



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from:            Presidency  
to:                Delegations

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

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Delegations will find below a Presidency compromise text on the above Commission proposal, to be discussed at the 25 January 2011 meeting.

With respect to the Commission's proposal, additions are underlined and those compared to the last compromise are highlighted in bold.

Recitals have not all been updated. Only new recitals or those redrafted so far are included.

**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,

Having regard to the opinion of the European Central Bank,<sup>1</sup>

Having regard to the opinion of the European Data Protection Supervisor<sup>2</sup>,

After transmission of the **draft legislative act** to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[...],

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<sup>1</sup> OJ C [...]

<sup>2</sup> OJ C [...]

*NEW AND REDRAFTED RECITALS*

*Recital on DGS governance*

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

*Recital on the set off of fallen due claims*

(14a) Deposit Guarantee Schemes should only be permitted to set off liabilities of a depositor against his or her claims for repayment if these liabilities have fallen due before the date of failure. By no means should such set off 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.

*Addition to recitals as regards Finnish Housing Companies*

(15) Member States should not be prevented from establishing systems protecting pensions in general, which should operate separately from Deposit Guarantee Schemes. Member States should not be prevented from protecting certain deposits for social reasons or in relation to real estate transactions for private residential purposes. Such transactions could also include transactions in shares of Finnish Housing Companies. In all cases, state aid rules should be complied with.

Recitals on eMoney and savings accounts

- (16a) Electronic money and funds received in exchange for electronic money should, in line with Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (OJ reference in footnote), not be treated as deposits and therefore not be covered by Deposit Guarantee Schemes.
- (16b) Savings accounts should be protected by Deposit Guarantee Schemes, whether or not certificates are issued for them.

Addition to recitals as regards clarification of exclusions

- (18) Certain depositors should not be eligible for deposit protection, in particular public authorities and financial institutions. This should comprise deposits by government and central administration authorities, provincial, regional, local and municipal authorities and should not apply to other public bodies, in particular those comparable to private enterprises. The limited number of these depositors compared to all other depositors minimises the impact on financial stability in case of a bank failure. Authorities also have much easier access to credit than citizens. Non-financial businesses should in principle be covered, regardless of their size.

*New recital as regards elimination of the 10 working days extension*

(26a) The period of 20 working days introduced by Directive 2009/14/EC within which repayments have to be executed by a Deposit Guarantee Scheme, is maintained. The former extension of 10 working days, which was allowed under exceptional circumstances and after approval by the competent authorities, was deleted.

*Recital on Art 7(1b)*

(26b) The time period necessary for the repayment of deposits should take into account cases where schemes have difficulty with determining the amount of repayment and the rights of the depositor, notably if deposits arise from residential housing transactions or certain life events, if a depositor is not absolutely entitled to the sums held in an accounts, 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.

*Adjustments to recital on data protection*

(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 data<sup>1</sup> applies to the processing of personal data carried out pursuant to this Directive. Deposit Guarantee Schemes and competent 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.

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

Adjustment to recital on delegated acts

- (35) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of Article 5(5). The European Parliament and the Council should have three months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by three months in regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Subject matter and scope*

1. This Directive lays down rules concerning the functioning of Deposit Guarantee Schemes.
2. This Directive shall apply to all Deposit Guarantee Schemes on a statutory or contractual basis and to institutional protection schemes recognised as Deposit Guarantee Schemes.
3. Institutional protection schemes defined in Article 80(8) of Directive 2006/48/EC **of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>1</sup> that also guarantee deposits** 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.
4. Institutional protection schemes not **fulfilling the conditions set out in** paragraph 3 shall not be subject to this Directive, except the second subparagraph of Article 14(5) and the last paragraph of Annex III.

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<sup>1</sup> OJ L 177, 30.6.2006, p. 1.

*Article 2*  
*Definitions*

1. For the purposes of this Directive:
- (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 must repay under the legal and contractual conditions applicable.

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

**Notwithstanding the following subparagraph, savings books shall be treated as deposits.**

An instrument shall not be a deposit in any of the following circumstances:

- its existence can only be proven by a certificate other than a statement of account;
  - 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 according 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;



- (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 may operate against the signature of one or more of those persons;
- (e) 'unavailable deposit' means a deposit that is due and payable but has not been paid by a credit institution under the legal and contractual conditions applicable thereto, where either:
- (i) the relevant competent 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. 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 directly related to the credit institution's financial circumstances which has the effect of suspending depositors' ability to make claims against it, should that occur before the aforementioned determination has been made;
- (f) 'credit institution' means an undertaking defined in Article 4(1) of Directive 2006/48/EC including those referred to in Article 2 of that Directive;
- (g) 'branch' means a place of business which forms a legally dependent part of a credit institution and which conducts directly all or some of the operations inherent in the business of credit institutions;

- (i) 'available financial means' means cash, deposits and low-risk assets, which can be liquidated within a time limit not exceeding the limit set by Article 7(1). Available financial means may also include payment commitments which are duly backed by collateral which consists of low risk assets unencumbered by any third party rights, at the free disposal, and earmarked for the exclusive use of the Deposit Guarantee Scheme which has the irrevocable right to claim these payments;
- (j) 'low-risk assets' means asset items falling into one of the categories set out in the first and second category of Table 1 under point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions,<sup>1</sup> but excluding other qualifying items as defined in point 15 of that Annex;
- (k) 'home Member State' means the Member State in which a credit institution is authorised;
- (l) 'host Member State' means the Member State in which a credit institution has a branch or in which it provides services.
2. Where this Directive refers to 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC,<sup>2</sup> bodies which administer Deposit Guarantee Schemes or where the operation of the deposit-guarantee scheme is administered by a private company, the public authority supervising those schemes, shall, for the purpose of that regulation, be considered competent authorities in accordance with Article 4(2) of Regulation (EU) No 1093/2010 .

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<sup>1</sup> OJ L 177, 30.6.2006, p. 201.

<sup>2</sup> OJ L 331, 15.12.2010, p 12.

*Article 3*  
*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.

No credit institution may take deposits unless it is a member of such a scheme.

2. If a credit institution does not comply with the obligations incumbent on it as a member of a Deposit Guarantee Scheme, the competent authorities which issued its authorization shall be notified and, in collaboration with the guarantee scheme, shall take all appropriate measures including the imposition of sanctions to ensure that the credit institution complies with its obligations.
3. If those measures fail to secure compliance on the part of the credit institution, the scheme may, where national law permits the exclusion of a member, with the express consent of the competent authorities, give not less than 1 month's notice of its intention of excluding 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 the notice period, the credit institution has not complied with its obligations, the guarantee scheme shall proceed to exclusion.
4. Deposits held when the authorization of a credit institution authorised pursuant to Article 6 of Directive 2006/48/EC is withdrawn shall continue to be covered by the guarantee scheme.
5. Deposit Guarantee Schemes referred to in Article 1(2) and (3) shall be supervised as to their compliance with this Directive.

- 5a. Member States shall ensure that Deposit Guarantee Schemes, at any time and at their request, receive from their members all information necessary to prepare a repayment of depositors, including markings under Article 4(2).
6. Member States shall ensure that Deposit Guarantee Schemes perform tests of their systems and that they are informed in the event that the competent authorities detect problems in a credit institution that are likely to give rise to the intervention of Deposit Guarantee Schemes.

Such tests shall take place at least every three years or when the circumstances require it. The first test shall take place by 31 December 2013.

The European Banking Authority shall periodically conduct peer reviews pursuant to Article 30 of **Regulation (EU) No 1093/2010** in this regard. Deposit Guarantee Schemes shall be bound to professional secrecy referred to in Article 70 of that Regulation when exchanging information with the European Banking Authority.

Information necessary to perform tests of their systems may only be used by the Deposit Guarantee Schemes for the performance of these tests and shall be kept no longer than is necessary for that purpose.

*Article 4*

Exclusions

1. The following shall be the exclusions from any repayment by Deposit Guarantee Schemes:
  - (a) deposits made by credit institutions;
  - (d) deposits by financial institutions as defined in Article 4(5) of Directive 2006/48/EC;
  - (e) **subject to Article 6(3)**, deposits by investment firms as defined in Article 4(1)(1) of Directive 2004/39/EC;
  - (g) deposits by insurance undertakings **referred to in Article 13(1) to (6) of Directive 2009/138/EC**;
  - (h) deposits by collective investment undertakings;
  - (i) **subject to Article 6(3)**, deposits by pension and retirement funds;
  - (j) deposits by authorities;
  - (b) all instruments which would fall within the definition of 'own funds' in Article 57 of Directive 2006/48/EC;

- (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 financing**<sup>1</sup>;
- (f) deposits **whose** holder **has not been** identified **at the moment** they have become unavailable;
- (k) debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes.

2. Member States shall ensure that credit institutions mark eligible deposits that are not excluded in paragraph 1 in a way that allows an immediate identification of such deposits.

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<sup>1</sup> OJ L 309, 25.11.2005, p. 15.

*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.
  
2. Member States shall ensure that Deposit Guarantee Schemes do not deviate from the coverage level laid down in paragraph 1. However, Member States may decide that the following deposits are covered provided that the costs for such repayments are not subject to Article 9:
  - (a) deposits resulting from real estate transactions for private residential purposes;
  
  - (b) deposits that fulfil social considerations defined in national law and are linked to particular life events such as marriage, divorce, invalidity or decease of a depositor.

The coverage shall not exceed a time period of 12 months after the amount has been credited.

3. Paragraph 2 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.

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 of entry into force of this Directive.

Member States may round off the amounts resulting from the conversion, provided that such rounding off does not exceed EUR 2 500.

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 **three** years. Member States may 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 31 December 2015 unless unforeseen events necessitate an earlier review.
7. The Commission may adjust the amounts referred to in paragraph 1 in accordance with inflation in the European Union on the basis of changes in the harmonised index of consumer prices published by the Commission.

That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with Article 16.



## *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.

Member States shall decide when and under what conditions the first subparagraph applies.

**Actual and intending depositors shall be informed about these conditions.**

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).
- 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 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) **provided that the set-off is possible according to the contract between the credit institution and the depositor.**
- Actual and intending depositors shall be informed where their liabilities towards the credit institution are taken into account when calculating the repayable amount.**
5. Member States shall ensure that Deposit Guarantee Schemes 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 Deposit Guarantee Scheme. The limit referred to in Article 5(1) shall not be exceeded. **If interest depends on the value of another financial instrument and can therefore not be determined without jeopardising payout within the deadline referred to in Article 7(1)(a), the reimbursement of such interest may be limited under national law.**
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).

*Article 7*  
*Repayment*

1. Deposit Guarantee Schemes shall **make the repayable amount available** within 20 working days of 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).
  - 1a. 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. Where it is uncertain whether a person is legally entitled to receive a repayment, or it is uncertain whether that person can freely dispose of the sums held in an account, repayment may be deferred **until there is certainty on the identity and the entitlement of the beneficiary of the repayment.**
2. Depositors shall be repaid without a request to Deposit Guarantee Schemes being necessary. For this purpose, the credit institution shall transmit the necessary information on deposits and depositors as soon as requested by the Scheme.

3. Any correspondence between the Deposit Guarantee Scheme and the depositor shall be drawn up 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 of Directive 2005/60/EC, the Deposit Guarantee Scheme may suspend any payment pending the judgment of the court.
  
- 4a. Repayments shall be made in the currency of the Member State where the Deposit Guarantee Scheme is located. Member States may allow repayments in the currency of the account. **Actual and intending depositors shall be informed about the currency of 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 by the depositor against the Deposit Guarantee Scheme.
  
2. Without prejudice to any other rights which they may have under national law, schemes which make payments under guarantee shall have the right of subrogation to the rights of depositors in winding up or reorganisation proceedings for an amount equal to their payments.
  
4. Member States may limit the time in which depositors whose deposits were not repaid or acknowledged by the scheme within the deadlines set out in Articles 7(1) **and (1a)** can claim the repayment of their deposits. Such time limit shall be determined by the date at which the rights to which the Deposit Guarantee Scheme has subrogated pursuant to paragraph 2 are due to be registered in a winding up procedure under national law.

When determining the time limit, Member States shall take into account the time needed by the Deposit Guarantee Scheme to collect such claims before such registration.

*Article 9*  
*Financing of Deposit Guarantee Schemes*

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

Deposit Guarantee Schemes shall raise the available financial means by regular contributions to be made by their members at least once a year. This shall not prevent additional financing from other sources.

The available financial means of a Deposit Guarantee Scheme shall at least reach a target level of [1.5]% 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. Where the available financial means amount to less than two thirds of the target level, the regular contribution shall not be less than [0.25%] of **covered** deposits.

The share of irrevocable payment commitments as defined in Article 2(1)(i) shall not exceed [30%] of the total available financial means.

3. If the available financial means of a Deposit Guarantee Scheme 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.
4. The cumulated amount of contributions referred to paragraphs 1 and 3 may not exceed [1%] of **covered** deposits per calendar year.

The competent authorities may entirely or partially exempt a credit institution from the obligation referred to in paragraph 3 if the sum of payments referred to in paragraphs 1 and 3 would jeopardise the settlement of claims of other creditors against it. Such exemption shall not be granted for a longer period than 6 months but may be renewed on request of the credit institution.

5. The financial means referred to in paragraphs 1 and 3 of this Article shall principally be used in order to repay depositors pursuant to this Directive.

**Member States may decide to use the financial means for financing the transfer of deposits to another credit institution or in order to avoid bank failure, provided that the available financial means of the Scheme are proportionate.**

6. Member States shall ensure that Deposit Guarantee Schemes have in place adequate alternative funding arrangements to enable them to obtain funding on short notice where necessary to meet claims against those Deposit Guarantee Schemes.

**6a. Available financial means of the Deposit Guarantee Schemes shall be invested in low risk assets. This shall not prevent Deposit Guarantee Schemes from lending to other Schemes on a voluntary basis.**

7. Member States shall **by 31 January of each year** inform the European Banking Authority of the amount of covered deposits in their Member State and of the amount of the available financial means of their Deposit Guarantee Schemes **as of 31 December of the preceding year**. This information shall be confirmed by the competent authorities.

Article 11  
Contributions to Deposit Guarantee Schemes

1. The contributions to Deposit Guarantee Schemes referred to in Article 9 shall **comprise both a non risk-based and a risk-based element. The non-risk-based element shall not account for more than half of the total contribution of a member.**

**The non risk-based element of the contribution shall be based on the amount of the covered deposits of each member. The risk-based element of the contribution shall be based on specific indicators reflecting the degree of risk incurred by a member. The set of indicators shall include at least the following ones: capital adequacy, asset quality, liquidity and profitability.**

Risk weights assigned to individual members shall not be lower than 75% and higher than 200% depending on the risk category to which a given member has been classified. **The contributions may be determined by the Deposit Guarantee Scheme, the competent authority supervising the credit institution or in collaboration between each other.**

Member States may decide that members of Schemes referred to in Article 1(4) pay lower contributions to Deposit Guarantee Schemes. **The contributions of these members may be reduced by maximum 50% in comparison to the other credit institutions within the same risk category.**

Member States may allow that all credit institutions affiliated to the same central body under Article 3(1) of Directive 2006/48/EC are subject to the risk weight determined for their central body.



4. In order to ensure consistent harmonisation of this Directive, the European Banking Authority (hereinafter "EBA") established by Regulation (EU) **No 1093/2010** shall develop draft regulatory technical standards to specify the **method for calculating the contributions to Deposit Guarantee Schemes in line with paragraph 1. 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.**

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) **No 1093/2010**.

*Article 12*  
*Cooperation within the Union*

1. Deposit Guarantee Schemes 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 other Member States shall be repaid by the scheme of the host Member State on behalf of the scheme in the home Member State. The scheme of the host Member State shall make repayments in accordance with the instructions of the scheme of the home Member State. The scheme of the host Member State shall not bear any liability with regard to the determination of the repayment amount or to the execution of the repayments. The scheme of the home Member State shall provide the necessary funding prior to payout and shall compensate the scheme of the host Member State for all incurred costs.

**Member States shall ensure that Deposit Guarantee Schemes preparing the repayment of depositors according to this paragraph obtain from branches of credit institutions on request the information necessary to repay depositors.**

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

3. If a credit institution ceases to be member of a scheme and joins another scheme, the contributions paid during the 12 months preceding the withdrawal of membership shall be transferred to the other scheme. This shall not apply if a credit institution has been excluded from a scheme pursuant to Article 3(3).
4. Member States shall ensure that Deposit Guarantee Schemes of the home Member State exchange information referred to under Article 3**(5a) and (6)** with those in host Member States. The restrictions set out in that Article shall apply.

5. In order to facilitate an effective cooperation between Deposit Guarantee Schemes, with particular regard to this Article, the Deposit Guarantee Schemes, or, where appropriate, the competent authorities, shall have written cooperation agreements in place. Such agreements shall take into account the requirements set out in Directive 95/46/EC.

The European Banking Authority shall be notified of the existence and the content of such agreements. It may issue opinions on such agreements in accordance with Article 34 of Regulation (EU) No 1093/2010. If competent authorities or Deposit Guarantee Schemes cannot reach an agreement or if there is a dispute about the interpretation of such agreement, either party may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case, EBA may act in accordance with the powers conferred on it by that Article.

The absence of such agreements shall not affect the claims of depositors under Article 8(2) or of credit institutions under paragraph 3 of this Article.

*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.

Failing that, Member States may, subject to Article 38(1) of Directive 2006/48/EC, stipulate that branches established by a credit institution which has its head office outside the Union must join Deposit Guarantee Schemes in operation within their territories.

2. Actual and intending depositors at branches established by a credit institution which has its head office outside the Union and is not member of a scheme operating in a Member State shall be provided by the credit institution with all relevant information concerning the guarantee arrangements which cover their deposits.
3. The information referred to in paragraph 2 shall be made available 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 drafted in a clear and comprehensible form.

*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 Deposit Guarantee Scheme of which the institution and its branches are members within the Union. When a deposit is not guaranteed by a Deposit Guarantee Scheme in accordance with Article 4, the credit institution shall inform the depositor accordingly.
2. Information to intending depositors shall be made available before entering into a contract on deposit-taking and shall be countersigned by intending depositors. The template in Annex III shall be used.
3. Information to actual depositors shall be provided on their statements of account. This information shall consist of a confirmation that the deposits are eligible pursuant to Article 2(1) and Article 4. Moreover, reference shall be made to the information sheet in Annex III and where it can be obtained. The web site of the responsible Deposit Guarantee Scheme may also be indicated.
4. The information provided for in paragraph 1 shall be made available in the manner prescribed by national law in the official language or languages of the Member State in which the branch is established.
5. Member States shall limit the use in advertising of the information referred to in paragraph 1 to a factual reference to the scheme guaranteeing the product to which the advertisement refers.

Credit institutions that are member of a scheme referred to in Article 1(4) shall inform depositors adequately on the functioning of the scheme. Such information may not contain a reference to unlimited coverage of deposits.

6. If mergers or similar events lead to deposits held with several credit institutions being aggregated in order to determine their coverage under the Deposit Guarantee Scheme, Depositors shall be informed at least one month before the event takes legal effect, unless commercial secrecy justifies a shorter deadline.
  
7. If a depositor uses internet banking, the information required to be disclosed by this Directive may be communicated by electronic means in a way that brings it to the attention of the depositor.

*Article 15*

*List of authorised credit institutions*

In the list of authorised credit institutions which it is required to draw up pursuant to Article 8(1)(k) of **Regulation (EU) No 1093/2010**, the EBA shall indicate the status of each credit institution with regard to this Directive. It shall also indicate whether a credit institution is a member of a Deposit Guarantee Scheme or an Institutional Protection Scheme acknowledged as a Deposit Guarantee Scheme.

*Article 16*  
*Exercise of the delegation*

1. The power to adopt delegated acts referred to in Article 5(7) shall be conferred on the Commission for a period of four years from ...\*. The Commission shall draw up a report in respect of the delegated power at the latest six months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 17.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 17 and 18.

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\* OJ: please insert the date of entry into force of this Directive.

*Article 17*  
*Revocation of the delegation*

1. The delegation of power referred to in Article 16 may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.
3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.



*Article 18*

*Objections to delegated acts*

1. The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by three months.
2. If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 of the Treaty, the institution which objects shall state the reasons for objecting to the delegated act.

*Article 19*

*Transitional provisions*

1. Contributions to Deposit Guarantee Schemes referred to in Article 9 shall be distributed as evenly as possible until the target level referred to in the third subparagraph of Article 9(1) is reached.
2. Depositors holding debt securities issued by the same credit institution and liabilities arising out of own acceptances or promissory notes, deposits whose existence can only be proven by a certificate other than a statement of account, deposits whose principal is not repayable at par; or whose principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party shall be informed if their deposits are not covered anymore under a Deposit Guarantee Scheme.
3. Where certain deposits cease to be covered wholly or partially by Deposit Guarantee Schemes after the transposition of this Directive or Directive 2009/14/EC into national law, Member States may allow such deposits to be covered until 31 December 2014 if those deposits were paid in before 31 December 2012. After 31 December 2014, Member States shall ensure that no scheme grants higher or more comprehensive guarantees than those provided for in this Directive, regardless when the deposits were paid in.
4. By 31 December 2015 the Commission shall submit a report, and, if appropriate, a legislative proposal to the European Parliament and the Council with the aim to determine whether existing Deposit Guarantee Schemes should be replaced by a single scheme for the whole Union.
5. The Commission, supported by the EBA, shall submit to the European Parliament and to the Council by 31 December 2015 a report on the progress towards the implementation of this Directive.

*Article 20*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2(1)(a), (c), (d), (f), (h)-(m), 2(2), 3(1), 3(3), 3(5)-3(7), 4(1)(d)-(k), 5(2)-5(5), 6(4)-6(7), 7(1)-(3), 8(2)-(4), 9, 12, 13(1)-(2), 14(1)-(3), 14(5)-(7), 19 and Annex I-III by 31 December 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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 the third subparagraph of Article 9(1), Article 9(3) and Article 10 by 31 December [2020].

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 Articles 7 7(1) and 11 by 31 December [2013].

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 together with its successive amendments, **is** repealed from 31 December [2012], without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and 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 2(1)(b), (e), (g), 4(1)(a)-(c), 5(1), 6(1)-6(3), 7(4), 8(1), 12(1), 13(3), 14(4), 15-18 shall apply from 1 January [2013].

*Article 23*

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the European Parliament*

*The President*

[...]

*For the Council*

*The President*

[...]

### ANNEX III

#### **Depositor information template**

If a deposit which is due and payable has not been paid by a credit institution for reasons which are directly related to its financial circumstances, depositors are repaid by a Deposit Guarantee Scheme. The [insert product] of the [insert name of the account-holding credit institution] is in general covered by the responsible Deposit Guarantee Scheme.

This repayment covers at maximum EUR 100 000 per bank. This means that all deposits at the same bank are aggregated 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 bank operates under different trading names. The [insert name of the account-holding credit institution] also trades under [insert all other brands of the same credit institution]. This means that all deposits with one or more of these brand names are in total covered up to EUR 100 000.

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.]

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 bank will also inform you on request whether certain products are covered or not. If deposits are covered, the bank shall also confirm this on the statement of account.

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) within six weeks at the latest, from 31 December 2013 within 20 working days.

**[Only where applicable: When calculating the repayable amount your liabilities towards the credit institution are taken into account.]**

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*].

[Only where applicable pending the transposition of Article 7(4a), the currency of the responsible scheme and the currency in which the account is held ]: Since the responsible Deposit Guarantee Scheme is located in another Member State, the scheme would repay deposits in [insert currency].

[*Only where applicable:*] Your deposit is guaranteed by an Institutional Guarantee Scheme [recognised/not recognised] as a Deposit Guarantee Scheme. This means that all banks that are members of this scheme mutually support each other in order to avoid a bank failure. However, if nevertheless a bank failure occurred, your deposits will be repaid up to EUR 100 000.

## **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)**

<b>Directive</b>	<b>Deadline for transposition</b>
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)	