European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

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EACB Note
on
Draft Guidelines on payment commitments under DGSD (EBA/CP/2014/27)

The members of the EACB welcome the opportunity to comment on the EBA draft GL on payment commitments under DGSD.

We believe that these guidelines should not aim to further restrict the national implementation of the DGSD, but instead use a "substance over form" – approach: as long as the goals and provisions of the DGSD are met by the DGS in the different Member States (in particular by ensuring security and rapid availability of payment commitments), it should be possible to take into account specific national features in the course of implementation.

Please find here below our answers to selected questions.

1. *Answers to specific questions*

Q1: Apart from the admissibility requirements suggested in the present guidelines, which objective criteria do you think could be applied, notably in order to determine the overall amount of payments to be accepted in a given year, or to be applied to individual banks applying for the option?

While we recognise that the right for credit institutions to provide their contributions in the form of payment commitments shall remain under Member States' discretion, we believe that, if a level playing field is to be established, DGSs should have no alternative but to accept payment commitments if all specified required conditions are met.

As the total share of payment commitments for the DGS is limited to 30%, a cap for any contributions (ex-ante and/or ex-post) might be systematically logic. But it should be also recognized that in case where the share of payment commitments of the ex-ante fund already accumulated does not reach the 30% limit, yearly contributions in this form could go beyond a 30% cap. Therefore it might be more reasonable to focus on the individual fund volume accumulated to fix a maximum amount or percentage for payment commitments of individual contributions. Thus, we do not see a reason for an additional annual cap as long as the total share of 30% of payment commitments is met.

Q2: Do you agree with these provisions to be included in Payment Commitment Arrangements? Do you think other provisions should be provided?

Multilateral or statutory arrangements should also be deemed sufficient. A payment within 2 working days is challenging. An extension of this deadline should be considered.

Q3: Do you agree that a credit institution should pay in cash the Payment Commitment Amount, when its obligation becomes due, within 2 working days at the latest?

We think that the setting a payment horizon of 2 working days is disproportionate. Payment commitments should be considered to be of the same nature of deposits or investments. Therefore a shorter period for the transformation into cash of this form of ex-ante funding seems unreasonable. The deadline of 2 days should be extended.

The funds shall be made ready for payments to depositors within the period set down in Art. 8(1) DGSD. The readiness of funds should be aligned with the general rule.

With regard to the actual procedure for the realisation of the payment commitment, we believe that a less formalistic approach should be preferred (see above).

Moreover, with regard to Art. 12(d)(v), the draft GL should better clarify which events might fulfil the obligation to accelerate the enforcement of the payment. In particular, a reference to unspecified "reorganization measures" seems to be too far reaching if not appropriately curtailed. For instance, a link to Art. 51 BRRD could be an appropriate limitation in terms of these GL. Any other reorganization should be subject to further negotiations and dialogue between the DGS and the institution to ensure the recoverability of all contributions to the fund (including payment commitments). But it cannot be seen as an enforceable event, as these kind of measures are part of common business activities and hence are the individual responsibility of any institution.

Q4: Do you agree with the option left to the DGS to enter into a Security Financial Collateral Arrangement (full ownership remains with the credit institution) or a Title Transfer Financial Collateral Arrangement (full transfer of ownership)?

We prefer the Security Financial Collateral Arrangement. The ownership shall remain with the credit institution. Anyhow it should be under the responsibility of the DGS to provide for the options.

In addition, Part 3 should envisage that the existence of a payment commitment is linked to the risk that a credit institution contributes to the respective DGS. For instance, a payment commitment may terminate without settlement in situations where the credit institution no longer has any deposits that are covered by the respective DGS as when it discontinues its deposit collection activity. In this case the termination of a payment commitment appears to be justifiable under a "going concern" assumption. In the same way the guidelines should clarify payment commitments can be reduced or even terminated to reflect the actual current exposure contribution of a credit institution.

Q5: Do you think other requirements about the choice of the custodians should be provided under these guidelines?

We do not see the need for further requirements.

Q6: Do you agree on the requirements suggested for the eligibility of collateral? Would you suggest other limits on concentration in exposures?

Yes, however the criteria to be determined by the DGSs and designated authorities should not be too burdensome. No other limit on concentration exposures is needed.

Q7: Do you consider appropriate not to consider the currency of issuance when determining whether debt instruments are correlated to an event of DGS pay-out, be it inside or outside the euro area?

Q8: Do you consider that the proposed wording correctly applies the concept of proportionality, or whether some limits to concentration should be envisaged also for smaller, locally operating banks?

Q9: Do you agree with the criteria on the eligibility of the collateral provided in this Part 6? Do you think other requirements should be provided in these guidelines on this issue?

Q10: Do you agree with the criteria on the haircut provided in this Part 7? Do you think there are other requirements which should be provided under these guidelines about this issue?

In general we question the admissibility of haircuts on low risk assets as we do not see a specific requirement stemming from the DGSD. Haircuts seem particularly disproportionate in cases where low risk assets are provided as collateral and do not consist of debt securities as defined in Art. 336 CRR, but for instance of assets that are not affected by market risks, such as deposits. It should be highlighted that the assets in question do not bear high risks, for which the application of haircuts would instead be justified.

It seems that a potential mismatch could emerge between low-risk items as payment commitments and low-risk items invested from cash payments. In fact, according to Art. 10(7) DGSD, the available financial means of DGSs shall be invested in a low-risk and sufficiently diversified manner. In that case it seems that no haircuts would be demanded. On the other hand if the same low-risk asset are delivered via a payment commitment a DGS would have to apply an haircut.

Thus to avoid such mismatches we recommend a deletion of the haircut treatment.

Finally, we do not think there are other requirements which should be provided about this issue.

Q11: Do you agree with the prudential approach suggested? Would you suggest further details on the methodology to be applied, and if so which ones?

We appreciate that the EBA-Guidelines do not explicitly impose a defined accounting treatment for payment commitments. However many of the terms and conditions specified in the draft GL seem to point in the direction of an inevitable full provisioning of these items in the balance sheet (as a liability, or with the collateral arrangement reflected as a full cost), which would vastly hamper the actual recourse to these instruments and not be in line with the spirit of level 1 legislation.

We understand the EBA standpoint, recognising payment commitments under the DGSD as a source of ex-ante funding, and aiming to avoid any incentives to prefer this form of payment over cash. However, the prudential treatment should also reflect the different economic basis of cash contributions (i.e. P&L) and that of payment commitments. In addition, in particular the unconditionality of the right for DGSs to call payments at once (para. 5(iii), 11(b)) would lead to conclude that payment commitment cannot in fact qualify as a contingent liability and would instead turn them into very expensive instruments due to: full balance sheet provisioning, collateral management costs, haircuts imposed on the low risk assets.

We welcome the fact that during the public hearing the EBA clarified that it is not in its intention to prescribe an accounting treatment for payment commitments.

However, we believe that the unconditional right for a DGS to claim the cashing in of payment commitments without any specific trigger or condition to be fulfilled would lead to see such instruments as full liabilities. In addition, such unconditional demand seems unnecessary as each payment commitment is already secured by low risk assets, such as even cash deposits, that would prevent any increase of funding risk for the DGS.

Thus, the guidelines should foresee that the payment of payment commitments by a credit institution can only be required following a pre-defined trigger event introducing contingency upon a future determinable event for which the likelihood of its occurrence can be assessed.

In this respect, for instance, a mechanism taking into account the probability for the instruments to be called upon within a given time horizon (e.g. one year) for their recognition as on-balance sheet items, could be envisaged. The DGS and the competent authorities would in fact have the means to assess potential situations of risk ahead of the materialisation of a trigger event. In this sense the possibility to conclude each year the Payment Commitment Arrangement, or to renew and supplement a master arrangement (para. 10), could take into due account different scenarios and evaluate the contingency of the payment commitment.

It should also be reminded that under the BRRD and the SRM there would be no mandate for EBA to develop a regulatory product on payment commitments. Thus the EBA should bear in mind that defining very restrictive rules for payment commitments under the

DGS may unduly impact especially deposit taking institutions, without necessarily be in line with the requirements that will be developed in the resolution context.

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