

## **Analysis of the answers and issues raised by the proposal for joint accounts' compensation (FGDR survey)**

The proposal for offering an adjusted coverage calculation for joint accounts' co-holders did not receive support from the EFDI community. Therefore, it will be discarded.

It breaks with the various common usages, a possible reason why it triggered an impressive number of interesting questions and objections, on which it may be worth having further exchanges of views.

Then, the national specificities and practices should clearly be considered: the proposal raised could make sense only in jurisdictions where joint accounts express a common involvement of co-holders in some daily life operations, with a limited concern over the split of their property (Q2, answer b); and not where the use of joint accounts reflects the willingness to strictly share the property (Q2, answer a).

Beyond this key distinction, comments were made through different angles: a depositor viewpoint, a DGS and member banks angle and a market and risk approach. Two alternatives are also reviewed (see point D below).

### **A - Comments in relation with depositors**

#### **Fairness issue/ communication issue/ deviation from the core depositor protection rule**

*(i.e. the proposal leads to an unequal coverage treatment between depositors with no joint accounts and depositors holding both individual and joint accounts. From a communication viewpoint, DGS rules must be simple, 100 % clear to all. The proposal also constitutes a violation of the fundamental principle regarding the guarantee limit of €100,000 per depositor).*

The proposal takes the fairness question in another way: where applicable (Q2 answer b), is it fair that unforeseen events, unpredictably freezing a property split between co-holders, leave one coholder with an uncompensated claim which would have been compensated with another distribution of funds? With that, does the proposed adjustment of the compensation rule create unfairness or misunderstanding for other depositors?

We are all used to the current rule, but what this existing rule implies is that depositors have to understand how their joint accounts are split and how they should follow their individual aggregated balances, while they may feel trapped in the end.

The proposed adjustment could be formulated and simply communicated as follows:

- Coverage level of €100,000 for any depositor
- Coverage level of €200,000 for 2 depositors with a joint account.

From a depositor point of view, whether this would look unfair, less clear and less simple than the current rule, and would violate the core coverage message, can be disputed. Furthermore, this core message (€100,000 per depositor) has also been "violated" through the introduction of THBs.

One step further: DGSs do not usually communicate at large over the details and complexities of the coverage (beneficiary accounts, collective accounts, seizures, set-off...). Should we communicate on

this to the general public? Matter of choice, but it may look possible to apply this adjusted rule without any large public communication, except, and positively, through a compensation letter.

#### **Data privacy issue**

*(i.e. adding the coverage limit not used by a co-holder reveals to other co-holders how much deposits were kept by the first one on his personal accounts).*

Unquestionable, at least with two co-holders or, with more than two co-holders, if other co-holders share their information. Now, the indication given would be limited to the balance of that person on the very day of the failure, and only if other co-holders are not fully compensated.

In any case, this issue would need to be addressed and anticipated, for instance through a specific indication within the general conditions of joint banking accounts.

#### **Legal question**

*(i.e. can the co-holder whose a part of the coverage is transferred to better compensate the other, have a claim on the extra compensation of that co-holder?)*

The proposal introduces no change in the respective property of co-holders. The co-holder whose coverage is partly transferred, has already been fully compensated and cannot claim for any additional property right. The new rule would be stated in the regulation, limited to deposit guarantee and would not create other rights.

### **B - Comments in relation with DGSs and member banks**

#### **SCV/ IT cost issue**

*(i.e. additional IT costs for the DGS and for banks in the SCV and compensation process)*

This depends on national practices/ SCV formats. As long as SCV files built by member banks contain the names and balances of joint accounts, the adjustment can be made at the DGS level only. This requires an additional IT routine, probably not more complex than many others already introduced for various special cases.

Introducing this additional feature at the member banks level is obviously a harder task, but again equivalent to all special cases already introduced.

#### **Funding requirements**

*(i.e. increased contributions to match the increased resulting coverage)*

Here also, national usages may or may not have an impact on contribution needs. Where contributions are raised on member banks' exact coverage base, for instance including the treatment of beneficiary accounts, THBs etc., the adjusted rule would result in a possible additional, but probably limited, funding. If the exact calculation is made only at the time of a payout, no additional funding would be raised.

### **Complexity issue**

*(i.e. difficulty to handle scenarios with multiple joint accounts and multiple beneficiaries)*

The attached Excel file shows how such scenarios would work, with 2, 3 or more depositors and with all configurations of joint accounts.

The way to handle those scenarios is simpler through an IT routine. For any chain of co-holders, co-holders need to be categorised as fully compensated (with the amount of their unused coverage) on one hand, and non-fully compensated (with the amount of their residual claims) on the other hand.

### **Process issue**

*(i.e. depositors sharing a joint account cannot be treated independently anymore. If one of the co-holder's reimbursement must be put on hold in total or partially, the other holder cannot be reimbursed fully either)*

Yes, with two remarks:

- this is already the case with the current rule if the problem lies with the joint account;
- in such cases, the transfer of the unused coverage could be a second compensation step. As a first step, the co-holder would receive the same than with the existing rule.

## **C - Comments in relation with markets**

### **Level playing field/ regulatory arbitrage risk**

*(i.e. risk that, as an option, the proposed adjustment could lead to cross-border arbitrages)*

All DGSD options could theoretically lead to such arbitrages. Some of them may look much more troublesome, including THBs, treatment of beneficiary accounts, IPSs, voluntary schemes... Still, markets remain mainly local at this stage, especially for individuals.

### **Moral hazard issue**

*(i.e. risk of leading depositors to deposit more money in the bank regardless of its contingent risks)*

As for the above risk, many other features in the DGSD look more problematic than this one from a banking risk perspective. The proposed adjustment – €200,000 for two depositors, rather than €100,000 + €100,000 – does not look significant enough.

### **Market distortion**

*(i.e. when some players in a given banking market do not generally offer joint accounts – case of Poland)*

Is that issue specific to Poland? Now, if this adjusted feature happens to be considered as relevant by depositors, couldn't it be seen as an encouragement for all players to follow the market trend?

### **Function creep risk**

*(i.e. risk that many customers open multiple joint accounts with "anybody" just to have the possibility to use a joint-benefit in case of compensation)*

Could this additional compensation feature for joint accounts be sufficient to prevail over the reluctance of people over opening joint accounts with persons they don't know well and trust and feeling financially exposed through this relation?

## **D - Alternative proposals from other DGSs**

### **Optimal split of property**

*(i.e. split of the joint account so to maximise the compensation of the two co-holders using the usual €100,000 for each; allow for instance a co-holder to be credited with a claim for more than 50% of the account when benefitting from a THB).*

This proposal requires that the property law of the jurisdiction does not stipulate a given (equal) split of the assets and allow for such flexibility; or to change the property law accordingly.

However, compared to a transfer of an unused coverage, changing the property law may look difficult. Furthermore, an extension of this proposal to more complex cases (multiple beneficiaries and multiple joint accounts) also looks quite challenging. Last, this proposal may raise the legal question mentioned at the end of section A.

### **Other proposed model: joint account as an individual depositor**

*(i.e. joint account seen as an individual depositor with a separate coverage of €100,000)*

Article 7(2), 3<sup>rd</sup> paragraph of the DGSD makes such treatment possible, not for joint accounts, but for accounts where “two or more persons are entitled as members of a partnership, association or grouping of similar nature, without legal personality”. For instance, this covers accounts in relation with a business partnership, estates or banking accounts open under a co-undivided ownership regime.

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At this stage, and this proposal aside, “question 2-answer b” jurisdictions are left with an unresolved situation: how do we cope with a property split which looks more artificial and legal, than real? As for THBs, how can we claim, as underlined by one of the respondents, “that the legal split operated on the joint account realistically reflects the sharing of property between the co-holders, both before and after the THB has been deposited?”<sup>1</sup>

A matter for open invitation of further discussion for those who are interested in!

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<sup>1</sup> This respondent added that the proposed distribution of funds does not solve this problem either. This is true, it does not solve this issue; it makes it irrelevant...