



ELIGIBLE DEPOSITS

Regulatory framework and some open questions

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Definition of a „deposit“ in Article 2 (3) DGSD

► Positive definition + 2 explicit examples:

„a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit ...“

► Negative definition (3 exclusions):

„... but excluding a credit balance where:

(a) its existence can only be proven by a financial instrument as defined in Article 4(17) of Directive 2004/39/EC of the European Parliament and of the Council (1), unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014;

(b) its principal is not repayable at par;

(c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party“

„Normal banking transactions“

„a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit ...“

➡ funds left in an account, or

➡ funds from temporary situations deriving from „normal banking transactions“

Normal banking transactions:

- ▶ Payment transactions, collection transactions (encashment), letters of credit, ... etc.
- ▶ Who decides whether a banking transaction is normal/not normal (banking supervisor, court) ?
- ▶ Supposedly within the scope of the banking licence but only this condition?
- ▶ Normal = usual, performed by other banks ?

Principal - no conditions for repayment (?)

*„a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution **is required to repay under the legal and contractual conditions applicable**, including a fixed-term deposit and a savings deposit ...*

*but excluding a credit balance where ... (c) **its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party**“*

EBA definition of a deposit (EBA/Op/2014/12):

*„a sum of money; repayable on demand or at a contractually agreed point in time (**but otherwise repayment of the principal is unconditional**) and with or without interest or a premium, received from third parties (legal or natural persons), received in the course of carrying on the activity by way of business and subject to number of exclusions ...“
(exclusions - money for services or for provision of property, atc.)*



No conditions for repayment of the principle of a deposit but time (otherwise it is not a deposit) (?)


Certificate of deposit

„... but excluding a credit balance where ... (a) its existence can **only be proven by a financial instrument** as defined in Article 4(17) of Directive 2004/39/EC of the European Parliament and of the Council (1), **unless it is a savings product which is evidenced by a certificate of deposit** made out to a named person and which exists in a Member State on 2 July 2014“

- ▶ Definition of financial instruments – MIFID I → MIFID II (Directive 2014/65/EU) Annex I Section C
- ▶ Evidenced, proven by / incorporated in ?
- ▶ existing in a Member State on 2 July 2014 – refers to a type of a savings product (?)
(in some countries only certificates of deposits issued prior to that date - to be sure)

Structured deposits

„...but excluding a credit balance where ... (c) its **principal is only repayable at par under a particular guarantee or agreement** provided by the credit institution or a third party“

MIFID II (Art. 4 para 43): „structured deposit“ means a deposit as defined in  which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as ... (index, financial instrument, commodity, foreign exchange rate, combination of those).

- ▶ The principal of a deposit is at risk = a structured deposit under MIFID II (not covered)
- ▶ Only interest, premium at risk = a deposit covered under DGSD
- Only a part of the principal is at risk (e.g. 5 %) – 95 % covered or 100 % uncovered ?
- Interest or premium at risk covered (?) Any role for IPS ?

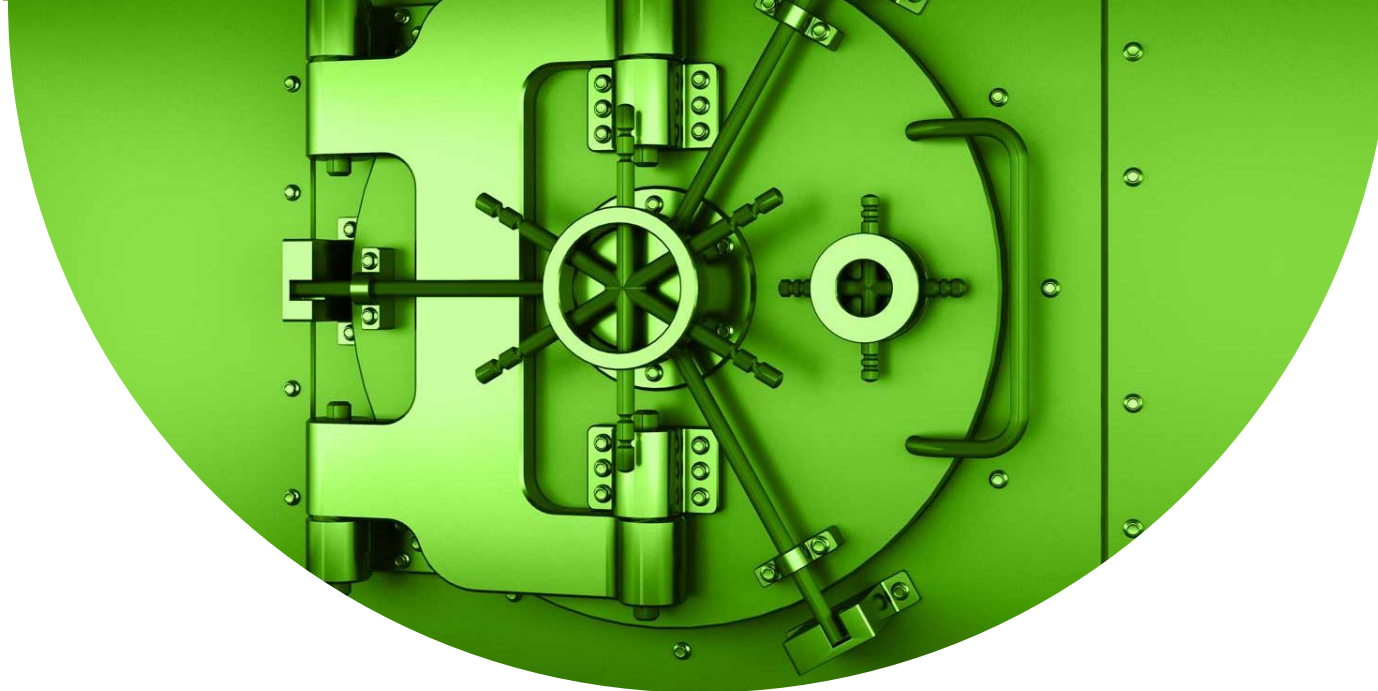
Eligibility of deposits

Article 5 DGSD - a negative definition (the list of exclusions)

Many issues could be also raised here – e.g.:

- ▶ deposits of „credit institutions“ – EBA/Op/2014/12: *„wide variation between Member States as to the prudential treatment of relevant entities“* – perimetres of credit institutions in Member States differs
- ▶ deposits of „insurance undertakings“ – what about other licenced subjects in this business (insurance agents, insurance brokers) – possibly covered
- ▶ deposits of local authorities – optional to cover if annual budget is up to 0,5 mil. EUR
 - budget proven prior to or after the payout event
 - more than one level self-governance (e.g. Prague)

and many, many further questions and issues



Thank you

The outcomes of the survey will follow ...