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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.10.2008
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2008/0199 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 94/19/EC on Deposit Guarantee Schemes as regards the coverage level and the payout delay

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In times of volatile markets, one of the biggest concerns for depositors is the safety of bank deposits should their bank fail.

Since 1994, Community rules have ensured that all Member States have in place a safety net for depositors if banks fail. A review of these existing rules published by the Commission in 2006¹ highlighted a number of areas where improvements could be made. However, this report concluded that at that stage many of the improvements could be achieved without amending the legislation.

Events in 2007 and in 2008, and in particular the current turmoil on the financial markets, have exposed these deficiencies and their consequences in terms of depositors' confidence to a new extent.

Crucially, there is also increasing awareness that many savers could be caught out, and not reimbursed in the event of a bank failure because their savings exceed the coverage levels in their country. The minimum coverage level of €20.000 has not been adjusted since 1994 and is no longer adequate in a number of countries given the distribution of savings. There is evidence suggesting that the competitive distortions created by different national measures are having a real and disturbing impact on deposit taking.

Moreover, the current payout delay of three months does not meet depositors' needs and expectations.

The Council of the European Union agreed on 7 October 2008, that it is a priority is to restore confidence and proper functioning of the financial sector. It committed to take all necessary measures to protect the deposits of individual savers and welcomed the intention of the Commission to bring forward urgently an appropriate proposal to promote convergence of deposit guarantee schemes. Therefore, the Directive should be revised in three key areas:

- Increase of the minimum coverage level
- Reduction of the payout delay to a maximum of 3 days
- Termination of co-insurance

2. IMPACT ASSESSMENT AND PUBLIC CONSULTATION

Due to the urgency of the matter, neither an impact assessment nor a public consultation could be carried out for the current proposal.

¹ COM(2006) 729.

However, the Commission gained important insights from its review process of Directive 94/19/EC. In the context of the Commission communication of 2006, the Commission notably asked the Commission's Joint Research Centre for submitting reports on the coverage level (2005), the possible harmonisation of funding mechanisms (2006/7) and the efficiency of deposit guarantee schemes (2008). This work was supported by the European Forum of Deposit Insurers (EFDI), in particular concerning obstacles to a rapid payout to depositors. This work has been taken into account for the current proposal.

The reports are available on the following web site:

http://ec.europa.eu/internal_market/bank/guarantee/index_en.htm

3. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

4. LEGAL ELEMENTS OF THE PROPOSAL

A Directive amending the current directive is the most appropriate instrument. The proposal is based on Article 47(2) of the Treaty, which is the legal basis to adopt Community measures aimed at achieving the Internal Market in financial services.

In accordance with the principles of subsidiarity and proportionality as set out in Article 5 EC, the objectives of the proposed action, cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. Its provisions do not go beyond what it is necessary to achieve the objectives pursued.

Only Community legislation can ensure that credit institutions operating in more than one Member State are subject to similar requirements concerning Deposit Guarantee Schemes, which ensures a level playing-field, avoids unwarranted compliance costs for cross-border activities and thereby promotes further single market integration. Community action also ensures a high level of financial stability within the EU.

5. DETAILED EXPLANATION OF THE PROPOSAL

5.1. Reduction of payout delay

The current payout delay of three months, which can even be extended to nine months, is detrimental to the confidence of depositors and does not meet their needs. Many depositors can be expected to face significant financial difficulties already within less than one week. Therefore, the payout delay should be reduced to three days, without a possibility extension.

However, the deadline should commence only when either the competent authorities have determined that the credit institution appears to be unable to repay the deposit or a judicial authority has ruled that the claims of depositors are suspended. The decision of the competent authorities may take up to 21 days after first becoming satisfied that a credit institution has failed to repay deposits. In the interest of a rapid payout, this period of 21 days should be reduced to 3 days.

Currently, only inter-bank deposits and deposits linked to money-laundering activities are excluded from payout under Article 2.

Under Article 7(2) in conjunction with Annex 1, Member States can choose to further exercise 14 additional exclusions from payout. These include, inter alia, deposits from the financial and public sectors, close relatives of the bank's auditor and deposits by companies which are of "such a size that they are not permitted to draw up abridged balance sheets pursuant to Article 11 of Directive 78/660/EEC". It seems obvious that most of the exclusions create significant obstacles in any attempt to make a rapid payout. It is thus imperative that such exclusions should no longer apply. For the purposes of rapid payout, a scheme should cover only retail deposits. However, Member States should have the option to include other depositors provided that this inclusion does not impede rapid payouts.

5.2. Co-insurance

The current Directive allows an optional co-insurance of up to 10%, i.e. a certain percentage of losses that is borne by the depositor. This has proven counter-productive for the confidence of depositors and may have exacerbated the problems. The argument of moral hazard (depositors should be 'punished' if they deposit their funds at a bank offering high interest rates but incurring high risks) is not tenable since retail depositors cannot, in general, judge the financial soundness of their bank. Consequently, this option should be discontinued.

5.3. Coverage level

The current minimum coverage level is set at EUR 20 000 with the option for Member States to determine a higher coverage. However, this does not reflect the current average deposits of approximately EUR 30 000 per EU citizen. In order to maintain depositors' confidence, the coverage level should be raised significantly.

The Council of the European Union agreed on 7 October 2008 that all Member States would, for an initial period of at least one year, provide deposit guarantee protection for individuals for an amount of at least EUR 50 000, acknowledging that many Member States determine to raise their minimum to at least EUR 100 000. Therefore, the minimum coverage level should be first raised to at least EUR 50 000 and, after one year, to at least EUR 100 000. According to estimates, about 65% of eligible deposits are covered under the current regime. The new amounts would cover an estimated 80% (with coverage of EUR 50 000) and 90% (with coverage of EUR 100 000) of deposits.

Changes of the coverage level should be subject to the standard comitology procedure. However, in emergency situations, prompt action, coordinated across the Community, would be needed to increase the level of coverage to address any sudden loss of depositor confidence. Therefore, an emergency comitology measure is critical. Such emergency measures should be restricted to 18 months.

5.4. Cross-border cooperation

A deposit guarantee scheme does not only cover depositors in the Member State where the bank is authorized (home country) but also covers depositors at the bank's

branch in another Member State (host country). If the host country's deposit guarantee scheme offers a higher level of coverage than the home country's scheme, the branch may also join the host country's scheme to offer the same coverage as the banks that are authorized in the host country.

Whether or not the bank has joined the host country's scheme, it is essential that 'home and host' schemes cooperate with each other to ensure rapid payout. The proposal, therefore, explicitly introduces a general obligation for schemes to cooperate with each other.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 94/19/EC on Deposit Guarantee Schemes as regards the coverage level and the payout delay

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Central Bank³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) The Council of the European Union agreed on 7 October 2008 that it is a priority to restore confidence and proper functioning of the financial sector. It undertook to take all necessary measures to protect the deposits of individual savers and welcomed the intention of the Commission to bring forward urgently an appropriate proposal to promote convergence of deposit guarantee schemes.
- (2) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on Deposit guarantee schemes⁵ provides already for a basic coverage of depositors. However, the ongoing financial turmoil necessitates an improvement of the coverage.
- (3) The current minimum coverage level provided for in Directive 94/19/EC is set at EUR 20 000 with the option for Member States to determine a higher coverage. However, this has proved to be not adequate for a large number of deposits in the Community. In order to maintain depositors' confidence, the minimum coverage level should be raised.
- (4) Under Directive 94/19/EC, Member States may limit the coverage by a certain percentage. That option has proven counter-productive for the confidence of depositors and should be discontinued.

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 135, 31.5. 1994, p. 5.

- (5) The payout period of three months currently provided for, which can be extended to 9 months, runs counter to the need to maintain depositors' confidence and does not meet their needs. Therefore, the payout delay should be reduced to a period of three days from the date on which the deposit-guarantee scheme concerned has received the relevant information. Furthermore, in the cases where payout is triggered by a determination of the competent authorities, the decision period of 21 days currently provided for should be reduced to 3 days in order not to impede rapid payout.
- (6) The possibility of discretionary exclusions of certain categories of depositors set out in Annex I to Directive 94/19/EC has led to a variety of categories of beneficiaries that have to be identified during the payout procedure. This has proven to be difficult for the enforcement of arrangements between home and host country schemes (topping up) and to delay payout and should therefore be discontinued. In addition most of the exclusions currently provided for concern public entities and financial institutions. An increased protection should, however, benefit depositors who as a matter of principle do not dispose of a lot of financial expertise. Therefore protection should be limited to retail depositors, whilst maintaining the option for Member States to extend that protection to other categories of depositors.
- (7) Member States should ensure that deposit-guarantee schemes have adequate funds available to meet their needs.
- (8) The measures necessary for the implementation of Directive 94/19/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999⁶ laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (9) In particular, power should be conferred on the Commission to adjust the coverage level. Since this measure is of general scope and is designed to amend a non-essential element of Directive 94/19/EC, it must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (10) When, on the imperative grounds of urgency that occur if the confidence of depositors in the safety of the financial markets is at issue, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to apply the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the adoption of a temporary increase of the coverage level.
- (11) In light of the current financial turmoil and in order to maintain the confidence of depositors whilst at the same time respecting the legitimate expectations of all parties concerned, Member States should transpose the provision increasing the coverage level to EUR 50 000 through legislation applying retroactively with effect as of the date of the adoption of the Commission's proposal.
- (12) Since the objectives of the proposed action, namely the harmonisation of coverage levels and payout delays, cannot be sufficiently achieved by the Member States because it requires the harmonisation of a multitude of different rules existing in the legal systems of the various Member States and can therefore be better achieved at

⁶ OJ L 184, 17.7.1999, p. 23.

Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(13) Directive 94/19/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/19/EC is amended as follows:

(1) In point 3(i) of Article 1, the second subparagraph is replaced by the following:

"The competent authorities shall make that determination as soon as possible and at the latest 3 days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable; or"

(2) Article 4 is amended as follows:

(a) paragraph 5 is replaced by the following:

"5. In the cases referred to in paragraphs 1 to 4, Member States shall ensure that Deposit-guarantee Schemes cooperate with each other."

(b) the following paragraph is added:

"6. The Commission shall review the functioning of this Article and, if appropriate, propose amendments thereto."

(3) Article 7 is amended as follows:

(a) Paragraphs 1, 2 and 3 are replaced by the following:

"1. Deposit-guarantee schemes shall stipulate that the aggregate deposits of each depositor must be covered up to at least EUR 50 000 in the event of deposits' being unavailable.

By 31 December 2009 at the latest coverage shall be increased to at least EUR 100 000.

2. Member States may provide that certain deposits, listed in Annex I, be excluded from the guarantee or be granted a lower level of guarantee provided that the payment to all depositors is carried out within the deadline set out to in Article 10(1).

3. This Directive shall cover depositors who are natural persons acting for purposes other than their trade, business or profession.

Deposit-guarantee schemes may also cover other depositors provided that the payment to all depositors is carried out within the deadline referred to in Article 10(1)."

(b) Paragraph 4 is deleted.

(c) Paragraph 5 is replaced by the following:

"5. The amount referred to in paragraph 1 shall be reviewed annually by the Commission. The first review shall take place by 31 December 2010."

(d) The following paragraphs are added:

"6. The Commission may adjust the amount referred to in paragraph 1, taking account in particular of developments in the banking sector and the economic and monetary situation in the Community.

That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7a(2).

7. The Commission may, for a period not exceeding 18 months, decide upon a temporary increase of the amount referred to in paragraph 1.

That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7a(3)."

(4) After Article 7, the following Article 7a is inserted:

"Article 7a

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC*.

2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC** shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

* OJ L 3, 7.1.2004, p. 36.

**OJ L 184, 17.7.1999, p. 23."

(5) Article 10 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Member States shall ensure that accurate data on depositors and deposits, which are necessary for the verification of claims, are made available to the deposit-guarantee scheme when the competent authorities make the determination referred to in point 3(i) of Article 1 or the judicial authority makes the ruling referred to in point 3(ii) of that Article.

Deposit-guarantee schemes shall be in a position to pay duly verified claims by depositors in respect of unavailable deposits within three days of the date on which the data referred to in the first subparagraph have been made available to them."

(b) Paragraph 2 is deleted.

(6) Article 12 is replaced by the following:

"Article 12

"1. By 31 December 2009 at the latest, the Commission shall submit to the European Parliament and to the Council a report on a harmonisation of the funding mechanisms of deposit-guarantee schemes and the possible introduction of a Community deposit-guarantee scheme, together with any appropriate proposals.

2. Member States shall inform the Commission and the European Banking Committee if they intend to change the scope or level of coverage for deposits and on any difficulty encountered when cooperating with other Member States."

(7) Annex I is amended as follows:

(a) points 1 to 9 are deleted;

(b) point 11 is deleted;

(c) point 14 is deleted.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2008 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Member States shall apply the first subparagraph of Article 7(1) as of 15 October 2008.

However, they shall bring into force the laws, regulations and administrative provisions necessary to comply with the second subparagraph of Article 7(1) of Directive 94/19/EC, as amended by this Directive, by 31 December 2009 at the latest.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President