



**COUNCIL OF
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"I" ITEM NOTE

from: Presidency
to: Permanent Representatives' Committee

No. Cion prop. : 12386/10 EF 83 ECOFIN 460 CODEC 715 – COM(2010) 368 final

Subject: Proposal for a Directive of the European Parliament and of the Council on
Deposit Guarantee Schemes [recast]
- Progress report

I. INTRODUCTION

1. The Commission's proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes [recast] was transmitted to the Council on 12 July 2010.
2. During the Belgian Presidency the proposal was examined by the Working Party on Financial Services at five meetings (13 September, 14 October, 23 and 29 November and 14 December).
3. During the discussions and in order to take into account Member States' concerns, the Belgian Presidency tabled two overall compromise texts (documents 15983/10 and 17543/10).

4. The position of the European Parliament and the opinion of the European Central Bank are still outstanding. The European Data Protection Supervisor delivered its opinion on 10 September 2010¹.

II. STATE OF PLAY

5. In general, Member States welcome the aim of the Commission's proposal to introduce further harmonisation. Where there is a large measure of agreement on several issues, a number of provisions of the proposal are either subject to strong reservations or are still under discussion.

6. Interaction with initiatives on crisis management and resolution mechanisms

Several Member States have evoked the need for consistency and proper articulation between Deposit Guarantee Schemes and resolution mechanisms and are of the opinion that the cumulative impact of financing Deposit Guarantee Schemes and resolution mechanisms, as well as the potential synergies to be explored between them, have to be considered before arriving at definitive conclusions on the financing of Deposit Guarantee Schemes.

At the same time most Member States are of the view that this does not impede further examination of the harmonisation of some funding principles, such as a target level and ex-ante contributions which are risk-based calculated.

7. Subject matter and scope

Some Member States have within their jurisdiction institutional protection schemes which are protecting the credit institutions themselves and are ensuring liquidity and solvency of their members. These Member States have concerns that the text proposed by the Commission could be interpreted in a way that requires many of their banks to pay a double contribution. They consider that a number of adjustments to the text of the Directive are still required in order to have the necessary legal clarity.

¹ 13001/10 EF 88 ECOFIN 488 CODEC 752

8. Eligibility of deposits

In general, Member States welcome harmonisation regarding which deposits must be covered and which should be excluded. However, some fine-tuning of scope and definitions of the excluded deposits is still required.

9. Determination of the repayable amount

Member States agree to the removal of a possible set-off of claims against the depositor's liabilities but, according to requests of a number of Member States, the Presidency's latest compromise proposes to allow for compensation of claims that have fallen due on the default date.

10. Repayment period

Most Member States have serious misgivings about the opportunity of further shortening the recently introduced payout period of 20 working days, to be implemented by Deposit Guarantee Schemes from 1 January 2011 onwards. The latest compromise maintains the current repayment period of 20 working days, while removing the possible extension of 10 working days.

11. Currency of repayment

The views of delegations converge to allow repayment in the currency of the Member State of the Deposit Guarantee Scheme that has to intervene, while not preventing Member States from organising repayments in other currencies, especially if in the currency of the account, for example of deposits held with EU-branches.

12. Financing principles

Many Member States agree with the principle that a Deposit Guarantee Scheme must have ex-ante financial means proportionate to its liabilities and that the determination of a harmonised target level is useful. However, some Member States are of the opinion that more discretion and better balancing with ex-post financing measures could be considered.

13. Basis and percentages for funding requirements

Member States largely support calculating the target level of the funding and resulting contributions on the basis of covered deposits rather than eligible deposits, which was the basis initially proposed by the Commission. It is the conviction of many Member States that the proposed financing requirements should be reduced and further consideration and careful assessment should be given to the precise level of funding needed. Therefore, all the percentages related to contributions have been inserted in square brackets.

14. Use of financial means for other purposes

There is a large support among Member States that the financial means of a Deposit Guarantee Scheme should be available for other interventions aimed at avoiding bank failures and that such use should not be subject to limits. This provision has been inserted in square brackets awaiting further developments in view of the ongoing discussion on crisis management and resolution mechanisms (see 6 above).

15. Borrowing between Deposit Guarantee Schemes

The Presidency has followed the nearly unanimous position of Member States in favour of deleting these provisions, given their serious concerns about both practical functioning and risk-related aspects. Most Member States are of the opinion that they should keep their discretion to define adequate alternative funding arrangements, in case funds are insufficient for an intervention. The measure can be further examined in the context of the report, which the Commission should submit by 31 December 2015, on the feasibility of replacing existing Deposit Guarantee Schemes by a single scheme for the whole Union.

16. Calculation of contributions

The principle of risk-based contributions is welcomed by many Member States. However, most Member States are also of the view that the extended methodology proposed by the Commission should be simpler and more flexible. There is no consensus on whether there should be an emphasis on harmonisation or more discretion to Member States. The corresponding provisions have been inserted in square brackets, in view of the need for further consideration and evaluation.

17. Cooperation between Deposit Guarantee Schemes

Most Member States welcome enhanced cooperation between Deposit Guarantee Schemes. There is a consensus on the role of a single point of contact for the Host scheme which consists of providing information to depositors of their jurisdiction and giving technical assistance to the Home scheme in case of intervention. As many Member States seek a strict limitation of the financial responsibility of the Host scheme, the Presidency proposes in its latest compromise that the Host scheme only act as a paying agent and must receive the necessary funds from the Home scheme prior to the payout.

III. CONCLUSION

18. Against this background the Permanent Representatives' Committee is invited to:

- take note of the progress achieved with regard to the proposal;
- take note of the latest Belgian Presidency's compromise text as set out in doc. 17543/10 EF 202 ECOFIN 817 CODEC 1471;
- invite the incoming Hungarian Presidency to continue work on the basis of this compromise text in order to reach an agreement on a general approach in the near future.
