

**Joint position paper on Banking Union:
Review of the bank crisis-management & deposit-insurance framework (DGSD review)**

We, the BVI as the German Investment Funds Association¹ and the German Banking Industry Committee² (GBIC), take the opportunity to present our views on the CMDI package proposed by the European Commission in relation to the [proposal](#) for a Directive amending Directive 2014/49/EU (Deposit Guarantee Schemes Directive, DGSD) as regards the scope of deposit protection. GBIC's member associations operate the mandatory deposit guarantee schemes respectively institutional protection schemes of the three German banking pillars. BVI's members are asset managers managing collective investment undertakings (CIUs³) that neither offer deposit services nor are entitled as institutional investors to assert legal claims against a deposit guarantee scheme (DGS). With a share of 28%, Germany represents the largest fund market in the EU. However, the business models of CIUs and their deposits could be affected by the new proposals to extend the scope in relation to client funds deposits. We therefore limit our remarks on that topic as follows:

The new proposal to supplement the definitions in Article 2(1)(20) of the DGSD (client fund deposits) should be adapted as follows:

(20) 'client funds deposits' means funds that account holders that are financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013 deposit in the course of their business **in scope of Directive (EU) 2015/2366, Directive 2009/110/EC and Commission Delegated Directive (EU) 2017/593** with a credit institution for the account of their clients;

Justification

The draft definition with references to '*financial institutions as defined in Article 4(1), point (26), of Regulation (EU) No 575/2013*' (CRR II) and the '*deposit in the course of their business*' is too broad and should be limited to the use cases that the EBA and the Commission have examined in advance. Otherwise, this can lead to inconsistencies and significant administrative consequences that were neither intended nor evaluated in advance for the following reasons:

- 1) Both the EBA and the EU Commission have analysed and assessed the new application case only for client funds held by non-bank financial institutions in a bank in line with the requirements for segregating client funds as set out in the Payment Services Directive (EU) 2015/2366, the E-money Directive 2009/110/EC and Commission Delegated Directive (EU) 2017/593.⁴

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 28%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

² The German Banking Industry Committee is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

³ Cf., definition provided in Article 4(1), point (7), of Regulation (EU) No 575/2013.

⁴ Cf. page 5 of the Commission's proposal for a Directive amending Directive 2014/49/EU, 18 April 2023, COM(2023) 228 final, 2023/0115 (COD); Opinion of the European Banking Authority on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes, EBA-Op-2019-10, 8 August 2019.

- 2) Asset management companies are considered ‘financial institutions within the meaning of Article 4(1), point (26), of the CRR II’ with their entire range of activities (see definition in Article 4(1), point (19), of the CRR II). This includes both managing CIUs as their main business and other services to which individual MiFID II requirements apply, see references in Article 6(6) of Directive 2011/61/EU (AIFMD) and Article 6(4) of Directive 2009/65/EC (UCITS Directive). Although asset management companies are also subject to Commission Delegated Directive (EU) 2017/593, this only applies to additional investment services for which the MiFID II requirements apply only for individual client relationships. The practical relevance, however, is very limited because asset management companies regularly do not have access to client funds. On the other hand, Commission Delegated Directive (EU) 2017/593 does not apply to the managing of CIUs as the main service of asset management companies; only the specific requirements of AIFMD and UCITS Directive apply here. Similarly, the other two Directives (Payment Services Directive and E-money Directive) do not apply to asset management companies. Maintaining the proposed broad definition of ‘*client funds deposits*’ would therefore lead to the service of managing CIUs and their deposits with credit institutions also being subject to the new definition. This can only be an editorial error.
- 3) According to Article 5(1)(h) of the DGSD, deposits of ‘*collective investment undertakings*’ shall continue not to be covered. If these are now included in the new definition of ‘*client funds deposits*’, this is a contradiction that cannot be resolved.
- 4) According to the latest EBA [Opinion](#)⁵ on treatment of client funds under DGSD, the Commission’s Call for Advice did not explicitly ask the EBA to assess the materiality of client funds placed by other types of entities currently excluded from DGS coverage such as asset management companies and CIUs. Thus, the EBA explained in its Opinion that it did not collect such information and so at this stage cannot assess the materiality of such deposits (see paragraph 38 of the EBA Opinion).
- 5) **The practical impact of including deposits of CIUs is material in terms of amount of covered deposits.** Essentially, mutual funds such as UCITS would be affected in practice. Alternative investment funds (AIFs) with institutional investors regularly have no investors who would be covered under the DGSD. According to the German Bundesbank statistics, the cash ratio for mutual funds issued in Germany was 5.1 percent at the end of March 2023. The fund volume of mutual funds launched in Europe amounts to approx. EUR 10 trillion (EUR 633 billion in Germany). **Based on the assumption made in Germany with an average cash ratio of about 5 percent, a lump sum of approximately EUR 500 billion in Europe (EUR 32.3 billion in Germany) would have to be additionally covered by law for deposits of CIUs.** This corresponds to an estimated additional amount of EUR 4 billion in Europe (EUR 258.4 million in Germany) that would have to be held by the DGS at 0.8 percent minimum coverage and that would lead to a substantial increase compared to the current minimum coverage amounts held by the DGS.
- 6) **The administrative effort is the biggest hurdle here, because a large number of investors would have to be compensated with very small contributions within a short period of time.** The attached example (see Annex, Chart 1) for only one mutual CIU illustrates that for a total of 1.2 million investors, an average value of approximately EUR 400 would have to be paid out by the DGS within seven days each. It should be noted that the example only shows the investors of a single CIU to be compensated. Typically, a depositary holds the assets and deposits for a large number of CIUs. The number of investors to be compensated in the event of failure of this depositary would be much higher.

⁵ Cf. Opinion of the European Banking Authority on the treatment of client funds under Deposit Guarantee Schemes Directive, EBA/Op/2021/11, 17 October 2021.

Background information:

- CIU investments are neither deposits nor comparable to client funds deposits that are to be newly covered. CIUs have the sole object of collective investment of capital raised from the public in certain assets and which operate, in general, on the principle of risk-spreading. They are special products with a high standard of investor protection with a view to contributing to the stability of the financial system following their own rules established under the AIFM and UCITS Directives.
- One particular aspect of investor protection is the role of the depositary. Asset management companies are required to appoint a depositary in order to separate asset safe-keeping and management functions, and to segregate investor assets from those of the manager. Therefore, strict requirements apply to the depositary in order to provide investor protection (see Commission Delegated Regulation (EU) 2016/438 supplementing the UCITS Directive with regard to obligations of depositaries). In particular, a depositary shall be liable to the management company and the unit-holders of the CIUs for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them. The depositary is responsible for the proper monitoring of the CIU's cash flows, and, in particular, for ensuring that investor money and cash belonging to the CIU, or to the asset manager acting on behalf of the CIU, is booked correctly on accounts opened in the name of the CIU or in the name of the asset manager acting on behalf of the CIU or in the name of the depositary acting on behalf of the CIU for the safe-keeping of the assets of the CIU, including the holding in custody of financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary, and for the verification of ownership of all other assets by the CIU or the asset manager on behalf of the CIU.
- Although the (deposit) accounts are held with the depositary 'for the account of the CIU', the general fiduciary principle applies, i.e., the asset management company always manages the assets for the 'collective account of the investors' irrespective of the ownership rights *in rem*.
- A separate settlement of the DGSD compensation procedure in relation to deposits of the CIU would also contradict the principle of collective asset management, as it is alien to the AIFMD and UCITS Directive to settle claims only for individual investors and outside the CIU by third parties without settling the CIU as a whole.

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CHART 1: Example of calculation

	CIU investing in real estate (per 31.3.21)	CIU investing in securities (per 30.9.22)
Assumptions		
Share of private investors in the CIU investing in real estate	80,00%	
Share of private investors in the CIU investing in securities		66,67%
Figures		
Number of private investors	800.000	1.200.000
Total of assets under management (private investors) in EUR	13.280.000.000	14.644.366.531
Cash ratio	16,19%	3,24%
Calculated payout in EUR	2.688	395

Explanation: In a CIU that invests in securities (based on real data), the share of private investors in the fund's assets is 66.67 percent, i.e., a total of EUR 14,644,366,531, distributed among 1.2 million private investors. The average private investor in the fund in this example holds units (based on the assumptions made) that are worth EUR 12,204. The example assumes that each of the private investors in this fund holds units of the same amount (in practice this will vary regularly, but this assumption is simpler to represent for the purposes of the example). The 3,24 per cent cash quota then corresponds to a value of 395 euros, which would have to be paid out by the DGS within seven days for a total of 1.2 million investors in each case.