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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
No. Cion doc.:	12386/10 EF 83 ECOFIN 460 CODEC 715
Subject:	Proposal for a DIRECTIVE .../.../ OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Deposit Guarantee Schemes (recast)[First Reading] <i>- Political Agreement</i>

1. On 13 July 2010, the Commission submitted the above-mentioned proposal to the European Parliament and the Council.
2. The proposal was presented to the Working Party on Financial Services of 13 September 2010. It was examined by the Working Party on twenty-five occasions under various Presidencies, including five under the Lithuanian Presidency.

3. At the Permanent Representatives Committee meeting of 16 June 2011 it was decided to mandate the Presidency to engage in informal contacts with the European Parliament with a view to a possible early agreement.
4. The rapporteur of the ECON Committee, Mr Simon, had his report voted on 25 May 2011. The first phase of the negotiations ended as the rapporteur decided to submit his report to the Plenary in early 2012, without completing negotiations with the Council.
5. The EP plenary voted on 16 February 2012 re-instating the ECON Committee report, with a very limited number of adjustments.
6. A total of eight trilogues took place, of which five during the Lithuanian Presidency. On the basis of the mandate given by the ECOFIN Council of 10 December 2013, the Presidency concluded the negotiations with the European Parliament on 17 December 2013, with the two parties agreeing *ad referendum* on the text of the Directive.
7. The Presidency submitted the negotiated text to the Permanent Representatives Committee on 20 December 2013. All delegations endorsed the agreement reached with the European Parliament.
8. The ECON Committee voted on 9 January 2014, unanimously, in favour of the agreed text.
9. On 10 January 2014 the Chair of the ECON Committee addressed a letter to the Presidency indicating that, should the Council transmit formally to the Parliament its position in the form that it was presented in the Annex to that letter, the Chair of the ECON Committee would recommend to the Plenary to accept the Council's position without amendment.

10. The text contained in the Annex to that letter is set out in the Annex to the present Note. This text is identical to the text endorsed by the Permanent Representatives Committee on 20 December 2013. Text in bold-italics indicates new text compared to the original Commission proposal.

11. In view of the above, the Permanent Representatives Committee is invited to:

- confirm the agreement reached with the European Parliament, as set out in the Annex to the present Note,

- suggest to the Council to adopt a political agreement on the text of this Regulation.

After adoption of the political agreement, the text will be sent for lawyer-linguist revision so that the Council can adopt its first reading position as an "A" item at a forthcoming Council. Subsequently, the Council's position at first reading will be communicated to the European Parliament with a view to approval by the Plenary without amendment in second reading.

Proposal for a
DIRECTIVE .../.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of [...]
on Deposit Guarantee Schemes [recast]

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the proposal to the national Parliaments,

(...)

Having regard to the opinion of the European Central Bank¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 99, 31.3.2011, p. 1.

² Position of the European Parliament of 16 February 2012.

Whereas:

(1) **Directive 94/19/EC of the European Parliament and of the Council^{*} has been substantially amended^{**}. Since further amendments are to be made, that Directive should be recast *in the interests of clarity*.**

(2) In order to make it easier to take up and pursue the business of credit institutions, it is necessary to eliminate ***certain*** differences between the laws of the Member States as regards the rules on ***deposit-guarantee schemes (DGS)*** to which those institutions are subject.

(...)

(3) This Directive constitutes an essential instrument for the achievement of the internal market from the point of view of both the freedom of establishment and the freedom to provide financial services in the field of credit institutions, while increasing the stability of the banking system and the protection of depositors. ***In view of the costs of the failure of a credit institution to the economy as a whole and its adverse impact on financial stability and the confidence of depositors, it is desirable not only to make provision for reimbursing depositors but also to allow Member States sufficient flexibility to enable DGS to carry out measures to reduce the likelihood of future claims on DGS. These measures should in any event comply with State aid rules.***

(3a) In order to take account of the growing integration of the internal market, it should be possible to merge the DGS of different Member States or to create separate cross-border schemes on a voluntary basis. Member States should ensure sufficient stability and a balanced composition of the new and the existing DGS. Adverse effects on financial stability, for example where only credit institutions with a high risk profile are transferred to a cross-border DGS, should be avoided.

(4) Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay¹ required the Commission, if appropriate, to put forward proposals to amend Directive 94/19/EC. This **Directive** encompasses the harmonisation of the funding mechanisms of **DGS**, the **introduction of** risk-based contributions ■ and the harmonisation of the scope of products and depositors covered.

(5) Directive 94/19/EC was based on the principle of minimum harmonisation. Consequently, a variety of **DGS** with very distinct features *currently* exist in the Union. *As a result of the formulation of common requirements laid down in this Directive, a uniform level of protection is provided for depositors throughout the Union while ensuring the same level of stability of DGS. At the same time, those common requirements are of the utmost importance in order to eliminate market distortions. This Directive therefore contributes to completion of the internal market.*

(6) *As a result of this Directive, depositors will benefit from a significantly improved access to deposit guarantee, thanks to a broadened and clarified scope of coverage, faster repayment periods, improved information and robust funding requirements. This will improve consumer confidence in financial stability throughout the internal market.*

(6a) Member States should ensure that their schemes have sound governance practices in place and that they produce an annual report on their activities.

¹ OJ L 68, 13.3.2009, p. 3.

(7) In the event of closure of an insolvent credit institution, the depositors at any branches situated in a Member State other than that in which the credit institution has its head office should be protected by the same guarantee scheme as the institution's other depositors.

(7a) This Directive does not prevent Member States from including within its scope those institutions which satisfy the definition of credit institution but are exempted under Article 2 of Directive 2013/36/EU. Member States should be able to decide that, for the purpose of this Directive, the central body and all credit institutions affiliated to that central body are treated as one credit institution.

(8) In principle, this Directive requires every credit institution to join a **DGS**. A Member State admitting branches of a credit institution having its head office in a third country should decide how to apply this Directive to such branches and **should** take account of the need to protect depositors and maintain the integrity of the financial system. Depositors at such branches should be fully aware of the guarantee arrangements which affect them.

(9) ■ It should be recognised that there are systems which protect the credit institution itself (Institutional Protection Schemes) and, in particular, ensure its liquidity and solvency. **Where** such schemes are separate from DGS, their additional safeguard role should be taken into account when determining the contributions of their members to Deposit Guarantee Schemes. ■ The harmonised level of coverage should not affect schemes protecting the credit institution itself unless they repay depositors.

(9a) Each credit institution should be part of a DGS recognised under this Directive, thereby ensuring a high level of consumer protection, a level playing field between credit institutions and preventing regulatory arbitrage. A DGS should be able to provide that protection at any time.

(9b) The key task of a DGS is to protect depositors against the consequences of the insolvency of a credit institution. DGSs should be able to provide that protection in various ways. DGS should primarily be used to repay depositors pursuant to this Directive (pure 'paybox' function).

(9ba) DGS should also use their financial means in order to finance resolution of credit institutions under the conditions set out in [BRRD].

(9c) It should also be possible, where permitted under national law, for DGS to go beyond a pure reimbursement function and to use the available financial means in order to prevent a bank failure with a view to avoid the costs of reimbursing depositors and other adverse impacts. These measures should, however, be carried out within a clearly defined framework and in any event comply with State aid rules. Inter alia, the DGS should have appropriate systems and procedures for selecting and implementing the measures and monitoring affiliated risks. The granting of the measure should be linked to conditions imposed on the credit institution involving at least more stringent risk-monitoring and greater verification rights for the DGS. The costs of the measures taken to prevent bank failure should not exceed the costs necessary to fulfil the statutory or contractual mandate of the respective DGS with regard to protecting covered deposits at the credit institution or the institution itself.

(...)

(10) DGSs should also be able to take the form of an institutional protection scheme. Institutional protection schemes are *referred to* in Article 113(7) of Regulation (EU) No 575/2013 and may be recognised as Deposit Guarantee Schemes by the competent authorities if they fulfil all criteria laid down in that Article and in this Directive.

(10a) The present directive should not apply to contractual and institutional protection schemes that are not officially recognised as DGS, except for limited requirements on advertising and information of depositors in case of exclusion or withdrawal of a bank. In any event, these schemes remain subject to state aid rules.

(11) In the recent financial crisis, uncoordinated increases in coverage across the *Union have in some cases* led to depositors shifting money to banks in countries where deposit guarantees were higher. *Such uncoordinated increases* drained liquidity from banks in times of stress. In times of stability, *it is possible that* different coverage *leads* to depositors choosing the highest deposit protection rather than the **■** deposit product *best suited to them. It is possible that such different coverage results* in competitive distortions in the internal market. It is therefore *necessary* to ensure a harmonised level of deposit protection *by all recognised DGS*, wherever deposits are located in the Union. However, *it should be possible to cover* certain deposits relating to the personal situation of depositors **■** at a higher level but for a limited time.

(...)

(12) The same coverage **■** should apply to all depositors regardless of whether a Member State's currency is the euro. **■** Member States *whose currency is not the euro* should have the possibility to round off the amounts resulting from the conversion without compromising the equivalent protection of depositors.

(13) On the one hand, the *coverage* prescribed in this Directive should not leave too great a proportion of deposits without protection in the *interests* both of consumer protection and of the stability of the financial system. *On* the other hand, the cost of funding DGS should be taken into account. It would therefore appear reasonable to set the harmonised *coverage* at EUR 100 000.

(14) *This Directive retains the* principle of a harmonised limit per depositor rather than per deposit. **■** It is therefore appropriate to take into consideration the deposits made by depositors who are not mentioned as holders of an account or are not the sole holders. *The* limit *should* therefore be applied to each identifiable depositor. *The principle that the limit be applied to each identifiable depositor* should not apply to collective investment undertakings subject to special protection rules which do not apply to *such* deposits.

(14a) The introduction, with Directive 2009/14, of a fixed coverage set at EUR100.000 has put some Member States in the special situation of having to lower their coverage level, with risks of undermining depositor confidence. While harmonisation is essential in order to secure the level playing field and financial stability in the internal market, risks of undermining depositor confidence should be taken into account. Therefore, an option to provisionally apply a higher coverage level should be introduced for Member States which foresaw a coverage level higher than the harmonised level before the adoption of Directive 2009/14, but should be limited in time and in scope, and the concerned Member States should proportionately adjust the target funding level and contributions paid to the scheme. Given that it is not possible to adjust the target level if the coverage level is unlimited, it would be appropriate to limit the option to Member States which, on 1 January 2008, applied a coverage level within a certain determined range, set between EUR100.000 and EUR300.000. In order to limit the impact of diverging coverage levels, and considering that the Commission will review the implementation of this Directive by 31 December 2018, it is appropriate to allow for this option until no later than 31 December 2018.

(14 b) DGS should only be permitted to set off liabilities of a depositor against his or her claims for repayment if those liabilities have fallen due on or before the date of failure. Such set off should not impede the capacity of schemes to repay deposits within the deadline set by this Directive. Member States should not be prevented from taking appropriate measures concerning the rights of schemes in a winding up or reorganisation procedure of a credit institution.

(14c) Eligibility for repayment should not arise in respect of deposits where, in accordance with national law, the funds deposited are not at the disposal of the depositor because the depositor and the credit institution have contractually agreed that the deposit would serve only to pay a loan contracted for the purchase of a private property. Such deposits should be offset against the outstanding amount of the loan.

(15) Member States should ensure that deposits resulting from certain transactions, or serving certain social or other purposes, are protected above EUR 100 000 for a given period. Member States should decide on a temporary maximum coverage for such deposits and, when doing so, they should take into account the significance of the protection for depositors and the living conditions in the Member States. In all cases, State aid rules should be complied with.

(...)

(16) It is *necessary* to harmonise the methods of financing of DGS. On the one hand, the cost of financing *DGS* should be borne, *in principle*, by credit institutions themselves *and*, on the other, the financing capacity of DGS *should* be proportionate to their liabilities. In order to ensure that depositors in all Member States enjoy a similarly high level of protection, *the financing of DGS should be harmonised at a high level with a uniform ex-ante financial target level for all DGS.*

(16a) However, in certain circumstances, credit institutions may operate in a highly concentrated market where most institutions are of such a size and degree of interconnection that they would unlikely to be wound up under normal insolvency proceedings without endangering financial stability and would therefore be more likely to be subject to orderly resolution proceedings. In such circumstances, schemes could be subject to a lower target level.

(16b) Electronic money and funds received in exchange for electronic money should not, in accordance with Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions¹, be treated as deposits and should not therefore be covered by DGS.

(16c) In order to limit deposit protection to the extent necessary to ensure legal certainty and transparency for depositors and to avoid transferring investment risks to DGS, financial instruments should be excluded from the scope of coverage, except for existing savings products evidenced by a certificate of deposit made out to a named person.

(...)

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(18) Certain depositors should not be eligible for deposit protection, in particular public authorities or other financial institutions. Their limited number compared to all other depositors minimises the impact on financial stability in the case of a bank failure. Authorities also have much easier access to credit than citizens. *However, Member States should be able to decide that the deposits of local authorities with an annual budget not higher than EUR 500 000 are covered.* Non-financial businesses should in principle be covered, regardless of their size.

(...)

(19) *Depositors whose activities include money laundering within the meaning of Article 1(2) or (3) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹* should be excluded from payments by **DGS**.

(20) The cost to credit institutions of participating in a **DGS** bears no relation to the cost that would result from a massive withdrawal of bank deposits not only from a credit institution in difficulties but also from healthy institutions following a loss of depositor confidence in the soundness of the banking system.

(21) It is *necessary* that the available financial means of **DGS** amount to a certain target level and that extraordinary contributions may be collected. In any event, **DGS** should have adequate alternative funding arrangements in place to enable them to obtain short-term funding to meet claims made against them. *It should be possible for the available financial means of the DGS to include cash, deposits, payment commitments and low-risk assets, which can be liquidated within a short period of time. Contributions to the DGS should take due account of the business cycle or otherwise take into account the stability of the deposit-taking sector and existing liabilities of the scheme.*

(...)

¹ *OJ L 309, 25.11.2005, p. 15.*

(...)

(23) DGS should invest in low-risk assets referred to in Categories first and second in Article 336.1 of Regulation 575/2013 or similarly safe and liquid assets.

(24) Contributions to DGS should ***be based on the amount of covered deposits and the degree of risk incurred by the respective member***. This would allow to reflect the risk profiles of individual banks, ***including their different business models, should*** lead to a fair calculation of contributions and provide incentives to operate under a less risky business model. ***In order to tailor contributions to market circumstances and risk profiles, DGS should be able to use their own risk-based methods.***

In order to take account of particularly low-risk sectors which are regulated under national law, Member States should be allowed to provide for corresponding reductions in the contributions while respecting the target level for each scheme. In any event, calculation methods should be approved by competent authorities. EBA should issue guidelines in order to specify methods for calculating contributions.

(...)

(25) Deposit protection is an essential element in the completion of the internal market and an indispensable supplement to the system of supervision of credit institutions on account of the solidarity it creates amongst all the institutions in a given financial market in the event of the failure of any of them. Therefore, ***Member States should allow DGS to lend money to each other on a voluntary basis.***

(26) The existing ***repayment period*** runs counter to the need to maintain depositor confidence and does not meet depositors' needs. The ***repayment period*** should therefore be reduced to a period of ***seven working days***.

(26a) In many cases, however, the necessary procedures for a short time limit for repayment do not yet exist. Member States should, therefore, be given the option, during a transitional period to reduce the repayment period gradually to seven working days. The maximum repayment delay set out in this Directive should not prevent DGS from making repayments to depositors earlier. In order to ensure that, during the transitional period, depositors do not encounter financial difficulties in the event of failure of their credit institution, depositors should, however, on request, be able to have access to an appropriate amount of their covered deposits to cover the cost of living. Such access should be made solely under the data provided by the credit institution. Given the different living costs between the Member States, that amount should be determined by the Member States.

(26b) The period necessary for the repayment of deposits might take into account cases where schemes have difficulty with determining the amount of repayment and the rights of the depositor, in particular if deposits arise from residential housing transactions or certain life events, if a depositor is not absolutely entitled to the sums held in an account, if the deposit is subject of a legal dispute or competing claims to the proceeds of the account or if the deposit is subject of economic sanctions imposed by national governments or international bodies.

(26c) In order to secure repayment, DGS should be entitled to subrogate into the rights of repaid depositors against a failed credit institution. Member States should be able to limit the time in which depositors whose deposits were not repaid, or not acknowledged within the deadline for the repayment, can claim the repayment of their deposits, in order to enable the DGS to exercise the rights into which it is subrogated by the date at which these rights are due to be registered in insolvency proceedings.

(27) DGS in Member States where a credit institution has established branches, should inform and repay depositors on behalf of the DGS in the Member State where the credit institution has been authorised. *Safeguards are necessary to ensure that the DGS repaying depositors receives from the home DGS the necessary financial means and instructions prior to repayment.* The DGS that may be concerned should enter into agreements in advance in order to facilitate these tasks.

(28) Information is an essential element in depositor protection. Therefore, depositors should be informed about their coverage and the responsible **DGS** on their statements of account and intending depositors should be informed by way of a standardised information sheet the receipt of which they should be asked to acknowledge. The content of such information should be identical for all depositors. The unregulated use in advertising of references to the amount and scope of a **DGS** could affect the stability of the banking system or depositor confidence. Therefore, references to **DGS** in advertisements should be limited to short factual statements.

(29) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹ applies to the processing of personal data carried out pursuant to this Directive. ***DGS and relevant authorities should handle data relating to individual deposits with extreme care and should maintain a high standard of data protection in accordance with that Directive.***

(30) This Directive ***should*** not result in the Member States or their ***relevant*** authorities being made liable in respect of depositors if they have ensured that one or more schemes guaranteeing deposits or credit institutions themselves and ensuring the compensation or protection of depositors under the conditions prescribed in this Directive have been introduced and officially recognised.

(30a) 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)² assigned a number of tasks concerning Directive 94/19/EC to the European Banking Authority.

(...)

(32) While respecting the supervision of DGS by Member States, ***EBA*** should contribute to the achievement of the objective of making it easier for credit institutions to take up and pursue their activities while at the same time ensuring effective protection for depositors ***and minimising the risk to taxpayers. Member States should keep the Commission and EBA informed of the identity of their designated authority in view of the requirement for cooperation between EBA and the designated authorities provided for in this Directive.***

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L331, 15.12.2010, p. 12.

(33) There is a need to introduce an effective instrument to ***issue guidelines*** in financial services to ensure a level playing field and an adequate protection of depositors across Europe. Such ***guidelines*** should be ***issued*** in order to ***specify the method*** of the calculation of risk-based contributions.

(34) In order to ensure efficient and effective functioning of ***DGSs*** and a balanced consideration of their positions in different Member States, EBA should be able to settle disagreements between them with binding effect.

(34-a) Given the divergences in administrative practices relating to DGS in Member States, they should be free to decide which authority determines the unavailability of deposits.

(34a) The competent authority, the designated authority the resolution authority and the DGS should cooperate with each other and exercise their powers in accordance with this Directive.

Resolution authorities, competent authorities, designated authorities and DGS should cooperate from an early stage in the preparation and implementation of the resolution measures in order to set the amount by which the DGS is liable when the financial means are used to finance the resolution of credit institutions.

(35) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in order to adjust the coverage for the total deposits of the same depositor as laid down in this Directive in line with inflation in the Union on the basis of changes in the consumer price index. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(...)

(...)

(36) Since the objectives of this Directive, namely the harmonisation of rules concerning the functioning of DGS, can be only achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

(37) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(38) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law of the Directives set out in Annex IV,

(38a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

¹ ***OJ C 369, 17.12.2011, p. 14.***

Article 1

Subject matter and scope

1. This Directive lays down rules *and procedures relating to the establishment and the functioning of Deposit Guarantee Schemes.*

2. This Directive shall apply to:

(a) statutory Deposit Guarantee Schemes;

(b) contractual Deposit Guarantee Schemes that are officially recognised as Deposit Guarantee Schemes in accordance with Article 3(1a);

(c) institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013 that are officially recognised as Deposit Guarantee Schemes in accordance with Article 3(1a);

(d) the credit institutions affiliated to the schemes referred to in points (a), (b) or (c).

3. *Without prejudice to Article 14(5) and 14(6a) the following schemes shall not be subject to this Directive:*

(a) contractual schemes that are not officially recognised as Deposit Guarantee Schemes, including schemes that offer an additional protection to the coverage level provided in Article 5;

(b) institutional protection schemes that are not officially recognised as Deposit Guarantee Schemes;

(...)

(...)

Member States shall ensure that schemes referred to in points (a) and (b) have in place adequate financial means or relevant financing arrangements to fulfil their obligations.

Article 2 Definitions

1. For the purposes of this Directive:

(-a) "deposit guarantee schemes" means schemes referred to in points (a), (b) and (c) of Article 1(2);

(a) 'deposit' means any credit balance ■ which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, *including fixed-term deposits and savings deposits.*

(...)

(...)

Shares in United Kingdom or Irish building societies apart from those of a capital nature covered in Article 4(1a)(b) shall be treated as deposits.

A ***credit balance*** shall not be considered to be a deposit where:

its existence can only be proven by a ***financial instrument as defined in Article 4(17) of Directive 2004/39, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State upon entry into force of this directive.***

its principal is not repayable at par;

its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;

(b) 'eligible deposits' ***means*** deposits that are not excluded from protection pursuant to Article 4;

(c) 'covered deposits' ***means the part of*** eligible deposits that do not exceed the level of coverage referred to in Article 5;

(ca) 'depositor' means the holder or, in the case of a joint account, each of the holders, of a deposit;

(d) 'joint account' ***means*** an account opened in the names of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons;

(e) 'unavailable deposit' ***means*** a deposit that is due and payable but that has not been paid by a credit institution under the legal or contractual conditions applicable thereto, where either:

(i) the relevant administrative authorities have determined that in their view the credit institution concerned appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and to have no current prospect of being able to do so.

Member States shall identify the relevant administrative authority in their Member State for the purpose of this paragraph.

Competent authorities, designated authorities and resolution authorities shall cooperate with each other and exercise their powers in accordance with this Directive.

The competent authorities shall make that determination as soon as possible and in any event no later than five working days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable; or

(ii) a judicial authority has made a ruling for reasons which are directly related to the credit institution's financial circumstances and which has the effect of suspending the rights of depositors to make claims against it **■**;

(f) 'credit institution' means credit institution as defined in ***Article 4(1)(1) of Regulation (EU) No 575/2013***;

(...)

(g) 'branch' means a place of business ***in a Member State*** which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;

(h) 'target level' means *the amount of available financial means which the DGS is required to reach in accordance with Article 9 (1), expressed as a percentage of covered deposits of its members;*

(i) 'available financial means' means cash, deposits and low-risk assets which can be liquidated within a period not exceeding that referred to in Article 7(1) *and payment commitments up to the limit set out in Article 9(1) ;*

(ia) 'payment commitments' means payment commitments of a credit institution towards a DGS which are fully collateralised providing that:

(i) the collateral consists of low risk assets;

(ii) the collateral is unencumbered by any third party rights and at the free disposal of the DGS.

(...)

(...)

(...)

(j) 'low-risk assets' *means* asset items falling into one of the categories set out in the first and second *categories in Article 336 of Regulation 575/2013 or any assets which are considered to be similarly safe and liquid by the competent or designated authority.*

(k) 'home Member State' means *home Member State as defined in Article 4(1) (43) of Regulation (EU) No 575/2013;*

(l) 'host Member State' means *host Member State as defined in Article 4(1) (44) of Regulation (EU) No 575/2013;*

(m) 'competent authorities' means national competent authorities *as defined in Article 4(1)(40) of Regulation (EU) No 575/2013*.

(n) '*designated authority*' means the bodies which administer DGS pursuant to this Directive, or, where the operation of the DGS is administered by a private entity, the public authorities designated by Member States for supervising those schemes pursuant to this Directive.

2. Where this Directive refers to Regulation (EU) No 1093/2010, bodies which administer DGSs or where the operation of the deposit-guarantee scheme is administered by a private entity, the public authority supervising those schemes, shall, for the purpose of that regulation, be considered to be competent authorities as defined in Article 4(2) of that Regulation.

Article 3

Official recognition, membership and supervision

1. Each Member State shall ensure that within its territory one or more ***Deposit Guarantee Schemes*** are introduced and officially recognised.

This shall not preclude the merger of schemes of different Member States *or the establishment of a cross-border DGS. Approval of such cross-border or merged DGSs shall be obtained from the respective Member States where the concerned schemes are established.*

1a. Contractual schemes referred to in Art. 1 (2)(b) may be officially recognised as Deposit Guarantee Schemes if they comply with this Directive.

Institutional protection schemes referred to in Art. 1 (2) (c) may be officially recognised as Deposit Guarantee Schemes if they fulfil the criteria laid down in Article 113(7) of Regulation (EU) No 575/2013 and comply with this Directive.

No credit institution authorised in a Member State pursuant to Article 8 of Directive 2013/36/EC shall take deposits unless it is a member of a scheme officially recognised in its home Member State pursuant to paragraph 1.

(...)

2. If a credit institution does not comply with the obligations incumbent on it as a member of a **DGS**, the competent authorities shall be notified **immediately** and, in collaboration with the **DGS**, shall **promptly** take all appropriate measures including the imposition of penalties to ensure that the credit institution complies with its obligations.

3. If **the measures taken under paragraph 2** fail to secure compliance on the part of the credit institution, the Deposit Guarantee Scheme may, subject to national law and with the express consent of the competent authorities, give not less than one month's notice of its intention to exclude the credit institution from membership of the scheme. Deposits made before the expiry of the notice period shall continue to be fully covered by the scheme. If, on the expiry of that notice period, the credit institution has not complied with its obligations, the DGS shall **exclude the credit institution**.

4. Deposits held **on the date on which a credit institution is excluded from membership of the scheme** shall continue to be covered by the **DGS**.

5. All **DGS** referred to in Article 1 shall be supervised by the **designated** authorities on an ongoing basis, as to their compliance with this Directive.

Cross-border DGSs, shall be supervised by representatives of the designated authorities of the Member States where the affiliated credit institutions are authorised

5a. Member States shall ensure that DGS, at any time and upon request of the DGS, receive from their members all information necessary to prepare a repayment of depositors, including markings under Article 4(2).

5b. DGS shall ensure the confidentiality and the protection of the data pertaining to depositors' accounts. The processing of such data shall be carried out in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

6. Member States shall ensure that **DGS** perform tests of their systems and that they are informed as soon as possible in the event that the competent authorities detect problems in a credit institution that are likely to give rise to the intervention of **DGS**.

Such tests shall take place at least every three years *and more frequently where appropriate*. The first test shall take place *three years after entry into force of this Directive at the latest*.

(...)

Based on the results of the stress tests, EBA shall, at least every five years, conduct peer reviews pursuant to Article 30 of Regulation (EU) No 1093/2010 in order to examine the resilience of DGSs. Deposit Guarantee Schemes shall be subject to the requirements of professional secrecy in accordance with Article 70 of Regulation (EU) No 1093/2010 when exchanging information with EBA.

(...)

7. DGS shall use information necessary to perform tests of their systems only for the performance of those tests and shall keep such information no longer than is necessary for that purpose.

7a. Member States shall ensure that their DGS have sound and transparent governance practices in place. DGS shall produce an annual report on their activities.

(...)

(...)

Article 4

Eligibility of deposits

1. The following shall be excluded from any repayment by DGS:

- (a) subject to Article 6(3), deposits made by other credit institutions on their own behalf and for their own account,
- (b) all instruments which would fall within the definition of 'own funds' in *point 118 of Article 4(1) of Regulation (EU) 575/2013*,
- (c) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering *as defined in Article 1(2) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹*;
- (...)
- (d) deposits by financial institutions as defined in *point 26 of Article 4(1) of Regulation (EU) 575/2013*;
- (e) deposits by investment firms as defined in Article 4(1)(1) of Directive 2004/39/EC *of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments²*;
- (f) deposits the holder of which has never been identified pursuant to Article 3(1) of Directive 2001/97/EC, when they have become unavailable,
- (g) deposits by insurance undertakings *referred to in Article 13(1) to (6) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)³*;

¹ OJ L 309, 25.11.2005, p. 15.

² OJ L 145, 30.4.2004, p. 1.

³ OJ L 335, 17.12.2009, p. 1.

- (h) deposits by collective investment undertakings,
- (i) deposits by pension and retirement funds;
- (j) deposits by **public** authorities;
- (k) debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes..

(...)

1a. By way of derogation from paragraph 1, Member States may ensure that the following are included up to the coverage level defined in Article 5 paragraph 1:

(a) deposits held in personal pension schemes and occupational pension schemes of small or medium sized enterprises;

(b) deposits by local authorities with a yearly budget not higher than 500.000 Euro.

(...)

(ca) deposits that can be released in accordance with national law only to pay off a loan on a private property towards the credit institution or another institution.

(...)

(...)

2. Member States shall ensure that credit institutions mark eligible deposits in a way that allows an immediate identification of such deposits.

Article 5

Coverage level

1. Member States shall ensure that the coverage for the aggregate deposits of each depositor shall be EUR 100 000 in the event of deposits being unavailable.

(...)

(...)

(...)

(...)

1a. In addition, Member States shall ensure that the following deposits are protected above EUR 100.000 for at least 3 months and no longer than 12 months after the amount has been credited or from the moment when such deposits become legally transferable.

a) deposits resulting from real estate transactions *relating to* private residential *properties*;

(b) deposits that *serve* social *purposes* defined in national law and are linked to particular life events such as marriage, divorce, *retirement, dismissal, redundancy*, invalidity or death of a depositor;

(c) deposits that serve purposes defined in national law and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

3. Paragraph 1 shall not prevent Member States from maintaining or introducing schemes protecting old-age provision products and pensions, provided that such schemes do not only cover deposits but offer comprehensive coverage for all products and situations relevant in this regard.

(...)

4. Member States shall ensure that repayments are made in any of the following:

(a) the currency of the Member State where the DGS is located;

(b) currency of the Member State where the account holder is resident;

(c) Euro;

(d) the currency of the account;

(e) the currency of the Member State where the account is located.

Depositors shall be informed about the currency of repayment.

(...)

(...)

If accounts were maintained in another currency than the currency of payout, the exchange rate used shall be that of the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or when the judicial authority makes the ruling referred to in Article 2(1)(e)(ii).

5. Member States who convert into their national currency the amount referred to in paragraph 1 shall initially use in the conversion the exchange rate prevailing on the date *set out in the first subparagraph of Article 20 (1)*.

Member States may round off the amounts resulting from the conversion, provided that such rounding off does not exceed **EUR 5 000**.

Without prejudice to the preceding subparagraph, Member States shall adjust the coverage levels converted into another currency to the amount referred to in paragraph 1 every five years. Member States shall make an earlier adjustment of coverage levels, after having consulted the Commission, following the occurrence of unforeseen events such as currency fluctuations .

6. The amount referred to in paragraph 1 shall be reviewed periodically by the Commission at least once every five years. If appropriate, the Commission shall submit to the European Parliament and to the Council a proposal for a Directive to 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 Union. The first review shall not take place before ***five years following the date set out in the first subparagraph of Article 20(1)*** unless unforeseen events necessitate an earlier review.

7. The Commission ***shall be empowered to adopt delegated acts in accordance with Article 16 concerning the periodical update, at least every five years, of the amount*** referred to in paragraph 1 in accordance with inflation in the Union on the basis of changes in the harmonised index of consumer prices published by the Commission ***since the previous adjustment***.

(...).

Article 6

Determination of the repayable amount

1. The limit referred to in Article 5 (1) shall apply to the aggregate deposits placed with the same credit institution irrespective of the number of deposits, the currency and the location within the Union.

2. The share of each depositor in a joint account shall be taken into account in calculating the limit provided for in Article 5 (1).

In the absence of special provisions, such an account shall be divided equally amongst the depositors.

Member States may provide that deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, may be aggregated and treated as if made by a single depositor for the purpose of calculating the limit provided for in Article 5 (1).

3. Where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which the competent authorities make the determination described in Article 2 (1) (e) (i) or the judicial authority makes the ruling described in Article 2 (1) (e) (ii). If there are several persons who are absolutely entitled, the share of each under the arrangements subject to which the sums are managed shall be taken into account when the limit provided for in Article 5 (1) are calculated.

(...)

(...)

4. The reference date for the calculation of the repayable amount shall be the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or when the judicial authority makes the ruling referred to in Article 2(1)(e)(ii). Liabilities of the depositor against the credit institution shall not be taken into account when calculating the repayable amount.

4a. Member States may decide that the liabilities of the depositor towards the credit institution are taken into account when calculating the repayable amount, where they have fallen due on or before the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or when the judicial authority makes the ruling referred to in Article 2(1)(e)(ii) to the extent the set-off is possible according to the statutory and contractual provisions governing the contract between the credit institution and the depositor.

Depositors shall be informed prior to the conclusion of the contract by the credit institution where their liabilities towards the credit institution are taken into account when calculating the repayable amount.

5. Member States shall ensure that **DGS** may at any time request credit institutions to inform them about the aggregated amount of eligible deposits of every depositor.

6. Interest on deposits which has accrued until but has not been credited at the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or the judicial authority makes the ruling referred to in Article 2(1)(e)(ii) shall be reimbursed by the **DGS**. The limit referred to in Article 5(1) shall not be exceeded.

(...)

7. Member States may decide that certain categories of deposits fulfilling a social purpose defined by national law, for which a third party has given a guarantee that complies with state aid rules, are not taken into account when aggregating the deposits held by the same depositor with the same credit institution as referred to in paragraph 1. In such cases the third party guarantee shall be limited to the coverage established by Article 5 (1).

7a. Where credit institutions are allowed under national law to operate under different trademarks as defined in Article 2 of Directive 2008/95/EC, Member State shall ensure that depositors are informed clearly about the fact that the credit institution operates under different trademarks and that the coverage level according to Article 5 applies to the aggregated deposits the depositor holds with the credit institution. The information shall be included in the depositor information according to Article 14 and Annex III.

(...)

(...)

Article 7

Repayment

1. DGSs shall ensure that the repayable amount is available within ***seven working days*** of the date on which the ***administrative*** authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

1a. However, Member States may for a transitional period until 31 December 2023 establish the following repayment periods:

(a) 20 working days at latest by 31 December 2018;

(b) 15 working days from 31 December 2018 at latest to 31 December 2020;

(c) 10 working days from 1 January 2021 at latest to 31 December 2023;

1aa. Member States may decide that deposits referred to in Article 6 (3) are subject to a longer repayment period. However, that period shall not exceed 3 months from the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

(...)

(...)

1b. During the transitional period until 31 December 2023 and when DGS cannot make the repayable amount(s) available within 7 working days, DGS shall ensure that depositors within 5 working days after request have access to an appropriate amount of their covered deposits to cover the cost of living.

1ba. DGS may make the access to the amount(s) as referred above solely under the data provided by the credit institution.

1bb. The amount(s) shall be deducted from the repayable amount as referred to in Art. 6

1c. Repayment or payout as referred to in paragraph 1 and 1b may be deferred in any of the following cases:

(a) it is uncertain whether a person is legally entitled to receive repayment or the deposit is subject to legal dispute;

(b) the deposit is subject to restrictive measures imposed by national governments or international bodies;

c) by way of derogation from paragraph 4a of this Article there has been no transaction relating to the deposit within the last 24 months (the account is dormant);

(d) the amount to be repaid is deemed to be part of a temporary high balance as defined in Article 5(1a); or

(e) the amount to be repaid is to be paid out by the DGS of the host Member State in accordance with Article 12(2).

2. *The repayable amount shall be made available* without a request to **DGS** being necessary. For this purpose, the credit institution shall transmit the necessary information on deposits and depositors as soon as requested by the **DGS**.

3. Any correspondence between the DGS and the depositor shall be drawn up in the official language *of the Union that is used by the credit institution holding the guaranteed deposit when writing to the depositor or* in the official language or languages of the Member State in which the guaranteed deposit is located. If a *credit institution* operates directly in another Member State without having established branches, the information shall be provided in the language that was chosen by the depositor when the account was opened..

4. Notwithstanding the time limit laid down in paragraph 1, where a depositor or any person entitled to or interested in sums held in an account has been charged with an offence arising out of or in relation to money laundering as defined in *Article 1(2) of Directive 2005/60/EC*, the **DGS** may suspend any payment related to the depositor concerned, pending the judgment of the court.

4a. No repayment shall be effected where there has been no transaction relating to the deposit within the last 24 months and the value of the deposit is lower than the administrative costs incurred by DGS that would arise from such repayment.

Article 8

Claims against Deposit Guarantee Schemes

1. Member States shall ensure that the depositor's rights to compensation may be the subject of an action against the Deposit Guarantee Scheme.

2. Without prejudice to rights which they may have under national law, DGS that make payments under guarantee ***within a national framework*** shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to their payments made to depositors. ***Where a DGS makes payments in the context of resolution proceedings, including the application of resolution tools or the exercise of resolution powers in accordance with Art. 9a, the DGS shall have a claim against the relevant credit institution for an amount equal to their payments made to depositors. That claim shall rank at the same level as covered deposits under national law governing normal insolvency proceedings.***

(...)

(...)

(...)

(...)

3. Member States may limit the time in which depositors whose deposits were not repaid or acknowledged by the ***DGS*** within the ***deadlines*** set out in Articles 7(1) ***and (1a)*** can claim the repayment of their deposits. ■

(...)

Article 9

Financing of Deposit Guarantee Schemes

1. Member States shall ensure that **DGSs** have in place adequate systems to determine their potential liabilities. The available financial means of **DGSs** shall be proportionate to these liabilities.

DGSs shall raise the available financial means by contributions to be made by their members *at least once a year*. This shall not prevent additional financing from other sources. ■

Member States shall ensure that, in a period no longer than 10 years after the entry into force of this directive, the available financial means of a DGS shall at least reach a target level of 0.8 % of the amount of the covered deposits of its members.

Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again.

After the target level has been reached for the first time where the available financial means have subsequently been reduced to less than two thirds of the target level, the regular contribution shall be set at a level allowing the target level to be reached within six years.

The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this provision.

Member States may extend the initial period of time for a maximum of four years if the financing arrangements have made cumulative disbursements in excess of 0.8 % of covered deposits.

2. The available financial means to be taken into account in order to reach the target level may include payment commitments as defined in Article 2(1)(ia). The total share of payment commitments shall not exceed 30 % of the total amount of available financial means raised in accordance with this Article.

In order to ensure consistent application of this Directive, EBA shall issue guidelines on payment commitments.

2a. Notwithstanding paragraph 1, a Member State may, for the purpose of fulfilling its obligations under paragraph 1 of this Article, raise the available financial means through the mandatory contributions paid by credit institutions to existing schemes of mandatory contributions established by a Member State in its territory for the purpose of covering the costs related to systemic risk, failure, and resolution of institutions.

The DGS is entitled to an amount that is equal to the amount of such contributions up to the target level in paragraph 1, which the Member State will make immediately available to that scheme upon request, for use exclusively for the purposes foreseen under Article 9a.

The DGS is only entitled to this amount, if the competent authority considers that the DGS is unable to raise extraordinary contributions from its members, and the DGS must repay this amount through contributions from its members in accordance with the replenishment rules in Article 9(1).

2b. Contributions to resolution financing arrangements under Title VII of the Directive [BRRD], including available financial means to be taken into account in order to reach the target level of the resolution financing arrangements according to Art. 93 paragraph 3b of Directive [BRRD], shall not count towards the target level.

2c. By way of derogation from paragraph 1, Member States, upon approval of the Commission, if duly justified, may authorise a minimum target level lower than the target level specified in paragraph 1 of this Article, provided that the following conditions are met:

a) The reduction is based on the assumption that it is unlikely that a significant share of available means will be used for measures to protect covered depositors, other than defined in Art. 9a paragraphs 2 and 4; and

b) The banking sector in which the credit institutions affiliated to the DGS operate is highly concentrated with a large quantity of assets held by a small number of credit institutions or banking groups, subject to supervision on a consolidated basis which, given their size, are likely in case of failure to be subject to the resolution proceedings.

The revised target level shall not be lower than 0.5 % of covered deposits.

The available financial means of DGS shall be invested in a low-risk and sufficiently diversified manner.

3. If the available financial means of a DGS are insufficient to repay depositors when deposits become unavailable, its members shall pay extraordinary contributions not exceeding 0.5% of their covered deposits per calendar year. *DGS may in exceptional circumstances and with the consent of the competent authority require higher contributions.*

The competent authorities may exempt the credit institution entirely or partially from the obligation to pay the contributions referred to in the first subparagraph if the contributions would jeopardise the liquidity or solvency of the credit institution.

Such exemption shall not be granted for a longer period than 6 months but may be renewed on request of the credit institution.

The contributions concerned shall be paid at a later point in time, when the payment no longer jeopardises the liquidity and solvency of the credit institution.

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

6. Member States shall ensure that DGS have in place adequate alternative funding arrangements to enable them to obtain short-term funding where necessary to meet claims against those DGSs.

7. Member States shall by 31 March of each year inform EBA of the amount of covered deposits in their Member State and of the amount of the available financial means of their DGSs as of 31 December of the preceding year.

(...)

(...)

Article 9a

Use of funds

1. The financial means referred to in Article 9 shall be primarily used in order to repay depositors pursuant to this Directive.

2. The financial means of a DGS shall be used in order to finance the resolution of credit institutions under the conditions of Article 99 of the Directive [BRRD]. The resolution authority shall determine, in consultation with the DGS, the amount by which the DGS is liable.

3. Member States may allow DGS to use the available financial means for alternative measures in order to prevent a bank failure provided that the following conditions are met:

(i) the resolution authority has not taken any resolution action under Article 27 of Directive [BRRD];

(ii) the DGS has appropriate systems and procedures for selecting and implementing alternative measures and monitoring affiliated risks;

(iii) the costs of the measures do not exceed the costs necessary to fulfil the statutory or contractual mandate of the DGS;

(iv) the granting of alternative measures by the DGS is linked to conditions imposed on the credit institution that is being supported, involving at least more stringent risk monitoring and greater verification rights for the DGS;

(v) the granting of alternative measures by the DGS is linked to commitments by the credit institution being supported with a view to securing access to covered deposits;

(vi) the ability of the affiliated credit institutions to pay the extraordinary contributions in accordance with subparagraph 2 is assured in the assessment of the competent authority.

The DGS shall consult with the resolution authority and the competent authority on the measures and the conditions imposed on the credit institution.

Alternative measures shall not be applied where, upon consultation, the competent authority in consultation with the resolution authority is of the opinion that the conditions for resolution action under Art. 27 paragraph 1 of Directive [BRRD] are met.

If available financial means are used in accordance with paragraph 3, the affiliated credit institutions shall immediately provide the DGS with the means used for alternative measures, where necessary in the form of extraordinary contributions, in the following cases:

(i) *if the need to reimburse depositors arises and the available financial means of the DGS amount to less than two thirds of the target level;*

(ii) if and in so far as the available financial means fall below 25% of the target level.

4. Member States may decide that the available financial means can also be used to finance measures to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of national insolvency proceedings, provided that the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the credit institution concerned.

(...)

Article 10

Borrowing between Deposit Guarantee Schemes

1. Member States may allow DGS to lend to other schemes within the Union on a voluntary basis, provided that both the following conditions are met:

(a) *the borrowing scheme is not able to fulfil its obligations under Article 8(1) because of a lack of available means referred to in Article 9;*

(...)

(c) *the borrowing scheme has made recourse to extraordinary contributions referred in Article 9(3)*

(d) the borrowing scheme undertakes the legal commitment that the borrowed funds will be used in order to pay claims under Article 8(1).

(e) the borrowing scheme is not currently subject to an obligation to repay a loan to other DGSs under this Article;

(f) the borrowing scheme shall state the amount of money requested.

(g) the total amount lent does not exceed 0,5 % of **covered** deposits of the borrowing scheme;

(h) the borrowing scheme informs EBA without delay and states the reasons why the conditions set out in this subparagraph are fulfilled and the amount of money requested.

(...)

(...)

(...)

(...)

2. The loan shall be subject to the following conditions:

(...)

(b) the borrowing scheme shall repay the loan at the latest after 5 years. It may repay the loan in annual instalments. Interest shall be due only at the time of repayment.

(c) the interest rate *set is at least* equivalent to the marginal lending facility rate of the European Central Bank during the credit period;

(ca) the lending scheme informs EBA of the initial interest rate as well as the duration of the loan.

(...)

(...)

5. Member States shall ensure that the contributions levied by the borrowing scheme are sufficient to reimburse the amount borrowed and to re-establish the target level as soon as possible.

Article 11

Calculation of contributions DGS

1. The contributions to DGS referred to in Article 9 shall be based on the amount of covered deposits and the degree of risk incurred by the respective member.

Member States may provide for lower contributions for low-risk sectors which are governed by national law.

(...)

Member States may decide that members of Schemes referred to in Article 113(7) of Regulation (EU) No 575/2013 pay lower contributions to Deposit Guarantee Schemes.

Member States may allow that the central body and all credit institutions affiliated to this central body under Article 10(1) of Regulation (EU) No 575/2013 are subject as a whole to the risk weight determined for the central body and its affiliated institutions on a consolidated basis.

Member States may decide that credit institutions pay a minimum contribution, irrespective of the amount of their covered deposits.

(...)

(...)

3. DGS may use their own risk-based methods for determining and calculating the risk-based contributions by their members. The calculation of contributions shall be proportional to the risk of the members and shall take due account of the risk profiles of the various business models. This method may also take into account the asset side of the balance sheet and risk indicators, such as capital adequacy, asset quality and liquidity.

Each method shall be approved by the competent authority in cooperation with designated authority. EBA shall be informed about the methods approved.

4. In order to *ensure consistent application of this Directive, by * [one year after entering into force of this Directive], EBA shall issue guidelines pursuant to Article 16 of Regulation (EU) No 1093/2010 to specify methods for calculating the contributions to DGS in line with paragraph 1 and 3.*

In particular, it shall include a calculation formula, specific indicators, risk classes for members, thresholds for risk weights assigned to specific risk classes, and other necessary elements.

Three years after entry into force of this Directive and at least every five years afterwards, EBA shall conduct a review of the guidelines on risk based or alternative own-risk based methods applied by DGS.

(...)

(...)

(...)

(...)

Article 12

Cooperation within the Union

1. **DGS** shall cover the depositors at branches set up by credit institutions in other Member States.
2. Depositors at branches set up by credit institutions in *another Member State* shall be repaid by *a DGS* in the host Member State on behalf of the DGS in the home Member State. *The DGS of the host Member State shall make repayments in accordance with the instructions of the DGS of the home Member State. The DGS of the host Member State shall not bear any liability with regard to acts done in accordance with the instructions given by DGS of the home Member State. The DGS of the home Member State shall provide the necessary funding prior to payout and shall compensate the DGS of the host Member State for the costs incurred.*

The **DGS** of the host Member State shall also inform the depositors concerned on behalf of the DGS of the home Member State and shall be entitled to receive correspondence from those depositors on behalf of the **DGS** of the home Member State.

3. If a credit institution ceases to be member of a **DGS** and joins another **DGS**, the contributions, *with the exception of the extraordinary contributions according to Article 9(3)*, paid during the 12 months preceding the end of the membership shall be transferred to the other DGS. This shall not apply if a credit institution has been excluded from a DGS pursuant to Article 3(3).
If part of the activities of a credit institution are transferred to another Member State and thus become subject to another DGS, the contributions of that bank paid during the 12 months preceding the transfer, with the exception of the extraordinary contributions in accordance with Article 9(3), shall be transferred to the other DGS in proportion to the amount of covered deposits transferred.

4. Member States shall ensure that DGS of the home Member State exchange information referred to under *Article 3(7) or 3(5a) and (6)* with those in host Member States. The restrictions set out in that Article shall apply.

If a credit institution intends to transfer from one DGS to another in accordance with this Directive, it shall give at least six months' notice of its intention to do so. During that period, the credit institution shall remain under the obligation to contribute to its original DGS in accordance with Article 9 both in terms of ex-ante and ex-post financing.

5. In order to facilitate an effective cooperation between **DGS**, with particular regard to this Article and to Article 10, the **DGSs**, or, where appropriate, **the designated** authorities, shall have written cooperation agreements in place. Such agreements shall take into account the requirements *set out in Article 3 (5b)*.

The designated authority shall notify EBA of the existence and the content of such agreements and may issue opinions in accordance with Article 34 of Regulation (EU) No 1093/2010. If designated authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 and EBA shall act in accordance with that article.

The absence of such agreements shall not affect the claims of depositors under Article 8(1) or of credit institutions under paragraph 3 of this Article.

5a. Member States shall ensure that appropriate procedures are in place to enable DGS to share information and communicate effectively with other DGS, their affiliated credit institutions and the relevant competent authorities within their own jurisdictions and with other agencies on a cross-border basis, where appropriate.

5b. EBA and the competent and designated authorities shall cooperate with each other and exercise their powers in accordance with the provisions of this Directive and with Regulation (EU) No 1093/2010.

Member States shall inform the Commission and EBA of the identity of their designated authority by ... [12 months after entry into force].

5c. EBA shall cooperate with the European Systemic Risk Board (ESRB) on systemic risk analysis concerning DGS.

Article 13

Branches of credit institutions established in third countries

1. Member States shall check that branches established by a credit institution which has its head office outside the union have protection equivalent to that prescribed in this Directive.

If protection is not equivalent, Member States may, subject to ***Article 47(1) of Directive 2013/36/EC***, stipulate that branches established by a credit institution which has its head office outside the Union must join a DGS in operation within their territories.

When performing the verification provided for in paragraph 1, Member states shall at least check that depositors benefit from the same coverage level and scope of protection as provided in this Directive.

(...)

(...)

2. *Each branch established by a credit institution which* has its head office outside the Union and *which* is not a member of a scheme operating in a Member State shall ***provide all relevant information concerning the guarantee arrangements for the deposits of actual and intending depositors at that branch.***

3. The information referred to in paragraph 2 shall be made available in ***the language that was agreed by the depositor and the credit institution when the account was opened or*** in the official language or languages of the Member State in which a branch is established in the manner prescribed by national law ***and shall be clear and comprehensible.***

Article 14

Depositor information

1. Member States shall ensure that credit institutions make available to actual and intending depositors the information necessary for the identification of the ***DGS*** of which the institution and its branches are members within the Union. ***Member States shall ensure that credit institutions inform actual and intending depositors of the exclusions from DGS protection which apply.***

2. ***Before entering into a contract on deposit-taking, depositors shall be provided with the information referred to in paragraph 1. They shall acknowledge the receipt of that information.***
The template set out in Annex III shall be used ***for that purpose.***

3. ***Confirmation that the deposits are eligible deposits*** shall be provided to depositors on their statements of account ***including a reference to*** the information sheet set out in Annex III. ***The website of the relevant DGS shall be indicated on the information sheet. The information sheet set out in Annex III shall be provided for the depositor at least annually.***

The website of the DGS shall contain the necessary information for depositors, in particular information concerning the provisions regarding the process for and conditions of deposit guarantees as envisaged under this Directive.

4. The information provided for in paragraph 1 shall be made available in the manner prescribed by national law in the language *that was agreed by the depositor and the credit institution when the account was opened or* in the official language or languages of the Member State in which the branch is established.

Member States shall limit the use in advertising of the information referred to in *paragraphs 1, 2 and 3* to a factual reference to the scheme guaranteeing the product to which the advertisement refers and to such additional information as required by national law.

Such information may extend to the factual description of the functioning of the scheme but shall not contain a reference to unlimited coverage of deposits.

(...)

6. In case of merger, conversion of subsidiaries into branches or similar operations, depositors shall be informed of the merger *or conversion* at least one month before it takes legal effect *unless the competent authority allows a shorter deadline on the grounds of commercial secrecy or financial stability*.

Depositors shall be given a three- month period following notification of the merger or conversion in order to give them the opportunity to withdraw or transfer to another bank, without incurring any penalty fees, their deposits including all accrued interest and benefits in so far as they exceed the coverage level pursuant to Article 5(1) but not higher than before the operation.

6a. Member States shall ensure that if a credit institution withdraws or is excluded from a DGS, the credit institution shall inform its depositors within one month of such withdrawal or exclusion.

7. If a depositor uses internet banking, the information required to be disclosed by this Directive may be communicated by electronic means. Where the depositor so requests, it shall be communicated on paper.

(...)

Article 15

List of authorised credit institutions

Member States shall ensure that when notifying EBA of authorisations in accordance with Article 20(1) of Directive 2013/36/EC, competent authorities shall indicate to which DGS each credit institution is a member of.

When publishing and updating the list of authorised credit institutions in accordance with Article 20(1) of Directive 2013/36/EC, EBA shall indicate of which DGS each credit institution is a member.

Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

1a. The powers to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time.

1b. The delegation of power referred to in Article 16(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. A delegated act adopted pursuant to this Directive shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

(...)

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(...)

(...)

3. Where certain deposits *or categories of deposits or other instruments* cease to be covered wholly or partially by DGS after the transposition of this Directive or Directive 2009/14/EC into national law, Member States may allow ■ deposits and other instruments *with an initial maturity date* to be covered *until their initial maturity date if they were paid in or issued before ... [date of entry into force]*

3a. Member States shall ensure that depositors are informed about the deposits or categories of deposits or other instruments which will no longer be covered by a DGS after the date set out in the first subparagraph of Article 20(1).

3aa. Until the target level has been reached for the first time, Member States may apply the thresholds in Article 9a paragraph 3 subparagraph 2 in relation to the available financial means.

3b. By way of derogation from Article 5 paragraph 1, Member States which, on 1 January 2008, provided for a coverage level between EUR 100 000 and EUR 300 000, may decide to reapply that higher coverage level until 31 December 2018. In that case, the target level and the contributions of the credit institutions shall be adjusted accordingly.

4. *Five years after the entry into force of this Directive*, the Commission shall submit a report, and, if appropriate, a legislative proposal to the European Parliament and the Council setting out *how DGS operating in the Union may cooperate through a European Scheme to prevent risks arising from cross-border activities and protect deposits from such risks.*

5. *Five years after entry into force of this Directive*, the Commission, supported by the EBA, shall submit to the European Parliament and to the Council ■ a report on the progress towards the implementation of this Directive. *That* report should, *in particular address*:

– *the target level on the basis of covered deposits, with an assessment of the appropriateness of the percentage set, taking into account the failure of deposits in the EU in the past;*

- *the impact of alternative measures used in accordance with Article 9a on the protection of the depositors and consistency with the orderly winding up proceedings in the banking sector*

(...)

– *the impact on the diversity of banking models;*

– *the adequacy of the current coverage level for depositors.*

- *the report shall also assess whether the matters referred to in the first subparagraph have been dealt with in a manner that maintains the protection of depositors.*

Five years after entry into force of this Directive, EBA shall report to Commission on calculation models and their relevance to the commercial risk of the members. When reporting, EBA shall take due account of the risk profiles of the various business models.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with [grey shaded areas] by (...) ***[12 months after entry into force of this Directive].***

They shall forthwith communicate to the Commission the text of those provisions. ■

(...)

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with ***Article 7(1b) by 31 May 2016.***

If, after a thorough examination, designated authorities establish that a DGS is not yet in a position to comply with Article 11 within the transposition deadline of this Directive set out in Article 19 (1), the relevant laws, regulations and administrative provisions shall be brought into force by 31 May 2016 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. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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 21

Repeal

Directive 94/19/EC as amended by the Directives listed in Annex IV is repealed with effect from [one day after date in Article 20(1)] without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the dates of application of the Directives set out in Annex IV.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

Article 22

Entry into force

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

Articles [list of Articles and Annexes which are unchanged in comparison with repealed directive] shall apply from [the day after the transposition deadline in Art. 20(1))].

Article 23

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament

For the Council

ANNEX I

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Entire Annex I deleted

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(...)

ANNEX II

Entire Annex II deleted

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$$(\dots)$$

Annex III. Depositor information template

Basic information about the protection of deposit	
Deposits in (insert name of credit institution) are protected by:	[insert the name of the relevant DGS] ¹
Limit of protection:	€ 100 000 per depositor per credit institution ² [replace by adequate amount if currency not EUR] [where applicable:] The following trademarks are part of your credit institution [insert all trademarks which operate under the same licence]
If you have more deposits at the same credit institution:	All your deposits at the same credit institution are "aggregated" and the total is subject to the limit of € 100 000 [replace by adequate amount if currency not EUR] ²
If you have a joint account with other person(s):	The limit of € 100 000 [replace by adequate amount if currency not EUR] applies to each depositor separately ³
Reimbursement period in case of credit institution's failure:	7 working days ⁴ [replace by another deadline if applicable]
Currency of reimbursement:	Euro [replace by another currency where applicable]
Contact:	[insert the contact data of the relevant DGS (address, telephone, e-mail etc)]
More information:	[insert the website of the relevant DGS]
Acknowledgement of the depositor:	
Additional information (all or some of the below)	
¹ Scheme responsible for the protection of your deposit [<i>Only where applicable:</i>] Your deposit is covered by a contractual scheme officially recognised as a Deposit Guarantee Scheme. If insolvency of your credit institution should occur, your deposits would be repaid up to EUR 100 000 [replace by adequate amount if currency not EUR]. [<i>Only where applicable:</i>] Your credit institution is part of an Institutional Protection Scheme officially recognised as a Deposit Guarantee Scheme. This means that all institutions that are members of this scheme mutually support each other in order to avoid insolvency. If insolvency should occur, your deposits would be repaid up to EUR 100 000 [replace by adequate amount if currency not EUR]. [<i>Only where applicable:</i>] Your deposit is covered by a statutory Deposit Guarantee Scheme and a contractual Deposit Guarantee Scheme. If insolvency of your credit institution should occur, your deposits would in any case be repaid up to EUR 100 000 [replace by adequate amount if currency not EUR].	

[*Only where applicable:*] Your deposit is covered by a statutory Deposit Guarantee Scheme. In addition, your credit institution is part of an Institutional Protection Scheme in which all members mutually support each other in order to avoid insolvency. If insolvency should occur, your deposits would be repaid up to EUR 100 000 [replace by adequate amount if currency not EUR] by the Deposit Guarantee Scheme.

² General limit of protection

If a deposit is unavailable because a credit institution is unable to meet its financial obligations, depositors are repaid by a Deposit Guarantee Scheme. This repayment covers at maximum EUR 100 000 [replace by adequate amount if currency not EUR] per credit institution. This means that all deposits at the same credit institution are added up in order to determine the coverage level. If, for instance a depositor holds a savings account with EUR 90 000 and a current account with EUR 20 000, he or she will only be repaid EUR 100 000.

[*Only where applicable:*] This method will also be applied if a credit institution operates under different trademarks. The [insert name of the account-holding credit institution] also trades under [insert all other trademarks of the same credit institution]. This means that all deposits with one or more of these trademarks are in total covered up to EUR 100 000.

³ Limit of protection for joint accounts

In case of joint accounts, the limit of EUR 100 000 applies to each depositor.

[*Only where applicable:*] However, deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of EUR 100 000 [replace by adequate amount if currency not EUR].

In some cases [insert cases defined in national law] deposits are protected above EUR 100 000 [replace by adequate amount if currency not EUR]. More information can be obtained under [insert the website of the relevant DGS].

⁴ Reimbursement [to be adapted]

The responsible Deposit Guarantee Scheme is [insert name and address, telephone, e-mail and web site]. It will repay your deposits (up to EUR 100 000 [replace by adequate amount if currency not EUR]) within [insert repayment period as is required by national law] at the latest, from [31 December 2023] within [7 working days].

[Add info on emergency/interim payout if repayable amount(s) are not available within 7 working days.]

If you have not been repaid within these deadlines, you should take contact with the Deposit Guarantee Scheme since the time to claim reimbursement may be barred after a certain time limit. Further information can be obtained under [insert web site of the responsible DGS].

Other important information

In general, all retail depositors and businesses are covered by Deposit Guarantee Schemes. Exceptions for certain deposits are stated on the web site of the responsible Deposit Guarantee Scheme. Your credit institution will also inform you on request whether certain products are covered or not. If deposits are covered, the credit institution shall also confirm this on the statement of account.

ANNEX IV

PART A

Repealed Directives together with their successive amendments (referred to in Article 21)

Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes

Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay

PART B

Deadlines for transposition (referred to in Article 21)

Directive	Deadline for transposition
94/19/EEC	1.7.1995
2009/14/EC	30.6.2009
2009/14/EC (second paragraph of point 3(i) of Article 1, Article 7(1a) and (3) and Article 10(1) of Directive 94/19/EC as amended by Directive 2009/14/EC)	31.12.2010

ANNEX V

Correlation Table

This Directive	Directive 2009/14/EC	Directive 94/19/EEC
Article 1	-	-
Article 2(1)(a)		Article 1(1)
Article 2(1)(d)		Article 1(2)
Article 2(1)(e)	Article 1(1)	Article 1(3)
Article 2(1)(f)		Article 1(4)
Article 2(1)(g)		Article 1(5)
Article 3(1)		Article 3(1)
Article 3(2)		Article 3(2)
Article 3(3)		Article 3(3)
Article 3(4)		Article 5
Article 3(6)	Article 1(6)(a)	
Article 4(1)(a)-(c)		Article 2
Article 4(1)(d)		Article 7(2), Annex I (1)
Article 4(1)(f)		Article 7(2), Annex I (10)
Article 4(1)(g)		Article 7(2), Annex I (2)
Article 4(1)(h)		Article 7(2), Annex I (5)
Article 4(1)(i)		Article 7(2), Annex I (6)
Article 4(1)(j)		Article 7(2), Annex I (3), (4)
Article 4(10)(k)		Article 7(2), Annex I (12)
Article 5(1)	Article 1(3)(a)	Article 7(1)
Article 5(4)	Article 1(3)(a)	
This Directive	Directive 2009/14/EC	Directive 94/19/EEC
Article 5(6)		Article 7(4), 7(5)
Article 5(7)	Article 1(3)(d)	
Article 6(1)-(3)		Article 8
Article 7(1)	Article 1(6)(a)	Article 10(1)
Article 7(3)		Article 10(4)
Article 7(4)		Article 10(5)
Article 8(1)		Article 7(6)
Article 8(2)		Article 11
Article 12(1)		Article 4(1)
Article 13		Article 6
Article 14(1)-(3)	Article 1(5)	Article 9(1)
Article 14(4)		Article 9(2)
Article 14(5)		Article 9(3)
Article 15		Article 13
Article 16-18	Article 1(4)	