

EBA/GL/2021/17

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17 December 2021

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# Final Report

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Guidelines on the delineation and reporting of available financial means (AFM) of Deposit Guarantee Schemes (DGS)

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# 1. Executive Summary

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In the EBA Opinion on deposit guarantee scheme funding and uses of deposit guarantee scheme funds published on 23 January 2020 (EBA/OP/2020/02), the EBA recommended to the EU Commission to clarify in the EU Deposit Guarantee Schemes Directive (DGSD) that borrowed funds do not count towards the available financial means (AFM) of deposit guarantee schemes (DGSs). The aim of this clarification is to ensure that DGSs raise contributions from the industry to reach the required minimum target level for the DGS fund. The Opinion also stated that before such a clarification may eventually be introduced into the DGSD, there may be a need to provide guidance by means of an EBA legal instrument. These Guidelines aim to deliver on this recommendation.

More specifically, the Guidelines clarify that the AFM, which are defined in the DGSD, are comprised of two subsets:

- Qualified AFM (QAFM) – funds stemming directly or indirectly from contributions of DGS member institutions, which qualify towards reaching the target level of the DGS fund;
- Other AFM – funds which are not QAFM, including borrowed funds that stem from liabilities such as loans, and hence do not count towards reaching the target level of the DGS fund.

In consequence, DGSs should keep track of the origin of funds and record how they use and manage these funds. This is relevant not only for contributions from the industry, and any loans a DGS may obtain, but also when allocating recoveries to QAFM and other AFM, which these Guidelines also address.

Furthermore, the Guidelines clarify the treatment of investment income and losses as well as loans between DGSs with regard to QAFM. The Guidelines also require DGSs to report to the EBA their level of AFM, QAFM, other AFM, their outstanding liabilities, loans made to other DGSs and high-level information on alternative financing arrangements in place. The reported information is then to be published on the EBA website.

In the context of the public consultation on the draft Guidelines, which the EBA conducted between April and July 2021, the EBA received comments from seven respondents. After considering the arguments brought forth and further discussing the issues with national competent authorities, the EBA decided to replace the approach it had originally proposed in the Consultation Paper (CP) for the allocation of recoveries to QAFM and other AFM with an approach that permits two alternatives, both of which better fulfil the aims of the Guidelines. Furthermore, the EBA decided to simplify the treatment of investment income with regard to QAFM compared to the CP version and to delete the reporting requirement for unclaimed repayment. Also, while assessing the

consultation responses, the EBA identified the merit of further clarifying the aim of the Guidelines, the treatment of loans between DGSs and the reporting template.

Taken together, these Guidelines introduce more clarity for DGSs as to which funds to already take into account when levying further contributions from the industry to meet the minimum target level. They also introduce more clarity and comparability of DGSs' financial positions across the EU and provide more transparency concerning DGS funding to the authorities and the public.

## Next steps

The Guidelines on the delineation and reporting of DGS available financial means shall apply from 30 March 2022.

## 2. Background and rationale

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### 2.1 Background

1. Article 10(10) of the DGSD requires DGSs to report their available financial means (AFM) to the EBA. AFM are defined in the DGSD Article 2(1)(12) as being cash, deposits, low-risk assets which can be liquidated within a period not exceeding that referred to in Article 8(1) DGSD (henceforth called 'liquid low-risk assets') and payment commitments. Article 10(1) second subparagraph of the DGSD further states that DGSs shall raise the AFM by contributions to be made by their members.
2. In this context, the EBA published on 23 January 2020 an Opinion on deposit guarantee scheme funding and uses of deposit guarantee scheme funds (EBA/OP/2020/02).<sup>1</sup> The Opinion was addressed to the EU Commission and proposed considerations for amendments when revising the DGSD. The relevant recommendations in the context of this consultation paper were:
  - The DGSD should be amended to unequivocally state that funds or low-risk assets stemming from or being financed by borrowed resources should not be included in a DGS's calculation of its available financial means and so do not count towards reaching the minimum target level. (cf. Opinion paragraph 172 – 174)
  - DGS's liabilities should not be included in the reported amount of available financial means. Instead, for the sake of transparency, Member States should also report any borrowed cash and low-risk assets stemming from the use of alternative funding arrangements, or other funding sources, as well as the liability of the DGS, to be understood as the amount of outstanding loans (but excluding operational liabilities). (cf. Opinion paragraph 172 – 173)
3. Furthermore, the Opinion recommended for the DGSD to be clarified in relation to the treatment of funds recovered in an insolvency, administrative fees, income from investment activities and unclaimed repayments, and whether these funds qualify as counting towards reaching the target level or not. With regard to these issues, the Opinion stated that before such a clarification may eventually be introduced into the DGSD at a later stage, there may be a need to provide guidance on the application of current provisions in the existing DGSD by means of an EBA legal instrument. In the context of such an EBA legal instrument on the calculation and reporting of AFM, the Opinion also recommended exploring whether or not to give the possibility for DGSs to provide brief additional information.
4. In line with the recommendations in the above-mentioned Opinion, and in accordance with Article 26(1) and 26(2) of Regulation EU/1093/2010, the EBA developed a Consultation Paper on draft Guidelines on the delineation and reporting of available financial means of DGSs and published it

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<sup>1</sup> [https://eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Opinions/2020/EBA%20Opinion%20on%20DGS%20funding%20and%20uses%20of%20DGS%20funds.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2020/EBA%20Opinion%20on%20DGS%20funding%20and%20uses%20of%20DGS%20funds.pdf)

on 28 April 2021. A public hearing was held on 28 June 2021 before the consultation period ended on 28 July 2021, by which time the EBA had received seven responses.

5. The Final Report on the Guidelines on hand is based on the draft Guidelines, the EBA's assessment of the responses received, and further discussions at the EBA. With this final version, the Guidelines aim to determine which available financial means qualify towards reaching the target level of the DGS. However, they are not to be read as determining which funds are available for which kind of intervention.
6. The following section provides an overview of the key elements of these Guidelines and changes made following the public consultation compared to the proposal that was presented in the CP.

## 2.2 Rationale

7. The DGSD states that the cost of DGS financing should, in principle, be borne by credit institutions themselves, and that the financing of DGSs should be harmonised at a high level with a uniform ex ante financial target level for all DGSs to ensure that depositors in all Member States enjoy a similarly high level of protection.
8. The EBA is of the view that a lack of a harmonised concept of AFM and the requirement established in Article 10(1) DGSD leads to the situation that some Member States would count borrowed funds to those funds that count towards reaching the target level. This could result in the following practices and resultant undesirable consequences:
  - Counting borrowed funds towards reaching the target level could mean that DGSs would have the possibility to partially or fully meet the target level by taking out long-term or perpetual loans and by raising little or no contributions from the industry. Such an approach would undermine the provisions of the DGSD requiring timely prefunding by the industry.
  - In the absence of uniform rules, DGSs across the EU may potentially levy contributions from affiliated credit institutions in such a way that consistent compliance with Article 10(2) DGSD is not ensured, i.e. that the target level is not met within the timeframe specified in that Article.
  - Differing notions by DGSs on the reported figures could lead to a lack of clarity and comparability of DGSs' data published on the EBA website, thereby hampering transparency.
9. Thus, to ensure an approach that is consistent with the aims of the DGSD and harmonised across Member States, these Guidelines provide further guidance on the delineation and reporting of AFM by DGSs. They also introduce more clarity and comparability of DGSs' financial positions and provide more transparency concerning DGS funding to the authorities and the public.

## Changes to the Guidelines following the public consultation

10. In the context of the public consultation on these draft Guidelines, the EBA received seven responses. Having assessed these responses, and following additional discussions with national competent authorities, the EBA has made changes to the Guidelines in the following three areas.
  11. Firstly, in response to the proposal and the alternative approach to the treatment of recoveries set out in the Consultation Paper, some respondents said that the proposed approach as well as the alternative approach were acceptable. However, one respondent advocated applying the alternative approach, as under the proposed approach, QAFM would depend on the sequence in time for receiving recoveries and making repayments, meaning that two DGSs in the same financial situation (initial disbursement, borrowed resources, aggregate recoveries and aggregate repayments) would not necessarily display the same level of QAFM. Also, in their view, the proposed approach would be very complex.
  12. After considering these arguments, and following further discussions with national competent authorities, the EBA decided to change the approach on the treatment of recoveries. Consequently, the EBA concluded that two approaches should be allowed:
    - Approach A (called 'Option 1' in the impact assessment of the Consultation Paper), which offers a simple and reliable solution to treating recoveries while fulfilling all the aims set out in the Guidelines. The approach requires DGSs to split recoveries sequentially and first allocate recoveries to other AFM until the other AFM matches the level of outstanding liabilities before allocating recoveries to QAFM. This approach applies to recoveries from different DGS interventions in an aggregate manner and does not treat them separately.
    - Approach B (called 'alternative approach' in the Consultation Paper or 'Option 4' in the impact assessment of the Consultation Paper), which also meets all the aims set out in the Guidelines, while allowing a more precise simultaneous allocation of recoveries to QAFM and other AFM as it treats recoveries from different interventions separately, as well as taking into account uses of additional QAFM to repay outstanding loans. This approach requires DGSs to calculate the case-specific other AFM by multiplying aggregate recoveries with the borrowing ratio (defined later in the Guidelines) and subtracting aggregate repayments for a given intervention where the minimum is zero. The DGS determines its level of other AFM by adding up the case-specific other AFM and determines its QAFM as the difference between AFM and overall other AFM.
  13. The EBA assessed the impact both options would have on raising contributions from the industry and concluded that they may yield different results in economic terms depending on the scenario, and at different points in time. Over time, irrespective of the approach, the same net amount of contributions would need to be raised.
  14. Neither of the approaches fully eliminates the risk that a DGS does not raise sufficient contributions to meet the DGSD-mandated minimum target level at the binding deadline or to avoid breaching the minimum target level if it has to service liabilities when these become due, due to the uncertainty of the amount and the timing of receiving recoveries from the insolvency.
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Thus, to address this risk, the Guidelines provide a requirement that DGSs should apply a forward-looking plan when raising contributions, i.e. that DGSs should not only raise sufficient contributions to meet the target level at the deadline required by the DGSD, but additionally, in the course of the period to reach the deadline, raise sufficient contributions so that QAFM and other AFM are enough to service outstanding liabilities when these become due to avoid the risk of not being able to meet the deadline. The Guidelines also provide that such forward-looking plans should ensure that after a DGS reaches the DGSD-mandated target level ahead of the deadline, on their own, the loan repayments do not reduce that DGS's QAFM to less than two thirds of the target level. That is important because otherwise, loan repayments of DGSs could be structured in such a way that a new period to meet the deadline could artificially restart when sizeable loan repayments are made. Finally, the forward-looking plans should ensure that in cases where a DGS still has a liability after the DGSD-mandated deadline to reach the target level, it raises enough contributions in advance of any further loan repayments to be able to repay them without reducing the level of QAFM below the DGSD-mandated target level.

15. With this clarification, the EBA opines that both approaches yield similar economic results and are viable for treating recoveries. The possibility of using one of these two options is now reflected in Guideline 4.2.
16. Secondly, in response to the proposal in the Consultation Paper to apply a similar approach to investment income as to the treatment of recoveries, i.e. to split the income if the investment was financed by QAFM as well as other AFM, some respondents questioned this approach, stating that investment income is relatively small in comparison to the size of the funds and that it seems unlikely that other AFM are being invested or generate significant amounts of income. Also, they pointed out that to clearly allocate income to both types of AFM, it would be necessary to keep a record for each investment not only of the levels of QAFM and other AFM at the source of those investments, but also of the precise dates, time spans and yield of each investment. In their view, this represents an excessive administrative burden to solve an issue which does not seem to be of significance in practice. Instead, they argued in favour of allocating all investment income as well as losses to QAFM.
17. Having assessed the argument, the EBA concurred with it and therefore decided to simplify the approach to the treatment of investment income required under Guideline 4.3.
18. Thirdly, some respondents to the Consultation Paper opposed the required reporting of unclaimed repayments that the EBA had proposed in the Consultation Paper, as these respondents argued that the requirement would put an additional administrative burden on DGSs and not provide useful information to depositors. The EBA concurs with that argument because it asserts that the information would be relevant in only very few cases and for a very short time, and by the time the information is published, it will almost certainly already be out-of-date. In consequence, the EBA decided that the reporting requirement for unclaimed repayments should be deleted from Guideline 4.4 of the draft Guidelines in the Consultation Paper.



## Additional clarifications introduced

19. While assessing the consultation responses, the EBA identified the merit of introducing some additional clarifications to the Guidelines.
20. Firstly, the EBA clarified the aim of the Guidelines in section 2 paragraph 6 to say that they aim to determine which available financial means qualify towards reaching the target level of the DGSs, and they are not to be read as determining which funds are available for which kind of intervention.
21. Secondly, the EBA identified the need to clarify the treatment of loans between DGSs and decided that to avoid double counting AFM, which could occur if the lent amount were to be counted as AFM both by the lending and the borrowing DGSs, the Guidelines should specify that a loan that a DGS provides to another DGS should not count towards the lending DGS's AFM and hence also not to its QAFM or other AFM. Furthermore, funds that a DGS borrows from another DGS cannot count towards the borrowing DGS's QAFM, but they should be counted as other AFM.
22. The clarification on the treatment of loans between DGSs, on its own, could be seen as a disincentive for DGSs to lend funds to each other according to Article 12 DGSD, as a lending DGS would need to raise contributions if, as a consequence, it breached the target level of QAFM. In order to avoid that situation, and similarly to the requirement on the raising of contributions provided in relation to the treatment of recoveries, a matching provision should be included with regard to the treatment of the amount a DGS has lent to another DGS. More specifically, the lending DGS should take into account the amount and the timing of the loans to be repaid by the other DGS, when the lending DGS decides how much to levy in contributions from the industry. It means that a DGS does not necessarily have to raise contributions to make up for the disbursed loan (as long as it meets the target level in line with the deadlines required in the DGSD). The EBA thus introduced in these Guidelines a new section 4.4 on the treatment of loans between DGSs. The EBA emphasises that this provision does not prevent DGSs from raising higher contributions if they deem it necessary (cf. EBA Guidelines EBA/GL/2015/10, paragraph 37).
23. In addition, the EBA decided in section 4.5 of these Guidelines to require DGSs to report to the EBA on an annual basis loans made to other DGSs, in addition to the one-off requirement already included in Article 12 of the DGSD. The EBA will subsequently include this information when publishing the DGS funding information on its website when a loan has been made. The EBA also decided in section 4.5 of these Guidelines to require DGSs to report to the EBA which of the two allowed approaches to the allocation of recoveries they have chosen.
24. Finally, the EBA made a few technical amendments to the reporting template. These amendments relate to the reporting of the applicable exchange rate and the alternative financing arrangements. The EBA also amended the reporting template to reflect the decisions on the reporting of unclaimed repayments, of loans to other DGSs, and of the chosen approach to the allocation of recoveries, as explained in the preceding paragraphs.



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17 December 2021

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### 3. Guidelines

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on the delineation and reporting of  
available financial means (AFM) of  
Deposit Guarantee Schemes (DGS)

# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>2</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set out the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities addressed by these guidelines must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by **(dd.mm.yyyy)**. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2021/17'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

## 2. Subject matter, scope and definitions

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### Subject matter

5. These guidelines delineate the available financial means (AFM) according to Article 2(1)(12) of Directive 2014/49/EU (DGSD) into those qualified AFM (QAFM) that were contributed according to Article 10(1) of the same Directive and, therefore, count towards reaching the target level, and other AFM that were neither directly nor indirectly contributed and thus do not count towards reaching the target level. Furthermore, these guidelines expand the reporting requirements of DGS funds to the EBA according to Article 10(10) of that Directive.
6. These guidelines aim at ensuring a harmonised application of the DGSD with regard to reaching the target level in the EU. They determine which AFM qualify towards reaching the target level of the DGS. However, they are not to be read as determining which funds are available for each case of interventions. In the absence of uniform rules, DGSs across the EU may potentially levy contributions from affiliated credit institutions in such a way that consistent compliance with Article 10(2) DGSD is not ensured, i.e. that the target level is met within the timeframe specified in that Article. Furthermore, the diverging concepts of AFM that count towards reaching the target level may weaken the consistency of data reported to the EBA according to Article 10(10) of the DGSD and thereby hamper transparency. Consequently, in accordance with Article 26(1) and 26(2) of Regulation EU/1093/2010, the EBA adopts own initiative guidelines to remedy this situation.

### Scope of application

7. These guidelines apply to competent authorities when determining the level of QAFM that count towards reaching the target level of the DGSs under their supervision, and when reporting the required information to the EBA.
8. When a DGS is administered by a private entity, competent authorities should ensure that these guidelines are applied by such DGSs.

### Addressees

9. These guidelines are addressed to competent authorities as defined in Article 4(2)(i) and (iv) of Regulation (EU) 1093/2010. References to 'competent authorities' in these GLs refer to either type of authorities, as applicable, based on the competences assigned by the applicable national framework implementing Directive 2014/49/EU.

## Definitions

10. Unless otherwise specified, terms used and defined in Directive 2014/49/EU have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Available financial means (AFM)	means all cash, deposits and low-risk assets of a DGS which can be liquidated within a period not exceeding that referred to in Article 8(1) and payment commitments up to the limit set out in Article 10(3).
DGS intervention	means an intervention conducted by a DGS in which it uses DGS funds for the purposes allowed under Article 11 of the DGSD, such as repaying depositors (Article 11(1)), contributing to resolution (Article 11(2)), preventing the failure of a credit institution (Article 11(3)), or preserving depositors access to covered deposits in the context of national insolvency proceedings (Article 11(6)).
Other AFM	means all those available financial means of a DGS that are not qualified available financial means (e.g. borrowed funds).
Qualified available financial means (QAFM)	means all those available financial means that were contributed by affiliated credit institutions of a DGS or that derive from such contributed funds according to Article 10(1) of Directive 2014/49/EU.
Recoveries	means assets that meet the definition of available financial means, that a DGS receives as a consequence of the rights it acquired based on a DGS intervention.

## 3. Implementation

### Date of application

11. These guidelines apply from dd.mm.yyyy

## 4. Delineation of QAFM and reporting of DGS funds

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### 4.1 Delineation of QAFM

12. A competent authority should ensure that a DGS only includes QAFM when determining whether the target level according to Article 10(2) DGSD is reached.
13. For the purpose of these guidelines, QAFM that were not directly contributed but derive from contributed funds should include recoveries following one of two methods described in section 4.2 and investment income following the method described in section 18.
14. For the purpose of these guidelines, AFM can only be counted as QAFM if the (extraordinary) contributions they stem from are free of any obligation of a DGS to repay them upon receiving recoveries, e.g. to the contributing institutions.
15. A competent authority should ensure that a DGS has adequate systems in place to keep track of the origin of funds.

### 4.2 Treatment of recoveries with regard to QAFM

16. A DGS should allocate recoveries to QAFM and to other AFM according to either one of the only two allowed approaches: approach A or approach B.
  17. Where a DGS is not a competent authority, it should inform the competent authority of the approach it has chosen before implementing it.
  18. Under approach A, a DGS should:
    - a. allocate incoming recoveries to other AFM if, at that point in time, other AFM are lower than outstanding liabilities as reported under Guideline 4.5 until other AFM are equal to outstanding liabilities, and
    - b. allocate incoming recoveries to QAFM if, at that point in time, other AFM are equal to or greater than outstanding liabilities as reported under Guideline 4.5, and
    - c. at any point in time reallocate other AFM in excess of outstanding liabilities as reported under Guideline 4.5 to QAFM.
  19. Under approach B, a DGS should:
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- a. record the borrowing ratio used in that DGS intervention, which is the ratio of the total liability incurred by that DGS for the purpose of that DGS intervention, divided by the total amount of funds used in that DGS intervention, and
  - b. record the aggregate figure of recoveries received from the related insolvency from inception of that DGS intervention, and
  - c. record the aggregate figure of repayments made of the related liability from inception of that DGS intervention, and
  - d. determine the 'intervention-specific other AFM' related to that DGS intervention by multiplying aggregate recoveries (according to subparagraph 19b) with the most up-to-date borrowing ratio (according to subparagraph 19a) and then subtract the aggregate repayments (according to subparagraph 19c), and if the result is negative, it becomes zero, as 'intervention-specific other AFM' cannot be negative, and then
  - e. determine the DGS's other AFM equal the sum of 'intervention-specific other AFM' related to each DGS intervention (according to subparagraph 19d).
20. Irrespective of which one of the two approaches is chosen by a DGS, at any point in time, the level of a DGS's QAFM is determined by subtracting 'other AFM' from AFM.
21. Irrespective of which one of the two approaches is chosen by a DGS, the DGS should raise enough contributions in a forward-looking manner so that:
- a. the resulting level of QAFM and other AFM is sufficient to service the outstanding liabilities reported under section 4.5. of these guidelines as soon as these liabilities are due to meet the applicable deadline in Article 10(2) DGSD, and
  - b. after reaching the target level for the first time and following a DGS intervention, but ahead of the deadline to meet the target level again according to Article 10(2) DGSD, on its own the servicing of such liabilities does not lead to a fall of QAFM to less than two thirds of the target level, and
  - c. if a DGS has an outstanding liability after the deadline to reach the target level following an intervention, on its own the servicing of the liabilities does not reduce the DGSs QAFM below the target level.

### 4.3 Treatment of investment income with regard to QAFM

22. Provided that a DGS decides to add its income from investment activities to the DGS's AFM, such income should be considered QAFM, irrespective of whether the underlying investment was financed by QAFM or other AFM.
23. A DGS should allocate losses from investments to QAFM.

## 4.4 Treatment of loans between DGSs

24. Funds that a DGS lends to another DGS in line with Article 12 DGSD should not count towards the AFM and hence also not to the QAFM or other AFM of the lending DGS.
25. Funds that a DGS borrows from another DGS in line with Article 12 DGSD should not count towards the borrowing DGS's QAFM. If they meet the definition to qualify as AFM, they should be counted as other AFM.
26. When a DGS raises contributions, it should take into account the expected amount and time when it will receive a repayment of the loan it made to another DGS in line with the conditions of the loan.

## 4.5 Reporting to the EBA

27. A competent authority should, for each DGS under its supervision, by 31 March each year, inform the EBA of:
  - a. the amount of covered deposits and the amount of the overall AFM as well as the QAFM and other AFM of their DGS or DGSs on 31 December of the preceding year, and
  - b. the outstanding liabilities that have been incurred for the purpose of a DGS intervention or investment of their DGS or DGSs on 31 December of the preceding year. This figure should exclude operational liabilities of the DGS or DGSs, and
  - c. the alternative financing arrangements that their DGS or DGSs have in place to draw on additional liquidity on 31 December of the preceding year, and
  - d. their DGS's or DGSs' outstanding loans to other DGSs in line with Article 12 DGSD on 31 December of the preceding year, and
  - e. the approach chosen by their DGSs to allocating recoveries according to Guideline 4.2.



# Annex 1: Reporting template for DGS funds

Basic information	
Reporting Authority:	
Member State:	
Deposit Guarantee Scheme:	
Date of submission:	
Reporting year:	
Currency	
[Only if currency is not euro]:	
Exchange rate date (if not 31 December)	
Exchange rate	
Chosen approach to allocating recoveries	Approach A <input type="checkbox"/> / Approach B <input type="checkbox"/> / not yet decided <input type="checkbox"/>

Amount of DGS funds as of 31 December of the reporting year	Amount in EUR (thousands)	[Only if currency is not euro]:
		Amount in local currency (thousands)
Available financial means		
of which: qualified available financial means (QAFM)		
of which: other available financial means (other AFM)		
Outstanding liabilities that have been incurred for the purpose of a DGS intervention or investment		
Covered deposits		
Outstanding loans to other DGSs in accordance with Article 12 DGSD.		

Alternative financing arrangement in place	Multiple answers possible
Mandatory lending from member banks	<input type="checkbox"/>
Credit line (or similar) from central bank	<input type="checkbox"/>
Credit line (or similar) from government	<input type="checkbox"/>
Credit line (or similar) with (commercial) bank(s)	<input type="checkbox"/>
Other (please specify)	Free text

## 5. Accompanying documents

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### 5.1 Draft impact assessment

25. The DGSD introduced the requirement for DGSs to collect sufficient AFM to meet a minimum target level by 3 July 2024. AFM are defined in Article 2(1)(12) DGSD as being cash, deposits, liquid low-risk assets and payment commitments. Article 10(1) second subparagraph of the DGSD further states that DGSs shall raise the AFM by contributions from their member institutions. Nevertheless, the DGSD does not provide full clarity on the specific features that these funds should have to be counted towards reaching the minimum target level, thereby ensuring that the aims of the DGSD are achieved and applied in a harmonised way across Member States and DGSs. Against this background, the EBA has developed guidelines with the aim of providing additional clarity and guidance.
26. As per Article 16(2) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any guidelines developed by the EBA shall be accompanied by an impact assessment (IA) annex that analyses ‘the potential related costs and benefits’ of the guidelines. Such an annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.
27. In the IA included in this Final Report, the EBA analyses the policy options considered when developing the guidelines. Given the nature of the object of study, the EBA conducted a qualitative IA.

#### A. Problem identification and baseline scenario

28. The DGSD sets a minimum target level of AFM to be reached by 3 July 2024. Although Article 2(1)(12) DGSD defines AFM as being cash, deposits, liquid low-risk assets and payment commitments, the additional provisions set out in Article 10(1) second subparagraph of the DGSD on the target level further state that DGSs shall raise the AFM by contributions to be made by their member institutions. In combination, these two articles hold some ambiguity with regard to the definition of AFM and the funds to reach the target level. As stated in the EBA Opinion on funding, some DGSs considered that borrowed funds that satisfied the conditions in Article 2(1)(12) can be considered as AFM that qualify towards reaching the minimum target level. However, other DGSs exclude borrowed funds as they do not stem from contributions made by DGS members. These differing notions of AFM show that the current text of the DGSD is not sufficiently clear.
29. The negative consequences of this situation can be listed as follows:

- Some DGSs might count borrowed funds as AFM that count towards reaching the target level. This would undermine the aim set by the DGSD to require ex ante funding of the DGS fund by means of contributions.
  - In the absence of uniform rules, DGSs across the EU may potentially levy contributions from affiliated credit institutions in such a way that consistent compliance with Article 10(2) DGSD is not ensured, i.e. that the target level is met within the timeframe specified in that Article.
  - The reporting of AFM by DGSs to the EBA provides insufficient clarity and comparability of these funds across DGSs given the differing notions of AFM. Hence, they do not allow for adequate monitoring of the level of AFM and whether the target level has been met across DGSs.
  - Should DGSs not include borrowed funds in their AFM, they would potentially restrict themselves by limiting the funds available for conducting preventive or alternative measures according to Article 11(3) and 11(6) DGSD.
30. Furthermore, the DGSD does not provide guidance on how funds with specific features should count towards reaching the minimum target level. This is the case for recoveries, administrative fees, investment income or unclaimed repayments. For example, the lack of guidance with regard to the treatment of recoveries may lead to the automatic inclusion of these funds as AFM that count towards the minimum target level, as the majority of DGSs seem to be doing. However, if the initial intervention was financed by a mix of AFM that count towards the minimum target level as well as other funds, this may lead to the situation where indirectly, borrowed funds count towards the target level. Regarding administrative fees, the majority of DGSs did not include them in their AFM. Also, regarding income arising from the investment of AFM, which a majority of DGSs would include in the AFM that count towards reaching the target level, there is a need to specify how these funds should be treated. This is the case because given the size of the DGS fund, the amount of investment income could become significant. With regard to the treatment of unclaimed repayments, most DGSs would not deduct them from the AFM. All in all, further guidance on how these funds with specific features should count towards reaching the minimum target level of the DGS fund and on reporting requirements of DGSs with regard to them is necessary to ensure that the level playing field is maintained and that the aim of the DGSD is accomplished.

#### B. Policy objectives

31. The main objective of these Guidelines is to a) provide clarity with regard to the funds that should count towards reaching the minimum target level, and b) extend the reporting requirements of DGS funds to the EBA.
32. To this end, these Guidelines:

- define which resources should count as qualifying AFM (QAFM) that count towards reaching the target level;
- specify how resources with specific features should be treated with regard to QAFM;
- specify the reporting requirements that ensure adequate monitoring of the DGS funds reaching their minimum target level and provide sufficient transparency for depositors in the EU.

### C. Options considered

33. When drafting the present Guidelines, the EBA considered several policy options under four main areas:

#### 1) Definitions of available financial means that count towards the minimum target level of the DGS fund

The EBA has assessed excluding borrowed funds from the resources that count towards reaching the minimum target level.

**Option 1:** *Not to consider borrowed funds as funds that count towards reaching the minimum target level.*

**Option 2:** *To consider borrowed funds as funds that count towards reaching the minimum target level.*

With regard to how the inclusion or exclusion of borrowed funds should be introduced in the framework, the EBA has analysed the option to introduce the concept of AFM that qualify towards reaching the minimum target level.

**Option 1:** *Not to consider borrowed funds as AFM.*

**Option 2:** *To consider borrowed funds as AFM but define the subset ‘qualified available financial means (QAFM)’ from which borrowed funds would be excluded.*

Regarding the monitoring of available financial means that count towards the minimum target level of the DGS fund, the EBA has analysed whether there should be specific guidance on accounting requirements to keep traceability of the funds.

**Option 1:** *To establish the requirement of keeping track of the funds that stem directly or indirectly from contributions (the source-based approach).*

**Option 2:** *To deduct outstanding liabilities from AFM to obtain QAFM (the balance sheet approach).*

#### 2) Treatment of recoveries with regard to QAFM

With regard to the treatment of recoveries, the EBA has assessed whether recovered funds should be part of the AFM that count towards reaching the minimum target level. The following options were assessed:

**Option 1:** *To always consider recoveries as AFM that count towards the minimum target level.*

**Option 2:** *To consider recoveries as funds that count towards the minimum target in such a way that it respects the criteria for determining QAFM.*

Additionally, the EBA has analysed different approaches to allocating recovered funds to QAFM or other AFM:

**Option 1:** *To attribute recoveries to other AFM first, up to the amount necessary to cover outstanding loans. Residual recoveries exceeding the aforementioned amount would be attributed to QAFM.*

**Option 2:** *To allocate recoveries to QAFM and other AFM according to their share of financing in the related DGS intervention.*

**Option 3:** *To allocate recoveries to QAFM and other AFM according to their share of financing in the entire related DGS intervention on a cash-flow basis.*

**Option 4:** *To allocate recoveries to QAFM and other AFM according to their share of financing in the entire related DGS intervention independent of the order of recoveries and repayments.*

### **3) Treatment of administrative fees**

**Option 1:** *To define the treatment of administrative fees in these guidelines.*

**Option 2:** *To exclude the treatment of administrative fees from the scope of these guidelines.*

### **4) Treatment of investment income**

**Option 1:** *To define the treatment of investment income in these guidelines.*

**Option 2:** *To exclude the treatment of investment income from the scope of these guidelines.*

### **5) Treatment of unclaimed repayments**

**Option 1:** *To define the treatment of unclaimed repayments in these guidelines.*

**Option 2:** *To exclude the treatment of unclaimed repayments from the scope of these guidelines.*

### **6) Treatment of loans between DGSs**

**Option 1:** *To clarify the treatment of loans between DGSs with regard to the target level in these guidelines.*

**Option 2:** *To exclude the treatment of loans between DGSs from the scope of these guidelines.*

#### D. Assessment of the options and the preferred option(s)

##### 1) Delineation of available financial means that count towards reaching the minimum target level

34. With regard to excluding borrowed funds from the resources that count towards reaching the minimum target level, the EBA assesses that counting borrowed funds towards reaching the target level would undermine the aim of the DGSD, which is to have DGS funds in place that are prefunded by the industry. Such prefunded funds ensure a certain level of liquidity of the DGS in the event of insolvency. If borrowed funds counted towards reaching the target level, DGSs would be relying on funds that need to be repaid eventually. Additionally, counting borrowed funds towards reaching the target level could mean that DGSs would have the possibility to meet the target level by taking out long-running or perpetual loans and without raising contributions from the industry, which conflicts with the provision in Article 10(1) second subparagraph of the DGSD. For these reasons, the preferred option is Option 1: not to consider borrowed funds as funds that count towards reaching the minimum target level.
35. Regarding how to frame the exclusion of borrowed funds from the funds that count towards reaching the minimum target level, excluding borrowed funds from the definition of available financial means does not seem appropriate, as Article 2(1)(12) clearly defines AFM as being cash, deposits, liquid low-risk assets and payment commitments. This definition covers borrowed funds as well. Furthermore, Article 11(3) and 11(6) of the DGSD allows the use of AFM to prevent the failure of a credit institution or to preserve depositors' access to covered deposits in the context of national insolvency proceedings. If borrowed funds did not count as AFM, these Articles could potentially be understood as allowing such interventions only with the use of contributed funds. For these reasons, it seems adequate to divide AFM into two different categories: qualified available financial means (QAFM) which count towards reaching the minimum target level, and other available financial means (other AFM), which fall under the definition of AFM according to Article 2(1)(12) DGSD, but do not count towards reaching the minimum target level. Therefore, the preferred option is Option 2: to consider borrowed funds as AFM but define the category 'qualified available financial means (QAFM)' in which borrowed funds are not included.
36. With respect to the need to define additional obligations to ensure adequate monitoring of the level of the minimum target level, it seems straightforward to allocate funds to QAFM or other AFM at the precise moment the funds are received by the DGS. Nevertheless, this allocation does not seem so straightforward at a later stage, i.e. when the funds are used to cover an insolvency event and afterwards return to the DGS in the form of recoveries. It is deemed necessary for the DGSs to keep track of the origin of funds and how these funds are used in transactions and interventions so that the recoveries can be properly allocated to QAFM or other AFM (source-based approach).
37. The EBA also considered another approach for assessing QAFM to keep track of the origin of funds. This alternative approach would require DGSs to deduct from their AFM the level of

outstanding liabilities that have been incurred for the purpose of a DGS intervention. Such a 'balance sheet approach' might dispense with the requirement to keep meticulous track of the origin of funds as in the source-based approach. Moreover, it also offers potential for a deeper harmonisation of the accuracy of the reported QAFM.

38. However, the EBA believes that the lack of a harmonised accounting framework for DGS balance sheets and especially of outstanding liabilities would make introducing this approach cumbersome for little benefit over the approach presented in section 4.1 of the guidelines. Moreover, without further refinement, the balance sheet approach forces DGSs to levy the necessary means to repay loans within the deadline for refilling the fund, i.e. within six years, even if the loan comes to maturity after that.
39. Considering these challenges under the current framework, the EBA decided not to pursue this approach. For this reason, the preferred option is Option 1: to establish the requirement of keeping track of the funds that stem directly from contributions. However, if the revision of the DGSD introduces a harmonised accounting framework for balance sheets of DGSs, then it could be reconsidered whether the balance sheet approach could offer more viable results than the approach presented in these Guidelines.

## **2) Treatment of recoveries**

40. It seems reasonable that where an intervention giving rise to a claim against the credit institution's estate (for example the insolvency estate) was fully funded by QAFM, the recoveries arising from such an intervention should be allocated to QAFM. Nevertheless, where the initial intervention was at least partially financed by other AFM such as borrowed funds, an attribution of recoveries to QAFM would inflate the DGS fund with borrowed funds that have to be repaid. This would be against the definition of QAFM that excludes borrowed funds. For this reason, where a mixture of QAFM and other AFM has been used in an intervention, in general recoveries should be allocated between QAFM and other AFM. Therefore, the preferred option is Option 2: to consider recoveries as funds that count towards the minimum target in such a way that it respects the criteria for determining QAFM.
41. It is necessary to define which would be the best approach that allows the allocation of recoveries to QAFM and non-QAFM respecting the criteria for determining QAFM. To this end, four approaches have been considered.
42. The first approach (Option 1) would attribute recoveries sequentially: first, they are allocated to other AFM to cover outstanding liabilities that were incurred for the purpose of the intervention. Thereafter, residual recoveries that exceed that amount would be allocated to QAFM.
43. The second approach (Option 2) allocates recoveries simultaneously to QAFM and other AFM: the borrowing ratio in the initial intervention defines the share of allocation of any tranche of

recoveries to QAFM and other AFM. Transactions that take place after the initial disbursement is completed are not taken into account. Hence, if an amount of X QAFM and Y other AFM were used in an initial disbursement, then any recovery would be allocated to QAFM according to the share of  $X/(X+Y)$ . The allocation of recoveries to other AFM would follow the share  $Y/(X+Y)$ . In any case, no more recoveries should be allocated to other AFM than necessary to repay the outstanding loan and reasonably foreseeable interest payments. Any residual recoveries should be allocated to QAFM.

44. The third approach (Option 3) allocates recoveries simultaneously to QAFM and other AFM: the borrowing ratio in the initial intervention defines the share of allocation of a tranche of recoveries to QAFM and other AFM. However, if transactions using QAFM (not other AFM) take place after the initial disbursement is completed, then they are taken into account when allocating subsequent recovery instalments. In any case, no more recoveries should be allocated to other AFM than necessary to repay the outstanding loan and reasonably foreseeable interest payments. Any residual recoveries should be allocated to QAFM.
45. The fourth approach (Option 4) allocates recoveries simultaneously to QAFM and other AFM: the borrowing ratio applies when allocating a tranche of recoveries to QAFM and other AFM. However, if, after the initial disbursement, transactions take place using QAFM, such as a loan repayment, then the allocation of subsequent recoveries to QAFM and other AFM is effectively adjusted in order to restore the borrowing ratio.
46. **Example 1:** A DGS uses EUR 1,000 QAFM and EUR 500 other AFM from a loan to reimburse depositors. In year 1 after the disbursement, the DGS has to repay EUR 100 of the loan by levying extraordinary contributions of EUR 100, which are QAFM. In year 2, the DGS receives EUR 300 of recoveries. In year 3, it repays again EUR 100 of the loan and in year 4, it receives again EUR 300 of recoveries. In year 5, it repays the outstanding loan of EUR 300 + EUR 50 of interest. For simplicity, regular annual DGS contributions are ignored in this example. Table 1 shows the different results of the four approaches

*Table 1: Comparison of results of the four approaches for allocating recoveries*

<b>Example 1 (Total payout: 1500)</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Recoveries (flow – total: 600)</b>	<b>+0</b>	<b>+300</b>	<b>+0</b>	<b>+300</b>	<b>+0</b>
<b>Repayments of loan + interest (flow – total: 550)</b>	<b>-100</b>	<b>-0</b>	<b>-100</b>	<b>-0</b>	<b>-350</b>
<b>Extraordinary contributions (flow – total: 100)</b>	<b>+100</b>				



Results for Option 1					
AFM (stock)	0	300	200	500	150
other AFM (stock)	0	300	200	350	0
QAFM (stock)	0	0	0	150	150
Results for Option 2					
AFM (stock)	0	300	200	500	150
other AFM (stock)	0	100	0	100	0
QAFM (stock)	0	200	200	400	150
Results for Option 3					
AFM (stock)	0	300	200	500	150
other AFM (stock)	0	80	0	76	0
QAFM (stock)	0	220	200	424	150
Results for Option 4					
AFM (stock)	0	300	200	500	150
other AFM (stock)	0	0	0	0	0
QAFM (stock)	0	300	200	500	150

47. Observations: Once the outstanding liability is repaid in year 5, all approaches yield the same result. Even if recoveries were received after year 5, all approaches would yield the same result, as these recoveries would be entirely allocated to QAFM. Consequently, the approaches only yield different results before the outstanding liability is completely repaid in year 5.

- The result of Option 1 produces the most noticeable difference from the results of the other three approaches before the final loan repayment. This is because Option 1 prioritises preparing the loan repayment by allocating all recoveries necessary for that to the other AFM bucket. Only thereafter does Option 1 allocate recoveries to QAFM. Hence, this approach allocates recoveries to QAFM only in year 4.
- The differences between Options 2, 3 and 4 only occur in this specific scenario where a partial loan repayment takes place that has to be settled using QAFM, because insufficient

other AFM are available to repay that loan instalment. Otherwise, if recoveries were received before that loan repayment and if, in consequence, the DGS has sufficient other AFM to cover these partial loan repayments, then Option 2, 3 and 4 would produce the same result.

- Options 2 and 3 always allocate a portion of recoveries to other AFM and QAFM. By contrast, as this example demonstrates, Option 4 sometimes allocates no recoveries to other AFM and instead allocates all recoveries to QAFM.
  - Option 2 allocates more recoveries to other AFM than Option 3 and hence fewer recoveries to QAFM.
  - Out of all approaches, the level of QAFM changes the least under Option 1, followed by Option 2, Option 3 and Option 4.
48. Collection of contributions to reach the target level: To evaluate the four different approaches, the EBA judges it beneficial to analyse the impact of these approaches on the levying of contributions to reach the target level within six years. In the aforementioned example in Table 1, under all four approaches the DGS would have to levy EUR 850 of contributions over the six-year period.
49. However, to analyse the impact further, Example 2 is needed. In comparison to Example 1, instead of reaching the loan maturity in year 5, Example 2 considers what would happen if the final loan repayment (including interest) of EUR 350 were scheduled in year 7. It is assumed that the target level of EUR 1,000 QAFM needs to be reached in year 6. Furthermore, it is assumed that DGSs collect over a six-year period only as many contributions as necessary to reach the target level of EUR 1,000 QAFM in year 6 and not more. Table 2 illustrates the results.

*Table 2: Impact on the level of contributions and the shortfall of QAFM after the loan repayment*

<b>Example 2 (Target level: 1000)</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Year 6</b>	<b>Year 7</b>
<b>Recoveries (flow – total: 600)</b>	+0	+300	+0	+300			+0
<b>Repayments of loan + interest (flow – total: 550)</b>	-100	-0	-100	-0			-350
<b>Extraordinary contributions (flow – total: 100)</b>	+100						
<b>Results for Option 1</b>							
<b>AFM (stock)</b>	0	300	200	500	500	<b>1350</b>	<b>1000</b>

other AFM (stock)	0	300	200	350	350	350	0
QAFM (stock)	0	0	0	150	150	1000	1000
Contributions over 6 years (flow)	+850						No shortfall
<b>Results for Option 2</b>							
AFM (stock)	0	300	200	500	500	1100	750
other AFM (stock)	0	100	0	100	100	100	0
QAFM (stock)	0	200	200	400	400	1000	750
Contributions over 6 years (flow)	+600						Shortfall I: 250
<b>Results for Option 3</b>							
AFM (stock)	0	300	200	500	500	1076	726
other AFM (stock)	0	80	0	76	76	76	0
QAFM (stock)	0	220	200	424	424	1000	726
Contributions over 6 years (flow)	+576						Shortfall I: 274
<b>Results for Option 4</b>							
AFM (stock)	0	300	200	500	500	1000	650
other AFM (stock)	0	0	0	0	0	0	0
QAFM (stock)	0	300	200	500	500	1000	650
Contributions over 6 years (flow)	+500						Shortfall I: 350

50. Observations: Under all approaches, the other AFM is equal to zero in year 7 as a result of the repayment of the outstanding liability and due interest. Consequently, the amount of AFM equals that of QAFM.

- Only under Option 1 would the DGS levy EUR 850 over the initial six-year period. After reaching the target level in year 6, the DGS would not experience an outflow of QAFM and hence no shortfall that would need to be covered though levying further contributions. In year 6, the total AFM would be EUR 1,350, of which EUR 1,000 are QAFM. In year 7, the other AFM would be reduced to zero while the QAFM account remained EUR 1,000 and would thus not change. However, it should be noted that under Option 1, a shortfall is still

possible, if insufficient recoveries are received to build up sufficient other AFM and if the DGS does not raise enough contributions to service liabilities when they are due.

- In contrast, under Options 2, 3 and 4, the DGS would levy fewer contributions in the six-year period, experience an outflow of QAFM in year 7 and resume levying contributions after that outflow because in all three approaches, there would be a shortfall of QAFM. In this example, the three approaches of Options 2, 3 and 4 provide for the possibility to expand the time span over which to levy contributions beyond the deadline for meeting the target level.
  - In this example, under Option 2, the shortfall would be EUR 250, under Option 3 it would be EUR 274, and under Option 4 it would be EUR 350.
51. Consequently, in order to avoid experiencing a shortfall of QAFM after the target level has to be reached, the EBA is of the view that DGSs should implement forward-looking plans for repaying outstanding liabilities and refilling the target level.

#### **Preferred option**

52. The key difference between the four approaches is the potential impact they have on the time span over which the DGSs will levy contributions to reach the target level and as a consequence the level of such contributions. However, the difference in impact between the four approaches depends on the situation: if recoveries are received in one instalment and the loan is repaid shortly after, then the four options would not have a different impact on the level of contributions. If recoveries are received after the date on which the target level has to be reached, then the four approaches also do not have significantly diverging impacts, irrespective of whether the loan comes to maturity before or after the deadline to refill the DGS fund. A potential divergence in impact is thus limited to a few, very specific cases, as described hereafter.
53. In contrast to the situations described in the previous paragraph, a difference in impact could most likely be expected in a scenario when recoveries are received before the deadline to reach the target level of the DGS fund, and the loan reaches maturity significantly later. In this specific case, it also makes a difference whether the loan matures before or after the deadline to refill the target level. According to the assessment of the EBA, when recoveries are received and not immediately used to repay a loan, the following effects occur:
- If these recoveries are attributed to QAFM, the gap to reach the target level would narrow, meaning that the level of contributions would also decrease.
  - However, if recoveries are attributed to other AFM, then the gap of QAFM to the target level does not narrow and thus the level of contributions remains higher than in the first case.
  - Furthermore, if the loan matures before the deadline to refill the DGS fund and the repayment were to be done using QAFM, then the gap of QAFM to the target level would

widen again after repayment, prompting the levying of significantly higher contributions again to reach the target level.

- If, however, the loan matures after the deadline, and recoveries are primarily attributed to QAFM, then the target level could be reached with relatively lower contributions than if the recoveries were attributed to other AFM. If, later, the loan has to be repaid using QAFM and the target level is breached again, this would trigger the renewed collection of contributions, but with a new deadline to reach the target level.
54. In conclusion, in the specific case where a) recoveries are received before the deadline to reach the target level of the DGS fund and b) the loan matures after that deadline, then the attribution of recoveries to QAFM instead of other AFM reduces the level of contributions due in the short run and stretches out the levying of contributions over a longer period, beyond the original deadline for reaching the target level of the DGS fund. Over time, the level of aggregate contributions would only differ depending on the interest due. With regard to the four options, this assessment translates as follows:
- Option 1 strictly applies the principle that borrowed funds should not count towards reaching the target level and takes into account that loans have to be repaid in full, irrespective of the recoveries attributed to QAFM. It would also more likely ensure that no or few QAFM would need to be used to repay a loan under the assumption that sufficient recoveries are received before the loan matures. Furthermore, its application should be simple to implement. However, in the short term, and in specific circumstances, this option imposes a relatively higher burden for affiliated member institutions of a DGS to provide contributions within the deadline to refill the DGS fund than Options 2, 3 or 4. It would not permit stretching the levying of contributions beyond the deadline.
  - Options 2, 3 and 4 are prone to experiencing a significant outflow from QAFM to repay the loan, thereby blurring the concept that QAFM should not be inflated by borrowed funds. However, the three options are designed to assign recoveries according to the principle that QAFM should stem directly or indirectly from contributions while other AFM should stem directly or indirectly from borrowed funds. Moreover, Options 3 and 4 allow for an accurate accounting of the origin of funds, which Option 2 may not fully account for. Furthermore, in the short-term, Options 2, 3 and 4 could be expected to lead to lower contributions in comparison to Option 1 as it enables stretching out the period for meeting the target beyond the original deadline.
55. As outlined further above, in most instances the choice of the option would not have material impact. However, in some specific instances, Options 2, 3 and 4 could be expected to lead to lower annual contributions from the industry – though for a longer period – than Option 1 where all recoveries are first attributed to other AFM to repay loans. Also, Option 4 provides the most accurate adherence to the principle that QAFM should stem directly or indirectly from contributions.

56. With this background and taking into account how the different approaches would implement the criteria of QAFM, and the complexity of application and the impact on contributions in the short run, the preferred option is to provide flexibility between the application of Option 1, which strictly applies the principle that borrowed funds should not count towards reaching the target level, and Option 4, which provides the most accurate adherence to the principle that QAFM should stem directly or indirectly from contributions. However, to ensure that the economic results of both options are also similar in the specific cases described in this assessment, a clarification needs to be included to ensure that DGSs raise contributions in a forward-looking manner and not only meet the minimum target level at the deadline, but also ensure the repayment of outstanding liabilities when these are due, without breaching the target level.

### **3) Treatment of administrative fees**

57. In the EBA Opinion on funding, the EBA concluded that relative to the DGS fund, administrative fees are immaterial. Therefore, it can be considered that their treatment does not seem to create level playing field issues. For this reason, the preferred option is Option 2: to exclude the treatment of administrative fees from the scope of these guidelines.

### **4) Treatment of investment income**

58. Funds arising from investment may come from the investment of QAFM as well as potentially from the investment of other AFM such as borrowed funds. Considering that some DGS funds' target levels amount to several billion euros, the investment income that may arise from QAFM could become quite significant and therefore it becomes necessary to define how these funds should be treated with regard to QAFM. Therefore, the preferred option is Option 1: to define the treatment of investment income in these guidelines.

### **5) Treatment of unclaimed repayments**

59. Unclaimed repayments do not affect the level of funds at the disposition of the DGS for further interventions until they are claimed and disbursed. However, provided that the vast majority of DGSs seem to follow this practice, the EBA does not see an urgent necessity to clarify this aspect. For this reason, the preferred option is Option 2: to exclude the treatment of unclaimed repayments from the scope of these guidelines.

### **6) Treatment of loans between DGSs**

60. The DGSD is silent on the treatment of loans between DGSs with regard to the target level. Hence, there could be ambiguity as to whether a lending DGS could count its loans to another DGS towards the target level. This could potentially lead to the situation where some DGSs do count loans to other DGSs towards their target level, while other DGSs do not. To avoid this situation, the preferred option is Option 1: to clarify the treatment of loans between DGSs.

## 5.2 Feedback on the public consultation

61. The EBA conducted a consultation on the draft Guidelines on the delineation and reporting of available financial means (AFM) of Deposit Guarantee Schemes (DGS) over a 3-month period ending on 28 July 2021. A public hearing was held on 28 June 2021. The EBA received seven responses, of which six were published on the EBA website, and one was not published because the respondent did not wish for them to be made public.

### **Main comments received during the public consultation**

62. One respondent advocated applying the alternative approach to the treatment of recoveries as, under the proposed approach, QAFM would depend on the sequence in time for receiving recoveries and making repayments, meaning that two DGSs in the same financial situation (initial disbursement, borrowed resources, recoveries and repayments) would not necessarily display the same level of QAFM. Also, the proposed approach would be very complex.
63. After considering these arguments, and following further discussions with national competent authorities, the EBA decided to change the approach on the treatment of recoveries. The EBA identified that under the proposed approach, the level of QAFM and other AFM may change depending on the sequence of events and that the approach might be complex to apply. Consequently, the EBA concluded that a different approach, Option 1 from the impact assessment, offers a more reliable and simple solution to treating recoveries while fulfilling all requirements set out in the Guidelines. This option requires DGSs to split recoveries sequentially and first allocate recoveries to other AFM until other AFM match the level of outstanding liabilities before allocating recoveries to QAFM. Furthermore, the EBA deemed the alternative approach to also be a viable approach. However, as both options may yield different results in economic terms to the raising of contributions, clarification needs to be provided with regard to the raising of contributions in a forward-looking manner.
64. The clarification is that DGSs should apply a forward-looking plan when raising contributions, i.e. that DGSs should not only raise sufficient contributions to meet the target level at the deadline, but additionally raise sufficient contributions so that QAFM and other AFM are sufficient to service outstanding liabilities when these become due. With this clarification, the EBA opines that both approaches, Option 1 and Option 4 from the impact assessment, are viable approaches to treating recoveries, and it changes section 4.2. of the Guidelines accordingly.
65. Some respondents to the consultation paper questioned the approach on the treatment of investment income with regard to QAFM, stating that investment income is relatively small in comparison to the size of the funds, and that it seems quite unlikely that other AFM are being invested or generate significant amounts of income. Also, they pointed out that to clearly allocate income to both types of AFM, it would be necessary to keep a record for each investment not only of the levels of QAFM and other AFM at the source of those investments, but also of the precise dates, time spans and yield of each investment. In their view, this



represents an excessive administrative burden to solve an issue which does not seem to be of significance in practice. Instead, they argue in favour of allocating all investment income as well as losses to QAFM. The EBA concurs with this argument and simplifies the Guidelines accordingly.

66. Some respondents to the Consultation Paper opposed the required reporting of unclaimed repayments, as it would put an additional burden on DGSs and not provide useful information to depositors. It would also be relevant in only very few cases and for a very short time. In consequence, by the time the information is published, it will almost certainly be out-of-date already. Taking into account the aforementioned arguments, the EBA decided that the reporting requirement for unclaimed repayments should be removed and deleted paragraph 26 of section 4.4 of the draft Guidelines in the Consultation Paper.
67. Detailed feedback on each of the comments received is provided in the table below.



## Summary of responses to the consultation and the EBA's analysis

Comments	Summary of the responses received	EBA analysis	Amendments to the proposals
<p><b>Question 1: Do you agree with the proposals for the criteria that QAFM should fulfil, i.e. on the exclusion of borrowed resources, the exclusion of contributions from QAFM that contain an obligation to be repaid upon receiving recoveries and keeping track of the origin of funds, as outlined in section 4.1 and 4.4 of the guidelines?</b></p>			
<p>Conformity of the guidelines with the DGSD</p>	<p>One respondent stated that dividing the AFM into two subsets (QAFM and other AFM) has no basis in the DGSD and is a new concept rather than constituting only a clarification of the existing rules, the more so because it imposes a number of new operational obligations and reporting requirements on the DGSs and also may have a significant impact on the level of contributions collected by particular DGSs. Another respondent indicated that some of their members advocated having a solid legal basis of the Guidelines by amending the DGSD and that the Guidelines should focus on reporting issues.</p>	<p>In the EBA Opinion on deposit guarantee scheme funding and uses of deposit guarantee scheme funds published on 23 January 2020 (EBA-Op-2020-02), the EBA recommended amending the DGSD to unequivocally state that borrowed funds or funds stemming from borrowed funds should not be included in a DGS's calculation of its AFM and so do not count towards reaching the minimum target level for DGS funds. The Opinion also stated that before such a clarification may eventually be introduced into the DGSD, there may be a need to provide guidance by means of an EBA legal instrument.</p> <p>Consequently, in accordance with Article 26(1) and 26(2) of Regulation EU/1093/2010, the EBA adopts guidelines to remedy the situation where there is a lack of clarity in regard to different subsets of AFM and thereby ensures that national DGSs are adequately funded by contributions from financial institutions. The guidelines are in line with the current definition of the AFM provided in Article 2(1)(12) of the DGSD and clarify how Article 10(1) second subparagraph of the DGSD – the requirement that DGSs shall raise the AFM by contributions – relates to that definition of AFM. The guidelines clarify that the AFM comprises two parts – QAFM that stem from contributions and other AFM that stem from other sources.</p>	<p>No change.</p>

Comments	Summary of the responses received	EBA analysis	Amendments to the proposals
Apply balance sheet approach instead of tracking the origin of funds	One respondent agreed with excluding borrowed resources from AFM that count towards the target level but rejected the approach of tracking the origin of funds. Instead, a balance sheet approach should be applied in which the QAFM equal the overall AFM minus the DGSS' liabilities. By extension, that respondent opposed the proposed allocation of recoveries and investment income and favoured adding them to the overall AFM and thereby to QAFM when they are received, which implies the assumption that the liabilities do not change.	EBA Opinion EBA-Op-2020-02 considered the balance sheet approach and rejected it, because it would a) impose a deadline for the repayment of loans, which the EBA considered to be undesirable, and b) that there is no harmonised accounting or reporting framework for balance sheets of DGSSs yet. The reasoning is also explained in detail in the impact assessment annexed to these Guidelines.	No change.
Using the Legal Entity Identifier (LEI) to track funds belonging to a DGS	One respondent emphasised the importance of having systems in place to track the origin of funds, which could be best achieved by requiring the use of the LEI.	The EBA agrees that DGSSs need to be capable of tracking the origin of their funds and understand that many DGSSs would already make use of the LEI. Insofar, it does not seem necessary to prescribe the use of the LEI in the Guidelines for the purpose of keeping track of the origin of funds. However, competent authorities should supervise how DGSSs implement the Guidelines and may make use of the LEIs.	No change.
Guidelines should only apply to newly collected AFM, current level of AFM should be grandfathered	Some respondents supported the proposals set out in the Guidelines. However, one respondent added that the proposal for the criteria of QAFM should not affect the level of available financial means (AFM) already reported by DGSSs, especially in the case where DGSSs' AFM are integrated into the funds of the national Treasury as non-fiscal revenues and where the fungibility of funds is high. In this case, DGSSs may collect contributions from member institutions way	The introducing of the Guidelines will not have an impact on already reported levels of AFM, as these figures are not bound to change. Instead, the AFM figures reported after the entry into force of the Guidelines will additionally be subdivided into QAFM and other AFM. Concerning the cases where funds are integrated in the national Treasury, to the understanding of the EBA, these funds were raised by contributions and hence the fungibility of funds raised in the	No change.

Comments	Summary of the responses received	EBA analysis	Amendments to the proposals
	<p>above the minimum target level and the AFM may be in excess. To counterbalance interlinkages between DGS funds and Treasury funds and the fact that DGSs' AFM may be counted towards government budgetary deficits, the respondent would support a system that could 'flag' cases when DGSs accumulate AFM in excess.</p>	<p>past would not raise an issue for providing the precise numbers of the stock of QAFM and other AFM.</p> <p>In relation to flagging where a DGS has accumulated QAFM in excess of the target level, the data that will be published after entry into force of the Guidelines will contain all the necessary elements for market participants to calculate whether the target level has been reached or not.</p>	
<p>Keeping track of funds should not mean holding separate accounts</p>	<p>Some respondents who support the Guidelines emphasised that keeping track of the origin of funds should just imply that DGSs are subject to the usual accounting rules and then keep the records of what has been borrowed and repaid. In their view, no separation of banking accounts is therefore needed for that purpose.</p>	<p>The EBA concurs with this view. The Guidelines do not require separate bank accounts to be held. Section 4.1 of the Guidelines leaves sufficient flexibility for DGSs and competent authorities on the approach to securing traceability.</p>	<p>No change.</p>
<p><b>Question 2: Do you agree with the proposed approach to allocate recoveries to QAFM and other AFM, as outlined in section 4.2 of the guidelines?</b></p> <p><b>and</b></p>			
<p><b>Question 3: In your view, is the alternative approach or any other approach to allocating recoveries better, with particular focus on the method's a) suitability to respect the principles of QAFM set out in section 4.1 and 4.4 of the guidelines, b) and simplicity of application?</b></p>			
<p>In favour of the alternative approach</p>	<p>One respondent advocated applying the alternative approach, as under the proposed approach, QAFM would depend on the sequence in time for recoveries and repayments, meaning that two DGSs in the same financial situation (initial disbursement, borrowed resources, recoveries and repayments) would not necessarily display the same level of QAFM; the allocation rate used after repayments from QAFM</p>	<p>The EBA agrees that under the proposed approach, the level of QAFM and other AFM may change depending on the sequence of events and that the approach might be complex to apply. Consequently, the EBA concluded that a different approach, Option 1 from the impact assessment of the Consultation Paper, offers a more reliable and simple solution to treating recoveries while fulfilling all requirements set out in the Guidelines. This option requires</p>	<p>Options 1 and 4 from the impact assessment of the Consultation Paper are the only two options allowed for the treatment of recoveries. In addition, the Guidelines include a clarification regarding the raising of contributions to make sure that both approaches yield comparable economic results.</p>

Comments	Summary of the responses received	EBA analysis	Amendments to the proposals
	<p>resources is not financially legitimate and if only used, it could not be applied just on a year-to-year basis.</p> <p>This respondent stated that, instead, the alternative approach meets the requirements set for by the EBA Consultation Paper and is simpler than the proposed approach, with no complex calculation. Also, two DGSs in the same financial situation (initial disbursement, borrowed resources, recoveries and repayments) will always display the same level of QAFM and QAFM will not depend on the sequence in which recoveries and repayments are received. The respondent also claims that the alternative approach is the only consistent option, with an allocation rate financially justified in all situations.</p>	<p>DGSs to split recoveries sequentially and first allocate recoveries to other AFM until other AFM matches the level of outstanding liabilities before allocating recoveries to QAFM. Furthermore, the EBA deemed the alternative approach to also be a viable approach. However, as both options may yield different results in economic terms to the raising of contributions, a clarification needs to be provided with regard to the raising of contributions in a forward-looking manner. The clarification is that DGSs should apply a forward-looking plan when raising contributions, i.e. that DGSs should not only raise sufficient contributions to meet the target level at the deadline, but additionally raise sufficient contributions so that QAFM and other AFM are sufficient to service outstanding liabilities when these become due. With this clarification, the EBA opines that both approaches, Option 1 and Option 4 from the impact assessment, are viable approaches to treating recoveries and changes section 4.2. of the Guidelines accordingly.</p>	<p>Section 4.2 of the Guidelines has been amended accordingly.</p>
<p>No additional bureaucratic burden</p>	<p>Some respondents agreed with the proposed approach to allocate recoveries, of which a few stressed that the method should not lead to an additional bureaucratic burden, and the derivation of the recoveries in line with the origin of the funds cannot be distorted by individual specificities. In addition, some of them indicated that the alternative approach would also be acceptable.</p>	<p>The EBA considered the argument and comes to the conclusion that the proposed approach could potentially increase the bureaucratic burden. This argument also influenced the decision of the EBA to opt for Options 1 and 4 from the impact assessment, which are simpler in terms of application and do not increase the bureaucratic burden.</p>	<p>See answer and amendment to the comment above.</p>

**Question 4: Do you agree with the proposal that the treatment of administrative fees relative to QAFM does not need to be specified?**



Comments	Summary of the responses received	EBA analysis	Amendments to the proposals
No objection	Some respondents agreed not to specify the treatment of administrative fees. One respondent specified that they use their investment income to cover (part of) the administrative expenses.	The EBA concurs with the view that there is no need to specify the treatment of administrative fees with regard to QAFM.	No change.
<b>Question 5: Do you agree with the treatment of investment income relative to QAFM as proposed in section 4.3 of the guidelines?</b>			
Investment income and losses should be allocated to QAFM	While some respondents agreed and another respondent did not see any issues with the proposed approach, others believe that investment income and losses should both be allocated to QAFM. Some of these respondents stated that investment income from other AFM would rarely be of any importance and hence does not justify the reporting burden. One respondent objected on the grounds that the balance sheet approach should be applied instead.	Having assessed the comments received, the EBA concurs with the view that the situation in which income would be generated through the investment of 'other AFM' would be limited and potentially insignificant. At the same time, the additional burden for calculating the precise share of income to be allocated to QAFM and other AFM might be significant, as it would be necessary to keep a record for each investment, not only of the levels of QAFM and other AFM at the source of those investments, but also of the precise dates, time spans and yield of each investment. The EBA agrees that this would represent an excessive administrative burden to solve an issue that does not seem to be of significance in practice.  Consequently, the EBA concurs with the view of those respondents and will amend the Guidelines to simplify the treatment of investment income with regard to QAFM.	The Guidelines will be amended, so that where a DGS decided to allocate its investment income to AFM, it should all be allocated to QAFM instead of splitting it according to the funding source.  Losses from investments will continue to be allocated to QAFM. Section 4.3 will be changed accordingly:  Provided that a DGS decides to add its income from investment activities to the DGS's AFM, it should allocate such income to its QAFM. <del>only if the underlying investment was financed by QAFM. If the underlying investment was financed by other AFM, then the DGS should allocate income from that investment to other AFM. If the source of investment was mixed, then the investment income should be allocated to QAFM and other AFM</del>

Comments	Summary of the responses received	EBA analysis	Amendments to the proposals
			<p>according to their share of financing in the initial investment.</p> <p><del>The DGS should not allocate more investment income to other AFM than necessary to repay the outstanding and future liabilities, including interest payments. The DGS should allocate any residual investment income to QAFM.</del></p>
<b>Question 6: Do you agree with the proposed treatment of unclaimed repayments with regard to AFM?</b>			
<p>Deduct unclaimed repayments from QAFM for new disbursement cases, do not deduct from disbursement cases in the past</p>	<p>Some respondents agreed not to specify the treatment of unclaimed repayments with regard to QAFM, while another generally agreed with that approach but stated that for new disbursement cases (cases that occur after the entry into force of the guidelines), the unclaimed repayments can be significant and should thus be deducted.</p>	<p>The EBA is of the view that there is currently no uniform definition or application of unclaimed repayments, and given that the stock of unclaimed repayments would in most instances be high only for a very short period of time, there does not seem to be merit in developing a uniform definition and prescribe an accounting treatment, as this would be associated with an additional burden for reporting DGSs. The benefit for consumers of having such information would not be sufficient to justify the additional burden for DGSs.</p>	<p>No change.</p>
<b>Question 7: Do you agree with the proposed reporting of a) outstanding liabilities that have been incurred for the purpose of a DGS intervention, b) alternative financing arrangements and c) unclaimed repayments to the EBA and the publication of this information by the EBA as presented in section 4.4 of the guidelines?</b>			
<p>Exclude unclaimed repayments entirely from</p>	<p>Some respondents opposed the required reporting of unclaimed repayments, as it would put an additional burden on DGSs and not provide useful information to depositors. On the other hand, one of the</p>	<p>The EBA reviewed possible approaches to collecting information on unclaimed repayments in a consistent way across DGSs. It considers the arguments by the industry that introducing such a reporting requirement would be</p>	<p>The reporting requirement for unclaimed repayments was removed from the Guidelines:</p>



Comments	Summary of the responses received	EBA analysis	Amendments to the proposals
<p>the Guidelines vs develop a uniform definition of unclaimed repayments</p>	<p>respondents who agreed with the reporting requirements suggested that ‘unclaimed repayments’ should be defined in the Guidelines. Another respondent stated that it would be helpful if the accounting treatment of unclaimed was reported, i.e. if they are contingent or actual liabilities.</p>	<p>challenging and be associated with an additional burden for DGSs, would require developing a uniform definition and would prescribe the accounting treatment of unclaimed repayments. The situation in which the reporting of this figure could be relevant would be of a short-term nature. Furthermore, the benefit for consumers to have such information does not outweigh the burden for the industry. Consequently, the EBA has arrived at the view that, at this stage, it would be inappropriate to introduce such a reporting requirement, and that paragraph 26 of the draft Guidelines in the Consultation Paper should therefore be removed.</p>	<p><del>26. Competent authorities should, by 31 March each year, inform EBA of the unclaimed repayments of their DGSs on 31 December of the preceding year.</del></p>

**Question 8: Do you consider that it would be beneficial to publish further data? If so, which data and for what reason?**

<p>Require DGSs to report the Legal Entity Identifier (LEI) of all affiliated institutions</p>	<p>Some respondents did not see the need to require further reporting, while one respondent suggested requiring the reporting of the LEI of all affiliated institutions and fund managers of a DGS.</p>	<p>As required by Article 17(2) of the DGSD and Article 20(2) of the CRD, the EBA already publishes a registry of credit institutions, which includes their DGS affiliation and their LEI.</p>	<p>No change.</p>
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