

DGSD Implementation Initiative (D2I)

Berlin, 15 March 2019

1 Joint Accounts

2 Temporary High Balances

Introduction: Regulatory framework (incl. historical background), state of the discussions in the TFDGS, EBA draft opinion on THB

DGSD Recital (26):

*Member States should ensure that the protection of deposits resulting from certain transactions, or serving certain **social or other purposes**, is **higher than EUR 100 000** for a given period. Member States should decide on a **temporary maximum coverage level** for such deposits and, when doing so, they should take into account the **significance of the protection for depositors and the living conditions in the Member States**. In all such cases, the State aid rules should be complied with.*

Introduction: Regulatory framework (incl. historical background), state of the discussions in the TFDGS, EBA draft opinion on THB

DGSD 6(2):

2. In addition to paragraph 1, 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 particular 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.

3. Paragraphs 1 and 2 shall not prevent Member States 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.

EBA: Time Limit

The TFDGS provided a steer that the time limit should be harmonised. Do you agree that harmonising the time limit applicable to THBs should be set at 12 months, to offer maximum protection to depositors (even though cases of THBs are very rare?)

EBA: Amount

What are the pros and cons of harmonising the maximum amount subject to a THB payout across member states?



EBA: Scope

What is the view of the workstream on the included list of deposits in Art 6(2)? Should extra cases be added or should the Directive offer the member states the opportunity to add additional cases through their national legislation? Or is it better to have a closed list?

EBA: Other Technical Issues

Given many technical and operational issues stemming from THBs, is there merit in considering how further clarity could be provided (by means of Q&As, EBA Guidelines, or amendments of the DGSD)?

EBA: Other Technical Issues

Do you think it should be made clear whether the concept of “legal transferability” applies only to cases where the disposal of the deposit is restricted by a decision of a public authority or by law, or whether it applies also to contractual limitations where the depositor has agreed not to dispose of the deposit?

EBA: Other Technical Issues

Should the DGSD should clarify whether the ability to ‘look through’ named account holders to beneficiaries who are absolutely entitled to the monies on deposit, applies to THBs?

EBA: Other Technical Issues

If compensation has been paid to all co-owners of a joint account pro rata and the total amount credited to this account is successfully claimed by one of the co-owners under the THB regime afterwards, how will the “excess payment” to the other co-owner(s) be treated?

EBA: Other Technical Issues

As out of the survey and during the previous discussion became clear that there is a need for more clarity on the technical aspects of the THB provision for a part of the member states, the following questions can be useful to discuss during the workstream meeting:

- a. Is there added value in tracing a deposit subject to THB provision after the date of crediting that amount on an account?*
- b. Is according to the workstream participants the following statement correct : “ If at the moment of the pay out event, an amount subject to Art 6(2) according to the justifying documents and within the time limit mentioned in Art6(2) is still on one of the accounts of the same depositor within the same credit institution, that amount is subject to a THB payout.”*
- c. For some MSs the entitled depositor to the THB provision in Art 6(2) (a) is not entirely clear. Which depositors are protected?*
 - ☒ the purchaser that deposited a certain amount in order to purchase a private real estate on a third party’s account such as a notary, an attorney at law, a real estate agent;*

(hereby it is possible that the deposit is not legally transferable as the third party may only release the amount to the seller or respectively the purchaser in case the sale is executed or respectively cancelled, according to appropriate contractual arrangements.)

- ☒ the seller with deposits resulting from the sale of a private real estate transaction on its accounts.*

EBA: Other Technical Issues

Should a THB payout be reimbursed in a special account opened by the depositor?

EBA: Other Technical Issues

Should institutions be required to mark potential THB payouts on a continuous basis in the SCV-file? And should institutions be required to mark potential THB payouts upon failure in the SCV-file?



Definitions of THBs in national laws



Concepts of THB (transfer of THB to other accounts, splitting of THBs)



Conditions for claiming THBs



Level of "Proof"



Legal assessment by DGSs



THB claims by more than one depositor



Treatment of THB in SCV File



Pros and cons of dedicated THB accounts



Cross-border implications in THB cases

