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Association Pour la Garantie des Dépôts Luxembourg (AGDL)

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AGDL's Response to the Consultative Working Paper on the Review of the Deposit Guarantee Schemes Directive (94/19/EC)

AGDL (Association pour la Garantie des Dépôts, Luxembourg) was set up in 1989 by Luxembourg's banking and financial community under the supervision of the Financial Sector Supervision Authority as Luxembourg's official guarantee scheme. Its purpose is to set up a mutual guarantee system covering deposits in cash as well as claims resulting from investment transactions. By the way and contrary to the statement of the consultative paper, Belgium is not the only jurisdiction where both guarantees are covered in a single legal entity.

The Luxembourg guarantee scheme is ex-post funded and adapted to the requirements of the European Directives.

AGDL welcomes this opportunity to express its views, in the case that amendments to directive 94/19/EC would come under consideration. In general however, AGDL believes that the current legal framework grants both for flexibility and for efficiency and respects national traditions that sometimes have been built up over decades. AGDL considers that it is not necessary to undertake a profound review, which would put a considerable burden on both the Guarantee schemes and the concerned professionals. The differences that exist between the different schemes in Europe cannot be considered as having ever undermined the exercise of depositor's rights.

The AGDL ex-post funded system - with its rather light structure based on a private association - has proven to be efficient in two concrete cases. It is in permanent contact with the regulatory authorities and has made constant efforts to be ready in the event of insolvency of one of its members.

Keeping in mind that one of the aims of deposit guarantee schemes is to protect depositors, and more particularly those with smaller deposits, so as to avoid an inappropriate financial burden for customers in general, it appears that "high-figure" deposits on the contrary should remain under co-insurance, based on the argument of "moral hazard". For this reason, AGDL does not favour harmonisation of the level of coverage, which would inevitably increase to a higher level than the current 20'000 EUR coverage. It must also be noted that a higher level of coverage means a bigger risk for the Guarantee schemes (and for its members) and may even lead, in worst-case scenarios, to a systemic risk.

It may appear that the current organisation of deposit guarantee schemes has proven to be a source of complication for cross-border consolidation in Europe in at least one particular case. If this circumstance may justify amendments to the 94/19/EC directive, AGDL would support amendments to the topping-up system, even considering it to be abolished.

Concerning the different questions of the consultation, AGDL wants to take position as follows:

Question 1:

We consider that the directive's objectives based on the protection of "small" depositors and stability of the banking system have been achieved.

Question 2:

The differences in existing rules do not create barriers (except the Scandinavian case referred to in questions 23-24) and no competitive distortions in cross-border business have been encountered from our part notwithstanding Luxembourg's cosmopolitan financial environment.

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Question 3:

AGDL cannot exclude that differences in existing national rules may ultimately have theoretical implications for the depositors. However from a practical point of view it does not appear that those differences have led to an arbitrage on the depositors' side and to competitive distortions between the different national banking systems.

Question 4:

Concerning the effective handling of bank failures which involve a cross-border dimension we suspect the current topping-up system as representing the major problem.

Question 5:

AGDL considers that there is no need for further harmonisation as it would cause a disproportionate burden for the Guarantee schemes and the professionals by forcing at least some of them to fundamentally change their current scheme.

Questions 6 - 7:

From AGDL's experience both definitions are still valid as the definition of deposits is rather broad and the definition of the exclusions is logical and satisfactory. No further harmonisation is needed.

Question 8:

We consider that a voluntary de minimis clause could be justified for administrative purposes, but could be found to run against the initial purpose of protecting smaller depositors.

Questions 9 - 11:

The Luxembourg scheme has no co-insurance below the 20'000 EUR threshold. AGDL considers that national schemes should remain free to maintain their current solution as the co-insurance permitted by directive 94/19/EC has not proven any competitive implications.

Questions 12 - 16:

From AGDL's experience the topping-up rule must be considered as the worst provision of directive 94/19/EC and should be abolished. It has proven nearly impossible to put up effective topping-up agreements that foresee in all necessary details how to handle the involvement of two different systems in the reimbursement of one specific deposit. Today's topping-up agreements generally can be summarized in a mutual promise to collaborate and exchange information. It must be feared that in a practical case the intervention of the two systems would cause serious problems and delays in the reimbursement. Therefore AGDL favours the general abolition of topping-up arrangements.

In practice abolishment of topping-up solutions altogether would lead to differences in the protection of depositors in one country. These differences however should not be feared: they exist today for all those who have not decided to top-up and if distortions are feared by the concerned professional, they can be avoided by creating a specific legal entity, independent from the country of origin.

The second-best solution could be a topping-up under the sole responsibility of the home country. This could cause distortions within one scheme, but would still respect the paramount principle of the home country responsibility.

Finally it would be feasible to establish a host country system under which a branch willing to top-up would leave its home country scheme and adhere for the total to the host country. That would lead EU branches to be in the same situation as Non-EU branches.

As a conclusion, all possible solutions are better than the present one.

Questions 17 - 20:

AGDL is of the opinion that it would be equally burdensome to change ex-post systems into ex-ante systems or to change ex-ante systems into ex-post systems. As an ex-post funded system, AGDL believes in the advantages of this solution as being both cost-efficient and effective. We see no need however to impose our solution on others and are not prepared to see others' solutions imposed on us. We believe that the principles of better regulation, as set out in the Commission's 2002 Better Regulation Action Plan should be followed including a cost-benefit analysis of an harmonising process.

Questions 21 - 22:

AGDL strongly advocates against the creation of a European Deposit Insurance for "systemically significant" banks as it would create a distortion between such banks and others. It would furthermore jeopardise the efficiency of the national deposit insurances, which would lack the financial weight of the bigger players. Finally, the definition of what is "systemically significant" would inevitably lead to endless discussions.

AGDL considers furthermore that same arguments plead against the idea of regional deposit insurances.

Questions 23 - 24:

AGDL recognizes that deposit guarantee schemes should not become barriers to cross-border consolidation in the European banking market. The problem that has appeared in Scandinavia does not exist in ex-post funded systems such as AGDL. AGDL does not seek to impose on ex-ante funded schemes a change in their system, but it can be noted that a solution where ex-ante systems would allow a blocking of the funds on banks' own accounts is very close to an ex-post funded system, where provisions are possible. In both cases entry/exit problems disappear.

Questions 25 - 26:

AGDL does not favour risk-based principles in the financing of the deposit guarantee schemes. We believe that this would require deposit guarantee schemes to supervise their members' activities and probably they would even have to impose new regulation on their members. We must consider that such an orientation would exceed the objectives of the Directive, i.e. the protection of the depositors.

Questions 27 - 31:

For reasons of principle, AGDL favours home-country responsibility. The topping-up arrangements in the current system have proven inefficient and should be abolished. Host-country responsibilities are contrary to the general orientation of banking supervision. (See also our answers 12 - 16)

AGDL considers that there is no necessity for exchange of information between the schemes on the one hand and the supervisors of other member states on the other hand. However, exchange of information between the schemes in different member states is absolutely necessary in case of topping-up. In practice however, AGDL has not met any resistance to exchange information between different national schemes so that it does not seem useful to impose it in a new directive.

Question 32:

AGDL considers that the relationship between the State, the National Central Bank and the Deposit Guarantee Schemes doesn't have any relevant cross-border implications, for depositors, for credit institutions and/or from a supervisory perspective.

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