

# Second round of amendments to the Deposit Guarantee Scheme Policy Rules

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**DeNederlandscheBank**

EUROSYSTEEM



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## Summary

- 4 As the administrator of the Dutch Deposit Guarantee Scheme (DGS), DNB published two policy rules and an amendment to the Regulation on Statements of Financial Undertakings (Regeling staten financiële ondernemingen Wft 2011 – Statements Regulation) in July 2017. Among other things, this set of rules introduced the concept of the single customer view (SCV), which enables compensation to be granted and made available for payment within seven working days. It also clarified certain aspects of the rules that have a bearing on the scope and execution of the DGS.
- The DGS rules have been amended for the first time in 2019. This document contains the second round of amendments to the DGS rules (2021). The changes and additions have been made in response to questions raised by banks and DNB's own wish to provide further clarification of a number of specific situations involving the DGS. The consultation responses submitted by the sector in mid-2021 have been incorporated in the document.

# 1 Introduction

DNB adopted the Single Customer View Policy Rule (SCV Policy Rule) and the Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme in July 2017. This was in compliance with the obligations under Directive 2014/49/EU on deposit guarantee schemes (also known as 'DGSD'). Both policy rules were amended for the first time in February 2019. This consultation document describes the definitive changes in the second round of amendments. The changes were made in response to banks' questions on the preparation and submission of SCV files and DNB's wish to clarify a number of specific situations involving the DGS.

## Single Customer View Policy Rule

The Single Customer View Policy Rule lays down the requirements with regard to the single customer view (SCV). The introduction of the SCV makes it possible to grant compensation for covered deposits and make it available for payment within seven working days. The changes in the second round of amendments concern clarification of (i) banks' treatment of withholding tax in reports and (ii) the deposit base that DNB uses under various circumstances to determine the contributions that banks are required to pay for the DGS. There are also two additions to the SCV: (i) banks must supply the business category of non-natural depositors in accordance with the specifications of the data model and (ii) additional markers that help DNB to administer the DGS.

The amendments make clear that banks must take account of the deduction of withholding tax when determining the balances to be reported. That will ensure that DNB does not grant compensation on the part of the accrued but not yet credited interest that the bank would deduct to pay the withholding tax. This is relevant to banks operating in Member States that levy withholding tax on savings interest.

Banks submit a quarterly report to DNB that forms the basis for determining a bank's deposit base (i.e. covered deposits). The size of the covered deposits can be calculated in two ways: on the basis of the SCV or on the basis of a calculation based on the number of accounts held by a bank and the associated balances. The first method is more accurate, but is only useful and desirable if the SCV (the SCV file) and the method of preparation of the SCV (using the SCV system) are of sufficient quality. The change clarifies the circumstances under which DNB uses either of the two calculation methods for the deposit base.

One of the additions to the SCV is the banks' obligation to classify non-natural persons into business categories based on the options that DNB provides in the data model. This classification provides a clearer picture of why some non-natural persons are not eligible for compensation under the deposit guarantee scheme. It assists DNB in assessing the accuracy of the SCV and helps provide an explanation and substantiation in the event that depositors in a DGS situation object to

6 DNB's decision not to pay out covered deposits for a specific depositor.

This round of amendments also includes the addition of four markers to the SCV. These are (i) depositors who have been granted suspension of payments, (ii) annuity accounts and standing right savings accounts, (iii) deposits that are subject to a BEM (minors' investment, inheritance and other monies) clause or similar administration at account level and (iv) home construction accounts. These markers help DNB to administer the DGS.

### Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme

The Policy Rule on the Scope and Execution of the DGS sets rules on aspects (i) for which the national rules give DNB discretionary room or (ii) that warrant further clarification. By adopting the amendments DNB provides clarity for banks and depositors on the definition of public authorities and the handling of various situations that may arise during a DGS payout.

The addition to the policy rule makes the term 'public authority' more operationally relevant and makes it easier to determine which entities are classified as public authorities and hence excluded from the DGS and the associated protection. Practice has shown that it is sometimes difficult to determine whether an entity is classified as a public authority.

The policy rule also makes clear that DNB does not provide compensation for deposits of non-natural persons without legal personality belonging to a group of companies or financial undertakings to which the deposit guarantee scheme does not apply. In this specific case DNB thus examines the activities of the non-natural persons without legal personality.

Annuity accounts and standing right savings accounts receive special tax treatment under the Income Tax Act (Wet inkomstenbelasting 2001) and the Wages and Salaries Tax Act (Wet op de loonbelasting 1964). A failure of a bank that holds such accounts would require the payout of the accrued capital and expose depositors to the risk that the tax benefits of such accounts could be lost. For this reason the round of amendments provides for special treatment for annuity accounts and standing right savings accounts in the administration of the DGS. Although the DGS directive specifies that compensation for these deposits must also be made available to the depositor within the statutory period of 10 working days (seven working days from 2024), the guiding principle must be avoidance of undesirable tax consequences. Another factor is that a depositor may be unaware of these tax consequences. In order to protect the depositor's interests, DNB is therefore building extra caution into the payout process.

Finally, a change has been made to the terms used for the ranking of eligible deposits. This change is intended to provide greater precision and clarity.

## Content of this document

This document is intended to supplement the official definition in the Government Gazette (Staatscourant) by explaining the amendments and the incorporation of consultation responses. No rights can be derived from the content of this document. In the event of any discrepancies between the content of this document and the publications in the Government Gazette, the latter will prevail.

Part 2 of this document discusses the consultation responses and their incorporation. Part 3 presents the adopted amendments to the SCV Policy Rule. Part 4 describes the adopted amendment to the Scope and Execution Policy Rule.

## Next steps

The adopted amendments to the policy rules will be published in the Government Gazette. Subsequently, where applicable, the Data Delivery Agreement (DDA) and the DGS Data Delivery Manual (version 3.2) will be amended to bring them into line with the amended rules.

The amendments to the rules will also be incorporated in new, consolidated version of PDF file 'Rules of the Deposit Guarantee Scheme for Banks', which will be published on DNB's website.

## 2 Results of the consultation on the second round of amendments (July 2021)

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Banks took the opportunity to respond to the public consultation on the second round of amendments to the DGS rules. A total of nine responses were received. In this part DNB explains the banks' main responses and the associated feedback. The responses from the sector led to clarification of a number of matters in the rules themselves as well as the accompanying explanation. These clarifications have also been included in the associated DGS Data Delivery Manual where appropriate.

### SCV Policy Rule

#### **Withholding tax**

The sector commented on the clarification in the policy rule that when compiling the SCV file banks must take account of the deductible withholding tax in determining the balances to be reported.

The question was raised as to whether a transitional period could also apply to this provision. While DNB understands that the clarification may require some banks to modify their SCV system, a transitional period would be undesirable and unnecessary. This is because the clarification concerns the handling of certain situations as part of an existing delivery obligation, namely the determination of the accrued but not yet credited interest amount for each account. A transitional period would actually result in a lack of clarity during the transitional period.

DNB understands the situation faced by banks that have to modify their system as a result of the clarification. In consultation with the bank, this will be taken into account in the assessment of the SCV system and the SCV file.

#### **Determination of deposit base and treatment of accounts marked as home construction accounts**

The sector raised various questions and commented on the addition of a marker for home construction accounts to the single customer view. This is covered in more detail in the section on the home construction accounts marker.

As part of the clarifications provided by DNB in this area, an exception is created for home construction accounts in the determination of the deposit base as referred to in Section 29.16(1) of the Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantees under the Financial Supervision Act. (Besluit bijzondere prudentiële maatregelen, beleggerscompensatie en depositogarantie Wft – Bbpm). The amount held on accounts marked as home construction accounts is not included in the covered amount used to determine the deposit base. This reflects the special position of home construction accounts, which are part of a broader financial agreement (a mortgage loan) and intrinsically have a limited term.

### **Categorisation of non-natural persons**

For clarification banks raised a number of technical questions concerning the addition of business classification for non-natural persons. The requested technical clarification is included in the DGS Data Delivery Manual.

### **Marker for suspension of payments**

As part of the consultation DNB asked whether there was a need for a further distinction between provisional and final suspension of payments. The responses indicate that this would provide no added value, so DNB will not make such a distinction.

In the consultation document DNB proposed applying the suspension of payments marker at the level of the depositor. Several banks stated that it would be clearer to apply such a block at account level, as the depositor still has legal capacity and is not legally represented. DNB concurs with this view and will amend the wording of Section 6(1)(i) to read “deposits of depositors that have been granted suspension of payments”. The marker will thus be applied at account level.

DNB also asked whether it was necessary to add a marker for depositors in a debt restructuring scheme (Wet schuldsanering natuurlijke personen – WSNP). Banks confirm that depositors in the WSNP scheme are allocated an administrator and that this involves attachment of their deposits. The administration thus provides a sufficient signal, by means of the existing attachment marker, to convey this

information to DNB. No separate marker for debt restructuring for natural persons is necessary.

### **Marker for annuity accounts and standing right savings accounts**

With regard to standing right savings accounts, in response to the consultation it was also asked whether this marker should also be applied to an annuity BV with a payment account. This is not the case. An annuity BV is a legal entity formed by a natural person to make use of the standing right exemption. This is a different structure than the legally facilitated standing right savings account, which is a savings account that is held in the name of a natural person and operated in the same way as an annuity savings account. The standing right exemption was abolished with effect from 1 January 2014, so no new standing right accounts can be opened.

### **Marker for deposits subject to a BEM clause or similar administration at account level**

Banks ask when a form of administration can be considered similar to the BEM clause. The key criterion is that the administration takes place at account level and is often established deliberately (i.e. ex-ante) in the setting up of the account. The BEM clause, which applies to one or more individual accounts, and for which the District Court must approve transactions, is an example of this. This form of administration thus differs from generic administration conducted at depositor level. It is up to the banks themselves to assess whether such a situation exists. An example of such administration are accounts that are subject to a custody clause. The generic

wording is necessary in part to take account of similar structures in other countries in which Dutch banks are or may be operating.

The question is similarly raised as to whether such a marker should also be used for testamentary administration. This is the case if testamentary administration has been established in respect of one or more legacy goods. It follows that testamentary administration may indeed be applicable at account level in a manner similar to a BEM clause. This has been added to the explanatory notes on the policy rule.

#### **Marker for home construction accounts**

Many consultation responses concerned the added marker for home construction accounts. Banks state that the explanation appears to indicate that in DNB's view a home construction account fulfils the definition of a deposit and hence falls within the protection afforded by the deposit guarantee scheme. Several respondents expressed the view that a home construction account does not fulfil the definition of a deposit. Furthermore, a number of banks state that the addition of home construction accounts to the SCV file would be a complex change, because these banks administer home construction accounts in a different way – for example as part of their mortgage administration – than regular accounts.

DNB acknowledges the lack of clarity on whether home construction accounts qualify as deposits (and the associated protection under the deposit guarantee scheme). One consultation response

summarises the problem concisely: "There is no legal definition of the home construction account. The form of a home construction account is determined primarily by the contractual conditions on which it is based. The question of whether a home construction account qualifies as a deposit can therefore only be answered on the basis of the underlying contracts." DNB endorses this interpretation. At the same time DNB believes it is desirable to create as much clarity as possible on the situations (i.e. form and structure) and conditions that lead or may lead to a home construction account qualifying as a deposit. DNB expects to be able to enter into discussions with the banks on this in the foreseeable future.

Notwithstanding the above, DNB wishes to set out more clearly why it is desirable to add the marker for home construction accounts to the SCV. The starting point is that, in line with the definition in Section 1(k), the SCV lists all of a depositor's deposits at a bank with all data included in accordance with the specified data model. It follows that if a certain balance does not qualify as a deposit, it will not be included in the SCV.

It does not therefore follow from the addition of part I, home construction accounts, to Section 6(1) that DNB necessarily considers that a home construction account – in whatever form – qualifies as a deposit. As stated, this would depend on the precise (contractual) form. The addition of a marker for home construction accounts is conditional. If a home construction account is classified as a deposit (and therefore has to be

included in the SCV), it must be marked as such. This is in order to take account of the possible tax consequences of a payout, as described in the explanatory notes. Figure 1 provides a more detailed schematic explanation of the addition of the home construction account marker.

of Section 2.3 is intended to mark the scope of the public authorities that are excluded in paragraph 1 of Section 2.3. Taken together, paragraphs 1 and 2 provide an assessment framework to determine whether a public authority or government organisation is excluded from protection under the deposit guarantee scheme.

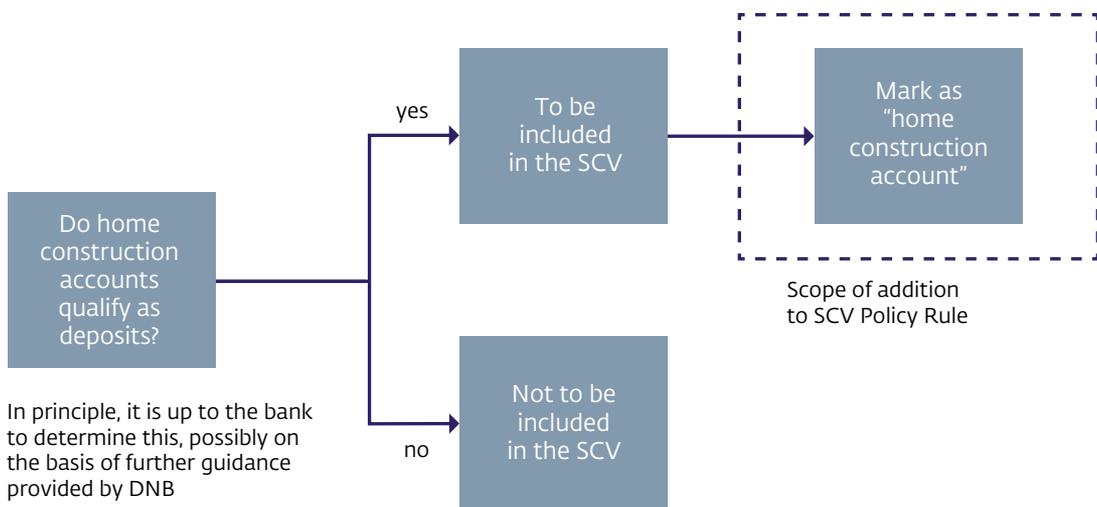
## Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme

### Scope of definition of public authority within DGS rules

Banks request further clarification on the public authorities that should be covered by Section 2.3(2). From DNB’s perspective this clarification should not be necessary in principle because paragraph 2

Some examples are nevertheless given below for clarification. The Council of State is a constitutionally established body without its own legal personality that is directly part of the State of the Netherlands. The protection of bank deposits by the deposit guarantee scheme is therefore inapplicable. By way of comparison the Chamber of Commerce is also established by law, but it has been expressly laid down that the Chamber of Commerce has legal personality

Figure 1 Scope of home construction account marker in the SCV



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(Section 2 of the Chamber of Commerce Act). Hence it is an entity based on public law that is not a direct and integral part of a public authority (because it has its own legal personality). A deposit held by the Chamber of Commerce is therefore eligible for protection under the deposit guarantee scheme.

#### **Treatment of excluded non-natural persons without legal personality**

In response to the consultation it is noted that a situation may also arise in the case of a non-natural person without legal personality where that person holds an account on which deposits are held on behalf of third parties or where that person is the third person on whose behalf deposits are held. The original wording of Section 2.4 was not sufficiently precise to provide clarity on treatment of these situations. DNB has accordingly amended the wording to clarify the treatment of situations in which the non-natural person without legal personality is the depositor. For the sake of completeness, it should be noted that in such situations consideration must always be given to Section 29.02(3) of the Bbpm, which states that if an account holder holds a deposit for third parties, the third parties are the depositors.

#### **Annuity accounts and standing right savings accounts**

In payouts for annuity accounts or standing right savings accounts DNB aims to facilitate capital transfers that are tax-neutral for depositors. In their responses banks endorse the desirability of this from the customer's perspective. They

nevertheless note that tax-neutral transfers are labour-intensive and require examination of the precise payment history. The bank for which the deposit guarantee scheme has been activated must presumably be available to transfer capital in accordance with the Capital Transfers Streamlining Protocol. DNB is aware of this complexity and wishes to cooperate with banks on the further deployment of the required process in the period ahead. The addition of provisions to the SCV Policy Rule and the Policy Rule on the Scope and Implementation of the Deposit Guarantee Scheme is a first step in that direction.

A further question raised in the consultation responses concerns the sequence of payouts if a depositor has a (regular) deposit and an annuity account, as well as the role of the Tax Administration. An example is a payment account of EUR 70,000 and an annuity account of EUR 50,000.

DNB refers here to the ranking of eligible deposits as set out in Section 3.1, in which payment accounts are paid out first. The annuity account would be in (the amended) part d. This category includes all accounts that are not payment accounts, savings accounts or time deposits. The deposit guarantee scheme could thus immediately pay out EUR 70,000. In the case of the annuity account EUR 30,000 of the EUR 50,000 could be made available for a transfer. The remaining EUR 20,000 would be covered by the regular insolvency claim made through the liquidator.

## 3 Amendments to the SCV Policy Rule

### **Regulation amending the SCV Policy Rule (Regeling tot wijziging van de Beleidsregel Individueel Klantbeeld Wft 2017) in connection with the execution of the deposit guarantee scheme.**

De Nederlandsche Bank N.V.'s Policy Rule dated 10 July 2017 containing rules on the preparation of SCV files by banks for the benefit of the deposit guarantee scheme and resolution (SCV Policy Rule).

De Nederlandsche Bank N.V.

Having regard to Section 3:17(2), opening words and (d), of the Financial Supervision Act (Wet op het financieel toezicht – Wft) and Section 26a of the Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft – Bpr);

Having regard to Section 3:261 of the Wft, and Sections 29.05(3) to (5), Section 29.06(1), Section 29.07(4) and Section 29.16(1) of the Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantees under the Financial Supervision Act (Besluit bijzondere prudentiële maatregelen, beleggerscompensatie en depositogarantie Wft – Bbpm);

Having regard to Section 212ra of the Bankruptcy Act (Faillissementswet);

Having consulted the representative organisations involved and the general public;

Decides as follows:

### Section 1

The SCV Policy Rule will be amended to read as follows:

#### **A. Definitions**

A part is added to Section 1, with the lettering of parts c to p inclusive being changed to parts d to q inclusive, reading as follows:

- c. Bpr: Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft;

#### **B. Withholding tax**

A new paragraph is added to Section 3, with the full stop at the end of the fourth paragraph being replaced by a semicolon, reading as follows:

5. In the case of deposits held at branches in Member States that levy withholding tax, a bank, when determining the amount of accrued but not yet credited interest to be reported, takes account of the withholding tax to be deducted and does not report it.

#### **C. Determination of deposit base**

1. A new part is added to Section 4(3) after part f, reading as follows:
  - g. Deposits as referred to in Section 6(1)(l) are considered ineligible deposits.
2. A paragraph is inserted in Section 4, with the fourth paragraph being renumbered as the fifth, reading as follows:
  4. In determining the deposit base as referred to in Section 29.16(1) of the Bbpm, DNB uses one of the following calculation methods:

- a. In principle DNB uses the deposit base resulting from the aggregation of the covered amounts per depositor, as shown in the single customer view in accordance with the calculation method set out in the third paragraph and as reported by the bank in accordance with Section 130(1), opening words and part b of the Bpr.
- b. If appropriate having regard to the assessment of the quality of the supplied SCV files and/or the control of the SCV system, as included in Article 15, DNB will, notwithstanding part a, use the deposit base resulting from the estimate of the total size of the covered deposits based on the number of deposits and balances as reported by the bank in accordance with Section 130(1), opening words and section b, of the Bpr, without taking account of depositors holding more than one account.

#### **D. Categorisation of non-natural persons**

A new paragraph is added to Section 5, with the full stop at the end of the third paragraph being replaced by a semicolon, reading as follows:

4. For every non-natural person a bank administers the associated business category in accordance with the options in a data model prescribed by DNB and on the basis of definitions set by DNB.

#### **E. Markers**

1. In Section 6(1)(g): 'Deposits that have been blocked pursuant to the laws of the country in which the deposit is held, to the extent that such blocking is relevant to a payout under the DGS' is replaced by 'Deposits that have been blocked pursuant to the laws of the country in which the deposit is held, other than the Netherlands, to the extent that such blocking is relevant to a payout under the DGS'.
2. Four parts are added to Section 6(1), with the full stop at the end of part h being replaced by a semicolon, reading as follows:
  - i. Deposits of depositors that have been granted suspension of payments;
  - j. Annuity accounts as referred to in the Income Tax Act and standing right savings accounts as referred to in the Wages and Salaries Tax Act;
  - k. Deposits subject to a BEM clause or similar administration at account level;
  - l. Home construction accounts.

#### **F. Other matters**

Section 16 is deleted, with Sections 17 and 18 being renumbered as Sections 16 and 17.

## Section II

1. This Regulation will come into force on the day after its publication in the Government Gazette (Staatscourant). In the case of Section I(D) and Section I(E)(2) a transitional period applies up to 1 April 2022.

This Regulation and the accompanying explanatory notes will be published in the Government Gazette.

Amsterdam, 27 September 2021

De Nederlandsche Bank N.V.  
Nicole Stolk-Luyten, Executive Director

## Explanatory Notes

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### General

DNB has issued the SCV Policy Rule to specify in further detail the requirement that banks must be capable of providing DNB, at DNB's request, with the information it requires to administer the deposit guarantee scheme (DGS), in a manner and within a period specified by DNB (Section 26a of the Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft – Bpr)). With effect from 1 January 2019 banks are required to submit this information in the form of the Single Customer View (SCV) compiled in accordance with their own procedures and measures (the SCV system). This will allow the period within which the DGS compensation is granted and made available for payment to be shortened to seven working days, which is a requirement in the recast European Directive on deposit guarantee schemes (2014/49/EU, DGSD).

Over the past period it has become necessary to make a number of clarifications and additions to this policy rule. This round of amendments clarifies a number of points concerning the way in which banks are required to report data (withholding tax), adds data to be reported (categories of non-natural persons, additional markers) and clarifies how DNB deals with the two different methods of calculating the deposit base reported by banks for the periodic setting of premiums (determination of deposit base).

## Notes on individual sections

### Section I

#### A. Definitions

The addition to Section 1 defines the Bpr as the Decree on Prudential Rules for Financial Undertakings.

#### B. Withholding tax

The addition to Section 3 makes clear that when compiling the SCV file, banks must take account of the deductible withholding tax in the determination of the balances to be reported. This is relevant to banks operating in Member States that levy withholding tax on savings interest. Taking the deductible withholding tax into account will ensure that DNB does not grant compensation on the part of the accrued but not yet credited interest that would be deducted by the bank to pay the withholding tax. This would be undesirable and unnecessary because of clashes between tax treatments in different Member States.

Take for example a deposit held in a Member State where a 20% withholding tax is levied on savings interest. The principal of the deposit since 1 January has been EUR 50,000 and the bank's applicable fixed interest rate is 1%. The accrued interest is credited every year on 31 December. On 30 December the interest accrued but not yet credited would be just under EUR 500. When the interest is credited, the depositor receives EUR 400 of interest and EUR 100 (20%) is deducted to pay

the withholding tax. In accordance with the application of the new fifth paragraph of Section 3, the bank would therefore report on 30 December EUR 50,000 of principal and EUR 400 of accrued but not yet credited interest.

#### C. Determination of deposit base

The first amendment to Section 4, the addition of part g to the third paragraph, specifies that the amount held on accounts marked as home construction accounts is not included in the calculation of the covered amount used to determine the deposit base. This reflects the special position of home construction accounts, which are part of a broader financial agreement (a mortgage loan) and intrinsically have a limited term.

The second amendment to Section 4, the new fourth paragraph, clarifies DNB's working method in determining the bank deposit base used to calculate the contributions that banks are required to pay for the deposit guarantee scheme.

The opening words of the new fourth paragraph make clear that it concerns the deposit base laid down in Section 29.16(1) of the Bbpm, which refers to Section 130(1), opening words and part b, of the Bpr. Annex 15 of the Regulation on Statements of Financial Undertakings then includes the statements that a bank submits in determining the deposit base.

The statement contains two calculated values for the deposit base. First, in column 09, line 0070, the deposit base is calculated by aggregating the

covered amounts per depositor, as shown in the SCV. For this purpose a bank uses the calculation method set out in Section 4(3). Second, in column 06, line 1000, the deposit base is calculated by means of an estimate of the covered deposits based on the number of deposits and balances, without taking account of depositors having more than one account.

Parts a and b of the new fourth paragraph state how DNB selects one of the two calculation methods for the deposit base.

Part a states that in principle DNB uses the estimate of the deposit base resulting from the SCV. The precondition for this is that the supplied SCV files and the control of the SCV system are of sufficient quality.

Part b states that if appropriate having regard to the assessment of the quality of the supplied files and/or the control of the system, DNB will rely on the estimate based on the number of deposits and balances.

The assessment framework published by DNB for supervision of compliance with the requirements of the SCV Policy Rule fulfils the criteria and standards for the monitoring and assessment of compliance with the policy rule. The assessment framework is the basis on which DNB determines whether the supplied files and the control of the system are of sufficient quality.

#### **D. Categorisation of non-natural persons**

The addition to Section 5 states that banks must use the options available in the data model prescribed by DNB to determine the type of business category to which non-natural persons belong. On the basis of definitions of business categories specified by DNB and included in the DGS Data Delivery Manual, banks can determine the category to which a non-natural person must be allocated.

The allocation of the business category of non-natural persons indicates the reason why certain non-natural persons are not eligible for compensation under the deposit guarantee scheme. This assists DNB in assessing the accuracy of the SCV and helps provide an explanation and substantiation for DNB's decision not to pay out the covered deposits for a specific depositor under the deposit guarantee scheme.

#### **E. Markers**

Two amendments are made to Section 6. First, in paragraph 1(g), the passage "other than the Netherlands" is added. This makes clear that this marker concerns account blocks associated with national regulations in other Member States. This prevents any apparent overlap with other new or existing markers.

A total of four markers are also added to the first paragraph. These new markers are being included and incorporated in the data model prescribed by DNB. The new markers are explained below.

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The addition of part i, deposits of depositors that have been granted suspension of payments, enables DNB to identify these deposits and take account of the applicability of the suspension of payments in the administration of the deposit guarantee scheme. This could be done, for example, in consultation with the administrator of the organisation to which suspension of payments has been granted.

The addition of part j, annuity accounts as referred to in the Income Tax Act and standing right savings accounts as referred to in the Wages and Salaries Tax Act, makes it possible to identify these fiscal accounts. In the administration of the deposit guarantee scheme DNB can then apply the policy as described in the new Section 3.7 of the Policy Rule on the Scope and Execution the Deposit Guarantee Scheme.

The addition of part k, deposits subject to a BEM clause or similar administration at account level, enables DNB to take account of the applicability of these clauses or similar administration at account level – for example a gift administration or testamentary administration – in the administration of the deposit guarantee scheme. For example, the permission of the District Court will be required to process a payout in respect of an account to which a BEM clause applies.

The addition of part l, home construction account, makes it possible to identify these accounts. This may be desirable due to the possible tax consequences if the deposit on a home construction account is paid out directly by the

deposit guarantee scheme. The addition of a marker for home construction accounts is conditional. If a home construction account is classified as a deposit (and therefore has to be included in the SCV), it must be marked as such.

#### **F. Other matters**

The opportunity is taken to delete Section 16. This article contained transitional provisions that ceased to apply on 1 January 2019.

## **Section II**

The following should be noted with regard to the date on which the Regulation comes into force. Section II specifies that the regulation comes into force on the day after its publication in the Government Gazette, with the exception of the amendment to Section 5, in relation to the categorisation of non-natural persons, and the addition of parts i to l inclusive to Section 6(2) with regard to the additional markers. A transitional period ending on 1 April 2022 applies to these amendments, as they may impact the banks' SCV systems.

Amsterdam, 27 September 2021

De Nederlandsche Bank N.V.  
Nicole Stolk-Luyten, Executive Director

## 4 Amendments to the Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme

### **Regulation amending the Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme in connection with the administration of the deposit guarantee scheme.**

De Nederlandsche Bank N.V.'s Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme (Beleidsregel Reikwijdte en Uitvoering Depositogarantiestelsel) as referred to in Section 3:259(2) of the Financial Supervision Act (Wet op het financieel toezicht – Wft).

De Nederlandsche Bank N.V.

Having consulted with representative organisations;

Having regard to Sections 29.02 and 29.06 of the Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantees under the Financial Supervision Act (Besluit bijzondere prudentiële maatregelen, beleggerscompensatie en depositogarantie Wft – Bbpm) and Section 26a of the Decree on Prudential Measures under the Financial Supervision Act (Besluit prudentiële maatregelen Wft – Bpr);

Having consulted the representative organisations involved and the general public;

Decides as follows:

### **Section I**

#### **A. Definitions**

Section 1.1. is amended as follows:

1. Point 1 "1. Temporarily high deposit: a deposit as referred to in Section 29.02(4) of the Decree;" is deleted.
2. A definition is added to Section 1.1, with the full stop being replaced by a semicolon, reading as follows:  
"6. Temporarily high deposit: a deposit as referred to in Section 29.02(4) of the Decree."

#### **B. Scope of definition of public authority in DGS rules and treatment of excluded non-natural persons without legal personality**

The following section is added to Chapter 2, Scope:

#### **Section 2.2 Exclusions**

##### **Section 2.3**

1. In determining the compensation payable under the deposit guarantee scheme, as referred to in Section 3:261(1) of the Act, DNB considers the following public authorities to be public authorities to which the deposit guarantee scheme does not apply, as referred to in Section 29.01(2), opening words and part a(8), of the Decree:
  - a. the State;
  - b. provinces;
  - c. municipalities;
  - d. water control boards;
  - e. the public bodies of the BES islands
  - f. Foreign and supranational public authorities comparable to public authorities in parts a to e inclusive.

2. In determining the compensation payable under the deposit guarantee scheme, as referred to in Section 3:261(1) of the Act, DNB considers that the deposit guarantee scheme does apply to public-law entities that are not a direct, integral part of the public authorities referred to in the first paragraph.

#### **Section 2.4**

If a depositor is a non-natural person without legal personality that is classified as a company to which the deposit guarantee scheme does not apply, as referred to in Section 29.01(2) of the Bbpm, DNB will not grant compensation for this deposit to the persons claiming the deposit as members of the company or similar grouping.

#### **C. Annuity accounts and standing right savings accounts**

The following section is added to Chapter 3, Execution:

#### **Section 3.7**

1. In the case of deposits that have been marked in accordance with Section 6(1)(j) of the SCV Policy Rule as annuity accounts within the meaning of the Income Tax Act or standing right savings accounts within the meaning of the Wages and Salaries Tax Act, DNB will not make the compensation granted under the deposit guarantee scheme available automatically for payout through the website as referred to in Section 29.07(1) of the Bbpm.
2. Before making the compensation available as referred to in the first paragraph, DNB will draw the depositor's attention to the possible

tax consequences of direct receipt of the compensation.

3. Where possible, DNB supports a structure whereby depositors can have that part of the compensation granted under the deposit guarantee scheme in respect of an annuity account as referred to in the Income Tax Act or the standing right savings account as referred to in the Wages and Salaries Tax Act paid to another account in which the applicable tax treatment can continue.

#### **D. Order of priority of eligible deposits**

Article 3.1(3) "d. Special accounts" is replaced by:

- d. Accounts that are not payment accounts, savings accounts or time deposits and in respect of which DNB can determine the eligible amount on the basis of the data supplied by the bank.

#### **Section II**

This Regulation will come into force on the day after its publication in the Government Gazette (Staatscourant).

This Regulation and the accompanying explanatory notes will be published in the Government Gazette.

Amsterdam, 27 September 2021

De Nederlandsche Bank N.V.  
Nicole Stolk-Luyten, Executive Director

## Explanatory Notes

### General

By means of the proposed amendment to the Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme, DNB provides further clarity for banks and depositors on the scope of the protection afforded by the deposit guarantee scheme and the treatment of a number of cases that may arise during a payout situation. The principal additions to the policy are a more detailed definition of public authorities of relevance to the deposit guarantee scheme, the addition of special treatment for annuity accounts and standing right savings accounts in payout situations and a change to the terminology used in ranking the eligible deposits.

### Notes on individual sections

## Section I

### A. Definitions

The amendment rectifies incorrect numbering.

### B. Scope of definition of public authority in DGS rules and treatment of excluded non-natural persons without legal personality

The addition of Section 2.3 provides clarity on the scope of the term 'public authorities' as used by DNB in the administration of the deposit guarantee scheme. This is important because the deposit guarantee scheme and the associated protection do not apply to public authorities.

Practice shows that it is sometimes difficult to determine whether an entity is classified as a public authority.

Parts a to e inclusive of the first paragraph identify the following five public authorities: the State, provinces, municipalities, water control boards and public bodies of the BES islands. These public authorities are not covered by the deposit guarantee scheme and the associated protection. The policy rule is thus aligned with the explanatory memorandum accompanying the decree of 16 November 2015 containing provisions amending the Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantees under the Financial Supervision Act (Besluit bijzondere prudentiële maatregelen, beleggerscompensatie en depositogarantie Wft – Bbpm), the Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft – Bpr) and the Decree on Administrative Fines in the Financial Sector (Besluit bestuurlijke boetes financiële sector) in connection with the implementation of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (OJEU 2014, L 173) (Deposit Guarantee Scheme Implementation Decree).

Part f of the first paragraph states that the deposit guarantee scheme and the associated protection do not apply to foreign public authorities that are comparable to parts a to e inclusive.

The second paragraph provides additional clarity on entities in the public domain to which the deposit guarantee scheme and the associated protection do apply. This concerns entities that are based on public law but are not a direct, integral part of the public authorities referred to in the first paragraph. By extension, it should be noted that the deposit guarantee scheme and the associated protection also apply to private law entities that are publicly owned. These are not only private law entities in a legal sense, but there is also a significant difference between a public authority itself and the entities that it owns.

The difference can be clarified by some examples. The Council of State is a constitutionally established body without its own legal personality that is directly part of the State of the Netherlands. The protection of bank deposits by the deposit guarantee scheme is therefore inapplicable. By way of comparison the Chamber of Commerce is also established by law, but it has been expressly laid down that the Chamber of Commerce has legal personality (Section 2 of the Chamber of Commerce Act). Hence it is an entity based on public law that is not a direct and integral part of a public authority (because it has its own legal personality). A deposit held by the Chamber of Commerce is therefore eligible for protection under the deposit guarantee scheme.

The addition of Section 2.4 provides clarity on the applicability of the deposit guarantee and the associated protection to deposits held by non-natural persons without legal personality that are companies to which the deposit

guarantee scheme does not apply. Clarification is desirable because, viewed individually, the deposit guarantee scheme could apply to the (underlying) persons who are members of a company, association or other grouping that does not possess legal personality.

In Article 2.4 DNB specifies that no compensation will be set for a depositor that is at the same time a non-natural person without legal personality and a company to which the deposit guarantee scheme does not apply. This is connected to Section 29.01(2) of the Bbpm, which states that the deposit guarantee scheme does not apply to deposits of certain groups of companies. A crucial point is that Section 29.02(3) of the Bbpm does not apply to these depositors. The section concerned specifies the treatment of escrow accounts, particularly the principle that in the case of an escrow account the third party qualifies as the depositor. This escrow account structure does not apply to regular deposits held by non-natural persons without legal personality. It follows that the deposit guarantee scheme and the associated protection do not apply to these depositors when a non-natural person without legal personality belongs to an excluded category of companies.

Take for example a deposit of EUR 50,000 held by a general partnership in which two persons cooperate on an equal basis. At the same bank person A also has an individual account with a balance of EUR 20,000 and person B has an individual account with a balance of EUR 5,000. The partnership is classified as a financial institution within the meaning of Section 29.01(2)(a)(2).

In this example, DNB, in administering the deposit guarantee scheme, will determine that the partnership's deposit is not eligible for the deposit guarantee scheme and the associated protection because the partnership is classified as a financial institution. Person A only receives compensation of EUR 20,000 for their individual account and the same applies to person B (compensation of EUR 5,000).

Now suppose that the general partnership is classified as a company to which the deposit guarantee scheme and the associated protection apply. Both persons' claim to the partnership's deposit will then be included in the compensation to be set for these persons. Person A will then receive compensation of EUR 45,000 and person B will receive compensation of EUR 30,000.

### **C. Annuity accounts and standing right savings accounts**

Annuity accounts and standing right savings accounts receive special tax treatment under the Income Tax Act 2001 and the Wages and Salaries Tax Act 1964. A failure of a bank that holds such accounts would require the payout of the accrued capital and expose depositors to the risk that the tax benefits of such accounts could be lost.

For this reason the Section 3.7 introduces special treatment for annuity accounts and standing right savings accounts in the administration of the deposit guarantee scheme. Although the DGS directive specifies that these deposits must also be made available to the depositor within the statutory period of 10 working days (seven working days

from 2024), the guiding principle must be avoidance of undesirable tax consequences. Another factor is that a depositor may be unaware of these tax consequences. In order to protect the depositor's interests, DNB is therefore building extra caution into the payout process.

The first paragraph states that DNB will not make compensation in respect of annuity accounts and standing right savings accounts available automatically on the website of the deposit guarantee scheme. This avoids the risk that a depositor will have the compensation paid out without being aware of the possible tax consequences.

The second paragraph states that DNB will draw the depositor's attention to the possible tax consequences of the direct receipt of compensation. The depositor reserves the right to receive the compensation and to have it paid out to a bank account of their choice. The third paragraph states that in its administration of the deposit guarantee scheme DNB is prepared to cooperate in providing compensation based on a tax-neutral payout. This could be a solution in line with the Protocol on the Streamlining of Capital Transfers drawn up by the Dutch Banking Association and the Dutch Association of Insurers. DNB cannot provide advance assurance that this option will be available. The ability to offer this solution would depend in part on banks' readiness to support it at the specific time of execution of the deposit guarantee scheme. Possible technical challenges in guaranteeing tax neutrality may also be relevant factors. The addition of Section 3.7 to

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the Policy Rule on the Scope and Execution of the Deposit Guarantee Scheme in any case creates a basis on which to facilitate such a solution.

#### **D. Order of priority of eligible deposits**

The amendment replaces the term “special accounts” with “accounts that are not payment accounts, savings accounts or time deposits and in respect of which DNB can determine the eligible amount on the basis of the data supplied by the bank”.

Within the ranking of eligible deposits part d thus now has a negative definition (it states which accounts do not fall within this category) instead of the previous positive definition. This better reflects the fact that this category includes all accounts that are not payment accounts, savings accounts or time deposits but in which the eligible amount can be determined. The old definition of “special accounts” was not sufficiently clear on this point.

## **Section II**

Article II states that the Regulation will come into force on the day after its publication in the Government Gazette.

Amsterdam, 27 September 2021

De Nederlandsche Bank N.V.  
Nicole Stolk-Luyten, Executive Director



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