



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 November 2008

16030/08

**Interinstitutional File:
2008/0199 (COD)**

**ECOFIN 537
EF 114
CODEC 1612**

NOTE

from : General Secretariat of the Council
to : Delegations

No. Cion prop.: 14317/08 ECOFIN 423 EF 79 CODEC 1337

Subject : Proposal for a Directive of the European Parliament and of the Council amending Directive 94/19/EC on Deposit Guarantee Schemes as regards the coverage level and the payout delay
- Presidency compromise

Delegations will find below the draft text of the above directive as agreed by Coreper of 19 November.

Changes introduced in relation to the Commission proposal appear in underlined text and deletions are denoted by (...).

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank,

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

Whereas:

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

(3a) By 31 December 2011, the coverage of the aggregate deposits of each depositor should be set at EUR 100 000 in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interest and to avoid the distortion of competition between Member States' deposit guarantee schemes. By 31 December 2009, the Commission should present a report to the European Parliament and the Council assessing the impact of the increase of the coverage level to 100 000 EUR and the necessity for this amount to become an harmonised coverage level in the Community in the light of consumer protection and financial stability. In the event the assessment reveals that it is not necessary to increase the coverage level to 100 000 EUR and to harmonise the coverage level in the Community, the Commission should submit to the European Parliament and the Council appropriate proposals.

(3b) The report to be presented by the Commission should analyse all related issues such as set off and counterclaims, the determination of contributions to schemes, the scope of products and depositors covered and the effectiveness of cross-border cooperation between deposit guarantee schemes. For the purpose of this report, Member States should collect the relevant data and submit them on request to the Commission.

(3c) Some Member States have established deposit-guarantee-schemes under the Directive 94/19/EC which provide full coverage for certain kinds of long term deposits, such as claims on pensions. It is necessary to respect these rights and expectations for depositors in such schemes.

(...)

(5) The payout period of three months currently provided for, which can be extended to 9 months, runs counter to the need to maintain depositors' confidence and does not meet their needs. Therefore, the payout delay should be reduced to a period of twenty working days. (...) This period should only be extended under exceptional circumstances and after approval by the competent authorities.

(5a) Deposits may be considered unavailable once early intervention or reorganisation measures have been unsuccessful. This should not prevent competent authorities from making further restructuring efforts during the pay-out period.

(5b) In the cases where payout is triggered by a determination of the competent authorities, the decision period of 21 days, currently provided for, should be reduced to five working days in order not to impede rapid payout. However the competent authorities must first be satisfied that a credit institution has failed to repay deposits which are due and payable. This assessment should be subject to the judicial or administrative procedures in the Member states.

(6) Under Directive 94/19/EC, Member States may limit the coverage by a certain percentage. That option has proven counter-productive for the confidence of depositors and should be discontinued.

(...)

(8) The measures necessary for the implementation of Directive 94/19/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(9) In particular, power should be conferred on the Commission to adjust the coverage level according to the inflation in the European Union on the basis of changes in the Harmonized Index of Consumer Prices published by the European Commission. Since this measure is of general scope and is designed to amend a non-essential element of Directive 94/19/EC, it must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(...)

(...)

(12) Since the objectives of the proposed action, namely the harmonisation of coverage levels and payout delays, cannot be sufficiently achieved by the Member States because it requires the harmonisation of a multitude of different rules existing in the legal systems of the various Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(12a) The Council, in accordance with paragraph 34 of the Interinstitutional agreement on better law-making, should encourage Member States to draw up, for themselves and in the interest of the Community, their own tables which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and to make them public.

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/19/EC is amended as follows:

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

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

- (2) Article 4 is amended as follows:

- (a) paragraph 5 is replaced by the following:

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

- (b) the following paragraph is added:

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

- (3) Article 7 is amended as follows:

- (a) Paragraph 1 (...) is replaced by the following:

"(...)

1. Member States shall ensure that the coverage of the aggregate deposits of each depositor shall be at least EUR 50 000 in the event of deposits' being unavailable.

By 31 December 2011, Member States shall ensure that the coverage of the aggregate deposits of each depositor shall be set at EUR 100 000 in the event of deposits' being unavailable.

If the Commission's report referred to in Article 12 concludes that this level and the harmonisation of the coverage amount are not necessary in order to avoid cross-border distortions between Member States and, ensure consumer protection and financial stability in the Community, it shall present to the European Parliament and the Council a proposal to amend subparagraph 2.

Without prejudice of the following subparagraph, Member States that convert the amounts expressed in euro referred to in this paragraph into their national currency shall ensure that the amounts in national currencies effectively paid to depositors are equivalent to those set out in this directive.

Member States may round off the amounts resulting from the conversion provided that such rounding off does not exceed EUR 100.

(...)"

(aa) Paragraph 3 is replaced by the following:

"3. This article shall not preclude the retention of provisions which offered, before 1 January 2008, notably for social considerations, a full coverage for certain kinds of deposits."

(b) Paragraph 4 is deleted.

(...)

(d) The following paragraph (...) is added:

"7. The Commission may adjust the amounts referred to in paragraph 1 according to the inflation in the European Union on the basis of changes in the Harmonized Index of Consumer Prices published by the European Commission.

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

(...)"

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

"Article 7a

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC.
2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

(...)"

(5) Article 10 is amended as follows:

(a) Paragraph 1 is replaced by the following:

- "1. (...) Deposit-guarantee schemes shall be in a position to pay duly verified claims by depositors in respect of unavailable deposits within twenty working days of the date on which the competent authorities make the determination described in Article 1 (3) (i) or the judicial authority makes the ruling described in Article 1 (3) (ii).

In wholly exceptional circumstances and in special cases a guarantee scheme may apply to the competent authorities for an extension of the time limit. Such extension shall not exceed ten working days.

Member States shall ensure that deposit-guarantee schemes perform regular tests of their systems and, if appropriate, are informed in the event that the competent authorities detect problems in a credit institution that are likely to trigger deposit-guarantee schemes.

(...)"

(b) Paragraph 2 is deleted.

(6) Article 12 is replaced by the following:

"Article 12

1. By 31 December 2009 at the latest, the Commission shall submit to the European Parliament and to the Council a report assessing the impact of the increase of the coverage level to 100 000 EUR and the necessity for this amount to become an harmonised coverage level in the Community and on a harmonisation of the funding mechanisms of deposit-guarantee schemes and the possible introduction of a Community deposit-guarantee scheme, together with any appropriate proposals;
2. By 31 December 2010 at the latest, the Commission shall submit to the European Parliament and to the Council a report on the effectiveness and delays of the payout procedures.
3. Member States shall inform the Commission and the European Banking Committee if they intend to change the scope or level of coverage for deposits and on any difficulty encountered when cooperating with other Member States."

(...)

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2009 (...).

However, Member States shall apply (...) the provisions of Articles 10(1) and 1(3)(i) of Directive 94/19/EC, as amended by this Directive by 31 December 2010, at the latest.

By way of derogation from the first subparagraph, (...) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the second subparagraph of Article 7(1) and Article 7(3) of Directive 94/19/EC, as amended by this Directive, by 31 December 2011 (...).

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

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

Article 3
Entry into force

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

Article 4
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
