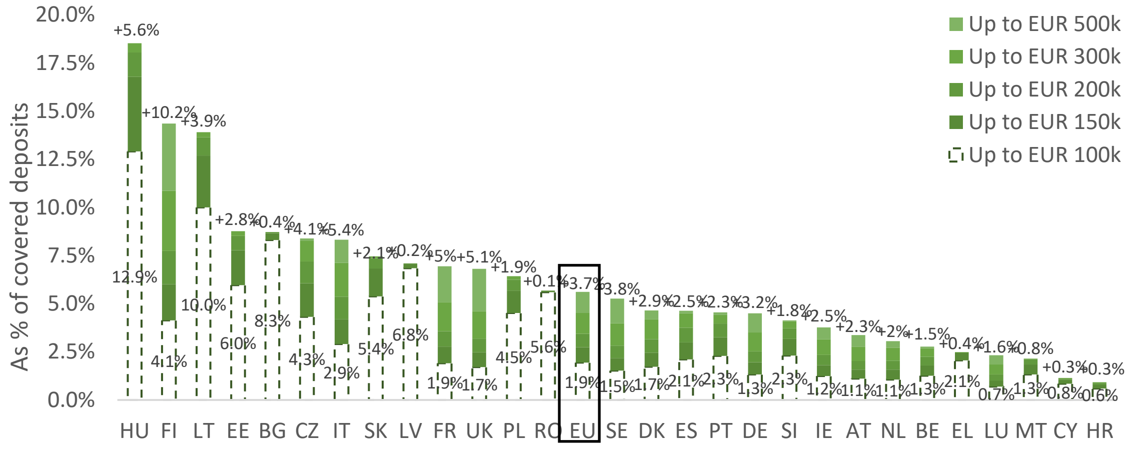


Notes: This figure shows the THBs across Member States and the EU average weighted by the share of covered deposits. The THBs are estimated for the median implementation of THB provisions across Member States; maximum coverage level of EUR 500 000 coverage of all persons (buyers and sellers) and up to 6 months after/before transaction.

Source: CEPS estimates based on model specified in Annex 1

Importantly, depositors would likely claim substantially lesser amounts of THBs in practice. A large part of THBs could potentially already be covered under the regular depositor insurance coverage up to EUR 100 000 per depositor per member institution. For example, if a couple purchases a residential property using a joint account, the coverage for the transaction can be up to EUR 200 000. In practice, the potential amount of the THBs already covered under the regular coverage is likely to range between EUR 0 and EUR 200 000 depending on whether there are one or multiple account holders, the balance on the account, and the transaction amounts. The amount of THBs actually covered under the THB provisions can thus be substantially lower than the maximum eligible amount. Figure 4.3 shows the estimates for THBs due to primary residential property transactions across Member States based on the median implementation by EU Member States, indicating the shares of the THBs covered applying various coverage levels ranging between EUR 100 000 and EUR 500 000. Assuming that EUR 100 000 of the THBs are covered under the regular provisions, the average of THBs drops significantly. In some Member States such as Romania (0.1 % of covered deposits remaining) and Latvia (0.2 %), THBs would be almost eliminated, while in other Member States such as Finland (10.2 %) and Hungary (5.6 %) the THBs would still be substantial. Overall, the EU weighted average would drop by about a third from 5.6 % to 3.7 % of covered deposits. The actual increase in covered deposits under the median implementation of THB provisions would thus be about 3.7 % of covered deposits.

Figure 4.3 THBs – median implementation across coverage levels



Notes: This figure shows the THBs across Member States and the EU average weighted by the share of covered deposits. The THBs are estimated for the median implementation of THB provisions across Member States; maximum coverage level of EUR 500 000, coverage of all actors (buyers and sellers) and up to 6 months after/before transaction.

Source: CEPS estimates based on model specified in Annex 1

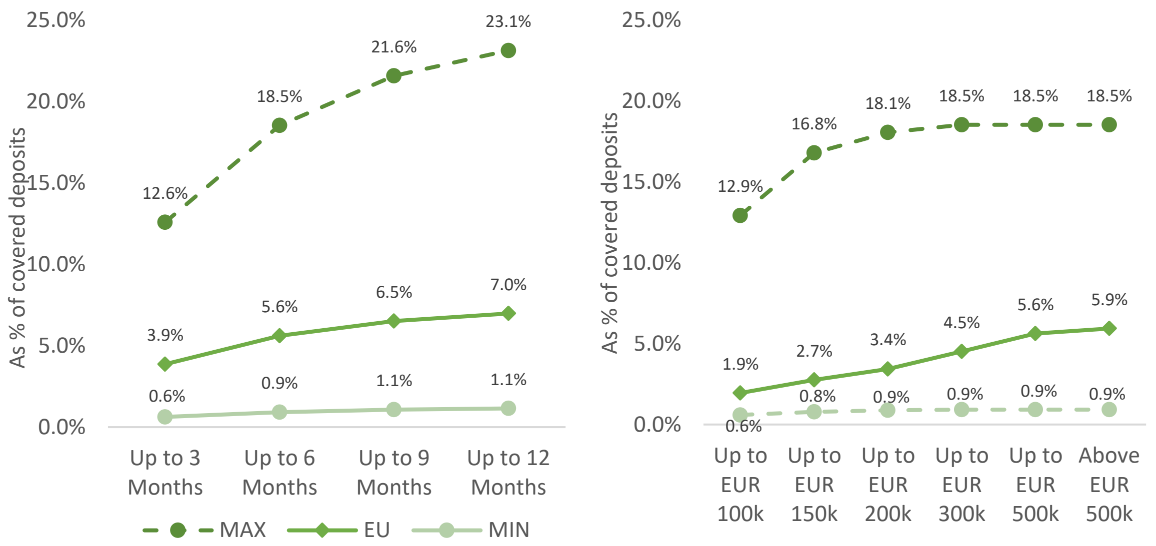
Turning to the various options for the duration and level of coverage of THBs, there are large differences in the amounts of THBs covered. In particular, the coverage level seems to have a significant impact on the amounts eligible under the THB provisions. Figure 4.4 shows the EU weighted average of THBs as a share of covered deposits and the minimum and maximum level of THBs across Member States for durations ranging between 3 and 12 months (left-hand side panel) and maximum coverage levels ranging from EUR 100 000 to unlimited (right-hand side panel).

The amounts eligible as THBs increase with the increased coverage level. However, the incremental increase decreases when the coverage level increases. For example, a 100 % increase in coverage level from EUR 100 000 to EUR 200 000 is likely to increase the eligible deposits from 1.9 % of covered deposits to 3.4 % of covered deposits, which is an increase of about 80 %. While a 150 % increase from EUR 200 000 to EUR 500 000 is likely to increase the eligible amount by just over 60 % from 3.4 % to 5.6 % of covered deposits. By contrast, the THBs do not increase significantly above a coverage level of EUR 500 000. The impact of the coverage level is largely due to differences in property prices, which range in the model between EUR 55 000 for a flat in a rural area in Bulgaria and EUR 1 147 000 for a detached house in a city in the UK. These property prices effectively put a cap on the maximum eligible amount generated.

Similarly, an increase in the duration covered is likely to lead to an increase in eligible deposits. Indeed, a 100 % increase in coverage duration from 3 months to 6 months is likely to increase eligible deposits by about 45 % from 3.9 % to 5.6 % of covered deposits. A further 100 % increase in coverage duration from 6 to 12 months is estimated to increase eligible deposits by only 24 % from 5.6 % to 7.0 % of covered deposits.

Figure 4.4 THBs – median implementation dispersion

a) Across durations **b) Across coverage levels**



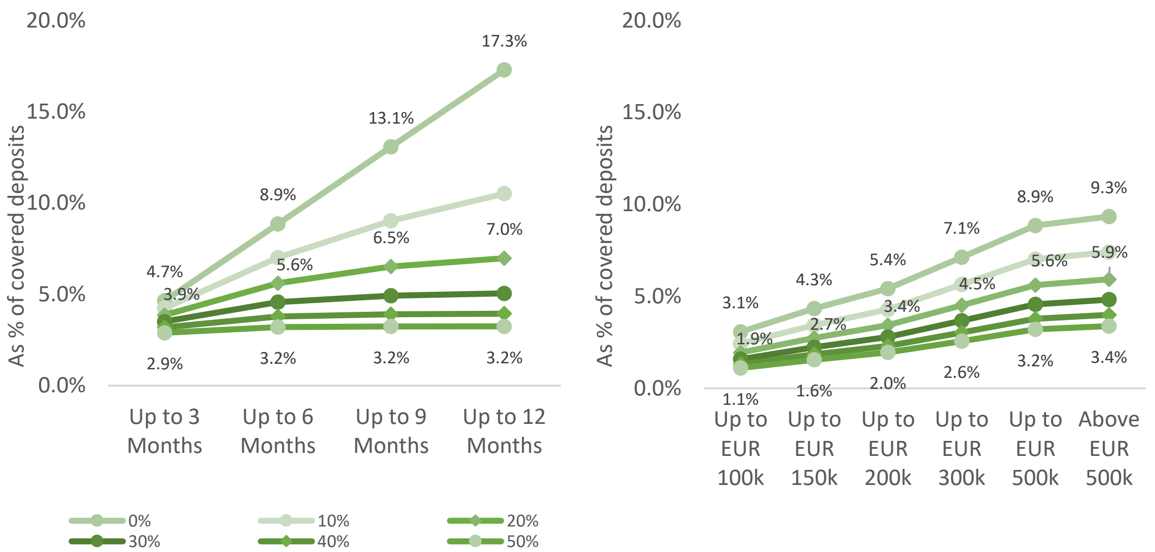
Notes: This figure shows the EU average weighted by the share of covered deposits and minimum and maximum THBs across Member States for various durations and coverage levels respectively. The other conditions for the estimation are based on the median implementation conditions; maximum coverage level of EUR 500 000, coverage of all actors (buyers and sellers) and up to 6 months after/before transaction.

Source: CEPS estimates based on model specified in Annex 1

The impact of a longer coverage duration on eligible deposits would largely depend on the (assumed) inflow and outflow rates. The eligibility of deposits from first-time buyers largely depends on the date at which an agreement for the purchase of the residential property is signed. The existence of such an agreement is often a condition for the eligibility for the THB, i.e. the balances on the account are only covered when there is a purchase agreement. The model assumes that the share of signed purchases decrease by 20 % per month. This means that it is assumed that about 80 % of purchase agreements have already been signed in the month before the transaction (100 % - 20 % = 80 %), while 64 % have already been signed two months before the transaction (80 % * 80 % = 64 %), etc. In practice, the share of the agreements might differ across Member States and time. This effect is less important for multiple-time buyers as they will already be covered through the sales transaction that generates most of their THBs. Similarly, the deposits generated from the sale are likely to decrease as time after the transaction passes. The rate at which the deposits are used for other purposes such as investments might differ between Member States and across time.

Figure 4.5 THBs – median implementation across in- and outflow rates

a) Across durations **b) Across coverage levels**



Notes: This figure shows the EU average weighted by the share of covered deposits and minimum and maximum THBs across various outflow and inflow levels. The estimations are based on the median implementation conditions; maximum coverage level of EUR 500 000, coverage of all actors (buyers and sellers) and up to 6 months after/before transaction.

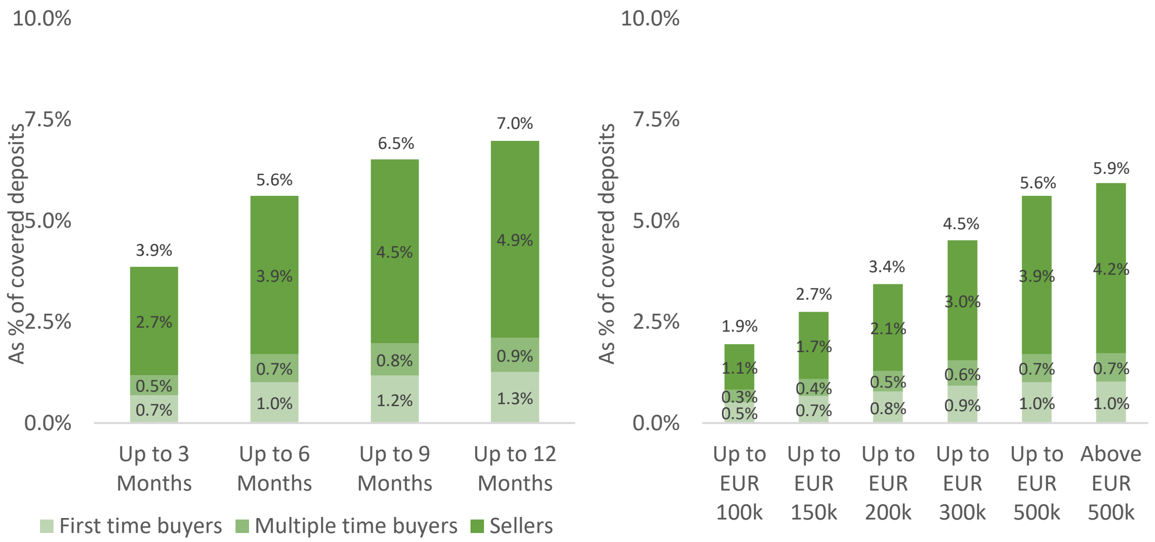
Source: CEPS estimates based on model specified in Annex 1

The higher the inflow and outflow rates are, the lower the deposits eligible under THB provisions are. In practice, the inflow and outflow rates might well be lower or higher than the 20 % per month assumed in the model (80 % at the account [1 month before/after failure], 64 % [2 months], 51 % [3 months], 41 % [4 months], 33 % [5 months], etc.).

Figure 4.5 shows the THBs for different inflow and outflow rates across various covered durations (left-hand panel) and coverage levels (right-hand panel). The difference between various coverage durations is relatively low for the higher inflow and outflow rates, with only 12 % more deposits eligible for an inflow and outflow rate of 50 % instead of 20 % per month. More specifically, the eligible deposits increase for a coverage duration between 3 months and 12 months from 2.9 % to 3.2 % of covered deposits. In turn, inflow and outflow rates of 0 % (i.e. covered deposits remain for the entire coverage duration on the account) would imply that the eligible covered deposits would almost quadruple from 4.7 % to 17.3 % of covered deposits for the durations of 3 months and 12 months respectively. For the assumed inflow and outflow rate of 20 % per month, the eligible deposits increase by 80 % from 3.9 % to 7.0 % of covered deposits for coverage durations of 3 months and 12 months respectively. For the different coverage levels the inflow and outflow rates have a similar impact. The eligible deposits would almost triple when the inflow and outflow rates decrease from 50 % to 0 % per month.

Figure 4.6 THBs – <u>median</u> implementation across actors

a) Across durations **b) Across coverage levels**



Notes: This figure shows the EU average weighted by the share of covered deposits and minimum and maximum THBs across actors for various durations and coverage levels respectively. The other conditions for the estimation are based on the median implementation conditions; maximum coverage level of EUR 500 000, coverage of all actors (buyers and sellers) and up to 6 months after/before transaction.

Source: CEPS estimates based on model specified in Annex 1

It follows from the distribution of the different eligible depositors (e.g. Figure 4.6), that sellers will be responsible for most of the eligible deposits. This is primarily because they are generating the largest share of deposits benefitting from the repayments of the mortgage loans during the time that they held the property and price increases. The share of buyers and sellers remains stable for various maturities. First-time buyers account for about 18 % of total eligible THBs, multiple-time buyers round 12 % and sellers about 70 %. As the THBs generated by sellers are higher than for first- and multiple-time buyers, the share of eligible deposits held by sellers increases when the coverage level increases, as shown in Figure 4.6 (right-hand side). The sellers account for about 58 % of eligible deposits when THBs up to EUR 100 000 are covered and 70 % when unlimited amounts of THBs are covered.

Overall, THBs are estimated to have a significant impact on the covered deposits in most Member States. However, as many of the estimated THBs remain below EUR 100 000, depositors would potentially be able to claim a substantial share of THBs under the regular coverage. The relative importance of the THBs differs across Member States, coverage levels and coverage durations as well as inflow and outflow rates.

4.4.2.2 Level playing field

Despite significant fragmentation, the impact of THBs on the level playing field is likely to be limited because it reflects national specificities (e.g. the living conditions in a Member State). While the coverage is identical within one Member State, in the cross-border context, the differences in covered events, levels and duration could potentially cause distortions in the level playing field to the detriment of a uniform level of depositor protection. In particular, some THBs might not be covered to the same extent across Member States, which could distort the choice of accounts. Nevertheless, based on current experience, the differences in THB regimes do not appear to be well known and the perceived benefits are only temporary. If depositors' awareness about THBs were to increase, the existing fragmentation could also create incentives for moving to jurisdictions with higher coverage.

4.4.2.3 Depositor confidence

This NOD is highly important for depositor protection. In a number of life events (e.g. sale of an apartment, insurance benefits, to name but a few examples), depositors are likely to receive exceptionally large amounts of money on their account, potentially above the standard coverage of EUR 100 000 and, in the absence of THBs, lose such savings in the event of a bank failure. Therefore, the coverage of THBs aims to protect depositors in exceptional circumstances and maintain their confidence in the system.

4.4.2.4 Relevance for respective Member States

Despite limited experience so far, THBs appear highly important in nearly all Member States. By contrast, they are less important in Member States where account balances, including THBs, are unlikely to exceed the regular coverage level of EUR 100 000 per depositor per member institution (e.g. Bulgaria, Croatia, Cyprus, Greece, Latvia and Romania) and where DGSs avoid pay-outs with the use of preventive or alternative measures (Austria, Germany, Italy, etc.)[47].

4.4.3 Options in the context of EDIS

Despite the limited experience so far, THBs are highly important for depositor protection and there are differences in the application of THB provisions across Member States.

In this view, the alternative (Option 3) or the even more ambitious full harmonisation (Option 4) building on the current NOD appear as the most sensible policy options because they would reduce the existing fragmentation. Both options ensure that the

[47] In these Member States, the coverage levels are *de facto* unlimited, making the THBs irrelevant.

most important life events would continue to be covered, while reducing the unlevel playing field.

Under Option 3, depositors would be entitled to THB protection up to the limit of EUR 500 000 and within a period of up to 6 months[48]. Under Option 4, all THBs would be covered up to EUR 1 000 000 for a duration up to 12 months. The scope of protection would remain the same, i.e. all events covered now would continue to be covered[49].

The increased protection for THBs would be likely to have a significant impact in terms of financial exposure for EDIS (about 5 % of covered deposits on average), in particular when taking the form of a full insurance scheme. This is why, under Option 3, it is recommended that THBs are reflected in the calculation of contributions to EDIS. Currently, with one exception for Spain, THBs are not taken into account in the calculation of covered deposits because it may be difficult to identify their amounts. To this end, under Option 3, it would be necessary to estimate[50] the amount of THBs for every member institution.

4.4.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD.

Effectiveness: This option would maintain depositor confidence. Given that THBs are generally not taken into account in the calculation of contributions, DGSs could be too exposed in the crisis scenario with increased THB claims. Currently, the number of THBs is very limited. Important in this respect is that the amount covered under the provision is largely unknown. For EDIS, it is important that the burden is equally distributed across Member States. As the THBs vary substantially across Member States, no contribution would lead to an implicit subsidy of institutions in Member States with relatively low THBs to institutions in Member States with relatively high THBs.

Efficiency: The THB claims can be burdensome for the DGS. In most cases, the DGS would assess the claims on a case-by-case basis which could be more or less complicated depending on the definition of the scope of protection. With EDIS in place[51], such impacts would not be exacerbated because handling of claims would remain in the competence of national DGS.

Coherence: The differences in coverage (duration, level and events) across Member States reduce the cross-border level playing field and the coherence of the system. In turn, the THBs contribute to strengthening financial stability in line with the objective of the resolution mechanism (BRRD/SRM).

Subsidiarity: Under this option, Member States would retain flexibility as regarding the amount of the THB, duration and the scope of transactions. This allows Member States to include all the life events that may involve more or less large amounts of deposits. For example, the amounts of money involved in marriage, dismissal and invalidity are more important in some Member States than in others.

[48] Based on the median implementation, assuming a coverage of EUR 500 000 in the UK with about 87% of the deposits covered, the recommended coverage level would cover basically all the deposits related to primary residential property transactions in the majority of Member States.

[49] i) deposits resulting from transactions related to private residential properties, ii) deposits related to life events, and iii) deposits related to payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

[50] According to the estimations in the context of this study, the THBs would be equivalent to 5.6% of covered deposits.

[51] The COM proposal provides that EDIS covers the deposits as defined under Article 6(1) DGSD. This study considers that EDIS could covers the deposits which correspond to temporary high balances under Article 6(2) DGSD.

4.4.3.2 Option 2: Eliminating

This policy option considers eliminating the current NOD. In practice, THBs would no longer be protected and depositors would be likely to lose an important part of their savings – amounts on their account because of important, and often one-off, life events.

Effectiveness: This policy option would undermine depositor confidence but strengthen the financial capacity of DGSs because the DGSs would not have to cover deposits that had not been reflected in the calculation of contributions. The amount of deposits potentially covered in a pay-out event would be less likely to be underestimated.

Efficiency: This policy option would reduce the administrative burden for DGS related to the potentially burdensome assessment of THB-related claims. This could be compensated by increased awareness among depositors who would know about the need to disperse any funds above the regular coverage level among more banks.

Coherence: This policy option would not contribute to a more coherent system in terms of adequate depositor protection because it would not reflect the different living conditions and real estate prices in the Member States. On the one hand, it might allow for more burden-sharing (i.e. THB holders absorb some of the losses), while, on the other hand, it might increase the lack of financial stability likely prevailing in resolution decisions (i.e. more uncertainty might trigger bank runs).

Subsidiarity: This NOD is highly relevant for depositor confidence in order to address the different living conditions and elimination would negatively impact subsidiarity.

4.4.3.3 Option 3: Alternative

This policy option considers increased harmonisation of the THB in terms of their duration, level and events. This would be combined with an increase in covered deposits because THBs would be taken into account in the calculation of contributions based on a model. This model should consider at least the importance of the various covered events, the sums involved and extent that the amounts are already covered under the regular coverage at Member State level as well as the relevance of the THBs in general at institution level (e.g. THBs are likely to be more important for a mortgage bank than for a bank that serves primarily SMEs).

Based on the median implementation, depositors could claim THB protection up to the limit of EUR 500 000 and within a period of up to 6 months. The scope of protection would remain the same, i.e. all events covered now would continue to be covered. Moreover, in order to reflect THBs in the contributions to EDIS, it would be necessary to estimate the amount of THBs for every member institution. This estimate of THBs could be performed by the institution responsible for the implementation of EDIS or one of the other pan-European banking institutions. According to the estimations in the context of this study, the THBs would be equivalent to 5.6 % of covered deposits (of which some would already be covered under the regular coverage of EUR 100 000 per depositor per institute).

Effectiveness: The alternative option would likely contribute to enhanced depositor confidence, while limiting the uncertainty about the THBs covered. Depending on the current coverage level and the living conditions in the Member State, the maximum threshold of EUR 500 000 and duration up to 6 months might either improve or decrease depositor protection. The broader scope of protection in terms of covered events would likely have only a limited effect, as most Member States primarily exclude events that appear irrelevant in their national context. The increase in the calculated covered deposits for the target level further ensures that there is an additional contribution to the DGS for the THBs.

Efficiency: Increased harmonisation in terms of the duration, amount and events would improve efficiency, while the addition of the THBs to the covered deposits would decrease efficiency. Indeed, the simplification of the NOD with standard coverage (duration, level and potentially events) should alleviate the assessment of claims by DGSs across Member States, which would be particularly important when the deposit insurance is arranged centrally (e.g. fully fledged EDIS).

In turn, most DGSs and member institutions consider it too burdensome to determine the exact amount of THBs *ex ante*. The banks may not necessarily have all the information about the origin and destination of the funds possessed by the depositors. The alternative option therefore considers determining the amounts of additional covered deposits based on a model. The envisaged model can potentially take a similar form as the model used in the discussion above, which could likely limit the burden for both DGSs and member institutions.

Coherence: This option would strengthen the coherence of the system due to a reduced fragmentation. The option might find a balance between loss absorption and financial stability that is closer to optimal. From depositors with large amounts of deposits, one could argue that with a coverage of up to EUR 500 000 the most damaging losses are avoided and some shared responsibility for higher amounts can be demanded.

Subsidiarity: This option would reduce the discretion of Member States but address the fragmentation with a middle-ground solution based on the current application of the NOD. Based on the transposition and interviews, most Member States do not seem to have strong preferences for coverage levels and duration.

4.4.3.4 Option 4: Full harmonisation

This policy option considers that the current NOD would be modified by extending the level of protection. In practice, all THBs[52] would be covered up to EUR 1 000 000 for a duration up to 12 months. This means that in some Member States with already high protection reflecting living conditions (e.g. high real estate prices), depositors will continue to be adequately protected, whereas in other Member States with lower protection, depositors would likely be fully protected.

Effectiveness: This option would adequately maintain depositor confidence because the limit of EUR 1 000 000 is used as the ceiling in Member States with the highest real estate prices. It would increase depositor protection in other Member States that have so far opted for lower protections. However, this would potentially make the DGS more fragile and increase financial exposure for EDIS. Compared to the alternative option, the improvement in depositor confidence is likely to be limited as very few depositors have more than EUR 500 000 due to THBs, whereas the additional amounts per depositor are likely to be larger.

Efficiency: This option would simplify divergent rules by having one level of coverage and one duration and would be beneficial for DGS claims assessment.

Coherence: This option would strengthen internal coherence. External coherence would still be impacted due to a less optimal balance between burden-sharing and financial stability.

[52] i) deposits resulting from transactions related to private residential properties, ii) deposits related to life events, and iii) deposits related to payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

Subsidiarity: This option would limit subsidiarity. However, as the survey did not indicate strong preferences related to implementation, this option would be reasonable.

4.5 NOD 5 – Old-age provision products and pensions

Summary: NOD 5 – Old-age provision products and pensions				
DGSD [Article 6(3)]				
Member States shall not be prevented from maintaining or introducing schemes protecting old-age provision products and pensions, provided that such schemes do not only cover deposits but offer comprehensive coverage for all products and situations relevant in this regard.				
Transposed into national law [2 Member States]				
Denmark and Latvia				
Practical experience so far [2 Member States]				
Denmark and Latvia				
Importance				
Up to 22 % of covered deposits[53]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	-	-	+	+
Policy options in the context of EDIS				
	Option 1: Retain in current form [Recommended]	**Option 2: Eliminating**	**Option 3: Alternative**	**Option 4: Full harmonisation**
Effectiveness	**+**	-	+	+
Efficiency	**-**	+	+/-	+
Coherence	**+/-**	+	+	-
Subsidiarity	**+**	-	-	-

4.5.1 Implementation across Member States

Denmark and Latvia are the only Member States that transposed and use the NOD to maintain or establish schemes protecting old-age provision products and pensions in addition to deposits.

[53] The additional amount covered under the NOD is estimated based on data from the Danish central bank and ManaPensija (2019) for Denmark and Latvia respectively. The Danish pension savings are relatively the highest, equivalent to 22% of the covered deposits of the Danish member institutions. The additional coverage due to the NOD is, however, likely to be substantially less as some is already under the standard coverage (EUR 100,000 per depositor per bank). According to estimates provided by a large Danish bank, the additional exposure would be less than a third or about 6% of total covered deposits.

4.5.1.1 Motivations to transpose and use the NOD

The main motivations are historical as well as to provide a level playing field between different providers of pension products and promote private (Pillar 3) savings for old-age provision products and pensions.

Pension funds have historically had a high level of protection in Denmark. Non-bank pension providers are obligated by law to match liabilities of each customer with assets pledged, which ensures that the customers retain their pension savings if the pension provider fails. This NOD reflected the priority to encourage saving for old-age through supplementary pension schemes offered by banks, which may require protection beyond the standard coverage under the DGSD (EUR 100 000 per depositor per bank).

Latvia decided to provide additional protection for state-funded pension scheme investment plans, private pension schemes, and the funds provided for fulfilment of the obligations laid down in pension schemes, with the purpose of reducing social insecurity among the elderly.

4.5.1.2 Coverage of pension funds and resolution

In Denmark, the NOD reflects the high level of protection of pension funds; far beyond the coverage level under the DGSD[54]. This NOD was already implemented under Directive 94/19/EC, as amended by Directive 2009/14/EC (Article 1 amending Article 7(3) of Directive 94/19/EC), providing for grandfathering for exemptions for social considerations existing before 2008. Denmark has – in transposing this NOD – not implemented any *special* schemes protecting old-age provision products and pensions. The national legislation protects any type of pension/retirement schemes and retained the pre-existing provision.

Under the national legislation, pension savings accounts recognised by law shall be fully covered. This applies both when the pension funds are in the form of a cash deposit and the deposited funds are placed in a pension pool scheme administered by a bank, irrespective of whether the pension scheme is subscribed for privately or as part of an employer scheme. Cash in pension accounts created under the law are therefore fully covered by the DGS. The same applies if the pension funds are placed in securities as part of a pension pool scheme[55]. The transposing measure is formulated in a general way so as to apply to any future pension products recognised under the Danish law.

Full coverage means there is no limitation of the amount and no deduction for overdue liabilities towards the member institution. This applies as long as the funds are in the pension account. If the funds are disbursed and then placed on a regular deposit account, the regular coverage will apply including for THBs (see NOD 4)[56].

In Latvia, funds in state-funded pension scheme investment plans, private pension schemes and those provided in fulfilment of the obligations laid down in pension schemes are not considered as a bank property under the Law on Credit Institutions (KIL). Therefore, the bank cannot use these funds that are not subject to a potential bail-in under the resolution regime.

Accordingly, in order to receive the repayment of the full amount of funds covered under the NOD, the depositor shall submit to the member institution the necessary information confirming the compliance of the deposit with the specific provisions of the Latvian law.

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[54] Commission Working Paper - Impact Assessment (SEC/2010/0834 final).

[55] Finansiel Stabilitet (2019), Hvordan er jeg sikret, hvis mit institut går konkurs?

[56] In such instances, a special coverage of EUR 150 000 applies for a period of 6 months from the moment the payment from a pension account is made.

No further details regarding how this evidence is submitted and how it is verified could be obtained.

Deposits currently held by personal pension schemes and occupational pension schemes covered by the NOD would therefore be fully repaid by the DGS.

4.5.1.3 Practical experience with the NOD so far

Denmark has not been confronted with a pay-out since the implementation of the DGSD. However, as the Danish resolution scheme prevents smaller institutions[57] to undergo normal insolvency proceedings, customers received coverage under this NOD in two cases (2015 and 2018) outside an actual pay-out event. Before the implementation of the DGSD there have been similar cases of coverage of old-age provision products and pensions provided by the Danish DGS in place at that time (also outside a pay-out event).

Latvia has recently dealt with two pay-outs (ABLV Bank AS in February 2018 and JSC PNB Banka in August 2019) but it is unclear whether the NOD was used.

The DGSs were unable to provide the additional amounts covered under the NOD. Based on the information from the Danish central bank, there were about DKK 158 billion (EUR 21 billion) in special deposits at Danish banks at the end of 2017, of which the large majority consist of deposits for pensions in special accounts. These special deposits are equivalent to about 22 % of the covered deposits in Denmark. The additional coverage due to the NOD is, however, likely to be substantially less as a large amount is already covered under the standard coverage (EUR 100 000 per depositor per bank). According to estimates provided by a large Danish bank, the additional exposure would be less than a third or about 6 % of total covered deposits.

Similarly, information on the potential coverage of the Latvian pension instruments is limited. Based on the overview of the total net asset value (NAV) of Pillar 3 pension funds, the amounts are substantially lower in Latvia. According to the figures provided by ManaPensija (2019) the total Pillar 3 pension funds account for EUR 434 million, equivalent to 5.2 % of covered deposits in Latvia at the end of 2017[58]. This amount puts an upper limit on the amounts currently covered under the provision as the third pillar pension funds are also provided by some non-banks and some of the funds might also be covered under the standard deposit guarantee coverage. It should also be noted that the average participant has a claim of only about EUR 1 500 on the pension funds, which is well below the standard coverage of EUR 100 000.

4.5.2 Impact of the NOD

The coverage of old-age provision products and pensions is potentially increasing the risk for the DGS and distorting the level playing field. However, the provisions are important for Denmark and Latvia as they improve depositor confidence by avoiding that coverage limitations discourage savings for retirement.

4.5.2.1 Risk profile of the national DGS

This NOD impacts the risk profile of the DGS. The full coverage of old-age products and pensions could result in a substantial additional exposure of the DGS.

[57] According to the Danish resolution authority these smaller institutions also provide critical functions, i.e. being a primary bank for customers.

[58] The share of covered deposits has been growing by about 0.5% of covered deposits per year in the past three years.

In Denmark, old-age products and pensions, other than regular deposits, are held on separate deposit accounts that can be identified. The impact on the risk profile of the DGS depends on whether the higher exposure increases the probability of pay-out and whether this additional amount is backed by adequate contributions to the fund. While the amount of old-age products and pensions is not reflected in the calculation of the contributions, the Danish DGS reached its target level years ago and has gone well beyond it. The available financial means were equal to 1.3 % of covered deposits at the end of 2018, which is more than 1.5 times the target level of 0.8 % of covered deposits.

Latvia introduced this provision only recently[59]. Like Denmark, Latvia has also already reached the target level, and it is well above it, with contributions amounting to about 2.1 % of covered deposits at the end of 2018, which is about 2.5 times the target level of 0.8 % of covered deposits.

4.5.2.2 Level playing field

This NOD is country-specific and applicable to specific accounts or services that are unlikely to be provided by providers from outside Denmark and Latvia, the negative impact at cross-border level on the level playing field is limited.

However, there is also a potential impact within the same country, as the pension services are also offered by non-banks whose products do not benefit from the coverage under Article 6(3) DGSD. However, these providers are required to have the assets and liabilities of the pension products matched to eliminate the risks for the account holder.

4.5.2.3 Depositor confidence

This NOD covers old-age provision products and pensions, including both deposits and non-deposits. In the same vein as the deposit guarantee, the purpose is to offer protection to savers, and therefore the deposit insurance increases their confidence in the system. In practice, most individuals are likely to expect these products to be safe and assimilate them to deposits.

4.5.2.4 Relevance for respective Member States

This NOD is relevant in Denmark and Latvia[60]. Denmark has a strong tradition of high protection of pension funds/savings, pre-existing the DGSD and this NOD is relevant both politically and financially. Politically, because it reflects social preferences, practices and expectations, which are difficult to change, without affecting the confidence of the population in the financial system. Financially, because the size of these products to be guaranteed by the DGS is significant relative to covered deposits.

4.5.3 Options in the context of EDIS

Given the limited transposition of the NOD, and the strong country-specific dimension, maintaining the current NOD (Option 1) would appear as the most sensible option under EDIS. With EDIS in place, it could also be considered to include the funds that fall within the scope of the NOD in the risk-based contributions to better reflect the financial exposure of the NOD for the DGS. This is currently not necessary as both Denmark and

[59] It was not possible to confirm with certainty whether the deposits under this NOD are reflected in the calculation of the contributions.

[60] In the absence of more detailed information, no assessment about the relevance in Latvia was possible.

Latvia have sufficient funds in excess of the target level to cover the additional deposits covered under this NOD.

4.5.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD. This means that old-age provision products and pensions would continue to be covered in the Member States which opt for the NOD.

Effectiveness: This option would contribute to the effectiveness of the DGS in terms of increased depositor confidence by guaranteeing these deposits that often form integral part of the old-age provisions. However, as long as this additional coverage is not reflected in the contributions, the risk to the DGS, and potentially EDIS, is increased, which could require the intervention of the government if the DGS funds are not sufficient. In both Denmark and Latvia, the latter is effectively mitigated with the current higher target amount.

Efficiency: This option would reduce the efficiency of the DGS. However, the additional burden for the DGSs and member institutions is relative given that the coverage is unlimited and the deposits are held at dedicated accounts.

Coherence: This option appears coherent with the national regulatory frameworks. At least, this seems to be the case of Denmark, where this policy has been in place for years, not least to enhance the level playing field among different providers of pension products and make sure that from a consumer protection point of view, all savers enjoy the same protection on similar products. However, the level playing field would be distorted between Member States that fully cover pensions, while others do not.

Subsidiarity: Although the NOD is only used in two Member States, the coverage of old-age provision products and pensions might be relevant for a larger number of Member States. Moreover, the way the deposits are covered could be harmonised across Member States.

4.5.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. Old-age provision products and pensions that include also non-deposit products would not be protected by the DGS.

Effectiveness: This option would reduce the effectiveness of the DGS and the depositor confidence in the relevant Member States. It would not take into account that the DGSs in Denmark and Latvia currently have funds in excess of the target level, which reduces the likelihood of insufficient DGS funds that would have to be backed by the governments.

Efficiency: Elimination of the NOD would likely improve efficiency by reducing the burden for the DGSs and member institutions as they would have to apply a special treatment to the accounts for old-age provision products and pensions.

Coherence: Coherence of the regulatory framework across countries would increase as this option would eliminate the current fragmentation in the treatment of such products across Member States.

Subsidiarity: This option would impact subsidiarity for Member States using the NOD.

4.5.3.3 Option 3: Alternative

This policy option considers limiting the coverage of the current provisions for old-age provision products and pensions that also include non-deposit products up to

EUR 100 000 in all Member States. This would assimilate these products and pensions to a greater degree to deposits and would apply the same principle of protection. The rationale would be to increase savers' (not only depositor) confidence in the system and set a common social objective of reducing insecurity in old age, possibly increasing the propensity to save.

Effectiveness: If this policy objective is shared across Member States, this alternative option would increase the effectiveness across EU Member States. However, it would also imply a larger exposure relative to the NOD in its current form (as explained in Option 1). To ensure effectiveness, the larger coverage would need to be accompanied by a proportional increase in the risk-based contributions.

Efficiency: This option would likely increase the burden for the DGS. Indeed, the DGSs and member institutions would have to determine the coverage of the old-age and pension products, though this would be easier if such funds were held at dedicated accounts.

Coherence: The coherence of the regulatory framework would increase as the same principle would be applied across Member States. This change would resemble the introduction of the coverage level of EUR 100 000 to ensure deposit protection. Moreover, it could further encourage savings for old-age provision and pensions as a way to address the forthcoming challenges of an ageing population.

Subsidiarity: This partial harmonisation would negatively impact subsidiarity both in Member States where the NOD has been applied at national level (and coverage was in full) and in those which have not opted for the NOD.

4.5.3.4 Option 4: Full harmonisation

This policy option considers extending the NOD to all Member States. Given that the use of the NOD has so far been limited, full harmonisation would likely have the same impact as Option 1. However, if more Member States include more products under the NOD, it would be beneficial to ensure that the member institutions include such amounts in the calculation of contributions to mitigate the exponential increase of the financial exposure of the DGS.

4.6 NOD 6 – Treated as a single depositor

Summary: NOD 6 – Treated as a single depositor				
DGSD [Article 7(2)]				
Member States may provide that deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, may be aggregated and treated as if made by a single depositor for the purpose of calculating the deposit protection limit.				
Transposed into national law [14 Member States]				
Austria, Belgium, Denmark, Estonia, Croatia, Cyprus, France, Ireland, Italy, Luxembourg, Malta, Portugal, Romania and the UK				
Practical experience so far [0 Member States]				
N/A				
Importance				
Up to 9 % of covered deposits[61]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	++	-/+	-	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+**	-	+	+
Efficiency	**--**	+	-	--
Coherence	**-**	+	++	+
Subsidiarity	**+**	-	-	-

4.6.1 Implementation across Member States

Under this NOD, Member States may aggregate joint accounts provided such an account is held by two or more persons entitled as members of a business partnership, association or grouping of a similar nature, without legal personality and treat the account holders as a single depositor for the purpose of calculating the standard deposit protection limit of EUR 100 000. 14 Member States[62] transposed the NOD.

[61] The indicated amount is based on the estimates provided by member institutions in 6 of the Member States that transposed the NOD. The amounts for these member institutions ranged between 0% and 9% of covered deposits of the respective institutions.

[62] Austria, Belgium, Denmark, Estonia, Croatia, Cyprus, France, Ireland, Italy, Luxembourg, Malta, Portugal, Romania and the UK.

4.6.1.1 Motivations to transpose and use the NOD

The rationale for transposing this NOD varies across Member States. The main motivations are avoiding additional compensation, ensuring equal treatment of various deposits or maintaining the provisions that existed prior to DGSD adopted in 2014.

Specific holders of joint accounts are treated as a single depositor eligible for repayment of up to EUR 100 000. Without this restriction, the coverage would be equal to the number of account holders multiplied by the standard coverage of EUR 100 000[63]. Some Member States have implemented the NOD to ensure that **no additional compensation** has to be paid out (e.g. Ireland).

In some Member States, this NOD is implemented to ensure **equal treatment** (e.g. Belgium and the UK). For example, there is some overlap between Article 6(2)(b) DGSD on Temporary High Balances (see NOD 4) and this Article 7(2) on treatment as single depositor. In particular, in the case of an account set up in the context of a heritage with multiple account holders, NOD 4 on temporary high balances provides for a standard coverage per depositor. Without this NOD, the maximum coverage would be determined by the number of account holders. This may create an unequal treatment of the heirs.

In several Member States, the provision already existed prior to the current DGSD. It was difficult to extract consistent information about the rationale of the national transpositions of the NOD from the feedback of the authorities and DGSs. However, the NOD seems to reflect a general principle that the depositor to be protected is the holder of the account, which is not necessarily an individual, e.g. an association, a club, the heirs altogether or a partnership, even if they do not have legal personality.

4.6.1.2 Types of joint accounts covered

In Austria, the joint accounts covered under national legislation correspond to the types of joint accounts determined in Article 7(2) DGSD. More specifically, 'an ordinary partnership, a limited partnership, a civil law partnership or a business organisation of a similar nature' are within the scope of the NOD, unlike entrepreneur accounts of only one natural person.

Several countries included a so-called co-ownership. In Croatia, this corresponds to the case of a joint community of heirs applicable before the inheritance of a deceased person is legally divided between his/her heirs. The bank account in the name of the deceased would be covered by the NOD during that period, i.e. treated as an account of a single depositor.

France has also added co-ownership (*indivision*). A co-owned account (*compte indivis*) belongs collectively to a group of persons who cannot act individually or take ownership of a part of the sum as long as the co-ownership exists. The notion of co-ownership is quite broad and can cover:

- the account of a deceased person before the estate is settled by a notary and the amounts shared between the heirs;
- the account in which several persons have joined together for a common purpose, but without giving a particular legal form to this association, and which operates by mutual agreement between the joint co-owners for all transactions;
- the account created in this form by two persons, which must operate under their two signatures, and whose title bears the mention 'person A and person B' (for instance, matrimonial property scheme).

[63] Under the assumption that that an account should be divided equally among the depositors.

This implies that the co-ownership (and not the individuals) is eligible for the deposit guarantee. Thus, any individual accounts held by co-owners would be considered separately for the purpose of setting the EUR 100 000 limit for two reasons: (i) neither of the holders of such a deposit may act independently or withdraw the part of such a deposit until the joint ownership is dissolved; and (ii) a member of a co-ownership is not free to choose the bank at which the deposits are held. French authorities have concluded that separate consideration of co-owned accounts prevents unequal treatment of a member of an undivided co-ownership who happens to have personal accounts in the same bank and such an approach is favourable to depositors.

Similarly, in Belgium, the scope of the NOD is relatively broad, covering *'assets eligible for repayment in the context of deposit protection and placed in a cash account and assets eligible for repayment in the context of life insurance protection, to which at least two persons may assert rights as members of an association, a group or an co-ownership (indivision) without legal personality'*. This NOD would also apply to any type of organisation with lucrative purposes that does not have a real legal personality (and is not a legal entity by its strict definition) but still has the characteristics of one. The NOD is used to ensure equal treatment.

In Luxembourg, the terms 'associations, partnership or groupings'[64] concerns, for example, business clubs, business associations, business fellowships, building co-ownerships, or accounts in joint ownership following the death of a person (*indivision*). The rationale for the particular treatment of joint ownership accounts in the latter case is that the depositor was the deceased person, not the beneficiaries.

Italy limits the exception to business associations without legal personality, i.e. all types of business entities which are not natural persons and do not have legal personality, e.g. partnership (*societa di persone*). The situation is comparable in Ireland where the types of business association, partnership and grouping covered are sole traders, partnerships and small companies, while medium or large companies, insurers, public authorities, pension funds, collective investment schemes, banks, large financial credit schemes, clubs, schools or charities are not covered.

4.6.1.3 Practical experience with the NOD so far

This NOD has not yet been used. In Belgium, the Ministry of Finance examined a case in 2016 in the context of the bankruptcy of the Optima Bank. However, the provision was not applied in the end.

4.6.2 Impact of the NOD

The treatment of multiple joint accounts as a single depositor is likely to reduce the risk profile of the national DGSs, while potentially reducing depositor confidence. The relevance of the NOD for the Member States that have transposed the provision appears to vary a lot depending on the scope of the national implementation.

4.6.2.1 Risk profile of the national DGS

The treatment of joint accounts as a single depositor limits the coverage on the accounts to EUR 100 000, irrespective of the number of account holders. As the maximum coverage is lower, the expected pay-out for the DGS is likely to be reduced. In practice, in the absence of more detailed information from the DGSs, it is difficult to identify the

[64] The legislation transposes Article 7(2) of the DGSD in a literal fashion.

relevant situations. However, several banks seem aware of the matter and, based on their estimates, the size varies from close to 0 to close to 9 % of covered deposits. In Austria, Italy and Malta, those accounts are below 0.5 % of covered deposits. In Portugal and Denmark, they seem to range between 1 % and 5 % of covered deposits. In Belgium, the percentage seems much higher and close to 9 % of covered deposits. This may be explained by the relevance of the NOD per country (incidence of the relevant entities), but it may also be an overestimation. In practice, banks tend to consider all accounts of associations without legal personality as a single depositor, when calculating covered deposits.

4.6.2.2 Level playing field

Most of the accounts within the scope of this NOD are held in the country in which the business or the association are established or the deceased person lived. As the NOD is applied to all member institutions within the Member States, the level playing field within a Member State would not be distorted. Moreover, as such companies and natural persons appear rather unlikely to have cross-border accounts, the effect on the cross-border level playing field seems marginal.

4.6.2.3 Depositor confidence

The impact on depositor confidence is likely to differ across types of accounts and Member States and appears fairly limited.

Under this NOD, businesses without legal personality would be affected in case of a pay-out if they have deposits exceeding the standard coverage of EUR 100 000. In some cases (e.g. related to administration of heritage), the holders of the account cannot choose to disperse the funds into more than one account to increase the protection but would benefit from the protection applicable to THBs (NOD 4).

4.6.2.4 Relevance for respective Member States

The relevance of the NOD differs across Member States depending on the national law, such as potential alternative provisions and holdings beyond the covered amount on these accounts. Based on the information provided by banks, the NOD would seem to be particularly relevant in Belgium.

4.6.3 Options in the context of EDIS

Half of the Member States have transposed the NOD and, in this view, both full harmonisation (Option 4) or elimination (Option 2) of the NOD would appear in principle reasonable to explore.

With EDIS in place, these two options would give rise to two outcomes at the opposite sides of the spectrum. While eliminating the NOD would translate into a higher financial exposure for the DGSs and EDIS, because such deposits would be considered as joint accounts (i.e. the limit of EUR 100 000 would apply to each depositor), the full harmonisation would mean the exact opposite, i.e. less financial exposure for the DGS and EDIS. In terms of administrative burden for EDIS, both retaining the NOD in its current form (Option 1) and harmonisation (Option 4) would not give rise to additional complexity related to differences among Member States because the national DGSs would remain responsible for the management of depositor claims.

This study recommends therefore an alternative (Option 3), which could complement either Option 1 or 4. Under the alternative option, only businesses without legal personality that make profits would be treated as a single depositor in order to be put on an equal footing to incorporated SMEs. By contrast, other joint accounts (e.g. non-profit associations or co-ownership) would continue to benefit from the standard coverage for joint accounts and result in higher depositor confidence.

4.6.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD.

Effectiveness: This option would contribute to reducing the exposure of EDIS and improving the stability of the DGS. However, the NOD affects the depositor confidence to some extent.

Efficiency: In the context of managing depositor claims, DGSs need to distinguish between standard joint accounts and those treated as single depositors. This includes dealing with potential legal challenges from depositors. Therefore, the NOD impacts efficiency. However, with EDIS in place, retaining the NOD would not give rise to additional complexity related to differences among Member States because the national DGSs would remain responsible for the management of depositor claims.

Coherence: The differences in the treatment across Member States negatively impact the coherence of the system.

Subsidiarity: Member States would retain their flexibility to decide on the treatment of joint accounts and on the relevant situations where the treatment as single depositor applies.

4.6.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. This means that all joint accounts would be subject to the same treatment, i.e. the maximum coverage under joint accounts without legal personality would depend on the number of account holders.

Effectiveness: This option would result in higher covered deposits and hence higher exposure of the DGS and EDIS, relative to retaining the NOD in its current form. However, it would have a positive impact on depositor confidence.

Efficiency: Eliminating the NOD would positively impact the execution of the pay-out because all joint accounts would be treated the same. This would simplify the task of the DGS in assessing when the exception from the coverage of joint accounts applies.

Coherence: The same treatment of joint accounts across the Member States would increase the coherence of the system.

Subsidiarity: The NOD is relevant for about half of Member States but does not seem to be used in practice. While this option impacts subsidiarity by limiting Member State discretion, in practice the impact would be fairly limited.

4.6.3.3 Option 3: Alternative

This policy option considers applying the current NOD only to businesses without legal personality (leaving aside associations, etc.). This would achieve a level playing field between businesses without legal personality and SMEs that are considered as a single depositor.

Effectiveness: This option would further nuance the derogation from the standard treatment of joint accounts, by defining more narrowly the account holders that should be treated as a single depositor. This would improve effectiveness by reducing the exposure of EDIS as compared to the option where all joint accounts are treated the same (Options 1 and 4). Accordingly, business associations, which make profits but have no legal personality would be treated the same way as SMEs. By contrast, other joint accounts (e.g. non-profit associations) would benefit from the standard coverage for joint accounts, resulting in higher depositor confidence.

Efficiency: Under this option, a narrower definition of a joint account treated as a single depositor would simplify the treatment of such accounts. This could reduce the administrative burden on the DGS as compared to Option 1.

Coherence: This option would increase the coherence of the system, both across countries and in terms of treatment of depositors in similar situation.

Subsidiarity: This option would reduce subsidiarity in the Member States.

4.6.3.4 Option 4: Full harmonisation

This policy option considers applying the current NOD in all Member States so that business partnerships without legal personality would be treated as single depositors.

Effectiveness: This option would improve effectiveness by reducing the exposure of DGS and EDIS. It would also better achieve the equal treatment of depositors. Reducing the standard coverage otherwise applicable to joint accounts would, however, reduce depositor confidence to greater extent than under Option 3.

Efficiency: Full harmonisation would impact efficiency. It would increase the burden on DGSs and member institutions when assessing the scope of the derogation from the standard treatment of joint accounts. However, with EDIS in place, such an approach would not give rise to additional complexity related to differences among Member States because the national DGSs would remain responsible for the management of depositor claims.

Coherence: This option would positively impact the coherence of the system.

Subsidiarity: Full harmonisation would limit Member State discretion as opposed to the current state of play.

4.7 NOD 7 – Set-off of depositor liabilities

Summary: NOD 7 - Set-off of depositor liabilities				
DGSD [Article 7(5)]				
Member States are allowed to consider the due liabilities of the depositor against the bank when calculating the repayable amount.				
Transposed into national law [17 Member States]				
Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Romania, Slovakia, Slovenia and Spain				
Practical experience so far [2 Member States]				
Cyprus and Ireland				
Importance				
Up to 5.9 % of covered deposits[65]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+	+/-	+/-	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating [Recommended]**	**Option 3: Alternative**	**Option 4: Full harmonisation**
Effectiveness	**+/-**	+/-	+	+
Efficiency	**-**	+	-	-
Coherence	**-**	+	+	+
Subsidiarity	**+**	-	-	-

4.7.1 Implementation across Member States

Under Article 7(5) DGSD, Member States may decide to consider the liabilities of the depositor against the same member institution when calculating the repayable amount. Such a set-off is allowed only when liabilities have fallen due on or before the date on which the unavailability of deposits is determined. In addition, the provision is applicable only if it is part of the statutory and contractual provisions governing the contract between the member institution and the depositor. Depositors must be informed by the member institution prior to the conclusion of the contract that their liabilities towards

[65] The amount is based on the information provided by one DGS and fourteen large European banks, which provided amounts ranging between 0.0% and 5.9% of covered deposits.

the member institution will be considered when calculating the repayable amount. 17 Member States[66] have transposed this NOD in national law.

4.7.1.1 Motivations to transpose and use the NOD

The main motivations for application of this provision include historical reasons and the objective to facilitate the insolvency procedures.

Several Member States justified transposing the NOD by the need to **facilitate the insolvency procedures**. In Slovakia, the set-off of depositor liabilities speeds up the payment of compensation, while improving the effectiveness of the subsequent insolvency proceedings. In Slovenia, offsetting was considered beneficial to prevent enforcement actions concerning the funds owed by the depositor to the member institutions that could potentially be lengthy, costly and not economically viable. The application of the general rules on set-off under a general contract law would also be costly and lengthy. In Estonia, practical purposes, namely to avoid disputes, form the main motivation for the transposition. In Greece, the main reason for the application is to facilitate the process of repayment of overdue liabilities of depositors.

Several Member States mentioned **historical reasons** stating that this requirement was already included in national legislation prior to the DGSD (e.g. Denmark, Estonia and Slovakia).

4.7.1.2 Depositor liabilities subject to offsetting

This NOD is typically broadly formulated in the transposing legislation and does not specify which liabilities are to be covered (i.e. whether the set-off is limited to certain types of deposits). The supervisory authority or the DGS would normally define which liabilities should be considered.

In Belgium, the Ministry of Finance (i.e. the DGS) determines which obligations of the depositors should be considered in calculating the repayable amount depending on whether the set-off is statutory or contractual. As this varies across member institutions and contracts, when the Ministry conducted a stress test to assess the relevance of the provision, it turned out that the information about such deposit contracts was very limited.

In Cyprus, the DGS gave some examples of the liabilities at stake during the pay-out of the FBME Bank, namely loans, overdrafts, credit card balances, hire purchase agreements and other financing were offset[67].

In Denmark, the national competent authority[68] calculates the net compensation on behalf of the DGS. It shall determine the liabilities of depositors towards the institution, including loans, utilised credit commitments and guarantees, which are due to the failing member institution.

In some Member States, exceptions to offsetting may derive from the application of the general rules of the Civil Code or Civil Procedure Code which usually apply to set-off. In

[66] I.e. Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Romania, Slovakia, Slovenia and Spain.

[67] Announcement by the Management Committee of the Deposit Guarantee and Resolution of Credit and Other Institutions Scheme (‘DGS’) regarding the Compensation of Deposits at FBME Bank Ltd – Cyprus Branch (‘Fbme’), 14/06/2016.

[68] Finansiel Stabilitet is an independent public enterprise owned by the Danish state through the Ministry of Business and Growth, of which the Danish FSA (*Finanstilsynet*) is an integral part. The Danish FSA is the competent authority for bank resolutions and supervision.

general, the liabilities considered in the set-off are those due to the failing member institutions, in line with the wording of Article 7(3) DGSD which refers to the liabilities of depositors to the member institution and do not include liabilities to third parties, except for France and Spain.

In Luxembourg and France, the legislation includes a general prohibition for offsetting. However, it enables offsetting (i) provided for in regulatory or legal provisions and (ii) deriving from the contract between the depositor and the member institution. In France, the offsetting covered by legal provisions is mainly of a temporary nature, and includes the different debits related to a payment card and debit premiums, recorded on the date when deposits are declared unavailable.

In France and Spain, third-party claims towards a depositor can be set off against them when calculating the amount repayable from the DGS. In France, offsetting extends to the sums allocated to the creditor of a depositor[69]. In this case, the creditor, hence a third party, receives from the DGS an amount equal to the amount of the claim to the depositor up to the difference between the ceiling (EUR 100 000) and the compensation paid to that depositor. Contractual provisions governing the agreement between the member institution and the depositor can also provide for such a compensation. Those contractual provisions mainly concern legal entities and small traders and are linked to commercial considerations, as part of the mechanism for centralising cash and company accounts. In Spain, third-party claims are considered if the creditor makes a claim to the member institution.

4.7.1.3 Practical experience with the NOD so far

There are only a few concrete examples of practical experiences with this NOD. In Ireland, the DGS stated on their website in relation to the cases of the Rush Credit Union and the Charleville Credit Union that, in general, liabilities such as loans are not set off against deposits when calculating the DGS compensation. However, the Joint Provisional Liquidators, where entitled to do so, could set off arrears which have fallen due on or before the date of the liquidation. In practice, liquidators have set off liabilities before compensation was paid out on a case-by-case basis.

The same also occurred in the case of FBME Bank Ltd in Cyprus[70]. No delay in payments in relation to set-offs was recorded, given the small number of loans concerned.

In Spain, the DGS compensates all the debts due and payable at the moment of the pay-out. The set-off has to be established in the contract between the depositor and the member institution. As a result, the member institution directly applies this set-off when reporting the data to the DGS and includes it in the Single Customer View file. The depositor can contest the net amount by sending a disagreement letter. The Spanish DGS always tries to pay-out the depositors within the 7 working days period, even though there is a possibility to delay it (NOD 9). A procedure through a webpage is available to speed up the process.

In Austria, the due liabilities are not considered in the calculation of covered deposits, but they should be taken into account in the pay-out. It emerged from the stress testing exercise that the depositors concerned would not go into the DGS' automatic pay-out system. The DGS would have to contact the client, or vice versa, and both overdue amounts and loans would be considered. In practice, this could lead to a dispute

[69] Who is the holder of an enforceable title, who has seized and assigned the claim or notified the notice to the third-party holder or any similar act in the hands of the member institution before the date of declaring deposits unavailability, but has not been paid by that member institution before that date.

[70] In Cyprus basically all liabilities, including loans, overdrafts, credit card balances, hire purchase agreements or other financing become due.

between the depositor and the DGS. The simulations indicated that the effect on the DGS was less than 1 % of covered deposits. The main reason for the low number is that most depositors with overdue amounts and loans in practice did not have any covered deposits.

Czechia did not transpose the NOD. However, it considered a similar provision at the time of the biggest pay-out case in 2003. In that case, it was calculated that the set-off represented less than 0.5 % of the total pay-out. In practice, given the short time available to prepare the pay-out file, member institutions decided not to consider the amounts due. Based on that experience, it was deemed reasonable not to apply set-offs any longer.

4.7.2 Impact of the NOD

The set-off of claims and liabilities of a depositor to the member institution is likely to reduce the risk profile of the national DGS, while no significant impact should exist on the level playing field and depositor confidence. The relevance of the NOD for the Member States that have transposed the provision varies depending on the scope of the national implementation.

4.7.2.1 Risk profile of the national DGS

The set-off of claims and liabilities of individual depositors to the same member institution is likely to reduce the repayable amount in a pay-out as well as the claims of the DGS on the member institution to reclaim the repaid deposits in case of a pay-out event. In practice, if the set-off calculation is operated by the member institution, the task of the DGS would also be simplified. The amounts covered under the NOD seem to range between 0.0 % and 5.9 % based on the information provided by 1 DGS and 14 large European banks.

4.7.2.2 Level playing field

The set-off would give a small advantage to the member institutions that also have claims on depositors, if the calculation of the liabilities contributed to reduce the amount of covered deposits. However, this does not appear to happen in practice.

In addition, the cross-country impact of the provision is likely to be zero as a depositor is ultimately expected to receive the same net amount, unless the deposits are higher than the claims of the member institution on the depositor and above the standard coverage level of EUR 100 000 per depositor per bank.

4.7.2.3 Depositor confidence

Although a depositor should expect to receive the same net amount with or without the set-off, the set-off could affect depositor confidence. The rationale of having loans and deposits with the same member institution is primarily related to liquidity. The claims of the depositor on the member institution (current account, savings deposits, and term deposits) often have a shorter duration than the claims of the member institution on the depositor (mortgages, personal loans, etc.). The set-off of the claims might create short-term liquidity problems and thus a potential loss in confidence of depositors that have all their savings at a current account with the defaulted institution. However, in the case of due claims, the liquidity issue creates lesser concerns as those depositors often do not hold any or only limited amounts of deposits.

By contrast to this argument, in Denmark, the NOD is seen as a means to increase depositor confidence. As a general principle of property law, set-off ensures certainty and fair treatment, i.e. each depositor knows the amount (s)he owns and owes. In this respect, as mortgages can reside with separate institutions other than these where depositors hold their bank accounts, the due liabilities linked to mortgages are not necessarily relevant in the application of the NOD.

4.7.2.4 Relevance for respective Member States

The relevance of the NOD seems limited because: (i) only some contracts include the provision about the set-off; (ii) only certain types of due liabilities are considered for the set-off calculation; and, (iii) depositors with due liabilities relevant for the calculation are likely to have limited covered deposits, if any. These considerations seem in line with amounts based on one concrete experience in Czechia (prior to the DGSD) and the stress test exercise in Austria.

4.7.3 Options in the context of EDIS

With EDIS in place, this NOD would lower the financial exposure of the DGS or EDIS as the set-off could reduce the amount of covered deposits (i.e. due liabilities are deducted from the amount of the deposits). In addition, the NOD would not impact EDIS in terms of administrative burden because the settlement of depositor claims would remain in the competence of national DGSs. Indeed, the NOD increases the administrative burden for the DGSs and member institutions.

However, the NOD, although transposed in more than half of Member States, appears to have limited relevance and has not been used in practice. Therefore, in view of the low materiality, the study recommends to eliminate the NOD (Option 2) in line with the main findings that the scope of the NOD is relatively limited. The set-off must be provided for in the contract between the depositor and the bank and the amounts involved are likely to be marginal. A depositor with due liabilities is unlikely to have available amounts of covered deposits that could be set off. The elimination of the NOD would also be beneficial for the DGSs in terms of reduced administrative burden that would otherwise be necessary to verify depositor contracts. Elimination would mean that the responsibility to recover the due amounts would be shifted to a liquidator in the insolvency procedure. This policy option would also ensure a level playing field as the depositor’s due amounts would be treated in the same way across Member States.

4.7.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD in those countries that have transposed it.

Effectiveness: This option would preserve effectiveness in Member States that implement the NOD with a view to facilitating insolvency procedures.

Efficiency: In practice, the information required for the set-off (i.e. the assessment of the conditions) is the main impediment to comply with the 7 working days pay-out. For example, the analysis of overdue liability may take several days, subject to a possible legal challenge by a depositor in case of disagreement with the determination of the repayable amount. Currently, in some Member States, depositor liabilities vis-à-vis third parties could also be considered in the calculation (ES, FR), which adds to the complexity of the assessment. These considerations would lower the efficiency of this policy option.

Coherence: This option would impact coherence due to differences in the actual implementation of the NOD to the detriment of the harmonised treatment of depositor claims.

Subsidiarity: This option would not impact subsidiarity.

4.7.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. This would mean that the due liabilities of a depositor would not be set off against the deposits. Accordingly, the depositors would first receive a repayment of the deposits up to EUR 100 000 and then be liable to pay their obligations towards the member institution in the insolvency procedure.

Effectiveness: This option would to some extent impact the efficiency of insolvency proceedings as the failed institution would recover the due liabilities in the pay-out procedure. However, this would be largely dependent on the overall effectiveness of national insolvency regimes and has rather a remote link to depositor protection. It could be argued that if a depositor received a repayment of the covered deposits from the DGS, the failed institution would employ standard practices to recover the due amounts from debtors.

At the same time, this option could potentially increase the financial exposure of the DGS or EDIS, i.e. result in higher pay-outs. However, it should be noted in this respect that, based on available information, the amounts related to the set off of due liabilities appear immaterial.

Efficiency: This policy option would improve efficiency for the DGS by eliminating the need to carry out assessments of the conditions of the set-off. This option would also be beneficial in terms of reducing the costs and administrative burden of the DGSs, which would also remain responsible for the settlement of depositor claims with EDIS in place.

Coherence: This option would improve the coherence of the regulatory framework by eliminating the difference as to the treatment of depositor claims across Member States.

Subsidiarity: This option would negatively impact subsidiarity.

4.7.3.3 Option 3: Alternative

This policy option considers an alternative approach complementing either retaining the NOD in its current form (Option 1) or full harmonisation (Option 4). It would modify the current provision so that the set-off would be limited to deposits placed on saving accounts, as opposed to current accounts. As the balances on current accounts, in principle, fulfil short-term payment obligations and expenses, such a modification could limit the potential short-term liquidity shortfalls that the set-offs could cause. If such depositors had funds on a savings account, the set-off would be performed to preserve its function to facilitate the insolvency proceedings.

Effectiveness: This option would be beneficial for effective depositor protection.

Efficiency: This option would reduce efficiency despite the fact that additional harmonisation would reduce differences in the implementation of the NOD. The main reason is that it would remain challenging for the DGSs to carry out an assessment whether particular deposits are on current or saving accounts.

Coherence: This option would improve the coherence of the regulatory framework by eliminating the difference as to the treatment of depositor claims across Member States.

Subsidiarity: This option would negatively impact subsidiarity.

4.7.3.4 Option 4: Full harmonisation

This policy option considers extending the current NOD to all Member States. In practice, this would mean that the deposits would be set off against the overdue and contractually agreed claims of the member institution vis-à-vis the depositor.

Effectiveness: This option would contribute to the objective of the uniform treatment of depositor claims and to facilitate the insolvency procedures. It may however create short-term liquidity issues for the depositors.

Efficiency: This option would negatively affect efficiency in terms of increased administrative burden for the DGSs which would be liable to carry out assessments of the conditions of the set-off, being the main impediments to ensuring 7-day pay-outs.

Coherence: This option would improve coherence by eliminating the differences in the implementation and practices across Member States.

Subsidiarity: This option would negatively impact subsidiarity.

4.8 NOD 8 – Exclusion of deposits fulfilling a social purpose

Summary: NOD 8 - Exclusion of deposits fulfilling a social purpose				
DGSD [Article 7(8)]				
Member States may decide that certain categories of deposits fulfilling a social purpose defined by national law, for which a third party has given a guarantee that complies with State aid rules, are not considered when aggregating the deposits held by the same depositor with the same member institution.				
Transposed into national law [1 Member State]				
France				
Practical experience so far [1 Member State]				
France				
Importance				
About 25 % of the covered deposits[71]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member State**
Overall	+	+/-	+	+
Policy options in the context of EDIS				
	Option 1: Retain in current form [Recommended]	**Option 2: Eliminating**	**Option 3: Alternative**	**Option 4: Full harmonisation**
Effectiveness	**+**	+	+	+
Efficiency	**+/-**	-	-	+
Coherence	**-**	+/-	+	-
Subsidiarity	**+**	-	+	+

4.8.1 Implementation across Member States

Under Article 7(8) DGSD, Member States may exclude certain categories of deposits when aggregating the deposits held by one single depositor with the same member institution. They must fulfil: (i) a social purpose defined by national law and (ii) a third party has given a guarantee compliant with State aid rules up to EUR 100 000.

France transposed this NOD in order to cover three types of savings accounts: Livret A, the Livret Développement Durable et Solidaire (LDDS), and the Livret d'Epargne Populaire (LEP). A part of the deposits collected by the member institutions are transferred to a fund (Fond d'Epargne) used to finance social housing projects, urban development and local public investments. In addition, part of the fund is also invested in financial assets to generate the due interest payments on savings, and to guarantee

[71] The balances on the accounts eligible under this NOD amount to EUR 420 billion, which is equivalent to 36% of the covered deposits under the French DGS. In practice, about 30% of these eligible deposits are non-centralised and not covered by the DGS. This means that the NOD reduces the covered deposits by approximately EUR 300 billion, which is equivalent to about 25% of covered deposits under the French DGS.

the liquidity of the fund. All these deposits are regulated, have a fixed return and a maximum amount, and are tax exempt. The French state provides the guarantee for these deposits.

4.8.1.1 Motivations to transpose and use the NOD

The Livret A are popular banking accounts. The main motivation for the exclusion of these deposits from DGS protection was historically to avoid a double guarantee because the centralised part of the deposits is guaranteed by the French state under the NOD.

4.8.1.2 Deposits fulfilling a social purpose

This NOD applies only to the part of the deposits placed on LEP and LDDS, Livret A which are centralised in a savings fund managed by the Caisse des Dépôts et Consignations (CDC) and for which the French state offers a guarantee. This centralised part amounts to about 70 % of the total deposits (LEP, LDDS, Livret A)[72]. The other 30 % placed on such accounts is protected by the Fonds de Garantie des Dépôts et de Résolution (FGDR, i.e. the French DGS) as part of standard deposit protection and should be aggregated with regular deposits.

This implies that, due to the NOD, only the share of the deposits that are not centralised are included in the calculated covered deposits and contributions to the DGS.

It should be noted that in practice most of these deposits have a quite low ceiling, i.e. EUR 12 000 for the LEP and LDDS and EUR 22 950 for Livret A, and no depositor can hold more than one of each type. The compensation of THBs (NOD 4) is not included in this calculation.

4.8.1.3 Practical experience with the NOD so far

Only France has used this NOD as it reflects its specific national system that provides a state guarantee for certain types of deposits. There is no record of a pay-out related to this NOD under the DGSD.

However, in the event of a pay-out, the FGDR would manage the operations and cover the whole amount of relevant regulated savings, both for the centralised part and the remainder. The French state will then reimburse the DGS for the part that is centralised under the CDC. The reimbursement is done based on the information available in the Single Customer View (SCV) file.

4.8.2 Impact of the NOD

The exclusion of deposits fulfilling a social purpose with a state guarantee is likely to have limited impact on the risk profile of the national DGS, limited impact on the level playing field and a positive impact on depositor confidence. The NOD is relevant only for France.

[72] Until 2008 all regulated savings were centralised. In 2009 the collection and centralisation of the regulated deposits was reformed in order to comply with EU rules. The reform included the possibility for commercial banks to distribute regulated deposits, and the reduction of the degree of centralisation. At that time, the government committed to a minimum rate of centralisation of 70%, calculated on the Livret A and LDDS. In practice this means that the actual amounts centralised may vary over time and across banks.

4.8.2.1 Risk profile of the national DGS

Given that member institutions contribute to the DGS based on the deposits that are covered by the DGS (non-centralised deposits), in principle the NOD does not have an impact on the risk profile of the DGS. In practice, given that the DGS would manage the pay-out of all regulated deposits including the centralised part protected by a state guarantee, the procedure of reimbursement may imply an extra administrative burden and potentially a liquidity risk. Moreover, the exclusion of the deposits reduces the contribution base for the DGS.

4.8.2.2 Level playing field

The existence of these deposits and the NOD itself do not distort the level playing field in France, as all member institutions are allowed, since 2008, to distribute these deposit accounts. Since the contributions of member institutions to the DGS are based on the share of deposits covered by the DGS, there is – in principle – no impact on the level playing field[73]. However, the level playing field is only slightly distorted from the perspective of depositors because the customers of French banks benefit from a slightly higher coverage level and from the perspective of banks from other Member States because the guaranteed deposits cannot be sold outside France.

4.8.2.3 Depositor confidence

As the purpose of the NOD is to avoid a double guarantee on a special category of deposits, the impact on depositor confidence should be positive. In practice, depositors are rather unlikely to be aware of the existence and of the precise implications of a centralised and non-centralised part, also due to the collective perception that such accounts are guaranteed by the state, as has been the case for decades. It is also likely that the FGDR is recognised as the institution that will intervene in case of a crisis, as this must be clearly stated to depositors every year by the bank managing the accounts.

4.8.2.4 Relevance for respective Member State

In France, the practice of placing deposits in special accounts that serve a special social purpose and enjoy a state guarantee has a very long tradition (CDC was created in 1816) and is common throughout the population. This makes the NOD relevant both politically and financially.

Politically, it reflects social preferences, practices and expectations, which are difficult to change without affecting people's confidence in the financial system and state.

Financially, the total size of the concerned deposits is very large. Total regulated deposits amounted to about EUR 420 billion[74] at the end of 2018[75], of which approximately EUR 300 billion are centralised and benefit from the state guarantee[76]. This NOD makes it possible to exclude these approximately EUR 300 billion in

[73] By contrast, an impact exists on the banks' contributions to the Single Resolution Fund, which are based on the total amount of savings, without excluding the centralised part. In this sense, French banks with regulated deposits in their balance sheet pay relatively more than other banks.

[74] For almost 90 million accounts (less than EUR 5,000 per account on average).

[75] 55 million Livret A accounts representing a total of EUR 267 billion in deposits;
8.5 million LEP accounts for a total of EUR 43 billion in deposits;
24 million LDDS accounts for a total of EUR 107 billion in deposits.

Observatoire de l'épargne réglementée (2019), Rapport annuel 2018.

[76] The remaining EUR 120 billion are not centralised and are recognised as covered deposits, covered by the DGS.

centralised deposits, equivalent to 25 % of the French covered deposits (as declared to the EBA).

From the perspective of the DGS, the existence of the state guarantee is likely to be more an administrative complication than an advantage in terms of lower exposure. For the member institutions, the existence of such deposits may be a disadvantage when the contributions to the SRF are also considered[77].

4.8.3 Options in the context of EDIS

Given the strong country-specific dimension because the transposition of the NOD is limited to only one Member State, the recommended option is to retain the NOD in its current form (Option 1). The NOD would not have any impact on the risk profile of EDIS because the relevant part of deposits (i.e. 70 %) covered by the NOD are, financially speaking, excluded from the DGS protection. From the perspective of the DGS, this approach reduces the depositor base and, hence, also the potential pooling benefits. This NOD could co-exist with EDIS because such deposits would be outside its scope.

In addition, the alternative option (Option 3) could also be envisaged to the extent that it would contribute to a more coherent DGS at the cost of a slightly higher burden for the member institutions and DGS. Under this option, the deposits would be included in the covered deposits, but the member institutions would be rewarded with a lower contribution to the DGS. This would make the treatment somewhat similar to that of members of IPSs (NOD 17).

4.8.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD in France, i.e. deposit accounts with a social purpose that are guaranteed by the French state would continue to be excluded from the DGS coverage. This option could co-exist with EDIS because such deposits would be outside its scope.

Effectiveness: With a view to avoiding a double guarantee on certain deposits, excluding the deposits from the coverage does not impact the level of protection for depositors and does not impact the risk profile of the DGS, or potentially EDIS. However, the NOD contributes to retaining the direct link between member institutions and the national governments, which back the state guarantee.

Efficiency: This option increases efficiency as the DGS and member institutions have to consider fewer deposits for determining the covered deposits. However, in the event of pay-out, the DGS also executes the repayments of the state-guaranteed deposits and is repaid by the government which increases its administrative burden.

Coherence: This approach impacts the coherence of the EU framework because it maintains to some extent the direct link between member institutions and the national government. However, it is acknowledged that the main source of incoherence does not come from the option itself, but from the pre-existing French system of state-guaranteed deposits, which has no equivalent in other Member States.

Subsidiarity: This option does not impact subsidiarity because it takes into account the high degree of the country specificity.

[77] The centralised part of the deposits is reflected in the contributions to the SRF. Consequently, the target level of the SRF will be reduced (1% of covered deposits), while the contribution base (non-covered deposit liabilities) will be expanded. Overall, the benefit of the target level reduction is less than the corresponding contribution base.

4.8.3.2 Option 2: Eliminating

This policy option considers eliminating the current provision that allows Member States to exclude deposit accounts with a social purpose from the covered deposits.

Effectiveness: The elimination of the NOD would not reduce the effective depositor protection because such deposits would be covered by the DGS instead of the state. Indeed, the inclusion of state-guaranteed deposits reduces the maximum amount of deposits covered to the regular coverage (EUR 100 000 per depositor per institution), i.e. the deposits guaranteed under the NOD are in practice additional to the regular covered deposits.

Efficiency: From the perspective of member institutions, efficiency would deteriorate because costs for the member institutions would increase due to higher contributions to the DGS[78]. For the purposes of improved efficiency, the state guarantee would have to be eliminated.

Coherence: In the context of this NOD, it is not straightforward that the elimination of national discretion improves the coherence of the regulatory framework across Member States. On the one hand, as the NOD aims to mitigate the impact of a Member State specificity under standard deposit protection, removing the NOD may lead to less coherence. On the other hand, the NOD reduces the contribution base for the DGS, increases the contagion risk between member institutions and governments and gives French depositors a potentially higher maximum coverage than depositors in other Member States. All in all, this option would improve coherence.

Subsidiarity: This option would impact subsidiarity.

4.8.3.3 Option 3: Alternative

Under the alternative option, the deposits covered by the NOD would be included in the calculation of the covered deposits but the costs for member institutions would be mitigated by applying a significantly lower contribution and target level for these deposits. This would reflect the double guarantee and be in line with the lower contributions for low-risk sectors (NOD 16) and lower contributions for members of IPSs (NOD 17). Such adjusted contributions would primarily compensate the DGS for its contribution to a potential pay-out (e.g. liquidity and administration).

Effectiveness: This option would not affect the covered amount for French depositors under the DGSD because the deposits fulfilling a social purpose would still be additional to the regular coverage (EUR 100 000 per depositor per institution). In practice, however, the potential additional coverage for the French deposits is limited[79]. The state would still have to cover losses on the centralised guaranteed deposits (70 % of deposits fulfilling a social purpose). The DGS would be compensated, through the extra contributions from the member institutions, for the management and pre-financing of the state-guaranteed deposits.

Efficiency: This option would likely increase the burden for the DGS and member institutions in order to report and reflect the state-guaranteed deposits in the Single Customer View files and in the calculation of contributions, including the discount.

[78] However, their contributions to the SRF would be reduced.

[79] Holders have on average EUR 5 000 of these guaranteed accounts of which some part might be otherwise covered under the regular coverage and some part is not centralised (about 30%).

Coherence: This option would likely strengthen internal coherence because the DGS is compensated for its contribution under the NOD.

Subsidiarity: This option would mitigate the impact on subsidiarity by recognising the importance of these deposits to French depositors.

4.8.3.4 Option 4: Full harmonisation

This policy option considers extending the current provision as included in Article 7(7) of the DGSD to all Member States. This option is *de facto* the same as retaining the NOD in its current form (Option 1), as these special deposits do not exist in other Member States.

4.9 NOD 9 – Longer repayment period for certain deposits

Summary: NOD 9 - Longer repayment period for certain deposits				
DGSD [Article 8(3)]				
Member States may decide that deposits referred to in Article 7(3) DGSD are subject to a longer repayment period, up to three months. This derogation concerns deposits for which the depositor is not the person entitled to the sums on the account, but another beneficiary, who needs to be identified or is identifiable before the date on which the pay-out occurs.				
Transposed into national law [22 Member States]				
Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Lithuania, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the UK				
Practical experience so far [3 Member States]				
Czechia, Ireland and Luxembourg				
Importance				
Up to 2 % of covered deposits[80]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+	+	-	+/-
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative**	**Option 4: Full harmonisation [Recommended]**
Effectiveness	**+**	-	+	+
Efficiency	**+**	-	+	+
Coherence	**+**	-	+	+
Subsidiarity	**+**	--	+	+

4.9.1 Implementation across Member States

Under Article 8(3) DGSD, Member States may subject to a longer repayment period the deposits where the depositor is not absolutely entitled to the sums held in an account or where several persons are absolutely entitled (so-called beneficiary accounts). This longer repayment period cannot extend beyond three months after the relevant administrative authority has decided that the member institution is unable to repay or after a judicial authority has suspended the rights of depositors to make claims against a member institution. 22 Member States transposed this NOD.

[80] Generally, only limited information was available about the amounts covered under this NOD. Based on the information collected for Ireland, about 98% of the depositors were repaid within 15 working days in three recent pay-outs. The repayment was delayed in the remaining 2% of the cases because it was necessary to verify the identity and entitlement of the person claiming the unavailable deposit or the liabilities to be set-off.

4.9.1.1 Motivations to transpose and use the NOD

The derogation concerns beneficiary accounts which are quite common and makes it possible to delay a repayment, if it is required for the identification of the beneficiary. In practice, the additional time allows the competent authority to verify the entitlement to the repayment and the validity of the claims.

4.9.1.2 Starting date of the repayment period

In most Member States, the starting date of the repayment period corresponds to the decision of the relevant administrative or judicial authority declaring the unavailability of deposits. In Germany and Slovenia, the repayment period starts on the day on which the competent administrative authority makes the determination of unavailability of the deposits. In France, the extended repayment period starts on the day on which the DGS has carried out processing operations or the necessary information has been received. This appears different from the starting point as set out in the DGSD. In Denmark, the 3 months' deadline for the pay-out of beneficiary accounts starts running from the date on which the restructuring or bankruptcy proceedings are initiated by the ruling of the court.

4.9.1.3 Duration of the repayment period

The majority of the Member States applies the maximum repayment period of 3 months specified in the DGSD. A few Member States apply a shorter duration. Slovakia provides for an additional period of 10 working days, with the prior consent of the National Bank of Slovakia. In Czechia, the transposing provision provides for a shorter repayment period of 15 working days from the date that the deposits could no longer be claimed from the member institution. In France, the repayment period is 20 working days from the day on which the processing operations have been carried out or the necessary information has been received. The shorter period may be due to the different starting points for the time limit, which under some circumstances could imply that the whole process of repayment would exceed the 3-month period set out in the DGSD.

4.9.1.4 Types of deposits covered

Member States can apply a longer repayment period to beneficiary accounts i) where another person than the depositor is entitled to the sums or ii) where several persons are entitled to those sums.

In most Member States[81], the longer repayment period applies in both situations where another person than the depositor is entitled to the sums, and where several persons are entitled to those sums[82]. In Denmark, for instance, the longer repayment also applies in cases where there is uncertainty as to the identity of the owner of the deposit in question. This includes cases where the deposit belongs to a person not registered as the holder, or who is not the only account holder[83]. In Slovenia, the NOD applies to 'depositors not autonomously or independently entitled to the repayment', which corresponds to both deposits mentioned in Article 7(3) DGSD.

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[81] E.g. Austria, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Lithuania, Luxembourg, Portugal, Slovakia, Spain and the UK.

[82] The transposition measure often cross-refers directly to the measure transposing Article 7(3) or a similar provision.

[83] *Travaux préparatoires* accompanying the legislative proposal for Amending Act 334.

Some Member States limit the application of the NOD to specific types of accounts, but covering the two types of situations mentioned in Article 7(3).

In Austria, the reference to a depositor not absolutely entitled to the sums held in an account concerns only trust and fiduciary accounts. The deposits on such fiduciary accounts should be considered proportionally for each trustee in the calculation of eligible deposits of individual depositors in accordance with the requirements applicable to the management of these deposits. The same interpretation prevails in Croatia. In Austria, this also applies to a trustee whose identity is not known to the bank provided that such a trustee can prove his claim to the DGS. The lack of a bank's knowledge about the identity may be based on the application of simplified customer due diligence procedures in accordance with anti-money laundering rules, or other federal government regulations that may justify the refusal to disclose the identity of the trustee in relation to the bank. Those trusts are to be considered in the calculation of eligible deposits of individual depositors only from the moment the trustee has proven their claim against the DGS.

In Czechia, the NOD applies to deposits with several beneficiaries, where the funds are entrusted to certain entities (namely payment institutions, small-scale payment service providers, electronic money institutions, or small-scale electronic money issuers) to execute a payment transaction or against the receipt of which electronic money have been issued. It also applies to bailiff accounts[84], where funds are consigned for eligible and registered creditors pursuant to the Execution Code and to accounts entrusted to investment firms on which the funds are constituted by the client's assets pursuant to Act No 526/2004 on Business Activities on the Capital Market.

In Estonia, the relevant accounts concern deposits held by notaries and bailiffs (those types of accounts are mandatory for certain transactions under Estonian law). Deposit accounts of notaries also fall within the category of accounts where the depositor is not absolutely entitled to the sums.

In Spain, the NOD applies to accounts with one or more beneficiaries, provided that they have been identified before the member institution is declared unable to repay its deposits.

Finland adopted a broad understanding of this longer repayment period, by treating without distinction (and within the 3-month period) situations where: i) the depositor's entitlement to the deposits is unclear; ii) where the depositor's rights have been limited by way of a decision by an authority; iii) when the account has not been used within the last 24 months; iv) where the claim of the depositor is paid in full (extended coverage such as THBs); or v) where the deposit concerns a deposit made to a foreign branch.

In France and Luxembourg, the longer repayment period applies to both accounts with beneficiaries and deposits benefitting from the extended coverage such as THBs. In Luxembourg, however, the starting point of the repayment period for Article 6(2) DGSD types of deposits differs from the one for Article 7(3) DGSD types of deposits (three months from the time when the depositor has provided the DGS with the information necessary to determine the amount repayable).

In Slovakia, the DGS has a discretion, if justified and with the prior consent of the National Bank of Slovakia, to extend the repayment period in relation to beneficiaries which claim the repayment of an unavailable deposit, except for depositors with authorised representatives or commissioned persons of national competent authorities from other Member States.

In Belgium, the longer repayment period applies to beneficiary accounts, not mentioning situations where several persons are entitled.

[84] Deposits held by bailiffs are accounts where funds received from debtors are held before being transferred to the creditors who are using the services of the bailiff.

In the Netherlands, the NOD applies to the situation in which a person entitled to receive the DGS repayment is a third party. In this case, the third party would be considered eligible for repayment and should be repaid within three months, unless the identity of the third party could not be established before the decision of the DNB to trigger DGS or the judicial ruling. No maximum timeframe has been set for this type of situation.

Estonia, Finland, France, Germany, Luxembourg and Slovakia have adopted a broader application of the longer repayment, by leaving greater discretion to the DGS. Sometimes, the DGS also have discretion to defer the repayment when setting off the depositor liabilities (NOD 7). In Cyprus, the transposing provision applies only to joint accounts.

1.1.1.1 Practical experience with the NOD so far

Most Member States[85] reported that the NOD has not been used in practice so far.

In Luxembourg, longer delays in pay-outs have been noted in order to verify the eligibility for repayment under anti-money laundering rules and under the exclusion of financial institutions. The reasons for delay were not linked to the identification of the beneficiary.

In Ireland, the average duration of pay-outs is 15 working days (98 % of the depositors in 3 pay-outs). Only 2 % of the depositors were repaid after 15 working days because it was necessary to verify the identity and entitlement of the person claiming the unavailable deposit or the set-off of the due liabilities, i.e. the longer repayment period applied for both Article 7(3) accounts and Article 7(5) DGSD on depositor liabilities set-off (see NOD 7).

In Czechia, the longer repayment period applies to accounts where the funds held are entrusted to certain entities (namely payment institutions, small-scale payment service providers, electronic money institutions, or small-scale electronic money issuers). In the pay-out regarding the ERB Bank, the repayment of the basic compensations started 9 days after the determination of unavailable deposits[86].

4.9.2 Impact of the NOD

The longer repayment period for certain deposits has marginal impact on the risk profile of the DGS and on depositor confidence because such deposits would be paid out in any case once the verification is complete.

4.9.2.1 Risk profile of the national DGS

The longer repayment period would have marginal impact on the risk profile of the DGS as such deposits would be paid out in any case once the verification is complete and the amounts involved are limited. The NOD contributes to reducing the risk of payments to ineligible depositor and, hence, also the risk of potential legal disputes between the DGS and the depositor (both the eligible and wrongfully paid).

4.9.2.2 Level playing field

The impact on the level playing field is expected to be nil both domestically and cross-border. Domestically, the extension of the payment period has the same impact on all

[85] E.g. Bulgaria, Cyprus, Denmark, Finland, Germany, the Netherlands, Slovenia and Sweden.

[86] In that case, the DGS confirmed that it had not initiated repayment of deposits entrusted with payments institutions or electronic money institutions owned by the clients of ERB Bank, because according to the information submitted to the DGS, no such deposits were maintained with the bank.

member institutions. The cross-border impact is also likely limited as most of the account holders to which this NOD applies, such as notaries, have in practice almost always domestic accounts.

4.9.2.3 Depositor confidence

The longer repayment period could to some extent increase uncertainty about the repayment among the entitled persons. However, the negative impact on depositor confidence would rather be marginal as depositors know they would be paid out in any case once the verification is complete. The possibility to request an interim payment (once the beneficiary has proven to be such) reduces this negative impact further.

4.9.2.4 Relevance for respective Member States

Only limited information from the DGSs was available. Most DGSs explicitly mentioned that in practice the repayment period would be kept as short as possible and that the deadline of 3 months addresses a situation where the DGS is unable to repay earlier due to the complexity of the case.

4.9.3 Options in the context of EDIS

Given the large number of Member States that transposed the provision and in the absence of more practical experience with the NOD, full harmonisation appears as the most sensible option (Option 4) because complex cases may require additional time for verification of depositor claims. At the same time, the NOD provides for a maximum time limit in which the claim must be assessed, which increases depositors' legal certainty. DGSs should in any case retain the possibility to repay the depositor earlier than upon expiry of the maximum time limit as long as they have sufficiently verified the claims. With EDIS in place, this would not give rise to additional complexity because the national DGSs would remain responsible for the management of depositor claims.

4.9.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD.

Effectiveness: This option would ensure that DGSs have enough time to verify the eligible depositors in complex cases. It provides a good balance between a period that is too long, possibly affecting depositor confidence in the system, and too short, not allowing DGS enough time to verify claims in complex cases.

Efficiency: This option would positively impact efficiency by giving the DGSs enough time to examine complex cases. With EDIS in place, this would not give rise to additional complexity because the national DGSs would remain responsible for the management of depositor claims.

Coherence: This option would contribute to the coherence of the system, balancing the need for faster pay-outs and the need to assess complex cases by including a maximum time limit during which the depositor claims must be assessed.

Subsidiarity: This option would not impact subsidiarity by giving Member States sufficient flexibility to deal with complex cases.

4.9.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. This would mean that all repayments would be done in a 7-day pay-out including in complex cases, involving beneficiary accounts.

Effectiveness: This option would not ensure enough time for DGSs to assess complex cases. The same would be true under EDIS where the DGSs remain competent for assessment of the claims.

Efficiency: This option would not reflect the policy objective to ensure enough time for DGS to assess the eligible claims. The maximum time limit ensures that depositors have enough legal certainty about receiving the repayment.

Coherence: Faster pay-out in all cases would make the system more coherent but would not meet the objective to account for complex cases.

Subsidiarity: This option would impact subsidiarity.

4.9.3.3 Option 3: Alternative

This policy option considers harmonising the provision regarding the longer payment (Option 4) and complementing it with the obligation to provide an interim payment to depositors to avoid their not having sufficient financial means for immediate needs.

Effectiveness: This option would increase effectiveness. It assumes full harmonisation under which national DGSs would continue to defer the repayment to ascertain the identity of the entitled beneficiaries in order to reduce the risk of repayments to ineligible depositors across the EU. In addition, the possibility of an interim payment could mitigate the negative impact of the potential repayment delay on depositor confidence.

Efficiency: This option would positively impact efficiency, relative to the baseline. As the process of identification of the entitled beneficiaries can be burdensome, there could be synergies in applying the same approach in all Member States in order to reduce potential costs associated with wrongful payments. By contrast, the possibility to request the interim payment would to some extent reduce efficiency as it increases the potential burden in administering such claims.

Coherence: The existence of the same period of repayment and interim payment across Member States would contribute to better coherence.

Subsidiarity: This option would not impact subsidiarity as Member States would be allowed to repay earlier upon the verification of claims.

4.9.3.4 Option 4: Full harmonisation

This policy option considers extending the current NOD to all Member States, which means that the NOD would no longer be an option.

Effectiveness: This option would increase effectiveness. It assumes full harmonisation under which national DGSs would continue to defer the repayment to ascertain the identity of the entitled beneficiaries in order to reduce the risk of repayments to ineligible depositors across the EU. In addition, the DGS would in any case maintain the possibility to repay earlier upon verification of claims.

Efficiency: This option would positively impact efficiency. As the process of identification of the entitled beneficiaries can be burdensome, there could be synergies in applying the same approach in all Member States in order to reduce potential costs associated with wrongful payments.

Coherence: The existence of the same period of repayment and interim payment across Member States would contribute to better coherence.

Subsidiarity: This option would not impact subsidiarity as Member States would be allowed to repay earlier upon the verification of claims.

4.10 NOD 10 – Deadline on validity of repayment claims

Summary: NOD 10 – Deadline on validity of repayment claims				
DGSD [Article 9(3)]				
Member States may limit the time during which depositors whose deposits were not repaid or acknowledged by the DGS within the deadlines set out in Article 8(1) and (3) can claim the repayment of their deposits.				
Transposed into national law [20 Member States]				
Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia and Slovenia				
Practical experience so far [2 Member States]				
Belgium and Cyprus				
Importance				
Up to 0.2 % of covered deposits[87]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+	+/-	-	+/-
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**-**	+	+	+
Efficiency	**-**	-	+	+
Coherence	**-**	+/-	+	+
Subsidiarity	**+**	-	+/-	+/-

4.10.1 Implementation across Member States

20 Member States transposed the NOD. However, there are large differences between Member States in the way the NOD has been transposed. The main differences concern (i) the nature of the claims, ii) the starting point from which a claim may be submitted, and iii) the limitation of the duration in which a claim may be submitted.

In most Member States, the provision sets a deadline for depositors to contest the decision of the DGS not to repay their deposits before a court, therefore limiting in time their legal claim against the DGS for repayment.

[87] There is limited public information on the share of the deposits repaid after the initial pay-outs. The indicated amount is based on the Optima Bank case in Belgium. Based on this case, only 0.2% of the covered deposits remained unclaimed after 1 year.

Hungary did not transpose the NOD and the obligation of the DGS to pay out is not limited in any way. The DGS had 17 pay-outs in the last 25 years and there are still depositors with outstanding claims dating back 15 years because the DGS was unable to identify the depositor due to an address change or because the depositor passed away. In practice, more than 99 % of the covered deposits is repaid within 20 days and the share of such unpaid covered deposits is small. Currently, there is an ongoing discussion in Hungary about transposing the provision.

Austria indicated that the DGS is committed to repay the covered deposit even if the time limit expires, e.g. more than 5 years after the institution failed.

4.10.1.1 Motivations to transpose and use the NOD

The main reasons for transposing the NOD are the legal certainty, common-law limitation period, proper conduct of restructuring or bankruptcy proceedings and historical reasons.

The NOD ensures legal certainty for both the DGS and depositors by introducing a time limit for the possibility to claim repayment.

In some Member States, a limitation for depositor claims considers the objective of the proper conduct of the pay-out procedure and the restructuring or bankruptcy proceedings (e.g. Denmark). A limitation period between 2 and 5 years on average was considered reasonable for the finalisation of the procedures (i.e. the official closing of a bank pay-out process, the necessary time for depositors to claim repayment of their deposits) (e.g. Greece) or to undertake any actions aimed at clarifying doubts as to the correctness of the payment process (e.g. Poland).

Some Member States have used general limitation periods for submitting a judicial claim in banking matters. For example, in France there is a general civil law prescription for actions in banking matters under which depositors may claim repayment within 2 years. This gives depositors enough time to become aware of the repayment.

Several Member States also invoked historical reasons, i.e. the time limit was already applicable under the previous legislation on deposits guarantee (e.g. Belgium, Czechia and Germany). In Slovenia, a 3-year limitation period existed under the previous legislation but was applied to cases of 'serious medical or other demonstrable reason' proving that the person in question could not exercise their right to compensation. Slovakia also decided to maintain the existing limitation period, without requiring a motivated justification from the depositor.

4.10.1.2 Nature of the claims

In most Member States[88] depositors are legally entitled to request a payment from the DGS within a limited period. This does not, however, exclude the possibility for the DGS to internally review the decision. For example, in France, the legislation provides for two different limitation periods, one for internal (*ex gratia*) appeals, which must be submitted to the DGS within two months, and one for a judicial appeal before the administrative court. The judicial nature of the claim also explains its length: the deadline for submitting a claim ranges from 2 to 10 years.

By contrast, 4 Member States[89] have followed a different approach, by requiring depositors to address the claim for repayment directly to an administrative authority.

[88] E.g. Croatia, Cyprus, Czechia, Estonia, France, Germany, Greece, Italy, Lithuania, Latvia, Luxembourg, Malta, Poland, Portugal, Romania and Slovenia.

[89] I.e. Belgium, Bulgaria, Denmark and Slovakia.

These claims are subject to an administrative review of the DGS pay-out decision and do not affect the possibility to submit a judicial claim against the DGS, within the general deadline applicable to similar claims. In these Member States, depositors can submit a request to the conservator, temporary administrator liquidator and special manager, liquidator, temporary trustee or trustee in bankruptcy (e.g. Bulgaria), or to the Financial Supervisory Authority, which acts on behalf of the DGS (e.g. Denmark), or to the DGS (Belgium and Slovakia).

When the claim is of an administrative nature, the duration of the limitation period is typically much shorter, as it is seen as a procedure preceding a legal challenge in court. One exception to this principle is relevant for Slovakia, where the limitation period for submitting a repayment claim to the DGS is traditionally much longer (3 years).

4.10.1.3 Starting point for submitting a claim

In most Member States[90], the deadline starts running from the determination of unavailable deposits (starting day of a pay-out procedure)[91]. Some of these Member States have also provided for derogations postponing the starting point of the deadline if the depositor can justify an inability to claim their right to repayment (e.g. Denmark and France). In France, the starting point of the limitation period for contesting the DGS decision in an administrative court also depends on the previous introduction of an internal administrative review. Where such an administrative appeal has been submitted, the limitation period for judicial review starts running from the notification of the new decision of the DGS. In a few Member States, the deadline can be either postponed (e.g. Latvia and Slovenia) or interrupted (e.g. Czechia and Italy) by the initiation of other legal proceedings (i.e. when the deposit is subject to criminal proceedings or restrictive measures from national governments or international organisations) or when the depositor is not absolutely entitled to the sums held in an account (e.g. Czechia and Latvia[92]).

In some Member States, the limitation period starts when the depositor or the person entitled to repayment is legally presumed to become aware of the pay-out event, i.e. the official publication of the decision on the unavailability of the deposits (e.g. Croatia and Slovenia), the notification to the person entitled to the deposit (e.g. Germany), or when the Fund published the deadline on its website (e.g. Belgium).

Finally, in Greece, the limitation period starts upon the expiry of the deadlines set out in Article 8(1) and (3) DGSD, i.e. the end of the repayment period.

4.10.1.4 Duration of the limitation period for submitting a claim

Where Member States opted for a general limitation period of the legal entitlement of depositors to request a payment, the deadline is either 2 years, 3 years, or 5 years (see Table 4.6). In Luxembourg, the period lasts up to 10 years. In Romania, where bankruptcy proceedings of the failed member institutions can last more than 5 years, the right to receive payment of compensation shall be prescribed on the date of the closing of bankruptcy procedures, which means that the duration of the limitation period can exceed 5 years. In Czechia, limitation period was reduced from 5 to 3 years since the implementation of the DGSD but the NOD has not been used in practice. Based on

[90] E.g. Bulgaria, Cyprus, Czechia, Denmark, Estonia, France, Italy, Lithuania, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia and Slovenia.

[91] No information could be found for Portugal, as the legislation does not specify the starting point, and no pay-out event has occurred since 2010.

[92] In Latvia, the suspension of the limitation period only applies if the right of the person to the deposit is subject to a legal dispute.

previous experience, about 99.8 % of covered deposits are repaid within the standard repayment period.

Table 4.5 Duration of general limitation period for submitting a claim

Duration	Member States
2 years	Cyprus, France, Malta
3 years	Croatia, Czechia, Estonia
5 years	Germany, Greece, Italy, Latvia, Lithuania, Poland, Portugal, Romania (5+ years), Slovenia
10 years	Luxembourg

Source: CEPS-Milieu elaboration

In some cases, such a limitation period also applies to all claims related to compensation rights (e.g Estonia), to all actions in banking matters (e.g. France and Portugal) or the common-law deadline for civil judicial claims in general (e.g. Italy and Slovenia).

In the Member States with a deadline for an administrative review of the DGS' decision, the limitation period varies between 2 months (i.e. France), 3 months (i.e. Bulgaria) and 3 years (i.e. Slovakia). In Belgium, the DGS has discretion to set up a maximum period within which depositors can claim repayment, depending on the circumstances of the case. In Denmark, claims submitted after the 4 months' deadline can still be accepted, unless the delay is not justifiable. The Supervisory Authority has full discretion for assessing the 'justifiable' nature of the delay.

Italy has two general limitation periods in civil law of 5 and 10 years, but the 5 years' prescription was considered more reasonable in this case. Slovenia also applies a limitation period of 5 years, in the absence of other legal regulations.

The duration appears to balance the need to provide enough time for the depositors to gather information on their rights and evidence to support their claims and the necessity to limit, at least to some extent, the duration of the fund's financial exposure. For example, Romania took into account the duration of a usually lengthy bankruptcy proceedings, in order to extend the time available for a depositor to claim compensation and to guarantee full and complete protection.

4.10.1.5 Practical experience with the NOD so far

2 Member States reported to have practical experience with the NOD[93]. The option was used in the Belgian Optima Bank case. While the limitation period is subject to the DGS' discretion, the end of the limitation period was postponed several times to eventually reach one year. Based on this experience, only 0.2 % of cases were not closed within 1 year. In Cyprus, the NOD was used in FBME Bank Ltd case. According to the Central Bank, all the covered deposits were repaid within the 2-year period. The deadline for claiming repayment is still ongoing in the pay-out events that have occurred only recently in other Member States (e.g. Croatia, Hungary, Luxembourg and Lithuania).

[93] No information is available regarding the repayment of deposits in the Bulgarian KTB (Corporate Commercial Bank) case although this case entailed delays in pay-outs, mainly due to the late decision of the Central Bank to withdraw the licence of the member institutions.

Table 4.6 National application of the NOD

Country	Duration	Recipient of the claim	Starting point
Belgium	Determined by the DGS	DGS	As soon as the Fund has published the deadline on its website
Bulgaria	3 months	conservator, temporary administrator or special manager, liquidator, temporary trustee or trustee in bankruptcy	From the date the deposits are determined unavailable
Croatia	3 years	Ultimately Court	Publication of the fact that the insured event occurred in the 'Official Gazette'
Cyprus	2 years	Ultimately Court	From the date the deposits are determined unavailable
Czechia	3 years	Ultimately Court	From the date the deposits are determined unavailable, unless the repayment is suspended, pursuant to criminal proceedings, restrictive measures from national governments or international organisations, or when it is not sure who is entitled to repayment
Denmark	4 months	Finansiel stabilitet (Supervisory authority)	From the date the deposits are determined unavailable, unless the depositor or investor can justify that they have been unable to claim their right to repayment and the claim is submitted within a justifiable delay
Estonia	3 years[94]	Civil Court	From the date the deposits are determined unavailable
France	2 years[95]	Administrative Court	From the date the deposits are determined unavailable or when the depositor was informed (the burden of the proof lays on the depositor, who should demonstrate that he was not aware of the unavailability of the funds until this moment)
Germany	5 years	Ultimately Court	After notification of the depositor about the fact that the credit institution is unable to repay deposits
Greece	5 years	Court of Athens	After the expiry of the deadlines set out in Article 8(1) and (3)
Italy	5 years[96]	Ultimately Court	From the date the deposits are determined unavailable. The period of limitation is interrupted by the

[94] Common law for claims related to compensation rights.

[95] Common civil law prescription of all actions in banking matters.

[96] One of the prescription periods under the Italian civil law.

Country	Duration	Recipient of the claim	Starting point
			institution of legal proceedings or recognition of the right by the deposit guarantee fund (i.e. when the deposits have been declared unavailable)
Latvia	5 years	Ultimately Court	From the date the deposits are determined unavailable or after the circumstances for the refusal to pay the guaranteed compensation have expired after a Court's decision
Lithuania	5 years[97]	Courts of general jurisdiction	From the date the deposits are determined unavailable
Luxembourg	10 years	Ultimately Court	From the date the deposits are determined unavailable
Malta	2 years	Ultimately Court	From the date the deposits are determined unavailable
Poland	5 years	Ultimately Court	From the date the deposits are determined unavailable
Portugal	5 years[98]	Court	No information as the law does not specify the starting point
Romania	5 years	Ultimately Court	From the date the deposits are determined unavailable. In case the bankruptcy proceedings of the credit institution exceeds the limit of 5 years, the right to receive payment of compensation shall be prescribed on the date of the closing of bankruptcy procedures
Slovakia	3 years	DGS	From the date the deposits are determined unavailable
Slovenia	5 years[99]	General Court	The publication of the decision on unavailability of deposits, unless the person entitled to repayment is determined by a decision of a Court, where the limit starts from the moment the decision becomes final

Note: Information could not be verified regarding the Netherlands[100] and Ireland.

Source: CEPS-Milieu elaboration

[97] Probably general law prescription, as the claims shall be dealt with by the courts of general jurisdiction according to the procedure laid down in laws.

[98] General prescription time for administrative offences under the Legal Framework of Credit Institutions and Financial Companies.

[99] Common law prescription.

[100] It is not clear from the legislation whether there is a time limit for contesting the claim. Under the Dutch law, during 3 months after the notice of application of the deposit guarantee scheme, depositors can communicate in writing or by logging on to a website designed for this purpose that compensations that have been made available are paid out. This could suggest that upon expiry of this period, the depositor would lose their right to repayment and the DGS would instead be likely to apply an approach favourable to the depositor.

4.10.2 Impact of the NOD

The limitation period for depositors' claims for repayment is beneficial for legal certainty for both the DGSs and depositors. From an operational point of view, it would be desirable that the DGSs do not have cases pending over many years. In practice, the existence of a fixed term could result in lower amounts in pay-outs for the DGSs, but such (positive) effects would likely be marginal because the vast majority of pay-outs is paid out during the repayment period. In terms of depositor confidence, the limitation period could have a negative effect, in particular if the duration is too short, e.g. 4 months like in Denmark, unless the depositor is able to justify their inability to seek the repayment. Despite the existing fragmentation among Member States, the effect on the level playing field would be marginal as nearly all deposits are in practice claimed within the standard repayment period.

4.10.2.1 Risk profile of the national DGS

The NOD has a positive impact on the risk profile. The limitation period could in principle result in a lower amount of pay-outs. However, based on the feedback from Member States, the vast majority of claims is repaid during the standard repayment period. In theory, the amount that is not claimed due to the time limit would largely depend on the level of awareness of the depositors and complexity involved in claiming their deposits. Sometimes depositors are pro-actively approached and, in many Member States, information campaigns are undertaken to ensure that depositors have the right information to claim their covered deposits.

4.10.2.2 Level playing field

The NOD does not seem to impact the level playing field as nearly all deposits are in practice claimed within the standard repayment period after the deposits have been declared unavailable. In addition, the use of the NOD depends on the awareness of depositors about the existing limitation periods. Those who are not aware are also unlikely to change to another bank in a Member State which applies a longer limitation period.

4.10.2.3 Depositor confidence

Depositor confidence could be reduced in the event that depositors are unable to claim their deposits because the limitation periods are too short. While only few Member States have short limitation periods (e.g. 3 months in Bulgaria or 4 months in Denmark[101]), others enable depositors to claim the repayment during at least 2 years, which often corresponds to the general limitation periods in the civil law. As long as there is sufficient time to claim the deposits, the negative impact on confidence in the system should be mitigated.

4.10.2.4 Relevance for respective Member States

The NOD is relevant in the context of pay-out events. Some Member States can be singled out because of relatively short limitation periods.

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[101] In Denmark, claims submitted after the limitation period has expired could still be accepted if the delay is considered justifiable.

4.10.3 Options in the context of EDIS

The limitation period in relation to the validity of depositor claims for repayment increases legal certainty for both the DGS and depositors. It should achieve that, on the one hand, depositors have sufficient time to claim their deposits in cases where they have not become instantly aware about the pay-out and, on the other hand, avoid that the DGS has pending depositors' files for many years. Given that most Member States transposed the NOD and in view of mainly operational benefits of the NOD for the DGSs, either the alternative option (Option 3) complementing the current NOD or, to a lesser extent, also full harmonisation (Option 4) would appear as the most sensible options. The modification to the current NOD would consist in providing for one single limitation period of 3 years in which depositors would be able to claim the deposits. This would safeguard the effectiveness of the deposit insurance and reduce the existing fragmentation across Member States, while allowing the DGSs to close the outstanding repayment cases within a reasonable time frame.

With EDIS in place, the national DGSs would remain responsible for the management of depositor claims. However, Options 3 and 4 would also be beneficial in order to reduce potential complexity resulting from the fragmentation among Member States on the disbursement of funds between EDIS and the national DGS.

4.10.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD and allowing Member States to provide for the limitation period for the validity of repayment claims.

Effectiveness: This option would negatively impact effectiveness due to fragmentation among Member States that apply different limitation periods, which are sometimes too short. This has negative effects on depositor confidence.

Efficiency: This option would maintain the fragmentation among Member States, which could prove complex in the system based on the disbursement of funds between EDIS and national DGSs.

Coherence: The existence of different limitation periods, which are sometimes too short, for the validity of the repayment claims would severely affect the coherence of the system.

Subsidiarity: This option would not impact subsidiarity.

4.10.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. This means that there would be no limitation period for the validity of the repayment claims and the claims for repayment could be filed even many years after the pay-out event.

Effectiveness: This option would positively impact depositor confidence. Under EDIS, the depositor would be entitled to claim the repayment at any time.

Efficiency: This option would impact efficiency in terms of increased administrative costs and prove complex in the system based on the disbursement of funds between EDIS and national DGSs.

Coherence: This option would marginally improve the coherence of the system. While the depositor would be entitled to claim the repayment at any time, there would still be differences between national procedures, which make the system based on the disbursement of funds between EDIS and national DGSs too complex.

Subsidiarity: This option impacts subsidiarity as Member States would not be able to provide for a limitation period.

4.10.3.3 Option 3: Alternative

This policy option considers full harmonisation, which would introduce one single limitation period of 3 years, starting from the determination of unavailable deposits. In addition, the limitation period would be extended if considered justifiable by the DGS. This option would increase legal certainty for both the DGS and depositors and reduce the existing fragmentation among Member States.

Effectiveness: This option would positively impact depositor confidence because the limitation period of 3 years would appear sufficient to enable nearly all depositors to claim the repayment. This approach would also address the issue that some Member States seem to have too short limitation periods.

Efficiency: This option would increase efficiency by reducing the fragmentation among Member States and would be beneficial for the system of disbursement of funds between EDIS and national DGSs when settling depositor claims. From an operational perspective, also under EDIS, DGSs would remain responsible for settling depositor claims and managing the pending depositor files within a limited period of time.

Coherence: This option would improve the coherence of the system.

Subsidiarity: This option would impact subsidiarity, but would reflect the existing practice in most Member States that currently have limitation periods ranging from 2 to 5 years.

4.10.3.4 Option 4: Full harmonisation

This policy option considers introducing one harmonised time limit of 5 years for claiming the repayment of deposits from the DGS. The considerations stated under option 3 are fully applicable for this option.

Effectiveness: This option would positively impact depositor confidence because the limitation period of 5 years is sufficiently long to enable depositors to claim repayment. This approach would also address the issue that some Member States seem to have too short limitation periods.

Efficiency: This option would increase the efficiency by reducing the fragmentation among Member States and increase legal certainty for both DGSs and depositors.

Coherence: This option would improve the coherence of the system.

Subsidiarity: This option would impact subsidiarity, but would be on the upper-side of the range of existing limitation periods that most Member States currently have (2 to 5 years).

5 Contributions and available financial means

This section provides a comprehensive overview of each of the NODs related to contributions and available means on the implementation. It does so by: i) assessing the implementation of the NOD across Member States; ii) estimating the impact of the NOD on the risk profile of the national DGS, impact on the level playing field, impact on depositor confidence and relevance for the Member States; and, iii) identifying options in the context of EDIS to assess whether the NOD should be retained, eliminated, fully harmonised or an alternative option can be recommended.

5.1 NOD 11 – Payment commitments

Summary: NOD 11 - Payment commitments				
DGSD [Article 10(3)]				
The DGS' available financial means may include payment commitments. The total share of payment commitments shall not exceed 30 % of the total amount of available financial means. Under Article 2(13) DGSD, payment commitments of member institutions towards DGS shall be fully collateralised and the collateral shall: (a) consist of low risk assets; (b) be unencumbered by any third-party rights and be at the disposal of the DGS.				
Transposed into national law [24 Member States]				
Austria, Belgium, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden				
Practical experience so far [5 Member States]				
France, Germany (excl. cooperative banks), Malta, Poland and Portugal				
Importance				
Up to 63 % of the available financial means[102]				
Impact				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	--	--	-	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating [Recommended]**	**Option 3: Alternative**	**Option 4: Full harmonisation**
Effectiveness	-	++	+	+/-
Efficiency	-	++	+	-
Coherence	-	++	+	+
Subsidiarity	+	--	-	+

[102] The importance of the payment commitments varies largely across Member States. On average, payment commitments in these Member States amounted to 22% of the available financial means at the end of 2017, ranging between 4.3% for the German savings banks and 63% of available financial means of the Maltese DGS. Importantly, the Maltese and the French DGS are in transition to bring their payment commitments below the 30% limit specified in the DGSD, by July 2024 (see Section 5.1.1.5.).

5.1.1 Implementation across Member States

Twenty-four Member States have transposed Article 10(3) DGSD in different ways. Among these Member States, only very few have used payment commitments in practice. Bulgaria, Cyprus, Hungary and the United Kingdom are the only four Member States that have not transposed this NOD into their national laws.

5.1.1.1 Motivations to transpose and use the NOD

The main reasons for transposing the NOD are the beneficial accounting and regulatory capital treatment and return on committed funds. Historical reasons are also relevant.

First, the payment commitments provide member institutions – if the auditor allows it - a beneficial accounting treatment. The payment commitments are in those cases not considered in the profit and loss account of the member institution.

Second, in some Member States the payment commitments can be used to contribute to the regulatory capital and other regulatory requirements. For the euro area banks this was changed when the ECB decided to exclude the payment commitments from the capital requirements. However, this is currently contested in court by several of the banks that risk losing the beneficial treatment. The main issue for both the treatment under the accounting rules and regulatory capital requirements is whether the payment commitments are indeed irrevocable. Some auditors and national competent authorities that allow banks to use the beneficial accounting and capital treatments argue that the payment commitments are only irrevocable as long as the institution remains a deposit taking institution (i.e. member of the DGS). Provided that the institution ceases to be a member of the DGS (merger, stop taking deposits, etc.), the payment commitments could, under the current provisions, be undone.

Third, using payment commitments instead of cash contributions to the DGS can reduce the costs for the member institutions. More specifically, the member institutions can earn interest or investment returns on their payment commitments (e.g. Germany, France and Poland).

Fourth, several DGSs already allowed member institutions to contribute to the DGS in the form of payment commitments before the DGSD was implemented. In France, member institutions were able to contribute to the DGS through guaranteed deposits. These cash-guaranteed deposits were recorded as debts to the DGS and could reach up to 100 % of the contribution of member institutions. With the transposition of the DGSD the upper limit has been reduced to 30 % of the total amount of available financial means. In Poland, before the implementation of the DGSD, banks were obliged to accumulate funds that should have been ring-fenced in the so-called *Funds Protecting the Guaranteed Deposits* (FPGD). Such FPGD were created individually by each member institution. The FPGD in Poland and cash-guaranteed deposits in France are equivalent to payment commitments. These payment commitments still qualify due to the transposition of the NOD in national law.

By contrast, some of the Member States that do not use payment commitments, indicated that member institutions have not expressed any interest in contributing in the form of payment commitments. These banks indicated that they might not be allowed to benefit from the accounting and capital treatments and that the management of the collateral used to back the commitments is too complicated, costly and potentially delays the pay-out.

5.1.1.2 Maximum level of payment commitments

Under the DGSD, the payment commitments shall not exceed 30 % of the total amount of available financial means. Most of Member States[103] either set the maximum payment commitments at 30 % of the available financial means of the DGS or at 30 % for each individual member institution[104] or a combination of both[105]. In Germany, the limits are set at both member institution and DGS level, but the limit per member institution can reach up to 100 % of their annual contribution, which means that they are very similar to those Member States that set the limit only at the level of the DGS.

France and Malta deferred the application of the 30 % limit until the end of the transition period, i.e. 3 July 2024. Malta is gradually reducing the share of payment commitments of the DGS, for 2019 the maximum level of payment commitments is set at 58 % of the available financial means[106]. In France, the 30 % limit can be exceeded if this does not compromise the achievement of the financing target set for this facility.[107]

5.1.1.3 Safeguards for payment commitments

Payment commitments must be fully collateralised. This collateral must consist of low-risk assets that are not encumbered by any third-party rights and at the disposal of the DGS (Article 2(13) DGSD). The low-risk assets consist of: i) debt securities which receive a zero risk-weight for credit risk under the standardised approach for bank capital requirements (Category I in Table 1 of Article 336 of the CRR); ii) debt securities that have a 20 % or 50 % risk-weight for credit risk and meet the specific conditions in the Capital Requirements Regulations (CRR) for banks (Category II in Table 1 of Article 336 of the CRR) and iii) assets which are considered to be similarly safe and liquid by the competent or designated authority.

The majority of Member States[108] have transposed the above requirements into their legislation verbatim. Other Member States[109] have excluded some of the low-risk assets defined in the DGSD, defined the low-risk assets differently or not at all. Malta and Poland that have defined the assets differently limit the payment commitments to assets denominated in euro (e.g. Malta)[110] and olish Treasury bonds and tradable money bills and bonds issued by the Polish Central Bank respectively. In France, the payment commitments take the form of cash deposits at the DGS. The Member States[111] that have not defined low-risk assets, have not received any contributions in the form of payment commitments.

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[103] E.g. Austria, Belgium, Croatia, Czechia, Denmark, Estonia, Finland, France, Latvia, Luxembourg, Malta, the Netherlands, Romania, Slovakia, Slovenia and Sweden.

[104] E.g. Greece, Ireland, Italy and Spain.

[105] E.g. Lithuania, Poland and Portugal.

[106] Under Article 25(9) of the Subsidiary Legislation 371.09 Depositor Compensation Scheme Regulations the competent authority may issue banking rules in order to review and amend the effective date or percentages indicated in sub-regulation.

[107] The same applies to the mechanism for financing the resolution during the period of building up the resources of this mechanism, which runs until 31 December 2024

[108] E.g. Croatia, Czechia, Estonia, Germany, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania and Spain.

[109] E.g. Denmark, Ireland and Poland.

[110] Subsidiary Legislation 371.09 Depositor Compensation Scheme Regulations, Article 25(13).

[111] E.g. Belgium, Finland, Italy and Slovakia.

In line with the EBA Guidelines, in Germany, Malta[112] and Poland[113], haircuts are applied to the value of low-risk assets provided as collateral. Additionally, Poland requires member institutions to ring-fence funds not less than their payment commitments and collateralise these funds accordingly. This means that those funds are invested in a safe manner in highly liquid instruments as defined by the statute, so that they can transfer funds up to the equivalent of their payment commitments at the first call of the Fund. Such funds and assets must be deposited on an account separated for each entity and maintained either by the Polish Central Bank or by the National Depository for Securities[114]. Assets pledged as security for payment commitments must be irrevocably blocked on these accounts exclusively for the DGS' benefit.

In Germany, the member institutions can either use cash or securities as collateral for the payment commitments. The cash needs to be held at a subsidiary of the DGS, whereas the securities are managed by the German central bank. The central bank is responsible for most of the operational aspects, whereas the DGSs formulate the list with eligible low-risk securities acceptable as collateral. In order to use payment commitments, member institutions need to enter into a framework agreement where they commit themselves to provide securities that will be held by the central bank. The latter will inform the DGS when the value of the securities falls below a certain threshold and there is a need for additional collateral, or when some of the collateral can be released.

In the event of a pay-out, the German DGSs will first assess whether there is enough cash before calling the payment commitment. In case of need to call on the payment commitments, the DGS sends a letter to the member institutions to invite them to pay within 24 hours or the collateral would be sold to fulfil the commitment.

In Malta, the member institutions can either use cash or securities as collateral for the payment commitments. The cash must be held at the Maltese central bank. The securities, which are government bonds, are managed by the member institutions. These have to apply ECB's eligibility criteria and haircuts to meet the liquidity criterion. In the event of pay-out, cash will be used first and payment commitments will be called only in case of need.

5.1.1.4 Approval and monitoring of payment commitments

In the majority of Member States[115] the DGSs are responsible for approving contributions in the form of payment commitments, without explicit requirements on the procedures. In some Member States, the DGSs can establish some specific conditions for the use of payment commitments[116] and/or monitoring of the conditions for payment commitments, which are either established based on national law or requirements by the DGS[117]. The monitoring covers both the quality and overcollateralisation of the payment commitments.

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[112] Subsidiary Legislation 371.09 Depositor Compensation Scheme Regulations, Article 25(12).

[113] See §4 of the Regulation of The Minister of Development and Finance of 8 March 2017 on the transfer of premiums paid into the Bank Guarantee Fund by banks, branches of third country banks, investment firms, cooperative savings and credit unions and the National Cooperative Savings and Credit Fund in the form of commitments to pay the premiums paid into the Bank Guarantee Fund.

[114] It could also be the company to which the Depository has delegated the performance of some of its activities.

[115] E.g. Croatia, Czechia, Estonia, Finland, France, Greece, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Romania, Slovakia, Slovenia and Spain.

[116] E.g. Czechia, Denmark and Greece.

[117] E.g. Czechia, Germany, Malta, Poland and Spain.

5.1.1.5 Practical experience with the NOD so far

DGSs in France, Germany, Malta, Poland and Portugal have practical experience with payment commitments. All these Member States already received some form of payment commitments before the new DGSD was implemented.

The total payment commitments are estimated at EUR 3 011 million or 22 % of the available financial means of all the DGSs concerned at 31 December 2017[118]. In France, the amount of payment commitments raised in the available financial means of the DGS was EUR 1 575 million[119] (around 43 % of available financial means). In Germany, out of the three DGSs (private, public and savings banks) that use the NOD, only the DGS for savings banks disclosed information on the payment commitments. Their payment commitments amounted to EUR 129 million, which is equivalent to 4.3 % of the available financial means at 31 December 2017. In Malta, the maximum level of payment commitments amounted to EUR 96 million or 63 % of the total available financial means at 31 December 2017. The Polish DGS only provided information for the contribution to the DGS in 2017, which showed that EUR 50 million or 23.6 % of the available financial means was contributed in the form of payment commitments. In Portugal, the larger of the two DGSs, Fundo de Garantia de Depósitos, accepted payment commitments for an amount of EUR 444 million or 28.7 % of available financial means at 31 December 2017. The amount was much higher in the past and has been on a declining pattern for some time, expected to gradually disappear, as the reasons for keeping payment commitments are also vanishing.

Looking at the collateral used, most of the collateral takes the form of cash or debt securities with a zero risk-weight. The French and German member institutions that participated in the survey indicated having cash amounts pledged as collateral equal to the payment commitments. The Maltese, Polish and Portuguese banks indicated that they have pledged a mix of debt securities with a zero risk-weight under the capital requirements legislation. In addition, all of them have more debt securities pledged than payment commitments. The overcollateralisation of the member institutions ranges between 10 % and 25 %. Putting aside the benefits from payment commitments linked to accounting standards and capital requirements, if member institutions hold cash as collateral, there is, in the current low-interest environment, almost no difference between contributions and payment commitments. If member institutions hold collateral in the form of government securities, which generates interest payments for the member institutions, there is not much impact on the liquidity of the guarantee fund, as DGSs often invest part of the available means in the same assets. In an environment with ultra-low interest rates, the impact is limited and may be partially offset by the cost of an active management of the collateral, which is typically conducted by the member institution and monitored by the DGS and/or the central bank, but it can still be positive.

5.1.2 Impact of the NOD

The contributions in the form of payment commitments impact the risk profile of the DGSs and the level playing field from the perspective of both DGSs and member institutions. The impact on the confidence of depositors, if any, is rather limited; the NOD is still relevant in some Member States but on a declining trend.

[118] For the estimate of the total payment commitments, it is assumed that the share of payment commitments as of available financial means is the same as the share of annual payment commitments as of the annual contributions. Moreover, when the information on the payments is not provided, the share of payment commitments is assumed equal to the share of payment commitments of available financial means of the DGS that has disclosed information on the payment commitments.

[119] Garantie des Dépôts (2018), Annual report 2017.

5.1.2.1 Risk profile of the national DGS

Although the overall impact on the DGSs is currently rather limited, the payment commitments could increase the risks of the national DGSs because they potentially reduce the means immediately available for the compensation of covered deposits.

Although, in principle, payments commitments do not affect the available financial means, the only exception would be if the payment commitment were revoked. This could happen, as some representatives of national DGSs and national competent authorities argued in the interviews, if the member institution stopped taking deposits. Moreover, there is also a potential risk, though low given the safeguard measures, that the member institution is not able to fulfil the commitment, which would reduce the available financial means in the event of a pay-out.

Accordingly, the realisation of the payment commitments represents a risk for the national DGSs that are accepting securities as collateral. After the DGS has requested the payment in the event of pay-out, the member institutions have two working days to transfer the funds. According to EBA, this time-period is reasonable and adequate[120].

In practice, the DGSs indicated giving the member institutions just one day. If member institutions are unable to perform the payment, the DGSs can claim the collateral. For example, the payment could be an issue for the defaulted institutions unable to meet their obligation to pay the payment commitment.

Whether the inability to pay the payment commitment also leads to losses for the DGSs would depend on the quality and amount of collateral. The member institutions can either use cash or securities. In terms of the ability to pay the commitments when called, there is not much concern regarding the collateral consisting of cash held at the DGS or national central bank for an amount equal or higher than the payment commitments. By contrast, payment commitments in securities are ensured, with more than 10 % over-collateralisation with zero risk-weighted assets (primarily government bonds), which means that the member institutions should in principle be able to pay the commitments as long as there are no sovereign defaults. These are low probability but high loss events[121].

5.1.2.2 Level playing field

The use of payment commitments has a negative impact on the level playing field. Allowing some member institutions to contribute to the DGS through payment commitments offers them the possibility to benefit from the accounting, regulatory capital and/or return on the assets. As these benefits are only available in Member States where auditors, national competent authorities and DGSs allow member institutions to use payment commitments, these institutions have an advantage compared to member institutions of DGSs in Member States that do not provide these benefits.

[120] EBA (2015), Guidelines on payment commitments under Directive 2014/49/EU on deposit guarantee schemes.

[121] De Groen, W.P. (2015), The ECB's QE: Time to break the doom loop between banks and their governments, CEPS Policy Brief.

5.1.2.3 Depositor confidence

The payment commitments are likely to have a limited negative effect on depositor confidence. The average depositor is unlikely to be aware of the funding of the deposit insurance. It is acknowledged that the DGSs that currently allow payment commitments may have already a longer tradition in using payment commitments. Moreover, the safeguards should ensure that in pay-out events the financial means would be as readily available as in the DGSs that do not allow member institutions to contribute in the form of payment commitments. However, if depositors become aware that the DGS is not fully cash funded or payment commitments cannot be cashed in, this might also impact their confidence about the ability of the DGS to repay their covered deposits.

5.1.2.4 Relevance for respective Member States

Currently, the NOD appears particularly relevant for France and Malta, where payment commitments are considerably above the 30 % limit. The payment commitments are also important in Germany and Poland, where the payment commitments are below the 30 % limit. Moreover, in Poland, the financial means available excluding the payments commitments would currently be enough to meet the target level of 0.8 % of covered deposits included in the DGSD.

5.1.3 Options in the context of EDIS

The contributions in the form of payment commitments have the potential to impact the risk profile of the DGSs and the level playing field from the perspective of both the DGSs and member institutions. As the payment commitments largely depend on the credibility of the collateral pledged by each member institution, elimination of the NOD (Option 2) is recommended as the most sensible option. This is primarily justified on the grounds of efficiency and effectiveness, as, with EDIS in place, the NOD would make the deposit insurance too complex, e.g. in terms of the collection of the contributions it could ultimately compromise the paybox function if the materialisation of collateral is for any reason problematic. Moreover, the benefits for member institutions associated with payment commitments have the potential to distort the level playing field.

5.1.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD. This means that DGSs in the Member States that currently use the NOD may continue to allow member institutions to contribute in the form of payment commitments up to 30 % backed-up by collateral consisting of low-risk assets.

Effectiveness: Payment commitments reduce effectiveness. The payment commitments must be made good on time in the event of a pay-out and this creates uncertainty about the actual availability of financial means. In this respect, it is critical whether the member institutions have pledged enough collateral to ensure the payment and whether the payment commitment is irrevocable. Moreover, the payment commitments distort the level playing field. More specifically, the member institutions of DGSs that allow payment commitments enjoy beneficial accounting and regulatory treatment and make a return on their payment commitments. This gives these member institutions an advantage over those that are not allowed to contribute in the form of payment commitments.

Efficiency: This option would negatively affect efficiency in terms of the collection of the contributions. In particular, under EDIS, the DGSs would have to use additional resources to collect the payment commitments, calculate the required amount, inform the member institutions, administer the transfers and deplete the collateral (in case of non-payment) in the event of a pay-out. Furthermore, the DGSs will need to monitor the collateral, which is more difficult for securities than for cash. The securities would require continuous assessment of their eligibility and value to ensure that the payment commitments are paid.

Coherence: First, with EDIS in place, the payment commitments could compromise the paybox function if the materialisation of collateral is for any reason problematic, potentially creating more uncertainty about the funding.

Second, the NOD does not contribute to the main objective of harmonisation of the national requirements under the DGSD and of improved access to DGSs. This is because the NOD is currently only applied in three Banking Union countries and provides some benefits to member institutions in those Member States compared to others.

Third, although the impact of the NOD on the sovereign-bank nexus is limited, the NOD is not in line with the objective of the Banking Union to break the link between banks and their sovereigns in the euro area. The low-risk assets referred to in the DGSD consist mostly of debt securities with a zero risk-weight, typically a mix of sovereign bonds issued by the home country and other euro area countries. The NOD could reinstate the link between banks and their sovereigns, noting that the payment commitments are small in size and sovereigns have a low probability of default (De Groen, 2015). However, it is acknowledged that most of the collateral for the payment commitments in Germany and all of the collateral in France are provided in cash.

Subsidiarity: The member institutions in the Member States that currently use payment commitments for their contributions to the DGS would be able to continue to do so under this option. The maximum threshold in the NOD means that, in principle, no legacy issues would be created, except for two Member States that currently do not yet fulfil the requirement of payment commitments below 30 %.

5.1.3.2 Option 2: Eliminating

This policy option considers eliminating the current provision for payment commitments in the DGSD. The overall impact of this option would likely be limited in aggregate as the estimated payment commitments in the EU account for EUR 3 011 million, namely about 8 % of the available financial means, i.e. 0.04 % of covered deposits.

Effectiveness: This option would improve the effectiveness of EDIS in the event of pay-out by removing the concerns about the realisation of the payment commitments and need to deplete (some of) the collateral. Moreover, all member institutions would be subject to the same treatment in terms of collection of contributions (i.e. cash) which prevents the distortion of the level playing field.

Efficiency: This option would improve efficiency. With EDIS in place, the administrative burden for EDIS and national DGS would decrease in the context of the collection of funds (e.g. no need for monitoring of the collateral). Moreover the fund would be able to invest the committed funds and potentially obtain additional returns[122]. From the perspective of member institutions, this option would mean a potential loss in efficiency because they are able to achieve a higher return on their payment commitments than the DGSs are able to make on their available financial means.

Coherence: This option would improve coherence because it has the potential to reduce the bank-sovereign nexus (i.e. the collateral often contains sovereign bonds). Moreover,

[122] In the current negative interest rate environment, the return of EDIS might be negative. Hence, EDIS is like the Single Resolution Fund, likely to hold their funds at the central bank, which currently charges for holding deposits.

it would better ensure access to EDIS by removing the risk that payment commitments are not made good successfully. It would also imply that, in line with the principle of equal treatment, some member institutions would lose the benefit of the accounting and capital requirement treatment of payment commitments.

Subsidiarity: This option would impact subsidiarity in the Member States that use payment commitments. As most of the payment commitments are currently already held in cash, the exercise should be relatively straightforward.

5.1.3.3 Option 3: Alternative

This policy option considers that the current NOD could provide more stringent rules regarding the collateral which would be restricted to the cash deposits, while keeping the 30 % threshold. This is the current practice in France and of the Single Resolution Fund (SRF) within the Single Resolution Mechanism. The latter requires member institutions to pledge cash deposits as collateral. So far, the SRF has allowed 15 % of an annual contribution to be made in the form of payment commitments. This could apply to member institutions in all Member States.

Effectiveness: This option would improve effectiveness under EDIS. In the event of a pay-out, EDIS would be able to call on payment commitments immediately, without uncertainty on whether the member institutions are able to make good on the commitment or on the value of the collateral.

Efficiency: This option would improve efficiency, by facilitating the monitoring of the collateral and collection. Also with EDIS in place, the collection and monitoring of cash deposits (since the deposits are with the DGS) would be easier. More specifically, the current negative interest rate environment requires in some cases the replenishment of collateral lost due to interest payments, while in a positive interest rate environment some of the collateral could be released. The administration costs under this option would nevertheless be higher than under Option 2. Moreover, as the member institutions would be obliged to use cash, the returns for the DGSs would be the same as for the member institutions.

Coherence: This option would lead to a more coherent framework. As the cash deposits are immediately available, there would be no impact on the capacity of EDIS to intervene in the event of a pay-out. Moreover, the sovereign-bank nexus would be reduced as the commitments are held in cash instead of a mix of liquid assets.

Nevertheless, the level playing field would still be distorted as only member institutions in Member States that transposed the NOD would be allowed to use payment commitments and not all member institutions will necessarily be able to benefit from a beneficial accounting and capital treatment.

Subsidiarity: This option would reduce subsidiarity. Some Member States in which cash deposits are used as a collateral would continue using them. In others, some of the collateral (in the form of securities) would have to be replaced. Moreover, the reduction of the maximum amount of payment commitments, would mean that some of the payment commitments would have to be made good on and the share of payment commitments in new contributions to the DGS reduced.

5.1.3.4 Option 4: Full harmonisation

This policy option considers extending the current NOD to all Member States. This would mean that institutions could contribute up to 30 % in payment commitments backed-up by collateral consisting of cash deposits and low-risk assets.

Effectiveness: This option would reduce effectiveness by making the collection of the contributions in the event of a pay-out more complex, with higher claims on defaulted institutions. The losses of a defaulted institution would further increase if the institution had to fulfil the payment commitment; this is because the payment commitments are often not accounted for in the profit and loss account. While the opportunity to use payment commitments would be available to all member institutions under EDIS, the negative impact of the NOD on the level playing field would remain, if accounting and regulatory benefits depend on national legislation and practices.

Efficiency: This option would reduce efficiency potentially for both the DGSs and the member institutions. Under EDIS, the collection of the payment commitments and monitoring of the collateral would likely become significantly more complex, if administered at a greater scale, as the number of member institutions is substantially larger. With about 3 450 credit institutions in the Banking Union in 2019, the number of institutions at national level range between eight credit institutions in Estonia and about 1 470 in Germany[123]. From the point of view of member institutions, in practice the benefits are likely to be limited, if any, in those Member States where the auditors and national competent authorities require that payment commitments are booked as costs and deduct them from regulatory capital. Furthermore, in the current low-interest environment, the additional returns on collateral would be negligible, potentially even negative when deposited at the central bank or invested in government bonds, and would necessitate compensation for the extra administrative resources devoted to collateral management.

Coherence: The option would improve external consistency, while worsening internal consistency. The use of payment commitments will lead to a marginal increase in the sovereign-bank nexus in the Eurozone, when the collateral consists of sovereign debt instead of cash. More frequent use of payment commitments does not need to go hand-in-hand with depositor protection.

Subsidiarity: This option would have no impact on subsidiarity as member institutions in the Member States could continue using payment commitments.

[123] Based on a combination of the lists of credit institutions provided by the EBA and ECB.

5.2 NOD 12 – Contributions into existing mandatory schemes

Summary: NOD 12 – Contribution into existing mandatory schemes				
DGSD [Article 10(4)]				
Member States may raise the available financial means through the mandatory contributions paid by member institutions to existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure, and resolution of institutions. DGSs shall be entitled to an amount equal to the amount of such contributions up to the target level, which the Member State will make immediately available to those DGSs upon request. The contributions shall be used primarily for the repayment of depositors (Article 11 DGSD). DGSs are entitled to that amount only if the competent authority considers that they are unable to raise extraordinary contributions from their members.				
Transposed into national law [1 Member State]				
UK				
Practical experience so far [0 Member States]				
None				
Importance				
Nihil[124]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member State**
Overall	+	-	+	+/-
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating [Recommended]**	**Option 3: Alternative**	**Option 4: Full harmonisation**
Effectiveness	**+**	-	+/-	
Efficiency	**+/-**	+/-	+	
Coherence	**-**	+	+/-	
Subsidiarity	**+**	-	-	

5.2.1 Implementation across Member States

Only the UK has transposed this NOD in the DGSD allowing Member States to use the bank levy to ensure that its available financial means are proportionate to its potential liabilities provided and subject to the condition that such a scheme of mandatory contributions was existing pre-DGSD.

[124] Based on some estimations the cumulative bank levies could contribute about 50% of available financial means in the UK in 2018 based on the cumulative bank levies.

Moreover, as a reaction to the 2007-09 financial and 2010-12 Eurozone debt crises 14 Member States have also implemented (temporary) bank levies in order to cover the costs related to systemic risk, failure, and resolution of institutions[125]. Slovakia has introduced a bank levy[126] that can contribute to the DGS. However, the specific conditions to this NOD have not been transposed. This means that Slovakia is not meeting the conditions to be considered as having transposed this NOD.

5.2.1.1 Motivations to transpose and use the NOD

Bank levies were introduced in some Member States in the aftermath of the crisis, before the adoption of the DGSD. The main motivation for the introduction of the bank levies was primarily to compensate for the large bail-outs as well as strengthening the robustness of the crisis management framework (systemic risk, failure, and resolution).

The financial and economic crisis saw many banks bailed-out by their national governments. In the UK, in 2008 for instance, the DGS borrowed GBP 20.4 billion (EUR 25.6 billion) to fund the costs of compensating or transferring the accounts of consumers in the failure of five banks, referred to as the Specified Deposit-taker Defaults (SDDs). The SDD loans were financed under facilities originally provided by the Bank of England, and subsequently refinanced by HM Treasury[127].

Strengthening the framework for crisis management represents the main motivation to use bank levy receipts to contribute to the DGS. In the UK, as part of the design of the bank levy, protected deposits are covered by a statutory, state-run guarantee[128] or insurance scheme and loans backed by the UK government are exempt from the tax base. Long-term chargeable equity and liabilities (with a maturity date exceeding one year) are charged in the bank levy at half the rate applicable to short-term chargeable liabilities. All banks and building societies operating in the UK are liable for the bank levy, whatever the amount of guaranteed deposits they hold.

The UK considers that the use of the bank levy for the DGS could increase the available financial means and reduce the risk to taxpayers as well as avoid rendering member institutions incapable of providing extraordinary contributions.

5.2.1.2 Level of the bank levy

In the UK, the bank levy is chargeable on the balance sheet liabilities of the institutions including equity and excluding covered deposits, borrowing backed by UK government debt and the first GBP 20 billion (about EUR 22 billion) of any taxable debt. The levy rate is fixed at 0.078 % for short-term chargeable liabilities, and half this rate (0.039 %)

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[125] Austria, Belgium, Cyprus, Germany, France, Hungary, the Netherlands, Latvia, Portugal, Romania, Slovakia, Slovenia, Sweden and the UK. With the possible exception of Slovakia, these Member States do not use the levies to finance the DGS.

[126] In Slovakia, the tax rate for the bank levy has been fixed at 0.2% of total liabilities excluding equity, funds on long-term offer to a branch of a foreign bank, and its subordinated debt, for the period 2015-2020. The Slovakian legislation on the special levy of selected financial institutions specifies that the bank levies can be used for the sole purpose of covering the costs related to resolution of the financial crisis in the banking sector and to protect the stability of the banking sector in Slovakia, including to replenish fund resources necessary to cover the expenditure due to compensation payments for unavailable deposits. The other uses of the DGS assets mentioned in Article 11 DGSD are not covered by the Slovak legislation. Although not clearly specified in the legislation, the National Bank of Slovakia confirmed that bank levies cannot be used to reach the target level of contributions.

[127] FCA (2018), Financial Services Compensation Scheme levies for specified deposit-taker defaults.

[128] Including deposits protected by other statutory guarantee or insurance schemes operating outside the UK and comparable with the FSCS scheme.

for longer maturity liabilities and non-protected deposits (except for deposits from financial institutions and financial traders).

5.2.1.3 Conditions related to amounts and availability

Subparagraph 2 of Article 10(4) DGSD provides for three types of conditions for the DGS to be entitled to the bank levies:

i) maximum amount to which DGSs shall be entitled;
ii) immediate availability; and,
iii) exclusive use for the purposes of interventions of the DGS, including contributions to resolution.

This means that the DGSs shall be entitled to an amount equal to the amount of the bank levy, up to the target level set up by the DGSD. The Prudential Regulatory Authority (PRA)[129] in the UK can authorise the Financial Services Compensation Scheme (FSCS) to borrow from the bank levy pool an amount equal to its shortfall, when its financial resources are inadequate to meet the claims, but there is no reference to the target level in the transposing measures. The funds obtained from the bank levy will be equal or less than the amounts of pay-outs, which means that the contribution is in practice unlikely to exceed the target level (0.8 % of the covered deposits).

The amounts raised from the bank levy shall be paid to the UK Consolidated Fund, which means that they are mixed up with other funds held in the Government's general bank account at the Bank of England. Payments from this account must be authorised in advance by the House of Commons. The Government shall present its 'requests' to use this money in the form of Consolidated Fund Bills. According to the UK Treasury, the fact that the bank levies are held in the Government's general bank account does not impact their immediate availability to the FSCS, as the Government would also make these funds immediately available in the event of a resolution if required, in accordance with Article 100(6) BRRD. The UK Treasury will therefore use the mechanism under the same legal basis[130] to transfer funds from the bank levy to the FSCS, by which it can disburse funds to the Bank of England as the resolution authority to support a resolution. This is also justified by the fact that the BRRD also allows Member States to use existing *ex ante* resolution financing arrangements in a different form than as a 'fund', and that it permits the Government flexibility in the use of those funds when they are not needed for resolution.

The DGS regulations provide that the financial means raised through mandatory contributions paid by the financial sector to existing schemes of mandatory contributions can be used for the purposes of Article 11(1) and 11(2) DGSD, once the PRA has established that the FSCS cannot raise contributions under the compensation scheme. Therefore, funds raised from the bank levy can be used to repay depositors and to finance the resolution of member institutions, but not for the purpose of Article 11(6) DGSD, i.e. to finance measures to preserve the access of depositors to covered deposits, including transfer of assets, liabilities and/or deposit book, and in the context of national insolvency proceedings (NOD 14).

5.2.1.4 Conditions related to capacity and availability

Paragraph 3 of Article 10(4) DGSD provides for two additional types of conditions for the DGS to be entitled to the bank levies:

i) incapacity to raise extraordinary contribution; and,

[129] Which is part of the Bank of England.

[130] Section 228 of the FSMA.

ii) obligation to repay the amount granted immediate availability.

The requirement regarding the incapacity to raise extraordinary contribution is transposed by the PRA Depositor Protection Rule 32.2. The rule states that the FSCS, which runs the DGS, among other insurance schemes, can only borrow after authorisation from the PRA the amounts necessary to meet the liabilities of the DGS from the bank levy (through the intervention of the Treasury) if the PRA determines that the FSCS is unable to raise levies from its members. Such incapacity will be assessed on a case-by-case basis by the PRA, at the time of each call on the DGS funds. The PRA expects to consider a range of factors including the likely impact of raising levies on financial stability, the size and timing of levies needed to be raised and other regular levies already imposed on the financial sector, and the impact of pro-cyclical contributions on the setting of annual contributions.

The provision to repay the amount borrowed is transposed by the PRA Depositor Protection Rule 32.3 which provides for a legal obligation for the FSCS to impose a compensation costs levy on its members, enough to repay any amounts equal to mandatory contributions borrowed in accordance with Article 10(4) DGSD within a reasonable time.

5.2.1.5 Practical experience with the NOD so far

The NOD has not been used in practice. The FSCS has not borrowed from the funds raised through the bank levies, but has used the funds standing to the credit of one funding class to meet the costs of another on a short-term basis[131]. The cumulative amount of SDD levies collected between 2009 and 2018 accounts for about 0.35 % of covered deposits, equivalent to 50 % of available financial means at the end of 2018[132]. This means that the bank levy could potentially deliver a substantial contribution to the DGS. The bank levies accumulated constitute an immediately available liquidity pool, which will enable the DGS to spread the costs of a repayment or resolution procedure (through compensation costs) over several years. This procedure ensures that the failure of a member institution does not put too much pressure on an already weakened sector during a crisis.

5.2.2 Impact of the NOD[133]

The NOD effectively increases the means available to the DGS[134]. The funds collected through the bank levy are added to the available financial means provided that the extraordinary contributions can be obtained, which reduces the risk profile of the national DGS and strengthens depositor confidence. However, the level playing field is distorted because member institutions with this NOD are likely to contribute more than member institutions that did not implement this NOD. Based on the current experience, the contribution of the levy to the DGS has a limited relevance to the Member States concerned.

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[131] In the UK, the FSCS, which covers savings deposits, insurance policies, and investments, is financed through different types of levies, organised in 'funding classes' (deposits class, life and pensions provision class and general insurance provision class).

[132] See FSCS (2019) for the cumulative amount of SDD levies, and EBA (2019) for covered deposits and available financial means as of 31 December 2018.

[133] The assessment of the impact is based on the assumption that the bank levy is introduced with the purpose of potentially contributing to deposit insurance when necessary.

[134] This is because the DGS is entitled to the available financial means if the competent authority considers that the DGS is unable to raise extraordinary contributions from the members.

5.2.2.1 Risk profile of the national DGS

In the UK that has transposed and can use this NOD, the effective means available to the national DGS are around the target level of 0.8 %. Based on some estimates, the bank levies could have contributed an additional 50 % of available financial means in the UK in 2018.

Moreover, the UK bank levy is risk-based, which may incentivise member institutions towards less risky behaviour and potentially reduce the likelihood of pay-outs and the risk profile of the DGS. However, if the bank levy is (too) high, it may affect banks' profitability, which might increase the probability of pay-out events and in turn the risk profile of the national DGS.

5.2.2.2 Level playing field

The member institutions in Member States that raise extraordinary contributions ahead of available financial means are likely to experience relatively higher costs than without the levy. This puts the member institutions at a competitive disadvantage. Finally, the design of the levy can also impact the level playing field. For instance, the impact on the savings intermediation is minor if the base for the calibration of the bank levy excludes covered deposits (UK). If this is not the case, banks may be motivated to restrain collection of deposits or to lower interest rates on deposits.

5.2.2.3 Depositor confidence

The NOD is likely to strengthen depositor confidence. The main factors that contribute to this strengthening of depositor confidence are the increase in funds available to the DGS, reduction in the probability of a pay-out, and reduced probability of contagion to the national government. Overall, the more robust the DGS is, the more confidence the depositors have in the ability of the fund to repay the deposits when necessary.

5.2.2.4 Relevance for respective Member State

The NOD is only transposed in one Member State. Although the funds have not been used by the DGS, the funds could potentially deliver a substantial contribution to the DGS.

5.2.3 Options in the context of EDIS

The purpose of the NOD seems to increase the level of financial means by requiring the DGS to raise the extraordinary contributions ahead of using the available financial means. In this respect, the DGSD provides for a minimum target level allowing Member States to raise more contributions and Member States could achieve the same result by increasing the target level. An alternative way to deal with insufficient available financial means could be to raise the minimum target level instead (Option 3). However, although this would likely improve the protection for depositors, there is currently no evidence that the target size of the DGSs is insufficient.

Because this NOD is specific to only one Member State outside the Banking Union, it would be recommended to eliminate this NOD (Option 2). It should be noted that, if this NOD is eliminated, Member States would not be prevented from levying a tax on banks outside the scope of the DGSD and the DGS using such funds in a systemic crisis.

5.2.3.1 Option 1: Retain in current form

This policy option considers retaining the current provision as included in Article 10(4) DGSD.

Effectiveness: This option is used in one Member State outside the Banking Union and would not be relevant under EDIS. The NOD does not impact the effective protection of depositors due to the lower pay-out probability and more funds available to the DGS.

Efficiency: This option does not affect the efficiency of the system.

Coherence: On the one hand, retaining the NOD in its current form under EDIS would contribute to reducing the contagion risk in case of losses between the national DGS and the home government, which is one of the main objectives of the Banking Union. On the other hand, the bank levy leads to distortions in the level playing field between Member States.

Subsidiarity: This option would not impact subsidiarity.

5.2.3.2 Option 2: Eliminating

This policy option considers eliminating the possibility to use a bank levy to contribute to the DGSD.

Effectiveness: Eliminating the NOD would not impact the effectiveness of the DGS because the standard cascade of funding resources would apply instead (extraordinary contributions would be raised if available financial means are insufficient).

Efficiency: This option would improve efficiency because the DGS would first use the available financial means.

Coherence: This option would be beneficial for the level playing field and improves the overall coherence.

Subsidiarity: This option would impact subsidiarity in a Member State using the NOD.

5.2.3.3 Option 3: Alternative

This policy option considers increasing the target level to contribute to the DGS, beyond the target level of 0.8 % of covered deposits, to replace the bank levy as a means to contribute to the DGS where it exists.

Effectiveness: Increasing the target level is likely to have a similar impact as retaining the current NOD (Option 1). A higher target level would increase the effective protection for depositors due to the higher available financial means, which reduces the risk of shortfalls. Furthermore, the additional risk-based contribution would discourage excessive risk-taking by member institutions. Risk of contagion to the respective national governments would also be lowered. However, there is currently no clear evidence that there is a need for more funds.

Efficiency: Increasing the target level is likely to be more efficient than if the NOD is retained in its current form (Option 1). This avoids a parallel system to determine, collect and manage the funds. Increasing the target level requires limited extra resources as in essence only the amounts change.

Coherence: Increasing the target level would improve coherence. Like retaining the current form, a higher target reduces the contagion risk to the government, which is one of the main objectives of the Banking Union. Moreover, as the calculation of the target level would be more similar across Member States as well as the potential increase of the target level, the distortion of the level playing field between member institutions across Member States is likely to be less than with financing through bank levies. Additionally, the increased target level is always used to strengthen the DGS, whereas bank levies are sometimes used for additional purposes, unrelated to the stability of the banking sector.

Subsidiarity: Increasing the target level would reduce the flexibility of the Member States somewhat as they have less discretion to change the calculation of the contribution and determine the management of the funds.

5.2.3.4 Option 4: Full harmonisation

This policy option considers extending the NOD to all Member States which would effectively modify the cascade of the DGS funding that currently applies in the majority of Member States (raising extraordinary contributions ahead of available financial means).

5.3 NOD 13 – Financing of failure prevention measures

Summary: NOD 13 – Financing of failure prevention measures				
DGSD [Article 11 (3)]				
Member States may allow a DGS to use the available financial means for alternative measures in order to prevent the failure of a credit institution provided that: i) the resolution authority has not taken any resolution action ; ii) the DGS has appropriate systems and procedures in place for selecting and implementing alternative measures and monitoring affiliated risks; iii) the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the DGS; iv) the use of alternative measures by the DGS is linked to conditions imposed on the credit institution that is being supported, involving at least more stringent risk monitoring and greater verification rights for the DGS; v) the use of alternative measures by the DGS is linked to commitments by the credit institution being supported with a view to securing access to covered deposits; vi) the ability of the affiliated credit institutions to pay the extraordinary contributions. The DGS shall consult the resolution authority and the competent authority on the measures and the conditions imposed on the credit institution.				
Transposed into national law [9 Member States]				
Austria, Croatia, France, Germany, Ireland, Italy, Malta, Poland and Spain				
Practical experience so far [0 Member States]				
None[135]				
Importance				
Nihil[136]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+	-	+	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+/-**	-	+	+/-
Efficiency	**+**	-	-	+/-
Coherence	**-**	+	+	+
Subsidiarity	**+**	-	+/-	-

[135] Based on the collected information, the NOD has not been used in practice since the DGSD has been applicable in the Member States.

[136] In view of the limited experience with the NOD, it was not possible to assess the importance of the NOD.

5.3.1 Implementation across Member States

Under Article 11(3) DGSD, Member States may allow a DGS to prevent the failure of a member institution (further referred to as 'preventive measures'[137]). Accordingly, the funds would be used at an earlier stage by contributing to the prevention of a bank failure, instead of using them to pay out the depositors in the event of bank insolvency with a view to avoid paying for higher losses that could result from such a failure.

Preventive measures must meet the following conditions: (i) the resolution authority has not taken any resolution action; (ii) the DGS has appropriate systems and procedures in place for selecting and implementing alternative measures and monitoring affiliated risks; (iii) the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the DGS; (iv) the use of alternative measures by the DGS is linked to conditions imposed on the member institution that is being supported, involving at least more stringent risk monitoring and greater verification rights for the DGS; (v) the use of alternative measures by the DGS is linked to commitments by the credit institution being supported with a view to securing access to covered deposits; (vi) the ability of the affiliated credit institutions to pay the extraordinary contributions to DGS is confirmed in the assessment of the national competent authority.

9 Member States have transposed the NOD[138]. Most of them have also implemented the conditions, with exception of Croatia, Spain and possibly France[139], that did not transpose Article 11(3)(f) DGSD.

The NOD leaves a considerable margin for interpretation to Member States as to the meaning and choice of preventive measures or the conditions for their use ('appropriate' systems and procedures in place for selecting and implementing preventive measures and monitoring affiliated risks[140]). At the same time, Article 11(3) DGSD provides for several safeguards in order to ensure that the DGS has enough funds to continue playing its primary role of paying covered depositors in the event of the failure of a member institution. Control on the use of preventive measures is exercised through the EU State aid framework[141].

5.3.1.1 Motivations to transpose and use the NOD

The main reasons for the use of failure prevention measures are to support the objective to avoid the failure of member institutions and to lower the costs of interventions, and to promote depositor confidence and system stability.

For example, this is the case of the Institutional Protection Schemes (IPSs). Their main objective is to avoid the failure of their member institutions and, hence, to avoid reputational risk as the members of IPSs often have branding in common. Under Article 113(7) of the Capital Requirement Regulation (CRR), the role of IPSs is to protect their member institutions and ensure that they have the liquidity and solvency needed to

[137] In this study, measures under Article 11(3) DGSD (NOD 13) are referred to as preventive measures although the Article 11(3) also uses the word 'alternative'. This is to ensure clear distinction with measures under Article 11(6) that are referred to as 'alternative measures' (NOD 14).

[138] I.e. Austria, Croatia, France, Germany, Ireland, Italy, Malta, Poland and Spain.

[139] It was not possible to confirm if France transposed Article 11(3)(e) DGSD.

[140] Article 11(3)(b) of the DGSD; however, as the DGSD does not specify more details, such assessment is an Member State discretion.

[141] See for instance Decision of the European Commission with respect to the Italian Banca Tercas, Commission press release IP/15/6395, 23 December 2015 (annulled by the General Court) and the remarks of Italy concerning the impact of the decision on the feasibility to use the option from Article 11(3) of the DGSD discussed further in this report.

avoid bankruptcy where necessary. An IPS may be officially recognised as a DGS (and be subject to all provisions of the DGSD) or it may continue its activity as a pure IPS (its members need to belong to an officially recognised DGS). For IPSs recognised as DGSs, this NOD is crucial as it allows the financing of preventive measures with the DGS funds.

In Austria and Germany, only IPSs are allowed to use their available financial means to finance preventive measures. In practice, IPSs generally provide liquidity and solvency support to avoid any situation leading to the failure of their member institutions. To this end, the IPSs monitor their members more closely than conventional DGSs. The two Polish IPSs also intervene through early intervention measures, which avoids pay-outs.

There are several motivations for IPSs to avoid the failure of their members. First, with the interventions, total losses for creditors are likely to be reduced because fire sales in the event of insolvency are avoided. Second, the members of IPSs often work quite closely together (e.g. branding, product development, interbank lending, etc.) and, therefore, the preventive measures avoid a loss in credibility and contagion to other member institutions. Third, the preventive measures contribute to preserving the diversity in the financial system because IPS members are typically stakeholder banks (cooperative banks, savings banks or public banks), which in the case of failure are likely to disappear or demutualise.

Besides, some DGSs consider that failure prevention measures can lower the costs for the DGSs, as the value of assets is better preserved in a going concern than in a liquidation procedure, involving a pay-out to depositors. According to the Italian DGS, loss-minimising, compared to pay-out, is the most important reason for using the NOD. In Italy, this was the usual way chosen for intervention by the Italian DGSs prior to the DGSD as considered less costly and of less significant systemic impact than letting a bank be liquidated. Other Member States shared this rationale (Spain, France, Poland).

5.3.1.2 Type of preventive measures

Member States do not tend to set strict limits on the type of possible preventive measures. Croatia, France, Poland and Spain clarified the types of preventive measures that DGSs can take, including by open-ended provisions, like providing financing 'in any form whatsoever' (i.e. France) and 'any other financial support measures' (i.e. Spain), hence, in essence leaving the catalogue of possible measures open. In some Member States, the type of measures is specified in the statutes of the DGSs (i.e. Germany and Italy).

The types of preventive measures show some commonality but differ across the Member State. They include subsidies to the acquiring member institution, capital support, loans, asset/liability purchases, support to bridge institutions or asset management companies, guarantees on assets/liabilities and take-over of third-party claims (see Table 5.1).

Table 5.1 Preventive measures specified in legislation

Country	Subsidy	Capital	Loans	Acquire assets/ liabilities	Bridge institution/ Asset management company	Guarantee (assets and liabilities)	Third-party claims
Croatia		X		X (property)		X	
France		X		X	X	X	
Germany (Cooperatives)*	X	X	X	X		X	
Germany (Savings)		X	X			X	X
Italy (excl. Cooperatives)		X		X		X	
Italy (Cooperatives)		X	X	X		X	
Poland (Cooperatives)		X	X	X		X	X
Spain**	X	X	X	X (unprofitable)			
Total	**2**	**8**	**5**	**7**	**1**	**7**	**2**

Notes: *Traditionally BVR primarily uses guarantees (80 %) and grants (20 %). **Only the specific alternative measures specified in the Spanish law are covered in the table, whereas France and Spain also have a general provision that allows any financial support measure.

Source: CEPS-Milieu elaboration

5.3.1.3 No resolution action

The DGS can only contribute when the resolution authority has not taken any resolution action. All Member States have transposed this condition into their legislation. In the specific context of Poland, because the Bank Guarantee Fund (BGF) acts both as the DGS and resolution authority, it has the discretion to finance measures (e.g. guarantees, loans, cash compensations) to a failing or likely to fail cooperative bank under Article 11(3) DGSD, or initiate a resolution procedure conducive to the same type of measures (e.g. a purchase and assumption transaction) with the use of the resolution fund and the DGS[142]. The decision is nevertheless subject to approval of the Polish financial supervision authority (KNF).

5.3.1.4 Systems and procedures for selection and monitoring

The DGS must have appropriate systems and procedures in place for selecting and implementing preventive measures and monitoring affiliated risks. All relevant Member States have adopted this condition[143].

[142] The DGS can contribute to resolution within the meaning of Article 11(2) DGSD and Article 109 BRRD.

[143] Although Poland has not officially transposed the condition, it has been implemented in practice as the DGS has issued a number of internal resolutions establishing such systems and procedures.

Those Member States that used their DGS for the financing of preventive measures prior to the DGSD have already had systems and procedures in place (Italy, Poland and Spain). In Poland, member institutions covered by the DGS shall provide, at the DGS' request, information required to control the adequate use of assistance and support measures (taken under both Article 11(3) and 11(6) DGSD) and monitor the economic and financial situation as well as management system of a member institution receiving financial assistance (Article 5(2) DGSD). In France, if the DGS accepts to intervene, it defines, after consulting the French prudential authority, the conditions for this intervention. Therefore, the systems/procedures for selection and monitoring would be set when the NOD was applied. In Germany, the DGSs for cooperative banks and saving banks have also strong monitoring procedures that existed prior to the DGSD. The monitoring is different for Member States that transposed this NOD with the DGSD. For instance, the Irish central bank has not put any system in place and intends to create procedures on a case-by-case basis for selecting and implementing preventive measures and monitoring affiliated risks.

5.3.1.5 Costs not exceeding mandate under the DGS

The costs of the measures may not exceed the costs of fulfilling the statutory or contractual mandate of the DGS. With the exception of Croatia and Italy, all relevant Member States have transposed this condition with similar wording as in the DGSD.

In Croatia, the cost of the measures must not exceed 50 % of the amount of the covered deposits of the member institution. In Italy, the cost of the intervention shall not exceed the cost which the system would have to bear in order to carry out other interventions in the cases provided for by the law or by the DGS' statutes.

There is not much information about the practical implementation, probably because the NOD has not been used since the adoption of the DGSD. In Poland[144], the forced administrator appointed by the KNF would prepare the financial information preceding its appointment and report on the level of assets, equity, and liabilities, including covered deposits. This report would be audited by a certified auditor. Based on the experience with multiple failing SKOKs (cooperative credit and saving unions), if the administrator finds that the assets are insufficient to cover the liabilities, i.e. in case of insolvency, the KNF seeks another member institution (domestic) that would be willing and able to safely take over the insolvent member institutions. If the amount of covered deposits is higher than the difference between the assets and liabilities, the KNF offers to the acquiring bank a non-repayable subsidy to cover this difference between assets and liabilities.

The German IPS for cooperatives have a similar approach. They consider the amount that they have to inject in the failing member institution as the costs of the preventive measures, while the total covered deposits in the failing member institution are considered as the costs associated with the pay-out. The costs of the preventive measure need to be less than the covered deposits to meet this condition.

[144] See the announcement of the Polish Financial Supervision Authority (KNF), which contains a description of how this condition should be checked in practice.

5.3.1.6 More stringent risk monitoring for the DGS

More stringent risk monitoring and greater verification rights for the DGS are another condition for the use of preventive measures. Most relevant Member States[145] have transposed this condition with similar wording as in the DGSD.

Austria has introduced a stricter wording as compared to the DGSD requiring DGSs to impose severe conditions on the entity benefiting from preventive measures.
In France, this condition, transposed in a general way, does not require specifically that the conditions imposed should involve at least more stringent risk monitoring and greater verification rights for the deposit guarantee and resolution fund.
Croatia and Poland have implemented this condition by imposing several detailed requirements on entities benefiting from the preventive measures[146].

In Germany, the cooperative DGS has the possibility to replace board members, require merger talks, reductions in specific business models, portfolios, etc. This may also require a change of the business model to guarantee long-term viability and close monitoring to follow the recovery.

5.3.1.7 Securing access to covered deposits

The preventive measures under this NOD must be linked to continued access to covered deposits. All relevant Member States, except possibly for France[147], have transposed this condition with similar wording as in the DGSD.

5.3.1.8 Ability to pay the extraordinary contributions

The ability of the affiliated member institutions to pay the extraordinary contributions is confirmed in the assessment of the competent authority. Croatia, France and Spain have not transposed this condition.

5.3.1.9 Consultation of resolution and competent authority

The DGS shall consult the resolution authority and the competent authority on the measures and the conditions imposed on the member institution. All relevant Member States have transposed this condition. Poland has implemented it only in relation to preventive measures used for SKOKs.

Member States introduced various forms of consultation and involved different entities. In Austria, an expert opinion by the national central bank and the consent of the resolution authority are required regarding the supporting measures and conditions for the member institution.

In Croatia, the DGS decides on the use of preventive measures after obtaining opinions of the national central bank as well as of the competent and resolution authority.

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[145] I.e. Germany, Ireland, Italy, Malta and Spain.

[146] This includes information requirements in Poland, the right of the DGS to appoint members of the supervisory board, the risk committee and the audit committee, the need to specify the manner and deadlines for reporting on the implementation of the restructuring plan as well as the exit strategy and other monitoring by the DGS to verify whether the member institution complies with its obligations in Croatia.

[147] The preventive measures were used in 1999 for the last time and there is no other information on how the provision would be applied.

In Germany, the national competent authority (BaFin) shall confirm the ability of affiliated member institutions to pay the extraordinary contributions.

Ireland has adopted the provisions in the DGSD literally and requires that the designated authority shall consult the resolution authority and the competent authority on the measures and conditions that it is considering imposing on any member institution. However, given that the national central bank acts both as the competent and resolution authority, the consultation will take place between the competent departments.

In Italy, the resolution authority Bank of Italy is consulted by the respective DGS on the possibility to reorganise the institution. The DGSs follow internal procedures to assess whether the potential restructuring meets the conditions under the DGSD and the Italian law. The DGS asks for the opinion of the Bank of Italy before making the final decision. The new legal framework does not, however, require specific authorisation from the Bank of Italy.

In Malta, the DGS shall consult the resolution and competent authorities, which are both part of the Malta Financial Services Authority, on the measures and the conditions imposed on the member institution.

In Poland, as regards preventive measures for SKOKs, the DGS consults the KNF as the competent supervisory authority, which must issue a positive decision about the restructuring programme for the beneficiary member institution and lack of risk related to the acquisition by another member institution. No consultation requirements are provided for in relation to preventive measures to support acquisition of ailing member institutions by other members.

Finally, in Spain, preventive measures would be subject to an agreed plan approved by the competent authority, after consulting the Spanish resolution authority (FROB). There are no guidelines or internal documents setting out the details of neither the collaboration involving the DGS, the FROB and the national competent authority (Bank of Spain)[148], nor the timeframe of the consultation.

5.3.1.10 Practical experience with the NOD so far

The preventive measures have been used prior to the DGSD (e.g. Italy and Spain). More specifically, the following measures have been used: i) guarantees for losses related to certain activities or exposures of the acquired entity (e.g. Italy and Spain); iii) a non-repayable contribution to cover negative equity (e.g. Italy); iv) a guarantee to cover additional costs arising from tax payments on the other financial support (e.g. Italy); v) recapitalisation (e.g. Spain); vi) loans (e.g. Spain); vii) acquisition of damaged assets (e.g. Spain).

[148] All of them are expected to be involved because the representatives of each authority are present in the structural organisation of the other authority: the FROB sits within the Bank of Spain and the Bank of Spain is a member of the Managing Board of the Spanish DGS, DGFCI.

Box 2. Least-cost test of savings banks in Austria and Germany

S-Haftung is an IPS, recognised as a DGS, for savings institutions in Austria. It does not have a detailed methodology for the least-cost test. However, historically the least-cost test is on a cash flow basis and considers the covered deposits of the distressed institution plus the administrative costs which could be incurred in a hypothetical pay-out (i.e. costs to fulfil their obligation as a DGS). In turn, the total amount of funds injected in the institution (liquidity support, capital injection, etc.) are considered the costs of financing a prevention measure.

The conditions for the support are based on the contractual agreements of the IPS with the member institutions and internal monitoring and financial support guideline. In general, there are no restrictions as to which conditions may be imposed. Depending on the institution’s difficulties, the conditions would entail changes in the management board, credit underwriting standards, approval requirements, additional reporting obligations, etc. The conditions are determined on a case-by-case basis depending on the support measures and the internal guideline.

The Deutsche Sparkassen und Giroverband (DSGV) in Germany also has an IPS recognised as a DGS. The least-cost test is defined on a cash flow basis, i.e. the upper limit for preventive measures is the amount of covered deposits to be compensated in case of failure of a member institution. The amount of covered deposits is collected quarterly from each of the member institutions. In practice, costs for preventive measures (injection of equity, issuance of guarantees and payment of third-party claims) are, according to the IPS, much smaller than compensating depositors in case of failure of a member institution based on cash-flows.

If the institution requires support from the IPS, the involved parties enter into a support agreement according to the articles of association of the IPS. This agreement covers, among others, the support measures, resources to be provided as well as the conditions imposed on the member institution that is being supported and the duration of the reorganisation phase. The set of conditions imposed on the member institution are determined based on a case-by-case basis, taking into account a detailed analysis of the specific circumstances of the institution concerned. The conditions can include specific performance indicators such as a target agreement for future business planning and the initiation of personnel changes on the board of the member institution.

Italy used to apply preventive measures prior to the DGSD. However, the decision of the European Commission in the Tercas Cassa di Risparmio della Provincia di Teramo case challenged the possibility for the DGS in Italy to use the preventive measures. According to the FITD, the Italian DGS, this created issues for the Italian banking system and four banks had to be put into resolution rather than benefit from preventive measures.

Italy approved preventive measures for Tercas in 2014. The FITD support intervention was authorised by the Bank of Italy on 7 July 2014 and entailed the following measures: i) EUR 265 million as a non-repayable contribution to cover the negative equity of Tercas; ii) EUR 35 million as a guarantee (for up to three years) to cover the credit risk associated with certain exposures of Tercas. Those exposures (two bullet loans maturing on 31 March 2015) were fully repaid by the debtors at maturity and hence the guarantee expired without being triggered; and, iii) up to EUR 30 million as a guarantee to cover additional costs arising from tax payments on the measure. Such tax payments would be necessary if the measure was not tax-exempted under Italian law. That specific tax exemption for intervention measures by the FITD would, according to the relevant legal text, be subject to the approval of the European Commission. The FITD paid out the full amount of EUR 30 million to Tercas at a point in time when the European Commission had not yet decided on that tax exemption. On 23 December 2015 the European

Commission issued a decision that the three measures constituted prohibited State aid and had to be repaid by the beneficiary. On 19 March 2019, the General Court annulled the European Commission's decision and the case is currently pending before the EU Court of Justice[149].

In Spain, preventive measures were also used. The most frequently used measures included a recapitalisation, guarantees, loans, an acquisition of damaged assets and the use of the Scheme for the Protection of Assets (Esquema de Protección de Activos, EPA). Under this scheme, the FROB guaranteed the value or part of the value of a set of assets of the beneficiary entity (Bank of Valencia, Cajasur, Banco Castilla la Mancha, CAM Bank, etc.). The scheme serves, consequently, to protect the acquiring member institution against potential losses of an entity in financial distress so as to enable and ease the sale. The costs should be limited as the guarantees are meant not to be called, due to the recovery of the asset value.

Most of the IPSs in Austria and Germany combine the DGS and IPS function with another voluntary fund. The other voluntary funds are private and can be used for preventive measures when the DGS cannot be used. In practice, these other funds are likely to be depleted first before the DGS will contribute. For example, the German savings banks have both an IPS recognised as DGS and a private IPS. Both DGSs have a target level of 0.8 % of covered deposits until July 2024; the amounts in the IPS have not been disclosed. In 2018 and 2019, the IPSs had to deal with one case each year.

5.3.2 Impact of the NOD

The use of DGS funds for early intervention can both increase and decrease the risk profile of the national DGS. It distorts the level playing field, strengthens depositor confidence and is most relevant for Member States with IPSs recognised as DGSs. Overall, the main challenge for this NOD is its interaction with the BRRD and State aid policy. Currently, the NOD seems available for use mainly to private DGSs that are not subject to State aid, this being under scrutiny in the Tercas case pending before the EU Court of Justice.

5.3.2.1 Risk profile of the national DGS

When all the conditions are met, the costs of preventive measures should lower the costs for the DGS and thus the risk profile of the DGS. The least-cost test should normally ensure that the costs for the DGS are less than in the case of a pay-out. However, the methodology used for the test does not necessarily take into account the potential recovery in insolvency given the preferential creditor ranking of the DGS.

It is not straightforward to perform the least-cost test even with a more sophisticated methodology. In practice, for every real case, one can observe the costs of the preventive measures with a counterfactual of a hypothetical pay-out event. However, the two costs can never be observed *ex post* at the same time and for the same event. The valuation of a failing institution is uncertain and must often be based on assumptions (default rates, recovery rates, economic forecasts, etc.) and can turn out better or worse compared to the anticipated economic developments. The use of preventive measures could therefore either increase or decrease the risk for the national DGS. The potentially most detrimental risk is that the DGS uses such measures to

[149] The General Court annulled the European Commission's decision because it concluded incorrectly that the measures granted to Tercas entailed the use of State resources and were imputable to the State. The Court also ruled that in a situation in which the measures were taken by a private DGS, the Commission had to have sufficient evidence to conclude that those measures were taken under the actual influence or control of the public authorities and that, accordingly, they were, in fact, imputable to the State.

prevent a failure of an institution, which nevertheless fails afterwards. This could be conducive to moral hazard (amounting to saving 'zombie' institutions) and, most importantly, leave the DGS with insufficient funds to compensate depositors in the same or other subsequent events of failure.

5.3.2.2 Level playing field

The early interventions from the national DGS are likely to distort both the domestic as well as cross-border level playing field because a member institution that would have otherwise failed, will receive a financial benefit while other banks in the same situation would be put into insolvency. This allows the beneficiary member institution to continue operating and thus competing with other institutions in the same market. In a cross-border context, banks in the jurisdiction allowing for preventive measures are placed at an advantage compared to member institutions of DGSs in other Member States not using the NOD. In practice, this distortion is to some extent mitigated through the State aid rules, which limit distortions to competition.

The same consideration applies to depositors because creditors, including eligible depositors (with non-covered deposits above EUR 100 000) are less likely to lose their funds in Member States where such measures are applicable, as pay-out events would be less frequent, if any.

In addition, the Tercas decision also gives rise to an unlevel playing field, as the NOD seems available for use mainly to private DGSs which are more likely than public DGSs to fall outside the State aid rules. However, the origin of available financial means of both public and private DGSs is the same, i.e. based on contributions from member institutions.

5.3.2.3 Depositor confidence

Preventive measures strengthen depositor confidence. As the member institution is rescued, by preventing the failure, all deposits, including those above EUR 100 000, would be shielded against a potential loss in insolvency. Accordingly, preventive measures maintain the depositors' access to their deposits, whereas in pay-out events they would have to wait a few days for repayment or to claim the non-covered deposits in insolvency.

5.3.2.4 Relevance for respective Member States

The NOD is relevant for Member States with IPSs recognised as DGS and to a lesser extent for the DGSs aiming to avoid pay-out and reduce the losses resulting from failing member institutions[150]. There are two broad views about this way of tackling bank failures. On the one hand, some argue that failures should be dealt with to the extent possible in the same manner as other business failures, i.e. limit public intervention as far as possible and use the insolvency framework when possible. On the other hand, others take the view that bank liquidations are not appropriate given the social and economic impact , including losses of eligible depositors and destruction of economic value in insolvency[151].

[150] The latter events to reduce losses resulting from failing member institutions can also be addressed with the alternative measures under Article 11(6) DGSD assessed in NOD 14.

[151] More specifically, the surveys demonstrated that while the SRB argues and acts very much in line with the former view, other resolution authorities such as the Danish and Italian authorities would be in favour of the latter view.

In practice, the NOD has not been used during the recent 'peace time' years since the adoption of the DGSD in 2014. Only very few capital measures would meet the conditions of Article 11(3) DGSD. Instead, several preventive measures were taken under the Bank Recovery and Resolution Directive (BRRD). These so-called precautionary recapitalisations are allowed when the bank is solvent and when the funds are not used to offset losses that the institution has incurred or is likely to incur in the near future[152]. In the case of precautionary recapitalisation, the costs for executing the mandate under the DGSD would be zero (as the bank is solvent, there is no expected pay-out to depositors)[153]. This was also expressed in the Tercas decision, which made it *de facto* impossible up to the start of 2019 to use the NOD. Hence, the support to Tercas was considered State aid as the capital injection went, according to the European Commission, beyond the repayment of depositors[154]. The ongoing judicial procedure might change the scope for using this NOD.

Currently, the NOD is mostly relevant for IPSs (e.g. Austria and Germany) aiming to prevent the failures of member institutions and therefore any pay-out. Moreover, they also have additional voluntary schemes outside the State aid rules allowing for more manoeuvre to use preventive measures.

Box 3. Role of preventive and alternative measures in crisis management framework

The role of preventive measures (Article 11(3) DGSD – NOD 13) has been marginalised within the current crisis management framework. There are in practice very few cases that would meet the conditions.

- The DGS can only deliver a preventive contribution when the costs of the preventive measures do not exceed the costs of fulfilling its mandate (least cost test).
- The State aid rules seem to constitute the main obstacle to the use of preventive measures. Some IPSs seem to be allowed to use preventive measures whereas some DGSs cannot.
- The preventive measures can be used for banks that are not considered failing or likely to fail (FOLTF). Otherwise, depending on the public interest assessment of the SRB, the bank falls under the resolution framework or the national insolvency proceedings (liquidation or alternative measure according to Article 11(6) DGSD – NOD 14).

However, this does not mean that there is no potential role for preventive measures in the crisis management framework. More specifically, the IPSs i) avoid failures of their members to minimise the losses for creditors (also non-covered deposits), ii) avoid contagion to other member institutions, and iii) preserve stakeholder banks (cooperative banks, savings banks or public banks). The IPSs are currently organised as either voluntary schemes or recognised as DGSs.

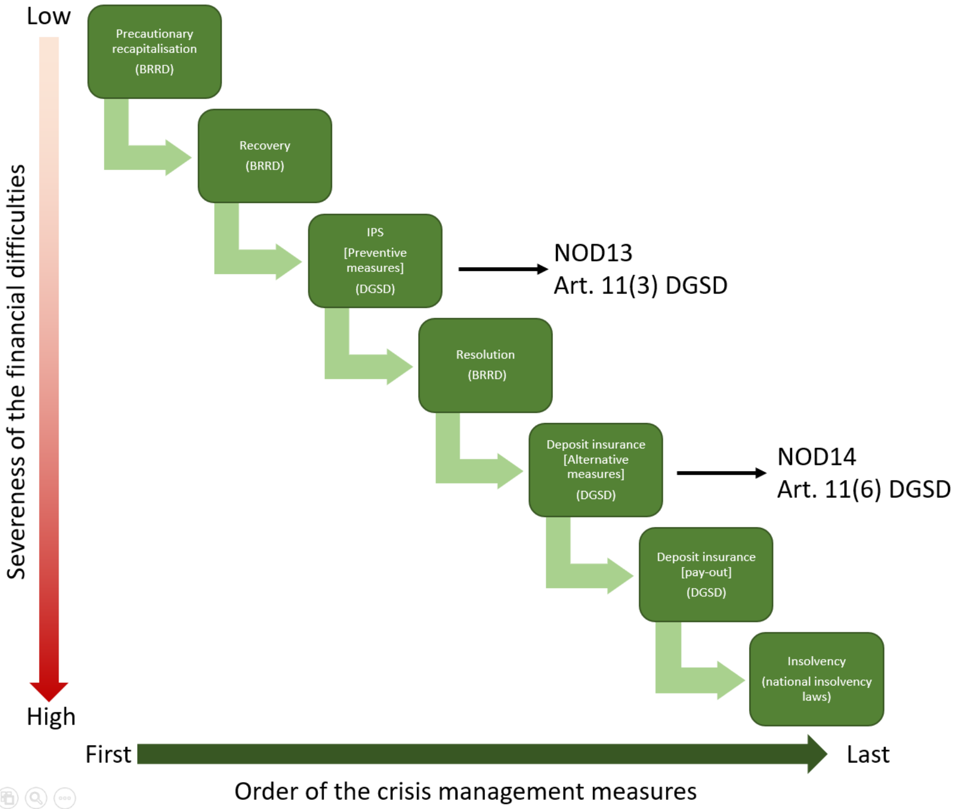
Given the difference in the objectives of the IPSs and DGSs and order of the crisis management measures, it would therefore appear sensible to separate both functions. This would allow the IPSs to support preventive measures to their member institutions before the resolution authorities intervene.

[152] See Article 32(4) of the Bank Recovery and Resolution Directive.

[153] This is different for liquidity concerns that can lead to concerns about the repayment of covered deposits, but are not necessarily accompanied with solvency problems that make a member institution failing or likely to fail.

[154] See the Decision of the European Commission with respect to the Italian Banca Tercas, Commission press release IP/15/6395, 23 December 2015.

Figure 5.1 Priority of crisis management measures



***Note:* The figure above shows some of the applicable crisis management measures (they also include early intervention). In practice, some of the measures (in particular the precautionary recapitalisation and preventive measures) could be taken in parallel. For example, the deposit insurance can contribute to the financing of resolution tools or prevent or contribute to the insolvency.**

Source: CEPS elaboration

Unlike the preventive measures, the objectives of alternative measures and of the deposit insurance are largely aligned. Both ensure that the covered deposits are protected, while the alternative measures make it possible to reduce the costs for the DGS in the pay-out. It is therefore reasonable to allow the DGS to also take alternative measures to reduce the required available financial means.

5.3.3 Options in the context of EDIS

The preventive measures (NOD 13) are crucial for IPSs recognised as DGSs. These IPSs rely on this NOD to achieve their main goal, i.e. to prevent the failure of member institutions by intervening before the resolution phase. In addition, some DGSs are also interested in using preventive measures to lower the costs of intervention as compared to a pay-out. The latter could, however, achieve the same result using the alternative measures (NOD 14).

Against this background, it is recommended to enable DGSs and IPSs recognised as DGSs to perform the preventive measures with voluntary funds (Option 3). The IPSs recognised as DGS would be compensated by reducing their contributions to the DGS

(NOD 17). This policy option would appear the most compatible with EDIS taking the full insurance scheme.

Alternatively, depending on the outcome of the political negotiations in relation to the final design of EDIS (assuming an amount of funds left at national level) and if there is a political will to maintain the NOD, some targeted improvements would be required (Option 1). The least-cost test should be defined in order to (i) ensure the level playing field in the Banking Union (between IPSs and private and public DGSs), (ii) protect the available financial means of the fund, and (iii) avoid support to institutions that would fail after the preventive measure.

The recent changes to the creditor hierarchy regarding the preferential ranking of covered deposits can have a strong impact on the least-cost test and can reduce the possibility of applying preventive measures. For the calibration of the least-cost test, some factors that could mitigate the impact of the ranking of depositors could be envisaged, such as the impact of pay-out on financial stability and on the available financial means of the DGS[155].

In addition, it would be necessary to strengthen the level playing field across the EU.

- The State aid rules need to be clarified. They seem to constitute the main obstacle to the use of the NOD and seem to allow some IPSs to use preventive measures whereas some DGSs cannot.
- In a cross-border context, some institutions can benefit from preventive measures (if the article 11(3) DGSD has been transposed into national law) whereas others in the same situation cannot. Moreover, the available tools for preventive measures differ across the EU, which distorts the level playing field. Therefore, the protection of depositors differs across the EU.

Finally, the interactions between preventive measures and the resolution framework should be clarified (see Box 3).

5.3.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD to allow DGSs to use preventive measures under EDIS. However, the following improvements would be recommended: the least-cost test should be defined, the level playing field should be strengthened (State aid rules, set of tools available for DGSs), and the interaction between preventive measures and the resolution framework has to be clarified.

Effectiveness: This option would contribute to effective depositor protection because it maintains access to deposits, both covered and non-covered, and could also reduce the destruction of economic value in insolvency, including of the expected funds required in case of a pay-out. However, the current least-cost test is not sufficiently clear as to whether it takes into account the preferential ranking of the DGS in insolvency (i.e. extent that repaid deposits can be recovered).

Efficiency: Despite the formalisation of the least-cost test that might increase the costs for the DGSs, preventive measures are in general considered less costly than pay-outs that form a considerable administrative burden for the DGSs.

Coherence: This option in its current form has a negative impact on coherence and the level playing field. While the conditions under this NOD should ensure that 'zombie' institutions are not rescued, member institutions in the jurisdiction allowing for preventive measures are put at an advantage compared to member institutions of DGSs in other Member States not using the NOD. The same unlevel playing field also applies

[155] In an insolvency procedure, the DGSs could face uncertainty and potentially also temporary liquidity needs as they might wait a lot of time for the recovery in insolvency.

to depositors because eligible depositors (with non-covered deposits above EUR 100 000) are less likely to lose their funds in jurisdictions using the NOD and avoiding the pay-out. By contrast, in a pay-out, eligible depositors would be able to recover their uninsured deposits depending on the losses of the failed institution. Another incoherence consists in a different treatment of private and public DGS from the perspective of State aid rules (see discussion of level playing field above).

Subsidiarity: This option would maintain the current level of flexibility for DGSs and IPSs recognised as DGSs.

5.3.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD.

Effectiveness: The NOD has been used only in very few cases during the recent years. However, in the event of crisis, eliminating of the NOD could reduce effectiveness in terms of higher costs for failures and lower depositor confidence.

Efficiency: The elimination of the NOD could potentially increase the costs of the DGS. However, as the NOD is only used in exceptional cases, the impact on efficiency is limited overall.

Coherence: Eliminating the NOD would reduce the distortion of the level playing field by treating all member institutions in the same way. However, the IPSs would be still able to use preventive measures outside the DGSD framework.

Subsidiarity: This option would reduce subsidiarity and impact the functioning of IPSs and DGSs using preventive measure to tackle bank failures.

5.3.3.3 Option 3: Alternative

Depending on the transposition of the NOD into the national laws, the DGSs can currently have different objectives across the EU: protection of covered deposits only (paybox function), or also preventive measures (IPSs) or alternative measures (see NOD 14). These differences could make the build-up of EDIS taking the form of the full insurance scheme more complicated.

Therefore, this policy option considers that the DGSs could still use preventive measures but would have to finance them with voluntary funds. In addition, the definition of the least-cost test would not be necessary under this option. However, the State aid rules may still need to be clarified (see above).

Effectiveness: Under this option, an additional buffer of funds could be raised by DGSs to be used for preventive measures and would thus be beneficial for effective depositor protection and financial stability.

Efficiency: For the members of IPSs recognised as DGSs, the contributions would be split between the DGSs and IPSs. The costs for these institutions would be higher than in the current framework. In practice, however, the existing IPSs recognised as DGSs already have voluntary funds. The DGSs would still have to meet the target level of 0.8 % of covered deposits, while the remainder or additional contributions could be used to finance preventive measures.

Therefore, this alternative option would increase the contributions for the members of IPSs recognised as DGSs. Importantly, the additional contributions to the voluntary fund might be partially offset by lower contributions to both the DGS (see NOD 17) and the resolution fund.

Coherence: The alternative option potentially improves the consistency as it mitigates the distortion of the level playing field.

Subsidiarity: This option impacts subsidiarity as compared to the current state of play.

5.3.3.4 Option 4: Full harmonisation

This policy option considers that preventive measures would be applied in all Member States. This option is similar to Option 1 under which DGSs retain discretion whether to use DGS funds for preventive measures. The DGSD would be amended so as to remove the text 'Member States may allow'.

5.4 NOD 14 – Financing of measures to preserve access of covered deposits

Summary: NOD 14 - Financing of measures to preserve access of covered deposits				
DGSD [Article 11 (6)]				
Member States may decide that the available financial means may also be used to finance measures to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of national insolvency proceedings, provided that the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the member institution concerned.				
Transposed into national law [11 Member States]				
Belgium, Denmark, Finland, Greece, Ireland, Italy, Luxembourg, Lithuania, Malta, Poland and the UK				
Practical experience so far [3 Member States]				
Italy, Poland and the UK				
Importance				
Limited[156]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+	+/-	+	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+/-**	-	++	+/-
Efficiency	**+**	-	++	+
Coherence	**+**	+/-	+	+
Subsidiarity	**+**	-	-/+	+

5.4.1 Implementation across Member States

Under Article 11(6) DGSD, DGS' available financial means may be used for other purpose than compensating depositors of failing banks (so-called alternative measures).[157]

[156] The potential reduction in costs for the DGS varies largely across cases. Based on experience so far, the NOD is primarily used for small member institutions, which involves relatively small amounts of covered deposits.

[157] In this study, measures under Article 11(6) DGSD are referred to as 'alternative measures', to distinguish them from 'preventive measures', under Article 11(3) DGSD (NOD 13).

Such alternative measures are normally used for banks for which there is no public interest in resolution and which are to be liquidated under national insolvency proceedings. In this case, in order to preserve the access of depositors to covered deposits and, at the same time, limit the destruction of value in a piecemeal liquidation, the DGS can finance the transfer of the assets and liabilities, or only a deposit book, from a failing bank to an acquiring bank in the context of insolvency.

The ability to use the NOD depends on whether national insolvency law provides the possibility of such transfers in liquidation.

11 Member States transposed the NOD[158].

In Lithuania, this NOD had been implemented only in relation to credit unions and became ineffective as of 1 January 2018 when the new law reforming the Lithuanian credit union system came into force.

Poland also implemented the NOD first in relation to credit unions and most recently extended the application to other member institutions[159]. The types of measures that the Polish DGS can adopt to financially support the acquiring entity are: (i) assumption of shares of an acquiring member institution; (ii) granting a loan or guarantee; (iii) granting a guarantee of the total or partial coverage of losses resulting from the risk associated with the assumed or acquired property rights or assumed liabilities; and, (iv) granting a subsidy for the potential loss for the DGS[160].

5.4.1.1 Motivations to transpose and use the NOD

The main objectives of the NOD are to lower the costs of a pay-out and enhance depositor confidence and system stability.

First, most Member States transposed the NOD because these alternative measures can be less costly compared to pay-outs. As a general principle, the sale of part of a member institution in blocs would likely lead to higher revenues (e.g. at least some of the franchise value is maintained) than atomistic sales (including fire sales) which usually take longer, entail more administrative costs and destruction of value, and hence lower revenues. The IMF is supportive of this approach[161]. In the EU, Italy has had long experience in the application of alternative measures. Out of 12 interventions of the FITD over the last 30 years, only 2 cases led to pay-outs. The other 10 interventions were managed through preventive measures (NOD 13) and alternative measures (NOD 14), namely transfer of assets and liabilities and/or support to member institutions in situations of extraordinary administration.

Second, some Member States transposed the NOD because of reduced disturbance for depositors and the financial system. The transfer of the deposits facilitates a smoother and market-based wind-up of member institutions. In Greece, the provision was transposed to put in place the possibility for a fast transfer of covered deposits to another member institution in order to avoid the typical and time-consuming processes involved in opening an account.

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[158] I.e. Belgium, Denmark, Greece, Finland, Ireland, Italy, Luxembourg, Lithuania, Malta, Poland and the UK.

[159] Article 5a and 268a of the BGF Act, adopted on 29 November 2018 and entered into force on 1 January 2019.

[160] Article 264(2) of the BGF Act.

[161] IMF (2018), Euro Area Policies - Financial Sector Assessment Program: Technical Note, Bank Resolution and Crisis Management.

By contrast, the complexity of alternative measures, including notably the least-cost test, were frequently mentioned as the main reason for not transposing the NOD.

5.4.1.2 Decision to use DGS funds for alternatives

This NOD has been used to a very limited extent and only a few Member States have more specific provisions regulating its use[162].

Member States allow for various alternative measures in their national transpositions. Finland and Greece allow for a deposit book transfer, while Italy allows the transfer of assets and liabilities (including deposit book). In Denmark, the NOD has been transposed through a specific concept of a 'dowry' whereby the DGS contributes to the resolution of a financial institution by transferring means or providing guarantees to cover all its non-subordinated creditors (i.e. both covered deposits, other deposits and other non-subordinated creditors). The remainder of the member institution is afterwards liquidated. Finansiel Stabilitet[163] can, on behalf of the Danish DGS, decide to contribute to the liquidation of the bank by providing funds or providing a guarantee.

The authorities competent to decide on the use of alternative measures are also very different across Member States: the Financial Stability Authority in Finland, the DGS and the Malta Financial Services Authority jointly in Malta, the DGS in consultation with the Bank of Italy[164] and the KNF in Poland[165].

5.4.1.3 Least-cost test

Under the least-cost test defined under Article 11(6) DGSD, the DGS intervention is limited to the '*net amount of compensating covered depositors'* in consideration of the liquidation process, i.e. corresponding to the total amount required to reimburse covered depositors *minus* the amount of proceeds DGS would receive from the insolvency estate. This is different from the least-cost test under Article 11(3)(c) DGSD which only states that the amount of the intervention should not exceed '*the costs of fulfilling the statutory or contractual mandate of the DGS'.*

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[162] For example, in Belgium, a Royal Decree is expected to determine the terms and conditions for undertaking such measures, but has not been issued so far.

[163] Finansiel Stabilitet is an independent public enterprise owned by the Danish state through the Ministry of Business and Growth, of which the Danish FSA (*Finanstilsynet*) is an integral part. The Danish FSA is the competent authority for bank resolutions and supervision.

[164] The DGS consults before adopting the measures, as Bank of Italy is the national competent authority to decide the opening of a liquidation procedure and appoints the liquidator. However, the decision whether to intervene or not and in what manner lies with the DGS. The DGS would only consider an intervention when the acquiring bank is very strong. Bank of Italy implements the decision.

[165] The Polish Financial Supervisory Authority (KNF) appoints a forced administrator who prepares the financial information for the day preceding its appointment. The administrator reports on the level of assets, balance sheet equity, and liabilities, including covered deposits. This report is audited by a certified auditor. If the administrator finds that the assets of the member institution (SKOK) are insufficient to cover its liabilities, which meant that the SKOK was insolvent, the KNF first seeks another SKOK that would be able to safely take over the insolvent SKOK. Once this search proves unsuccessful, the KNF seeks in an open procedure a domestic bank that could safely take over the insolvent SKOK. If this search also proves unsuccessful, the KNF starts insolvency proceedings in court. A court decision declaring the SKOK bankrupt triggers deposit guarantee pay-outs. By contrast, if there is a domestic SKOK or member institution willing to take over the insolvent SKOK and the amount of covered deposits in that SKOK is higher than the difference between the balance sheet value of the SKOK's property rights and the balance sheet value of the its liabilities from the guaranteed funds, the KNF offers to the acquiring SKOK or other member institution a non-repayable subsidy to cover this difference between assets and liabilities. Since January 2019, besides SKOKs, this NOD can also be used for other member institutions.

There is no detailed information about the application of a least-cost test at national level. Most Member States transposed the condition that the costs borne by the DGS shall not exceed the net amount of compensation for covered depositors at the member institution concerned.

Italy specified that such interventions constitute an alternative to the reimbursement of depositors where it is less costly compared to pay-out, taking into account, in the evaluation, the impact the liquidation of the bank could have on other banks in crisis and on the system as a whole. In Italy, two broad criteria are usually applied: the risks should be realistic and the estimated costs reasonable (see also Box 4).
Poland transposed this condition by requiring that the funds committed by the DGS for the alternative measures are not higher than the total amount of covered deposits guaranteed[166]. This condition must be demonstrated before the decision to grant support to the acquiring entity. In other words, the costs of the measures should not be higher than the amount of covered deposits, which means that the implementation deviates from the intention of the legislation to consider the net covered deposits, i.e. in simple terms the total covered deposits minus the covered deposits that will be recovered in insolvency.

In Malta, the national resolution authority (MFSA) should state the amount that would be requested from the DGS, the amount of the estimated pay-out, and the cost for the DGS. The DGS and MFSA might envisage the alternative measures if the financing costs less than a pay-out. It has never been used so far.

Box 4. Least-cost test of Italian cooperatives

The least-cost test of the Depositors' Guarantee Fund of Cooperative Banks (FGD - the DGS of Italian cooperative banks) is based on the net costs. They consider the estimated net contribution of the fund. The costs under normal insolvency regime are basically the covered deposits minus the amount that the DGS would be expecting to recover. The recovery rates vary in view of social, economic and administrative differences across regions. The expected costs for the administration, liquidation procedure and other costs such as the costs for the migration of IT systems are also considered. As the liquidation procedures in Italy require several years, a discount factor is applied to obtain the net present value of the contribution of the DGS under the liquidation framework. These costs are compared to the net present value of the costs of the alternative measure and, in most cases, cover support for the transfer of assets and liabilities to the acquiring institution. In the search for an acquiring institution the FGD has the following order of preference: a cooperative bank (BCC) in the same district, ten largest BCCs, other non-cooperative institutions. This order reflects the objective of the FGD to preserve the Italian cooperative banking sector.

[166] Article 265 of the BGF Act.

Box 5. Least-cost test of the FDIC

Since 1991, the Federal Deposit Insurance Corporation (FDIC) in the US has only been allowed to choose **the least costly option** to the Deposit Insurance Fund. Before the FDIC Improvement Act (FDICIA) was implemented in 1991, the FDIC could also consider other factors such as local availability of banking services and stability of the bank sector. The only condition was that the cost of the alternative measures was less than that of a pay-out.

To identify the least costly option, the FDIC performs a least-cost analysis. In this analysis the bids received for the assets and/or deposits (covered deposits or all deposits) of the failing bank are compared to the costs for the fund of liquidating the failing bank. The liquidation costs include estimation of the losses on assets as well as the receivership expenses of the FDIC.

The least costly option according to the FDIC methodology is the option that generates most funds to compensate the claims on receivership (covered deposits, preferred creditors, uninsured depositors, etc.). The FDIC uses the following calculation (simplified):

$$\begin{aligned} &Total\ receivership\ loss \\ &\qquad = Total\ gross\ assets - asset\ losses - FDIC\ receivership\ expenses \\ &\qquad + deposit\,\frac{premium}{asset}\,discount\ (Bid) - claims\ on\ receivership \end{aligned}$$

Source: FDIC (2019).

Box 6. Least-cost test in Denmark

In Denmark, the default option for addressing bank failures is resolution. The Danish DGS can contribute to these institutions in resolution by transferring financial means and providing guarantees on all non-subordinated creditors. The scheme originally implemented in 2011 resembles the measures covered under this NOD. Importantly, under the scheme, all non-subordinated liabilities are transferred to the acquiring institution with support from the DGS (Dowry Scheme). The remainder of the institution is liquidated.

The costs of the support from the DGS to the institution in resolution must be less than under regular bankruptcy proceedings. The latter is based on the Valuation 3 as defined under Article 74 BRRD, which is defined in the EBA regulatory technical standards (RTS) on valuation in resolution. This ensures that there is no creditor worse off in resolution than under regular bankruptcy proceedings.

The Valuation 3 set out in the EBA RTS on valuation in resolution considers the discounted amount of cash flows under the normal insolvency proceedings applying the relevant discount rates, including i) the applicable insolvency law and practice; ii) foreseeable administration, transaction, maintenance, disposal and other costs which would have been incurred as well as financing costs; iii) information on recent past insolvency cases of similar entities. Moreover, the calculated proceeds from the valuation should be allocated to the shareholders and creditors, including the DGS, to determine the expected loss for the DGS.

This exercise might be relatively simple but can take quite some time for mid-sized and larger banks. For example, in the case of Banco Popular, the SRB took more than one year after the resolution to finalise and publish the Valuation 3 report.

5.4.1.4 Practical experience with the NOD so far

Only Italy, Poland and United Kingdom have used this NOD under the new DGSD.

The Interbank Deposit Protection Fund (FITD, one of the two Italian DGSs) intervened in April 2018, in the context of the national insolvency proceedings of Banca Sviluppo Economico with a contribution of EUR 4.5 million to support the transfer of assets and liabilities (including deposits) of the mentioned bank to the Banca Agricola Popolare di Ragusa. The cost of the intervention that made it possible to preserve the access of depositors to their covered deposits was considered lower than the net amount of covered depositors to be compensated. The guaranteed deposits amounted to EUR 26.8 million (EUR 22.3 million above the FITD contribution) covering 1 602 depositors[167]. The intervention was considered successful because there was no material effect on the balance sheet of the acquiring member institution[168].

Since the entry into force of the DGSD, Poland has used alternative measures 11 times. In all cases, alternative measures took the form of support granted to member institutions to take over an ailing SKOK. This support in each case had the form of i) a non-repayable subsidy to cover the difference between the balance sheet value of the acquired property rights and the balance sheet value of the acquired liabilities from the guaranteed funds, and ii) a guarantee to cover losses resulting from the acquired property rights. The amount of support granted by the Polish Bank Guarantee Fund (BGF) to acquire insolvent SKOKs was significantly lower than the amount of deposits that these SKOKs held at the moment when they were considered insolvent. No detailed information on the net gain due to the asset transfer was, however, available.

The UK Financial Services Compensation Scheme (FSCS) transferred the deposits of the Shiremoor and District Credit Union Limited to Moneywise Credit Union Limited in July 2018[169].

In addition, Denmark, Luxembourg and United Kingdom used such alternative measures to preserve access to deposits prior to the new DGSD.

In Denmark, Finansiel Stabilitet used the Dowry Scheme once prior to both DGSD and BRRD (see also Box 6). The non-subordinated creditors of Spar Salling were in 2012 transferred to Den Jyske Sparekasse. Finansiel Stabilitet considered various amounts for the assessment of the costs of the transfer. It considered the costs of the pay-out to Den Jyske Sparekasse to acquire the non-subordinated creditors, the amount in resolution and the estimated run-off costs. The latter formed the maximum amount that Finansiel Stabilitet contributes to the Dowry Scheme.

In Luxembourg, this intervention was used in the context of the restructuring of Kaupthing Bank Luxembourg in 2008-2009. The private banking and deposit banking activities were finally taken over by Blackfish Capital, with the agreement of the AGDL, and invested in a new entity (Banque Havilland). The AGDL transferred to the new entity the amounts corresponding to deposits still not repaid, which later became fully accessible to depositors.

In the UK, alternative measures were used in March 2009 for the retail and wholesale deposits, branches, head office and originated residential mortgages (other than social housing loans and related deposits) of Dunfermline, which were all transferred to Nationwide. This followed a sale process conducted by the Bank of England under the Special Resolution Regime provisions of the Banking Act 2009. The Treasury made a

[167] Notification from the Italian Interbank Deposit Protection Fund (Fondo Interbancario di Tutela dei Depositi) in relation to the national insolvency proceeding of Banca Sviluppo Economico S.p.A.

[168] Banca Agricola Popolare di Ragusa had at the end of 2018 according to its annual accounts EUR 3 000 million deposits and EUR 600 million capital end-2018.

[169] FSCS (2018), Shiremoor and District Credit Union Limited declared in default.

payment to Nationwide to cover the liabilities that were not covered by the assets that Nationwide also acquired.

Many DGSs indicated that the possibility for using the NOD depends largely on the creditor hierarchy. The recent changes to the creditor hierarchy regarding the preferential ranking of covered deposits are likely to reduce the possibility of applying alternative measures such as the transfer of deposits. Indeed, more senior status for covered deposits implies fewer 'ultimate' losses on the DGS in liquidation. However, the transfer of deposits can still be financially attractive for the DGS as the funds required for the transfer can be substantially less than the funds required to repay the covered deposits in a pay-out event.

Indeed, in a pay-out event, the DGS first has to repay the covered deposits, for which it receives a claim on the member institution in insolvency. The latter allows the DGS over time to recover some and potentially all of the repaid amount (gross costs > net costs of the pay-out). In the case of an asset and liability transfer which preserves the access to covered deposits, the repayment and recovery form a single transaction, which is settled around the time that the repayment would take place (gross costs ≈ net costs of the transfer). This means that the DGS requires in principle less funds for alternative measures than for immediate pay-out after the failure. To address the fact that a DGS prefers to have its funds at hand instead of a claim in insolvency, a discount factor can be applied in the least-cost test[170].

5.4.2 Impact of the NOD

Alternative measures are likely to have a largely similar impact to that of preventive measures (NOD 13). The impact on the risk profile of the DGS and on depositor confidence is likely positive, provided that the least-cost test is well executed, whereas the level playing field is somewhat distorted. The NOD could potentially be interesting for all Member States, notably with smaller member institutions, as these constitute the most frequent candidates where such measures could be applied.

5.4.2.1 Risk profile of the national DGS

The costs related to the intervention should in principle be lower than a normal pay-out, taking into consideration the potential recovery in insolvency. If the least-cost test is well defined and executed, the risk profile of the DGS is likely to decrease.

However, in most cases, the methodology used for the test does not seem very sophisticated. It is acknowledged that it would always require some assumptions (default rates, recovery rates, economic forecasts, etc.), which can in practice mean that the least-cost test is either too positive or too negative about the value of the failing institution or recovery value in the event of a pay-out. This is less problematic than in the event of preventive measures (NOD 13), as the deposits are with the transfer carved out from the failing institution, which requires the failing institution to take the first loss instead of a potential renewed intervention in the case of preventive measures. All in all, targeted modifications in order to clarify the least-cost test would be beneficial, possibly following the rules used in the Valuation 3 in the BRRD.

The take-over of the assets and liabilities could also destabilise the acquiring institution. To limit the risk of potential multiple rounds of depositor pay-outs, the DGS should also assess not only the value of a potential bid of an interested acquirer (i.e. least-cost test), but also the impact on the stability of the acquiring institution. When the acquiring

[170] As the recovery from the claim on the failed institution often requires time, it would be attractive to accept the assets and liability transaction even though the normal pay-out might ultimately cost less based only on the cash flows, i.e. not considering the lower value of later pay-outs anticipated in the least-cost test with the discount factor.

institution is fragile or becomes fragile due to the acquisition of the deposits, the DGS would risk having to pay out depositors of a larger institution.

5.4.2.2 Level playing field

In principle, the transfer of the (sometimes only covered) deposits or, more broadly, assets and liabilities from the failing institution to another institution, does not distort the level playing field. Besides the deposits that are carved out, the failing institution is wound down under the normal insolvency proceedings.

However, there is a potential distortive effect on the level playing field due to the potential advantage for the acquiring institution. This institution might gain a competitive advantage from taking over the deposits at a low price. Such an effect would however be mitigated with an open competitive procedure.

Lastly, there is also a cross-border impact on the level playing field for all players (DGSs, banks and their depositors), as DGSs and member institutions from jurisdictions that do not allow alternative measures are not able to benefit from the possible positive effects of alternative measures. Such positive effects include the interest and ability of a potential acquirer to take over assets and liabilities at a higher price than if the assets were sold at a fire sale in insolvency – conducive to lesser destruction of value for non-covered deposits and economy as a whole, and the least-cost for the DGS.

5.4.2.3 Depositor confidence

The preserved access to deposits is beneficial for depositor confidence. If depositors continue to have access to covered and potentially also non-covered deposits, their confidence is not impacted despite few noticeable changes (ownership or name of the bank). In practice, the transfers of assets and liabilities are often presented as take-overs instead of bank failures.

5.4.2.4 Relevance for respective Member States

The NOD has only been used to a limited extent in the recent ‘peace-times’. However, it could potentially be an interesting measure for Member States with many smaller retail institutions and low recovery values where the losses for those institutions and the banking sector would likely be higher. In addition, smaller institutions can generally be more easily absorbed by larger acquiring institutions and alternative measures could prove beneficial for further consolidation of the banking sector.

5.4.3 Options in the context of EDIS

In view of the current experience (including in Denmark, Italy, Poland and the US), alternative measures have demonstrated a high potential to give rise to positive effects on depositor confidence conducive to higher consolidation of the banking sector while mitigating the destruction of economic and social value, resulting into more optimal financial results for the DGS.

Therefore, an alternative option (Option 3) would be recommended to introduce targeted modifications to the current NOD in order to ensure (i) an open competitive procedure to find a potential acquirer interested in taking over either assets and liabilities or just the deposit book at a higher price than the latter would have otherwise been materialised in insolvency (i.e. lesser destructive value), (ii) that such a transaction constitutes the least-cost for the DGSD, and (iii) does not put at risk the financial stability of the acquirer.

The alternative measures could either be financed by EDIS under the full insurance scheme or, alternatively, depending on the form EDIS takes, also by national DGSs. Indeed, this can change the incentives for the DGS. Within a framework where EDIS finances pay-outs and the national DGSs finance the alternative measures, the national DGSs would not have any real incentive to use their funds and could encourage a EDIS intervention.

5.4.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD to allow national DGSs to continue using preventive measures under EDIS and finance them from the available financial means that remain at national level, depending on the allocation of funds between EDIS and the national DGS.

Effectiveness: Retaining the NOD in its current form would contribute to effective depositor protection and reduced risk for the DGS, provided that the least-cost test is well executed and there are sufficient available funds at national level. The least-cost test must ensure that the acquiring institution obtains the deposits at a competitive price in order not to distort the level playing field. The assessment of the least-cost should also include the analysis of viability of the acquiring institution.

Efficiency: The transfer of deposits to another institution would reduce the administrative burden associated with a pay-out and subsequent recovery of the subrogated depositor claims in insolvency.

Coherence: Retaining the NOD is coherent with the resolution mechanism. It would ensure preserved access to deposits in insolvency by allowing member institutions to fail in an orderly manner, without government support. However, in order to ensure that the level playing field is not distorted, the competitive procedure should be as inclusive as possible, subject to the available time frame of the transaction.

Subsidiarity: The NOD does not impact subsidiarity. The NOD seems more relevant in Member States with less efficient insolvency regimes (lower recovery values) and many small banks (more attractive).

5.4.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. This means that it would not be possible to perform alternative measures to preserve depositors' access to covered deposits. Consequently, banks, which are not subject to resolution, would only have to be liquidated in insolvency. The DGS's function would be limited to a pay-out and contribution to a resolution.

Effectiveness: This option would negatively impact depositor protection, despite the fact that it is currently only used in very few cases and for small retail institutions. The costs of failures would likely increase. The ability of a potential acquirer to take over parts of assets and liabilities would likely mitigate at least some of the destruction of value that could otherwise occur in insolvency (impacting the recovery of the DGS).

Efficiency: This option would potentially increase the costs for the DGS, as it could no longer benefit from the reduced administrative burden. The administrative costs for the DGS are higher in the event of pay-outs and insolvency than in the case of asset and liability transfer.

Coherence: This option would mean that the DGS operates as a paybox to guarantee covered deposits, which is in line with the main objective of DGSD. However, this may be conducive to higher costs for the DGS and ultimately to higher losses for the governments that form the backstop for the DGSs. This would go against the objective of the crisis management framework to avoid that tax payers must contribute in case of failures of member institutions. In turn, this option would also lead to an equal treatment of all institutions across the EU, which would avoid distortion of the level playing field.

Subsidiarity: This option would impact subsidiarity in Member States, often with many small member institutions that would not otherwise have been subject to resolution, which prefer to preserve access to deposits while also potentially compensating for inefficient insolvency regimes.

5.4.3.3 Option 3: Alternative

Under this policy option, the current NOD would be amended to introduce targeted modifications in order to ensure:

(i) an open competitive procedure to find a potential acquirer interested in taking over either assets and liabilities or just the deposit book at a higher price than the latter would have otherwise been materialised in insolvency (i.e. lesser destructive value);

(ii) that such a transaction constitutes the least cost for the DGSD. To this end, the least-cost test would benefit from more detailed rules, possibly resembling the Valuation 3 used in the BRRD. This modification could also entail possible changes into creditor hierarchy, by levelling the covered and uninsured deposits[171];

(iii) an assessment of the viability and sufficient robustness of the acquiring institution in order avoid a chain of failures.

Under these more stringent circumstances, the alternative measures could either be financed by EDIS under a full insurance scheme or, alternatively also by national DGSs when EDIS would take the form of a re-insurance, co-insurance or mandatory lending scheme. It would be also beneficial to reflect about a possible coordinating role of the SRB for the purposes of managing the open competitive procedure and performing the least-cost test.

Effectiveness: This option would positively impact effectiveness for the DGSs and lead to more optimal results. A clearer least-cost test would likely lead to a well-informed decision on the use of the NOD and thus reduce the risk that alternative measures eventually lead to more cost than a pay-out[172] or a chain of pay-outs. An open competitive procedure would improve the ability of the DGS to look for the highest bid for the covered deposits of the failing institution.
Efficiency: This option would better ensure the least cost for the DGS. Following a clearer articulation of the least-cost test, alternative measures could be more easily embraced in the Member States and positively contribute to financial stability, by preserving the value of the failing banks. The more articulated least-cost test would likely increase the administrative costs for the DGS compared to the current practice, however this would be more than compensated by the reduced risk and lower costs for the DGS.

Coherence: This option would be beneficial for coherence with the resolution framework, particularly if the SRB assumes a coordinating role when managing the competitive procedure or conducting the least-cost test. It would ensure preservation of access to

[171] This is because the recent changes to the creditor hierarchy regarding the preferential ranking of covered deposits are likely to reduce the possibility of applying alternative measures.

[172] Particularly, in view of the preferential ranking of covered deposits in a creditor hierarchy.

deposits in insolvency by allowing member institutions to fail in an orderly manner, without government support. However, in order to ensure that the level playing field is not distorted, the competitive procedure should be as inclusive as possible, subject to the available time frame of the transaction.

Subsidiarity: This option would positively impact subsidiarity because it would respond to challenges that appear to prevent Member States from applying the NOD in practice.

5.4.3.4 Option 4: Full harmonisation

Under this policy option, all Member States would need to apply alternative measures, subject to the conditions. This option could be similar to the retaining the NOD in its current form (Option 1) or the alternative option (Option 3), if the targeted modifications are also included. This would benefit coherence and reduce distortion of the cross-border level playing field.

5.5 NOD 15 – Voluntary lending between DGSs

<table>
<tr><th colspan="5">Summary: NOD 15 – Voluntary lending between DGSs</th></tr>
<tr><td colspan="5">DGSD [Article 12(1)]</td></tr>
<tr><td colspan="5">Member States may allow the DGS to lend to other DGSs within the Union on a voluntary basis, provided that the borrowing DGS:
(a) is not able to pay claims because of a lack of available financial means;
(b) has made recourse to extraordinary contributions;
(c) commits to use the borrowed funds to pay claims;
(d) is not subject to an obligation to repay a loan to other DGSs under this Article;
(e) states the amount of money requested;
(f) ensures the total amount lent does not exceed 0.5 % of its covered deposits;
(g) informs the EBA without delay.
The loan should be repaid within five years and the interest rate be at least equivalent to the ECB marginal lending facility rate. The lending DGS should inform the EBA of the initial interest rate and duration of the loan.</td></tr>
<tr><td colspan="5">Transposed into national law [14 Member States]</td></tr>
<tr><td colspan="5">Austria, Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Italy, Latvia, Lithuania, Malta, Poland, Romania and Slovenia</td></tr>
<tr><td colspan="5">Practical experience so far [0 Member States]</td></tr>
<tr><td colspan="5">None</td></tr>
<tr><td colspan="5">Importance</td></tr>
<tr><td colspan="5">Nihil[173]</td></tr>
<tr><td colspan="5">Impact of the NOD</td></tr>
<tr><td></td><td>Risk profile national DGS</td><td>Level playing field</td><td>Depositor confidence</td><td>Relevance for respective Member States</td></tr>
<tr><td>Overall</td><td>+/-</td><td>+/-</td><td>+/-</td><td>+/-</td></tr>
<tr><td colspan="5">Policy options in the context of EDIS</td></tr>
<tr><td></td><td>Option 1: Retain in current form</td><td>Option 2: Eliminating</td><td>Option 3: Alternative</td><td>Option 4: Full harmonisation [Recommended]</td></tr>
<tr><td>Effectiveness</td><td>+/-</td><td>--</td><td>++</td><td>+/-</td></tr>
<tr><td>Efficiency</td><td>+/-</td><td>-/+</td><td>+</td><td>+/-</td></tr>
<tr><td>Coherence</td><td>-</td><td>+/-</td><td>+</td><td>+</td></tr>
<tr><td>Subsidiarity</td><td>+</td><td>+</td><td>-</td><td>+</td></tr>
</table>

[173] DGSs indicated in the interviews that it is unlikely that they would voluntarily lend to one another. This means that the provision does not have any impact.

5.5.1 Implementation across Member States

Half of the Member States have transposed the NOD, typically (almost) verbatim, without providing further details or specifications in their national legislation on how it could be made operational. While some Member States clearly cover both lending and borrowing in their legislation, Austria, Bulgaria, Italy, Lithuania, Malta, Poland, Romania and Slovenia refer only to the possibility of lending to DGSs of other Member States. The implementation also varies across Member States in terms of approval requirements for lending and payment of interest rates. A system of mandatory lending between EU DGSs had originally been put forward in the Commission's proposal for a recast Directive in 2010 but was subsequently rejected by the co-legislators as undesirable. Mandatory lending thus does not exist in current legislation.

5.5.1.1 Motivations to transpose and use the NOD

The NOD seems to be justified by the commitment to ensure the functioning of the financial market based on the principle of solidarity. More specifically, such temporary bridge loans or additional liquidity injections could have positive effects on the banking system at EU level (e.g. Slovenia).

Some of the Member States who chose not to transpose the NOD indicated concerns linked to the difficulties in the implementation and notably its effectiveness. In particular, these concerns related to the negative impact of the potential rejection of a loan request, as for example in the case of a systemic banking crisis (e.g. Greece) or limited resources available to support another DGS in other Member States.

Another reason for not transposing the NOD concerned the restriction for the DGS to invest funds only in liquid assets. This condition would not be fulfilled with a loan agreement with a maturity of five years, or even a shorter maturity and hence the creditor DGS could not include it in the available financial means (e.g. Latvia).

5.5.1.2 Approval of voluntary lending

Some Member States have chosen to make the voluntary lending conditional on the approval of or consultation with specific bodies as to the assessment of the conditions specified in the NOD.

The management bodies of DGSs are frequently responsible for such approvals. In Cyprus, the Management Committee of the DGS, consisting of the staff from the Ministry of Finance and the national central bank, decides whether the DGS may grant or receive a loan. In Poland, the DGS Board of Directors decides after receiving the approval of the Council of the DGS. In Czechia and Lithuania, the Ministry of Finance must give its approval. Further authorities are the Prudential Supervision and Resolution Authority in France and the Financial Services Authority in Malta.

Such requirements have been motivated by the need to carefully consider the risk of a future shortfall if a DGS pay-out occurred (i.e. lending to another DGS may expose the providing DGS to credit risk in case a pay-out event occurred in its jurisdiction during the duration of the lending).

Other Member States do not require any approval and/or consultation by law, and the detailed and concrete procedure would be developed in the event of using the NOD.

5.5.1.3 Payment of interest

Cyprus, Italy, Lithuania, Malta, Poland and Romania have reproduced the text of Article 12(2)(a) DGSD verbatim, in order to regulate the interest payments on loans to another DGS. Estonia, France and Slovenia have clearly indicated that the payment of interest would take place at maturity, at the time of the full repayment of the loan. By contrast, Austria provides that the payment of the interest is linked to the respective annual instalments.

5.5.1.4 Practical experience with the NOD so far

The NOD has not yet been used in practice. While the objective of the NOD is beneficial for financial stability, the concerns about the risks that it can have both for the lending and borrowing DGS in two Member States, and the political implications, make the use of the NOD unlikely. By contrast, voluntary lending between DGSs can be realistically envisaged within the same country. In fact, in Austria, a DGS would consider lending to another Austrian DGS, if needed. This would happen if the means available, including additional contributions from members, are insufficient to reimburse the deposits in the event of a pay-out.

5.5.2 Impact of the NOD

The NOD (if it were used in practice) impacts the credit and liquidity risk profile of the DGS, namely the risk that the borrowing DGS does not pay back and the risk that the lending DGS needs funds for a pay-out event. The NOD has ultimately a positive impact on depositor confidence although depositors may be unaware about it.

5.5.2.1 Risk profile of the national DGS

The NOD affects the risk profile both negatively and positively because it increases credit risk and liquidity risk for the lending DGS, which is reflected in the reduced risk of the borrowing DGS.

Lending to another DGS may result in a future shortfall in pay-out capacity, which could pose a serious risk to the DGS and to the financial stability of the financial system. While the voluntary nature of lending and the approval process should, in principle, prevent loans in risky situations for the lending DGS, the long period (up to five years) of reimbursement of the loan could be a source of liquidity risk. The financial crisis showed that stability conditions can deteriorate quite quickly and across many countries. A detailed analysis of the additional risks under this NOD is difficult because of the voluntary nature and the discretion enjoyed by Member States, i.e. even if requested, a DGS could still decide not to lend. In other words, there is no exogenous event triggering the use of the lending possibility because the lending DGS is fully responsible for risks entailed by such lending.

On the side of the borrowing DGS, the lack of certainty about the loan being granted could prevent it from requesting it in the first place in order to mitigate the effects of rejection which, if known, could exacerbate the crisis. If the loan is provided by the lending DGS, in practice, it may be challenging for the borrowing DGS to reimburse within five years in a severe crisis scenario, given that funds are based on contributions from member institutions. Depleted financial means would have to be replenished by member contributions which could be pro-cyclical in a crisis.

5.5.2.2 Level playing field

This NOD has no impact on the level playing field among financial institutions. However, the existence of bilateral agreements between DGSs, to the extent possible, could lead to different implicit levels of protection across Member States. Some DGSs mentioned that, in case of need, they would naturally request a loan to the DGS from another Member State, if they already have close relations.

5.5.2.3 Depositor confidence

The NOD would both positively and negatively impact depositor confidence, if it were used in practice. However, in view of the voluntary nature, such impacts would be relatively indirect, even if it were publicly known that such an NOD has been translated into national legislation.

The impact on confidence could, to some extent, materialise through signalling effects, although these may be fairly limited. For example, in the country of the lending DGS, informed depositors might fear that this could reduce the capability of the national DGS to repay their deposits in the event of a pay-out. This could negatively affect their behaviour and confidence. The need for borrowing could indicate that the borrowing DGS is in a difficult situation because of insufficient available financial means. At the same time, knowing that another DGS is providing funds could reassure them and boost confidence in the overall system. In practice, such signalling effects, including the awareness of depositors about the legal regulations (e.g. the transposition of the NOD) should not be overestimated.

5.5.2.4 Relevance for respective Member States

The NOD has not been relevant for the respective Member States because it has not been used in practice.

5.5.3 Options in the context of EDIS

Voluntary lending has a potential positive impact on both depositor confidence and financial stability. However, because the voluntary lending has not yet been used in practice, there is no evidence supporting the best policy approach to it.

With EDIS taking the form of a full insurance scheme, the national DGSs would be mutualised at Banking Union-level. The policy recommendation envisages that the NOD could be applicable between EDIS and the DGS of EU Member States which are not part of the Banking Union or between the DGSs outside the Banking Union to enable mutual lending and borrowing (both ways) (Option 4).

Given that the size of EDIS would be much larger than any other national DSG, it would be more likely for EDIS to actually lend to DGSs outside the Banking Union to mitigate potential spill-over contagion effects. To ensure fair treatment, the possibility for EDIS to borrow from non-Banking Union DGSs should not be discarded either. Therefore, full harmonisation (Option 4) could also be recommended in the context of EDIS. Beyond the scope of this NOD, the discussions on the steady state of EDIS also include the existence of a lender of last resort or a backstop. Although this is part of a broader discussion which goes beyond the scope of this NOD and is politically charged, the consideration of an EDIS backstop could further enhance the willingness for voluntary lending.

The alternative option (Option 3) of mandatory lending, included in the effects analysis[174], has already been discussed in the context of the EDIS design (See Section 2.4) and could also be envisaged depending on political ambition.

[174] See European Commission (2016), Effects analysis on the European deposit insurance scheme (EDIS).

5.5.3.1 Option 1: Retain in current form

This policy option considers retaining the current NOD by allowing DGSs to lend and borrow on a voluntary basis.

Effectiveness: Voluntary lending may be a useful tool in case of distress and a possible safeguard in case of liquidity shortfalls. The conditions informing the decision to lend to another DGS should provide assurances about the risk-based assessment, which should increase the robustness and effectiveness of such decisions. However, in view of the uncertainty around obtaining the funds, the voluntary nature of the lending may also negatively impact the effectiveness of the tool.

Efficiency: The uncertainty inherent in voluntary borrowing and lending could negatively impact efficiency. In practice, a rejection may have significant consequences since the liquidity stress of the national DGS would not be mitigated and other possibilities would need to be explored to fund a pay-out.

Coherence: This option would not impact coherence as it represents the status quo. The flexibility of voluntary lending may avert the risk of liquidity, which, in the overall picture, would outweigh the lack of consistency. Practical application would be limited to those cases where lending would be necessary and justified.

Subsidiarity: This option would not impact subsidiarity.

5.5.3.2 Option 2: Eliminating

This policy option analyses eliminating the NOD by removing the voluntary lending from the scope of harmonisation of Union law. This would be equivalent to the state of play prior to the DGSD, Member States would be allowed to use the tool of voluntary lending subject to their national law.

Effectiveness: This option would reduce the effectiveness of the system by reducing its flexibility and safeguards in case of heightened liquidity shortages in the EU.

Efficiency: This option would improve efficiency as the uncertainty inherent in the voluntary borrowing and lending would be avoided.

Coherence: This option would not impact coherence.

Subsidiarity: This option would not impact subsidiarity.

5.5.3.3 Option 3: Alternative

The voluntary nature of lending constitutes a weakness from the perspective of reducing liquidity risks in the DGSs. An alternative option would consider mandatory lending among DGSs, depending on political ambition because of the credit and liquidity risks it may entail and the lack of optionality or flexibility in the decision. Mandatory lending has already been considered in the design of EDIS (2016 effects analysis [European Commission, 2016] and Section 2.4).

Effectiveness: This option would be more effective both in terms of increased stability of the financial system, as it would reduce liquidity risks in case of many (concurrent) pay-outs as compared to the voluntary lending, and in terms of depositor confidence.

Efficiency: The system would be more prescriptive and cumbersome than the other options because it would entail prescribing concrete rules and procedures as to how the mandatory lending would take place, both in the phases preceding the full EDIS mutualisation as well as in the steady state.

Coherence: A system of mandatory lending might enhance coherence and consistency . However, there would be a significant reduction in flexibility to cater for specific circumstances.

Subsidiarity: This option would impact subsidiarity.

5.5.3.4 Option 4: Full harmonisation

This policy option considers applying the NOD in all Member States in order to enable voluntary lending between EDIS and DGSs both within and outside the Banking Union, and vice versa. This option would require a high level of political ambition. Beyond the scope of this NOD, the discussions on the steady state of EDIS should also include the existence of a lender of last resort or a backstop. Although this is part of a broader discussion, which goes beyond the scope of this NOD and is politically charged, the consideration of an EDIS backstop could further enhance the willingness for voluntary lending on a harmonised basis.

Effectiveness: Voluntary borrowing and lending between EDIS and DGSs may be an option in case of distress and a possible safeguard in case of liquidity shortfalls. On one hand, the voluntary nature of the lending still implies that there is no *ex ante* certainty around obtaining the funds, which would impact effectiveness. On the other hand, the assessment of conditions informing the decision to lend to non-BU DGSs should provide assurance that an assessment of risks has been performed, which would boost the robustness of decisions and therefore, their effectiveness.

Efficiency: The uncertainty inherent in the voluntary borrowing and lending would negatively impact efficiency. In practice, a rejection may have significant consequences since the liquidity stress of the national DGS would not be mitigated and other possibilities would need to be considered to fund a pay-out.

Coherence: This option would improve the coherence of the EU framework, with EDIS in place. Practical application would be limited to those cases where lending would be necessary and justified.

Subsidiarity: This option would impact subsidiarity because the decision to lend funds from EDIS to other non-Banking Union DGSs would be likely taken by the authority responsible for EDIS. However, there could be room for maintaining a degree of subsidiarity for Banking Union countries in such decision-making processes through a consultation process (to be analysed in the design of the EDIS governance structure).

5.6 NOD 16 – Lower contributions for low-risk sectors

Summary: NOD 16 – Lower contributions for low-risk sectors				
DGSD [Article 13(1), 2nd subparagraph]				
Member States may provide for lower contributions for low-risk sectors which are regulated under national law.				
Transposed into national law [4 Member States]				
Ireland, Germany, Hungary and Slovenia				
Practical experience so far [0 Member States]				
None				
Importance				
Nihil[175]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+/-	+	+/-	--
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating [Recommended]**	**Option 3: Alternative**	**Option 4: Full harmonisation**
Effectiveness	**+/-**	**+**	**+**	**+/-**
Efficiency	**-**	**+**	**-**	**-**
Coherence	**--**	**+**	**--**	**+**
Subsidiarity	**+**	**+/-**	**--**	**-**

5.6.1 Implementation across Member States

Under this NOD, lower contributions for low-risk sectors are intended for member institutions operating within sectors for which Member States have already imposed, through regulation, restrictions that substantially reduce the likelihood of failure. Such contributions to the DGS may be proportionately reduced, if adequately justified.

According to the EBA Guidelines[176] on the calculation of contributions, lower contributions from institutions belonging to low-risk sectors should be allowed based on empirical evidence that within these sectors the occurrence of failures has been consistently lower than in other sectors. The competent authority should grant the agreement to reduce contributions in cooperation with the designated authority, after consulting the DGS. Such reductions should be implemented in the calculation method

[175] This NOD is not used in practice so far and DGSs indicated in the interviews that it is unlikely that they will use it in the future, which means that there is no financial impact.

[176] EBA (2015), *Guidelines on methods for calculating contributions to deposit guarantee schemes*, September.

by including an additional risk indicator into the risk category 'Business model and management'.

Germany, Hungary, Ireland and Slovenia have transposed this NOD into their national legislation but so far none of them has used it in practice[177]. For example, in Slovenia, the Bank of Slovenia sets a regular annual contribution for member institutions with a low-risk business model independently of the extent of the guaranteed deposits of these banks. However, in practice, a lower contribution regime for member institutions with lower risk business models is currently considered not applicable, as all business models of commercial banks are considered as having similar risk. There is currently no need for a separate group of banks with lower risk.

5.6.1.1 Motivations to transpose and use the NOD

This NOD takes into account the situations in which the indicators for the risk-based contribution do not fully reflect the riskiness of the member institutions, i.e. based on such indicators, the member institution seems to have a higher risk of pay-out than it actually has. This can be due to the specific activities of the member institutions concerned or their membership in an IPS (see NOD 17).

In Hungary, it was initially considered that the NOD could apply to the case of building societies, which have a low-risk business model. However, in the end it was not used for this case. In Ireland, in order for this option to come into effect, the Minister for Finance may designate by order those sectors considered to be low risk. To date no such order has been made. Similarly, in Slovenia, the NOD was at first considered as relevant but then discarded because of issues as to how to identify a low-risk sector. In turn, Germany and Hungary have various nationally regulated member institutions such as cooperative and savings banks. In Germany, member institutions contributing to an IPS would have been considered as low risk. However, the DGSs are organised by nationally regulated sectors (i.e. cooperative, savings and public banks). As each of these sectors have their own IPSs recognised as DGSs with the same target level of covered deposits at 0.8 %, there is no need to use the NOD.

5.6.1.2 Calculation of the lower contributions

National regulations transposing the NOD provide in a general way that institutions in low-risk sectors may pay lower contributions to the DGS than they would have otherwise been required to pay.

Following the EBA guidelines for the calculation of contributions[178], the risk-based component can take into account the presence of a low-risk sector. This is in line with the principle that the variable risk-based fee is an important part of the contribution, reflecting the degree of risk arising from the activities of member institutions.

5.6.1.3 Practical experience with the NOD so far

The NOD has not been used in practice.

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[177] Hence, the national legislation is mostly very general with possible cross-references to secondary legislation, which, however, has not yet been adopted. For example, Ireland has provided in the Regulations the option deciding that credit institutions pay a minimum contribution, irrespective of the amount of their covered deposits. In order for this option to come into effect the Minister for Finance must designate the option by order. To date no such order has been made. The text of the Regulations reads *'the Minister may designate by order those sectors regulated under the law of the State considered to be low risk that may pay a lower contribution than that which would otherwise be payable under this Part.'*

[178] EBA (2015), *Guidelines on methods for calculating contributions to deposit guarantee schemes*, September.

5.6.2 Impact of the NOD

The NOD has no to limited impact on the risk profile of the national DGS, level playing field and depositor confidence. Moreover, the NOD is not relevant for any Member State.

5.6.2.1 Risk profile of the national DGS

Different aspects are relevant when assessing the potential impact of the NOD on the risk profile of DGS. Since the threshold for financial means of 0.8 % of covered deposits has to be met in any case, the lower contribution of certain member institutions must not affect the size of the fund available. This implies a redistribution effect among the members of the DGS but no impact on the risk profile of the DGS.

5.6.2.2 Level playing field

The NOD does not have negative impact on the level playing field because a different treatment for member institutions belonging to the low-risk sector is justified by a lower likelihood of pay-out.

5.6.2.3 Depositor confidence

The NOD has no impact on depositor confidence and their awareness about the effectiveness of depositor protection.

5.6.2.4 Relevance for respective Member States

In the absence of concrete experience in practice, the NOD does not seem relevant. This may be because it is difficult to identify such low-risk sectors or a specific business model among the bank business models that can be labelled as low risk, even if a specific restricting regulation exists. To a certain extent, this reflects the experience of the financial crisis. For instance, in Ireland, failures of many credit unions, typically considered low risk, demonstrated that in a systemic crisis no sector is shielded by the risk of default.

5.6.3 Options in the context of EDIS

Based on the motivations, which appear rather weak, and in the absence of practical experience of the NOD, the most sensible option would be to eliminate the NOD (Option 2). From the perspective of the DGS, an alternative option could be envisaged where member institutions that are likely to be resolved could benefit from a lower contribution to EDIS because these institutions would be less likely to receive a pay-outs from the DGS, including in view of the limit of 50 % of the DGS' contribution.

However, from the perspective of EDIS and the Banking Union in general, this alternative (Option 3) could also have unintended negative effects in terms of lowering contributions to the EDIS from systemic banks at the expense of less systemically relevant banks.

In the absence of any experience with the NOD, harmonisation (Option 4) should be discarded.

5.6.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD in its current form, allowing for lower contribution for member institutions operating within sectors for which Member States have already imposed, through regulation, restrictions that substantially reduce the likelihood of failure.

Effectiveness: Given the limited transposition and no instances of use, which are both linked to a rather weak motivation for the NOD, the effectiveness of this policy option is poor. The NOD could only be seen as effective in enhancing the application of the principle of proportionality of contributions to the fund, beyond the risk-based approach. In practice, this means taking into account the case of member institutions that already contribute to additional funds beyond the DGS.

Efficiency: If this NOD were used in practice, national DGSs would have to monitor the member institutions that would benefit from such special treatment. No particular additional costs/benefits should materialise for EDIS.

Coherence: This option has the potential to negatively impact coherence if there were fragmentation in the definition of the sectors.

Subsidiarity: This option does not impact subsidiarity.

5.6.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. This means that financial institutions would not be distinguished based on the risk of their own sector in the calculation of contributions. This option would also be justified because the NOD has not been used in practice so far.

Effectiveness: Given the weak motivation for the transposition of the NOD and in the absence of any experience, there seems to be no reason for maintaining the NOD. This option would have no impact on effectiveness.

Efficiency: Same reasoning as for effectiveness

Coherence: The system would be more coherent.

Subsidiarity: In the absence of concrete experience, this option would not impact subsidiarity.

5.6.3.3 Option 3: Alternative

This policy option considers applying lower contributions for member institutions that are likely to be resolved under the resolution mechanism and less likely to require the contribution from the DGS, also in view of the MREL build-up. This option would change the underlying objective of the NOD and its formulation. It would modify the concept of low risk currently used in the NOD and instead focus on institutions subject to resolution.

In practice, this option would likely lead to lower contributions of a large share of the systemically important banks and should envisage that such lower contributions are rebalanced with higher contributions to the SRF. To this end, the funding of EDIS and SRF and their mutual synergies could be subject to further policy reflection.

In such policy reflection the target level should also be considered, to avoid unintended consequences. Indeed, the large systemically relevant banks are currently responsible for the largest share of contributions to the DGSs, if their contributions are reduced it leads to large, in some case disproportionate contributions from smaller institutions. Taking the example of the SRF, for which public data are available, the largest 20 banking groups contribute 67 %. If the contribution of this group of 20 banking groups is reduced and the target level remains the same, the other banks have to contribute on average twice as much for every euro of covered deposits[179].

Effectiveness: From this perspective, this option would be more effective as relevant member institutions would be identifiable in all Member States and the methodology for the adjusted contribution known.

Efficiency: This option would decrease efficiency, as the DGSs would have one more indicator to consider in determining the contributions from the member institutions.

Coherence: The option would increase coherence across countries provided that it ensures that contributions of systemically important banks would be lower to the DGS but higher to the SRF.

Subsidiarity: This option would reduce subsidiarity.

5.6.3.4 Option 4: Full harmonisation

Under this policy option, all Member States would need to apply lower contributions for low-risk sectors subject to the conditions. This option would be similar to retaining the NOD in its current form (Option 1) or elimination (Option 2) because the NOD is not used in practice. This option of full harmonisation can therefore be discarded.

[179] For example, in case the contribution of large banks were reduced by -10%, the contribution of smaller banks would have to increase +20% in order to retain the total contribution at the same level. Calculation: -67% [share large banks] * -10% [reduction in contribution large banks] / +33% [share non-large banks] ≈ +20% [increase in contribution for smaller banks].

5.7 NOD 17 – Lower contributions for members of IPSs

Summary: NOD 17 – Lower contributions for members of IPSs				
DGSD [Article 13(1) 3rd subpara]				
Member States may decide that members of an IPS pay lower contributions to the DGS.				
Transposed into national law [5 Member States]				
Austria, Ireland, Germany, Hungary and Poland				
Practical experience so far [3 Member States]				
Austria, Hungary and Poland				
Importance				
Up to about 45 % of covered deposits[180]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+	+/-	+	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+/-**	+/-	+/-	+/-
Efficiency	**-**	+	+	-
Coherence	**+**	--	+	+
Subsidiarity	**+**	-	-	+

5.7.1 Implementation across Member States

5 Member States[181] transposed this NOD making it possible to reduce the contribution of the members of IPSs that are not recognised as DGSs. Only Austria, Hungary and Poland use the NOD in practice. Typically, in the latter Member States, the primary legislation contains only general provisions on the lower contributions to DGS paid by IPS members, while details are specified in secondary legislation.

5.7.1.1 Motivations to transpose and use the NOD

The NOD aims, firstly, to recognise that the IPSs ensure a greater degree of protection for their member institutions in line with recital 12 DGSD (e.g. Poland), and secondly,

[180] The member institutions that are both member of an IPS and DGS, account for up to 45% of the total covered deposits under the DGSs in Austria, Hungary and Poland that are not already recognized as IPS. See Section 5.7.1.4 for more information regarding importance of the NOD.

[181] I.e. Austria, Germany, Ireland, Hungary and Poland.

to avoid that IPS (non-DGS) members pay more contributions (e.g. Hungary), acknowledging that they already pay for both the protection from the IPS and DGS. Member States without IPSs did not transpose the NOD.

5.7.1.2 The role of an IPS

An IPS has the objective of protecting its member institutions against bankruptcy by ensuring that they are solvent and liquid[182]. The competent authorities may, in accordance with the conditions laid down in the Capital Requirements Regulations (CRR), waive selected prudential requirements or allow certain derogations for IPS member institutions. In practice, IPSs generally provide liquidity and solvency support to their members in the form of guarantees (i.e. Hungary and Poland), sureties (i.e. Poland), capital injections (i.e. Hungary) and loans (i.e. Hungary and Poland).

5.7.1.3 The level of lower contributions

Member States that use the NOD regulate the calculation of lower contributions to the DGS paid by IPS members in considerable detail and their respective methods are different. Under the Polish secondary legislation, member institutions participating in an IPS benefit from a 50 % reduction in the total risk-weight, considered for the purpose of calculating the contribution to the national DGS.

In Austria, the calculation method may take into account that members of an IPS have to pay lower contributions. The Austrian DGS (ESA) stated that its calculation method was approved by the Finance Market Authority in line with the EBA Guidelines on calculating contributions to DGSs[183]. The reduction in the aggregated risk-weight is implemented by including an additional risk indicator that reflects the additional solvency and liquidity protection provided by the IPS to its members. In order to recognise the IPS protection eligible for a reduction in the contribution, it should fulfil additional conditions related to the level of its *ex ante* funding. In practice, Austria applies the indicator proposed by EBA, i.e. a ratio between the available *ex ante* funds in the IPS and the total assets of the individual IPS members. The higher the level of the indicator, the lower the risk and hence the aggregate risk-weight to calculate the contribution.

In Hungary, the contribution to the DGS is composed of two fees (a minimum contribution fee and a risk-based fee). The relevant legislation specifies that the amount paid as membership contributions to an IPS are taken into account in the determination of the minimum contribution payable to the DGS. In addition, the same law also provides that membership in an IPS *may* be taken into consideration in the calculation of the risk-based variable-rate fee. Accordingly, it seems that membership in an IPS can reduce a member institution's fee payable to the DGS twice: by reducing the minimum contribution (where there seems to be no discretion) and at the same time by reducing the risk-based variable contribution (which is discretionary).

By contrast, the legislation of Germany and Ireland only provides that lower contributions for IPS members may be established.

5.7.1.4 Practical experience with the NOD so far

Austria, Hungary and Poland have had practical experience with the NOD.

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[182] Article 113(7) of the Capital Requirement Regulation (CRR).

[183] EBA (2015), *Guidelines on methods for calculating contributions to deposit guarantee schemes*, September.

Austria has 3 IPSs. Two of them, for the cooperative Raiffeisen banken[184], are not recognised as DGSs and are therefore covered by the NOD. The Raiffeisen banks account for about one third of the Austrian banking sector as of June 2019[185], and for about 45 % of the covered deposits of the Austrian DGS (Einlagensicherung Austria) at the end of 2018. The third Austrian IPS (S-Haftung), for savings bank Erste Bank and the permanently affiliated saving banks, was recognised as a DGS on 1 January 2019, and is therefore not covered by this NOD.

Hungary used to have 4 voluntary IPSs, which merged into the Cooperative Credit Institutions Integration Organisation (SZHISZ) in 2013[186]. The members of the IPSs in Hungary account for about 13 % of covered deposits in Hungary and they receive a reduction in the contribution equivalent to about 2.75 % of the total contributions.

Poland has 2 IPSs not recognised as DGSs. SGB and BPS are the IPSs for 196 and 208 cooperative member institutions respectively (January 2019). The members of these two IPSs account for about 10 % of the covered deposits in Poland and receive a reduction of about 5 % of the total contributions.

In Germany, 2 existing IPSs are recognised as DGSs so the NOD is not applicable.

5.7.2 Impact of the NOD

The NOD has in principle a positive impact on the risk profile of the DGS and on depositor confidence. The NOD is only relevant for Member States with IPSs that are not recognised as DGSs. This limits the Member States to whom this NOD is relevant considerably.

5.7.2.1 Risk profile of the national DGS

The risk profile of the DGS is likely to be reduced. On the one hand, the contribution of the member institutions to the DGS is likely to become more risk-sensitive because the nature of IPS should reduce incentives for member institutions to take on risk. Consequently, members of an IPS have less chance of requiring the repayment of their depositors from the DGS, compared to similar institutions that are not IPS members. On the other hand, as the target level remains the same, the contribution of the non-IPS member institutions increases. As these contributions are risk-based, the riskier institutions are likely to need to contribute more.

5.7.2.2 Level playing field

The lower contributions for IPS members have a fairly marginal positive impact on the level playing field. In principle, the NOD should improve level playing field across member institutions. In the absence of the provision, members of IPSs would have contributed more regardless of their reduced risk to the DGS.

The discounted contribution also contributes indirectly to the existing distortion of the level playing field between IPSs and DGSs. The IPS uses the funds to prevent failures and protect not only covered depositors but also other creditors (which effectively equals a higher coverage level), whereas the DGS contribution in most of the cases is only used for compensation of the covered depositors. In this respect, IPS members have a

[184] These two IPSs are for the lower state-level (Landes) and state-level (Bundes) member institutions, respectively.

[185] Total assets of Raiffeisen credit cooperatives as a share of the total assets of all banks are based on the bank balance sheets data from the Austrian national bank.

[186] The IPSs were OTIVA, HBA, TAKIVA and REPIVA.

competitive advantage compared to other member institutions. This distortion is not purely hypothetical. For example, the German DGS for commercial banks created a voluntary fund to also protect deposits above EUR 100 000 in order to be competitive with the IPSs for cooperative and savings banks that protect all their creditors.

5.7.2.3 Depositor confidence

This NOD does not affect depositor confidence because the IPSs represent an additional layer of protection for depositors. Moreover, depositors are likely to be unaware of the existence of the lower contributions available to IPS members.

5.7.2.4 Relevance for respective Member States

The NOD is relevant for a limited number of Member States with IPSs not recognised as DGSs. For the three Member States that use the NOD, the IPS members represent just a small part of the DGS members. They account for more than a third of the covered deposits in one Member State and much less in others (i.e. about 10 % in Poland). However, the reduction in contribution is substantially less than their share in covered deposits.

5.7.3 Options in the context of EDIS

The lower contribution for members of IPSs not recognised as a DGS appears sensible because it reflects the lesser risk of a potential pay-out. However, the Member States are currently applying different modalities of calculation for these lower contributions. In the context of EDIS, it would be recommended to maintain lower contributions for members of IPSs, but to set a common method to determine the reduction of the contribution (Option 3). This would fit well with the calculation of contributions under EDIS, noting that the reduction can only apply to members of IPSs that are not recognised as DGS.

5.7.3.1 Option 1: Retain in current form

This policy option considers maintaining the NOD in its current form.

Effectiveness: The reduced contributions for members of IPSs recognise the higher protection of deposits held by IPS members. Therefore, the NOD does not affect depositor confidence because depositors are unlikely to be aware of the calculation of DGS contributions. Additionally, the NOD does not affect the overall size of the DGS because the target level of the DGS remains 0.8 % of covered deposits. The NOD should not affect the financial stability of the system.

Efficiency: The lower contribution for IPS members decreases the efficiency of the DGS because it makes the determination of contributions more complex.

Coherence: The NOD in its current form is improving the risk-sensitiveness of the DGS contributions. It might lead to de-risking, which is also an important objective of most of the other prudential legislation (capital requirements, resolution, etc.).

Subsidiarity: This NOD is only important for Member States with IPSs that are not also DGSs. However, the IPS and their members are highly important for these Member States as they account for between 10 % and 45 % of the covered deposits.

5.7.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD, which would imply no adjustment in the contribution of the members of an IPS.

Effectiveness: This option implies that IPS members would likely pay higher contributions to the DGS. The level of protection would remain unchanged because non-IPS members would pay lower contributions and the target level remains the same.

If the IPSs were to decide to lower the contributions or even decide the IPS should compensate for the higher contributions of IPS members to the DGS, the chances of pay-outs of the DGS would increase.

Efficiency: This would have a positive impact on efficiency in terms of reduced administrative burden for the DGS (i.e. no need to determine the reduction of the contributions).

Coherence: This option would impact coherence by not acknowledging the additional layer of depositor protection ensured by the IPS and disproportionate contribution relative to their risk profile.

Subsidiarity: This option would impact subsidiarity in the Member States using the NOD.

5.7.3.3 Option 3: Alternative

This policy option considers retaining the NOD (as Option 1) and combining it with a harmonised method to calculate the lower contributions for members of IPSs. This would fit well with the calculation of contributions under EDIS.

Effectiveness: The reduced contributions for members of IPSs recognise the higher protection of deposits held by such institutions. Therefore, the NOD does not affect depositor confidence.

Efficiency: This option would improve efficiency as compared to retaining the NOD in its current form (Option 1). If all members of IPSs not recognised as DSGs benefit from a lower contribution calculated with a common method, it would be easier for EDIS to determine the contributions.

Coherence: This option would improve overall coherence by reflecting the improved risk-sensitivity of the DGS contributions. The latter might lead to de-risking, which is also an important objective of most of the other prudential legislation (capital requirements, resolution etc.). Moreover, setting up a common method to calculate the lower contributions would improve the level playing field.

Subsidiarity: This option would reduce subsidiarity as Member States would no longer be able to use their national method to calculate the lower contributions for IPS members.

5.7.3.4 Option 4: Full harmonisation

All Member States with IPSs not recognised as DGSs have already implemented the NOD. Therefore, full harmonisation would have the same impact as retaining the NOD in its current form with a national methodology for the calculation of the reduction in the contribution (Option 1) or retaining the NOD with a harmonised methodology to calculate the contribution (Option 3).

5.8 NOD 18 – Use of a uniform risk-weights for banks affiliated to central bodies

Summary: NOD 18 – Use of a uniform risk-weights for banks affiliated to central bodies				
DGSD [Article 13(1) 4th subpara]				
Member States may allow that the central body and all permanently affiliated institutions are treated as a single member institution when assessing the degree of risk incurred as a basis for calculating the contributions to DGSs.				
Transposed into national law [6 Member States]				
Cyprus, Finland, France, Ireland, Luxembourg and Romania				
Practical experience so far [2 Member States]				
Finland and Luxembourg				
Importance				
Up to 80 % of covered deposits[187]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	-	+	+	+/-
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**+**	-	++	+
Efficiency	**+**	-	-	+
Coherence	**+**	-	+	+
Subsidiarity	**+**	-	+	+

5.8.1 Implementation across Member States

6 Member States[188] have decided to transpose a uniform risk-weight for the affiliates of central bodies. Only Finland and Luxembourg use it in practice.

5.8.1.1 Motivations to transpose and use the NOD

This NOD accounts for mutual dependencies of member institutions and aims to reduce the administrative burden. Many of the networks of affiliated institutions such as

[187] The importance of the central bodies and permanent affiliates has been estimated based on publicly available information on the covered deposits and assets of the cooperative and savings banks networks and the total market in Finland and Luxembourg respectively. See Section 5.8.1.3 for more information.

[188] I.e. Cyprus, Finland, France, Ireland, Luxembourg and Romania.

cooperative and savings banks networks give mutual support to each other in case of failure. This mutual support mostly takes the form of a cross-guarantee or joint liability. As the institutions are interconnected, the consolidated indicators might better reflect the riskiness of member institutions than the risk-indicators of the individual institutions[189].

This NOD is relevant for Member States that have networks of institutions with a central body. Most Member States that did not transpose the NOD have no such networks of institutions.

5.8.1.2 No specific rules in national laws

All Member States except France transposed the NOD verbatim. In France, the decision of the Prudential Supervision and Resolution Authority specifies the rules for calculating and adjusting the degree of risk. The contributions to be paid to the French DGS (FGDR) could, under the implementing legislation, be calculated on a consolidated basis to the central bodies and their affiliated institutions[190]).

Networks of member institutions can be considered as central bodies and permanently affiliated institutions when they meet at least the following three conditions laid down in Article 10 of Regulation (EU) No 575/2013:

- The central body and affiliated institutions must be either jointly and severally liable (i.e. joint liability) or the commitments must be entirely guaranteed by the central body (i.e. cross-guarantee);
- The central body and affiliated institutions are treated as single institutions for the monitoring of solvency and liquidity; and,
- The central body can issue instructions to the affiliated institutions.

5.8.1.3 Practical experience with the NOD so far

The NOD is used in Finland and Luxembourg[191]. In the past, this NOD was also used in Cyprus.

Finland has three central bodies with networks of cooperative and savings banks, which are treated as single credit institutions: the cooperative OP Group with about 150 member institutions, cooperative POP Bank Group with 27 member institutions, and the Savings Banks Group with about 20 member institutions as of August 2019. These three networks collectively account for approximately 80 % of the covered deposits in Finland.

In Luxembourg, the cooperative Bank Raiffeisen consists of one central body with 13 affiliated Raiffeisen local banks. The covered deposits of the consolidated Bank Raiffeisen, including the affiliated institutions, account for less than 5 % of the covered deposits in Luxembourg as of 31 December 2018.

In Cyprus, the Cyprus Cooperative Bank used to fall within the scope of the NOD but ceased to exist as of June 2018 when its operations were taken over by the Hellenic Bank.

France, Ireland and Romania reported that they do not use the NOD.

5.8.2 Impact of the NOD

The NOD could have a limited negative impact on the risk profile of the DGS and a positive impact on the level playing field. The impact on depositor confidence should be

[189] The interviews did not provide more specific motivations for this NOD.

[190] Article 10 of Regulation (EU) No 575/2013.

[191] This was confirmed by both the surveys and interviews.

positive, assuming that its impact is understandable to depositors. The NOD is only relevant for Member States with integrated networks of affiliated institutions.

5.8.2.1 Risk profile of the national DGS

The treatment of central bodies and institutions permanently affiliated to these bodies as one single institution for the calculation might increase the risk profile of the national DGS. By treating the central bodies and affiliates as one single institution, the affiliates are arguably encouraged to take more risk. Moreover, the risk-taking of an individual institution has less impact on the ultimate contribution to the DGS. However, this is counterbalanced by the benefits for the national DGS. To mitigate the risk-taking of the individual institutions, the cross-guarantee or joint liability in principle reduces the likelihood of pay-outs by the national DGS, i.e. the institutions will first support each other before the national DGS might be called. To this end, these types of networks usually have stringent monitoring with additional requirements and disciplinary measures and/or risk-based reallocation contributions.

5.8.2.2 Level playing field

The NOD is likely to strengthen the level playing field between member institutions with different governance models. In fact, it allows the mostly decentralised cooperative and savings networks to receive similar treatment to centrally governed institutions. Within these cooperative and savings institutions networks, the affiliated institutions own the central body instead of the reverse, which applies to centrally governed institutions. Due to the cross-guarantees and joint liability, the mutual support between the institutions is similar.

5.8.2.3 Depositor confidence

The cross-guarantees and joint liability between the central bodies and the affiliate institutions in combination with the risk-mitigation measures reduce the likelihood of pay-outs. This NOD supports the use of these joint liability and cross-guarantee schemes and could thus contribute to depositor confidence. In practice, however, depositors may have little information about the impact of the NOD.

5.8.2.4 Relevance for respective Member States

This NOD is important for Member States with networks of closely integrated cooperative and savings bank networks. By contrast, the other banking networks are not eligible. In addition to Finland and Luxembourg, there are several other Member States with closely integrated cooperative and savings banks networks: (i) the fully integrated networks in the Netherlands and Spain with uniform risk-weights as all the local banks operate under a single licence and (ii) less integrated banking networks in Austria, Germany and Italy, which are either not sufficiently connected to be eligible for uniform risk-weights or have their own IPSs recognised as DGSs.

5.8.3 Options in the context of EDIS

For the purpose of improved functioning of the NOD under EDIS, the retention of the possibility to treat central bodies with permanently affiliated members as single institutions should be retained, but some conditions should be added to avoid additional risk-taking by affiliated institutions (Option 3). Option 1 retaining this NOD in its current form would be possible. Both eliminating the NOD and full harmonisation are considered as suboptimal options because this treatment of strongly related institutions is sensible and the provision is only relevant for a few Member States.

5.8.3.1 Option 1: Retain in current form

This option considers maintaining the current NOD regarding a uniform risk-weight for the affiliates of central bodies.

Effectiveness: Retaining the NOD in its current form would have a positive impact on the effectiveness of the DGS as long as the involved member institutions do not increase their risk-taking. This requires that the networks with central bodies and permanent affiliates have risk-mitigation measures in place as required by law.

Efficiency: The treatment of the networks as one single institution reduces the administrative burden for the involved DGSs. For example, the Finnish DGS has to deal with three networks instead of about 200 affiliated institutions. Moreover, these networks already have procedures for central monitoring of liquidity and solvency in place, which allow them to communicate more easily than with each of the institutions on individual basis.

Coherence: The NOD in its current form encourages the formation of closely integrated networks which, in combination with risk-mitigation measures, also reduces the probability of failure of the member institutions. Hence, the NOD contributes to de-risking alongside other existing prudential requirements (capital requirements, resolution etc.). Moreover, it contributes to establishing a level playing field between the member institutions with a centrally governed group structure and those with decentralised governing system.

Subsidiarity: This NOD is only important for those Member States with networks of central bodies with affiliates that do not have specific DGSs/IPSs in place.

5.8.3.2 Option 2: Eliminating

This option considers eliminating the NOD, i.e. affiliates of central bodies would thus have a different risk-weight than the central body.

Effectiveness: This option would reduce the effectiveness of the DGS in the sense that the risk of the individual member institutions would not be properly reflected. Indeed, these institutions are permanently affiliated due to the cross-guarantee or joint liability relation, and the elimination of the NOD would no longer recognise this.

Efficiency: This option would reduce efficiency as the treatment of the network members as both DGS and individual credit institutions would significantly increase their administrative burden.

Coherence: This option would undermine coherence and the level playing field.

Subsidiarity: The NOD is important in some Member States, notably Finland.

5.8.3.3 Option 3: Alternative

This option considers reviewing the current NOD in order to identify additional criteria for the risk-weight for the affiliates of central bodies to avoid moral hazard for the affiliated institutions.

Importantly, such additional conditions could ensure that the management of the central body is not only empowered to issue instructions to the management of the affiliated institutions as specified under Article 10 of Regulation (EU) No 575/2013, but also to have sufficient information for effective monitoring of the affiliated institutions and responsibility to intervene in case of enhanced risk-taking. Although the strengthened safeguards for the risk-mitigation would increase the administrative burden for the institutions involved, it would be beneficial for the risk profile of the DGS. Consequently, the NOD could continue to be used under EDIS.

The impact of this option would in principle be similar as under the current practice (Option 1).

5.8.3.4 Option 4: Full harmonisation

This option considers harmonising the NOD across all Member States. Under the current circumstances, there are not many cooperative and savings institutions networks to whom this provision could apply. For this reason, Option 1 and Option 3 should be preferred to harmonisation. This might change if EDIS fully integrated all the existing DGSs and if the less integrated networks of cooperatives and savings banks strengthened their cooperation. In such a scenario, several of the cooperative and savings institutions networks could be turned in networks that are treated as single member institutions under this NOD.

5.9 NOD 19 – Minimum contribution

Summary: NOD 19 – Minimum contribution				
DGSD [Article 13(1) 5th subpara]				
Member States may decide that credit institutions pay a minimum contribution to be paid by their members, irrespective of the amount of their covered deposits.				
Transposed into national law [9 Member States]				
Cyprus, France, Germany, Greece, Ireland, Italy, Portugal, Slovenia and the United Kingdom				
Practical experience so far [5 Member States]				
Cyprus, France, Germany, Greece and Portugal				
Importance				
Up to 6 % of annual contributions[192]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+/-	-	-	+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	**-**	+/-	+	-
Efficiency	**-/+**	+/-	+	-/+
Coherence	**-**	-	+	+/-
Subsidiarity	**+**	-	-	-

5.9.1 Implementation across Member States

9 Member States[193] transposed the NOD whereby member institutions pay a minimum contribution to their national DGS, irrespective of the amount of their covered deposits,

[192] The importance is calculated as the share of the minimum contributions in the total annual contributions. This maximum amount derived from a simulation exercise run for the German DGS for cooperative bank. The DGS has almost 900 member institutions (so a large number) that have to pay at least EUR 25 000 (a high contribution), for a total of EUR 22 million, which is equivalent to about 5.6% of the annual contributions. The latter is based on the difference in available financial means between the end of 2017 and 2018, assuming no pay-out event. This is not an unlikely assumption as the estimated annual contribution is fairly similar to the increase in available financial means in the two preceding years.

[193] Cyprus, Germany, Greece, France, Ireland, Italy, Portugal, Slovenia and UK. In Ireland, the order of the Minister for Finance, required to specify the calculation method for the NOD to come into effect, has not yet been adopted.

and 5 of them[194] set such a minimum contribution. Nevertheless, the types of such minimum contributions vary considerably between Member States.

5.9.1.1 Motivations to transpose and use the NOD

The main rationale of this NOD is to ensure that the DGSs are able to fulfil their obligations to achieve the target level (i.e. Germany and Portugal) and have the necessary financial assets to function properly (e.g. France). In Portugal, the objective of the minimum contribution is to reach the amount that the Bank of Portugal considers appropriate to ensure the ability of the DGS to fulfil its obligations (pay-outs and contributions to resolution tools). In Germany, the minimum contribution is integrated in the method for calculating the contributions of the member institutions, to ensure that even small member institutions in terms of covered deposits contribute to the DGS fund.

Alternatively, another objective of minimum contributions is greater proportionality through a reduction of the administrative burden for small member institutions. In some cases, the member institutions that contribute the minimum contributions would not need to provide the information for the calculation of the risk-based contribution.

For DGSs that have reached their target size or are about to reach it, there might be an additional motivation to charge a minimum contribution. More specifically, they can also use the minimum contribution to ensure that new member institutions that did not contribute to the build-up of the DGS fund, nevertheless contribute to the fund.

5.9.1.2 Minimum contribution

The concept of minimum contribution differs between the Member States that transposed the NOD. Some constructed it as a floor – a minimum contribution below which the annual contribution of each member institution cannot fall[195]. In others, the minimum contribution would apply only to new entrants as an entry fee (Cyprus and Greece).

The minimum contribution relates either to the contribution to the fund or the operating costs of the DGS.

5.9.1.3 Types of contribution

In many Member States, the DGSs raise two types of contributions: (i) a contribution to the DGS fund for pay-out purposes calculated on the amount of deposits covered and the risk rating; and ii) a contribution to the operating costs of the DGS.

Among the Member States that determine minimum annual contributions, France applies the minimum contribution to the operating costs but not in relation to the contribution to the fund. In Germany[196] and Portugal, the minimum contribution applies to the contribution to the DGS fund.

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[194] Cyprus, Germany, Greece, France and Portugal.

[195] This is the case for France, Germany (BVR, EdO and EdB) and Portugal. For BVR, another German DGS, the minimum contribution is understood as the basic contribution included in the calculation method, to which different weighting factors apply (contribution rate, overall risk-weighting of the CRR credit institution, covered deposits of the CRR credit institution, risk-weighted assets of the CRR credit institution and calibration factor).

[196] BVR, EdO and EdB. It is unclear if such an initial contribution is also required for EdO, as their ordinance on financing only says, regarding this one-off payment, that 'annual contributions for accounting years ending before 30 September 2015 and one-off payments for accounting years ending before 30 September 2014

Other Member States apply a minimum contribution for new entrants to the DGS fund[197].

5.9.1.4 Minimum contribution calculation

The EBA guidelines offer two possibilities for the calculation of the minimum contributions: either the minimum contribution is applied as a base rate to which the risk-based contribution is added (Method 1) or the minimum contribution represents the higher of the minimum contribution and the risk-based contribution (Method 2).

Method 1: $Annual\ contribution = \boldsymbol{Minimum\ contribution} + Risk\ based\ contribution$

Or

Method 2: $Annual\ contribution = Max(\boldsymbol{Minimum\ contribution}\ ;\ Risk\ based\ contribution)$

Moreover, in Germany, specific rules for the calculation of the initial or provisional contribution are specified in each DGS' financing rules. The DGS for cooperative banks in Germany (BVR) applies the first method and includes the minimum contribution in the calculation of the annual contribution[198]. For example, CRR credit institutions that joined the DGS in the current contribution year shall pay 80 % of the minimum contribution for the one-off payment[199]. The other German DGSs use the second method[200]. The minimum contribution for EdO and EdB members is a minimum amount under which the contribution cannot fall.

In France and Portugal, the procedure is provided either in the primary legislation or in its implementing measures. The final decision regarding the level of the minimum contribution is left to the discretion of the administrative authority managing (Bank of Portugal) or supervising (ACPR in France) the DGS.

In Cyprus, the initial contribution to join the DGS is fixed at EUR 50 000 per member institution by the national legislation. In Greece, the amount of the initial contribution shall be paid within 1 month after joining the DGS, and is calculated on the basis of the risk indicator specified for the regular annual contribution. The amount of the initial contribution shall not exceed 8 % of the equity of the new DGS member.

5.9.1.5 Minimum contribution amount

The minimum contribution varies across DGSs and ranges between EUR 235 and EUR 25 000 per year per institution.

In Portugal, the minimum contribution rate is determined annually by the Bank of Portugal, together with the basic contributory rate[201] and the limits on the use of

shall be charged in accordance with the EdB Contribution Ordinance or the EdB Contribution Ordinance in the version applicable up to the end of 11 January 2016'.

[197] Cyprus, Greece and BVR and Germany.

[198] The Articles of Association of BVR (Art. 10) specify the calculation method for the annual contributions.

[199] This one-off payment applies for credit institutions which joined the DGS after May 6, 2015, as an initial contribution, in addition to the annual contribution for the current contribution year. This single payment, which shall be made at the same time as the annual contribution, shall be equal to three times the annual contribution, and of at least EUR 25 000.

[200] The ordinance on the financing of EdO (for both EdO and EdB) specifies the calculation method for the annual contributions.

[201] The basic contributory rate is set up at 0.0003% for the year 2019.

payment commitments[202], in an instruction published on its website. For the year 2019, the minimum contribution rate is fixed at EUR 235 per year per institution[203].

In France, the calculation method for the contribution to operating costs sets the minimum contribution at EUR 1 000 per year per institution.

In Germany the amount of the minimum contribution for EdO and EdB members shall be at least EUR 6 500 per year per institution and EUR 20 000 per year per institution, respectively. This minimum contribution is reduced to an amount of at least EUR 3 250 per year for CRR credit institutions that benefit from a public institution guarantee (Anstaltslast[204], Gewährträ-gerhaftung[205] or refinancing guarantee). For BVR members, a minimum contribution is set at EUR 25 000 per year per institution.

5.9.1.6 Practical experience with the NOD so far

Cyprus, France, Germany, Greece and Portugal apply minimum contributions in practice. Most of these Member States have integrated the minimum contribution in the general calculation method for the contribution to the DGS fund in line with the EBA guidelines[206].

5.9.2 Impact of the NOD

The NOD to require a minimum contribution from member institutions, irrespective of the amount of their covered deposits, is likely to have an ambiguous effect on the risk profile of the DGS and the level playing field. Depositor confidence may decrease somewhat and the relevance for the Member States is in general limited. The assessment below focuses on the minimum annual contributions and it does not take into account entry fees.

5.9.2.1 Risk profile of the national DGS

A minimum contribution can both decrease or increase the risk profile of the national DGS. On one hand, the fixed minimum contribution is not risk-based, i.e. does not take into account the risk profile of the institution. Hence, while the total contribution to the DGS remains the same, the risk-taking of member institutions could potentially increase.

On the other hand, the minimum contribution enlarges the basis of the contributions, by leading to a broader participation in the DGS by more credit institutions. Generally, DGSs depend on a few member institutions that are responsible for most of the contributions. This NOD makes the DGS somewhat less reliant on larger institutions, though the impact is likely to be marginal.

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[202] Payment commitments are excluded for the year 2019.

[203] According to the most recent instruction of the Bank of Portugal, the minimum contribution is not applicable to Caixa Económica do Porto and Caixa Económica e Social, both members of the DGS, without further justification.

[204] Liability assumed by the public owners for the economic viability of the credit institution.

[205] Statutory guarantee of joint and several liability of the public owners to the creditors of the credit institution.

[206] EBA (2015), *Guidelines on methods for calculating contributions to deposit guarantee schemes*, September.

5.9.2.2 Level playing field

The minimum contribution, as currently designed, may distort proportionality when comparing small and large member institutions. Under both calculation methods proposed by the EBA, the contributions for smaller institutions are likely to be relatively bigger than for larger institutions. Under the first method, the fixed minimum contribution is in relative terms more important for smaller member institutions than for larger member institutions as it forms a larger part of their contribution. Under the second method, very small institutions are likely to pay the minimum contribution (unless the amount is negligible) and larger institutions are more likely to pay the risk-based contribution. Under both methods, smaller member institutions are likely to contribute more in relative terms for each euro of covered deposits than larger institutions with similar risk profile.

Especially for smaller institutions, the impact of the minimum contribution might be large. In general, the smaller the member institution, the larger the impact. This conclusion is based on a simulation exercise run for the German BVR, which has the highest minimum contribution and is composed of many small member institutions. Assuming the same degree of risk for smaller and larger member institutions, the minimum contribution reduces the annual contributions of the 5 % largest member institutions by about 5 %, relative to risk-based calculations. In turn, the annual contribution of the 5 % smallest member institutions on average more than doubles. In this simulation, the smallest institutions contribute more than twice as much for each euro of covered deposits as compared to larger institutions.

5.9.2.3 Depositor confidence

The minimum contribution decreases the risk-based component in the contribution to the DGS. Assuming depositor awareness of the calculation of contributions, depositor confidence might decrease as the member institutions could be encouraged to take on more risk under this NOD and, as a result, make the DGS more vulnerable to failures.

However, the overall effect would seem very limited. Even in the case of the German BVR which has many smaller member institutions and for which the annual contributions are relatively important, the minimum contributions account for only about 5.6 % of the total annual contributions in 2018[207].

5.9.2.4 Relevance for respective Member States

On the one hand, the relevance of the NOD is limited due to the relatively limited impact of the minimum contributions in total contributions. The Member States implemented the NOD with a view to raising the required contributions. However, in practice, the required annual contributions could be achieved without the implementation of the NOD, through risk-based contributions. This might explain why the vast majority of Member States have not transposed the NOD or are not using the NOD in practice.

On the other hand, the objective of minimum contributions was to provide for some proportionality for smaller member institutions. Balancing the need to raise contributions with the need to provide some relief for smaller institutions should be an important objective for Member States.

[207] The share of minimum contributions is calculated by dividing the total minimum contributions of all the approximately 900 member institutions at the end of 2018 by the total annual contribution in 2018 obtained from the Deposit Guarantee Schemes data of the EBA (2019).

5.9.3 Options in the context of EDIS

The NOD in its current form leads to fragmentation due to the divergent practices among Member States. In addition, it does not seem to have benefits for the functioning of the DGSs in view of the relatively small weight of minimum contributions in total contributions. The policy option under which this NOD would be eliminated (Option 2) would not seem appropriate because it would entail reverting to risk-based contributions, potentially detrimental to the proportionality for smaller banks.

However, if revised, the NOD could be more proportional and efficient (Option 3), including for smaller institutions. In such a scenario, a tiered set of flat contributions could be applied to very small institutions, similar to the contributions to the Single Resolution Fund[208]. In addition, it would also be beneficial to include initial contributions (i.e. entry fees) for new member institutions, when the DGS fund has reached its target size. Accordingly, these adjustments could complement the NOD in its current form and would fit well within the system of risk-based contributions under EDIS.

5.9.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD by allowing Member States to establish a minimum contribution to be paid by their members, irrespective of the amount of their covered deposits.

Effectiveness: This option would likely have a negative effect, albeit limited, on the effectiveness of DGSs. The minimum contributions, not being risk-sensitive, could encourage to some extent the risk-taking of member institutions and decrease the share of risk-based contributions in the overall contributions to the DGSs. If member institutions are indeed taking more risks, this could also trigger more pay-out events and put a strain on the level of available financial means of the DGS.

Efficiency: In the current form, the minimum contributions have the potential to reduce the efficiency of the DGS. This is because the minimum contributions are divergent among Member States and because they add one additional indicator to the calculation of contributions. However, as the minimum contribution is in principle a fixed amount, the impact on the administrative burden is limited.

Coherence: In principle, retaining the concept of minimum contributions would contribute to the coherence between the DGS and the resolution mechanism as well as to proportionality. However, in its current design the minimum contributions neither achieve alignment with the resolution mechanism nor with the principles of proportionality.

Subsidiarity: This option would not impact subsidiarity but would maintain the divergent practices across Member States.

5.9.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD.

Effectiveness: This option would be beneficial for the effectiveness of the DGS. Risk-based contributions, instead of fixed contributions, would better reflect the profile of

[208] According to Article 10 of the Commission delegated Regulation (EU) 2015/63, the contributions to the Single Resolution Fund are between EUR 1 000 to EUR 50 000 for categories of small institutions split into six buckets according to the size of their operations (the smallest category includes banks with total liabilities less own funds and covered deposits up to EUR 50 million and total assets of up to EUR 1 billion and the largest up to EUR 300 million and total assets of up to EUR 1 billion).

member institutions, which would positively impact depositor protection. However, this design would not be effective in terms of achieving proportionality.

Efficiency: This option would slightly improve the efficiency of the DGS. The removal of the minimum contribution does not require any additional data collection and the change to the calculation should be relatively straightforward. The overall impact would likely be limited.

Coherence: This option would positively impact the coherence of the DGS as the contribution would be fully risk-based to force member institutions that take more risk to contribute more to the fund. Moreover, the potential distortion of the level playing field between smaller and larger institutions due to relatively higher (than in the risk-based case) contributions for smaller institutions would be avoided. However, this option would also mean that there would be no proportionality or relief considerations for smaller banks, which would need to compute their contributions on a risk-based basis.

Subsidiarity: This option would impact subsidiarity by limiting the discretion that Member States and DGSs currently enjoy. It follows, however, from the feedback from DGSs and Member States that minimum contributions have nevertheless rather limited importance for the functioning of the DGSs.

5.9.3.3 Option 3: Alternative

This policy option considers revising the minimum contribution by aligning its design to that for the Single Resolution Fund[209], i.e. creating a tiered harmonised system of flat contributions for a number of categories of small institutions based on their size.

Such a revised design could better reflect the policy objectives than the current 'one size fits all' approach under the NOD with divergent minimum contributions in the form of flat amounts, included in the overall formula for contributions. The modification would consist of a set of flat rates replacing risk-based contributions, which would be defined according to the size of operations of member institutions. The specific flat rates and categories of banks according to their size would be defined.

In addition to the tiered system of flat rates per size of small institutions, any new institution would be required to pay a one-off entry fee when joining the DGS. This would be justifiable as a means for the DGS to continue collecting contributions after reaching the target level and assuming no pay-outs have occurred. Such a fee could be based on the median amount of covered deposits of member institutions, which could be a proxy for the expected covered deposits that a regular member institution will raise.

This policy option would fit well within the system of risk-based contributions under EDIS.

Effectiveness: This option would positively impact the effectiveness. A set of flat minimum contributions depending on the size of small institutions and replacing the risk-banks contributions would achieve the objective of ensuring broad participation in the DGS, while at the same time being more proportionate for smaller banks. This option would address the issue related to the disproportionate contribution by smaller banks relative to larger banks, as described above in the analysis of the current NOD. In addition, the entry fee would likely have a neutral impact on the effectiveness of the DGS because it is not common for many new institutions to join the DGS and particularly if they are small.

[209] See Article 10 of the Commission delegated Regulation (EU) 2015/63.

Efficiency: This option would positively impact efficiency. A set of flat minimum contributions depending on the size of small institutions and replacing the risk-based contributions would simplify the calculation of contributions. An entry fee would have a neutral impact on the efficiency of the system, because it is relatively simple to calculate and it would not increase the total contributions.

Coherence: This option would positively impact the level playing field by reducing the current fragmentation, contribute to the overall coherence under EDIS and alignment with the contribution to the Single Resolution Fund.

Subsidiarity: This option would reduce subsidiarity but could envisage some degree of flexibility for Member States to account for differences in size of financial institutions and national economies.

5.9.3.4 Option 4: Full harmonisation

This policy option considers extending the NOD to all Member States by requiring all member institutions to pay at least a minimum amount in contributions. This option could also entail agreeing on one method for calculating contributions.

Effectiveness: As indicated in Option 1, the minimum contribution is likely to have a negative effect (albeit limited) on the effectiveness of the DGS. Decreasing risk-based contributions and increasing minimum contributions could lead to an increase in risk-taking, which could trigger pay-out events, weakening depositor protection. This option would imply maintaining such an effect with a wider impact.

Efficiency: This option would slightly reduce efficiency as the minimum contribution is applied as a fixed amount and does not require any additional information from the member institution, making it relatively straightforward.

Coherence: This option would contribute to a more coherent framework, in particular if it also harmonises the amounts of minimum contributions to reduce fragmentation. However, this option would maintain 'one size fits all' to the detriment of proportionality.

Subsidiarity: This option would impact subsidiarity (see Option 1).

5.10 NOD 20 – Participations by branches from outside the EU

<table>
<tr><th colspan="5">Summary: NOD 20 – Participations by branches from outside the EU</th></tr>
<tr><td colspan="5">DGSD [Article 15 (1)]</td></tr>
<tr><td colspan="5">Member States shall check that branches established in their territory by a bank which has its head office outside the EU have protection equivalent to that prescribed in the DGSD.

If protection is not equivalent, Member States may require that third country branch to join a DGS in operation within their territories.

When performing the prescribed check, Member States shall at least check that depositors benefit from the same coverage level and scope of protection as provided for in this Directive.</td></tr>
<tr><td colspan="5">Transposed into national law [24 Member States]</td></tr>
<tr><td colspan="5">Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK</td></tr>
<tr><td colspan="5">Practical experience so far [12 Member States]</td></tr>
<tr><td colspan="5">Belgium, Bulgaria, Cyprus, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Spain and the UK</td></tr>
<tr><td colspan="5">Importance</td></tr>
<tr><td colspan="5">Up to 0.7 % of covered deposits[210]</td></tr>
<tr><td colspan="5">Impact of the NOD</td></tr>
<tr><td></td><td>Risk profile national DGS</td><td>Level playing field</td><td>Depositor confidence</td><td>Relevance for respective Member States</td></tr>
<tr><td>Overall</td><td>-</td><td>+</td><td>++</td><td>+/-</td></tr>
<tr><td colspan="5">Policy options in the context of EDIS</td></tr>
<tr><td></td><td>Option 1: Retain in current form</td><td>Option 2: Eliminating</td><td>Option 3: Alternative</td><td>Option 4: Full harmonisation

[Recommended]</td></tr>
<tr><td>Effectiveness</td><td>-</td><td>-</td><td>++</td><td>++</td></tr>
<tr><td>Efficiency</td><td>-</td><td>-</td><td>+</td><td>+</td></tr>
<tr><td>Coherence</td><td>+/-</td><td>-</td><td>+</td><td>+</td></tr>
<tr><td>Subsidiarity</td><td>+</td><td>+</td><td>+/-</td><td>+/-</td></tr>
</table>

[210] Based on estimations taking into account the number of third country branches in the Member States and available data on their covered deposits, third country branches take covered deposits in about half of the Member States and most of them account for a very small share of the covered deposits. On average, the covered deposits of third country branches account for only 0.05% of covered deposits, with a maximum of 0.7% in Cyprus.

5.10.1 Implementation across Member States

The large majority of Member States has transposed this NOD. Most of them require third country branches to join the national DGS only if the protection is not deemed equivalent[211]. In a few Member States, joining the national DGS is automatic for third country branches, regardless of the equivalence of the protection. In those Member States, either membership is compulsory (Romania and Czechia) or third country branches have to request and be authorised by the competent authority not to join the national DGS (France).

Austria, Finland, Latvia and Malta currently prohibit third country branches from joining their national DGS, with Malta being the only Member State with a presence of third country branches.

5.10.1.1 Motivations to transpose and use the NOD

The main motivations to use this NOD are to ensure depositor protection and equal treatment in a domestic market[212], international level playing field, financial stability and historic reasons (Italy and Lithuania).

Some Member States view the need to ensure a level playing field between EU and non-EU banks as even more important than depositor confidence because most clients of the third country branches are large corporations, rather than households.

The integrity of the banking and financial market, and the solvency of the national guarantee fund was particularly stressed by the UK. Malta does not use the NOD because the guarantee of the covered deposits at the third country branch is considered a source of potential risk for the DGS itself.

[211] I.e. Belgium, Bulgaria, Cyprus, Croatia, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Italy, the Lithuania, Luxembourg, Netherlands, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden and the UK.

[212] E.g. Cyprus, Czechia, Greece, Lithuania and Slovenia.

Box 7. DGS coverage of Icelandic branches in the Netherlands and United Kingdom

For a better understanding of this NOD, it is useful to recall the case of Iceland during the global financial crisis in 2008. This was a major economic and political event for the country: all three major private banks defaulted. Compared to the size of the economy, the default was the largest in economic history. The financial system, like external debt, had become enormous relative to GDP. The central bank found itself unable to act as lender of last resort when the global financial crisis erupted and confidence in the economy started to fade.

To restore order in the financial system, an emergency law was passed to enable the Financial Supervisory Authority to take control over financial institutions and to make domestic deposits in the banks priority claims. The banks were put into receivership and liquidation and this resulted in losses for their shareholders and foreign creditors. Importantly, outside Iceland, more than half a million depositors lost access to their accounts in foreign branches of Icelandic banks, after a run on deposits. This led to the Icesave dispute, that ended with an EFTA Court ruling that Iceland was not obliged to repay Dutch and British depositors guaranteed deposits.

If the NOD had been applied in the Netherlands and the UK (i.e. Icelandic branches had been required to participate and contribute to the respective hosting DGS), the depositors would have been directly covered by the Dutch and UK DGSs and the international dispute would have been prevented. It is worth noting that the equivalence, i.e. the criterion under the DGSD decisive for requiring the membership in the DGS, would become ineffective in the case of a large crisis. If the deposit guarantee under the Icelandic system had been considered equivalent to that of the Netherlands and the UK, the dispute would not have taken place, but Dutch and British depositors would have lost their money in any case.

5.10.1.2 Membership in the DGS

The modalities of third country branches participation in the national DGS vary considerably across Member States. In some Member States, third country branches do not exist or do not collect deposits (see Table 5.3). This also explains why in certain cases the details of the participation of non-EU branches in the national DGS are incomplete.

Participation of third country branches in the national DGS can be mandatory, conditional on the assessment of the equivalence of the protection in the home country[213] or voluntary.

The extent of the membership can also differ. In some, the third country branches are required to fully join the national DGS if the home country does not provide any kind of deposit protection or if the protection is not deemed equivalent[214]. In other Member States, depending on the level of protection provided by the home country, full membership is required only if the home country provides no protection. Where the protection is not deemed equivalent, third country branches have to join the national

[213] I.e. Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the UK.

[214] I.e. Belgium, Croatia, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Portugal, Spain and the UK.

DGS and contribute only in respect of covered deposits held at the branch, which are not covered by a scheme in the third country[215].

In Belgium, 8 third country branches are currently members of the DGS. The Belgian central bank conducts the equivalence test with the minimum coverage level of EUR 100 000 (as the only criterion). In the Netherlands, third country branches are also members of the DGS because the coverage of their DGSs in the US and Taiwan does not include foreign deposits and is, therefore, not considered equivalent.

In France, the participation in the DGS is automatic, unless third country branches request an exemption from the participation. The National Competent Authority assesses the equivalence of the protection and grants the exemption. So far, no third country branch has requested the exemption.

In Hungary, third country branches can join the DGS on a voluntary basis. This seems based on one experience with a branch of a Chinese bank: at the time of equivalence assessment, there was no DGS in China and the branch asked to join the DGS in Hungary. In this sense, contributing has been considered voluntary.

In Romania and Czechia[216], participation in the national DGS is compulsory.

5.10.1.3 Procedure for the membership

The procedure for joining the national DGS varies across Member States (see Table 5.2).

Table 5.2 Designated authorities responsible for equivalence test

Duration	Member States
National central bank	Belgium, Greece, Hungary, Ireland, Italy, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain
National Competent Authority	Denmark[217], Estonia, France, Germany, Luxembourg, UK
DGS	Bulgaria, Croatia, Cyprus, Lithuania, Poland and Sweden

Source: CEPS-Milieu elaboration

Time of the assessment

The assessment of equivalence is most frequently done at the time of such request for authorisation to provide banking services[218]. Only Spain and Sweden have specific rules requiring third country branches to notify any change in the coverage level and scope of protection of the guarantee in the third country.

In Slovakia, the assessment is performed after the authorisation is granted. In Czechia, the assessment shall be performed as soon as the branch starts operating.

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[215] E.g. Bulgaria, Ireland, Lithuania, Poland, Slovakia, Slovenia and Sweden.

[216] In Czechia, the national bank grants the licence and by default, banks have to join and contribute to the national DGS. The DGS does not perform equivalence checks.

[217] The legislation gives the competence to the Danish Financial supervisory authority, but in practice, the assessment is carried out by the DGS.

[218] E.g. Belgium, Croatia, Denmark, Estonia, France, Ireland, Lithuania, Luxembourg, Slovenia, Spain and Sweden.

In the Netherlands, the Dutch central bank may carry out the assessment at its own initiative, at the request of the creditors of a member institution, at the request of the institution itself or based on a decision requiring the coordination at EU level.

In Greece, the assessment is performed upon recommendation of the DGS.

For Portugal, Hungary and Germany, the procedure is not clearly identified but would likely take place during the authorisation procedure.

For Bulgaria, Cyprus, Italy, Poland and the UK, the moment of the assessment could not be identified.

Criteria of equivalence test

The equivalence test examines whether the third country DGS offers protection equivalent to that of the DGS in the Member State where the third country branch wants to operate. Mostly, such tests do not appear formalised. Member States typically mentioned the applicability of criteria such as coverage level and scope of the protection. Moreover, some also take into account the repayment period[219], the deposits excluded from the coverage (e.g. Germany and Portugal), the opinion of the DGS (e.g. Hungary), the modalities of the financial contributions (e.g. Ireland), the capacity of the guarantee schemes to carry out repayment (e.g. Italy), and/or the type of depositors (e.g. Hungary and Poland). Some leave the full discretion to their competent authority (e.g. Estonia and Slovenia).

5.10.1.4 Calculation of the contributions

Two different methods for calculation of the contributions of third country branches are applied. Most DGSs apply the same calculation method as for the national member institutions, i.e. the amount of covered deposits weighted by the risk profile of the institution[220]. However, the risk-weight in this calculation is mostly pre-defined because the third country branches are integrated in the parent undertaking in the third country.

Some of those Member States have specific rules for assessing the risk profile of third country branches, due to the difficulties in comparing their data with those of the national member institutions. In Greece, third country branches are ranked in the highest risk category. In the Netherlands, third country branches are automatically grouped in the second risk category (risk-weight of 100 %). In Spain, if the data necessary to determine the risk profile are not available, only the amount of the covered deposits will be considered (i.e. average risk-weight). In Belgium, the contributions of third country branches are based only on the amount of the covered deposits and are not risk-based (i.e. average risk-weight). Similarly, in the UK, the PRA rates all non-EEA branches as average risk.

In the Member States that opted for providing an additional guarantee (to the coverage of the third country DGS), the contribution of the third country branches is calculated taking into account only the amount of covered deposits held by the branches.

In some Member States, no details on the calculation method are available because of the absence of third country branches (also if the latter do not take deposits) on their domestic market (e.g. Estonia and Slovenia). The calculation method in Slovakia is not known probably because it applies a reciprocity condition regarding the possibility for third country branches to join the national DGS. In Ireland, the calculation method is currently under consideration.

[219] E.g. Croatia, Hungary, Ireland and Luxembourg.

[220] E.g. Bulgaria, Croatia, Czechia, Denmark, France, Germany, Greece, Hungary, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the UK.

Besides the calculation of the contribution, additional operational aspects were raised relating to the actual procedure of the pay-out. If the third country institution failed, some considered it unclear whether the DGS has to pay within the 7 working days, as it usually does for covered deposits, or if the deposits would be subject to the law of the home country of the branch. This seems even more complicated in the case of partial contributions.

5.10.1.5 Practical experience with the NOD so far

For the purposes of an assessment of the experience with the NOD, the study sets out an overview of the presence of third country branches in the EU. Table 1.1 shows the size of the deposits they collect, both in absolute terms and relative to total covered deposits.

The majority of Member States host third country branches in their jurisdiction. As many of these branches do not hold deposits in their balance sheet, estimated deposits held at third country branches are limited and well below 0.1 % of total covered deposits, with the two exceptions of Cyprus and the UK. In the UK, the absolute amount is estimated to be substantial, above EUR 2 500 million (equivalent to 0.21 % of covered deposits). While most Member States have transposed the NOD, the transposition does not seem to match one to one the presence of deposits in non-EU branches (EFTA and third country branches).

Table 5.3 Overview of third country branches and covered deposits

Country	EU Credit Institutions	EU Branches	Non-EU branches	Total	Estimated covered deposits third country branches (EUR million)	(Estimated) Share of covered deposits
Austria	522	24	1	547	-	0.00%
Belgium	32	48	8	88	68.4	0.02%
Bulgaria	20	4	1	25	21.2	0.08%
Croatia	25	1	0	26	-	0.00%
Cyprus	12	6	15	33	177.2	0.68%
Czechia	33	24	2	59	-	0.00%
Denmark	80	23	1	104	-	0.00%
Estonia	8	7	1	16	-	0.00%
Finland	227	30	2	259	-	0.00%
France	337	59	20	416	525.8	0.05%
Germany	1,470	92	20	1,582	208.5	0.01%
Greece	17	18	4	39	68.2	0.07%
Hungary	48	8	1	57	0.5	0.00%
Ireland	24	35	2	61	16.2	0.02%
Italy	424	72	7	503	95.1	0.01%
Latvia	14	6	0	20	-	0.00%
Lithuania	9	9	0	18	-	0.00%

Country	EU Credit Institutions	EU Branches	Non-EU branches	Total	Estimated covered deposits third country branches (EUR million)	(Estimated) Share of covered deposits
Luxembourg	89	32	14	135	31.4	0.10%
Malta	21	1	2	24	9.2	0.08%
The Netherlands	43	43	3	89	59.3	0.01%
Poland	583	31	0	614	-	0.00%
Portugal	128	27	0	155	-	0.00%
Romania	69	7	0	76	-	0.00%
Slovakia	12	15	0	27	-	0.00%
Slovenia	14	2	0	16	-	0.00%
Spain	116	81	3	200	156.7	0.02%
Sweden	121	31	4	156	-	0.00%
UK	229	83	83	395	2,668.3	0.21%
Total	**4,727**	**819**	**194**	**5,740**	**4,105.7**	**0.05%**

Note: Member States that did not transpose the NOD are marked in green.

Source: Own elaboration based on EBA (2018 & 2019), ECB (2019) and survey among DGS.

All in all, 11 Member States[221] do not seem to use this NOD because they have no deposit taking third country branches present in their local market. In 7 Member States[222], the deposit taking third country branches are covered by the DGS. In practice, Malta is the only Member State in which the third country branches take deposits that are not protected by the national DGS. For 5 Member States[223], the information as to whether their third country branches are members of the DGS is not available.

5.10.2Impact of the NOD

The participation of third country branches in the DGS improves depositor confidence and maintains a level playing field for both depositors and member institutions. However, its impact on the risk profile of the DGS can be ambiguous.

5.10.2.1 Risk profile of the national DGS

The presence of third country branches authorised to take deposits gives rise to the risk of the financial stability and of substantial costs for the financial system if such deposits do not benefit from an adequate protection. The experience of Icelandic banks in the UK and the Netherland is a good example (see Box 7). National DGSs may be called to

[221] I.e. Croatia, Czechia, Denmark, Estonia, Lithuania, Poland, Portugal, Romania, Slovenia, Slovakia and Sweden

[222] I.e. Belgium, Bulgaria, Cyprus, Greece, Spain, Hungary and the Netherlands.

[223] I.e. Germany, France, Ireland, Italy and Luxembourg.

repay deposits held at a third country branches, which did not contribute to the DGS. This NOD was adopted to address such a risk.

However, third country branch membership in the national DGS can also pose risks to the solvability of the fund because the reimbursement of the pay-out will be subject to the insolvency procedures and rules of the third country, which may be less favourable to the national DGS than domestic rules.

Yet, in view of the estimates involving small amounts of deposits (with the exceptions for Cyprus and the UK), the negative impact on the risk profile of the DGS should be rather limited.

5.10.2.2 Level playing field

The participation of third country branches in the national DGSs is beneficial for the level playing field. The NOD prevents the third country branches from having a more favourable treatment than EU member institutions because the annual contributions of member institutions to their national DGS reduce their profits.

Therefore, the NOD contributes to fairer competition between EU and non-EU credit institutions provided that the contributions to the DGS of third country branches are calculated in a similar way as for national member institutions.

5.10.2.3 Depositor confidence

Protecting and ensuring equal treatment of all depositors in a Member State should strengthen depositor confidence in the domestic banking market. This is particularly relevant for branches from third countries that do not provide any deposit guarantee. Previous failures in the Icelandic banks case have shown that depositors are not necessarily aware that a bank operating in their home country is actually a third country branch where deposits may not be adequately protected (see Box 7).

5.10.2.4 Relevance for respective Member States

Based on the data, this NOD is particularly relevant in the UK. However, in the specific case of the UK, the presence of many branches with parent banks in different non-EU countries can contribute to the diversification of the risk across countries, making it less likely that all these branches would fail simultaneously[224]. In addition, the exposure of the UK DGS is limited by the additional prudential provision of the PRA imposing the maximum threshold for deposits that each branch can collect, i.e. GBP 500 million of covered deposits (about EUR 550 million). For larger amounts, the authorisation to provide retail banking services may not be granted.

Cyprus has also large amount of deposits from third country branches compared to other Member States, but still well below 1 % of total covered deposits. All third country branches contribute to the DGS.

In Malta, the NOD has not been transposed. The DGS feared the risk of covering deposits held at banks that have not contributed to the DGS. The total amount of relevant deposits is not disclosed but estimated at about EUR 9.2 million, i.e. 0.1 % of covered deposits. This might well be higher in practice as the estimation is based on the average covered deposits held by branches in other Member States.

[224] Such benefit may be mitigated by having to deal with a different legal system.

5.10.3 Options in the context of EDIS

Given the existing fragmentation in the use of this NOD, which, in particular in some Member States, may directly impact the uniform level of depositor protection, a common approach adopted in all Member States would be recommended as the most sensible (Option 4 and possibly Option 3).

Under Option 4, all third country branches would be required to join the national DGSs under a common set of criteria for the assessment of the equivalence test and the calculation of contributions. In this respect, the equivalence test could be conducted centrally (e.g. EBA) for all Member States in order to reduce the administrative burden for individual DGSs. The calculation of contributions of third country branches would also benefit from the common approach, which is risk-based in order to ensure a level playing field with EU banks and mitigate the risk to the DGSs. Both combined approaches would increase the depositor protection and confidence and would be largely consistent with the existing approaches in the majority of Member States, reducing the potential impact on subsidiarity.

Under Option 3, a maximum threshold of EUR 500 million on covered deposits held by third country branches would be introduced as a preventive function to mitigate a potential risk to financial stability. Such an approach would also seem reasonable because apparently no third country branch currently has covered deposits above EUR 500 million.

The deposit guarantee of third country branches[225] normally increases the financial exposure of the DGS. With EDIS in place, potential pay-outs of such deposits could either be financed by EDIS under the full insurance scheme or, alternatively, depending on the form EDIS takes, also by national DGSs. In the former case, the above recommended policy options (maximum threshold, common methods for equivalence testing and calculation of criteria) would significantly mitigate the potential risk to the EDIS fund. The same would apply in the latter case with respect to the risk to national DGSs.

5.10.3.1 Option 1: Retain in current form

This policy option considers retaining the NOD in its current form. However, it would leave unclear to what extent Member States have a discretion not to require the third country branch to join the DGS, if the protection is not considered equivalent. Member States would also continue to enjoy discretion regarding the operational aspects, such as the calculation of the contributions.

Effectiveness: This option would impact the effectiveness under EDIS as some Member States seem to interpret it so that clients of third country branches operating within their territory can have a lower protection. In practice, all Member States (with one exception) require the third country branches to join the DGS and maintain the depositor protection because most third country DGSs either do not offer protection to foreign deposits or have lower thresholds. In any case, the additional risk related to the third country branches may also raise issues for the DGSs.

Efficiency: This option would reduce the efficiency of the DGS. Currently, there are divergences between the equivalence tests in Member States and the method of calculation of the contributions, based on standard or average risk-weights, which eases the calculation of the contribution.

[225] Third country branches are regulated under Article 47 CRD and are supervised at national level.

Coherence: This option would not contribute to a coherent framework under EDIS, even though the widespread application of the NOD improved the pre-DGSD environment (e.g. the Icelandic bank case). The existing fragmentation would remain.

Subsidiarity: This option would not impact subsidiarity.

5.10.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD, putting the treatment of third country branches outside the scope of harmonisation of Union law. This would be equivalent to the state of play prior to the DGSD.

Effectiveness: This option would negatively impact depositor protection and increase the risk to financial stability. The EU depositors of the third country branches would no longer be covered in case of a third country branch failure. This might lead to a reduction in depositor confidence as retail customers are not necessarily aware of whether they hold an account with a third country branch that does not guarantee their deposits.

Efficiency: This option would increase the efficiency of the DGS in terms of reduced administrative burden (e.g. in relation to equivalence test, calculation and collection of contributions, pay-outs).

Coherence: This option would impact the level playing field across Member States between the third country branches that are not required to join the DGS and EU banks that are required to join.

Subsidiarity: This option does not impact subsidiarity.

5.10.3.3 Option 3: Alternative

This policy option considers modifications to the current NOD. It would envisage a maximum threshold of EUR 500 million on covered deposits held by third country branches[226]. Such a threshold would have a preventive function to mitigate a potential risk to financial stability and also seems reasonable because apparently no third country branch currently has covered deposits above EUR 500 million.

Effectiveness: This option would positively impact depositor confidence by guaranteeing the same protection to all depositors in the EU. The maximum threshold would limit the potential exposure of the DGS in the event of a pay-out. It would also be recommended to set common criteria for the equivalence test and the method of calculation of contributions.

Efficiency: This option would not impact efficiency as currently no third country branches seem to have covered deposits above EUR 500 million.

Coherence: This option would improve the coherence of the system under EDIS, by ensuring an equal treatment of third country branches across Member States and of depositors in the EU.

Subsidiarity: This option would have the potential to impact subsidiarity. However, it has primarily a preventive function because this approach would currently be consistent with the state of play in the Member States, except for Malta[227].

[226] This approach resembles the application of the NOD in the UK.

[227] If this approach were applied in Malta, no single third country branch would be authorised to take more than 5% of the covered deposits (based on the total covered deposits as of December 2018).

5.10.3.4 Option 4: Full harmonisation

This policy option considers modifying the current NOD in order to require all third country branches to join the national DGSs and provide for one common set of criteria for the assessment of the equivalence test and the calculation of contributions.

Effectiveness: This option would positively impact depositor confidence by ensuring the same guarantee for deposits at third country branches irrespective of whether the bank operates under an EU licence or the authorisation of a third country. However, third country branches could give rise to financial stability concerns and losses to the DGSs in the case of insolvency (e.g. Icelandic case - see Box 7).

Efficiency: This option would increase efficiency, particularly where the equivalence test was conducted centrally (e.g. EBA) for all Member States, which would result in reduced administrative burden for the individual DGSs. Most Member States already perform equivalence testing and calculate contributions for third country branches and could benefit from the common approach, which is risk-based and possibly combined with pre-determined contributions[228], also taking into consideration the risk profile of the third country.

In the absence of the threshold for the size of the covered deposits of the third country branches, as envisaged under Option 3, these safeguards would mitigate the potential for destabilisation of the DGS as these institutions may have less incentive to contain their risk profile.

Coherence: This option would positively impact the coherence of the EU framework by ensuring a similar treatment of third country branches and EU banks. Indeed, the treatment is not the same as the risk-weight for the contributions assumed for branches.

Subsidiarity: This option would impact subsidiarity.

[228] The pre-determined contribution at least takes away some of the risk-sensitivity for third country branches.

6 Transitional provisions

This section provides a comprehensive overview of each of the NODs related to transitional provisions. It does so by: i) assessing the implementation of the NOD across Member States; ii) estimating the impact of the NOD on the risk profile of the national DGS, impact on the level playing field, impact on depositor confidence and relevance for the Member States; and, iii) identifying options in the context of EDIS to assess whether the NOD should be retained, eliminated, fully harmonised or an alternative approach should be chosen.

6.1 NOD 21 – Repayment periods longer than seven working days

Summary: NOD 21 – Repayment periods longer than seven working days				
DGSD [Article 8(2)]				
DGSs shall ensure that the repayable amount is available within seven working days of the date on which a relevant administrative authority makes a determination [..]. However, Member States may, for a transitional period until 31 December 2023, establish the following repayment periods of up to: (a) 20 working days until 31 December 2018; (b) 15 working days from 1 January 2019 until 31 December 2020; (c) 10 working days from 1 January 2021 until 31 December 2023.				
Transposed into national law [16 Member States]				
Austria, Belgium, Croatia, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and the UK				
Used in practice [At least 4 Member States]				
Belgium, Ireland, Latvia and Lithuania				
Importance				
100 % of covered deposits				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	+	-	-	-/+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative**	**Option 4: Full harmonisation** **[Recommended]**
Effectiveness	**-**	+/-	+	-
Efficiency	**+**	-	+/-	+/-
Coherence	**-**	+	+	+/-
Subsidiarity	**+**	-	+	-

6.1.1 Implementation across Member States

16 Member States have transposed the NOD that allows a longer repayment period. 14 of them also transposed the three longer transitional periods for repayment, i.e. 20, 15 and 10 working days. Finland and Luxembourg have opted for a faster transition. Finland shortened the repayment period by using the provisions for 20 and 15 days only. Luxembourg applied the period of 20 days until 31 May 2016 instead of until 31 December 2018.

6.1.1.1 Motivations to transpose and use the NOD

Most Member States chose longer repayment periods in order to ensure that the necessary procedures and mechanisms (e.g. IT systems) are in place at member institutions, DGSs and payment agents for identifying the eligible deposits and proceeding with the pay-out.

Some indicated that they do not necessarily need the NOD, but prefer having the possibility as a safeguard (e.g. Latvia, Lithuania and Slovenia), if the 7-day pay-out was not possible due to extraordinary circumstances. Others indicated that the longer repayment periods were not considered necessary, as they already had procedures to arrange for a 7-day pay-out (e.g. Greece).

6.1.1.2 Additional safeguard clauses to protect depositors

Under Article 8(2) DGSD (and recital 39), DGSs must ensure the payment of a minimum amount to cover the depositor's cost of living within 5 working days of a request, if DGS are unable to make the repayable amount available within 7 working days. Accordingly, Member States must provide for an interim payment during the transitional period.

Member States retain discretion in terms of determining the amount of cost of living, which takes into account the differences in living costs across the different Member States. The latter is expressed in absolute or relative amounts (see Table 6.1). For example, the estimated living costs in Belgium, Finland and Portugal ranges between EUR 1 000 and EUR 10 000. By contrast, in Lithuania (one month), Malta (three weeks), Slovenia (one month) and Slovakia (one month) the living costs are based on the minimum or average salary over a certain period. Accordingly, the amounts range between EUR 550 and EUR 1 025. The UK differentiates depending on whether the depositor is an individual or a small company/local authority, considering the cost of living and the coverage of necessary business expenses.

Some Member States specify that the claim must be well founded and justified by the depositor on the basis of its personal financial situation (i.e. Austria, Finland and Slovenia).

There is also at least one Member State that deviates from the NOD as specified in the DGSD. In Portugal, the DGS is required to pay living costs within a maximum of 7 working days, rather than 5 working days as specified in the DGSD.

Table 6.1 Cost of living

Country	Minimum amount
*Austria**	*N/A*
Belgium	EUR 3 000
Finland	EUR 1 000

Country	Minimum amount
*Croatia**	*Minimum monthly gross salary: EUR 505*[229]
*Hungary**	*Minimum monthly gross salary: HUF 138 000 (approx. EUR 416)*[230]
*Italy**	*N/A (minimum wage depends on the type of activity)*
*Latvia**	*EU data: average gross income EUR 1 006 (3rd quarter 2018)*[231] *Minimum wages: EUR 430 per month*[232]
Lithuania	One month minimum wage (EUR 550)
*Luxembourg**	*Minimum monthly wages as of 1 January, 2018*[233]*:* *Skilled workers: EUR 2 485* *Unskilled worker: EUR 2 071*
Ireland	Minimum wage from January 2019: € 9.80 per hour[234]
Malta	Three times the gross weekly salary (EUR 1 025)
Portugal	EUR 10,000
*The Netherlands**	*Minimum monthly wage for employee aged 23 or above: EUR 1 636*[235]
Slovakia	Average monthly salary of an employee as determined by the Statistical Office (EUR 1 023)
Slovenia	One month minimum wage (EUR 886)
UK	Varied depending on whether the depositor is an individual or a small company/local authority and considering the cost of living and the coverage of necessary business expenses

Notes: The amounts for Lithuania, Malta (combination of 2014 gross hourly earnings and 2016 weekly hours paid) and Slovenia have been based estimated based on information from Eurostat (2019)[236]. The average salary for Slovakia has been based on the information from the Slovakian Statistical Office for the first quarter of 2019. * Legislation does not specify the amount or which specific factors are taken into consideration. The amounts provide an indication of the living costs in the Member State.

Source: CEPS-Milieu elaboration

6.1.1.3 Practical experience with the NOD so far

Most Member States that have transposed the NOD seem to use it as a safeguard if they were not able to pay out in 7 working days. Belgium, Ireland, Latvia, Lithuania and potentially other Member States have used more than 7 working days for the pay-out since the adoption of the DGSD.

6.1.2 Impact of the NOD

Longer periods for repayment are generally not beneficial for depositor confidence. However, this NOD would only be applicable during the transitional period in order to

[229] EURES, The European Job Mobility Portal, Living and working conditions - Croatia (2019).

[230] EURES, The European Job Mobility Portal, Living and working conditions - Hungary (2019).

[231] EURES, The European Job Mobility Portal, Living and working conditions - Latvia (2018).

[232] EUROSTAT, Monthly minimum wages, bi-annual data (2019/S1).

[233] EURES, The European Job Mobility Portal, Living and working conditions - Luxembourg (2019) and EUROSTAT, Monthly minimum wages, bi-annual data (2019/S1).

[234] EURES, The European Job Mobility Portal, Living and working conditions - Ireland (2019).

[235] EURES, The European Job Mobility Portal, Living and working conditions - Netherlands (2019).

[236] Eurostat 'Monthly minimum wages – bi-annual data' (2019 S1).

enable Member States to put in place procedures for a faster pay-out within 7 working days.

6.1.2.1 Risk profile of the national DGS

The longer repayment period would impact positively the risk profile of the national DGS, as it may ease the pressure for the DGS when making pay-outs, including verifying the validity of the claims of depositors and ensuring that the resources for the pay-out are readily available.

Historically, deposit insurance was primarily used for smaller banks, requiring the pay-out of smaller amounts of covered deposits[237]. Most DGSs have the resources needed to cover pay-outs for smaller members readily available. Nevertheless, for larger pay-outs that exceed readily available funds the extra time to arrange for their availability is considered useful by the DGSs. Interestingly, the Member States that have transposed the NOD are not necessarily those that have inferior financial means. This would support the argument from most DGSs that the longer repayment period may be more important for operational reasons.

For some DGSs the longer repayment period makes it possible to avoid financial penalties and judicial costs for claims in the event of late repayment.

6.1.2.2 Level playing field

Longer repayment periods may affect the level playing field both domestically and cross-border.

First, when comparing the access to deposits in insolvency and resolution, a longer pay-out period in insolvency versus continued access to deposits in resolution may motivate depositors to move their deposits to larger institutions that are likely to be resolved under the resolution mechanism[238]. However, this assumes a level of awareness of insolvency and resolution regimes among depositors, which most are unlikely to have.

Second, the differences in repayment periods among Member States might create arbitrage, assuming depositor mobility, if depositors prefer institutions in Member States with a shorter repayment period. This is one of the reasons why, by 2024, all Member States are expected to converge to a 7 working days pay-out period. The impact of differences in pay-out duration is expected to be non-significant given the temporary nature of these differences and a likely low level of awareness among depositors regarding the differences in pay-out duration between Member States. The early repayment of the cost of living would likely reduce the impact due to differences in pay-out periods even further.

6.1.2.3 Depositor confidence

Longer repayment periods are relevant for depositor confidence. In general, the degree of access to deposits is directly proportional with depositor confidence. In the event of default of a member institution, longer repayment periods or delays in repayment could create contagion through a general loss of confidence in the DGS pay-out mechanism and trigger a run on other member institutions.

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[237] De Groen, W.P. and D. Gros (2019 – Forthcoming), How to make the SRF contribution really risk-based?, CEPS Paperback.

[238] De Groen, W.P. and D. Gros (2019 – Forthcoming), How to make the SRF contribution really risk-based?, CEPS Paperback.

In addition, the lack of access to the covered deposits might also lead to immediate liquidity concerns, i.e. depositors becoming unable to meet their payment obligations. The importance of uninterrupted access to payment accounts is increasing as non-cash payments (card, bank transfers, etc.) are becoming more important for both online and offline payments[239]. Immediate liquidity concerns could be mitigated to a certain extent by the interim payment covering the short-term cost of living.

6.1.2.4 Relevance for respective Member States

Most DGSs currently work towards a pay-out within 7 working days.

6.1.3 Options in the context of EDIS

This NOD will cease to exist in 2024 and retaining this NOD in its current form would be sensible to provide a temporary safeguard while the pay-out mechanisms are being operationalised across Member States. Given the importance for depositor confidence and the general readiness in the Member States, it could also be envisaged to accelerate the transition towards the 7 working days pay-out (Option 3). However, as the political process to finalise EDIS or a potential new DGSD is likely to last quite some time, it is recommended to either harmonise the NOD (Option 4) or eliminate the NOD (Option 2). The latter could be considered if the new legislation is not adopted by 2023.

6.1.3.1 Option 1: Retain in current form

This policy option considers that Member States can apply longer repayment periods until 2023.

Effectiveness: The longer repayment period reduces depositor confidence in principle. However, if the DGS is still unable operationally to pay out within 7 working days, a longer payment period, known to depositors in advance, provides legal certainty and is generally better than an unannounced late payment, which could result in additional legal claims and loss of confidence.

Efficiency: Retaining the NOD would contribute to a more efficient repayment procedure, by giving more time to operationalise the pay-out processes, procedures and IT infrastructure. The DGS is better able to obtain the necessary financial resources and reduce the risk of legal challenges by depositors for late repayments.

Coherence: Differences in repayment periods in Member States may create an unlevel playing field. First by encouraging depositors to move their deposits to Member States with a shorter repayment period. Second, by resulting in a different treatment of depositors depending on whether the institution is placed in insolvency (which includes DGS pay-out) versus resolution. The access to covered deposits should be uninterrupted in resolution[240], while it is restored in 7 working days under the deposit insurance and in up to 15 working days under the NOD. Considering that small institutions may be placed in insolvency while larger institutions may enter resolution, longer repayment periods could create some degree of arbitrage in depositor preferences for a given institution.

[239] Lalouette, L. and H. Esselink (2018), Trends and developments in the use of euro cash over the past ten years, ECB Economic Bulletin, Issue 6/2018.

[240] Possibly except during a moratorium, if applied by the resolution authority, of a maximum 2 working days.

Subsidiarity: The current NOD addresses the concern that a large share of DGSs might not be ready at the time of the adoption for a 7 working days pay-out. However, the general readiness on the DGS side has increased in the meantime.

6.1.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD so that Member States apply the 7 working days pay-out.

Effectiveness: Faster pay-outs are critical for effective depositor protection, as long as the DGSs are able to perform the payment within 7 working days. While the general readiness on the DGS side has increased, there is still a limited number of DGSs not yet prepared operationally for a shorter repayment period. This could fuel uncertainty among depositors.

Efficiency: Eliminating the NOD would reduce the flexibility of the DGS, as argued above.

Coherence: This option would be beneficial for the level playing field and reduce the difference in treatment of depositors in insolvency with DGS pay-out and resolution.

Subsidiarity: The flexibility of Member States would be reduced and potentially cause difficult situations where the DGSs are not prepared operationally for 7 working days pay-outs.

6.1.3.3 Option 3: Alternative

This policy option considers revising the transitional provision of Article 8(2) DGSD, and move towards a faster convergence to 7 working days in the coming years. Concretely, this option considers moving 1 year earlier to a repayment period of 10 working days (in 2020 instead of 2021) and 2 years earlier to 7 working days (in January 2022 instead of January 2024).

Effectiveness: The alternative option would be beneficial for deposit protection, reflecting the general readiness of DGS for a 7 working days pay-out. This modification would acknowledge the need for additional time for certain DGSs to change their operational systems to enable the 7 working days pay-out.

Efficiency: This option would reflect the trend observed in most DGSs to front-run the deadlines with a view to shortening the repayment period. All DGSs would likely be able to comply with the 7 working days pay-out.

Coherence: This option would reduce the distortion in the domestic and international level playing fields. The repayment period would shift more quickly towards the 7 working days target across all Member States (i.e. in the transition period the difference in repayment period is shorter). Similarly, the shortening of the transitional period may reduce the difference in level of access to deposits during insolvency and resolution.

Subsidiarity: The option would to some extent limit the discretion of Member States but would be justified by the readiness on the DGSs' side.

6.1.3.4 Option 4: Full harmonisation

The full harmonisation policy option is in practice likely to have the same impact as retaining the NOD in its current form (see Option 1), except that the approaches of the Member States would be more similar on paper.

6.2 NOD 22 – Coverage of deposits until the maturity date

Summary: NOD 22 – Coverage of deposits until the maturity date				
DGSD [Article 19 (1)]				
Member States may allow to cover wholly or partially certain deposits or categories of deposits or other instruments until their initial maturity date if they were paid in or issued before 2 July 2014.				
Transposed into national law [10 Member States]				
Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Hungary, Ireland, Luxembourg and Romania				
Used in practice [3 Member States]				
Denmark, Hungary and Luxembourg				
Importance				
Up to 2.2 % of covered deposits[241]				
Impact of the NOD				
	Risk profile national DGS	**Level playing field**	**Depositor confidence**	**Relevance for respective Member States**
Overall	-	+/-	+	-/+
Policy options in the context of EDIS				
	Option 1: Retain in current form	**Option 2: Eliminating**	**Option 3: Alternative [Recommended]**	**Option 4: Full harmonisation**
Effectiveness	-/+	+	++	-
Efficiency	-	+	+	-
Coherence	-	+	-	-
Subsidiarity	+	-	-	-

6.2.1 Implementation across Member States

10 Member States[242] have implemented this NOD, but according to most national DGSs, there are no or very limited covered deposits remaining under this NOD.

6.2.1.1 Motivations to transpose and use the NOD

The main objective of the NOD is to protect depositors by fulfilling existing obligations until the original maturity and to ensure a smooth transition into the DGSD regime (e.g. Denmark and Luxembourg).

[241] The importance is based on the relative materiality of the various deposits covered under this NOD. The importance ranges between 0.0% and 2.2% of covered deposits across the Member States that have transposed the NOD.

[242] I.e. Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Hungary, Ireland, Luxembourg and Romania.

In most other Member States in which the NOD was not transposed, the type of deposits and other instruments to which the NOD could be applied was deemed not relevant (e.g. Greece).

6.2.1.2 *Deposits and other instruments covered*

The types of deposits, categories of deposits or other instruments within the scope of Article 19(1) DGSD vary across the 10 Member States that transposed the NOD. Some Member States have adopted a blanket provision (i.e. Cyprus and Ireland) and used the same terminology as the DGSD, under the condition that deposits/instruments were paid in or issued before 2 July 2014 and provided they were covered by the DGS before the entry into force of the transposing legislation and that they are no longer covered under the regular standard coverage of the DGSD.

In other Member States, the types of deposits or instruments are specified based on national circumstances (see Table 6.2).

Table 6.2 Deposits or other instruments covered and importance

Country	Types of deposits or instruments	Indicative size as of 31 December 2017 (% of covered deposits)
Belgium	All bonds and bank debt securities previously guaranteed by a scheme if they had an initial maturity date.	0.0%
Bulgaria	Savings product (such as nominal deposit certificates) certified by a certificate of deposit issued to a named person.	0.0%
Czechia	Legislation refers to deposits in general in line with the conditions set by Article 19(1). According to the explanatory memorandum to the law, it covers principally term deposits of some territorial self-governing units and of the State.	0.0%
Denmark	Child savings accounts, education savings accounts, probate accounts concerning estates under public probate and escrow accounts, establishment accounts, entrusted means deposited on the client account of an attorney, and deposits managed by authorised management divisions in relation to guardianship or inheritance.	1.0%-2.0%
Estonia	Certificates of deposits (certain securities issued by credit institutions or other financial institutions) if they were issued before 2 July 2014, as well as instruments the principal amount is not repayable at par (including deposits with investment risk), and deposits the principal amount of which is only repayable under a guarantee or other	0.0%*

Country	Types of deposits or instruments	Indicative size as of 31 December 2017 (% of covered deposits)
	such agreement provided by the credit institution or a third party until the expiry of a contract entered into with regard to this claim, but not longer than until 31 December 2018.	
Hungary	Debt securities and group accounts i.e. accounts of condominiums, housing cooperatives, school saving associations and building societies, placed before 2 July 2015.	2.2%
Luxembourg	National legislation refers to deposits in general in line with the conditions set by Article 19(1), however the authority stated that only certificates of deposit issued before 2 July 2014, are covered, until their initial maturity date.	0.2%-0.6%**
Romania	Deposits and other instruments whose owners are house unions.	0.0%

Notes: The indicative size of the deposits covered under this NOD is based on the amounts indicated by DGSs and banks in the survey and the application of the provision. * As of 31 December 2018. ** For Luxembourg the figures have been based on the amounts of outstanding certificates of deposits of two large Luxembourg banks as of 31 December 2017. The amounts are presented as share of customer deposits.

Source: CEPS-Milieu elaboration

The deposits and other instruments can be classified in two broad categories. First, deposits and other instruments that were covered by the DGS before the DGSD was implemented such as housing cooperatives, building societies etc., without an explicit maturity date. These deposits and other instruments were mostly covered up to a certain date specified in the transposed legislation, such as 2 July 2015 in Hungary and 31 December 2018 in Estonia. Second, instruments that were issued before the DGSD with coverage under the national DGS with a fixed maturity. These deposits and other instruments are in principle covered up to the expiry date.

6.2.1.3 Practical experience with the NOD so far

There is no available information as to whether the NOD has been used in a pay-out. However, most Member States have no or limited amounts of deposits and other instruments covered.

6.2.2 Impact of the NOD

The NOD seems to be of limited relevance. From an analytical point of view, it may have a relevant impact on the risk profile of the national DGS, it has no or a limited impact on the level playing field and it may, to a limited extent, strengthen depositor confidence.

6.2.2.1 Risk profile of the national DGS

In theory, the extension of the coverage to other deposits or other instruments could increase the risk profile of the DGS in two ways. First, the risk profile would be increased due to an increase in the amount covered, without a corresponding increase in contributions. Second, the deposits and other instruments covered under this NOD are likely to be riskier than other covered deposits. As most of the instruments and deposits are uncollateralised, they are likely to have a more junior credit status than traditional covered deposits that have a super-senior status. The DGS will have the first right on the receipts from the depletion of assets that are not pledged as collateral. The risk for the national DGS is increased as some of the instruments that would otherwise cover the first losses are, due to the NOD, covered under the DGS.

In practice, the NOD's impact on the DGS's risk profile is limited and declining. Three Member States seem to still have deposits and other instruments covered under the NOD. In Denmark, Hungary and Luxembourg the covered deposits and other instruments under the NOD are equivalent to up to 2.2 % of covered deposits. In Hungary and Luxembourg, the amounts covered under the NOD are declining. The outstanding certificates of deposits of the two large Luxembourgish banks declined by almost 40 % in 2018 alone. In Hungary, the last instruments covered will mature by 31 December 2024. The group accounts of special purpose institutions such as housing cooperatives schools and building societies are already no longer eligible as the coverage expired a few months after the implementation of the Directive on 2 July 2015. The Danish deposits and other instruments covered under this NOD are according to the Danish national competent authority likely to have a maturity date, but this could not be affirmed.

6.2.2.2 Level playing field

The deposits and other instruments with a fixed maturity have no or a limited impact on the level playing field. The instruments and deposits were already issued before the DGSD was adopted and the coverage will in principle automatically expire at the maturity date.

In turn, the deposits and other instruments of depositors that do not have a fixed maturity could distort level playing field. More specifically, the coverage of these deposits could encourage the depositors to retain the deposits at the member institutions, as they are not covered by member institutions in other Member States or, in some cases, when transferred to another member institution in the same Member State. In practice, this effect is limited as most Member States have restricted the coverage of these deposits and other instruments to a pre-defined date.

6.2.2.3 Depositor confidence

This NOD strengthens depositor confidence in that the DGSD regime does not retroactively affect deposits with a long maturity date. For instruments and deposits issued before the adoption of the DGSD with a fixed maturity, the depositors are allowed to retain the coverage for the entire duration of the instruments and deposits. However, given the limited materiality of these deposits, the effect on depositor confidence is very limited.

6.2.2.4 Relevance for respective Member States

The NOD seems only still relevant in three Member States (Denmark, Hungary and Luxembourg) and they appear to attach importance to it, even though the amounts equivalent up to 2.2 % of covered deposits per Member State are relatively limited in size. In any case, the amounts of such deposits and other instruments are gradually declining as more of them reach the expiry date.

6.2.3 Options in the context of EDIS

This NOD will automatically lose its relevance as the remaining instruments and deposits issued under this provision reach their maturity date. For this it is important that all the deposits covered under this NOD have a clear maturity or the expiration date of the coverage is clearly specified in the legislation. Therefore, it is recommended to retain the NOD in its current form (Option 1) but add that in the absence of a maturity date the coverage is limited to, for instance, 12 months after transposition and including them in the calculations of the contributions to the DGS (Option 3).

6.2.3.1 Option 1: Retain in current form

This policy option considers that Member States can continue to cover deposits that were covered under this provision in the DGSD and of which the coverage did not yet expire.

Effectiveness: Retaining the NOD would contribute to depositor confidence to some extent, so that a limited number of depositors are not confronted with a change in coverage that they could not anticipate. However, the NOD increases the financial exposure of the DGS without requiring an extra contribution, which may increase the risk to the DGS.

Efficiency: This policy option would mean a limited extra operational burden for the DGS, which can relatively easily identify the deposits and other instruments in scope, as the number and types of deposits and other instruments are relatively limited.

Coherence: The potential negative impact of additional coverage of such specific deposits and other instruments is marginal, in view of their limited relevance and fixed maturity.

Subsidiarity: This policy option retains the flexibility of Member States.

6.2.3.2 Option 2: Eliminating

This policy option considers eliminating the NOD. In view of its limited relevance, the positive effects would likely be marginal.

Effectiveness: Eliminating the NOD may reduce the confidence of a limited group of affected depositors. In view of its limited relevance, the effect on depositor confidence would likely be marginal.

Efficiency: This policy option could improve the efficiency of the DGS and reduce the related administrative burden.

Coherence: This option would contribute to reducing divergence in policy between Member States.

Subsidiarity: The flexibility of Member States would be reduced in exchange for increased consistency.

6.2.3.3 Option 3: Alternative

This option considers a modification to the current NOD by requiring the DGS to reflect these deposits in the contribution to the DGS and potentially also exclude those deposits without a fixed maturity date after a short transition period.

Effectiveness: The option would complement Option 1 (retaining the NOD in its current form) in order to mitigate the increased risk for the DGS by requiring a contribution for the additional coverage as well as ensure that the level playing field is preserved by requiring an expiration date for all deposits under this option.

Efficiency: This policy option would not impact efficiency because member institutions already hold relevant information on the deposits and other instruments covered under this NOD.

Coherence: Coherence and the level playing field would improve under this option.

Subsidiarity: The discretion of the Member States would be reduced. However, most of them in practice already apply or applied a limit to the coverage of the deposits and other instruments. The main difference would be to account for the additional coverage in the contribution, which is important when the DGSs are mutualised under EDIS.

6.2.3.4 Option 4: Full harmonisation

The NOD has a transitional nature, meaning that full harmonisation across all Member States is foreseen in the DGSD. This option is *de facto* the same as retaining the NOD in its current form (see assessment of Option 1).

7 Recommended policy mix

Generally, national options and discretions (NODs) allow the EU legislator to demonstrate respect for national legal traditions and regulatory practices as well as to reduce implementation costs, especially in Member States with existing national frameworks and sometimes to help avoid political stalemate in the negotiations by facilitating compromises. The NODs also have, however, the potential to distort the level playing field and lead to fragmentation in the Single Market. In addition, they can create higher complexity, including higher compliance costs, and reduce transparency.

The DGSD contains more than 22 NODs. Their relevance under EDIS was frequently addressed in the context of the negotiations in the European Parliament and the Council[243]. In this context, the purpose of the study is to provide a mapping of the current use of the NODs in the Member States and contribute to the discussion regarding their treatment under EDIS. More specifically, whether greater harmonisation would be necessary where, for instance, the common fund under EDIS were called on to finance the NODs.

This chapter gives a brief overview of the NODs under the DGSD by outlining the policy recommendations, including in view of the impact of the NODs on EDIS in terms of financial exposure and administrative burden. The policy recommendations are based on the assumption that EDIS would **take the form of a full insurance scheme.**

For the purpose of defining the recommendations, each of the four policy options (see Chapter 3) was considered against the following elements: effectiveness, efficiency, coherence and subsidiarity. In practice, this means that the recommended option aims to ensure the objective of an effective depositor protection, without requiring support from taxpayers and against limited operational costs, while ensuring the level playing field in line with the broader context of financial policies such as resolution, and the principle of subsidiarity.

7.1 Coverage level and pay-out procedure

Member States use a number of NODs that impact the standard coverage level, taking into account special and sometimes country-specific circumstances. Some of these NODs increase the coverage level by protecting so-called temporary high balances (THBs – NOD 4), deposits in pension schemes (NOD 1 and 5) or by extending deposit protection to small public authorities (NOD 2). Other NODs have the potential to either decrease or derogate from the standard protection. The former category includes one NOD that excludes deposits to pay off the loan on private immovable property from the standard coverage (NOD 3); and another NOD which allows the set-off of the deposit against due liabilities (NOD 7). The latter category includes one that treats certain deposits held by two or more persons as a single depositor (NOD 6) and another that excludes deposits fulfilling social purposes (NOD 8). The two remaining NODs relate to the pay-out procedure, making it possible to provide for a longer repayment period for certain deposits where the depositor is not the person entitled to the sums on the account, i.e. so-called beneficiary accounts (NOD 9) and to set a time limit for the validity of depositors' claims for repayment (NOD 10).

Among the NODs with the potential to increase the standard protection, NOD 4 for THBs, applicable in all Member States, is highly important for depositors because it temporarily protects funds originated due to or reserved for important, often one-time, life events

243 European Commission (2017), Communication to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on completing the Banking Union, p. 11.

(real estate transactions, social purposes, and compensation for criminal injuries or wrongful convictions) – there is also a public interest in protecting these amounts that exceed the regular coverage level. It is recommended, therefore, to retain this NOD with modifications in the sense that depositors would be entitled to THB protection up to the limit of EUR 500 000 and for a period of up to 6 months[244]. The main benefit of this approach would be significantly reduced fragmentation across Member States relative to the currently different amounts of THBs.

The two NODs covering pension savings, including personal pension schemes and occupational pension schemes of small and medium enterprises SMEs (NOD 1) and schemes protecting old-age provision products and pensions (NOD 5) are used in a small number of Member States[245]. These NODs primarily ensure a level playing field between different providers of pension products held by individuals and SMEs, consistent with the economic rationale for deposit insurance to protect households and SMEs that cannot be expected to monitor the financial strength of a member institution. It is recommended to retain these NODs with the modification that they are treated as covered deposits up to EUR 100 000 per depositor per institution and included in the calculation of contributions.

While public authorities are not eligible for deposit protection, Member States may extend the protection to small local authorities with an annual budget of up to EUR 500 000 (NOD 2). As only a limited number of Member States transposed and used this NOD so far, the study recommends its elimination. The main benefit is reduced administrative burden because national DGSs would no longer be required to identify local authorities meeting the threshold of the EUR 500 000 budget. This approach would also weaken the sovereign-bank nexus as public authorities are an extension of governments.

Among the NODs that decrease the standard coverage, NOD 6 treats certain types of deposits held by two or more persons, that are members of a business partnership or an association without legal personality, as if they were a single depositor[246]. It is recommended to retain this NOD with a restricted scope. Accordingly, to ensure a level playing field with SMEs, only profit-making businesses without legal personality would be treated as a single depositor. However, the NOD would no longer apply to non-profitable associations or co-ownerships whose deposits would be considered as a joint account.

The exclusion of deposits to pay off a loan on private immovable property (NOD 3) and deposits fulfilling a social purpose (NOD 8) each address circumstances specific to one Member State[247]. NOD 3 covers financial products designed to maximise fiscal benefits by delaying the repayment of the mortgage loan. These financial products, integrating a deposit and a mortgage loan, will be gradually phased out by 2030[248]. Because of the link with the mortgage loan, no deposits would be subject to repayment in the event of a pay-out unless their amount exceeds the actual loan. Similarly, NOD 8 covers certain types of deposits fulfilling a social purpose (e.g. the popular Livret A bank account) that are guaranteed by the state, rather than by the DGS. In both cases, it is recommended to retain the NODs because of their specific nature and because they neither increase risk for the DGS nor for the depositor.

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[244] Based on the median implementation, assuming a coverage of EUR 500 000 in the UK with about 87% of the deposits covered, the recommended coverage level would cover basically all the deposits related to primary residential property transactions in the majority of Member States.

[245] The schemes under NOD 5 may be protected beyond the regular coverage level of EUR 100 000 per depositor per institution.

[246] Member States that do not apply the NOD, consider such deposits as joint accounts where each holder is eligible for protection of up to EUR 100 000.

[247] The NOD 3 is applicable in the Netherlands and NOD 8 is applicable in France.

[248] These products are no longer marketed because of the change in the tax regulations.

Under the DGSD, depositors normally have access to their aggregated deposits of up to EUR 100 000 without any set-off of their liabilities. By derogation to this general principle, Member States are allowed to take into account depositors' due liabilities when calculating the repayable amount under the NOD 7. Although transposed in a relatively high number of Member States, the study demonstrates that such a set-off appears to have a very limited impact in practice. In this view, it is recommended to eliminate this NOD in order to reduce the administrative burden for DGSs. Accordingly, the responsibility to recover the due amounts would be shifted to a liquidator in the insolvency procedure.

The two remaining NODs allowing a longer repayment period for the beneficiary accounts (NOD 9) and adjusting the deadline for the validity of repayment claims (NOD 10) ease the operational processes of the DGSs. Therefore, the policy option of full harmonisation is recommended for NOD 9, also because the latter is already transposed in the majority of Member States[249], while retaining the possibility for the DGSs to repay earlier than upon the expiry of the maximum time limit of three months provided they have verified the depositor claims. With respect to NOD 10, it is recommended to retain the NOD with a modification that depositors would be able to claim their deposits within the limitation period of 3 years since the determination of unavailable deposits. Generally, this NOD has a fairly limited impact on depositor protection because the vast majority of depositor claims is settled during the standard pay-out procedure. However, there is a small number of Member States with deadlines for the validity of claims that are too short. The recommended approach would allow the DGSs to close the outstanding repayment cases within a reasonable period while reducing the current fragmentation across Member States.

With EDIS in place, NODs 1, 4, 5 and to some extent also 6[250], have the potential to increase the financial exposure of the common fund. Therefore, it is proposed that all these deposits should be included in the calculation of the risk-based contributions in order to mitigate the impact on the financial exposure of EDIS. The study points out that the deposits under NODs 1, 4 and 5 are currently not consistently reflected in the contributions. With respect to THBs, the study acknowledges the difficulties of identifying THBs in advance[251] and proposes that the latter could be accounted for in the calculation of the contributions based on estimations. In addition, in the event that the proposed policy recommendations are put into practice, the eliminating of NOD 7 could also increase the financial exposure of EDIS. However, in view of its limited effects on the covered deposits, the study considers that the impact on financial exposure would not be material.

In terms of administrative burden, neither of the above NODs would impact EDIS directly, because the settlement of depositor claims when determining the repayable amount or handling the pay-out procedure would remain as the competence of national DGSs.

7.2 Available financial means and contributions

Member States also use a number of NODs, which impact (i) the collection and the use of available financial means of the DGS and (ii) the calculation of contributions.

The first category includes the possibility that available financial means include a certain share of payment commitments (NOD 11) or are raised through contributions into

[249] 22 Member States have transposed the NOD 9.

[250] In the event that the policy recommendation regarding the NOD 6 is followed, i.e. the scope is restricted to profit-making business partnerships without legal personality, the deposits of non-profitable associations or co-ownership would be treated as a joint account and increase the financial exposure.

[251] Only 1 Member State has a positive experience in this sense.

existing schemes (NOD 12) and the possibility to use available financial means for preventive (NOD 13) or alternative measures (NOD 14) or for voluntary lending among DGSs (NOD 15). The second category includes the different possibilities to make targeted adjustments to contributions of member institutions in view of their specific features, i.e. lower contributions for low-risk sectors (NOD 16), use of a uniform risk-weight for banks permanently affiliated to central bodies (NOD 18), and minimum contributions (NOD 19). Lastly, this section also covers the participation of third country branches (NOD 20).

The main challenges seem to relate to the preventive and alternative measures, also in view of limited practical experience. The preventive measures (NOD 13) are particularly crucial for IPSs recognised as DGSs, which rely on this NOD to achieve their main goal, i.e. to prevent the failure of member institutions by intervening before the resolution phase. The intervention of the DGS under normal circumstances is only supposed to follow after the resolution decision. This study therefore recommends that preventive measures are only used by voluntary funds. IPSs recognised as DGSs might decide to become pure IPSs. The IPSs might benefit from lower contributions under NOD 17. Moreover, some DGSs are also interested in using such measures to lower the costs of intervention as compared to a pay-out. In this context, the most reasonable option is to only allow them to use alternative measures.

The alternative measures (NOD 14) have demonstrated a high potential to preserve access to deposits and reduce the destruction of economic value resulting from an insolvency proceeding. It is recommended to maintain such measures with targeted modifications to address the fragmentation in the national transpositions affecting the level playing field across the EU and the protection of depositors. In particular, these modifications would ensure (i) an open competitive procedure to find a potential acquirer interested to take over either assets and liabilities or just the deposit book at a higher price than would have otherwise been materialised in insolvency (i.e. less destruction of value), (ii) that such a transaction constitutes the least cost[252], possibly in line with the Valuation 3 used in the BRRD, and (iii) does not put the financial stability of the acquirer at risk. This modification could also entail possible changes to creditor hierarchy, by levelling the covered and uninsured deposits[253].

With EDIS in place, alternative measures could be financed by EDIS under the full insurance scheme or, alternatively, depending on the form EDIS takes, also by national DGSs.

Currently, most third country branches in the vast majority of Member States participate in the national DGSs, but the approaches to the equivalence testing and calculation of contributions are diverse. In order to ensure an equal treatment of these branches across Member States, including the protection of depositors in the EU, the treatment of third country branches (NOD 20) should be harmonised. Therefore, it is recommended to require all third country branches to participate in the DGSs and define common criteria for the equivalence test[254] and the calculation of contributions. Besides, as third country branches would increase the risk profile of EDIS, these common criteria would mitigate the risk to EDIS. In addition, as third country branches do not have their own capital and liquidity requirements, it could be difficult to determine their financial strength and the risk to financial stability[255]. Therefore, it is proposed that third country

[252] The costs of these measures may not exceed the net amount of compensating covered depositors of the failing member institution, but there are no detailed rules how to apply such the least-cost test.

[253] This is because the recent changes to the creditor hierarchy regarding the preferential ranking of covered deposits are likely to reduce the possibility of applying alternative measures.

[254] The equivalence test examines whether the third country DGS offers protection equivalent to that of the DGS in which the third country branch wants to operate.

[255] In addition, the reimbursement of the pay-out will be subject to the insolvency procedures and rules of the third country, which may be less favourable to EDIS than EU rules.

branches are subject to a maximum threshold of EUR 500 million on covered deposits as another risk-mitigation measure.

A small number of Member States have used payment commitments (NOD 11) to ensure that the DGS would have sufficient financial means, without requiring the member institutions to actually transfer the funds. However, it is proposed to eliminate the NOD in view of its complexity in terms of the collection of the contributions and collateral management. Moreover, this NOD could potentially create uncertainty about the available financial means of EDIS if the materialisation of collateral is for any reason problematic.

As concerns NOD 12 dealing with contributions from existing mandatory schemes, it is proposed to eliminate it because the NOD is only specific to one Member State[256] and would not be relevant any longer. The lack of practical use so far of NOD 15 on voluntary lending between DGSs makes it questionable that it should continue to be part of the framework. However, because of the voluntary nature, the study suggests that retaining the possibility for voluntary lending between DGSs and, with EDIS in place, also between DGSs (both inside and outside the Banking Union) and EDIS, could constitute an additional tool in case of liquidity shortfalls or a systemic crisis.

The remaining NODs deal with the contribution model. In the context of EDIS, it is recommended to revise the NODs dealing with the central body structure (NOD 18), the minimum contribution (NOD 19), and the lower contributions for IPS members (NOD 17).

Only 2 Member States use the same risk-weights for institutions permanently affiliated to a central body (NOD 18) in order for the contribution model to reflect the fact that these institutions are guaranteeing each other. However, the application of the same risk-weight could arguably encourage the affiliates to take more risk. Therefore, it is recommended to retain the NOD with targeted modifications. These would identify additional conditions in order to strengthen the internal governance within the networks and avoid the moral hazard for the affiliated institutions.

A small number of Member States use the NOD on the minimum contribution for member institutions irrespective of their covered deposits (NOD 19). It is proposed to revise its design by aligning it to that of the Single Resolution Fund, i.e. creating a tiered harmonised system of flat contributions for a number of categories of small institutions based on their size. In addition, this NOD could be used to require any new institution to pay an entry fee when joining the DGS. This approach would reduce the fragmentation across Member States.

In addition, it is recommended to keep the lower contributions for members of IPSs not recognised as DGSs (NOD 17) because this NOD takes into account the lesser risk of a potential pay-out for members of IPSs. As Member States are currently applying different modalities of calculation for such lower contributions, it is also recommended to set a common method for reflecting IPS membership in the calculation of contributions.

Lastly, it is recommended to eliminate NOD 16 on lower contributions for low-risk sectors because it is not used in practice, often due to fact that the definition of a low-risk sector is considered too complex.

7.3 Transitional provisions

The DGSD contains two transitional NODs.

[256] NOD 12 is applicable in the UK.

The majority of Member States use the first NOD that allows for a repayment period longer than 7 working days to repay the covered deposits during the several transitional periods by 31 December 2023 (NOD 21). This allows DGSs to prepare for the fast pay-out procedures. In practice, many DGSs already confirmed their ability to pay out depositors within 7 working days or earlier. Because this NOD expires by 31 December 2023, the study recommends its harmonisation.

Only 3 Member States appear to still use the second NOD that wholly or partially covers certain deposits or other instruments until their initial maturity date if they were paid in or issued before 2 July 2014. The NOD seems to have limited impact in terms of covered deposits. Moreover, as this NOD will cease to have an effect as the remaining instruments and deposits within the scope of the NOD reach their maturity date, it is recommended to retain the NOD in its current form with the condition that only deposits with an explicit maturity date are maintained within its scope.

7.4 Overview of recommended policy options

The table below provides an overview of the recommended treatment of the NODs in the context of an EDIS that takes the form of a full insurance scheme. For the NODs when the difference between the options is small, both the recommended option are indicated as well as the option it relates most to.

Table 7.1 Recommended options to address NODs in EDIS

NOD	Title	Option 1: Retain in current form	Option 2: Eliminating	Option 3: Alternative	Option 4: Full harmonisation
	Coverage level and pay-out procedure				
1	Coverage of pension schemes [Article 5(2)a]			X	x
2	Deposits held by small local authorities [Article 5(2)b]		X		
3	Exclusion of deposits to pay off a loan on private immovable property [Article 5(3)]	x		X	
4	Temporary high balances relating to certain transactions [Article 6(2)]			X	x
5	Old-age provision products and pensions [Article 6(3)]	X			
6	Treated as single depositor [Article 7(2)]			X	x
7	Set-off of depositor liabilities [Article 7(5)]		X		x
8	Exclusion of deposits fulfilling a social purpose [Article 7(8)]	X			

NOD	Title	Option 1: Retain in current form	Option 2: Eliminating	Option 3: Alternative	Option 4: Full harmonisation
9	Longer repayment period for certain deposits [Article 8(3)]	x			X
10	Deadline on validity of repayment claims [Article 9(3)]			X	x
	Contributions and available financial means				
11	Payment commitments [Article 10(3)]		X		
12	Contributions into existing mandatory schemes [Article 10(4)]		X		
13	Financing of failure prevention measures [Article 11(3)]		x	X NOD 17	
14	Financing of measures to preserve access of covered deposits [Article 11(6)]			X	x
15	Voluntary lending between DGSs [Article 12(1)]	x			X
16	Lower contributions for low-risk sectors [Article 13(1) 2nd subpara]		X		
17	Lower contributions for members of IPSs [Article 13(1) 3rd subpara]			X	
18	Use of a uniform risk-weights for banks affiliated to central bodies [Article 13(1) 4th subpara]	x		X	
19	Minimum contribution [Article 13(1) 5th subpara]	x		X	
20	Participations by branches from outside the EU [15(1) 2nd subpara]			X	x
	Transitional provisions				
21	Repayment periods longer than 7 working days [Article 8(2)]	x			X
22	Coverage of deposits until the maturity date [Article 19(1)]	x		X	

Note: The table above indicates for each of the NODs its recommended treatment under the DGSD and EDIS. The recommended option is marked with a large "X", whereas a small "x" marks similar options.

Source: CEPS elaboration

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List of abbreviations

Abbreviations

Acronym	Full form
ACPR	Autorité de contrôle prudentiel et de résolution
AGDL	Association pour la Garantie des Dépôts Luxembourg
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
BPS	System Ochrony Zrzeszenia
BRRD	Bank Recovery and Resolution Directive
BVR	Bundesverband der Deutschen Volksbanken und Raiffeisenbanken
CDC	Caisse des Dépôts et Consignations
CEPS	Centre for European Policy Studies
CRR	Capital Requirements Regulation
DG FISMA	Directorate-General for Financial Stability, Financial Services and Capital Markets Union
DGS	Deposit Guarantee Scheme
DGSD	Deposit Guarantee Schemes Directive
DSGV	Deutsche Sparkassen und Giroverband
EBA	European Banking Authority
ECB	European Central Bank
EdB	Entschädigungseinrichtung Deutscher Banken
EDIS	European Deposit Insurance Scheme
EdO	Entschädigungseinrichtung des Bundesverbandes öffentlicher Banken
ESA	Einlagensicherung Austria
EU	European Union
EUR	Euro
FDIC	Federal Deposit Insurance Corporation
FDICIA	FDIC Improvement Act
FGDR	Fonds de Garantie des Dépôts et de Résolution
FITD	Fondo Interbancario di Tutela dei Depositi
FROB	Fondo de Reestructuración Ordenada Bancaria
FSCS	Financial Services Compensation Scheme
GBP	British Pound
GDP	Gross Domestic Product
IADI	International Association of Deposit Insurers
IMF	International Monetary Fund
IPS	Institutional Protection Scheme
KNF	Komisja Nadzoru Finansowego
LDDS	Livret de développement durable et solidaire
LEP	Livret d'épargne populaire

Acronym	Full form
LTV	Loan to Value
MFSA	Malta Financial Services Authority
MREL	Minimum Requirement for own funds and Eligible Liabilities
NOD	National Option and Discretion
PRA	UK Prudential Regulation Authority
RBC	Risk-based contribution
RTS	Regulatory Technical Standard
SCV	Single Customer View
SDD	Specific Deposit Default
SGB	Spółdzielczy System Ochrony
SKOK	Spółdzielcza kasa oszczędnościowo-kredytowa
SMEs	Small and Medium-sized Enterprises
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
SZHISZ	Szövetkezeti Hitelintézetek Integrációs Szervezetét
THB	Temporary High Balance
VAT	Value Added Tax

Countries

Country code	Country names
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania

Country code	Country names
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom
US	United States

Annex I. Methodology for Temporary High Balances

The table below summarises the methodology used to estimate the amount of temporary high balances (THBs). The model has been defined to estimate the THBs resulting from transactions relating to primary private residential properties (Article 6 (2)(a) of the DGSD). The model has been defined to simulate the impact of the various legal provisions related to the coverage level, coverage duration and actors covered (buyers and/or sellers).

The model has been defined for three types of actors, including i) first-time-buyers, ii) second or multiple-time buyers and iii) sellers. There are two types of purchases as previous research in Sweden has found that first-time buyers are much more likely to borrow money and thus have lower THBs (Grodecka, 2018).

Formula for calculation of THBs

(1) $$THBs = THBs_{First\ time\ buyer} + THBs_{Multiple\ time\ buyer} + THBs_{Sellers}$$

For each of these actors the number of transactions, price of the residential property concerned, deposits generated and holding periods are estimated. All these four elements are multiplied and summed to determine the total THBs for each of the actors. In the presentation the THBs are expressed as share of covered deposits to allow for easier comparison across Member States and understanding of the importance for the DGSs.

Formula for calculation of THBs per type of actor (simplified expression)

(2) $$THBs_{Type} = Transactions_{Type} * \ Property\ price * Deposit\ share_{Type} * Holding\ period_{Type}$$

As the THBs are in most Member States capped at amounts ranging between EUR 130 000 and unlimited, the model has the possibility to set a limit to the amount covered. The limit in the model is determined based on the deposits used for the purchase of the residential property and deposits received from sales. The formula does not consider the deposits above the limit that come under the coverage of the THB at the moment that the deposits are transferred.

Formula for application of THB maximum coverage levels

(3) $$Property\ price * Deposit\ share_{Type} \leq THB_{Max\ coverage\ level}$$

Similarly, the holding period is limited by the legal provision, restricting the THBs to a duration between 3 months and 12 months.

Formula for application of THB maximum coverage durations

(4) $$Holding\ period_{Type} \leq THB_{Max\ coverage\ duration}$$

The table below describes how each of the elements has been defined, including calculation, sources and assumptions. When an indicator or driver is applicable to several types of actors it is only explained the first time.

Table A 1. Indicators, drivers, data sources and assumptions for THBs model

Indicators	Drivers	Calculations	Sources	Assumptions
Property price		Price per square metre * Region adjustment * Types of residential property adjustment * Number of square metres		
	Price per square metre	Average of square metre price in (larger) cities	The price per square metre to buy apartment in city centre in 2018 is obtained from Numbeo (2019)	The average price per square metre in the larger cities is representative for all cities
	Region adjustment		The model considers three types of regions (cities, towns and suburbs, and rural areas). The difference in price level between regions is determined based on the price levels across regions in the Netherlands in 2018 based on data from the Dutch statistical office (CBS, 2019). The type of region has been defined based on the classification of the European Commission.	The average price per square metre in rural areas is 59 % and towns and suburbs is 70 % of the price in cities (100 %) like in the Netherlands.

Indicators	Drivers	Calculations	Sources	Assumptions
	Types of residential property adjustment		The model considers three types of residential property (detached houses, semi-detached houses and flats). The adjustment for the difference in price level between different types of residential property is determined based on the price per square metre across the different types in the Netherlands in 2018 based on data from the main Dutch association of real estate agents (NVM, 2019). To align the categories provided with the Eurostat classification (See Transactions) the square price of semi-detached houses is based on the average for townhouse, corner houses and 2 under 1 roof houses, which are very similar.	The average price per square metre of semi-detached houses is 79 % and detached houses is 90 % of the price of flats (100 %) like in the Netherlands.
	Number of square metres		The number of square metres per type of residential property is determined based on the number of square metres across the different types in	The average number of square metres of flats is 84 square metres, semi-detached houses 123 square metres and detached

Indicators	Drivers	Calculations	Sources	Assumptions
			the Netherlands in 2018 based on data from the main association of real estate agents (NVM, 2019). To align the categories provided with the Eurostat classification (See Transactions) the size of semi-detached houses is based on the average for townhouse, corner houses and 2 under 1 roof houses, which are quite similar.	houses 171 square metres like in the Netherlands.
Transactions (first-time and multiple-time buyers)		Total number transactions * Type of actor share		
	Total number of transactions	Transactions involving existing residential property + (Transactions involving newly completed residential property * Share of households that own their property)	The total number of transactions for buyers consists of purchases of both existing and new residential property. *Total number of transactions with existing residential property* are based on statistics for 2017 from ECB (2018) completed with web searches.	When the number of transactions is not reported the median share of transactions was used for both existing and new residential properties, 3.7 % and 0.7 % of households owning residential property respectively

Indicators	Drivers	Calculations	Sources	Assumptions
			Total number of newly completed residential property are based on statistics for 2017 from national statistics offices completed with web searches. *Share of households that own their residential property* is based on statistics for 2017 or latest year before available from Eurostat (2018)	
	Type of actor share	1/(Share of residential property transactions * Property ownership years)	The share of first-time buyers is determined based on the total times that residential properties are traded over the time that an average owner is expected to hold property. The second or multiple-time buyer is defined as 100 % minus the share of first-time buyers. *Share of residential property* is calculated by the total number of transactions (see above) as share of total households that owns a	An average first-time buyer is assumed to be 30 years old. The maximum share of first-time buyers is set at 75 %

Indicators	Drivers	Calculations	Sources	Assumptions
			residential property. The number of residential property owning householders in 2017 is based on Eurostat (2018). *Property ownership years* is based on the average life-expectancy in 2017 from Eurostat (2019) minus the age of an average first-time buyer	
Transactions (seller)		Total number transactions		
	Total number of transactions	Transactions involving existing residential property	The total number of transactions for sellers consist of sales of existing residential property. *Total number of transactions with existing residential property* are based on statistics for 2017 from ECB (2018) completed with web searches	All new residential property is developed by commercial operators
	Type of residential property		The total number of transactions are distributed across the three types of residential property (detached houses, semi-	The share of transactions is similar to the distribution of types of residential property.

Indicators	Drivers	Calculations	Sources	Assumptions
			detached houses and flats) and types of regions (cities, towns and suburbs, and rural areas) respectively. The share of residential property by type of residential property and region are based on data on the share of population across types of residential properties and regions in 2017 or latest year available is obtained from Eurostat (2019).	
Deposit share (first-time buyer)		(1 + Residential property costs) – Mortgage loan		
	Mortgage loan	Share of LTV ratio	For the mortgage loan as share of residential property price two types of first-time buyers are considered. Those that are purchasing the residential property against the maximum share of the property price they can reasonably borrow and those that borrow less. The maximum amount that can be borrowed is based on	Half of the first-time buyers are borrowing the maximum amount based on the LTV and the other half of the first-time buyers borrow about half of the LTV. These shares are roughly based on the distribution for Sweden in Grodecka (2017).

Indicators	Drivers	Calculations	Sources	Assumptions
			the loan-to-value ratio (LTV). The LTV is based on the legal requirement or common practice obtained via web searches.	
	Residential property costs (as share of house price)	Tax + Purchase related costs	The residential property costs are based on the residential property transaction related tax (excl. capital gains) based on web searches plus additional costs related to the purchase (real estate agent, notary, etc.)	The additional purchase related costs are assumed around 2 %
Deposit share (second or multiple-time buyer)		(1 + House purchase costs) + − Mortgage loan	See above.	A quarter of the second or multiple-time buyers are borrowing the maximum amount based on the LTV and the other three quarters borrow about half of the LTV. These shares are roughly based on the distribution for Sweden in Grodecka (2017).
Deposit share (sellers)		(Residential property price index − Remaining mortgage loan) /(Residential		

Indicators	Drivers	Calculations	Sources	Assumptions
		property price index)		
	Residential property price index	(1 + residential property price increase)^ Average holding period	The residential property price index captures the price increase since the residential property was bought. *Residential property price increase* is based on the average annual price increase in the 15-years period between 2002 and 2017 from Eurostat (2019). *Average holding period* is calculated by dividing one by the share of primary residential properties traded annually in 2017 or the latest year available based on Eurostat (2019), ECB (2019) and web searches	The average holding period is maximum 40 years
	Remaining mortgage loan	1 – (Average holding period / Average maturity of mortgage loans)	The remaining share of the mortgage loan is determined based on the average holding period as share of the average maturity of mortgage loans at issuance.	

Indicators	Drivers	Calculations	Sources	Assumptions
			Average holding period (see above). *Average maturity of mortgage loans* in 2017 is based on web searches	
Holding period (first-time buyers)		Holding period (first-time buyers) * Adjustment for purchase agreement		
	Holding period (first-time buyers)		For the holding period of first-time buyers it is considered that the first-time buyers save a substantial part for a longer period running up to the purchase, while they receive the remaining part they contribute with deposits just a few days in advance of the transaction (loans from family and friends, consumer loans, etc.).	The first-time buyers are assumed to save about half of their personal contribution. A holding period of 7 days is assumed for the remaining part they receive just in advance of the transaction.
	Adjustment for purchase agreement	((((1-Monthly reduction in purchase agreements signed)^	The buyers are only covered at the moment that they are involved in a purchase agreement, which is not necessarily already signed	The share of signatures of the purchase agreements is assumed to drop by 20 % each additional month.

Indicators	Drivers	Calculations	Sources	Assumptions
		Maximum covered duration)-1)/-Monthly reduction in purchase agreements signed)	at the moment that the potential coverage under the THB provision would start *Monthly reduction in purchase agreements signed* is based on an assumption. *Maximum covered duration* depends on the legislative requirement.	The maximum covered duration ranges between 3 months and 12 months.
Holding period (second and multiple-time buyers)				
	Holding period (second and multiple-time buyers)		For the holding period of second and multiple-time buyers it is considered that the buyers save a substantial part for a longer period running up to the purchase, while they receive the remaining part they contribute with deposits just a few days in advance of the transaction from a sales transaction.	The second and multiple-time buyers are assumed to save about a quarter of their contributions with deposits themselves. A holding period of 7 days is assumed for the remaining part they receive just in advance from a sales transaction.
Holding period (sellers)		(Share of last time sellers *		

Indicators	Drivers	Calculations	Sources	Assumptions
		Holding period last time sellers) + (Share of other sellers * Holding period other sellers)		
	Share of last time sellers	1/(Share of existing residential property transactions * Property ownership years)	The share of last time buyers is determined based on the total times that residential properties are traded over the time that an average owner is expected to hold property (see Transactions first-time buyers and Type of actor share).	The maximum share of last time buyers is set at 75 %.
	Holding period last time sellers	((((1-Share of monthly outflows)^ Maximum coverage duration)-1)/- Share of monthly outflows)	The sellers are only covered as long as they leave the deposits on their account, at the moment that they use it for other purposes (investments, transfer to accounts at multiple banks, etc.) they are no longer covered. *Share of monthly outflows* is based on an assumption.	The share of outflows is assumed to be around 20 % per month on average. The maximum coverage duration ranges between 3 and 12 months.

Indicators	Drivers	Calculations	Sources	Assumptions
			Maximum coverage duration depends on the legislative requirement.	
	Share of other sellers	1 – Share of last time sellers	See above.	
	Holding period other sellers		The holding period of other sellers is assumed the same as of second or multiple-time buyers.	The holding period for sellers that are intended to purchase a new residential property is assumed 7 days.

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