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Committee on Legal Affairs

2010/0207(COD)

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DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a Directive .../.../EU of the European Parliament and of the Council on Deposit Guarantee Schemes (recast)
(COM(2010)0368 – C7-0177/2010 – 2010/0207(COD))

Rapporteur: Dimitar Stoyanov

PA_Legam

SHORT JUSTIFICATION

This proposal for a directive aims to codify Directive 94/19/EC and Directive 2009/14/EC and the amendments thereto, by means of a recast. It seeks to achieve further harmonisation of the Deposit Guarantee Schemes (DGSs) in the Member States and to improve the situation on the single market in terms of freedom of establishment and the freedom to provide financial services, and also to increase the stability of the banking system and reinforce depositor protection.

The clear focus of the Commission proposal is on strengthening depositors' rights in the event of the credit institution that is holding their deposits becoming insolvent. That is a laudable approach, but the legislation must not be allowed to ignore the DGSs themselves. To some extent, the proposal is too rigid in respect of DGSs. In order to tone down the affects on the DGSs of the Commission's proposal, while at the same time leaving the spirit of that proposal unaltered as regards the possibilities open to depositors, we would propose that the following amendments be adopted.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive
Recital 26

Text proposed by the Commission	*Amendment*
(26) The payout delay of at maximum six weeks from 31 December 2010**,** runs counter to the need to maintain depositor confidence and does not meet their needs. The payout delay should therefore be reduced to a period of ***one week***.	(26) The payout delay of at maximum six weeks from 31 December 2010 runs counter to the need to maintain depositor confidence and does not meet their needs. The payout delay should therefore be reduced to a period of ***two weeks***.

Or. bg

Justification

See justification for AM 3

Amendment 2

Proposal for a directive
Article 5 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Deposits shall be paid out in the currency in which the account was maintained. If the amounts expressed in euro referred to in paragraph 1 are converted into other currencies, the amounts effectively paid to depositors shall be equivalent to those set out in this Directive.	4. Deposits shall be paid out in the currency in which the account was maintained. If the amounts expressed in euro referred to in paragraph 1 are converted into other currencies, the amounts effectively paid to depositors shall be equivalent to those set out in this Directive. ***With the authorisation of the competent authorities, the Deposit Guarantee Scheme may pay out deposits in the currency of the Member State if the deposit cannot be paid out in the currency in which the account was maintained by the deadline set in Article 7(1). In that event, the exchange rate used shall be that for the type of currency in which the deposit was maintained up to 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).***

Or. bg

Justification

The funds cumulated within DGSs should be invested by them in duly authorised low-risk assets. While the requirement exists for the investment to be low risk, there is no requirement for the DGS to invest in a specified type of currency. The requirement that the deposit be paid in the currency in which it has also been maintained might result in significant difficulties and losses for the DGS in view of the new and shorter payout deadline. In order also to protect to the full the interests of depositors and of DGSs, the amendment provides for the possibility of an on-the-spot payout. That possibility would be subject to prior authorisation from the competent authorities and take effect only when there was a danger of the payout deadline not being respected.

Amendment 3

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Deposit Guarantee Schemes shall be in a position to repay unavailable deposits within ***7 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).	1. Deposit Guarantee Schemes shall be in a position to repay unavailable deposits within ***14 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).

Or. bg

Justification

Here too, the aim is to strike a balance between the interests of depositors and those of the DGSs. The Commission proposal understandably aims for stability and speed, but a sensible deadline should be set for the collection of available financial means in circumstances where banks are unable to repay the DGSs. Otherwise, there is a risk of the payout being made in two or more batches over several days, which will be additionally frustrating for investors and mean that the aim of stability cannot be achieved. The extra days would make this the minimum reasonable time in which the DGS concerned can secure available financial means and guarantee the uninterrupted payout of all the investors affected.

Amendment 4

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The cumulated amount of deposits and investments of a scheme related to a single body shall not exceed 5% of its available financial means. Companies which are included in the same group for the purposes of consolidated accounts, as defined in Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating this limit.	2. The cumulated amount of deposits and investments of a scheme related to a single body shall not exceed 5% of its available financial means***, excluding investments in government bonds***. Companies which are included in the same group for the purposes of consolidated accounts, as defined in Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating

	this limit.

Or. bg

Justification

The DGS are entitled to invest the funds cumulated in them, because only money in circulation benefits the economy. Very often, the DGS are a major help to the state as they actively participate in the purchasing of sovereign debt, which is a low-risk investment with high profitability rating. Participation in the financing of state activities through the purchasing of sovereign debt benefits society as a whole, which in itself includes depositors and credit institutions. There should therefore be no restriction on the DGS also holding larger investment portfolios in government bonds, outside the general restriction applicable to other types of investment.

Amendment 5

Proposal for a directive
Article 10 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Within 2 working days of reception of the confirmation and information referred to in paragraph 3, second sub-paragraph, any of the lending Deposit Guarantee Schemes may request the European Banking Authority to exempt them from the commitment to pay the loan. Exemption shall be granted only: ***a) where the lending Deposit Guarantee Scheme has made recourse to extraordinary contributions under Article 9(3), or*** ***b) where the lending Deposit Guarantee Scheme, in its request for exemption from its commitment, produces grounds which, in combination with the payment of the loan, would result in its being unable to pay out depositors pursuant to this Directive within the deadline set in Article 7(1), in the event of the deposits guaranteed by it being unavailable.*** ***The European Banking Authority shall immediately notify all the borrowing schemes of the exemption requests***

received and, after having assessed what the effects of granting exemption for one or more Guarantee Deposit Schemes would be on all the remaining schemes, shall rule on the requests within 3 working days of their reception. The European Banking Authority may not refuse an exemption in the circumstances referred to in point a) of the above sub-paragraph.

Should all the requests be rejected, the lending Deposit Guarantee Schemes shall be obliged to pay the sum specified, in line with the confirmation and information, as well as the deadline, set in paragraph 3, as from the day on which their request is refused.

Where one or more requests for exemption have been granted, the European Banking Authority shall, as well as forwarding its decision, notify the lending Deposit Guarantee Schemes not exempted from their commitment of the amounts to be lent by each scheme not granted exemption, as calculated pursuant to paragraph 2(a), and of the initial interest rate pursuant to paragraph 2(c) and the duration of the loan. The Deposit Guarantee Schemes not granted exemption shall pay the sums to the borrowing scheme no later than 2 working days after receiving notification of the amount calculated. No further requests may be made, under this paragraph, for exemption from paying the loan.

Or. bg

Justification

Under the Commission proposal, when one DGS seeks a loan, the remaining DGSs are obliged to grant one. However, that arrangement is only acceptable when just one scheme is experiencing difficulties in meeting its commitments under this Directive. The proposed amendment seeks to enable the European Banking Authority (EBA) to assess whether or not withdrawing the contributions of one or more DGSs, in response to express requests by *lending DGSs, will trigger a chain reaction and the collapse of a host of DGSs.*