

EBA/CP/2021/16

28 April 2021

Consultation Paper

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

Contents

1. Responding to this consultation	3
2. Executive Summary	4
3. Background and rationale	5
4. Draft guidelines	20
Annex 1: Reporting template for DGS funds	27
5. Accompanying documents	28
5.1 Draft impact assessment	28
5.2 Overview of questions for consultation	41

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 28 July 2021. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

In the EBA Opinion on **deposit guarantee scheme funding and uses of deposit guarantee scheme funds (“the Opinion”)** published on 23 January 2020, the EBA identified that there are differences across Member States in relation to the interpretation of the concept of available financial means (AFM) and stated that this shows that the current text may not be sufficiently clear. In consequence, 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 recommended further clarification in relation to the treatment of recoveries, administrative fees, income from investment activities and unclaimed repayments, and whether these funds qualify for counting towards reaching the target level or not.

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. Thus, the EBA is now consulting on the draft guidelines on the delineation and reporting on DGS funds. The consultation paper proposes that the draft guidelines should 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 of this proposed split, DGSs should keep track of the origin of funds and how DGSs use and manage these funds. This is especially relevant when allocating recoveries or investment income to QAFM and other AFM, for which the EBA elaborated an appropriate approach. The proposed guidelines also require DGSs to report their level of AFM, QAFM as well as other AFM, which includes borrowed funds. DGSs should also report their outstanding liabilities, high-level information on alternative financing arrangements in place and the level of unclaimed repayments. The consultation paper proposes for this information to be published on the EBA website.

Taken together, the proposals in the consultation paper will introduce more clarity on which funds to already take into account when levying further contributions from the industry to meet the minimum target level. It will also introduce more clarity and comparability of DGSs’ financial positions and provide more transparency concerning DGS funding to the authorities and the public.

Next steps

The public consultation closes by 28 July 2021 and the guidelines will be subject to final adoption by the EBA.

3. Background and rationale

3.1 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) 2nd 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 Opinion on funding”).¹ 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)
 - The DGSD should be clarified to establish whether or not there is a hierarchy or sequence in which different funding sources (i.e. AFM, extraordinary contributions and alternative funding arrangements) should be used by DGSs. (cf. Opinion paragraph 169)
 - If the DGSD were to be amended to clearly allow the flexibility to use alternative funding arrangements ahead of AFM, using alternative funding arrangements first should be accompanied by conditions and restrictions, such as a cost benefit analysis for different funding options and a repayment plan for the alternative financing arrangement if funds from such an arrangement were used ahead of AFM. (cf. Opinion paragraph 170)
 - If the Commission were to amend the DGSD to clarify that alternative funding arrangements can be used ahead of available financial means there would be no merit in introducing a restriction on the deadline for the funds accessed by means of alternative funding arrangements to be repaid. (cf. Opinion paragraph 171)
 - 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).

¹ https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2020/EBA%20Opinion%20on%20DGS%20funding%20and%20uses%20of%20DGS%20funds.pdf

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 for 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, there may also be a need to provide guidance on current provisions in this respect 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, this consultation paper sets out the EBA's proposals for guidelines on the delineation and reporting of AFM of DGSs. The proposed guidelines clarify the criteria for delineating different subsets of AFM, most notably that subset that counts towards reaching the target level. The guidelines also cover the treatment of recoveries, administrative fees, investment income and unclaimed repayments with regard to the AFM and the reaching the target level. Furthermore, they extend the reporting requirements of DGS data to the EBA.

3.2 Rationale

5. Section 3.2.1 of this chapter introduces the concept of qualified available financial means that count towards reaching the target level (QAFM) and outlines the criteria for their delineation. With regard to QAFM, section 3.2.2 proposes an approach to the treatment of recoveries, section 3.2.3 discusses the treatment of administrative fees, section 3.2.4 makes a proposal on the treatment of investment income and section 3.2.5 discusses the treatment of unclaimed repayments. The last section 3.2.6 outlines requirements for further data reporting to the EBA.

3.2.1 Criteria for delineating qualified available financial means (QAFM)

Exclusion of borrowed resources from QAFM

6. In its Opinion on funding, the EBA stated that across Member States there were two interpretations of the concept of AFM, which by itself shows that the current text of the DGSD may not be sufficiently clear. Based on Article 2(1)(12) DGSD, some DGSs understood AFM as being all of a DGS's cash, deposits, low-risk assets that can be quickly liquidated as well as payment commitments. Other DGSs understood AFM as being merely that subset of a DGS's cash, deposits, liquid low-risk assets and payment commitments that satisfies the requirement set out in Article 10(1) 2nd subparagraph of the DGSD, which stipulates that "DGSs shall raise the available financial means by contributions to be made by their members at least annually."
7. The EBA is of the view that a lack of a harmonized 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, which entail 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-running or perpetual

loans and by raising little to 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 the consistent compliance with the Article 10(2) DGSD is not ensured, i.e. that the target level is 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.
 - Given the reference to available financial means in Article 11(3) and 11(6) of the DGSD, differing notions of the composition of AFM could have an impact on the extent to which different DGSs could use their funds for preventive or alternative measures.
8. Thus, to ensure an approach that is consistent with the aims of the DGSD, harmonized across Member States, and transparent, the EBA provides further guidance on the delineation and reporting of AFM by DGSs.
 9. The EBA proposes in section 4.4 of the guidelines that DGSs report and EBA publishes the DGSs' AFM following the definition in Article 2(1)(12) of the DGSD, meaning all their cash, deposits and liquid low-risk assets and payment commitments, thereby offering a clear picture of the liquidity situation of the DGSs. Furthermore, the EBA proposes that DGS should also report the qualified available financial means that count towards reaching the target level (QAFM), which are a subset of available financial means, as well as the difference between AFM and QAFM, which for the purpose of these guidelines is referred to as "other AFM". The EBA also proposes that DGSs should report their outstanding liabilities and alternative funding arrangements as explained in section 3.2.6 of this consultation paper. The EBA would publish the reported information on its website.
 10. The EBA proposes in section 4.1 of the guidelines that QAFM are that subset of AFM that was contributed by the DGS member institutions in line with the 2nd subparagraph of Article 10(1) of the DGSD. The information on QAFM enables the public to establish whether the target level of funds has been reached or not and hence offers an indication of how much contributions the industry has yet to pay to reach the target level, notwithstanding any recoveries or investment income that could be allocated to QAFM in the future. The difference between AFM and QAFM referred to as "other AFM" includes borrowed funds that would be financed through alternative financing arrangements such as for example loans and credit lines when drawn. In consequence, DGSs should keep track of the origin of the funds they hold because their origin determines whether they count toward both the AFM and the QAFM, or only the AFM.

Exclusion of (extraordinary) contributions from QAFM subject to an obligation of the DGS to repay them upon receiving recoveries

11. The EBA Opinion on funding stated that there is no need to introduce any specification with regard to the ability of DGSs to repay contributions to members when the target level is exceeded. However, the EBA observed that, in some Member States, (extraordinary) contributions may be

subject to a commitment of the DGS to repay these contributions to the contributing credit institutions once recoveries are received, even if the target level is not reached. In the view of the EBA, these conditional repayment obligations imply that these funds may not be at the disposition of the DGS when necessary. In practice, the approach to treating such contributions would probably not have any significant impact on reaching the DGS target level because in most instances such contributions would a) be immediately used after being levied and b) be immediately repaid once recoveries are received. However, it is conceivable that delays in the use or the repayment of such funds could occur, leading to a situation where these funds could become a DGS's AFM, requiring a decision whether to count them as QAFM or as other AFM.

12. Thus, to prevent such a situation, the EBA proposes in section 4.1 of the guidelines that where contributions include a requirement for the DGS to repay them once the DGS receives recoveries, irrespective of whether the target level is reached, the DGS should not count such contributions as QAFM, but instead as other AFM.

Keeping track of the origin of funds

13. In light of the aforementioned proposals, the EBA acknowledges that, besides contributions and loans, there may be other sources of funds, notably recoveries from insolvency proceedings or investment income. Such funds, however, are ultimately a consequence of the DGS holding or having used funds from another source – either from contributions or loans, or both. It presents a challenge of how to interpret whether such funds count or do not count towards QAFM, and in consequence, has an impact on the amount and timing of contributions to be paid by the member institutions. Without specifying the approach to classifying such funds, it would also be possible that funds which were originally borrowed, and so did not count towards QAFM, upon returning to the DGS in the form of recoveries, would be treated as counting towards QAFM, thus undermining the logic that borrowed funds should not count as QAFM.
14. In order to address the aforementioned issue, the EBA proposes in section 4.1 of the guidelines that, as a general rule, funds qualify as QAFM if they stem directly or indirectly from contributions. Conversely, they do not count towards QAFM if they stem directly or indirectly from other AFM such as borrowed funds. This means that DGSs should keep track of the origin of funds and how these funds are used in interventions and investments. Notwithstanding this general principle, the remainder of section 3.2 provides further detail as to how the proposed guidelines treat different indirect sources of funds such as recoveries or investment income.

Consultation question:

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?

3.2.2 The treatment of recoveries with regard to QAFM

Proposal for the allocation of recoveries

15. The EBA Opinion on funding found that most DGSs were considering recovered funds to be part of the available means that count towards reaching the target level. It also recommended that DGSs do so. Economically, in many cases, a disbursement from a DGS gives right to a subrogated claim of the DGS against the insolvency estate of a failed credit institution subject to winding up or reorganization proceedings or a privileged claim as regards payments in the context of resolution proceedings.
16. The EBA is of the view that this recommendation is sensible in the case that an intervention giving rise to a claim against the insolvency estate was fully funded by QAFM. However, the EBA considers that when the initial intervention was at least partially financed by other AFM such as borrowed funds, a full attribution of recoveries to QAFM is not justified when the outstanding liability that was at the source of the other AFM has not yet been repaid. Otherwise, the QAFM would itself be inflated with funds stemming from borrowed funds that have to be repaid. The EBA sees such an approach in violation with the proposal for the definition of QAFM as stemming directly or indirectly from contributions as well as being free of borrowed funds.
17. In consequence, the EBA proposes in section 4.2 of the guidelines that, when a mixture of QAFM and other AFM were used in an intervention, recoveries should be allocated to QAFM and other AFM in such a way that it respects the criteria for determining QAFM established in section 3.2.1 of this consultation paper. In this regard, the EBA analyzed several options that may be valid to achieving this goal and presents the most appropriate approach in the following paragraphs of this consultation paper alongside another, similar option that was considered and which the EBA seeks views on. The impact assessment also outlines further potentially viable options and their impact is presented in the impact assessment.
18. The EBA acknowledges that in some jurisdictions it might be possible to receive recoveries in several instalments. The same is true for the repayment of liabilities, which can be done in one or several instalments. Consequently, the presented approach takes account of these specificities.
19. Before presenting the approach to allocate recoveries to QAFM and other AFM, the EBA emphasizes that such an attribution does not impinge on the DGS's ability to manage its liquidity or repay its loans. That is the case because even if recoveries are allocated to other AFM it does not oblige the DGS to use these funds to repay its liabilities immediately. Instead, it can keep the funds to maintain its liquidity until it has to repay the liabilities or use them in an intervention if necessary. Also, DGSs are free to repay their loans as they see fit with the funds they have, including QAFM.
20. Notwithstanding the above-mentioned flexibility of DGSs to use their liquid assets as they see fit, the allocation of recoveries to QAFM and other AFM should follow the proposal set out in this consultation paper. Before presenting the actual proposal, the EBA recommends that DGSs adhere to the following principles when determining their level of QAFM:

- When a liability has to be repaid partly or in full, a DGS should first use the funds allocated to the “other AFM” for the repayment before it uses its QAFM (rule for outflows).
- When a DGS receives a recovery installment, it should allocate it to QAFM and other AFM according to the financing mix used in the initial disbursement and account for further transactions using QAFM that have been effectuated until the receipt of that recovery installment. Transactions using other AFM should not be accounted for (rule for inflows).

21. In line with these principles, the EBA proposes in section 4.2 of the guidelines that DGSs allocate recoveries to QAFM and other AFM according to their share of financing in the entire disbursement event. This means that if in an initial intervention the amount of X QAFM and Y other AFM were used to reimburse depositors, then recoveries would be allocated to QAFM in the proportion of $X/(X+Y)$ and to other AFM in the proportion of $Y/(X+Y)$. However, if after that initial disbursement the DGS used its QAFM for an additional transaction, such as repayment of a loan installment, this event would be taken into account when determining the proportion of recoveries allocated to QAFM and other AFM after that. Transactions using other AFM should not be taken into account. For instance, if after a payout to depositors an amount of Z QAFM is used to repay a loan installment, this would be taken into account in subsequent allocation of recoveries to QAFM or other AFM. The next recovery installment would be split in the share $(X+Z)/(X+Y)$ QAFM to $(Y-Z)/(X+Y)$ other AFM, etc. 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.

Example for illustrating the allocation mechanism

22. Baseline in year 0: A DGS has to reimburse deposits amounting to EUR 1500 and only has EUR 1000 (stock) AFM, which consists entirely of QAFM and meets the target level. It borrows EUR 500 (inflow) from its alternative financing arrangement and has thus EUR 1500 AFM (stock) at its disposition, of which EUR 500 are other AFM. This interest on the loan is assumed to be due at maturity, after 5 years and amounts to EUR 50. The DGS uses all the EUR 1500 in AFM (outflow), composed of EUR 1000 QAFM and EUR 500 other AFM, to reimburse depositors. For the sake of simplicity, the regular contributions of the DGS are ignored at this stage and will be discussed in a later paragraph. After the disbursement, the DGS has EUR 0 AFM (stock) and an outstanding loan of EUR 500 and due interest of EUR 50 at maturity in year 5.

23. Sequence of events following the initial disbursement in year 0:

- Year 1: The DGS has to repay EUR 100 (outflow) from the loan by levying extraordinary contributions of EUR 100 (inflow). Hence, the described outflow is effectuated by using QAFM as the extraordinary contributions can be counted as QAFM. The remaining loan outstanding becomes EUR 450 (stock) and the AFM stays at EUR 0 (stock) as the outflow and inflow cancel each other out.
- Year 2: The DGS receives EUR 300 in recoveries (inflow). As explained in paragraph 24, of these recoveries, EUR 220 (inflow) are allocated to QAFM and EUR 80 (inflow) to other AFM. The AFM increase to EUR 300 (stock). The stock of QAFM is EUR 220 and of other AFM EUR 80.

- Year 3: The DGS needs again to repay EUR 100 (outflow) of the loan. It uses its entire stock of other AFM amounting to EUR 80 (outflow) and in addition EUR 20 (outflow) of QAFM. The AFM decreases to EUR 200 (stock), the outstanding loan is now EUR 350 (stock). QAFM decreases to EUR 200 (stock) and other AFM EUR 0 (stock).
- Year 4: The DGS receives a second recovery installment worth EUR 300 (inflow). As explained in paragraph 24, of these recoveries, EUR 224 (inflow) are allocated to QAFM and EUR 76 (inflow) to other AFM. The AFM increases to EUR 500 (stock). The stock of QAFM is EUR 424 and of other AFM EUR 76.
- Year 5: The loan matures and the DGS pays back the outstanding amount of the loan worth EUR 300 (stock) plus EUR 50 (stock) in interest, decreasing AFM by EUR 350 (outflow). Of this, EUR 76 (outflow) of other AFM are used, leaving a gap of EUR 274 (outflow) to be repaid by QAFM. The AFM decreases to EUR 150 (stock), other AFM to EUR 0 (stock) and QAFM to EUR 150 (stock).
- The sequence is represented in Table 1 below.

24. Allocation of recoveries:

- Year 2 (1st recovery installment): Following the partial loan repayment in year 1, the balance for allocating the first recovery installment in year 2 of EUR 300 to QAFM and other AFM would not be $QAFM = 300 \times (1000/1500)$ and $other\ AFM = 300 \times (500/1500)$, but instead would reflect the previous use of EUR 100 QAFM for a partial loan payment in year 1. Thus the allocation of the first recovery instalment would be $QAFM = 300 \times ((1000+100)/1500) = 220$ (inflow) and $other\ AFM = 300 \times ((500-100)/1500) = 80$ (inflow).
- Year 4 (2nd recovery installment): In year 3 another partial loan repayment of EUR 100 (outflow) takes place. If only other AFM and no QAFM were used to repay that loan installment, then the share of allocation of the next recovery installment in year 4 would be unchanged to the previous recovery instalment, i.e. 1100/1500 to QAFM and 400/1500 for other AFM. However, as in year 3 the balance for other AFM is only EUR 80 (outflow), this leaves EUR 20 (outflow) to be paid from QAFM. Consequently, the share of allocation to QAFM and other AFM changes for the next recovery installment of EUR 300 received in year 4. The balance for allocating the second recovery instalment would then be $QAFM = 300 \times ((1000+100+20)/1500) = EUR\ 224$ (inflow) and $other\ AFM = 300 \times (500-100-20)/1500 = EUR\ 76$ (inflow).
- Thus, after four years, the total recoveries allocated to other AFM would be equal to 80 + 76, which is EUR 156. In the same period, EUR 220 + 224 = EUR 444 of the recoveries would be allocated towards QAFM.

25. Illustration of the example: The following Table 1 illustrates the example. The stock of AFM, other AFM and QAFM are in blue. The relevant flow figures are recoveries, repayments and extraordinary contributions, all three in bold black. Below each of these items, the grey numbers illustrate how recoveries and repayments affect other AFM and QAFM. The stock of other AFM

and QAFM used in the entire intervention is also in grey and is necessary to determine the allocation of recoveries to other AFM and QAFM as described in paragraph 24.

Table 1: Example of the allocation of recoveries to other AFM and QAFM following and intervention

Example (Total payout: 1500)	Year 0 - before payout	Year 0 - after payout	Year 1	Year 2	Year 3	Year 4	Year 5
Recoveries (flow – total: 600)			+0	+300	+0	+300	+0
Recoveries allocated to other AFM (flow)				$(=300 * \frac{400}{1500})$ +80		$(=300 * \frac{380}{1500})$ +76	
Recoveries allocated to QAFM (flow)				$(=300 * \frac{1100}{1500})$ +220		$(=300 * \frac{1120}{1500})$ +224	
Repayments of loan + interest (flow – total: 550)			-100	-0	-100	-0	-350
Repayments from other AFM (flow)					-80		-76
Repayments from QAFM (flow)			-100		-20		-274
Extraordinary contributions (flow – total: 100)			+100				
AFM (stock)	1500	0	0	300	200	500	150
other AFM used in intervention (stock)		500	400	400	380	380	
QAFM used in intervention (stock)		1000	1100	1100	1120	1120	
other AFM (stock)	500	0	0	80	0	76	0
QAFM (stock)	1000	0	0	220	200	424	150

26. **Refilling the target level:** In addition to the example above, in year 6, the DGS will have to refill the target level of QAFM EUR 1000. For that, it needs to fill the gap of EUR 850 over that time period. Under the assumption of perfect foresight, i.e. that the DGS could accurately forecast the timing and amount of the recoveries and of the loan repayments, it would have to collect EUR 141.7 of contributions from its member banks every year. However, under the diametrically opposed assumption that it cannot forecast any recovery or loan repayment, the following Table 2 demonstrates the level of contributions due every year, which follow the EBA methodology for collecting contributions. Thereby, the DGS calculates the gap between the target level and the stock of QAFM from the last year, divided by the number of years left to reach the target level. In practice, DGSs will likely have some level of foresight with regard to their recoveries and a good level of foresight on their loan repayments.

Table 2: QAFM including yearly contributions to the DGS

Example (target level: 1000)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
QAFM from the example above (flow)	+0	+220	-20	+224	-274	+0
Contributions (amount)	+166.7	+166.7	+111.7	+118.3	+6.3	+280.3
Contributions (formula)	$= \frac{1000-0}{6}$	$= \frac{1000-166.7}{5}$	$= \frac{1000-553.3}{4}$	$= \frac{1000-645}{3}$	$= \frac{1000-987.3}{2}$	$= \frac{1000-719.7}{1}$
QAFM including contributions	166.7	553.3	645.0	987.3	719.7	1,000.0

27. **Observation:** The EBA assesses that Table 1 and Table 2 demonstrate the volatility of QAFM, which drops significantly from year 4 to year 5. Consequently, the level of contributions is also very volatile, which can be as low as EUR 6.3 in year 5 and as high as EUR 280.3 in year 6. Theoretically, the target level could be reached, entailing the suspension of contributions the following year, and then the target level could be breached again. These observations hold in the absence of a reliable and forward-looking plan for repaying the loan and refilling the target level. In order for DGSs to keep a steady amount of contributions and also not to breach the target level after reaching it, the EBA recommends that DGSs implement such forward-looking plans for repaying outstanding liabilities and refilling the target level.

Alternative approach to allocating recoveries

28. Besides the presented approach, the EBA also assessed several alternative approaches for allocating recoveries, as demonstrated in the impact assessment (section 5.1) of this consultation paper. The EBA deemed one of these approaches in particular to be of relevance, and so the EBA intends to collect the views from the public on this alternative approach, too. That alternative approach, similarly to the proposed approach, takes account of transactions that occur after the initial disbursement. This approach allocates recoveries simultaneously to QAFM and other AFM:

The proportion of the funding mix of QAFM and other AFM in the initial intervention shall usually apply 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 a different way than in the proposed approach. This alternative aims at avoiding that QAFM for a given financial situation of the DGS could vary with the order in time of repayments and recoveries and thereby aims to take account of the total recoveries and total loan repayments from the beginning of the disbursement event. The rules for applying this approach are:

- When DGSs repay a part of the outstanding liability, they first preserve their QAFM, i.e. they use for the repayment their other AFM until it is exhausted and use their QAFM only after that (*rule for outflows*).
- At any time, DGSs allocate total recoveries received from *inception* of the disbursement event to QAFM and other AFM according to their share of the financing mix in the *initial* disbursement event (*rule for inflows*).
- At any time, if total repayments are higher than recoveries allocated to other AFM, then the other AFM are exhausted.
- The simultaneous application of the principles above leads to two formulas to be used in the following two possible cases:
 1. If the sum of repayments made by DGSs over time is equal or greater than total recoveries allocated to the other AFM bucket, then: QAFM = AFM
 2. If the sum of repayments made by DGSs over the time is less than total recoveries allocated to the other AFM bucket, then the other AFM = (total recoveries allocated to the other AFM bucket according to the original financing mix minus total repayments) and QAFM = AFM minus other AFM

29. The differences between the proposed approach and the alternative approach is that in the proposed approach, the applied financing mix for allocating subsequent recoveries changes in response to QAFM being used to repay the loan. In contrast, in the alternative approach, this change could be considered (and would apply retrospectively to the allocation of previously received recoveries, as financially relevant), but does not affect the calculation of other AFM and QAFM, which are assessed based on the initial financing mix. The following Table 3 presents a comparison of the results of the proposed approach and the alternative approach applied to the same example outlined in paragraph 22 and following.

Table 3: Comparison of the results of proposed approach and the alternative approach

Example 1 (Total payout: 1500)	Year 1	Year 2	Year 3	Year 4	Year 5
Recoveries (flow – total: 600)	+0	+300	+0	+300	+0

Repayments of loan + interest (flow – total: 550)	-100	-0	-100	-0	-350
Extraordinary contributions (flow – total: 100)	+100				
Proposed approach					
AFM (stock)	0	300	200	500	150
other AFM (stock)	0	80	0	76	0
QAFM (stock)	0	220	200	424	150
Alternative approach					
AFM (stock)	0	300	200	500	150
other AFM (stock)	0	0	0	0	0
QAFM (stock)	0	300	200	500	150

30. Observation: The EBA assesses that once the outstanding liability is repaid in year 5, both approaches yield the same result. Even if recoveries were received after year 5, both approaches would yield the same result as these recoveries would be entirely allocated to QAFM. Consequently, both approaches only yield different results before the outstanding liability is completely repaid in year 5.

- The differences between the presented and alternative approach only occur in such a specific scenario where a partial loan repayment takes place that has to be settled using QAFM, because not sufficient other AFM is available to repay that loan installment. 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 both approaches would produce the same result.
- In this example, the proposed approach always allocates a portion of recoveries to other AFM and QAFM. By contrast, on a yearly basis, the alternative approach allocates no recoveries to other AFM.
- The proposed approach allocates flows of recoveries while the alternative approach allocates stocks of recoveries.
- In this example, the level of QAFM changes less from one year to another under the proposed approach than under the alternative approach.

- As the example shows, in the adopted approach the level of QAFM may at certain points be lower than it would have been under the alternative approach, which, depending on the DGSs decision may lead to temporarily higher contributions under the proposed approach. In this example, the total contributions to be levied over the six year period to meet the target level would be identical.

31. Further comparisons with other approaches are included in the impact assessment in section 5.1.

Consultation question:

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?

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?

3.2.3 The treatment of administrative fees

32. The EBA Opinion stated that the majority DGSs did not count administrative fees towards reaching the target level. It also stated that two DGSs did count these funds towards reaching the target level and that the EBA concluded that, for both these DGSs, including the administrative fees in these funds was immaterial, and so such treatment did not seem to create level playing field issues between DGSs.
33. Furthermore, the EBA considers that the DGSD provides no indication how DGSs should finance their operations. It would hence be possible for a DGS to finance its operations by a) using available financial means, b) by levying additional contributions from the industry, c) by using revenue from investments or d) by receiving public funds.
34. With regards to possible shortfalls in the operational budget, the aforementioned options may also serve as a source to cover the shortfall. A budget surplus on the other hand could either be repaid to contributing institutions, be set aside to fund future administrative expenses, or considered to be part of the QAFM or other AFM.
35. The EBA acknowledges that there may be different ways to fund the operational expenses of DGSs' and given their immateriality, the EBA proposes not to specifically regulate their treatment with regard to QAFM and not require DGSs to report on their administrative fees to the EBA. Instead, the EBA relies on the criteria for defining QAFM to avoid the situation that public funds would be allocated to QAFM as they stem neither directly nor indirectly from contributions.

Consultation question:

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

3.2.4 The treatment of investment income

36. The EBA Opinion on funding stated that the vast majority of DGSs would include investment income in the funds that count towards reaching the target level. However, at least three DGSs would not automatically consider investment returns and/or interest earned to count towards the target level. In their cases, whether or not such income becomes QAFM is subject to a decision by the DGS. Some DGSs may also use investment income to cover a significant part of their administrative fees or potentially pay it out to affiliated credit institutions.
37. In the understanding of the EBA, investment income may come from the investment of QAFM as well as potentially from the investment of other AFM such as borrowed funds. This can be the case when a DGS does not use the other AFM to immediately reimburse depositors, or does not use recoveries assigned to the other AFM to immediately repay a loan. Irrespective of the level of the return on investment, it is important to specify the accounting of surpluses and losses generated through such investment. Therefore, there is a need to specify how to assign income stemming from investing QAFM and other AFM.
38. The EBA proposes in section 4.3 of the guidelines that DGSs should allocate investment income to QAFM, as long as the general criteria for defining QAFM are met, i.e. that borrowed funds do not count towards QAFM, that contributions are excluded from QAFM if they contain an obligation to be repaid upon receiving recoveries and that QAFM stem directly or indirectly from contributions. Investment income from other AFM should first be allocated to other AFM in order to cover reasonably foreseeable future interest payments and loan repayments. If an investment was made using QAFM and other AFM, then the share of investment should be applied to allocate investment income accordingly. In any case, no more investment income from other AFM should be allocated to other AFM than necessary to cover the outstanding loan and reasonably foreseeable interest payments. Any residual investment income from other AFM should be allocated to QAFM. Consequently, the EBA assesses that losses from investment income, irrespective of the source of funding, would be borne by QAFM, as presented in section 4.3 of the guidelines.

Consultation question:

Question 5: Do you agree with the treatment of investment income relative to QAFM as proposed in section 4.3 of the guidelines?

3.2.5 The treatment of unclaimed repayments

39. The EBA Opinion on funding stated that most DGSs would not deduct unclaimed repayments (rights to compensation against the DGS for which the depositor has not yet filed a claim) from their available financial means. However, one DGS stated that it would deduct such amounts from the available financial means.
40. In the understanding of the EBA, there is no uniform definition of “unclaimed repayments”. Depending on the definition, and the specificities of a particular case, it can be advisable or not to

deduct unclaimed repayments from QAFM or even AFM. Given this lack of clarity, the EBA judges it premature at this stage to make a judgement on the treatment of unclaimed repayments.

41. Consequently, the EBA proposes not to specify the treatment of unclaimed repayments in the guidelines.

Consultation question:

Question 6: Do you agree with the proposed treatment of unclaimed repayments with regard to AFM?

3.2.6 Further reporting of DGS data to the EBA

42. The EBA Opinion on funding recommended reporting further data beyond AFM and covered deposits to the EBA, notably borrowed funds and liabilities. Furthermore, it recommended exploring whether there is merit in reporting brief additional information, for instance on expected recoveries, in the context of the potential EBA legal instrument on the calculation and reporting of AFM.
43. As outlined in section 5 of this consultation paper and section 4.4 of the guidelines, the EBA proposes that DGSs report both QAFM as well as AFM and that the EBA publishes these data, including the figure for other AFM, which includes borrowed funds. In addition to these items, the EBA considered whether additional reporting could be beneficial for the transparency of the DGSs and hence its credibility. It evaluated the inclusion of liabilities (excluding operational liabilities), expected recoveries, alternative financing arrangements such as loan agreements and credit lines, and unclaimed repayments.

Reporting of liabilities

44. Considering that the EBA Opinion on funding recommended the reporting of liabilities, the EBA proposes in section 4.4 of the guidelines that DGSs should report the outstanding liabilities that have been incurred for the purpose of a DGS intervention to the EBA. This figure should exclude the operational liabilities of a DGS. In combination with the publication of the QAFM data, it may offer an indication of the amount of future contributions that are due by affiliated credit institutions of a DGS, under the hypothesis of no further recoveries and investment income.

Reporting of expected recoveries

45. The EBA analyzed whether there is merit in reporting and publishing more data on the solvency situation of the DGSs. Considering that according to EBA information a frequent strategy by DGSs seems to be to repay loans with recoveries, the EBA concludes that in order to offer a more complete view of the DGSs' solvency, it could be beneficial to put liabilities in perspective by also reporting expected recoveries. However, given the uncertainty with its valuation, it may be challenging to report expected recoveries on a harmonized basis and offer a reliable indication of when the recoveries are expected to be recovered. Given the challenges for reporting expected

recoveries and the incertitude on the point in time when recoveries will be received, the EBA deems it not sensible to require the reporting of expected recoveries.

Reporting of alternative financing arrangements

46. The EBA proposes in section 4.4 of the guidelines that DGSs provide high-level information on their alternative financing arrangements. The EBA is of the opinion that providing more information on the liquidity situation and the financial capacity may offer more assurances to depositors that a DGS has a sufficiently large financial capacity to guarantee the reimbursement of all deposits when necessary. As such, there is a benefit in providing additional information on alternative financing arrangements in place to demonstrate how DGSs would draw on additional liquidity if the AFM do not suffice to reimburse all depositors. However, as the information would not be comparable between DGSs, the EBA does not require the reporting of the exact conditions or limits on the amount that can be obtained from an alternative funding arrangement. The EBA emphasizes that irrespective of the alternative funding arrangements in place, eligible deposits are covered by law up to the amounts specified in Article 6 of the DGSD. Consequently, if the AFM of a DGS, the funds drawn from extraordinary contributions and from alternative funding arrangements were to be insufficient, the DGS has a legal mandate to acquire further funds necessary to cover the deposits.

Reporting of unclaimed repayments

47. With a view to unclaimed repayments, which depending on the account treatment may constitute a contingent or actual liability of DGSs, the EBA concluded that publishing such information may provide benefit to the public, because the amount of unclaimed repayments may be high shortly after a bank failure, even if this situation is only of a short-lived nature. Hence, if shortly after a bank failure the DGS's AFM was not yet reduced and the reporting period would fall before the payout of DGS funds, then the reported level of AFM and QAFM may be out of context. The publication of the level of unclaimed repayments may help putting these numbers into context. Consequently, the EBA proposes that DGSs report their level of unclaimed repayments to the EBA.

Consultation question:

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?

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

4. Draft guidelines

In between the text of the draft RTS/ITS/Guidelines/advice that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

EBA/GL-REC/20XX/XX

DD Month YYYY

Draft Guidelines

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

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010². 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 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/201x/xx'. 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 EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

² 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

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 harmonized application of the DGSD with regard to reaching the target level in the EU. In the absence of uniform rules, DGSs across the EU may potentially levy contributions from affiliated credit institutions in such a way that the consistent compliance with the 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 DGSs when determining the level of qualified available financial means that count towards reaching the target level, the reporting of their level of available financial means and other data according to Article 10(10) of the DGSD as well as further data.
8. Where designated authorities administer a DGS, they should apply these guidelines when determining and reporting the AFM, QAFM and other. When a DGS is administered by a private entity, designated authorities should ensure that these guidelines are applied by such DGSs.

Addressees

9. These guidelines are addressed to competent authorities as defined in point (2)(iv) of Article 4 of Regulation (EU) No 1093/2010.

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 <u>all</u> 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).
Other AFM	means all those available financial means of a DGS that are not QAFM (e.g. borrowed funds).
Qualified available financial means (QAFM)	means all those available financial means according to Article 2(1)(12) of Directive 2014/49/EU 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 AFM set out in Article 2(1)(12) DGSD, that a DGS receives as a consequence of the rights it acquired in a winding up, reorganization or resolution proceeding described in Article 9(2) of the DGSD, or in the context of the application of alternative measures set out in Article 11(3) and 11(6) DGSD.

3. Implementation

Date of application

11. These guidelines apply from dd.mm.yyyy

4. Delineation of QAFM and reporting of DGS funds

4.1 Delineation of QAFM

12. Competent authorities should ensure that DGSs only include QAFM in determining whether the target level is reached.
13. For the purpose of these guidelines, available financial means that derive from contributed funds include recoveries following the method described in section 4.2 or investment income following the method described in section 4.3.
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 the DGS to repay them upon receiving recoveries, e.g. to the contributing institutions.
15. Competent authorities should ensure that DGSs have adequate systems in place to keep track of the origin of funds.

4.2 Treatment of recoveries with regard to QAFM

16. For the purpose of these guidelines, DGSs should count recoveries to their QAFM if the initial disbursement giving right to a subrogated claim of the DGS against the credit institution subject to winding up or reorganization proceedings or a privileged claim as regards payments in the context of resolution proceedings, or in the context of the application of alternative measures set out in Article 11(3) DGSD, was entirely financed with QAFM.
17. If such a disbursement was not entirely funded by QAFM, the DGS should allocate recoveries to QAFM and to other AFM according to their share of financing in the entire disbursement event. If the DGS used the amount of X QAFM and Y other AFM in an initial intervention to cover deposits, then the DGS should allocate recoveries to QAFM and other AFM according to the share of $X/(X+Y)$ to QAFM and $Y/(X+Y)$ to other AFM.
18. If after the initial disbursement of funds and the reception of recoveries, additional transactions have been made using QAFM of an amount Z, e.g. to repay a loan, these transactions should be taken into account when attributing subsequent recovery installments to QAFM and other AFM. In that case, an amount of $(X+Z)/(X+Y)$ of the recovery installment should be allocated to QAFM while $(Y-Z)/(X+Y)$ of the recovery installment should be allocated to other AFM. Transactions using other AFM should not be taken into account. This principle applies to every subsequent installment of recoveries that is received, if QAFM has been used in the meantime to make a payment with regard to the initial disbursement, e.g. to repay a loan associated with that disbursement.

19. DGS should not allocate more recoveries to other AFM than necessary to repay the outstanding and future liabilities, including reasonably foreseeable interest payments. The DGS should allocate any residual recoveries to QAFM.

4.3 Treatment of investment income with regard to QAFM

20. 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 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 according to their share of financing in the initial investment.
21. 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.
22. The DGS should allocate losses from investments to QAFM.

4.4 Reporting to the EBA

23. Competent authorities should, by 31 March each year, inform EBA of the amount of covered deposits in their Member State and of the amount of the overall AFM as well as the QAFM and other AFM of their DGSs on 31 December of the preceding year.
24. Competent authorities should, by 31 March each year, inform EBA of the outstanding liabilities that have been incurred for the purpose of a DGS intervention or investment of their DGSs on 31 December of the preceding year. This figure should exclude operational liabilities of the DGSs.
25. Competent authorities should, by 31 March each year, inform EBA of the alternative financing arrangements that their DGSs have in place to draw on additional liquidity on 31 December of the preceding year.
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.

Annex 1: Reporting template for DGS funds

Basic information	
Reporting Authority:	
Member State:	
Deposit Guarantee Scheme:	
Date of submission:	
Reporting year:	

Amount of DGS funds as of 31 December of the reporting year	Amount in EUR (millions)	[Only if currency is not Euro]:			
		Exchange rate date (if not 31 December)	Exchange rate	Local currency	Amount in local currency
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					
Unclaimed repayments					

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

5. Accompanying documents

5.1 Draft impact assessment

48. The DGSD introduced the requirement that DGSs have 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) 2nd subparagraph of the DGSD further states that DGSs shall raise the available financial means 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 harmonized way across Member States and DGSs. Against this background, the EBA has developed guidelines with the aim to provide additional clarity and guidance.
49. 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.
50. In the IA included in this consultation paper, 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

51. 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) 2nd subparagraph of the DGSD on the target level further state that DGSs shall raise the available financial means by contributions to be made by their members 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.
52. 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 via contributions.
 - In the absence of uniform rules, DGSs across the EU may potentially levy contributions from affiliated credit institutions in such a way that the consistent compliance with the 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 an 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, then 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.
53. 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 regards 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 the DGS 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 regards 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 regards 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

54. The main objective of these guidelines is a) to provide clarity with regards to the funds that should count towards reaching the minimum target level and b) extend the reporting requirements of DGS funds to the EBA.
55. To this end, these guidelines

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

C. Options considered

56. 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 regards 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: *Deduct outstanding liabilities from AFM to obtain QAFM (the balance-sheet approach).*

2) Treatment of recoveries with regard to QAFM

With regards 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 allocate the recovered funds to QAFM or non-QAFM:

Option 1: To attribute recoveries to other AFM first, up to the amount necessary to cover outstanding loans and reasonably foreseeable interest payments. 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 initial disbursement event.

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

Option 4: To allocate recoveries to QAFM and other AFM according to their share of financing in the entire disbursement event according to a time-independent basis.

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.

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

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

57. With regards to excluding borrowed funds from the resources that count towards reaching the minimum target, the EBA assesses that counting borrowed funds towards reaching the target level would undermine the aim of the DGSD 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 would counting 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) 2nd subparagraph of the DGS. For these reasons the preferred option is Option 1: Not to consider borrowed funds as funds that count towards reaching the minimum target level.

58. 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) DGSD and 11(6) DGSD allows the use of AFM to conduct preventive and alternative measures. 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 in 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 that 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.
59. With respect to the need to define additional obligations to ensure an 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. It is deemed necessary that the DGSs keep track of the origin of funds and how these funds are used in transactions and interventions so the recoveries can be properly allocated to QAFM or other AFM (source-based approach).
60. The EBA also considered another approach for assessing QAFM to keeping track of the origin of funds. In oversimplified terms, 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 from the requirement to keep meticulous track of the origin of funds as in the source-based approach, which in the assessment of the EBA could be challenging when a DGS has to manage several payouts and insolvency or resolution procedures. Moreover, it offers potential for a deeper harmonization of the accuracy of the reported QAFM.
61. However, the EBA believes that the lack of a harmonized accounting framework for DGS balance sheets and especially of outstanding liabilities would make this approach currently cumbersome to introduce for an incremental benefit over the approach presented in section 4.1 of the guidelines that is not necessarily significant. 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. In contrast, the source-based approach, apart from compelling DGSs to refill the target level through contributions within the deadline, would not force DGSs to levy contributions to cover also all outstanding loan repayments ahead of maturity.

62. 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 harmonized 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

63. It seems reasonable that in the case that 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, when the initial intervention was at least partially financed by other AFM such as borrowed funds, an attribution of recoveries to QAFM would inflate the fund with borrowed funds that have to be repaid. This would be against the definition of QAFM that excludes borrowed funds. For this reason, when a mixture of QAFM and other AFM were used in an intervention, 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.
64. 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:
65. The first approach (Option 1) would attribute recoveries sequentially: First, they are allocated to other AFM to cover outstanding liabilities and associated reasonably foreseeable interest payments that were incurred for the purpose of the intervention. Thereafter, residual recoveries that exceed that amount would be allocated to QAFM.
66. The second approach (Option 2) allocates recoveries simultaneously to QAFM and other AFM: The proportion of the funding mix of QAFM and other AFM 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.

67. The third approach (Option 3) allocates recoveries simultaneously to QAFM and other AFM: The proportion of the funding mix of QAFM and other AFM 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 installments. 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. The detailed approach is described in paragraph 15 and following of section 3.2.2 of this consultation paper.
68. The fourth approach (Option 4) allocates recoveries simultaneously to QAFM and other AFM: The proportion of the funding mix of QAFM and other AFM in the initial intervention shall usually apply 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 in order to restore the initial funding mix. The detailed approach is described in paragraph 28 of section 3.2.2. of this consultation paper.
69. Examples 1 (identical to the example in paragraph 22 and following of the Rationale section): A DGS uses 1000 Euros QAFM and 500 Euros other AFM from a loan to reimburse depositors. In year 1 after the disbursement, the DGS has to repay 100 Euros of the loan by levying extraordinary contributions of 100 EUR, which are QAFM. In year 2, the DGS receives 300 Euros recoveries. In year 3 it repays again 100 Euros of the loan and in year 4 receives again 300 Euros of recoveries. In year 5 it repays the outstanding loan of 300 Euros + 50 Euros of interest. For simplicity, regular annual DGS contributions are ignored in this example. Table 4 shows the different results of the four approaches

Table 4: Comparison of results of the four approaches for allocating recoveries

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

70. Observation: 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 prioritizes 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 Option 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 not sufficient other AFM is available to repay that loan installment. 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.

- Option 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 fewer recoveries to other AFM than Option 3 and hence more recoveries to QAFM.
- Out of all approaches, the level of QAFM is least volatile under Option 1, followed by Option 2 and then Option 3. QAFM is most volatile under Option 4.

71. Collection of contributions to reach the target level: To evaluate the four different approaches, the EBA judges it beneficial to analyze the impact of these approaches on the levying of contributions to reach the target level within six years. In the aforementioned example in Table 4, under all four approaches the DGS would have to levy EUR 850 of contributions over the six year period.

72. However, to properly analyze the impact, Example 1 needs to be slightly altered. 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 would be scheduled in year 7. It is assumed that the target level of EUR 1000 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 1000 QAFM in year 6 and not more. Table 5 illustrates the results.

Table 5: Impact on the level of contributions and the shortfall of QAFM after the loan repayment

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

Results for Option 2							
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: 250
Results for Option 3							
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: 274
Results for Option 4							
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: 350

73. Observation: 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 Euros 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 1350, of which EUR 1000 are QAFM. In year 7, the other AFM would be reduced to zero while the QAFM account remained EUR 1000 and would thus not change.
- In contrast, under Option 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 Option 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.

- The smallest shortfall would occur under Option 2, amounting to EUR 250. Option 3 would have the second biggest shortfall amounting to EUR 274. However, the biggest shortfall of EUR 350 would occur under Option 4.

74. Consequently, in order to avoid experiencing a shortfall of QAFM after the target level is supposed to be reached, the EBA recommends that DGSs implement forward-looking plans for repaying outstanding liabilities and refilling the target level.

Preferred option

75. The key difference between the four approaches is the potential impact they have on the time span over which the DGS 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 installment 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 when 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.

76. 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 materialize:

- 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 would 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 are 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.

77. 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 the levying of contributions out 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 in dependence of the interest due. With regard to the two four, 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 little 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 Option 2, 3 or 4. It would not permit stretching the levying of contributions beyond the deadline.
- Option 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, Option 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, Option 2, 3 and 4 could be expected to lead to lower contributions in comparison to Option 1 as it enables stretching the period for meeting the target beyond the original deadline.

78. As outlined further above, in most instances the choice of the option would not have material impact. However, in some specific instances, Option 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 3 provides the most accurate adherence to the principle that QAFM should stem directly or indirectly from contributions.

79. 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 Option 3: To allocate recoveries to QAFM and other AFM according to their share of financing in the entire disbursement event on a cash-flow basis.

3) Treatment of administrative fees

80. The EBA Opinion on funding has assessed 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

81. 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 level 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

82. Unclaimed repayments do not affect the level of funds at the disposition of the DGS for further interventions until they are actually 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.

5.2 Overview of questions for consultation

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?

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?

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?

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

Question 5: Do you agree with the treatment of investment income relative to QAFM as proposed in section 4.3 of the guidelines?

Question 6: Do you agree with the proposed treatment of unclaimed repayments with regard to AFM?

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?

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