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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 16 February 2012 with a view to the adoption of Directive 2012/.../EU of the European Parliament and of the Council on deposit-guarantee schemes (recast)
(EP-PE_TC1-COD(2010)0207)

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 16 February 2012

with a view to the adoption of Directive 2012/.../EU of the European Parliament and of the Council 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,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank¹,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

¹ OJ C 99, 31.3.2011, p. 1.

² Position of the European Parliament of 16 February 2012.

- (1) A number of substantial changes are to be made to Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes¹. In the interests of clarity, that Directive should be recast.
- (2) In order to make it easier to take up and pursue the business of credit institutions, it is necessary to eliminate ~~the~~ differences between the laws of the Member States ***which may distort markets*** as regards the rules on deposit-guarantee schemes (DGSs) to which those institutions are subject. **[Am. 1]**
- (2a) ***In order to prevent future claims on DGSs, there should be a strong focus on preventive action and supervision, ensuring a coordinated and transparent assessment of the business models of new and existing players, based on a common approach agreed between the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council² (EBA) and the competent authorities, potentially resulting in additional supervisory requirements, limitations on activities, mandatory changes to the business model, or even exclusion of credit institutions that take irresponsible risks. [Am. 2]***

¹ OJ L 135, 31.5.1994, p. 5.

² ***OJ L 331, 15.12.2010, p. 12.***

- (3) This Directive constitutes an essential instrument for the achievement of the internal market from the point of view of both the freedom of establishment and the freedom to provide financial services in the field of credit institutions, while increasing the stability of the banking system and protection for depositors. *In view of the costs of the failure of a credit institution to the economy as a whole and its adverse impact on financial stability and the confidence of depositors, it is desirable not only to make provision for reimbursing depositors but also to create sufficient flexibility to enable DGSs to implement prevention and support measures. As in this case, the affiliated credit institutions themselves cover the costs of DGSs, appropriate incentives exist to identify problems in the affiliated credit institutions at an early stage and to forestall impending guarantee cases by means of appropriate measures such as conditions concerning restructuring. DGSs which can also take preventive action therefore constitute an important complement to action by the supervisory authorities in day-to-day supervision and in the context of the orderly winding-up of credit institutions. Support measures provided by DGS should, however, always be subject to conditions, and their actions should always comply with competition law. [Am. 3]*

- (3a) *Appropriate incentives for effective action by DGSs exist particularly where there is the maximum possible correspondence between their field of competence and the area in which the costs of failure of a credit institution are borne. In order to take account of the growing integration of the internal market, therefore, it should be possible to merge the DGSs of different Member States or to create separate cross-border schemes on a voluntary basis. A precondition for approval by the competent authorities should be sufficient stability and balanced composition of the new and existing DGSs. Adverse effects on financial stability, for example where several high-risk credit institutions are covered which, within their own DGS, would present only an average risk, while contributions would be withdrawn from the existing guarantee schemes, must be avoided. [Am. 4]*
- (4) 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 delay¹ required the Commission, if appropriate, to put forward proposals to amend Directive 94/19/EC. This Directive encompasses the harmonisation of the funding mechanisms of DGSs, possible models for introducing risk-based contributions, the benefits and costs of a possible introduction of a Union-wide DGS, the impact of diverging legislations as regards set-off and counterclaims, on the efficiency of the system, the harmonisation of the scope of products and depositors covered.

¹ OJ L 68, 13.3.2009, p. 3.

- (5) Directive 94/19/EC was based on the principle of minimum harmonisation. Consequently, a variety of DGSs with very distinct features ~~were established~~ *currently exist* in the Union. ~~This caused~~ *As a result of the formulation of common requirements applicable to DGSs throughout the Union, inter alia with regard to the covered deposits, the coverage level, the target level, the conditions which apply to the use of funds and the arrangements for repayments, a uniform level of protection is provided for depositors throughout the Union while ensuring the same stability of DGSs. At the same time, the implementation of those common requirements for DGSs is of the utmost importance in order to eliminate* market distortions ~~for credit institutions and limited the benefits.~~ *This Directive therefore contributes to completion* of the internal market for depositors. [Am. 5]
- (6) This Directive should ~~enable a level playing field between credit institutions, allow depositors to easily understand the features of Deposit Guarantee Schemes and facilitate~~ *serve to inform depositors about covered and uncovered financial products and should ensure that information on the way in which DGSs function is provided. The possibility of preventing failure of a credit institution by means of appropriate measures adopted by the DGS should protect confidence in financial stability and should be in the interests of private depositors, local authorities that are in need of protection and, above all, small and medium-sized enterprises (SMEs). Consequently, a large proportion of the adverse consequences of insolvency of a credit institution such as the sudden loss of the relationship with the bank, can be avoided. In the event of payment becoming due under a guarantee, this Directive should ensure* quick repayment to depositors by sound and credible DGSs ~~in the interest of financial stability. Therefore, deposit protection should be harmonised and simplified to the largest extent possible.~~ [Am. 6]

- (7) In the event of the closure of an insolvent credit institution the depositors at any branches situated in a Member State other than that in which the credit institution has its head office must be protected by the same DGS as the institution's other depositors.
- (8) In principle, this Directive requires every credit institution to join a DGS. A Member State admitting branches of a credit institution having its head office in a third country should decide how to apply this Directive to such branches and should take account of the need to protect depositors and maintain the integrity of the financial system. It is essential that depositors at such branches should be fully aware of the guarantee arrangements which affect them.
- ~~(9) Although, in principle, all credit institutions should be members of a Deposit Guarantee Scheme, it should be recognised that there are systems which protect the credit institution itself (Institutional Protection Schemes) and, in particular, ensure its liquidity and solvency. Such schemes guarantee protection for depositors beyond that provided by a Deposit Guarantee Scheme. If such schemes are separate from Deposit Guarantee Schemes, their additional safeguard role of systems should be taken into account when the contributions of its members to Deposit Guarantee Schemes are determined. The harmonised level of coverage should not affect schemes protecting the credit institution itself unless they repay depositors. Depositors should have a claim against all schemes, in particular if protection by a Mutual Guarantee Scheme cannot be ensured. No scheme or system should thus be excluded from this Directive. [Am. 7]~~

- (9a) *Each credit institution should be part of a DGS recognised under this Directive, thereby ensuring a high level of consumer protection and a level playing field between credit institutions, and preventing regulatory competition. A DGS should be able to provide that protection at any time. [Am. 8]*
- (9b) *The key task of a DGS is to protect depositors against the consequences of the insolvency of a credit institution. DGSs should be able to provide that protection in various ways. At one end of the range of activities of DGSs, therefore, schemes with a pure reimbursement ('paybox') function should be possible. [Am. 9]*
- (9c) *It should also, however, be possible for DGSs to go beyond a pure reimbursement function by requiring affiliated credit institutions to supply additional information and, on that basis, to build up early warning systems. In this way, risk-dependent contributions can be adjusted at an early stage and preventive measures against recognised risks can be proposed. In the event of impending imbalances, DGSs should be able to decide on support measures or to use their resources in support of orderly winding-up of problematic credit institutions in order to avoid the costs of reimbursing depositors and the other adverse impacts of insolvency. [Am. 10]*

- (9d) *At the other end of the range of activities, DGSs should be able to take the form of an institutional protection scheme, as referred to 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 institutions¹. Institutional protection schemes protect the credit institution itself, in particular by ensuring its liquidity and solvency. They should be recognised as DGSs by the competent authorities if they fulfil all the criteria laid down in Article 80(8) of Directive 2006/48/EC and in this Directive. Those criteria ensure, in particular, that, as in other DGSs, sufficient resources are always available for a potential repayment. [Am. 11]*
- ~~(10) Institutional protection schemes are 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 business of credit institutions (recast)² and may be recognized as Deposit Guarantee Schemes by the competent authorities if they fulfil all criteria laid down in that Article and in this Directive. [Am. 12]~~
- (11) In the recent financial crisis, uncoordinated increases in the coverage levels across the Union *have in some cases* led to depositors shifting money to banks in countries where deposit guarantees were higher. Such uncoordinated increases drained liquidity from banks in times of stress. In times of stability, it is possible that different coverage levels lead to depositors choosing the highest deposit protection rather than the ~~most suitable~~ deposit product *best suited to them*. It is possible that such different coverage levels result in competitive distortions in the internal market. It is therefore necessary to ensure a harmonised level of deposit protection *by all recognised DGSs*, wherever deposits are located in the Union. However, it should be possible to cover certain deposits relating to the personal situation of depositors at a higher level but for a limited time. [Am. 13]

¹ OJ L 177, 30.6.2006, p. 1.

² OJ L 177, 30.6.2006, p. 1.

- (11a) *During the financial crisis, existing DGSs proved to be unable to carry all losses in such a way as to protect depositors. It is, therefore, necessary that the available financial means of DGSs amount to a certain target level and that extraordinary contributions be collected. Where necessary, DGSs should have adequate alternative funding arrangements in place to enable them to obtain short-term funding to meet claims made against them. [Am. 14]*
- (12) The same ~~coverage level~~ *legal entitlement in relation to DGSs* should apply to all depositors *in accordance with the coverage level provided for in this Directive*, regardless of whether or not a Member State's currency is the euro ~~and regardless of whether a bank is a member of a system which protects the credit institution itself~~. Member States whose currency is not the euro should be able to round off the amounts resulting from the conversion without compromising the equivalent protection of depositors. [Am. 15]
- (13) On the one hand, the coverage level prescribed in this Directive should not leave too great a proportion of deposits without protection in the interests both of consumer protection and of the stability of the financial system and, on the other, the cost of funding DGSs should be taken into account. It would therefore appear reasonable to set the harmonised coverage level at EUR 100 000.

- (14) This Directive retains the principle of a harmonised limit per depositor rather than per deposit. It is therefore appropriate to take into consideration the deposits made by depositors who either are not mentioned as holders of an account or are not the sole holders- The limit should therefore be applied to each identifiable depositor. The principle that the limit be applied to each identifiable depositor should not apply to collective investment undertakings subject to special protection rules which do not apply to such deposits.
- (15) Member States should ~~not be prevented from establishing systems protecting pensions in general, which should operate separately from~~ **ensure that deposits resulting from certain transactions are fully covered by the DGS.** Member States should ~~not be prevented from protecting certain deposits for social reasons or in relation to real estate transactions for~~ **for a given period. Such deposits include deposits in connection with the acquisition or sale of private residential purposes property, deposits that are protected on certain social grounds defined in national law and those that are connected with lifecycle events, such as birth, marriage, divorce and, in particular, provision for old age, or which arise from certain insurance benefits or compensation.** In all cases, State aid rules should be complied with. [Am. 16]

- (16) It is necessary to harmonise the methods of financing DGSs or credit institutions themselves. On the one hand, the cost of financing DGSs should be borne ~~principally~~, ***in principle***, by credit institutions themselves and, on the other, the financing capacity of DGSs should be proportionate to their liabilities. In order to ensure that ~~Depositors~~ ***DGSs*** in all Member States ~~enjoy~~ ***display*** a similarly high level of ~~protection and that Deposit Guarantee Schemes lend money to each other only if substantial financing efforts have been made by the Deposit Guarantee Scheme concerned~~, the financing of Deposit Guarantee Schemes should be harmonised at a high level. This, however, should not jeopardize the stability of the banking system of the Member State concerned ***stability, a uniform ex-ante financial target level should be stipulated for all DGSs.*** [Am. 17]
- (17) In order to limit deposit protection to the extent necessary to ensure legal clarity and transparency for depositors and to avoid transferring investment risks to DGSs, certain financial products with an investment character should be excluded from the scope of coverage, in particular those that are not repayable in par and those ***that are made out to the holder and not to a named person.*** [Am. 37]
- (18) Certain depositors should not be eligible for deposit protection, in particular public authorities or other financial institutions. Their limited number compared to all other depositors minimises the impact on financial stability in the case of a bank failure. Authorities also have much easier access to credit than citizens. ***However, Member States should ensure that the deposits of local authorities which are in need of protection are also covered.*** Non-financial businesses should in principle be covered, regardless of their size. [Am. 18]

- (19) Depositors whose activities include money laundering within the meaning of Article 1(2) and (3) 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 financing¹ should be excluded from payments by DGSs.
- (20) The cost to credit institutions of participating in a DGS bears no relation to the cost that would result from a massive withdrawal of bank deposits not only from a credit institution in difficulties but also from healthy institutions following a loss of depositor confidence in the soundness of the banking system.
- (21) It is necessary that the available financial means of DGSs amount to a certain target level and that extraordinary contributions may be collected. Where necessary, DGSs should have adequate alternative funding arrangements in place to enable them to obtain short-term funding to meet claims made against them.

¹ *OJL 309, 25.11.2005, p. 15.*

- (22) ~~The DGSs should have sufficient financial means of Deposit Guarantee Schemes should principally be used for the repayment of depositors. They could~~ ***in the event of the insolvency of a credit institution. In many cases, however, support measures should be taken to avert the insolvency of a credit institution since such measures are often more effective than reimbursement of depositors in guaranteeing deposits. Moreover, such measures may make it possible to avoid further costs and adverse effects on financial stability and to boost the confidence of depositors. It should therefore also be possible to use the resources of DGSs for support measures. Support measures should always entail conditions with which the institution receiving the support must comply. It should,*** however, also be used in order to finance the transfer of deposits to another ***possible to use such measures in conjunction with the orderly winding-up of a credit institution, provided that this results in the cheapest alternative for the DGS.*** The costs borne by the DGS ~~do~~ ***should therefore*** not exceed the amount of covered deposits at the credit institution concerned. They could also to a certain extent, as circumscribed in the Directive, be used to finance the prevention of bank failures. Such measures should comply with State aid rules. ~~This is~~ ***Those options for action by DGSs should be*** without prejudice to the future Commission policy concerning the establishment of national bank resolution funds. [Am. 19]
- (22a) ***It should be possible to use funds of DGSs to finance the continuity of account operation for an institution's share of covered deposits.*** [Am. 20]

- (23) Table 1 in 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 institutions¹ assigns risks to certain asset items. That table should be taken into account in order to ensure that DGSs only invest in low-risk assets.
- (24) Contributions to DGSs should take account of the degree of risk incurred by their members. This would allow to reflect the risk profiles of individual banks, ***including their different business models***, should lead to a fair calculation of contributions and provide incentives to operate under a less risky business model. ***To that end, a standard method for determining and calculating the risk-based contributions to DGSs should be laid down.*** The development of a set of core indicators that are mandatory for all Member States and of another set of optional supplementary indicators, ***based on a common approach agreed between EBA and the competent authorities***, would introduce such harmonisation gradually. ***However, the nature of the risks accepted by the affiliated credit institutions may vary depending on market circumstances and the business activities of the credit institutions. It is therefore worthwhile, in addition to the standard method, to enable DGSs to use their own alternative risk-based methods in so far as those alternative risk-based methods comply with the guidelines to be drawn up by EBA after consulting the European Forum of Deposit Insurers (EFDI). Such alternative risk-based methods take account of the risk profiles of individual banks, lead to a more precise calculation of contributions, tailored to market circumstances in the Member States, and provide incentives to operate under a less risky business model. In order to take account of particularly low-risk sectors of lending, which are regulated under national law, corresponding reductions in the contributions to be paid should be provided for.*** [Am. 21]

¹ OJ L 177, 30.6.2006, p. 201.

- (24a) *Profitability has, in some instances, been used as a risk diminishing indicator for risk-based premiums. This does not take account of the business model of mutuals which do not seek to be profit maximising. Further, the desire to drive up profit can create a perverse incentive for the adoption of riskier strategies. A holistic view of the soundness of the business model should be taken. [Am. 22]*
- (25) Deposit protection is an essential element in the completion of the internal market and an indispensable supplement to the system of supervision of credit institutions on account of the solidarity it creates amongst all the institutions in a given financial market in the event of the failure of any of them. Therefore, DGSs should be able to lend money to each other in the case of need.
- (26) The repayment delay of a maximum of six weeks from 31 December 2010 runs counter to the need to maintain depositor confidence and does not meet their needs. The repayment delay should therefore be reduced to a period of ~~one week~~ *five working days but no less than a week. [Ams. 23 and 150/rev]*

- (26a) *In many cases, however, the necessary procedures for a short time limit for repayment do not yet exist. If, however, depositors are assured that the time limit for repayment will be short and then, upon failure of a credit institution, the time limit is not complied with, this could permanently damage depositors' confidence in, and thereby undermine the stabilising effect and purpose of, DGSs. Member States should, therefore, be given the option, during a transitional period ending on 31 December 2016, to adopt a time limit for repayment of 20 working days if, after examination by the competent authorities, the reduced time limit for repayment is found not to be feasible. In that case, the procedures required for the time limit for repayment of five working days should be developed and tested by 31 December 2016. In order to ensure that, during the transitional period ending on that date, depositors do not encounter financial difficulties in the event of failure of their credit institution, depositors should, however, be able to obtain a payout of up to EUR 5 000 from the applicable DGS within five working days, but no less than a week, on their deposit which is eligible for repayment. [Ams. 24 and 150/rev]*
- (27) DGSs in Member States where a credit institution has established branches or where it directly provides services, should inform and repay depositors on behalf of the DGS in the Member State where the credit institution has been authorised. The DGSs that may be concerned should enter into agreements in advance in order to facilitate their tasks.

- (28) Information is an essential element in depositor protection. Therefore, depositors should be informed about their coverage, and of the DGS responsible, on their statements of account, and intending depositors should be asked to countersign a standardised information sheet. The content of such information should be identical for all depositors and intending depositors. The unregulated use in advertising of references to the amount and scope of a DGS could affect the stability of the banking system or depositor confidence. Therefore, references to DGSs in advertisements should be limited to a short factual statements. Systems which protect the credit institution itself should ~~clearly~~ inform depositors about their ~~function~~ ***legal entitlement arising from the coverage level provided for in this Directive and about how it operates***, without promising unlimited deposit protection. [Am. 25]
- (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 data¹ applies to the processing of personal data carried out pursuant to this Directive.
- (30) It is possible that this Directive does not result in liability on the part of the Member States or their competent authorities in respect of depositors if they have ensured that one or more schemes guaranteeing deposits or credit institutions themselves and ensuring the compensation or protection of depositors under the conditions prescribed in this Directive have been introduced and officially recognised.

¹ OJ L 281, 23.11.1995, p. 31.

- ~~(31) — The Commission in its Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority of 23 September 2009[†] brought forward draft legislation creating a European System of Financial Supervisors and provided details about the architecture of such a new supervisory framework including the creation of a European Banking Authority.~~
- (32) While respecting the supervision of DGSs by Member States, EBA should contribute to the achievement of the objective of making it easier for credit institutions to take up and pursue their activities while at the same time ensuring effective protection for depositors. ~~To that end, the Authority should confirm that the conditions of borrowing between DGSs laid down in this Directive are fulfilled and state, within the strict limits set by this Directive, the amounts to be lent by each scheme, the initial interest rate as well as the duration of the loan.~~ **and minimising the risk to taxpayers.** In this respect, EBA should also collect information concerning DGSs, in particular on the amount of deposits covered by them, confirmed by competent authorities. ~~It should inform the other DGSs about their obligation to lend.~~ [Am. 26]
- ~~(33) — There is a need to introduce an effective instrument to establish harmonised technical standards in financial services to ensure a level playing field and an adequate protection of depositors across Europe. Such standards should be developed in order to standardize the calculation of risk-based contributions.~~ [Am. 27]

[†] ~~Proposal for a Regulation of the European parliament and of the Council establishing a European Banking Authority COM(2009)501.~~

- (34) In order to ensure efficient and effective functioning of DGSs and a balanced consideration of their positions in different Member States, EBA should be able to settle disagreements between them with binding effect.
- (34a) ***In its Resolution of 7 July 2010 with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector, the European Parliament stressed the need for a European mechanism to resolve banking crises. The establishment of such a mechanism should not affect the protection of depositors through a DGS. [Am. 28]***
- (35) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union ~~in respect of Article 5(5)~~ should be delegated to the Commission ***in order to adjust the coverage level for the total deposits of the same depositor as laid down in this Directive in line with inflation in the Union on the basis of changes in the consumer price index. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council. [Am. 29]***

- (35a) *The Commission should also be empowered to adopt EBA's draft regulatory technical standards to establish the definitions and a standard method for calculating risk-based contributions by credit institutions to DGSs described in this Directive in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. EBA should develop such regulatory technical standards and submit them to the Commission for endorsement by 31 December 2012. [Am. 30]*
- (36) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, the objectives of the action to be taken, namely the harmonisation of rules concerning the functioning of DGSs, can be only achieved at Union level. 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.
- (37) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (38) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex IV,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter and scope

1. This Directive lays down rules concerning the functioning of *the European scheme for national deposit-guarantee schemes (DGSs) intended to provide depositors in the Union with a common safety net offering a high level of protection.* [Am. 31]

2. This Directive shall apply to all DGSs ~~on a statutory or contractual basis and to recognised pursuant to Article 3(1) and to their affiliated credit institutions. DGSs may take the form of statutory, contractual or~~ institutional protection schemes ~~recognized as DGSs as referred to in Article 80(8) of Directive 2006/48/EC.~~ [Am. 32]

~~3. Institutional protection schemes defined in Article 80(8) of Directive 2006/48/EC may be recognized as DGSs by the competent authorities if they fulfil all criteria laid down in that Article and in this Directive.~~ [Am. 33]

4. ~~Institutional~~ *For the purposes of this Directive,* protection schemes not recognised under ~~paragraph 3 and not guaranteeing deposits~~ *Article 3(1)* shall ~~not be subject to this Directive, except only~~ to the second subparagraph of Article 14(5), *to Article 14(6a)* and to paragraph 9 of Annex III. [Am. 34]

4a. The Commission, in cooperation with EBA, shall ensure that the level of protection for depositors remains high in the event of the establishment of a European fund for banking crisis resolution. [Am. 35]

Article 2
Definitions

1. For the purposes of this Directive:

(a) 'deposit' means:

(i) any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions, ***including fixed-term deposits, savings deposits and registered deposits***, and which a credit institution must repay under the legal and contractual conditions applicable, ***or***

(ii) ***any debt evidenced by a certificate issued by the credit institution.*** [Am. 36]

Shares in United Kingdom and Irish building societies apart from those of a capital nature covered in Article 2 shall be treated as deposits.

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

- ~~its existence can only be proven by a certificate other than a statement of account~~
where it is made out to the holder and not to a named person; [Am. 37]
- where its principal is not repayable at par;
- where its principal is repayable at par only under a particular guarantee or agreement provided by the credit institution or a third party;

(b) 'eligible deposit' means a deposit that is not excluded from protection pursuant to Article 4;

- (c) 'covered deposit' means the part of an eligible deposit that does not exceed the coverage level referred to in Article 5;
- (ca) '*depositor*' means *the holder or, in the case of a joint account, each of the holders, of a deposit*; [Am. 38]
- (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~~, **according to information available to them at that time**, the credit institution concerned ~~appears to be~~ **is** unable, for reasons which are directly related to its financial circumstances, to repay the deposit and ~~to~~ has no prospect of being able to do so. [Am. 39]

The competent authorities shall make such a 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) where no determination has been made under point (i), a judicial authority has made a ruling for reasons which are directly related to the credit institution's financial circumstances which has the effect of suspending the ability of depositor to make claims against it,

- (f) 'credit institution' means an undertaking within the meaning of Article 4(1) of Directive 2006/48/EC;
- (f-a) 'preventive and supportive measure' means a measure adopted by DGSs to prevent a bank failure of the affiliated credit institutions, including:*
- (i) verifying the economic situation and the risk position of the affiliated credit institutions or, where such an institution is being established, the basic plans, as well as information rights with regard to substantial changes in ownership and control,*
 - (ii) requiring the affiliated credit institutions to provide information on their economic situation and their risk position, their development and intended changes to their business model,*
 - (iii) imposing conditions to limit the volume of deposits guaranteed or wholly or partly to limit certain business operations where, on the basis of an audit, or drawing on other sources, there are indications that there may be an impending or acute risk of resorting to the DGS,*
 - (iv) levying contributions geared to the individual risk position of the institution,*
 - (v) an agreement regarding the exchange of information with competent authorities including confidential information,*
 - (vi) granting guarantees, loans and all types of liquidity and capital assistance, including satisfying third-party claims. [Am. 149/rev]*

- (fa) *'measure in conjunction with the orderly winding-up of credit institutions' means a measure to prevent a call on a DGS, including:*
- (i) *assistance in acquiring a credit institution which has become unbalanced,*
 - (ii) *a transfer of deposits and of corresponding assets, including business sectors, to a bridging credit institution,*
 - (iii) *an enforced merger with other credit institutions,*
 - (iv) *orderly winding-up with the participation of the DGS; [Am. 40]*
- (g) 'branch' means branch within the meaning of Article 4(3) of Directive 2006/48/EC;
- (h) 'target level' means 1,5 % of ~~eligible~~ *covered* deposits ~~for the coverage of which a DGS is responsible~~ *for covering*; [Am. 41]
- (i) 'available financial means' means cash, deposits and low-risk assets ~~with a residual term to final maturity of 24 months or less, which can be liquidated within a time limit not exceeding the limit set by Article 7(1)~~ *and up to 10 % of pledged assets*; [Am. 42]
- (ia) *'pledged assets' means payment commitments which are duly backed by high-quality collateral and which are subject to the following conditions:*
- (i) *the collateral consists of low risk assets unencumbered by any third-party rights, at the free disposal, and earmarked for the exclusive use of the DGS, which has the irrevocable right to claim these payments on demand,*

- (ii) a credit institution is entitled to the yield on the assets pledged by that credit institution as collateral,*
- (iii) the collateral is subject to regular mark-to-market analysis, and credit institutions ensures that the mark-to-market valuation of collateral is at least equal to that credit institution's commitment to the scheme, and*
- (iv) 'valuation haircuts' are applied in the valuation of underlying assets and the DGS requires the haircut-adjusted market value of the underlying assets to be maintained over time; [Am. 43]*
- (j) 'low-risk assets' are asset items falling into one of the categories set out in the first and second category of Table 1 in point 14 of Annex I to Directive 2006/49/EC but exclude other qualifying items referred to in point 15 of that Annex;
- (k) 'home Member State' means home Member State within the meaning of Article 4(7) of Directive 2006/48/EC;
- (l) 'host Member State' means host Member State within the meaning of Article 4(8) of Directive 2006/48/EC;
- (m) 'competent authorities' means competent authorities within the meaning of Article 4(4) of Directive 2006/48/EC.

2. Where this Directive refers to Regulation (EU) No 1093/2010, bodies which administer DGSs shall, for the purpose of that regulation, be considered competent authorities under Article 4(2) of Regulation (EU) No 1093/2010.

Article 3
Membership and supervision

1. Each Member State shall ensure that within its territory one or more DGSs are introduced and officially recognised.

This shall not preclude *the establishment of cross-border DGSs by Member States or the merger of schemes of different Member States by them. Approval of such cross-border or merged DGSs shall be obtained from the competent authorities in cooperation with EBA.* [Am. 44]

When considering whether DGSs should be officially recognised, the relevant competent authority shall pay particular attention to the stability of the DGS and shall ensure that its membership is balanced. [Am. 45]

No credit institution shall 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 DGS, the competent authorities which issued its authorisation shall be notified *immediately* and, in collaboration with the ~~guarantee scheme-DGS~~, shall *promptly* take all appropriate measures including the imposition of penalties to ensure that the credit institution complies with its obligations. [Am. 46]

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 one month's notice of its intention to exclude the credit institution from membership of the DGS. 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 DGS shall proceed to exclusion.

4. Deposits held when the authorisation of a credit institution authorised pursuant to Article 6 of Directive 2006/48/EC is withdrawn shall continue to be covered by the DGS.

5. All DGSs referred to in Article 1 shall be supervised by the competent authorities on an ongoing basis, ***in accordance with the existing rules of the European System of Financial Supervision (ESFS)***, as to their compliance with this Directive. [Am. 47]

EBA shall supervise cross-border DGSs, in cooperation with a body composed of representatives of the competent authorities of the countries where the affiliated credit institutions are based. [Am. 48]

6. Member States shall ensure ***that the alternative methods adopted by DGSs under Article 11(3a) comply with the provisions of that Article and with the guidelines adopted by EBA pursuant to Article 11(5)***, that DGSs perform tests of their systems and that they are informed ***immediately*** in the event that the competent authorities detect problems in a credit institution that are likely to give rise to the intervention of DGSs. ***EBA shall coordinate the actions of the Member States.*** [Am. 49]

Such tests shall take place at least every three years or ***more frequently*** when the circumstances require it. The first such test shall take place by 31 December 2013. [Am. 50]

EBA shall forward to the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board¹ (ESRB), on its own initiative or at the ESRB's request, the information concerning DGSs which is needed for systemic risk analysis. [Am. 51]

¹ OJ L 331, 15.12.2010, p. 1.

EBA shall ~~periodically~~ conduct peer reviews in this regard ***at least every five years*** pursuant to ~~Article 15 of the [EBA regulation]~~ ***Article 30 of Regulation (EU) No 1093/2010***. ***The scope of such peer reviews shall include corporate governance practices under paragraph 7a***. DGSs shall be bound to professional secrecy referred to in Article 70 of Regulation (EU) No 1093/2010 when exchanging information with EBA.

EBA shall have the power to examine on the basis of updated figures the stress resistance of DGSs annually in accordance with different scenarios of predefined breaking points in order to determine whether an adjustment of the current calculation model and the target level is appropriate. In that context the stress resistance test shall be based on a low-impact, a medium-impact and a high-impact following scenario. [Am. 52]

7. Member States shall ensure that DGSs, 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). Information necessary to perform stress tests shall be submitted to DGSs on an ongoing basis. Such information shall be rendered anonymous. The information obtained may only be used for the performance of stress tests, ***for analysis of the historical evolution of DGSs resilience*** or for the preparation of repayments and shall be kept ~~no longer than is necessary for those purposes~~ ***confidential***. [Am. 53]

7a. Member States shall ensure that their DGSs have sound corporate governance practices in place and, in particular, that:

(a) their boards include at least one non-executive member and have open and transparent appointment processes;

(b) they produce an annual report on their activities. [Am. 54]

Article 4
Eligibility of deposits

1. The following shall be excluded from any repayment by DGS:
 - (a) subject to Article 6(3), deposits made by other credit institutions on their own behalf and for their own account;
 - (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 within the meaning of ~~Article 1 (C) of Council Directive 91/308/EEC~~ **Article 1(2) of Directive 2005/60/EC**; [Am. 55]
 - (ca) deposits in respect of which the depositor and the credit institution have contractually agreed that the deposit shall be applied towards the discharge of specific obligations of the depositor towards the credit institution or another party, provided that, by virtue of the law or of contractual arrangements, the amount of the deposit can be offset by the depositor or will be offset automatically against such obligations in circumstances where the deposit would otherwise have become an unavailable deposit; [Am. 56]**
 - (d) deposits by financial institutions as defined in Article 4(5) of Directive 2006/48/EC;
 - (e) deposits by investment firms as defined in Article 4(1)(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments¹;
 - (f) deposits the holder of which has ~~never~~ **not** been identified **in accordance with Article 8(1) of Directive 2005/60/EC**, ~~when they have become unavailable at the time of the activation, during and following the repayment of deposit guarantees~~; [Am. 57]

¹ OJ L 145, 30.4.2004, p. 1.

- (g) deposits by insurance undertakings;
- (h) deposits by collective investment undertakings;
- (i) deposits by pension and retirement funds, *except those held in personal pension schemes or in occupational pension schemes of an employer that is not a large company*; [Am. 58]
- (j) deposits by *the State and by central, regional and local* authorities; [Am. 59]
- (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 deposits referred to in paragraph 1 in a way that allows an immediate identification of such deposits.

2a. However, Member States shall ensure that deposits by local authorities are eligible for repayments by a DGS provided that one of the following condition is met:

- (a) they do not routinely employ a professional treasurer; or***
- (b) the loss of the deposits would seriously undermine the continued provision of local government services. [Am. 60]***

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.

1a. In addition, Member States shall ensure that the following deposits are fully protected:

- (a) deposits resulting from real estate transactions relating to private residential properties for up to 12 months after the amount has been credited or from the moment when such deposits become legally transferable;*
- (b) deposits that serve purposes defined in national law which are linked to particular life events such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death of a depositor, for up to 12 months after the amount has been credited;*
- (c) deposits that serve purposes defined in national law and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction, for up to 12 months after the amount has been credited or from the moment when such deposits become legally transferable . [Am. 61]*

2. Member States shall ensure that ~~DGSs do not deviate from~~ *depositors have a legal entitlement to* 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, 10 and 11: [Am. 62]~~

~~(a) deposits resulting from real estate transactions for private residential purposes for up to 12 months after the amount has been credited; [Am. 63]~~

~~(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 such event. [Am. 64]~~

3. ~~Paragraph 2~~ **Paragraph 1** 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 a comprehensive coverage level for all products and situations relevant in this regard. [Am. 65]

3a. With regard to deposits with credit institutions or branches of foreign credit institutions in the Member States which were already made before 31 December 2010 and with regard to deposits of depositors whose principal place of residence is in an Member State which, before 1 January 2008, had a statutory DGS with a fixed coverage level between EUR 100 000 and EUR 300 000 for deposits, the Member States concerned may decide, by way of derogation from paragraph 1, that the fixed coverage level hitherto in force shall remain in force unaltered. In that case, the target level and the risk-based contributions of the credit institutions shall be adjusted accordingly. [Am. 66]

4. Deposits shall be paid out in the currency *of the Member State* 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. or in euro. Where deposits are denominated in another currency, the depositors shall be entitled to decide whether the sums are to be paid out in either of the following currencies:~~

- (a) *that in which the account was maintained by a date that has been agreed with the competent authorities and that is later than the deadline laid down in Article 7(1); or*
- (b) *that of the Member State in which the account was maintained.*

Under point (b) of the first subparagraph, 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). [Am. 67]

5. Member States that convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on ... *

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 second subparagraph, Member States shall adjust the coverage levels converted into another currency to the amount referred to in paragraph 1 every five years. Member States may make an earlier adjustment of coverage levels, after consulting 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, *in cooperation with EBA*, 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 ~~periodical~~-review shall not take place by 31 December 2015 unless unforeseen events necessitate an earlier review. [Am. 68]

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

7. The Commission ~~may adjust~~ ***shall be empowered to adopt delegated acts in accordance with Article 16 concerning the periodical update, at least every five years, of the amounts amount*** referred to in paragraph 1 in accordance with inflation in the Union on the basis of changes in the harmonised index of consumer prices published by the Commission ***since the previous adjustment.***

~~That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with Article 16. [Am. 69]~~

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 specific 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.

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). Liabilities of the depositor against the credit institution shall not be taken into account when calculating the repayable amount *except for liabilities of the depositor which are due on the reference date.*
[Am. 70]

5. Member States shall ensure that DGSs may at any time request credit institutions to inform them about the aggregated amount of 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 DGS. 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), the reimbursement of such interest shall be limited to the default interest rate 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 level pursuant to Article 5(1).

7a. Member States may decide that, for the purposes of the repayment referred to in Article 7(1), the deposits of a depositor with the same credit institution are not to be aggregated where the law of the Member State allows credit institutions to operate under different brand names. Deposits with the same credit institution under the same brand name shall be aggregated, and the coverage level pursuant to Article 5(1) shall apply to them. If that calculation leads to a larger amount of covered deposits per depositor and per credit institution than provided for by Article 5, the contributions to the DGS calculated pursuant to Articles 9 and 11 shall be increased accordingly.

If a Member State decides not to allow separate deposit protection across brands within the same credit institution, then the holder and the brands are not separately guaranteed. Aggregation of deposits for different brands from the same credit institution shall not apply to cross-border situations.

Credit institutions from Member States that apply this provision cannot offer a coverage level in those of their branches operated in Member States that do not allow credit institutions to operate under different brands. [Am. 71]

Article 7
Repayment

1. DGSs shall be in a position to repay unavailable deposits within ~~7 days~~ **five working days, but no less than a week**, 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).

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 three 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).

Member States may allow a 20-working day time for repayment limit to apply until 31 December 2016, provided that, after a thorough examination, the competent authorities establish that the DGSs are not yet in a position to guarantee a time limit of five working days but no less than a week for repayment.

A depositor who is not absolutely entitled to the sums held in those accounts referred to in Article 6(3) shall be repaid within the time limit referred to in the first subparagraph. That payment shall be taken into account when the persons absolutely entitled are repaid.

1a. If Member States allow, until 31 December 2016, a 20-working day time limit for repayment pursuant to the third subparagraph of paragraph 1, the DGS shall, upon the request of a depositor, make a one-off payout of up to EUR 5 000 within five working days, but no less than a week, on his or her deposit eligible for repayment. [Am. 150/rev]

1b. Repayment or payout as referred to in paragraph 1 may be deferred where:

- (a) it is uncertain whether a person is legally entitled to receive repayment or the deposit is subject to legal dispute;***
- (b) the deposit is subject to economic penalties imposed by national governments or international bodies;***
- (c) there has been no transaction relating to the deposit within the last 24 months (the account is dormant);***
- (d) the amount to be repaid is deemed to be part of a temporary high balance as defined in Article 5(1a); or***
- (e) the amount to be repaid is to be paid out by the DGS of the host Member State in accordance with Article 12(2). [Am. 75]***

2. Depositors shall be repaid without a request to DGSs being necessary. For that purpose, the credit institution shall transmit the necessary information on deposits and depositors as soon as requested by the DGS.

3. Any correspondence between the DGS and the depositor shall be drawn up in the official language *of the Union that is used by the credit institution holding the guaranteed deposit when writing to the depositor or, failing that, in the official language* or languages of the Member State in which the guaranteed deposit is located. If a bank 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. [Am. 76]

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~~ *Article 1(2)* of Directive 2005/60/EC, the DGS may suspend any payment *in which the depositor is concerned* pending the judgment of the court. [Am. 77]

4a. No repayment shall be effected where there has been no transaction relating to the deposit within the last 24 months and the value of the deposit is lower than the administrative costs that would arise from such repayment. [Am. 78]

Article 8 Claims against DGSs

1. Member States shall ensure that the depositor's rights to compensation may be the subject of an action ~~by the depositor~~ against the DGS. [Am. 79]

2. Without prejudice to any other rights which they may have under national law ~~and subject to paragraph 3~~, schemes which make payments under guarantee *within a national framework* shall have the right of subrogation to the rights of depositors in liquidation proceedings for an amount equal to their payments.

Rights subject to the right of subrogation referred to in this paragraph, shall be ranked immediately after the right of the depositor referred to in paragraph 1 and before all other rights against the liquidator. [Am. 80]

3. Where DGSs lend to another scheme under the procedure referred to in Article 10, the lending DGSs shall in proportion to the amount lent have the right of subrogation to the rights of depositors in liquidation proceedings for an amount equal to their payments.

The right of subrogation shall not be exercised before the loan is due under Article 10(2)(b). If the liquidation procedure ends before that date, the right of subrogation shall extend to the liquidation proceeds paid to the borrowing scheme.

Rights subject to the right of subrogation referred to in this paragraph shall be ranked immediately after the right of depositors referred to in paragraph 1 and before all other rights against the liquidator.

4. Member States may limit the time in which depositors whose deposits were not repaid or acknowledged by the scheme within the deadline set out in Article 7(1) can claim the repayment of their deposits. Such time limit shall be determined by the date at which the rights to which the DGS 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 DGS to collect such claims before such registration.

Article 9
Financing of DGSs

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

DGSs shall raise the available financial means by regular contributions from their members ~~on 30 June and 30 December of each~~ **at least once a year**. This shall not prevent additional financing from other sources. One-off entry fees shall not be requested. [Am. 81]

The available financial means shall at least reach the target level. 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~~. ***The regular contribution shall take due account of the business cycle and shall not be less than 0,1 % of the covered deposits. The duty to pay contributions only applies when the amount of funds held by the DGS is less than the target level. After the target level has been reached for the first time and*** where the available financial means amount to less than two thirds of the target level ***due to funds being used***, the regular contribution shall not be less than 0,25 % of ~~eligible~~ **covered** deposits. [Am. 82]

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.~~ ***The available financial means of DGSs shall be invested in a low-risk and sufficiently diversified manner, and shall not exceed 5 % of the scheme's available financial means, except where a zero risk weighting applies to those deposits or investments pursuant to Annex VI, Part I of Directive 2006/48/EC.*** Companies which are included in the same group for the purposes of consolidated accounts within the meaning of Council Directive 83/349/EEC¹ or in accordance with recognised international accounting rules shall be regarded as a single body for the **that** purpose of calculating this limit. [Am. 83]

¹ Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1).

3. If the available financial means of a DGS are insufficient to repay depositors when deposits become unavailable, its members shall pay extraordinary contributions not exceeding 0,5 % of their ~~eligible~~ **covered** deposits per calendar year. That payment shall be executed one day before the time limit referred to in Article 7(1). [Am. 84]

4. The cumulated amount of contributions referred to paragraphs 1 and ~~2~~ **3 shall** not exceed 1 % of ~~eligible~~ **covered** deposits per calendar year. [Am. 85]

The competent authorities may ~~entirely or partially~~ **temporarily** exempt a credit institution from the obligation referred to in paragraph 2 if the sum of payments referred to in paragraphs 1 and 2 would jeopardise the settlement of claims of other creditors against it. Such exemption shall not be granted for a period longer than six months but may be renewed on request of the credit institution. ***The sum concerned shall be contributed at a later point in time, when the payment no longer jeopardises the settlement of claims of other creditors. The financial means referred to in paragraphs 1, 2 and 3 shall principally be used in order to protect and repay depositors pursuant to this Directive. Up to one third of the available financial means may be used for preventive and support measures as referred to in this Directive. In that case, the DGS shall submit a report to the competent authority within one month showing that the limit of one third of the available financial means has been respected.*** [Am. 86]

5. The financial means referred to in paragraphs 1, 2 and 3 of this Article shall principally be used in order to repay depositors pursuant to this Directive.

~~They may however also be used in order to finance the transfer of deposits to another credit institution, provided that the costs borne by the DGS do not exceed the amount of covered deposits at the credit institution concerned. In this case, the DGS shall, within one month from the transfer of deposits, submit a report to the European Banking Authority proving that the limit referred to above was not exceeded.~~ [Am. 87]

~~Member States may allow DGSs to use their financial means in order to avoid a bank failure without being restricted to financing the transfer of deposits to another credit institution, provided that the following conditions are met: [Am. 88]~~

- ~~(a) a scheme's financial means exceed 1% of eligible deposits after such measure; [Am. 89]~~
- ~~(b) the DGS, within one month from its decision to take such measure, submits a report to the European Banking Authority proving that the limit referred to above was not exceeded. [Am. 90]~~

~~On a case by case basis and subject to authorisation by the competent authorities following a reasoned request by the DGS concerned, the percentage referred to in (a) may be set between 0,75 and 1%. [Am. 91]~~

5a. DGSs may use available financial means in excess of the threshold in paragraph 5 for preventive and support measures, provided that the following conditions are met:

- (a) the DGS has appropriate systems for monitoring and classifying risks and corresponding opportunities to influence affiliated credit institutions;***
- (b) the DGS has the necessary procedures and structures to select, implement and monitor prevention and support measures;***
- (c) the granting of prevention and support measures by the DGS is linked to conditions imposed on the credit institution that is being supported, involving at least more stringent risk monitoring and greater verification rights for the DGS;***

- (d) *the affiliated credit institutions immediately provide the DGS with the means used for prevention and support measures in the form of extraordinary contributions, if the need to reimburse depositors arises and the available financial means of the DGS amount to less than two thirds of the target level; and*
- (e) *the ability of the affiliated credit institutions to pay the extraordinary contributions in accordance with point (d) is assured in the opinion of the competent authority.* [Am. 92]

5b. The financial resources can also be used for measures in conjunction with the orderly winding-up of a credit institution, provided that the costs borne by the DGS do not exceed the amount of covered deposits at the credit institution concerned. Where winding-up takes place in this manner, the DGS shall, within one month from the transfer of deposits, submit a report to EBA confirming that the costs borne did not exceed the amount of covered deposits. [Am. 93]

6. Member States shall ensure that DGSs have in place adequate alternative funding arrangements to enable them to obtain short-term funding where necessary to meet claims against those DGSs.

7. Member States shall ~~monthly~~ inform EBA *on a quarterly basis* of the amount of eligible deposits and covered deposits in their territory and of the amount of the available financial means of their DGSs. This information shall be confirmed by the competent authorities and shall, accompanied by this confirmation, transmitted within ~~10 days from the end of each month~~ *one month* to EBA. [Am. 94]

Member States shall ensure that the information referred to in the first subparagraph is published on the website of the DGSs *and of EBA* at least on an annual basis. [Am. 95]

7a. DGSs shall meet specific governance rules and shall form a special committee which is composed of high representatives of the DGS, its members and of the relevant authorities who work out and decide on transparent investment guidelines for the available financial means. Those guidelines shall take into account factors such as matching duration, quality, diversification and the correlation of the investments. [Am. 96]

Article 10
Borrowing between DGSs

1. ~~A scheme shall have the right to borrow from all~~ **Member States may allow DGSs to lend to** other DGSs ~~referred to in Article 1(2)~~ within the Union **on a voluntary basis**, provided that all of the following conditions are met: **[Am. 97]**

- (a) the borrowing scheme is not able to fulfil its obligations under Article 8(1) because of previous payments within the scope of ~~the first and second subparagraph~~ of Article 9(5); **[Am. 87]**
- (b) the situation referred to in point (a) is due to a lack of available financial means referred to in Article 9;
- (c) the borrowing scheme has made recourse to extraordinary contributions referred in Article 9(3);
- (d) the borrowing scheme undertakes the legal commitment that the borrowed funds will be used in order to pay claims under Article 8(1);
- (e) the borrowing scheme is not currently subject to an obligation to repay a loan to other DGSs under this Article;
- (f) the borrowing scheme shall ~~state~~ **inform the competent authorities of** the amount of money requested; **[Am. 98]**

- (g) the total amount lent does not exceed 0,5 % of ~~eligible~~ **covered** deposits of the borrowing scheme; **[Am. 99]**
- (h) the borrowing scheme informs EBA without delay and states the reasons why the conditions set out in this subparagraph are fulfilled and the amount of money requested.

The amount referred to in point (f) of the first subparagraph shall be determined as follows:

~~[amount of covered deposits to be repaid under Article 8(1)] — [available financial means + maximum amount of extraordinary contributions referred to in Article 9(3)]~~ **[Am. 100]**

~~The other Deposit Guarantee Schemes shall act as lending schemes. For this purpose, Member States in which more than one scheme is established shall designate one scheme acting as the lending scheme of this Member State and inform the European Banking Authority thereof. Member States may decide if and how the lending scheme is reimbursed by other DGSs established in the same Member State.~~ **[Am. 101]**

DGSs that are required to repay a loan to other DGSs under this Article shall not lend to other DGSs.

2. The loan shall be subject to the following conditions:
 - ~~(a) — each scheme shall lend the amount proportionate to the amount of eligible deposits at each scheme without taking account of the borrowing scheme and Deposit Guarantee Schemes referred to under point (a). The amounts shall be calculated pursuant to the latest confirmed monthly information referred to in Article 9(7);~~ **[Am. 102]**
 - (b) the borrowing scheme repays the loan at the latest after five years, including by way of annual instalments, interest being due only at the time of repayment;

(c) the interest rate *set is at least* equivalent to the marginal lending facility rate of the European Central Bank during the credit period; [Am. 103]

(ca) *the borrowing scheme informs EBA of the initial interest rate as well as the duration of the loan.* [Am. 104]

3. EBA shall confirm that the requirements referred to in ~~paragraph 1~~ *paragraphs 1 and 2* have been met, ~~state the amounts to be lent by each scheme as calculated pursuant to paragraph 2(a) and the initial interest rate pursuant to paragraph 2(c) as well as the duration of the loan.~~ [Am. 105]

EBA shall transmit its confirmation together with the information referred to in paragraph 1(h) to ~~the~~ lending DGSs. They shall receive this confirmation and information within two working days. ~~The lending Deposit Guarantee Scheme shall, without delay but at the latest within further 2 working days after reception effect payment of the loan to the borrowing scheme.~~ [Am. 106]

5. Member States shall ensure that the contributions levied by the borrowing scheme are sufficient to reimburse the amount borrowed and to re-establish the target level as soon as possible.

Article 11

Calculation of contributions to DGSs

1. The contributions to DGSs referred to in Article 9 shall be determined for each member ~~on the basis of~~ *in proportion to* the degree of risk incurred by it. Credit institutions shall not pay less than 75 % or more than ~~200%~~ *250 %* of the amount that a bank with an average risk would have to contribute. Member States may decide that members of institutional protection schemes referred to in Article 1(~~3~~) ~~and (4)~~ pay lower contributions to DGSs but not less than 37,5 % of the amount that a bank with an average risk would have to contribute.

Member States may provide for lower contributions for low-risk sectors which are governed by national law. [Am. 107]

1a. Member States may allow all credit institutions affiliated to the same central body under Article 3(1) of Directive 2006/48/EC to be subject as a whole to the risk weighting determined for the central body and its affiliated institutions on a consolidated basis. Member States may require credit institutions to pay a minimum contribution, irrespective of the amount of their covered deposits. [Am. 112]

2. ~~The determination of Annexes I and II describe the standard method for determining the degree of risk incurred and the calculation of calculating contributions shall be based on the elements referred to in Annex I and II by members to the DGS. [Am. 108]~~

3. ~~Paragraph 2 shall not apply to Deposit Guarantee Schemes referred to in Article 1(2). [Am. 109]~~

3a. Notwithstanding paragraphs 1 and 2, DGSs may use their own alternative risk-based methods for determining and calculating the risk-based contributions by their members. The calculation of contributions shall be proportional to the commercial risk of the members and shall take due account of the risk profiles of the various business models. An alternative method may also take into account the asset side of the balance sheet and risk indicators, such as capital adequacy, asset quality and liquidity.

Each alternative method shall be approved by the competent authorities and by EBA and shall comply with the guidelines developed by EBA pursuant to Article 11(5). EBA shall conduct a review of compliance with the guidelines at least every five years and in any event whenever there is a change to the DGS's alternative method. [Am. 110]

4. In order to ensure ~~specify~~ ***effective harmonisation of*** the elements of definitions and methods under Annex II Part A, powers are delegated to the Commission. ~~These~~ ***to establish the standard method set out in paragraphs 1 and 2, EBA shall develop*** draft regulatory ***technical*** standards, shall be adopted in accordance with Articles 7 to 7d of [EBA Regulation]. ***if necessary, suggesting adjustments to those definitions and that method to ensure full comparability and to avoid distorting elements.***

EBA ~~may develop~~ ***shall submit those*** draft regulatory ***technical*** standards for submission 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 Articles 10 to 14 of Regulation (EU) No 1093/2010. [Am. 111]

4a. EBA shall take account in its risk analyses and for the purpose of drawing up draft regulatory technical standards of the governance control mechanisms set up by credit institutions. It shall ensure dissemination of examples of best practice via the ESFS. [Am. 113]

5. By 31 December 2012, EBA shall issue guidelines ***pursuant to Article 16 of Regulation (EU) No 1093/2010*** on the application of Annex II Part B ~~pursuant to [Article 8 of the EBA Regulation]~~ ***and on the alternative risk-based methods developed by the DGSs under paragraph 3a. [Am. 114]***

Article 12 Cooperation within the Union

1. DGSs 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 or in Member States where a credit institution authorised in another Member State operates 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 home Member State shall ~~reimburse~~ **advance the necessary funds to enable the scheme of the host Member State to meet the home Member State scheme's obligation to repay depositors under paragraph 1.** [Am. 115]

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 *a* member of a scheme and joins another scheme, the contributions paid during the ~~6 months~~ **year** preceding the withdrawal of membership shall be reimbursed or transferred **on a pro-rata basis** to the other scheme, **provided that these are not regular contributions under subparagraph 3 of Article 9(1) or extraordinary contributions under Article 9(3).** This shall not apply if a credit institution has been excluded from a scheme pursuant to Article 3(3). [Am. 116]

4. Member States shall ensure that DGSs of the home Member State exchange information referred to under Article 3(7) with those in host Member States. The restrictions set out in that Article shall apply.

Credit institutions that wish to transfer from one DGS to another on a voluntary basis in accordance with this Directive shall give at least six months' notice of such intention. During that period, the credit institution shall contribute to its original DGS both in terms of ex-ante and ex-post financing. [Am. 117]

5. In order to facilitate effective cooperation between DGSs, with particular regard to this Article and to Article 10, the DGSs, 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.

DGSs shall notify EBA of the existence and content of such agreements. EBA may issue opinions on such agreements under Article 6(2)(f) and Article 19 of Regulation (EU) No 1093/2010. If competent authorities or DGSs cannot reach an agreement or if there is a dispute about the interpretation of such an agreement, EBA shall settle disagreements pursuant to Article 11 of Regulation (EU) No 1093/2010.

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 (third-country credit institutions) 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 third-country credit institution must join DGSs in operation within their territories.

1a. In order to ensure consistent harmonisation of paragraph 1, EBA shall develop draft regulatory technical standards establishing general equivalence criteria.

EBA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph, in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. [Am. 118]

2. Depositors and intending depositors at branches established by a third-country credit institution which 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, ***and, where the depositor so requests and the branch is able to accede to such a request, in other languages***, in the manner prescribed by national law and shall be drafted in a clear and comprehensible form. [Am. 151/rev]

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 DGS of which the institution and its branches are members within the Union. When a deposit is not guaranteed by a DGS in accordance with ~~Article 4~~ ***Article 4(1)(a) to (g) and (i) to (k), and Article 4(2)***, the credit institution shall inform the depositor accordingly, ***whereupon the credit institution shall offer the depositor the opportunity to withdraw his or her deposits, including all interest and benefits accrued thereon, without incurring any penalties.*** [Am. 119]

2. Information to intending depositors shall be made available to, and countersigned by, them before they enter into a contract on deposit-taking. The template set out in Annex III shall be used for these purposes.

3. Information to depositors shall be provided on their statements of account. That information shall consist of a confirmation that the deposits are eligible deposits. Moreover, reference shall be made to the information sheet set out in Annex III and where it can be obtained. ***The information sheet set out in Annex III shall, at least annually, also be attached to one of their statements of account.*** The ~~web-site~~ ***website*** of the responsible DGS ~~may~~ ***shall*** be indicated on the information sheet.

The website of the DGS shall contain the necessary information for depositors, in particular information concerning the provisions regarding the process for and conditions of deposit guarantees as envisaged under this Directive. [Am. 120]

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, ***and, where the depositor so requests and the branch is able to accede to such a request, in other languages.*** [Am. 121]

5. Member States shall limit the use in advertising of the information referred to in ~~paragraph 1~~ ***paragraphs 1, 2 and 3*** to a factual reference to the scheme guaranteeing the product to which the advertisement refers. [Am. 122]

Credit institutions ~~that are member of a scheme referred to in Article 1(3) and 1(4)~~ shall inform depositors adequately ~~on~~, ***and in an easily understandable manner, concerning*** the functioning of the ***DGS. At the same time, credit institutions shall provide depositors with information about the maximum coverage level and other matters relating to the DGS.*** Such information shall not contain a reference to unlimited coverage of deposits. [Am. 123]

6. If credit institutions merge, their depositors shall be informed of the merger at least one month before it takes legal effect. Depositors shall be informed that when the merger becomes effective, all their deposits held with each of the merging banks are aggregated in order to determine their coverage level under the DGS. ***Depositors shall be given a three-month period following notification of the merger in order to give them the opportunity to transfer their deposits, including all accrued interest and benefits, in so far as they exceed the coverage level pursuant to Article 5(1), to another bank or bank brand without incurring any penalty fees. During that three-month period, if the amount set out in Article 5(1) is exceeded, the coverage level shall be extended by multiplying the amount set out in Article 5(1) by the number of credit institutions which have merged.*** [Am. 124]

6a. If a credit institution withdraws, or is excluded from, a DGS, its depositors shall be informed within one month by the outgoing credit institution. [Am. 125]

7. If a depositor uses internet banking, the information required to be disclosed by this Directive shall be communicated by ~~electronic~~ ***suitable*** means in a way that brings it to the attention of the depositor, ***and, where the depositor so requests, on paper.*** [Am. 126]

7a. Member States shall ensure that appropriate procedures are in place to enable DGSs to share information and communicate effectively with other DGSs, their affiliated credit institutions and the relevant competent authorities within their own jurisdictions and with other agencies on a cross-border basis, where appropriate. [Am. 127]

Article 15

List of authorised credit institutions

In the list of authorised credit institutions which it is required to draw up pursuant to Article 14 of Directive 2006/48/EC, the Commission shall indicate, ***in a transparent manner***, the status of each credit institution with regard to this Directive. [Am. 128]

Article 16
Exercise of the delegation

1. ***The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***

1a. The powers to adopt the delegated acts referred to in Article 5(7) shall be conferred on the Commission for an indeterminate period of time ***from ...****.

1b. ***The delegation of power referred to in Article 5(7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.***

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 powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 17 and 18.~~ ***A delegated act adopted pursuant to Article 5(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council. [Am. 129]***

* ***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 the 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 powers which could be subject to revocation and possible reasons for a revocation.~~

~~3. — The decision of revocation shall put an end to the delegation of the powers 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*. [Am. 130]~~

~~Article 18~~
~~Objections to delegated acts~~

~~1. — The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.~~

~~2. — If, on expiry of that period, 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 at 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 the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act. [Am. 131]~~

Article 19
Transitional provisions

1. ~~Contributions to DGSs 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.~~
[Am. 132]

1a. If a DGS is unable to determine the covered deposits of the credit institutions belonging to the scheme when this Directive enters into force, the target level in Article 2(1)(h) shall refer to the eligible deposits in the scheme. From 1 January 2015, the covered deposits shall constitute the basis for calculating the target level for all DGSs. [Am. 133]

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~~ **that are made out to the holder and not to a named person** 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 that their deposits would not be covered anymore under a DGS.

3. Where certain deposits cease to be covered wholly or partly by DGSs after the transposition of this Directive or of 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 30 June 2010. After 31 December 2014, Member States shall ensure that no DGS grants higher or more comprehensive guarantees than those provided for in this Directive, regardless of when the deposits were paid in.

4. ~~By 31 December 2015~~ **2 January 2014**, 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~~ **setting out how** DGSs should be replaced by a single scheme for the whole Union **operating in the Union may, under the coordination of EBA, cooperate through a European Scheme to prevent risks arising from cross-border activities and protect deposits from such risks.** [Am. 134]

5. The Commission, in cooperation with EBA, shall submit to the European Parliament and to the Council by 31 December 2015 a report on progress towards the implementation of this Directive. That report should, in particular address ~~the possibility to determine:~~

- ~~the target level on the basis of covered deposits, without diminishing the~~ ***with an assessment of the appropriateness of the percentage set or an assessment of other regulatory options, that target level reflecting the failure of deposits over the previous ten years within a statutory, contractual or institutional protection scheme, as referred to in Article 80(8) of Directive 2006/48/EC,***
- ***the cumulative effect of the regulatory obligations of credit institutions, such as capital requirements,***
- ***the interconnection between the legislation on DGSs and the future legislation on crisis management purposes,***
- ***the impact on the diversity of banking models, bearing in mind the need to safeguard it,***
- ***the adequacy of the current coverage level for depositors.***

The report shall also assess whether the matters referred to in the first subparagraph have been dealt with in a manner that maintains the protection of depositors. [Am. 135]

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), (e), (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 11, 12, 13(1) (2), 14(1) (3), 14(5) (7), 19 and Annex I-III~~ ***this Directive*** by 31 December 2012. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. [Am. 136]

~~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. [Am. 137]~~

~~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 Article 7(1) and 9(5) by 31 December 2013. However, the percentage of eligible deposits referred to in Article 9(5)(a) shall not apply before 1 January 2014. Until 31 December 2017, a percentage of 0.5% shall apply. After that date and until 31 December 2020, a percentage of 0.75% shall apply. [Am. 138]~~

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, are repealed with effect 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*.

Article 2(1)(b), (e), (g), Article 4(1)(a), (b) and (c), Article 5(1), Article 6(1), (2) and (3), Article 7(4), Article 8(1), Article 12(1), Article 13(3), Article 14(4), and Articles 15 to 18 shall apply from 1 January 2013.

Article 23
Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX I

Determination of risk-based contributions to DGSs

1. The following formulas shall be used:

(a) the amount of risk-based contributions of a member

$$C_i = TC * RS_i$$

(b) the risk share of a member

$$RS_i = \frac{RA_i}{\sum_{k=1}^n RA_k}$$

(c) the risk-weighted amount of contribution of a member

$$RA_i = CB * \beta_i$$

where:

C_i the amount of contribution of the i -th DGS member

TC the total amount of contributions to be collected by the scheme

RS_i the risk share for the i -th member

RA_i the risk-weighted amount of contribution of the i -th member

RA_k the risk-weighted amounts of contributions of each of the n members

CB the contribution base (i.e. the *covered deposits from 1 January 2015 or, where these cannot be calculated for all member bodies of the DGS, the eligible deposits*) [Am. 139]

β_i the risk coefficient assigned to the i -th member in accordance with Annex II.

2. The following formulas shall be used:

(a) the total composite score of a member

$$\rho_i = 3/4 \rho_i^{\text{COR}} + 1/4 \rho_i^{\text{SUP}}$$

(b) the composite sub-score of a member as regards core indicators

$$\rho_i^{\text{COR}} = 1/4 [\rho_i^{\text{CA1}} + \rho_i^{\text{AQ1}} + \rho_i^{\text{P1}} + \rho_i^{\text{L1}}]$$

(c) the composite sub-score of a member as regards supplementary indicators

$$\rho_i^{\text{SUP}} = 1/n [\rho_i^{x_1} + \rho_i^{x_2} + \dots + \rho_i^{x_n}]$$

where:

ρ_i the total composite score of the i -th member

ρ_i^{COR} the total composite sub-score of the i -th member as regards core indicators

ρ_i^{SUP} the total composite sub-score of the i -th member as regards supplementary indicators

ρ_i^x a variable assessing the risk of the i -th member with regard to an individual core or supplementary indicator presented in Annex II

x the symbol of a given core or supplementary indicator.

ANNEX II

Indicators, scores and weights for calculating risk-based contributions

PART A

Core indicators

1. The following core indicators shall be used for calculating risk-based contributions:

Risk class	Indicator	Ratio
Capital adequacy	Own funds items referred to in Article 57 (a) to (ca) of Directive 2006/48/EC and risk-weighted assets referred to under Article 76 of Directive 2006/48/EC	$\frac{\text{Own funds}}{\text{Risk weighted assets}}$
Asset quality	Non-performing loans	$\frac{\text{Non performing}}{\text{Gross loans}}$
Profitability	<i>Risk adjusted</i> return on assets [Am. 140]	$\frac{\text{Net income}}{\text{Average total assets}}$
Liquidity	To be determined by Member States subject to Article 11(4)	

2. The following scores shall be used in order to reflect risk profiles with regard to core indicators:

Risk level	Capital adequacy	Asset quality	Profitability	Liquidity
Very low risk	1	1	1	1
Low risk	2	2	2	2
Medium risk	3	3	3	3
High risk	4	4	4	4
Very high risk	5	5	5	5

3. The following scores shall be assigned to a member based on actual values of the indicators in a given risk class:

Element	Symbol (x)	$\rho^x = 1$	$\rho^x = 2$	$\rho^x = 3$	$\rho^x = 4$	$\rho^x = 5$
Capital adequacy	CA	$x > 12,3 \%$	$12,3 \% \geq x > 9,6 \%$	$9,6 \% \geq x > 8,2 \%$	$8,2 \% \geq x > 7 \%$	$x \leq 7 \%$
Asset quality	AQ	$x \leq 1 \%$	$1 \% < x \leq 2,1 \%$	$2,1 \% < x \leq 3,7 \%$	$3,7 \% < x \leq 6 \%$	$x > 6 \%$
Profitability	P	$x > 1,2 \%$	$1,2 \% \geq x > 0,9 \%$	$0,9 \% \geq x > 0,7 \%$	$0,7 \% \geq x > 0,5 \%$	$x \leq 0,5 \%$
Liquidity	L	Member States may determine the thresholds for each ρ^x subject to Article 11(4)				

4. The following risk weights (coefficients) shall be assigned to a member depending on its composite score:

Composite score (ρ)	$1 < \rho \leq 1,5$	$1,5 < \rho \leq 2,5$	$2,5 < \rho \leq 3,5$	$3,5 < \rho \leq 4,5$	$4,5 < \rho \leq 5$
Risk coefficient (β)	75 %	100 %	125 %	150 %	200 %

PART B

Supplementary indicators

1. ~~Member States shall determine supplementary indicators for calculating risk-based contributions.~~ Some or all of the following indicators may *also* be used for this purpose *to calculate risk-based contributions*: [Am. 141]

Risk class	Indicator / ratio	Definition
Capital adequacy	Total capital	$\frac{\text{Total capital}}{\text{Risk weighted assets}}$
	Excess capital *	$\frac{\text{Excess capital}}{\text{Total assets}} \quad \text{or} \quad \frac{\text{Excess capital}}{\text{Risk weighted assets}}$
Asset quality	Loan loss provision	$\frac{\text{Loan loss provision}}{\text{Net interest revenue}} \quad \text{or} \quad \frac{\text{Loan loss provision}}{\text{Operating income}}$
	Risk weighted assets	$\frac{\text{Risk weighted assets}}{\text{Total assets}}$
Profitability	Costs to income	$\frac{\text{Operating expenses}}{\text{Operating income}}$
	Net margin	$\frac{\text{Net margin}}{\text{Total capital}}$
Liquidity	To be determined by Member States subject to Article 11(5)	

* Excess capital = Capital – own funds referred to in Article 57(a) to (h) of Directive 2006/48/EC.

2. The following scores shall be used in order to reflect risk profiles with regard to supplementary indicators.

Risk level	Capital adequacy	Asset quality	Profitability	Liquidity
Very low risk	1	1	1	1
Low risk	2	2	2	2
Medium risk	3	3	3	3
High risk	4	4	4	4
Very high risk	5	5	5	5

3. The following risk weights (coefficients) shall be assigned to a member depending on its composite score:

Composite score (ρ)	$1 < \rho \leq 1,5$	$1,5 < \rho \leq 2,5$	$2,5 < \rho \leq 3,5$	$3,5 < \rho \leq 4,5$	$4,5 < \rho \leq 5$
Risk coefficient (β)	75 %	100 %	125 %	150 %	200 %

ANNEX III
Depositor information template

If a *your* deposit which is due and payable has not been paid by a *your* credit institution for reasons which are directly related to its financial circumstances, ~~depositors~~ *you, as the depositor*, 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 *in accordance with Directive 2012/.../EU of the European Parliament and of the Council on deposit-guarantee schemes**. [Am. 142]

This repayment covers at a maximum of EUR 100 000 per bank. This means that all *your* deposits at the same bank are ~~aggregated~~ *added up* in order to determine the coverage level. ~~If, for instance a depositor holds a savings~~ *For example, if you hold a deposit* account with EUR 90 000 and a current account with EUR 20 000, ~~he or she~~ *you* will only be repaid EUR 100 000. [Am. 143]

[Only where applicable]: This method will also be applied if a credit institution operates under different ~~trading~~ *brand* names *for its customers*. 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 *each* in total covered up to EUR 100 000. [Am. 144]

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.

* *OJ: please insert the number and the publication reference of this Directive.*

In general, all retail depositors and businesses *[where applicable in the Member State: and vulnerable local authorities]* are covered by deposit-guarantee schemes. Exceptions for certain deposits are stated on the web site of the responsible deposit-guarantee scheme *[insert web site of the responsible deposit-guarantee scheme]*. Your credit institution will also inform you on request whether certain products are covered or not. If deposits are covered, the credit institution shall also ~~confirm~~ *specify* this on ~~the~~ *your* statement of account. [Am. 145]

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 one week* **five** *[where applicable: 20] working days. [where applicable: On request, the deposit-guarantee scheme shall pay you a credit of up to EUR 5 000 within five working days. From 2017, your deposits (up to EUR 100 000) will be repaid within five working days.]*. [Am. 146]

If you have not been repaid within ~~these~~ *the above* deadlines, you should contact the deposit-guarantee scheme since the time to claim reimbursement ~~may be~~ *is* barred after a ~~certain time limit~~ *[insert relevant time period applicable in the Member State and the exact reference to the national legal act and the particular Article, which governs these provisions]*. Further information can be obtained under *[insert web site of the responsible deposit-guarantee scheme]*. [Am. 147]

[Only where applicable:] Your ~~deposit is guaranteed by~~ *credit institution is part of* an Institutional Guarantee Scheme ~~[recognized/not recognized]~~ as a DGS. This means that all ~~banks~~ *credit institutions* that are members of this scheme mutually support each other in order to avoid a ~~bank failure~~ *insolvency*. However, if a ~~bank failure~~ *insolvency* would nevertheless occur, your deposits will be repaid up to EUR 100 000 *within the framework of deposit-guarantee schemes recognised under national law*. [Am. 148]

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)

Directive	Deadline for transposition
94/19/EC	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/EC
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
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Article 4(1)(a)-(c)		Article 2
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