

DGS

Information provision by banks to clients on the Deposit Guarantee Scheme (DGS)

Note: unless otherwise indicated the article numbers in the below overview refer to articles of the EU DGS Directive 2014/49/EU.

Article I paragraph B - Article 29.03 of the Dutch Algemene Maatregel van Bestuur/Governmental Decree for implementation of the DGS Directive (stb. 2015, 434) refers to this article 16 DGS Directive.

Information provision seems to be required on four levels:

- I. General information – mostly on the website (art 16.1 + 16.3, 2nd paragraph)
- II. In the specific product itself (art 16.1 + 16.2)
- III. On the statement of account (art 16.3)
- IV. Yearly provision of Depositor Information Template (art 16.3)

Ad. I: general information:

A. *Contents:*

1. Information about the DGS system in the Netherlands (art 16.1 + 16.3, 2nd paragraph (Dutch Central Bank (DNB))

A bank can provide information on DGS on its website or alternatively it can either refer to or copy information which is published by the Dutch Central Bank (DNB) on its official DGS web site (art 16.3, 2nd paragraph).

2. Exclusions of coverage and persons who do not fall within DGS coverage (art 16.1).
3. A reference to information on DGS on the official DGS website (art 16.3, 2nd paragraph). This will, amongst others, include the general exemptions from coverage under DGS to which banks can refer.
4. Other institution-specific information regarding DGS (art 16.1)
5. Note: Banks are not allowed to use DGS for advertising purposes. Banks are only allowed to provide factual information pertaining to DGS coverage (art 16.5).

Optional for banks:

6. Special situations and arrangements, e.g. joint accounts, sole proprietorship (combined with personal account), settlement (however, please note paragraph II.D below), etc. (art 16.1 + 16.3, 2nd paragraph)
7. Products covered by DGS that are in portfolio of the bank in question; this can also be published generically per type/groups of products (art. 16.1)
8. Persons who are eligible for compensation under the DGS (also refer to I.A.2)

(Note: providing information mentioned under I.A.7 and I.A.8 above is not explicitly stated in art 16.1 and 16.2, but it seems evident to inform clients).

B. Where / how:

1. Providing information to current and potential depositors (art 16.1)
For current depositors only the general information provision, the information on account statements and the yearly provision of the Depositor Information Template are relevant.
2. Communications should be done in the way that is prescribed by national law (art. 16.4);
3. Mostly on the website of the institution
4. Include a reference to the official DGS web site (art 16.3, 2nd paragraph)
5. In the language agreed when the account was opened or in the language of the member state where the bank branch is based (art 16.4)

C. Remarks:

General information will in principle only be published on the website of the bank. Clients who prefer to have printed information will receive hard copies with the information published on the website. Banks will not develop separate folders or specific paper-based information carriers.

For exceptions to the coverage, banks can refer to information about DGS on the official DGS web site.

Ad. II: Information enclosed with the product itself:

A. Contents:

1. Information on DGS in the product information to fulfil the pre contractual information obligation to the client by providing information whether the product in question is covered by DGS. (art. 4:20 Financial Supervision Act/ Wet op het Financieel Toezicht (Wft)) (art 16.1)
2. Due to the legal position of the bank: a disclaimer that the *product* does fall within the coverage of the DGS but that the *depositor / client may be* excluded from coverage. (art 16.1)
3. The client must be provided with the Depositor Information Template prior to entering into a contract pertaining to a covered deposit. (art 16.2) > *also refer to II.B.1*
4. The client must acknowledge the receipt of this Depositor Information Template (art 16.2) > *also refer to II.B.2*

B. Where / how:

1. At a certain moment in the pre contractual phase the bank must provide the Depositor Information Template to the client. (art 16.2)

Banks use multiple ways of 'providing' the Depositor Information Template:

- a. as part of the contract or as an appendix to the contract;
- b. as part of as an appendix to the General Product Conditions or General Conditions;

- c. by placing a reference in the contract to the location where the Depositor Information Template can be found.
 - d. as part of the mandatory pre contractual information (e.g. art. 4:20 Financial Supervision Act/Wft)
 - e. as a separate document that is provided to the client prior to entering into the contract.
2. The Directive prescribes that the client must acknowledge the receipt of the Depositor Information Template (art 16.2).

On the Depositor Information Template a field is shown stating 'Acknowledgment of receipt by depositor' which provided space for a signature of the client. In the proposed Depositor Information Template this field has been deleted.

The Dutch Ministry of Finance has indicated: 'The Directive prescribes that the receipt of the information is acknowledged, but not the method by which this is done.' In addition, there is room for digital acknowledgement of receipt as well (art. 16.8).

Acknowledgment of receipt of the Depositor Information Template can, from a legal point of view, take place in several ways, whereby the acknowledgment should be in line with the way the Template has been provided (refer to the different ways of provision mentioned in II.B.1.a up to and including e).

Acknowledgment of receipt by the client can take place in the following ways:

- a. Verbal acknowledgment of receipt (in case of sales via phone) (also refer to remark 1 below).
- b. Written acknowledgment of receipt on the contract, while referring to the (location of the) Template which has been added to the contract. ('I declare to agree with the contract and acknowledge the receipt of the Template'). Refer to remark 2 below.
- c. Written on the contract, while referring to the general (product) conditions, which include the Template
- d. Written on the contract, while referring –in case of retail clients– to the mandatory Financial Supervision Act (Wft) product information (which includes the Template)
- e. Online, in which case the client receives a soft copy of the contract and the (location of the) Template and the applicable general conditions and the client checks the checkbox on screen next to 'I acknowledge the receipt of the Depositor Information Template'.
- f. Online, in which case the client receives both the contract and the applicable General Conditions as a soft copy where the Template is part of the General Conditions and the client checks the checkbox on screen 'I acknowledge the receipt of the General Conditions including the Depositor Information Template'
- g. Online, in which case the client receives both the contract and the applicable General Conditions as a soft copy where the Template is part of the General Conditions and the client checks the checkbox on screen 'I acknowledge the receipt of the General Conditions'
- h. Online, in which case the client receives a soft copy of all of the contract, the applicable general conditions and the product information, where the Depositor

Information Template is part of the product information and the client checks the checkbox 'I acknowledge the receipt of the general (product) conditions including the Depositor Information Template'.

Remark 1:

The verbal acknowledgment of receipt by the client (refer to sub a above) is only possible in case the prescribed information included in the Depositor Information Template is explained clearly to the client and the client is warned about the product in question – also in the light of what the client may envisage with the product (e.g. the client wants to spread risks but is unaware of the brands/labels to which the overall limit of coverage applies). It is mandatory that this is included in a script that needs to be followed in the phone call with the client. The content of this script can differ per client (type). Individual retail clients need to be explained clearly about the DGS aspects and risks; this is not applicable to large corporate clients who place a (very) large deposit on a (temporary) account via phone contact with the bank; for these large corporate clients, this DGS information is not needed in order to make a well-considered decision).

The client in this case needs to express a verbal confirmation. The acknowledgment of receipt is recorded by the bank on tape.

Remark 2:

When the contract refers to the depositor information template in case of retail customers: (i) it should be clear that and where this information sheet can be found; (ii) the customer must acknowledge receipt of the template and (iii) the process must be able to be checked/audited by the bank's Internal Audit Department and DNB to assess whether (i) and (ii) are complied with.

3. The instructions mentioned under I.B.1, 2 and 5 pertaining to information provision and the language(s) of communication are also applicable here (art 16.4).

C. *Remarks:*

1. Banks can determine themselves per product and client type, how they want to organise the provision and acknowledgment of receipt of the Depositor Information Template. All banks will use the same Depositor Information Template.
2. This can differ per bank, per product(type) and per client. For example, in case of a savings product the DGS protection will take a more prominent place than in case of a payments product. In case of retail clients, DGS protection will be a more relevant issue than in case of corporate clients.
3. This way it is guaranteed that the provision and/or acknowledgment of receipt for the bank and its clients takes place in an appropriate and logical way and that these take place on a logical moment in the process.
4. In case a product is offered both in written and online (internet) manner, the Depositor Information Template can be provided in either a hard copy or soft copy (online) as well.
5. Information provision by banks and arranging the client's acknowledgment of receipt may differ in conformity with the above rules. However, the following rules are mandatory:

- a) A sound process description needs to be in place about both the information provision and the client's acknowledgment of receipt;
- b) these process descriptions need to be auditable, both by DNB and the bank's own Internal Audit Department.

6. Regarding archiving/record keeping.

The standard archiving requirements for (pre)contractual information are applicable. Regarding the verbal contracting process, please refer to II.B.2.a above. The internal policies of the bank should describe how long the records of these conversations must be kept by the bank.

- D. *Specific mandatory information provision regarding deposits to pay off a loan on private immovable property ('bankspaardeposito's eigen woning'): Article 29.03 paragraph 2 Dutch Decree on special prudential measures, investors compensation and deposit guarantee Financial Supervision Act ('Besluit bijzondere prudentiële maatregelen, beleggerscompensatie en depositogarantie Wft') ("Decree"):*

Particularly for the product 'deposits to pay off a loan on private immovable property' ('bankspaardeposito's eigen woning') the Decree determines in Article 29.03 paragraph 2 that a bank needs to inform holders of this product pre the closing of the deposit agreement about the settlement by law of those deposits following from Article 3:265d of the Financial Supervision Act (Wft) in case of enforcement of the DGS.

PM: As far as deposits to pay off a loan on private immovable property ('bankspaardeposito's eigen woning') can be settled according to Article 3:265d Financial Supervision Act (Wft) with a related loan on private immovable property, these deposits ('bankspaardeposito's eigen woning') are not covered under DGS: Article 29.02 paragraph 2(e) of the Decree. This means that as soon as the settlement by law according to Article 3:265d Financial Supervision Act (Wft) can no longer take place (e.g. in case of moving house whereby the related loan on private immovable property is paid off from the sales proceeds of the house - and only subsequently the new loan on private immovable property / mortgage is bound to the new house) the deposit that can not be settled is covered by the DGS.

Ad. III: Information on statements of account: (art 16.3)

A. *Contents:*

- 1. Inform that the product in question falls within DGS coverage (art 16.3)
- 2. Record a reference to the Depositor Information Template (art 16.3)

B. *Where / how:*

- 1. On the statement of account of the product in question:
 - a) Information only periodically on the paper account statement.
 - b) No information in case of online banking (in case no/fewer formal statements of account are sent by the bank). The rationale is that a client can agree with the bank how often and in what form (hard copy or online) statements of account are to be received. In case of online banking (electronic banking, internet banking, mobile banking) a client

typically has 24/7 access to a digital transaction overview and no statements of accounts are provided. The client can create statements of account online. In case of mobile banking applications there is no room for such non-transaction related information.

Should the client be able to generate his or her own statement of account (via pdf) then a reference will be recorded to this file on DGS coverage because this statement will have the look and feel of a standard statement of account provided by the bank.

c) In case of products for which either no statements of account are provided or (in case of online banking) the client does not have the possibility to create his/her own statement of account (in pdf format) (as is the case especially in the large corporate segment; in this segment, clients are informed about their account balances and transactions in other ways) then there will not be a reference to DGS on account information.

2. Via a link on the statement of account to a website that shows the DGS information including the Template.

C. *Remark:*

From the text of the Directive one can understand that the statement on DGS coverage on account statements is person-specific. Also refer to 'Other important information' on the Template (bottom). A depositor who receives the information on his or her account statement may assume that he is covered under DGS. A depositor who is not covered would then receive no information about coverage on his or her account statement. In the case described there is a risk that non-eligible clients who are not covered will claim that they are not reminded that their deposits do not fall within DGS coverage. In case a reference is always made to the general information and the Depositor Information Template, then possible provision of wrong or unclear information to clients is avoided.

Based on the above considerations: Record a reference to general information and the Depositor Information template on the account statement of all depositors (both for persons who fall within DGS coverage and persons who don't). It is required to indicate that in order to receive a DGS payment, the person (natural person or legal person/entity who holds the account) needs to be covered under DGS and is not excluded from coverage. The answer to the question whether the account holder in question as a 'person' is covered by DGS cannot be recorded on the account statement. The account holder will need to do the check himself/herself whether an exemption/exclusion is applicable; in order to do this, a reference on the statement of account can be made to the general information and/or the official DGS website where the information can be found pertaining to the exceptions/exemptions of coverage.

Ad. IV: Annual provision of the Depositor Information Template: (art 16.3)

A. *Contents:*

Concerns the detailed Depositor Information Template (art 16.3)

B. *Where / how:*

1. Provision can be done in various ways. Paper-based (hard copy) or soft copy.

2. Yearly provision of the Depositor Information Template can be combined with the Yearly Financial Overview (or its equivalent in case of corporate clients).

C. *Remarks:*

1. Provision of the template can be done online e.g. by sending the Depositor Information Template (as pdf) along with the Yearly Financial Overview.

2. Alternatively the Depositor Information Template can be provided via a reference (link) to a website, along with information about the product in question, the DGS and the Depositor Information Template; the client can also request to have the information sent to him/her as a hard copy (in conformity with IV.C.1 above).