



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 December 2008

17155/08

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

**ECOFIN 616
EF 147
CODEC 1813**

"I" ITEM NOTE

from : General Secretariat of the Council
to : Permanent Representatives Committee
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

1. On 15 October 2008, the Commission presented a proposal for a directive on Deposit Guarantee Schemes as regards the coverage level and the payout delay ¹.
2. The opinion of the European Parliament is still outstanding. The European Central Bank² delivered its opinion on 18 November 2008.
3. At its meeting of 19 November 2008 the Permanent Representatives Committee agreed the general approach as set out in the Presidency compromise (16030/08 ECOFIN 537 EF 114 CODEC 1612 + COR 1), and this was confirmed by Council (ECOFIN) on 2 December 2008.

¹ 14317/08 ECOFIN 423 EF 79 CODEC 1337

² 15947/08 ECOFIN 525 EF 112 CODEC 1593

4. On 8 December 2008, the European Parliament's Committee on Economic and Monetary Affairs adopted its report on the Commission proposal. The Financial Services Working Party has examined the amendments adopted by the Committee and has agreed to incorporate them in the form, and to the extent, set out in the overall text present in annex to the attached draft letter.

5. In these circumstances the Permanent Representatives Committee is invited to confirm that the Presidency can indicate to the European Parliament that, should the European Parliament adopt the amendments to the Commission proposal as set out in the Annex to the attached draft letter, the Commission proposal thus amended would be acceptable to the Council.

DRAFT

Brussels, ...December 2008

Mme Pervenche BERÈS
Chair, European Parliament Committee on Economic and Monetary Affairs
STRASBOURG.

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

Dear Mrs Berès,

Following the informal meetings between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt the amendments to the Commission proposal in the exact form as set out in the compromise package contained in the Annex to this letter, the Council would, in accordance with Article 251, paragraph 2, first subparagraph, first indent of the Treaty, adopt the proposed directive in the form of the text thus amended subject, if necessary, to revision by the legal linguists of both institutions.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

Pierre SELLAL
Chairman of the Permanent Representatives
Committee (Part 2)

copy to: Commissioner Charlie McCreevy
Member of the European Parliament Mr Christian Ehler

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 and greater stability on the financial markets, the minimum coverage level should be increased at EUR 50.000. By 31 December 2010, coverage of the aggregate deposits of each depositor shall be set at EUR 100 000, unless a Commission impact assessment, submitted to the European Parliament and the Council by 31 December 2009, concludes that such an increase and such a harmonisation are not appropriate and are not financially viable for all Member States in order to ensure consumer protection, financial market stability and to avoid distortions of competition between Member States. In the event the impact assessment reveals that such an increase and such a harmonisation are not appropriate, the Commission should submit to the European Parliament and the Council appropriate proposals.
- (3a) The same coverage level should apply to all depositors regardless whether a Member State's currency is the Euro or not. However, Member States should have the possibility to round off the amounts resulting from the conversion without compromising the equivalent protection of depositors.
- (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, the effectiveness of cross-border cooperation between deposit guarantee schemes and the link between deposit guarantee schemes and alternative means for reimbursing depositors, such as emergency pay-out mechanisms. 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.
- (3ca)Some Member States have established or plan to establish deposit-guarantee-schemes under the Directive 94/19/EC which provide full coverage for certain temporarily increased account balances. The Commission should assess by 31 December 2009 whether a full coverage for certain temporarily increased account balances may be maintained or introduced.
- (3d) The functioning of systems which protect the credit institution itself and in particular ensure its liquidity and solvency, thus guarantying protection for depositors at least equivalent to that provided by a deposit guarantee scheme, and voluntary systems of depositors compensation which are not introduced or officially recognized by a member state should not be affected by this directive.
- (...)
- (4) Member States should encourage Deposit guarantee schemes to consider entering into agreements or improving existing agreements concerning their respective obligations.
- (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. Two years after the coming into force of the Directive, the Commission should submit a report on the effectiveness and delays of the payout procedures assessing whether further reduction to 10 working days of the delay referred to in the first subparagraph of Article 10(1) would be appropriate.

- (5a) Furthermore, in the cases where payout is triggered by a determination of the competent authorities, the decision period of 21 days, currently provided for, should be reduced to 5 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.
- (5b) 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.
- (5c) Member states should aim at ensuring the continuity of banking services and access to liquidity of banks, in particular in periods of financial turmoil. For this purpose, Member States should be encouraged to make arrangements as soon as possible for ensuring emergency payouts of appropriate amounts upon application of the affected depositor within three days or less after the application. Since the reduction of the current payout delay of three months will have a positive impact on the confidence of depositors and the proper functioning of the financial markets, Member States and their deposit guarantee schemes should ensure that the payout delay is as short as possible.
- (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 at least every two years 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.

1a. By 31 December 2010, 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, to be submitted to the European Parliament and the Council by 31 December 2009, concludes that such an increase and such a harmonisation are not appropriate and not financially viable for all Member States in order to ensure consumer protection, financial stability in the Community and to avoid cross-border distortions between Member States, it shall present to the European Parliament and the Council a proposal to amend paragraph 1a.

1b. Member States that convert the amounts expressed in euro referred to in paragraphs 1 and 1a 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.

(...)"

(aa) Paragraph 3 is replaced by the following:

"3. Paragraph 1a 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.

(...)"

(4a) In Article 9 paragraph 1 shall be replaced by the following:

"1. Member States shall ensure that credit institutions make available to actual and intending depositors the information necessary for the identification of the deposit-guarantee scheme of which the institution and its branches are members within the Community or any alternative arrangement provided for in Article 3(1), second subparagraph, or Article 3 (4). The depositors shall be informed of the provisions of the deposit-guarantee scheme or any alternative arrangement applicable, including the amount and scope of the cover offered by the guarantee scheme. When a deposit is not guaranteed by a deposit-guarantee scheme in accordance with Article 7(2), the credit institution shall inform its depositors accordingly. All information shall be made available in a readily comprehensible manner.

Information shall be given on request on the conditions for compensation and the formalities which must be completed to obtain compensation."

(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); this time limit includes the collection and transmission of the accurate data on depositors and deposits, which are necessary for the verification of claims.

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.

Two years after the coming into force of the Directive, the Commission shall submit a report on the effectiveness and delays of the payout procedures assessing whether further reduction to ten working days of the delay referred to in the first subparagraph could be implemented.

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. The Commission shall submit to the European Parliament and to the Council, by 31 December 2009 at the latest, a report on:
 - the harmonisation of the funding mechanisms of deposit-guarantee schemes addressing, in particular, the effects of an absence of harmonisation in the event of a cross-border crisis, in regard to the availability of the compensation payouts of the deposit and in regard to fair competition, and the benefits and costs of such harmonisation;
 - the appropriateness and modalities of providing for a full coverage for certain temporarily increased account balances;
 - possible models for introducing risk-based contributions;
 - the benefits and costs of a possible introduction of a Community deposit-guarantee scheme;
 - the impact of diverging legislations as regards set-off, where a depositor's credit is balanced against its debts, on the efficiency of the system and possible distortions, taking into account cross-border winding-up;
 - the harmonisation of the scope of products and depositors covered, including the specific needs of SMEs and local authorities.
 - the link between deposit guarantee schemes and alternative means for reimbursing depositors, such as emergency pay out mechanisms.

If necessary, the Commission shall submit appropriate proposals to amend this Directive.

(...)

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 Article 7(1a) and Article 7(3) of Directive 94/19/EC, as amended by this Directive, by 31 December 2010 (...).

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