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**\*\*\*I**

## **REPORT**

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

Committee on Economic and Monetary Affairs

Rapporteur: Peter Simon

(Recast – Rule 87 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

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

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0368),
  - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0177/2010),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to the reasoned opinions submitted, within the framework of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Danish Parliament, the German Bundestag, the German Bundesrat and the Swedish Parliament, , asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Central Bank of 16 February 2011<sup>1</sup>,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to the letter of 24 February 2011 from the Committee on Legal Affairs to the Committee on Economic and Monetary Affairs in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to Rules 87, 55 and 37 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A7-0225/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of

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<sup>1</sup> OJ C 99, 31.3.2011, p.1..

<sup>2</sup> OJ C 77, 28.3.2002, p. 1.

the existing texts, without any change in their substance,

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a directive

#### Recital 2

##### *Text proposed by the Commission*

(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 as regards the rules on Deposit Guarantee Schemes to which these institutions are subject.

##### *Amendment*

(2) In order to make it easier to take up and pursue the business of credit institutions, it is necessary to eliminate differences between the laws of the Member States **which may distort markets** as regards the rules on Deposit Guarantee Schemes to which these institutions are subject.

## Amendment 2

### Proposal for a directive

#### Recital 2 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***(2a) In order to prevent future claims on Deposit Guarantee Schemes, 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 Council<sup>1</sup> (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.*

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<sup>1</sup> OJ L 331, 15.12.2010, p.12.

## Amendment 3

### Proposal for a directive Recital 3

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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 to the economy as a whole of the failure of a credit institution and the 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 Deposit Guarantee Schemes to implement prevention and support measures. As in this case, the affiliated credit institutions themselves cover the costs of Deposit Guarantee Schemes, 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. Deposit Guarantee Schemes 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 Deposit Guarantee Schemes should, however, always be subject to conditions, and their actions should always comply with competition law.*

#### **Amendment 4**

##### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*(3a) Appropriate incentives for effective action by Deposit Guarantee Schemes particularly exist if 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 made possible to merge the Deposit Guarantee Schemes 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 Deposit Guarantee Schemes. Adverse effects on financial stability, for example where several high-risk credit institutions are covered which, within their own Deposit Guarantee Scheme, would only present an average risk, while contributions would be withdrawn from the existing guarantee schemes, must be avoided.*

#### **Amendment 5**

##### **Proposal for a directive Recital 5**

*Text proposed by the Commission*

(5) Directive 94/19/EC was based on the principle of minimum harmonisation. Consequently, a variety of Deposit Guarantee Schemes with very distinct features *were established* in the Union. *This caused* market distortions *for credit institutions and limited the benefits* of the Internal Market *for depositors*.

*Amendment*

(5) Directive 94/19/EC was based on the principle of minimum harmonisation. Consequently, a variety of Deposit Guarantee Schemes with very distinct features *currently exist* in the Union. *As a result of the formulation of common requirements applicable to Deposit Guarantee Schemes 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 payouts, a uniform level of protection is provided for depositors throughout the Union while ensuring the same stability of Deposit Guarantee Schemes. At the same time, the implementation of these common requirements for Deposit Guarantee Schemes is of utmost importance in order to eliminate* market distortions. *This Directive therefore contributes to completion* of the internal market.

**Amendment 6**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(6) The Directive should *enable a level playing field between credit institutions, allow depositors to easily understand the features of Deposit Guarantee Schemes and facilitate* a quick repayment to depositors by sound and credible Deposit Guarantee Schemes *in the interest of financial stability. Therefore, deposit protection should be harmonised and simplified to the largest extent possible.*

*Amendment*

(6) This Directive should *serve to inform depositors about financial products covered and those not covered and shed light on the way in which Deposit Guarantee Schemes function. The possibility of preventing failure of a credit institution by means of appropriate measures adopted by the Deposit Guarantee Scheme 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 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 a quick repayment to depositors by sound and credible Deposit Guarantee Schemes.*

## **Amendment 7**

### **Proposal for a directive**

#### **Recital 9**

*Text proposed by the Commission*

*Amendment*

*(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.*

*deleted*

## **Amendment 8**

### **Proposal for a directive**

#### **Recital 9 a**

*Text proposed by the Commission*

*Amendment*

*Each credit institution should be part of a Deposit Guarantee Scheme recognised under this Directive, thereby ensuring a high level of consumer protection and a level-playing field between credit institutions, as well as preventing regulatory competition. A Deposit Guarantee Scheme should be able to provide this protection at any time.*

## **Amendment 9**

### **Proposal for a directive**

#### **Recital 9 b (new)**

*Text proposed by the Commission*

*Amendment*

*(9b) The key task of a Deposit Guarantee Scheme is to protect depositors against the consequences of insolvency of a credit institution. Deposit Guarantee Schemes should be able to provide this protection in various ways: at one end of the range of activities of Deposit Guarantee Schemes, therefore, schemes with a pure reimbursement ('paybox') function should be possible.*

## **Amendment 10**

### **Proposal for a directive**

#### **Recital 9 c (new)**

*Text proposed by the Commission*

*Amendment*

*(9c) It should also, however, be possible for Deposit Guarantee Schemes to go beyond a pure reimbursement function by requiring affiliated credit institutions to*

*supply additional information and, on this basis, to build up early warning systems. In this way, risk-dependent contributions can be adjusted at an early stage, or preventive measures against recognised risks can be proposed. In the event of impending imbalances, Deposit Guarantee Schemes should be able to decide on support measures or to use their resources to support orderly winding-up of problematic credit institutions in order to avoid the costs of reimbursing depositors and the other adverse impacts of insolvency.*

## **Amendment 11**

### **Proposal for a directive Recital 9 d(new)**

*Text proposed by the Commission*

*Amendment*

*(9d) At the other end of the range of activities, it should be possible for Deposit Guarantee Schemes to take the form of institutional protection schemes, 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 institutions <sup>1</sup>. They protect the credit institution itself, in particular by ensuring its liquidity and solvency. They should be recognised as Deposit Guarantee Schemes by the competent authorities if they fulfil all criteria laid down in that Article and in this Directive. These criteria ensure, in particular, that, as in other Deposit Guarantee Schemes, sufficient resources are always available for a potential payout.*

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

## Amendment 12

### Proposal for a directive

#### Recital 10

*Text proposed by the Commission*

*(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)<sup>1</sup> 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.*

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

*Amendment*

*deleted*

## Amendment 13

### Proposal for a directive

#### Recital 11

*Text proposed by the Commission*

(11) In the recent financial crisis, uncoordinated increases in the coverage levels across the *EU* led to depositors shifting money to banks in countries where deposit guarantees were higher. This drained liquidity from banks in times of stress. In times of stability, different coverage levels may lead to depositors choosing the highest deposit protection rather than the *most suitable* deposit product. This may result in competitive distortions in the *Internal Market*. It is therefore indispensable to ensure a harmonised level of deposit protection wherever deposits are located in the Union. However, certain deposits relating to the personal situation of depositors may be covered at a higher level but for a limited

*Amendment*

(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. This drained liquidity from banks in times of stress. In times of stability, different coverage levels may lead to depositors choosing the highest deposit protection rather than the deposit product **best suited to them**. This may result in competitive distortions in the *internal market*. It is therefore indispensable to ensure a harmonised level of deposit protection **by all recognised Deposit Guarantee Schemes**, wherever deposits are located in the Union. However, certain deposits relating to the personal situation of depositors may be covered at a higher

time.

level but for a limited time.

#### Amendment 14

##### Proposal for a directive Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

***(11a) During the financial crisis, existing deposit guarantee schemes proved to be unable to carry all losses in such a way as to protect depositors. It is, therefore, indispensable that the available financial means of Deposit Guarantee Schemes amount to a certain target level and that extraordinary contributions may be collected. Where necessary, Deposit Guarantee Schemes should have adequate alternative funding arrangements in place to enable them to obtain short term funding to meet claims made against them.***

#### Amendment 15

##### Proposal for a directive Recital 12

*Text proposed by the Commission*

*Amendment*

(12) The same ***coverage level*** should apply to all depositors regardless of whether a Member State's currency is the Euro or not ***and regardless of whether a bank is a member of a system which protects the credit institution itself***. Member States outside the Euro area should have the possibility to round off the amounts resulting from the conversion without compromising the equivalent protection of depositors.

(12) The same ***legal entitlement in relation to the Deposit Guarantee Scheme*** should apply to all depositors ***in accordance with the coverage level provided for in this Directive***, regardless of whether a Member State's currency is the Euro or not. Member States outside the Euro area should have the possibility to round off the amounts resulting from the conversion without compromising the equivalent protection of depositors.

## Amendment 16

### Proposal for a directive

#### Recital 15

*Text proposed by the Commission*

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

*Amendment*

(15) Member States should *also ensure that deposits resulting from certain transactions are fully covered by the* Deposit Guarantee Schemes *for a given period. These include deposits in connection with the acquisition or sale of private residential properties. This should also apply to deposits which are protected on certain social grounds defined in domestic law and are connected with life cycle events - such as birth, marriage, divorce and, in particular, the provision for old age - or which arise from certain insurance benefits or compensation.* In all cases, state aid rules should be complied with.

## Amendment 17

### Proposal for a directive

#### Recital 16

*Text proposed by the Commission*

(16) It is indispensable to harmonize the methods of financing schemes guaranteeing deposits or credit institutions themselves. On the one hand, the cost of financing such schemes should be borne *principally* by credit institutions themselves; on the other hand, the financing capacity of such schemes must be proportionate to their liabilities. In order to ensure that *Depositors* in all Member States *enjoy* 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*

*Amendment*

(16) It is indispensable to harmonize the methods of financing schemes guaranteeing deposits or credit institutions themselves. On the one hand, the cost of financing such schemes should be borne, *in principle*, by credit institutions themselves; on the other hand, the financing capacity of such schemes must be proportionate to their liabilities. In order to ensure that *Deposit Guarantee Schemes* in all Member States *display* a similarly high level of *stability, a uniform ex ante financial target level should be stipulated for all Deposit Guarantee Schemes.*

*harmonised at a high level. This, however, should not jeopardize the stability of the banking system of the Member State concerned.*

## Amendment 18

### Proposal for a directive Recital 18

#### *Text proposed by the Commission*

(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 case of a bank failure. Authorities also have much easier access to credit than citizens. Non-financial businesses should in principle be covered, regardless of their size.

#### *Amendment*

(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 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.

## Amendment 19

### Proposal for a directive Recital 22

#### *Text proposed by the Commission*

(22) ***The financial means of Deposit Guarantee Schemes should principally be used*** for the repayment of depositors. ***They could***, however, also be ***used in order to finance the transfer of deposits to another*** credit institution, provided that the costs borne by the Deposit Guarantee Scheme ***do 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

#### *Amendment*

(22) ***Deposit Guarantee Schemes should have sufficient*** financial means for the repayment of depositors ***in the event of insolvency of a credit institution. In many cases, however, support measures should be taken to avert the insolvency of a credit institution since they have a more favourable effect in guaranteeing deposits than reimbursement of depositors.*** Moreover, such measures may make it possible to avoid further costs and adverse effects on financial stability and the confidence of depositors. ***It should***

aid rules. *This is* without prejudice to the future Commission policy concerning the establishment of national bank resolution funds.

*therefore also be possible to use the resources of Deposit Guarantee Schemes for support measures. Support measures should always entail conditions with which the institution receiving the support must comply. It should, however, also be possible to use them in conjunction with the orderly winding-up of a credit institution, provided that this results in the cheapest alternative for the Deposit Guarantee Scheme. The costs borne by the Deposit Guarantee Scheme should therefore not* exceed the amount of covered deposits at the credit institution concerned. Such measures should comply with state aid rules. *These options for action by Deposit Guarantee Schemes should be* without prejudice to the future Commission policy concerning the establishment of national bank resolution funds.

## Amendment 20

### Proposal for a directive Recital 22 a (new)

*Text proposed by the Commission*

*Amendment*

*(22a) Funds of Deposit Guarantee Schemes may be used to finance the continuity of account operation for an institution's share of covered deposits.*

## Amendment 21

### Proposal for a directive Recital 24

*Text proposed by the Commission*

*Amendment*

(24) Contributions to Deposit Guarantee Schemes should take account of the degree of risk incurred by their members. This would allow to reflect the risk profiles of individual banks and lead to a fair

(24) Contributions to Deposit Guarantee Schemes 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*

calculation of contributions and to provide incentives to operate under a less risky business model. *Developing* a set of core indicators mandatory for all Member States and another set of optional supplementary indicators would introduce such harmonisation gradually.

*business models* and lead to a fair calculation of contributions and to provide incentives to operate under a less risky business model. ***To this end, a standard approach to the identification of risk-dependent contributions to Deposit Guarantee Schemes should be laid down.*** *The developing 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 approach, to make it possible for Deposit Guarantee Schemes to also use risk-dependent procedures of their own in so far as they comply with the guidelines to be drawn up by EBA after consulting the European Forum of Deposit Insurers (EFDI). This takes account of the risk profiles of individual banks, leads to a more precise calculation of contributions, tailored to market circumstances in the Member States, and provides incentives to operate under a less risky business model. In order to take account of particularly low-risk sectors of lending which are governed by special laws, corresponding reductions in the contributions to be paid should be provided for.***

## Amendment 22

### Proposal for a directive Recital 24 a (new)

*Text proposed by the Commission*

*Amendment*

***(24a) It is noted that 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.*

## **Amendment 23**

### **Proposal for a directive Recital 26**

*Text proposed by the Commission*

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

*Amendment*

(26) The payout delay of at maximum six weeks from 31 December 2010, runs counter to the need to maintain depositor confidence and does not meet their needs. The payout delay should therefore be reduced to a period of **five working days**.

## **Amendment 24**

### **Proposal for a directive Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) In many cases, however, the necessary procedures for a short time limit for payout do not yet exist. If, however, depositors are assured that the time limit for payout will be short and then, upon failure of a credit institution, the time limit is not respected, this can permanently damage depositors' confidence in guarantee schemes, thereby undermining their stabilising effect and purpose. Member States should, therefore, be given the option, during a transitional period ending on 31 December 2016, to adopt a time limit for payout of 20 working days if, after examination by the***

*competent authorities, it has been ascertained that the reduced time limit for payout is not feasible. In that case, the procedures required for the five-working-day time limit for payout should be developed and tested by 31 December 2016. In order to ensure that, during the transitional period ending on 31 December 2016, 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 Deposit Guarantee Scheme within five working days on their deposit which is eligible for reimbursement.*

## Amendment 25

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

(28) Information is an essential element in depositor protection. Therefore, actual depositors should be informed about their coverage and the responsible scheme on their statements of account and intending depositors by countersigning a standardised information sheet. The content of such information should be identical for all depositors. The unregulated use in advertising of references to the amount and scope of a deposit-guarantee scheme could affect the stability of the banking system or depositor confidence. Therefore, a reference to Deposit Guarantee Schemes in advertisements should be limited to a short factual reference. Systems which protect the credit institution itself should **clearly** inform depositors about their **function** without promising unlimited deposit protection.

#### *Amendment*

(28) Information is an essential element in depositor protection. Therefore, actual depositors should be informed about their coverage and the responsible scheme on their statements of account and intending depositors by countersigning a standardised information sheet. The content of such information should be identical for all depositors. The unregulated use in advertising of references to the amount and scope of a deposit-guarantee scheme could affect the stability of the banking system or depositor confidence. Therefore, a reference to Deposit Guarantee Schemes in advertisements should be limited to a short factual reference. Systems which protect the credit institution itself should inform depositors about their **legal entitlement arising from the coverage level provided for in this Directive and about how it operates**, without promising unlimited deposit protection.

## Amendment 26

### Proposal for a directive

#### Recital 32

*Text proposed by the Commission*

(32) While respecting the supervision of Deposit Guarantee Schemes by Member States, the *European Banking Authority* 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 Deposit Guarantee Schemes 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.*** In this respect, the *European Banking Authority* should ***also*** collect information on Deposit Guarantee Schemes, in particular on the amount of deposits covered by them, confirmed by competent authorities. ***It should inform the other Deposit Guarantee Schemes about their obligation to lend.***

*Amendment*

(32) While respecting the supervision of Deposit Guarantee Schemes by Member States, the *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 and minimising the risk to taxpayers.*** In this respect, *EBA* should collect information *concerning* Deposit Guarantee Schemes, in particular on the amount of deposits covered by them, confirmed by competent authorities.

## Amendment 27

### Proposal for a directive

#### Recital 33

*Text proposed by the Commission*

(34) ***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***

*Amendment*

***deleted***

*contributions.*

## **Amendment 28**

### **Proposal for a directive Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***(34a) As already mentioned in Regulation (EU) No 1093/2010, 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. Such a mechanism for banking crisis resolution should be set up without prejudice to the protection of depositors through a Deposit Guarantee Scheme.***

## **Amendment 29**

### **Proposal for a directive Recital 35**

*Text proposed by the Commission*

*Amendment*

**(36)** The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union ***in respect of Article 5(5).***

**(36)** The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union ***in 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 European Union on the basis of changes in the consumer price index.***

## Amendment 30

### Proposal for a directive Recital 35 a (new)

*Text proposed by the Commission*

*Amendment*

***(35a) The Commission should also be empowered to adopt regulatory technical standards relating to the definitions and methods of the standard approach to calculating risk-adjusted contributions by credit institutions to Deposit Guarantee Schemes described in this Directive in accordance with the procedures provided for in 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.***

## Amendment 31

### Proposal for a directive Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. This Directive lays down rules concerning the functioning of Deposit Guarantee Schemes.

1. This Directive lays down rules concerning the functioning of ***the European scheme for national*** Deposit Guarantee Schemes ***intended to provide depositors in the European Union with a common safety net offering a high level of protection.***

## Amendment 32

### Proposal for a directive Article 1 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. This Directive shall apply to all Deposit Guarantee Schemes ***on a statutory or***

2. This Directive shall apply to all Deposit Guarantee Schemes ***recognised pursuant***

*contractual basis and to institutional protection schemes **recognized as Deposit Guarantee Schemes.***

*to Article 3(1) and to their affiliated credit institutions. Deposit Guarantee Schemes may take the form of statutory, contractual or institutional protection schemes **as referred to in Article 80(8) of Directive 2006/48/EC.***

### **Amendment 33**

#### **Proposal for a directive Article 1 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Institutional protection schemes defined in Article 80(8) of Directive 2006/48/EC 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.*

*deleted*

### **Amendment 34**

#### **Proposal for a directive Article 1 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

*4. Institutional protection schemes not recognized under **paragraph 3 and not guaranteeing deposits** shall **not** be subject to this Directive, except to the second subparagraph of Article 14(5) and the last subparagraph of Annex III.*

*4. **In respect of this Directive**, protection schemes not recognized under **Article 3(1)** shall only be subject to Article 11(1), the second subparagraph of Article 14(5), **Article 14(6a)** and the last subparagraph of Annex III.*

### **Amendment 35**

#### **Proposal for a directive Article 1 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. If a European fund for banking crisis resolution is set up, the Commission, supported by EBA, shall make sure that***

*the level of protection for depositors remains high.*

## **Amendment 36**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point a – subparagraph 1**

*Text proposed by the Commission*

(a) 'deposit' means any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable.

*Amendment*

(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.*

## **Amendment 37**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point a – subparagraph 3 – indent 1**

*Text proposed by the Commission*

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

*Amendment*

*it is made out to the holder and not to a named person;*

## **Amendment 38**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point c a (new)**

**(ca) 'depositor' means the holder or, in the case of a joint account, each of the holders, of the deposit;**

## **Amendment 39**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point e – point i**

*Text proposed by the Commission*

*Amendment*

(i) the relevant competent authorities have determined that ***in their view*** the credit institution concerned ***appears to be*** unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and ***to*** have no current prospect of being able to do so.

The competent authorities shall make that determination as soon as possible and in any event no later than five working days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable; or

(i) the relevant competent authorities have determined that, ***according to information currently available to them***, the credit institution concerned ***is*** unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and have no current prospect of being able to do so.

The competent authorities shall make that determination as soon as possible and in any event no later than five working days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable; or

#### *Justification*

*This amendment aims at clarifying too legally vague provisions, which would not offer enough legal certainty. The decision by the relevant competent authorities that a financial institution is not solvent should be supported by the evidence based on their current information, not on their views (as proposed by the Commission) in order to prevent any possible future disputes about the unfounded decisions.*

## **Amendment 40**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

**(fa) 'measures in conjunction with the orderly winding-up of credit institutions'**

*means measures to prevent a call on a Deposit Guarantee Scheme. Such measures may include, inter alia:*

*(i) assistance in acquiring a credit institution which has become unbalanced;*

*(ii) 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 Deposit Guarantee Scheme.*

#### **Amendment 41**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point h**

*Text proposed by the Commission*

(h) 'target level' means 1.5% of *eligible* deposits *for the coverage of* which a Deposit Guarantee Scheme is responsible;

*Amendment*

(h) 'target level' means 1.5 % of *covered* deposits which a Deposit Guarantee Scheme is responsible for covering;

#### **Amendment 42**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point i**

*Text proposed by the Commission*

(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);

*Amendment*

(i) 'available financial means' means cash, deposits and low-risk assets, which can be liquidated within a time limit not exceeding the limit set by Article 7(1) *and up to 10 % of pledged assets*;

#### **Amendment 43**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point i a (new)**

*(ia) 'pledged assets' means payment commitments which are duly backed by high quality collateral and which are subject to the following conditions:*

*- 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 Deposit Guarantee Scheme, which has the irrevocable right to claim these payments on demand;*

*- a credit institution is entitled to the yield on the assets pledged by that credit institution as collateral;*

*- the collateral is subject to regular mark-to-market analysis, and credit institutions will ensure that the mark-to-market valuation of collateral is at least equal to that credit institution's commitment to the scheme; and*

*- "valuation haircuts" are applied in the valuation of underlying assets and the Deposit Guarantee Scheme requires the "haircut-adjusted" market value of the underlying assets to be maintained over time;*

#### Amendment 44

##### Proposal for a directive

##### Article 3 – paragraph 1 – subparagraph 2

This shall not preclude the merger of schemes of different Member States.

This shall not preclude ***the establishment of cross-border Deposit Guarantee Schemes by Member States or*** the merger of schemes of different Member States ***by them. In this case approval shall be obtained from the competent authorities with the participation of EBA.***

## Amendment 45

### Proposal for a directive

#### Article 3 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***When recognising and approving Deposit Guarantee Schemes, particular attention shall be devoted to whether they are sufficiently stable and whether new and existing Deposit Guarantee Schemes are of balanced composition in relation to the affiliated credit institutions.***

## Amendment 46

### Proposal for a directive

#### Article 3 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. If a credit institution does not comply with the obligations incumbent on it as a member of a Deposit Guarantee Scheme, the competent authorities which issued its authorization shall be notified and, in collaboration with the ***guarantee scheme***, shall take all appropriate measures including the imposition of *sanctions* to ensure that the credit institution complies with its obligations.

2. If a credit institution does not comply with the obligations incumbent on it as a member of a Deposit Guarantee Scheme, the competent authorities which issued its authorization shall be notified ***immediately*** and, in collaboration with the ***Deposit Guarantee Scheme***, shall ***promptly*** take all appropriate measures including the imposition of *penalties* to ensure that the credit institution complies with its obligations.

### *Justification*

*In the case of financial problems of credit institutions it is necessary that the competent authorities are informed with no time delay and that subsequently the competent authorities together with the Deposit Guarantee Scheme act quickly in order to protect consumers.*

## Amendment 47

### Proposal for a directive

#### Article 3 – paragraph 5

*Text proposed by the Commission*

5. All Deposit Guarantee Schemes referred to in Article 1 shall be supervised by the competent authorities on an ongoing basis as to their compliance with this Directive.

*Amendment*

5. All Deposit Guarantee Schemes referred to in Article 1 shall be supervised ***in accordance with the existing rules of the European System of Financial Supervisors (ESFS)*** by the competent authorities on an ongoing basis as to their compliance with this Directive.

**Amendment 48**

**Proposal for a directive**

**Article 3 – paragraph 5 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***In the case of cross-border Deposit Guarantee Schemes, supervision shall be exercised by EBA, with the participation of a body composed of representatives of the competent authorities of the countries where the affiliated credit institutions are based.***

**Amendment 49**

**Proposal for a directive**

**Article 3 – paragraph 6 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that Deposit Guarantee Schemes perform tests of their systems and that they are informed in the event that the competent authorities detect problems in a credit institution that are likely to give rise to the intervention of Deposit Guarantee Schemes.

Member States shall ensure ***that the alternative approaches adopted by Deposit Guarantee Schemes under Article 11(3a) comply with the provisions of that Article and with the guidelines adopted by EBA pursuant to Article 11(5),*** that Deposit Guarantee Schemes 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 Deposit Guarantee Schemes. ***EBA shall coordinate the***

*actions of the Member States.*

## **Amendment 50**

### **Proposal for a directive**

#### **Article 3 – paragraph 6 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 51**

### **Proposal for a directive**

#### **Article 3 – paragraph 6 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***EBA shall forward to the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council<sup>1</sup> (ESRB), on its own initiative or at the request of the ESRB, the information concerning Deposit Guarantee Schemes which is needed for systemic risk analysis.***

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<sup>1</sup>OJ L 331, 15.12.2010, p. 1

## **Amendment 52**

### **Proposal for a directive**

#### **Article 3 – paragraph 6 – subparagraph 3**

*Text proposed by the Commission*

The European Banking Authority shall ***periodically*** conduct peer reviews pursuant to ***Article 15 of the [EBA regulation]*** in this regard. Deposit Guarantee Schemes shall be bound to professional secrecy

*Amendment*

EBA shall, ***at least every five years***, conduct peer reviews in this regard pursuant to ***Article 30 of Regulation (EU) No 1093/2010*** . ***Such peer reviews shall include inter-alia corporate governance***

referred to in Article 56 of that Regulation when exchanging information with the European Banking Authority.

*practices under paragraph 7a.* Deposit Guarantee Schemes shall be bound to professional secrecy referred to in Article 70 of Regulation (EU) No 1093/2010 when exchanging information with EBA.

*Additionally EBA shall have the power to examine on the basis of updated figures the stress resistance of Deposit Guarantee Schemes 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 this context the stress resistance test shall be based on the following scenarios:*

- (a) a low-impact scenario;*
- (b) a medium-impact scenario;*
- (c) a high-impact scenario.*

## Amendment 53

### Proposal for a directive Article 3 – paragraph 7

*Text proposed by the Commission*

7. Member States shall ensure that Deposit Guarantee Schemes, at any time and at their request, receive from their members all information necessary to prepare a repayment of depositors, including markings under Article 4(2). Information necessary to perform stress tests shall be submitted to Deposit Guarantee Schemes on an ongoing basis. Such information shall be rendered anonymous. The information obtained may only be used for the performance of stress tests or the preparation of repayments and shall be kept *no longer than is necessary for those purposes*.

*Amendment*

7. Member States shall ensure that Deposit Guarantee Schemes, at any time and at their request, receive from their members all information necessary to prepare a repayment of depositors, including markings under Article 4(2). Information necessary to perform stress tests shall be submitted to Deposit Guarantee Schemes 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 Deposit Guarantee Schemes resilience* or for the preparation of repayments and shall be kept *confidential*

## Amendment 54

**Proposal for a directive**  
**Article 3 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***7a. Member States shall ensure that their Deposit Guarantee Schemes have sound corporate governance practices in place. In particular:***

***(a) boards of Deposit Guarantee Schemes shall include at least one non-executive member and shall have open and transparent board appointment processes;***

***(b) Deposit Guarantee Schemes shall produce an annual report on their activities.***

**Amendment 55**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering as defined in ***Article 1 (C) of Council Directive 91/308/EEC***

(c) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering as defined in ***Article 1(2) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>1</sup>***;

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<sup>1</sup> *OJ L 309, 25.11.05, p. 15.*

**Amendment 56**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(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;*

*Justification*

*Deposits which act as collateral and are legally strongly connected to a loan or other obligation of the depositor should be exempted. These deposits act not as savings of the depositors but as collateral for obligations and decrease after netting the liabilities of the depositor.*

**Amendment 57**

**Proposal for a directive**

**Article 4 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) deposits the holder of which has **never** been identified pursuant to Article 3(1) of Directive 91/308/EEC, **when they have become unavailable**,

*Amendment*

(f) deposits the holder of which has been identified pursuant to Article 3 (1) of Directive 91/308/EEC **at the time of the activation, during and following the repayment of deposit guarantees;**

*Justification*

*The purpose of this amendment is the clarification that deposit guarantees which have been mistakenly paid out as a result of the insolvency of a credit institution to a holder which has not yet been identified pursuant to Article 3 (1) of Directive 91/308/EEC at the time of the pay-out may be withdrawn.*

**Amendment 58**

**Proposal for a directive**

**Article 4 – paragraph 1 – point i**

*Text proposed by the Commission*

(i) deposits by pension and retirement

*Amendment*

(i) deposits by pension and retirement

funds,

funds, *except those held in personal pension schemes or in occupational pension schemes of an employer that is not a large company;*

#### **Amendment 59**

##### **Proposal for a directive**

##### **Article 4 – paragraph 1 – point j**

*Text proposed by the Commission*

(j) deposits by authorities,

*Amendment*

(j) deposits by *the State and by central, regional and local* authorities;

#### **Amendment 60**

##### **Proposal for a directive**

##### **Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

*(i) they do not routinely employ a professional treasurer; or*

*(ii) the loss of the deposits would seriously undermine the continued provision of local government services.*

#### **Amendment 61**

##### **Proposal for a directive**

##### **Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*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 .*

## **Amendment 62**

### **Proposal for a directive**

#### **Article 5 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Member States shall ensure that ***Deposit Guarantee Schemes do not deviate from the coverage level laid down in*** paragraph 1. ***However, Member States may decide that the following deposits are covered provided that the costs for such repayments are not subject to Article 9, 10 and 11:***

*Amendment*

2. Member States shall ensure that ***depositors have a legal entitlement to the coverage level laid down in*** paragraph 1.

## **Amendment 63**

### **Proposal for a directive**

#### **Article 5 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) deposits resulting from real estate transactions for private residential purposes for up to 12 months after the amount has been credited;*

*deleted*

#### **Amendment 64**

##### **Proposal for a directive**

##### **Article 5 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

*(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.*

*deleted*

#### **Amendment 65**

##### **Proposal for a directive**

##### **Article 5 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. **Paragraph 2** shall not prevent Member States from maintaining or introducing schemes protecting old-age provision products and pensions, provided that such schemes do not only cover deposits but offer comprehensive coverage for all products and situations relevant in this regard.

3. **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 comprehensive coverage for all products and situations relevant in this regard.

#### **Amendment 66**

##### **Proposal for a directive**

##### **Article 5 – paragraph 3 a (new)**

**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 Deposit Guarantee Scheme 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-dependent contributions of the credit institutions shall be adjusted accordingly.**

#### **Amendment 67**

#### **Proposal for a directive Article 5 – paragraph 4**

*Text proposed by the Commission*

4. Deposits shall be paid out in the currency in which the account was maintained. ***If the amounts expressed in euro referred to in paragraph 1 are converted into other currencies, the amounts effectively paid to depositors shall be equivalent to those set out in this Directive.***

*Amendment*

4. Deposits shall be paid out in the currency ***of the Member State*** in which the account was maintained ***or in euro. Where deposits are denominated in another currency, the depositors shall be entitled to decide whether the sums are to be***

***(i) paid out in the currency in which the account was maintained by a specified date that has been agreed with the competent authorities and which is later than the deadline laid down in Article 7(1), or***

***(ii) paid out in the currency of the Member State in which the account was maintained, in which event, the exchange rate used shall be that for the type of***

*currency in which the deposit was maintained up to the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or when the judicial authority makes the ruling referred to in Article 2(1)(e)(ii).*

## Amendment 68

### Proposal for a directive Article 5 – paragraph 6

#### *Text proposed by the Commission*

6. The amount referred to in paragraph 1 shall be reviewed periodically by the Commission at least once every five years. If appropriate, the Commission shall submit to the European Parliament and to the Council a proposal for a Directive to adjust the amount referred to in paragraph 1, taking account in particular of developments in the banking sector and the economic and monetary situation in the Union . The first review shall not take place before 31 December 2015 unless unforeseen events necessitate an earlier review. .

#### *Amendment*

6. The amount referred to in paragraph 1 shall be reviewed periodically by the Commission, ***supported by 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 review shall not take place before 31 December 2015 unless unforeseen events necessitate an earlier review.

## Amendment 69

### Proposal for a directive Article 5 – paragraph 7

#### *Text proposed by the Commission*

7. The Commission ***may adjust*** the ***amounts*** referred to in paragraph 1 in accordance with inflation in the European Union on the basis of changes in the harmonised index of consumer prices published by the Commission.

#### *Amendment*

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

published by the Commission *since the last adjustment*.

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

## Amendment 70

### Proposal for a directive Article 6 – paragraph 4

*Text proposed by the Commission*

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.

*Amendment*

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 fall due on the reference date*.

## Amendment 71

### Proposal for a directive Article 6 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

*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 should not be aggregated where the law of the Member State permits 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 laid down in Article 5(1) shall apply to them. If this 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 Deposit Guarantee Scheme calculated pursuant to Article 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 cross border.*

*Credit institutions from Member States that apply this provision cannot offer such coverage in those of their branches operated in Member States that do not allow credit institutions to operate under different brands.*

## **Amendment 72**

### **Proposal for a directive**

#### **Article 7 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Deposit Guarantee Schemes shall be in a position to repay unavailable deposits within **7 days** of the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

*Amendment*

Deposit Guarantee Schemes shall be in a position to repay unavailable deposits within **five working days** of the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

## **Amendment 73**

### **Proposal for a directive**

#### **Article 7 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Member States may decide that until 31 December 2016 a time limit for repayment of 20 working days is to apply, provided that, after a thorough examination, the competent authorities establish that the*

*Deposit Guarantee Schemes are not yet in a position to guarantee a time limit of five working days for repayment.*

#### **Amendment 74**

##### **Proposal for a directive**

##### **Article 7 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. If Member States have adopted a longer time limit for repayment than 20 working days as applicable until 31 December 2016, depositors shall upon request receive a one-off payout of up to EUR 5 000 from the Deposit Guarantee Scheme within five working days on their deposit eligible for repayment.*

#### **Amendment 75**

##### **Proposal for a directive**

##### **Article 7 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*1b. Repayment or payout as referred to in paragraph 1 may be deferred in the following cases:*

*(i) it is uncertain whether a person is legally entitled to receive repayment or the deposit is subject to legal dispute;*

*(ii) the deposit is subject to economic penalties imposed by national governments or international bodies;*

*(iii) there has been no transaction relating to the deposit within the last 24 months (the account is dormant);*

*(iv) the amount to be repaid is deemed to be part of a temporary high balance as defined in Article 5(1a);*

*(v) the amount to be repaid is to be paid out by the Deposit Guarantee Scheme of*

*the host Member State in accordance with Article 12(2).*

## Amendment 76

### Proposal for a directive Article 7 – paragraph 3

*Text proposed by the Commission*

3. Any correspondence between the Deposit Guarantee Scheme and the depositor shall be drawn up in the official language or languages of the Member State in which the guaranteed deposit is located. If a 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.

*Amendment*

3. Any correspondence between the Deposit Guarantee Scheme 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 this, 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.

## Amendment 77

### Proposal for a directive Article 7 – paragraph 4

*Text proposed by the Commission*

4. Notwithstanding the time limit laid down in paragraph 1, where a depositor or any person entitled to or interested in sums held in an account has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of *Directive 91/308/EEC*, the Deposit Guarantee Scheme may suspend any payment pending the judgment of the court.

*Amendment*

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(2) of *Directive 2005/60/EC*, the Deposit Guarantee Scheme may suspend *temporarily* any payment *in which the depositor is concerned* pending the judgment of the court.

## Amendment 78

**Proposal for a directive**  
**Article 7 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. There shall be no repayment 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 repayment..***

**Amendment 79**

**Proposal for a directive**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that the depositor's rights to compensation may be the subject of an action ***by the depositor*** against the Deposit Guarantee Scheme.

1. Member States shall ensure that the depositor's rights to compensation may be the subject of an action against the Deposit Guarantee Scheme.

**Amendment 80**

**Proposal for a directive**  
**Article 8 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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 shall have the right of subrogation to the rights of depositors in liquidation proceedings for an amount equal to their payments.

2. Without prejudice to any other rights which they may have under national law , 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 have priority immediately after the right of the depositor referred to in paragraph 1 and before all other rights against the liquidator.***

## Justification

*The proposal introduces the principle that, in cases when a DGS lends to another scheme, the lending scheme shall have the first rank after the right of depositors in the liquidation proceedings. In order to treat all DGS in the same manner (regardless if they have lent to another Scheme) this principle shall be introduced as a general principle in all cases in which a bank fails and in order to ensure equal treatment among all DGS but only within a national framework.*

### Amendment 81

#### Proposal for a directive

##### Article 9 – paragraph 1 – subparagraph 2

###### *Text proposed by the Commission*

Deposit Guarantee Schemes shall raise the available financial means by regular contributions from their members **on 30 June and 30 December of** each year. This shall not prevent additional financing from other sources. One-off entry fees may not be requested.

###### *Amendment*

Deposit Guarantee Schemes shall raise the available financial means by regular contributions from their members **at least once** each year. This shall not prevent additional financing from other sources. One-off entry fees may not be requested.

### Amendment 82

#### Proposal for a directive

##### Article 9 – paragraph 1 – subparagraph 3

###### *Text proposed by the Commission*

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**. Where the available financial means amount to less than two thirds of the target level, the regular contribution shall not be less than 0.25% of **eligible** deposits.

###### *Amendment*

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 until the target level is reached. **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 Deposit Guarantee Scheme 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 **covered** deposits .

## Amendment 83

### Proposal for a directive Article 9 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

**2. The available financial means of Deposit Guarantee Schemes 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 these deposits or investments pursuant to Annex VI, Part I of Directive 2006/48.** Companies which are included in the same group for the purposes of consolidated accounts, as defined in Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for **this** purpose.

## Amendment 84

### Proposal for a directive Article 9 – paragraph 3

*Text proposed by the Commission*

3. If the available financial means of a Deposit Guarantee Scheme are insufficient to repay depositors when deposits become unavailable, its members shall pay extraordinary contributions not exceeding 0.5% of their **eligible** deposits per calendar year. That payment shall be executed one day before the time limit referred to in Article 7(1).

*Amendment*

3. If the available financial means of a Deposit Guarantee Scheme are insufficient to repay depositors when deposits become unavailable, its members shall pay extraordinary contributions not exceeding 0.5% of their **covered** deposits per calendar year. That payment shall be executed one day before the time limit referred to in Article 7(1).

## Amendment 85

### Proposal for a directive

#### Article 9 – paragraph 4 – subparagraph 1

##### *Text proposed by the Commission*

The cumulated amount of contributions referred to paragraphs 1 and 2 may not exceed 1% of **eligible** deposits per calendar year.

##### *Amendment*

The cumulated amount of contributions referred to paragraphs 1 and 3 may not exceed 1% of **covered** deposits per calendar year.

## Amendment 86

### Proposal for a directive

#### Article 9 – paragraph 4 – subparagraph 2

##### *Text proposed by the Commission*

The competent authorities may entirely or partially 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 *jeopardize* the settlement of claims of other creditors against it. Such exemption shall not be granted for a longer period than 6 months but may be renewed on request of the credit institution.

##### *Amendment*

The competent authorities may **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 longer period than 6 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 Deposit Guarantee Scheme 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.***

## **Amendment 87**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*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 Deposit Guarantee Scheme do not exceed the amount of covered deposits at the credit institution concerned. In this case, the Deposit Guarantee Scheme 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.*

*deleted*

## **Amendment 88**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

*Member States may allow Deposit Guarantee Schemes 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:*

*deleted*

## **Amendment 89**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 3 – point a**

*Text proposed by the Commission*

*Amendment*

*a) a scheme's financial means exceed 1% of eligible deposits after such measure;*

*deleted*

## **Amendment 90**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 3 – point b**

*Text proposed by the Commission*

*Amendment*

*b) the Deposit Guarantee Scheme, 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.*

*deleted*

## **Amendment 91**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 4**

*Text proposed by the Commission*

*Amendment*

*On a case by case basis and subject to authorisation by the competent authorities following a reasoned request by the Deposit Guarantee Scheme concerned, the percentage referred to in (a) may be set between 0,75 and 1 %.*

*deleted*

## **Amendment 92**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*(5a) Deposit Guarantee Schemes 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 Deposit Guarantee Scheme has appropriate systems for monitoring and classifying risks and corresponding opportunities to influence affiliated credit institutions;*

*(b) the Deposit Guarantee Scheme 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 Deposit Guarantee Scheme 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 Deposit Guarantee Scheme;*

*(d) the affiliated credit institutions immediately provide the Deposit Guarantee Scheme 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 Deposit Guarantee Scheme amount to less than two thirds of the target level;*

*(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 supervisory authority.*

## **Amendment 93**

### **Proposal for a directive Article 9 – paragraph 5 b (new)**

*Text proposed by the Commission*

*Amendment*

*(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 Deposit Guarantee Scheme do not exceed the amount of covered deposits at the credit institution concerned. In this case, the Deposit Guarantee Scheme shall, within one month from the transfer of deposits, submit a report to EBA proving that the limit referred to above was not exceeded.*

## Amendment 94

### Proposal for a directive

#### Article 9 – paragraph 7 – subparagraph 1

##### *Text proposed by the Commission*

Member States shall **monthly** inform the *European Banking Authority* of the amount of eligible deposits and covered deposits in their *Member State* and of the amount of the available financial means of their Deposit Guarantee Schemes. 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** to the *European Banking Authority*.

##### *Amendment*

Member States shall inform *EBA* **quarterly** of the amount of eligible deposits and covered deposits in their *territory* and of the amount of the available financial means of their Deposit Guarantee Schemes. This information shall be confirmed by the competent authorities and shall, accompanied by this confirmation, transmitted within **one month** to *EBA*.

## Amendment 95

### Proposal for a directive

#### Article 9 – paragraph 7 – subparagraph 2

##### *Text proposed by the Commission*

Member States shall ensure that the information referred to in the first subparagraph is published on the web-site of the Deposit Guarantee Schemes at least on an annual basis.

##### *Amendment*

Member States shall ensure that the information referred to in the first subparagraph is published on the website of the Deposit Guarantee Schemes **and of EBA** at least on an annual basis.

## Amendment 96

### Proposal for a directive

#### Article 9 – paragraph 7 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

**7a. Deposit Guarantee Schemes shall meet specific governance rules and shall form a special committee which is composed of high representatives of the Deposit Guarantee Scheme, its members and of the relevant authorities who work**

*out and decide on transparent investment guidelines for the available financial means. These guidelines shall take into account factors such as matching duration, quality, diversification and the correlation of the investments.*

#### **Amendment 97**

##### **Proposal for a directive**

##### **Article 10 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

(1) *A scheme shall have the right to borrow from all other Deposit Guarantee Schemes referred to in Article 1(2) within the Union provided that all of the following conditions are met:*

*Amendment*

(1) *There is no obligation to lend among Deposit Guarantee Schemes. Deposit Guarantee Schemes shall, however, have the option to lend to other schemes within the Union on a voluntary basis, provided that all of the following conditions are met:*

#### **Amendment 98**

##### **Proposal for a directive**

##### **Article 10 – paragraph 1 – subparagraph 1 – point f**

*Text proposed by the Commission*

f) the borrowing scheme shall *state* the amount of money requested.

*Amendment*

f) the borrowing scheme shall *inform the competent authorities of* the amount of money requested;

#### **Amendment 99**

##### **Proposal for a directive**

##### **Article 10 – paragraph 1 – subparagraph 1 – point g**

*Text proposed by the Commission*

(g) the total amount lent may not exceed 0.5% of *eligible* deposits of the borrowing scheme.

*Amendment*

(g) the total amount lent may not exceed 0.5 % of *covered* deposits of the borrowing scheme;

## **Amendment 100**

### **Proposal for a directive**

#### **Article 10 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

*[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)]*

## **Amendment 101**

### **Proposal for a directive**

#### **Article 10 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*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 Deposit Guarantee Schemes established in the same Member State.* **deleted**

## **Amendment 102**

### **Proposal for a directive**

#### **Article 10 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

*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* **deleted**

*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).*

#### Amendment 103

##### Proposal for a directive Article 10 – paragraph 2 – point c

*Text proposed by the Commission*

c) the interest rate shall be equivalent to the marginal lending facility rate of the European Central Bank during the credit period.

*Amendment*

(c) the interest rate *set* shall be ***at least*** equivalent to the marginal lending facility rate of the European Central Bank during the credit period;

#### Amendment 104

##### Proposal for a directive Article 10 – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) the borrowing body shall inform EBA of the initial interest rate as well as the duration of the loan.***

#### Amendment 105

##### Proposal for a directive Article 10 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

*The European Banking Authority shall confirm that the requirements referred to in paragraph 1 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.*

*EBA shall confirm that the requirements referred to in **paragraphs 1 and 2** have been met.*

## Amendment 106

### Proposal for a directive

#### Article 10 – paragraph 3 – subparagraph 2

##### *Text proposed by the Commission*

*The European Banking Authority shall transmit its confirmation together with the information referred to in paragraph 1(h) to **the** lending Deposit Guarantee Schemes. They shall receive this confirmation and information within 2 working days. **The lending Deposit Guarantee Schemes shall, without delay but at the latest within further 2 working days after reception effect payment of the loan to the borrowing scheme.***

##### *Amendment*

*EBA shall transmit its confirmation together with the information referred to in paragraph 1(h) to lending Deposit Guarantee Schemes. They shall receive this confirmation and information within **two** working days.*

## Amendment 107

### Proposal for a directive

#### Article 11 – paragraph 1

##### *Text proposed by the Commission*

(1) The contributions to Deposit Guarantee Schemes referred to in Article 9 shall be determined for each member ***on the basis*** of the degree of risk incurred by it. Credit institutions shall not pay less than 75% or more than 200% of the amount that a bank with an average risk would have to contribute. Member States may decide that members of *Schemes* referred to in Article 1(3) ***and*** (4) pay lower contributions to Deposit Guarantee Schemes but not less than 37.5% of the amount that a bank with an average risk would have to contribute.

##### *Amendment*

(1) The contributions to Deposit Guarantee Schemes referred to in Article 9 shall be determined for each member ***in proportion to*** the degree of risk incurred by it. Credit institutions shall not pay less than 75 % or more than 250 % of the amount that a bank with an average risk would have to contribute. Member States may decide that members of *protection schemes* referred to in Article 1(4) pay lower contributions to Deposit Guarantee Schemes 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 special laws.***

## Amendment 108

### Proposal for a directive Article 11 – paragraph 2

*Text proposed by the Commission*

(2) ***The determination*** of the degree of risk incurred and the calculation of contributions shall be based on the elements referred to in Annex I and II.

*Amendment*

(2) ***Annexes I and II describe the standardised approach for determining*** of the degree of risk incurred and the calculation of contributions ***by members to the Deposit Guarantee Scheme.***

## Amendment 109

### Proposal for a directive Article 11 – paragraph 3

*Text proposed by the Commission*

(3) ***Paragraph 2 shall not apply to Deposit Guarantee Schemes referred to in Article 1(2).***

*Amendment*

***deleted***

## Amendment 110

### Proposal for a directive Article 11 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) By way of derogation from the standardised approach in paragraphs 1 and 2, Deposit Guarantee Schemes may use their own risk-based methods as alternative approaches to determine the degree of risk incurred by members and calculate contributions by member bodies to the Deposit Guarantee Scheme. Calculation of the contributions shall be proportional to the commercial risk of the institution in question and shall take due account of the risk profiles of the various business models. The alternative approaches may also calculate the contribution base from the assets side of***

*the balance sheet and consider capital adequacy, the quality of the assets and liquidity at least as risk indicators. The alternative approaches shall be approved by the respective 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 whenever the scheme is changed and at periodic intervals which shall not exceed five years.*

## **Amendment 111**

### **Proposal for a directive Article 11 – paragraph 4**

#### *Text proposed by the Commission*

(4) In order to ensure *specify* the *elements* of definitions and methods *under* Annex II Part A, *powers are delegated to the Commission. These* draft regulatory standards *shall be adopted in accordance with Articles 7 to 7d of [EBA Regulation]. The European Banking Authority may develop* draft regulatory standards for submission to the Commission.

#### *Amendment*

(4) In order to ensure *consistent harmonisation of* the definitions and methods *described in* Annex II Part A *for the standardised approach set out in paragraphs 1 and 2 of this Article, EBA shall develop* draft regulatory technical standards. *If necessary, EBA may suggest adjustments to the definitions and methods to ensure full comparability and avoid distortionary elements. EBA shall submit its* draft regulatory technical standards to the Commission for endorsement *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.*

## **Amendment 112**

### **Proposal for a directive Article 11 – paragraph 1 a (new)**

***1a. Member States may provide that all credit institutions affiliated to the same central body under Article 3(1) of Directive 2006/48/EC are subject as a whole to the risk weighting determined for the central body and its affiliated institutions on a consolidated basis. Member States may decide that credit institutions shall pay a minimum contribution, irrespective of the amount of their covered deposits.***

### **Amendment 113**

#### **Proposal for a directive Article 11 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

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

### **Amendment 114**

#### **Proposal for a directive Article 11 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

(5) By 31 December 2012, the European Banking Authority shall issue guidelines on the application of Annex II Part B pursuant to ***[Article 8 of the EBA Regulation]***.

(5) By 31 December 2012, the European Banking Authority shall issue guidelines on the application of Annex II Part B ***and for the separate risk-based methods developed by the Deposit Guarantee Schemes under paragraph 3a*** pursuant to ***Article 16 of Regulation (EU) No 1093/2010.***

## Amendment 115

### Proposal for a directive

#### Article 12 – paragraph 2 – subparagraph 1

##### *Text proposed by the Commission*

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 *home* scheme shall **reimburse** the *host* scheme.

##### *Amendment*

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 **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 as laid down in paragraph 1.**

## Amendment 116

### Proposal for a directive

#### Article 12 – paragraph 3

##### *Text proposed by the Commission*

(3) If a credit institution ceases to be member of a scheme and joins another scheme, the contributions paid during the **6 months** preceding the withdrawal of membership shall be reimbursed or transferred to the other scheme. This shall not apply if a credit institution has been excluded from a scheme pursuant to Article 3(3).

##### *Amendment*

(3) If a credit institution ceases to be **a** member of a scheme and joins another scheme, the contributions paid during the **final year** preceding the withdrawal of membership shall be reimbursed or transferred **pro-rata** to the other scheme, **provided that these are not regular contributions under Article 9(1), subparagraph 3, sentence 4 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).

## Amendment 117

### Proposal for a directive

#### Article 12 – paragraph 4 – subparagraph 1 a (new)

***Credit institutions that wish to voluntarily transfer from one Deposit Guarantee Scheme to another, in accordance with the provisions of this Directive, must give at least six months' notice of this intention. During this period, the credit institution is still under the obligation to contribute to its original Deposit Guarantee Scheme both in terms of ex-ante and ex-post financing.***

*Justification*

*In the case of the expectation or threat of one credit institution becoming insolvent in the near future, other credit institutions, which are members of the same DGS as the failing institution, face a very likely increase in their contributions to the scheme (both in the form of ex-post and increased regular contributions). There is thus a strong financial incentive for these institutions to transfer to another DGS in the same Member State, where no additional contributions will be imposed, as no other member of this DGS is expected to become insolvent. The 6 months notice period is thus considered as an appropriate period of time to ensure that the reason for a transfer of an institution is not the avoidance of ex-post payments and increased regular contributions in the future.*

**Amendment 118**

**Proposal for a directive**

**Article 13 – paragraph 1 a (new)**

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

***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.***

**Amendment 119**

**Proposal for a directive**  
**Article 14 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that credit institutions make available to actual and intending depositors ***the*** information ***necessary*** for the identification of the Deposit Guarantee Scheme of which the institution and its branches are members within the Union . . When a deposit is not guaranteed by a Deposit Guarantee Scheme in accordance with Article 4, the credit institution shall inform the depositor accordingly.

*Amendment*

1. Member States shall ensure that credit institutions make available to actual and intending depositors the necessary information for the identification of the Deposit Guarantee Scheme of which the institution and its branches are members within the Union. When a deposit is not guaranteed by a Deposit Guarantee Scheme in accordance with Article 4(1)(a) to (g) ***and (i) to (k) and Article 4(2),*** the credit institution shall inform the depositor accordingly, ***whereupon the depositor shall be offered the possibility to withdraw his or her deposits without incurring any penalty fees, and with the all attained interests and benefits.***

**Amendment 120**

**Proposal for a directive**  
**Article 14 – paragraph 3**

*Text proposed by the Commission*

3. Information to actual depositors shall be provided on their statements of account. This information shall consist of a confirmation that the deposits are eligible pursuant to Article 2(1) and Article 4. Moreover, reference shall be made to the information sheet in Annex III and where it can be obtained. The ***web site*** of the responsible ***Deposit Guarantee Scheme*** ***may also*** be indicated.

*Amendment*

3. Information to actual depositors shall be provided on their statements of account. This information shall consist of a confirmation that the deposits are eligible pursuant to Article 2(1) and Article 4. Moreover, reference shall be made to the information sheet in Annex III and where it can be obtained. ***The information sheet in Annex III shall also be attached to one of their statements of account at least once a year.*** The ***website*** of the responsible ***Deposit Guarantee Scheme*** shall also be indicated. ***The website must contain the necessary information for depositors, in particular information concerning the provisions regarding the process and conditions of deposit guarantees as envisaged by this Directive.***

### *Justification*

*The provisions of this directive should be easily accessible, so as to ensure that depositors are aware of their rights and obligations arising from this directive.*

#### **Amendment 121**

##### **Proposal for a directive Article 14 – paragraph 4**

###### *Text proposed by the Commission*

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.

###### *Amendment*

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 grant that request, in other languages.***

### *Justification*

*This amendment aims to provide more flexible solution, which will be agreed by both parties, to provide necessary information also in other languages. Such an option will be welcomed in border regions, by expats and will increase cross-border competition in the Internal Market.*

#### **Amendment 122**

##### **Proposal for a directive Article 14 – paragraph 5 – subparagraph 1**

###### *Text proposed by the Commission*

Member States shall limit the use in advertising of the information referred to in ***paragraph 1*** to a factual reference to the scheme guaranteeing the product to which the advertisement refers.

###### *Amendment*

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

#### **Amendment 123**

##### **Proposal for a directive Article 14 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

Credit institutions ***that are member of a scheme referred to in Article 1(3) and 1(4)*** shall inform depositors adequately ***on*** the functioning of the ***scheme***. Such information may not contain a reference to unlimited coverage of deposits.

*Amendment*

Credit institutions shall inform depositors adequately, ***and in a way which is easy-to-understand, concerning*** the functioning of the ***Deposit Guarantee Scheme***. ***In the process, however, the maximum coverage level and other sources of information on the Deposit Guarantee Scheme shall also be addressed***. Such information may not contain a reference to unlimited coverage of deposits.

**Amendment 124**

**Proposal for a directive  
Article 14 – paragraph 6**

*Text proposed by the Commission*

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 would after the merger be aggregated in order to determine their coverage under the Deposit Guarantee Scheme.

*Amendment*

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 would after the merger be aggregated in order to determine their coverage under the Deposit Guarantee Scheme. ***Depositors will be given a three-month period following the notification of the merger in order to give them the opportunity to transfer their deposits exceeding the coverage guaranteed in Article 5(1) to another bank or bank brand without incurring any penalty fees, and with the right to all accrued interest and benefits. During this three-month period, if the amount set out in Article 5(1) is exceeded, the protection will be extended by multiplying the amount set out in Article 5(1) by the number of credit institutions which have merged.***

*Justification*

*Depositors should be not only properly informed, but they should also have the possibility without penalties to transfer the unguaranteed deposits to another credit institution, as they should not "suffer" from lower coverage due to the merger of their credit institution.*

## **Amendment 125**

### **Proposal for a directive**

#### **Article 14 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) If a credit institution withdraw or is excluded from a Deposit Guarantee Scheme, its depositors shall be informed within one month by the outgoing credit institution.***

## **Amendment 126**

### **Proposal for a directive**

#### **Article 14 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

(7) If a depositor uses internet banking, the information required to be disclosed by this Directive shall be communicated by ***electronic*** means in a way that brings it to the attention of the depositor.

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

## **Amendment 127**

### **Proposal for a directive**

#### **Article 14 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***7a. Member States have to ensure that appropriate procedures are in place to enable Deposit Guarantee Schemes to share information and communicate effectively with other Deposit Guarantee Schemes, their affiliated credit institutions and the relevant authorities within their own jurisdiction and with other agencies***

*on a cross-border basis, where appropriate.*

## Amendment 128

### Proposal for a directive Article 15 – paragraph 1

#### *Text proposed by the Commission*

In the list of authorized credit institutions which it is required to draw up pursuant to Article 14 of Directive 2006/48/EC the Commission shall indicate the status of each credit institution with regard to this Directive.

#### *Amendment*

In the list of authorized 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 way*** the status of each credit institution with regard to this Directive.

## Amendment 129 Proposal for a directive Article 16

#### *Text proposed by the Commission*

1. 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.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously

#### *Amendment*

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

***1a.*** The power to adopt 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 at 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.***

to the European Parliament and to the Council.

***3. 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.***

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***\* Date of entry into force of the basic legislative act or any other date set by the legislator.***

## **Amendment 130**

### **Proposal for a directive Article 17**

*Text proposed by the Commission*

*Amendment*

#### ***Article 17***

***deleted***

#### ***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.*

## **Amendment 131**

### **Proposal for a directive Article 18**

*Text proposed by the Commission*

*Amendment*

#### **Article 18**

*deleted*

#### ***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.***

## Amendment 132

### Proposal for a directive Article 19 – paragraph 1

*Text proposed by the Commission*

*Amendment*

*(1) Contributions to Deposit Guarantee Schemes referred to in Article 9 shall be distributed as evenly as possible until the target level referred to in the third subparagraph of Article 9(1) is reached.*

*deleted*

## Amendment 133

### Proposal for a directive Article 19 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*(1a) If a Deposit Guarantee Scheme 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. As of 1 January 2015, the covered deposits shall constitute the basis for calculating the target level for all Deposit Guarantee Schemes.*

## Amendment 134

### Proposal for a directive Article 19 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. By **31 December 2015** the Commission shall submit a report, and, if appropriate, a legislative proposal to the European Parliament and the Council ***with the aim to determine whether existing*** Deposit Guarantee Schemes ***should be replaced by a single scheme for the whole Union.***

4. By **2 January 2014, the date on which the review of Regulation (EU) No 1093/2010 is also due**, the Commission shall submit a report, and, if appropriate, a legislative proposal to the European Parliament and the Council ***setting out how*** Deposit Guarantee Schemes ***operating in the Union may, under the coordination of***

*the EBA, cooperate through a European Scheme to prevent risks arising from cross-border activities and protect deposits from such risks.*

## Amendment 135

### Proposal for a directive Article 19 – paragraph 5

#### *Text proposed by the Commission*

5. The Commission, supported by *the [European Banking Authority]*, shall submit to the European Parliament and to the Council by 31 December 2015 a report on the progress towards the implementation of this Directive. This report should cover notably *the possibility to determine* the target level on the basis of covered deposits, *without diminishing the* protection of depositors.

#### *Amendment*

5. The Commission, supported by *EBA*, shall submit to the European Parliament and to the Council by 31 December 2015 a report on the progress towards the implementation of this Directive. This report should cover notably:

- the target level on the basis of covered deposits, *with an assessment of the appropriateness of the percentage set or an assessment of other regulatory options; in this context the target level shall reflect the failure of deposits over the last 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 Deposit Guarantee Schemes 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;*

*All this work shall be carried out in such a way that protection of depositors is maintained.*

## **Amendment 136**

### **Proposal for a directive**

#### **Article 20 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with **Articles 1, 2(1)(a), (c), (d), (f), (h)-(m), 2(2), 3(1), 3(3), 3(5)-3(7), 4(1)(d)-(k), 5(2)-5(5), 6(4)-6(7), 7(1)-(3), 8(2)-(4), 9-11, 12, 13(1)-(2), 14(1)-(3), 14(5)-(7), 19 and Annex I-III** by 31 December 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

##### *Amendment*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with **this Directive** by 31 December 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

## **Amendment 137**

### **Proposal for a directive**

#### **Article 20 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

***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.***

##### *Amendment*

***deleted***

## **Amendment 138**

### **Proposal for a directive**

#### **Article 20 – paragraph 1 – subparagraph 3**

**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.**

**deleted**

### Amendment 139

#### Proposal for a directive

#### Annex 1 – point 1 – point c – paragraph 2 – indent 6

CB the contribution base (i.e. the eligible deposits)

CB the contribution base (i.e. the **covered deposits from 1 January 2015 at the latest or, where these cannot be calculated for all member bodies of the Deposit Guarantee Scheme, the** eligible deposits)

### Amendment 140

#### Proposal for a directive

#### Annex II – Part A – point 1

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	$\frac{\text{Non performing loans}}{\text{Gross loans}}$
Profitability	<b>Return</b> on assets	$\frac{\text{Net income}}{\text{Average total assets}}$

Liquidity	To be determined by Member States subject to Article 11(4)
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#### *Amendment*

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	$\frac{\text{Non performing loans}}{\text{Gross loans}}$
Profitability	<b><i>Risk adjusted return</i></b> on assets	$\frac{\text{Net income}}{\text{Average total assets}}$
Liquidity	To be determined by Member States subject to Article 11(4)	

### Amendment 141

#### Proposal for a directive

#### Annex II – part B – point 1 – introductory part

##### *Text proposed by the Commission*

1. ***Member States shall determine supplementary indicators for calculating risk-based contributions.*** Some or all of the following indicators may be used ***for this purpose***:

##### *Amendment*

1. Some or all of the following indicators may ***also*** be used ***to calculate risk-based contributions***:

### Amendment 142

#### Proposal for a directive

#### Annex III – paragraph 1

##### *Text proposed by the Commission*

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

##### *Amendment*

If ***your*** deposit which is due and payable has not been paid by ***your*** credit institution for reasons which are directly related to its financial circumstances, ***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 covered by the

Guarantee Scheme.

responsible Deposit Guarantee Scheme *in accordance with Directive 2011/.../EU of the European Parliament and of the Council on Deposit Guarantee Schemes*\*.

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\* *Number and publication reference of this Directive.*

### *Justification*

*This Amendment aims at providing more consumer-comprehensive language and simplifies the terminology used in the Annex III (Depositor Information Template).*

## **Amendment 143**

### **Proposal for a directive Annex III – paragraph 2**

#### *Text proposed by the Commission*

This repayment covers at maximum EUR 100 000 per bank. This means that all deposits at the same bank are **aggregated** in order to determine the coverage level. If, **for instance a depositor holds a savings** account with EUR 90 000 and a current account with **EUR 20 000, he or she** will only be repaid EUR 100 000.

#### *Amendment*

This repayment covers **a** maximum **of** EUR 100 000 per bank. This means that all **your** deposits at the same bank are **added up** in order to determine the coverage level. **For example, if you hold a deposit** account with EUR 90 000 and a current account with **EUR 40 000, you** will only be repaid EUR 100 000.

## **Amendment 144**

### **Proposal for a directive Annex III – paragraph 3**

#### *Text proposed by the Commission*

[Only where applicable]: This method will also be applied if a *bank* operates under different **trading** names. The [insert name of the account-holding credit institution] also trades under [insert all other brands of the same credit institution]. This means that all deposits with one or more of these brand names are in total covered up to EUR 100 000.

#### *Amendment*

[Only where applicable]: This method will also be applied if a *credit institution* **operates under different 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

## Amendment 145

### Proposal for a directive Annex III – paragraph 6

#### *Text proposed by the Commission*

In general, all retail depositors and businesses are covered by Deposit Guarantee Schemes. Exceptions for certain deposits are stated on the web site of the responsible Deposit Guarantee Scheme. Your bank will also inform you on request whether certain products are covered or not. If deposits are covered, the *bank* shall also **confirm** this on **the** statement of account.

#### *Amendment*

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 DGS]***. Your bank will also inform you on request whether certain products are covered or not. If deposits are covered, the *credit institution* shall also **specify** this on **your** statement of account.

## Amendment 146

### Proposal for a directive Annex III – paragraph 7

#### *Text proposed by the Commission*

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.***

#### *Amendment*

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 ***five [where applicable: 20] working days. [where applicable: On request, the deposit guarantee body 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.]***

## Amendment 147

### Proposal for a directive Annex III – paragraph 8

#### *Text proposed by the Commission*

If you have not been repaid within **these** deadlines, you should take contact with the Deposit Guarantee Scheme since the time to claim reimbursement **may be** barred after a **certain time limit**. Further information can be obtained under [insert web site of the responsible DGS].

#### *Amendment*

If you have not been repaid within **the above** deadlines, you should take contact with the Deposit Guarantee Scheme since the time to claim reimbursement **is** barred after a **[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 provision]**. Further information can be obtained under [insert web site of the responsible DGS].

## Amendment 148

### Proposal for a directive Annex III – paragraph 9

#### *Text proposed by the Commission*

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

#### *Amendment*

[Only where applicable:] Your **credit institution is part of** an Institutional Guarantee Scheme . This means that all **institutions** that are members of this scheme mutually support each other in order to avoid **insolvency**. However, if **insolvency** would nevertheless occur, your deposits will be repaid up to EUR 100 000 **within the above mentioned framework of deposit guarantee schemes recognised under national law**.

## EXPLANATORY STATEMENT

The rapporteur's approach

### Common requirements

- All credit institutions must belong to a Deposit Guarantee Scheme
- The depositor is entitled to a repayment of up to EUR 100 000
- Ex ante financing and the same target level for all schemes
- Short time limit for disbursement of repayments of deposits
- The same conditions for the use of funds for prevention and support purposes

Requirements/Monitoring of risks



#### Paybox

Pure payout function

Paybox  
+ prevention  
& support  
measures  
Increased supervision



#### Safeguarding of institutions

Strict requirements  
and monitoring  
arrangements

Flexibility



Probability of repayment of depositors



## **Initial situation**

Existing national Deposit Guarantee Schemes in the EU reimburse depositors in the event of failure of a credit institution up to a certain ceiling (the ‘coverage level’). During the financial and economic crisis, the coverage level was increased pursuant to Directive 2009/14/EC of the European Parliament and of the Council, initially from EUR 20 000 to EUR 50 000 and as of 1 January 2011, finally, to EUR 100 000 per depositor. At the same time, the time limit for paying depositors was reduced to a maximum of 30 working days. The increased level of protection improves depositors’ confidence and thus helps to prevent simultaneous withdrawals by many depositors (a run on the bank) prompted by a fear of losing their money.

However, a higher coverage level alone is not sufficient to protect depositors credibly. In order to counteract the danger of bank runs and prevent a possible destabilisation of financial markets, Deposit Guarantee Schemes must also be adequately financed. During the financial and economic crisis, however, it has become apparent that individual national Deposit Guarantee Schemes in Europe were inadequately financed, so that the State and ultimately the tax-payer had to bear the consequences of the failure of a credit institution. In order for Deposit Guarantee Schemes to have a stabilising effect at times of financial stress, therefore, it is also necessary throughout the EU to finance Deposit Guarantee Schemes adequately in advance (*ex ante*). Depositors must be better informed than hitherto about how Deposit Guarantee Schemes operate and must be reimbursed rapidly if the occasion arises. Bringing the measures together in this directive will increase depositors’ confidence, promote the stability of the European financial system and help to build the internal market.

## **Strategy**

In its proposal to amend the deposit guarantee directive, the Commission seeks to attain these objectives by means of a ‘one-size fits all’ approach to Deposit Guarantee Schemes. It largely disregards the heterogeneity of banking markets in the Member States, which has resulted in Deposit Guarantee Schemes operating in different ways, which in some cases have proven to be justified in the national context. In the rapporteur’s opinion, therefore, the task to be tackled here is that of achieving significantly better protection of depositors, which is the purpose of the Commission proposal, but at the same time taking into account the heterogeneity of banking markets and the positive functioning of tried and tested practices. In addition, distortion of competition between banks and Deposit Guarantee Schemes must be avoided and account must be taken of financial stability. The rapporteur therefore proposes a differentiated approach, involving the setting of common requirements applicable to all Deposit Guarantee Schemes, while ensuring sufficient flexibility with regard to the specific way in which they operate, based on the Commission proposal.

### **(1) Common requirements for comprehensive protection of depositors and equal stability of Deposit Guarantee Schemes within the EU**

In order to avoid any distortion of competition, protect depositors equally in all Member States and prevent destabilising displacements of deposits, all Deposit Guarantee Schemes in the EU must comply with common requirements. The essential common requirements include the following:

- All credit institutions must belong to a Deposit Guarantee Scheme

- Depositors must be entitled to a reimbursement of up to EUR 100 000
- Ex ante financing and the same target cover for all schemes
- A short time limit for repayments to depositors where they are due
- The same conditions applicable to the use of funds for prevention and support purposes

By laying down common requirements with which Deposit Guarantee Schemes must comply, uniform protection of all depositors in the Member States will be achieved while at the same time avoiding distortions of competition. Subject to these preconditions, the necessary scope for flexibility remains to do justice to the specific characteristics of banking markets in the Member States.

## **(2) Flexibility for prevention and support measures ensures stability**

It is beyond question that any Deposit Guarantee Scheme must have adequate funding in reserve to cover the cost of reimbursements should the need arise. Despite this, financial stability and the interests of depositors may be equally well protected by ensuring that credit institutions do not fail in the first place. By improving the scope for monitoring and supervision, intervening at the right time and instituting measures in support of Deposit Guarantee Schemes, it will often be possible to foresee the impending insolvency of a bank at an early stage and to avert it. Orderly winding-up of credit institutions backed by Deposit Guarantee Schemes if the institutions have problems can also render reimbursements unnecessary. At the same time, thanks to improved scope for monitoring and supervision, influence can be brought to bear, resulting in appropriate incentives for responsible use of Deposit Guarantee Schemes, as the credit institutions affiliated to them, rather than the taxpayer, will bear the costs. The rapporteur therefore advocates greater flexibility in the Member States in deciding the framework for the operation of Deposit Guarantee Schemes:

The possible approaches range from Deposit Guarantee Schemes which only reimburse depositors in the event of failure of a credit institution to schemes designed to preserve institutions, whose prime aim is to prevent failure of a credit institution. Within this spectrum of approaches, other schemes may also be designed to allow them the flexibility to take preventive action (see diagram).

## **(3) Realistic time limits for payments, in the interests of depositors**

A conflict of interests exists in that, for depositors, it is desirable to receive reimbursements quickly, while it is also necessary to establish reliable procedures which facilitate compliance with the time limit that has been laid down. At present, credit institutions are mostly not in a position to calculate each individual customer's deposits quickly (single customer view), which means that they also cannot within a few days forward to a scheme operator information about the deposits covered by Deposit Guarantee Schemes for all their customers in particular predetermined data formats. All the experts who were consulted have therefore stated that reimbursement of deposits within seven days (five working days) is hardly practicable in most Member States at present. If, however, depositors are promised a short time limit for reimbursement, which is then not complied with if a credit institution fails, this could permanently damage depositors' confidence in guarantee schemes and thus undermine their stabilising effect and purpose. It is not impossible that such a loss of confidence might also affect all the other schemes in Europe. This in turn could jeopardise the entire financial system in the EU. In order to be able to abide by the desirable time limit of five working days

in practice, therefore, arrangements must, at the minimum, be made to ensure that this promise can be kept under all circumstances. The rapporteur wishes to promote the requisite preconditions by means of two systems of incentives:

- (a) Deposit guarantee schemes which can already ascertain the deposits of the affiliated institutions which are covered by their scheme (i.e. the deposits, per depositor, which are actually covered) should calculate the target cover on the basis of the deposits covered. For all other guarantee schemes, the deposits potentially eligible for reimbursement (i.e. total deposits) should initially be taken as a basis for setting the target cover of the fund, which would result in higher contributions to that cover. From 2015, it would be compulsory to switch to calculation on the basis of the deposits covered. This transitional rule would create an incentive to be able to ascertain the deposits covered even before 2015, as this would reduce the contributions which banks would be required to make. At the same time, it would at an early stage create one of the preconditions to make it possible to reimburse depositors quickly.
- (b) The basic principle which the directive will introduce is that reimbursements should be made within five working days. However, until 31 December 2016 Member States may instead initially maintain the time limit which applies from 2011, namely 20 working days, if a survey by the competent supervisory authority shows that the necessary procedures for quick payment are not in place. In order to ensure that, in such cases, depositors do not encounter serious financial problems occasioned by failure of their credit institution, however, they may obtain payment of up to EUR 5 000 from the appropriate Deposit Guarantee Scheme within five working days. In view of the time limit of five working days which will in any case be compulsory for all Deposit Guarantee Schemes from 2017, this means that incentives will exist for the earliest possible introduction of the five working day time limit in any Deposit Guarantee Schemes which are not yet in a position to introduce it when the directive is first transposed.

#### **(4) European Deposit Guarantee Schemes and promotion of European cooperation**

In the field of deposit guarantees, it ought to be possible to establish cross-border guarantee schemes voluntarily or to link national schemes, in the interests of realisation of the common internal market. Appropriate incentives for effective operation of Deposit Guarantee Schemes exist, in particular, if there is maximum correspondence between their area of operation and the area where the economic costs of failure of a credit institution are incurred. If such a cross-border Deposit Guarantee Scheme is established voluntarily, the EBA would be responsible for supervision in cooperation with a board of national supervisory authorities. If cross-border Deposit Guarantee Schemes are established, the authorities which approve them should ensure sufficient stability and a balanced composition of the new and existing schemes, this being one of the fundamental conditions for approval.

Cooperation between national Deposit Guarantee Schemes is desirable in order to make it easier for depositors to make contact at branches of foreign credit institutions. The possibility of cross-border provision of credit between systems should also exist on a voluntary basis.

## **Conclusion**

The formulation of common requirements applicable to Deposit Guarantee Schemes will make it possible for Member States to organise these schemes in as flexible a manner as possible while providing uniform protection, ensuring equal stability and avoiding distortions of competition. While maintaining the same coverage level and target level and abiding by the stipulated time limits for reimbursements and terms relating to the use of funds, Member States will thus have the opportunity to adapt their Deposit Guarantee Schemes to national features of financial markets. By means of this approach, effective protection of depositors will be achieved and the stability of the financial system ensured.

The proposal and the rapporteur's ideas were already exchanged with the shadow rapporteurs at the preliminary draft stage of this report. When drafting the report, their suggestions were incorporated in many places and taken into account accordingly in the overall approach.

## ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2011)16258

Ms Sharon BOWLES  
Chair of the Committee on Economic and Monetary Affairs  
ASP 10G201  
Brussels

**Subject:      *Proposal for a directive of the European Parliament and of the Council on  
Deposit Guarantee Scheme (recast)  
(COM(2010)0368 - C7-0177/2010 - 2010/0207(COD))***

Dear Madam,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

*"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.*

In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal.

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 22 March 2011, the Committee on Legal

Affairs, by 17 votes in favour and no abstentions<sup>3</sup>, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

*Encl.: Opinion of the Consultative Working Party.*

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<sup>3</sup> The following Members were present: Klaus-Heiner Lehne, Tadeusz Zwiefka, Luigi Berlinguer, Françoise Castex, Lidia Joanna Geringer de Oedenberg, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Cecilia Wikström, Jiří Maštálka, Kurt Lechner, Angelika Niebler, Jan Philipp Albrecht, Eva Lichtenberger, Sajjad Karim.

# ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 29.9.2010

## OPINION

FOR THE ATTENTION OF      **THE EUROPEAN PARLIAMENT**  
   **THE COUNCIL**  
   **THE COMMISSION**

### **Proposal for a directive of the European Parliament and of the Council on Deposit Guarantee Schemes COM(2010)368 final of 12.7.2010 - 2010/0207 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 22 July 2010 for the purpose of examining the aforementioned proposal submitted by the Commission.

At that meeting<sup>4</sup>, an examination of the proposal for a directive of the European Parliament and of the Council recasting European Parliament and Council Directive 94/19/EC of 30 May 1994 on Deposit Guarantee Schemes resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) The wording of Article 2(1)(g) in the proposed recast text corresponds to the wording of the first sentence of Article 1(5) of Directive 94/19/EC. The wording of the second sentence of Article 1(5) of Directive 94/19/EC ("*any number of branches set up in the same Member State by a credit institution which has its head office in another Member State shall be regarded as a single branch*") should have also been present in the recast text; that wording should have been identified by using a grey-shaded type combined with double strikethrough, which is the sign generally used in recast proposals for marking substantive changes consisting of a deletion of existing texts.

2) In Article 4(1)(c), the reference made to "*Article 1(C) of Council Directive 91/308/EEC*" should be adapted so as to read as a reference to "*Article 1(2) of Directive 2005/60/EC of the*

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<sup>4</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

*European Parliament and of the Council"*.

3) In Article 8(4), the reference made to "*Article 1 of Directive 91/308/EEC*" should be adapted so as to read as a reference to "*Article 1(2) of Directive 2005/60/EC of the European Parliament and of the Council*".

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA  
Jurisconsult

J.-C. PIRIS  
Jurisconsult

L. ROMERO REQUENA  
Director General

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mrs Sharon Bowles  
Chair  
Committee on Economic and Monetary Affairs  
BRUSSELS

Subject: Opinion on the legal basis of the Proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes (COM(201)0368 – C7-0177/2010 – 2010/0207(COD))

Dear Madam Chair,

The rapporteur for opinion for this proposal in the Committee on Legal Affairs, Dimitar Stoyanov, raised the question as to whether the Commission's choice of legal basis (Article 53(1) TFEU) was appropriate. As a result, the committee decided to take up the question of the legal basis of the proposed measure on its own initiative pursuant to Rule 37(3) of the Rules of Procedure<sup>5</sup>. The committee reached the following conclusion at its meeting on 27 January 2011.

### ***I. The legal basis proposed***

The legal basis put forward by the Commission for the proposed measure is Article 53(1) TFEU.

#### *Article 53*

*(ex Article 47 TEC)*

*1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.*

*2. ...*

Article 53 needs to be read in conjunction with Article 54 TFEU:

#### *Article 54*

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<sup>5</sup> 3. The committee responsible for legal affairs may also on its own initiative take up questions concerning the legal basis of the proposals for legislative acts. In such cases it shall duly inform the committee responsible for the subject-matter.

*(ex Article 48 TEC)*

*Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.*

The effect of reading Article 53 together with Article 54 is to empower the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of the activities of companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union. These articles are concerned therefore with freedom of establishment and freedom to provide services.

## ***II. The Commission's choice of legal basis***

The legal basis proposed by the Commission is Article 53(1) TFEU. It has to be borne in mind that the proposal does not purport to create a new instrument. Indeed, the proposed directive on deposit guarantee schemes is a recast.

The Commission explains its choice of legal basis in the following terms: *"Directive 94/19/EC 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. Consequently, its legal basis is Article 57(2) of the Treaty establishing a European Community, which preceded Article 53(1) of the Treaty on the Functioning of the EU (TFEU). In conjunction with Article 54(1), Article 53 TFEU provides for issuing Directives concerning the taking-up and pursuit of companies such as credit institutions. Therefore, this proposal is based on Article 53(1) TFEU. All elements of this proposal serve this objective and are ancillary to it."*

## ***III. Approach of the Court of Justice***

Certain principles emerge from the case law of the Court. First, in view of the consequences of the legal basis in terms of substantive competence and the procedure, the choice of the correct legal basis is of constitutional importance<sup>6</sup>. Secondly, the choice of the legal basis for an act does not turn on the relevant institution's conviction as to the objective pursued but must be "based on objective factors which are amenable to judicial review"<sup>7</sup>, such as the aim and content of the measure<sup>8</sup>. In many instances, a measure is intended to attain objectives set out in a specific Treaty article, whilst at the same time influencing the functioning of the internal market.

Where, for example, harmonisation of national legislation is only an incidental effect of a

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<sup>6</sup> Opinion 2/00 *Carthage Protocol* [2001] E.C.R. I-9713, para. 5; Case C-370/07 *Commission v Council*, paras 46-49; Opinion 1/08 (30 November 2009), *General Agreement on Trade in Services*, not yet reported, para. 110.

<sup>7</sup> Case 45/86 *Commission v Council* [1987] E.C.R. 1493, para. 11.

<sup>8</sup> Case C-300/89 *Commission v Council* [1991] E.C.R. I-2867, para. 10.

measure which primarily pursues another objective, the measure must be adopted only on the basis of the specific Treaty article which corresponds to its main or predominant purpose or component<sup>9</sup>. This is often referred to as the “centre of gravity” test.

### ***III. Aim and content of the proposed measure***

The Commission states in the explanatory memorandum to the proposal that *"Directive 94/19/EC 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."*

This is borne out in full by the content of the proposal. Suffice it to refer to the following recitals:

Recital (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 as regards the rules on Deposit Guarantee Schemes to which these institutions are subject.

Recital (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.

Recital (5): Directive 94/19/EC was based on the principle of minimum harmonisation. Consequently, a variety of Deposit Guarantee Schemes with very distinct features were established in the Union. This caused market distortions for credit institutions and limited the benefits of the Internal Market for depositors.

Recital (6): The Directive should enable a level playing field between credit institutions, allow depositors to easily understand the features of Deposit Guarantee Schemes and facilitate a quick repayment to depositors by sound and credible Deposit Guarantee Schemes in the interest of financial stability. Therefore, deposit protection should be harmonised and simplified to the largest extent possible.

Recital (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 standardise the calculation of risk-based contributions.

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<sup>9</sup> Case 68/86 *United Kingdom v Council* [1988] E.C.R. 855, paras 14-16; Case C-70/88 *European Parliament v Council* [1991] E.C.R. I-4529, paras 16-18; Case C-155/91 *Commission v Council* [1993] E.C.R. I-939, paras 18-20; Case C-187/93 *European Parliament v Council* [1994] E.C.R. I-2857, paras 23-26; Case C-426/93 *Germany v Council* [1995] E.C.R. I-3723, para. 33; Case C-271/94 *European Parliament v Council* [1996] E.C.R. I-1689, paras 28-32; Case C-84/94 *United Kingdom v Council* [1996] E.C.R. I-5755, paras 11-12 and 22; Joined Cases C-164-165/97 *European Parliament v Council* [1999] E.C.R. I-1339, para. 16; Case C-36/98 *Spain v Council* [2001] E.C.R. I-779, para. 59; Case C-281/01 *Commission v Council* [2002] E.C.R. I-12649, paras 33-49; ECJ, Case C-338/01 *Commission v Council* [2004] E.C.R. I-4829, para. 55.

#### ***IV. Appraisal***

It is plain that the main object or centre of gravity of the proposed instrument is the achievement of the Internal Market from the point of view of both the freedom of establishment and the freedom to provide financial services.

It clearly emerges from the above analysis that the centre of gravity of the proposal is the taking-up and pursuit of the activities of companies or firms within the wider context of the achievement of the internal market. Consequently, the appropriate legal basis is Article 53(1) TFEU, which deals with the taking-up and pursuit of activities as self-employed persons, given that Article 54 TFEU provides that companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union are to be treated in the same way as natural persons who are nationals of Member States for the purposes of Article 53.

#### ***V. Conclusion***

It is considered that the proper legal basis for the proposal is Article 53(1) TFEU.

At its meeting of 27 January 2011 the Committee on Legal Affairs accordingly decided unanimously<sup>10</sup> to recommend to you as follows: the proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes (COM(2010)368 final) should be based on Article 53(1) TFEU.

Yours sincerely,

Klaus-Heiner Lehne

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<sup>10</sup> The following were present for the final vote: Klaus-Heiner Lehne (Chair), Raffaele Baldassarre (Vice-Chair), Evelyn Regner (Vice-Chair), Sebastian Valentin Bodu (Vice-Chair), Piotr Borys, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Toine Manders, Alajos Mészáros, Bernhard Rapkay, Francesco Enrico Speroni, Dimitar Stoyanov, Diana Wallis, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka.

## **OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION**

for the Committee on Economic and Monetary Affairs

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

Rapporteur: Zuzana Roithová

### **SHORT JUSTIFICATION**

The Committee on the Internal Market and Consumer Protection generally supports the revision of Directive 94/19/EC on Deposit Guarantee Schemes (DGS), as the existing system needs a more harmonised solution. The recent financial crisis shows that a more solid framework should be provided to overcome the destabilities of financial markets. There are about 40 DGSs in the EU today, covering different groups of depositors and deposits of different coverage levels, and imposing different obligations on financial institutions. Such a fragmented DGS system limits the benefits of the Internal Market and does not provide a solid basis to combat future crises. Moreover, the current schemes are underfinanced in many Member States.

In order to improve the clarity of Commission's text and put forward some critical observations on the proposal, the Committee suggests following substantial amendments:

- Broadening the scope of directive in order to cover traditional savings instruments such as savings books or certificates of deposits. These deposits, although not linked to a bank account, are used as a substitute to savings accounts.
- Clarifying vague provisions which would not offer legal certainty for consumers and the financial institutions.
- Introducing provisions for faster decision-making procedures, as in the case of financial problems of credit institutions it is necessary that the competent authorities are informed without delay and that subsequently those authorities, together with the Deposit Guarantee Scheme, act quickly in order to protect consumers.
- Ensuring that deposits of local authorities (municipalities) are also covered by the DGS. Vast majority of local authorities are small entities with low budgets, no direct link to the

central state budget and a limited ability to assess credibility of a credit institution.

- Allowing the extended scope of coverage of temporary high balances for the deposits that fulfil social considerations defined in national law (such as redundancy, insurance claims etc.).

- Extending the proposed 7 days payout period to 7 working days and making the payout process obligatory, not facultative.

- In many Member States a banking institution can operate under several different brand names but it only needs to get one authorisation from the regulator. In such a case a consumer who has several accounts with different brands covered under a single licence would only be compensated up to €100,000. The Committee on the Internal Market and Consumer Protection suggests allowing Member States to decide that the DGS coverage shall apply separately to the deposits placed with each brand entity, even if operated by one credit institution.

- Supporting the shift towards ex-ante funding of DGS and lowering the costs of harmonization. The target level determined on the basis of eligible deposits places an overbearing burden on financial institutions and interrupts the link between the actual amount of deposits and institutions' contributions. The Committee chose another concept of the covered deposits, which comprises the true amount of deposits and thus corresponds better with the needs of consumer protection.

- The Committee on the Internal Market and Consumer Protection is also convinced that the DGS should be able to use their funds for early intervention in order to minimize the effects of a potential bank default on customers.

- Mutual borrowing between the systems from different Member States could potentially help but could also transfer a crisis from one country to another. Therefore the Committee proposes to shift this provision from obligations to the model framework, which can be used if needed, and it would depend on the Member States if they participate in such a system (e.g. by signing the appropriate cross-border agreements).

- Deleting Annexes I and II on calculation of risk based contributions, as according to the principle of subsidiarity it should be left to Member States. The proposed system would not ensure the proclaimed goal (i.e. the same contributions for banks with the same risk profile in different Member States) due to the different conditions of financial markets across the EU and with respect to the specific products for consumers (i.e. deposits in the building savings banks).

- Strengthening information provisions and giving consumers the possibility (e.g. in case of merger) to transfer the unprotected deposits to another credit institution without penalties. The actual depositors will also be provided with the information sheet (based on the Annex III) in their bank statements.

- Allowing the choice of language regime of information requirements if agreed by both parties in order to provide a flexible solution for border regions and expats and to increase

cross-border competition in the Internal Market in general.

- Simplifying the terminology used in Annex III, so that information for consumers is provided in a comprehensive language.

## AMENDMENTS

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

### Amendment 1

#### Proposal for a directive Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) It should be possible for Deposit Guarantee Schemes to go beyond a pure reimbursement function by requiring member institutions to supply additional information and on this basis build up early warning systems. In this way risk-dependent contributions can be adjusted at an early stage or preventive measures against recognised risks can be proposed. In the event of impending imbalances, Deposit Guarantee Scheme operators should be able to decide on support measures or to use their resources to support orderly winding-up of problematic institutions in order to avoid the costs of reimbursing depositors and the other adverse impacts of insolvency.***

### Amendment 2

#### Proposal for a directive Recital 17

*Text proposed by the Commission*

*Amendment*

(17) In order to limit deposit protection to

(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 Deposit Guarantee Schemes, 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 whose existence can only be proven by a certificate.***

the extent necessary to ensure legal clarity and transparency for depositors and to avoid transferring investment risks to Deposit Guarantee Schemes, certain financial products with an investment character should be excluded from the scope of coverage, in particular those that are not repayable in par.

#### *Justification*

*This recital is changed according to the amendment to Article 2, paragraph 1 - point a - paragraph 3 - indent 1.*

### **Amendment 3**

#### **Proposal for a directive Recital 18**

##### *Text proposed by the Commission*

(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 case of a bank failure. Authorities also have much easier access to credit than citizens. Non-financial businesses should in principle be covered, regardless of their size.

##### *Amendment*

(18) Certain depositors should not be eligible for deposit protection, in particular ***government and central, provincial and regional*** authorities or other financial institutions. Their limited number compared to all other depositors minimises the impact on financial stability in case of a bank failure. ***Moreover, government and central, provincial and regional*** authorities also have much easier access to credit than citizens. ***However, Member States should ensure that the deposits of local municipalities are covered by this Directive so that they can fulfil their functions even in the case of bank failure.*** Non-financial businesses should in principle be covered, regardless of their size.

#### *Justification*

*This amendment refers to the changes made in Article 4 - paragraph 1 - point j.*

## Amendment 4

### Proposal for a directive Recital 24

*Text proposed by the Commission*

(24) Contributions to Deposit Guarantee Schemes *should take account of the degree of risk incurred by their members. This would allow to reflect the risk* profiles of individual banks and *lead* to a fair calculation of contributions and *to provide* incentives to operate under a less risky business model. *Developing a set of core indicators mandatory for all Member States and another set of optional supplementary indicators would introduce such harmonisation gradually.*

*Amendment*

(24) ***Member States are encouraged to set the*** contributions to Deposit Guarantee Schemes ***reflecting*** the risk profiles of individual banks and ***leading*** to a fair calculation of contributions and ***providing*** incentives to operate under a less risky business model. ***In the case of particularly low-risk sectors of lending which are governed by special laws, including building savings banks, corresponding special arrangements should be provided for.***

## Amendment 5

### Proposal for a directive Recital 26

*Text proposed by the Commission*

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

*Amendment*

(26) The payout 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 payout delay should therefore be reduced to a period of ***7 working days by 31 December 2013.***

*Justification*

*This amendment refers to the changes made in Article 7.*

## Amendment 6

### Proposal for a directive Recital 32

*Text proposed by the Commission*

(32) While respecting the supervision of deposit guarantee schemes by Member States, the European Banking Authority 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 Deposit Guarantee Schemes 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. In this respect, the European Banking Authority should also collect information on Deposit Guarantee Schemes, in particular on the amount of deposits covered by them, confirmed by competent authorities. ***It should inform the other Deposit Guarantee Schemes about their obligation to lend.***

*Amendment*

(32) While respecting the supervision of deposit guarantee schemes by Member States, the European Banking Authority 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 Deposit Guarantee Schemes laid down in this Directive are fulfilled, the initial interest rate as well as the duration of the loan. In this respect, the European Banking Authority should also collect information on Deposit Guarantee Schemes, in particular on the amount of deposits covered by them, confirmed by competent authorities.

*Justification*

*This amendment refers to the changes made in Article 10.*

**Amendment 7**

**Proposal for a directive  
Recital 33**

*Text proposed by the Commission*

(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.***

*Amendment*

(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.

*Justification*

*This amendment refers to the changes made in Article 11.*

**Amendment 8**

**Proposal for a directive**

**Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***(24a) Supervisory authorities should apply a rigorous licensing procedure for each credit institution that intends to be part of a Deposit Guarantee Scheme.***

*Justification*

*The deposit guarantee system can create moral hazard problems. It is necessary to have a rigorous licensing procedure to assess the business plan for each institution that make use of the Deposit Guarantee Scheme. Licensing should be subject to adequate conditions.*

**Amendment 9**

**Proposal for a directive**

**Article 2 – paragraph 1 – point a – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

(a) 'deposit' means any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable.

(a) 'deposit' means any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable, ***and any debt evidenced by a certificate issued by the credit institution.***

**Amendment 10**

**Proposal for a directive**

**Article 2 – paragraph 1 – point a – subparagraph 3 – indent 1**

*Text proposed by the Commission*

*Amendment*

its existence can only be proven by a

its existence can only be proven by a

certificate other than a statement of account;

certificate other than a statement of account, ***with the exception of savings books***;

#### *Justification*

*This amendment allows to cover the traditional savings instruments, such as savings books. Such deposits are used as a substitute to savings accounts and are popular among consumers in many Member States.*

### **Amendment 11**

#### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point e – point i**

##### *Text proposed by the Commission*

(i) the relevant competent authorities have determined that ***in their view*** the credit institution concerned ***appears to be*** unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and ***to*** have no current prospect of being able to do so.

The competent authorities shall make that determination as soon as possible and in any event no later than five working days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable; or

##### *Amendment*

(i) the relevant competent authorities have determined that, ***according to information currently available to them***, the credit institution concerned ***is*** unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and have no current prospect of being able to do so.

The competent authorities shall make that determination as soon as possible and in any event no later than five working days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable; or

#### *Justification*

*This amendment aims at clarifying too legally vague provisions, which would not offer enough legal certainty. The decision by the relevant competent authorities that a financial institution is not solvent should be supported by the evidence based on their current information, not on their views (as proposed by the Commission) in order to prevent any possible future disputes about the unfounded decisions.*

### **Amendment 12**

#### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

(h) 'target level' means **1.5%** of **eligible** deposits for **the coverage of** which a Deposit Guarantee Scheme is responsible;

(h) 'target level' means **1,25%** of **covered** deposits for which a Deposit Guarantee Scheme is responsible;

*(The change of 'eligible' to 'covered' applies throughout the text.)*

*Justification*

*With regard to protection of consumers and restricting the costs, which will be transferred from the financial institutions to consumers, the target level and contributions should be based on the actual amount of deposits (covered deposits), not on the hypothetical eligible deposits.*

**Amendment 13**

**Proposal for a directive**

**Article 3 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

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

No credit institution may take deposits unless it is a member of such a scheme **and fulfils the requirements of the supervisory authorities. It is necessary for supervisory authorities to have a rigorous licensing procedure to assess the risk profile of each institution that makes use of the Deposit Guarantee Scheme.**

*Justification*

*We have seen a number of cases where institutions take on extreme levels of risk and therefore are able to offer high rates on deposits. These institutions can only attract customers because of the protection from Deposit Guarantee Schemes. Therefore it is necessary to at least have a rigorous licensing procedure to assess the risk profile each institution that make use of the Deposit Guarantee Scheme. Licensing should be subject to adequate conditions.*

**Amendment 14**

**Proposal for a directive**

**Article 3 – paragraph 2**

*Text proposed by the Commission*

2. If a credit institution does not comply with the obligations incumbent on it as a member of a Deposit Guarantee Scheme, the competent authorities which issued its authorization shall be notified and, in collaboration with the **guarantee scheme**, shall take all appropriate measures including the imposition of *sanctions* to ensure that the credit institution complies with its obligations.

*Amendment*

2. If a credit institution does not comply with the obligations incumbent on it as a member of a Deposit Guarantee Scheme, the competent authorities which issued its authorization shall be notified **immediately** and, in collaboration with the **Deposit Guarantee Scheme**, shall **promptly** take all appropriate measures including the imposition of *penalties* to ensure that the credit institution complies with its obligations.

*Justification*

*In the case of financial problems of credit institutions it is necessary that the competent authorities are informed with no time delay and that subsequently the competent authorities together with the Deposit Guarantee Scheme act quickly in order to protect consumers.*

**Amendment 15**

**Proposal for a directive**

**Article 3 – paragraph 6 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

Such tests shall take place at least every **year or more frequently** when the circumstances require it. The first test shall take place by 31 December 2013.

**Amendment 16**

**Proposal for a directive**

**Article 4 – paragraph 1 – point j**

*Text proposed by the Commission*

(j) deposits by authorities,

*Amendment*

(j) deposits by **government and central, provincial and regional** authorities,

*Justification*

*This amendment allows that the deposits of local authorities (municipalities) will be also*

*covered. Vast majority of local authorities (municipalities) are small entities with low budgets, which can be seriously endangered in case of bank failure.*

## **Amendment 17**

### **Proposal for a directive**

#### **Article 5 – paragraph 1 – subparagraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States outside the euro area shall provide for an equivalent protection sum set in their currency, rounded to the nearest unit of 1 000.***

*Justification*

*Member States outside the euro area lack the certainty of a set level for protection which disadvantages consumers in those Member States. This set sum will also ensure that currency fluctuations do not unfairly affect the protection level of consumers.*

## **Amendment 18**

### **Proposal for a directive**

#### **Article 5 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. Member States shall ensure that Deposit Guarantee Schemes do not deviate from the coverage level laid down in paragraph 1. ***However***, Member States ***may decide*** that the following deposits are ***covered provided that the costs for such repayments are not subject to Article 9, 10 and 11:***

2. Member States shall ensure that Deposit Guarantee Schemes do not deviate from the coverage level laid down in paragraph 1. ***In addition***, Member States ***shall ensure*** that the following deposits are ***fully protected:***

## **Amendment 19**

### **Proposal for a directive**

#### **Article 5 – paragraph 2 – point a**

(a) deposits resulting from real estate transactions **for** private residential **purposes** for **up to 12 months** after the amount has been credited;

(a) deposits resulting from real estate transactions **relating to** private residential **properties** for **6 months** after the amount has been credited, **or longer at the Member State's discretion to a maximum of 12 months**;

## **Amendment 20**

### **Proposal for a directive**

#### **Article 5 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

(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**.

(b) deposits that **serve** social **purposes** defined in national law and are linked to particular life events such as marriage, divorce, **retirement, dismissal, redundancy**, invalidity or decease of a depositor. The coverage shall **be for 6 months after the event, or longer at the Member State's discretion to a maximum of 12 months**;

## **Amendment 21**

### **Proposal for a directive**

#### **Article 5 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

**(ba) deposits defined in national law such as the payment of insurance claims, compensation for clinical negligence and payments awarded by courts or tribunals as compensation for criminal injuries or wrongful conviction. The coverage shall be for 6 months after the amount has been credited, or longer at the Member State's discretion to a maximum of 12 months.**

## *Justification*

*Similarly to points a) and b) in this paragraph, the amendment allows the 100% coverage for temporary high balances of the accounts in case of special payments such as insurance claims etc. It is left to Member States to allow such possibility in their national law.*

### **Amendment 22**

#### **Proposal for a directive Article 5 – paragraph 6**

##### *Text proposed by the Commission*

6. The amount referred to in paragraph 1 shall be reviewed periodically by the Commission at least once every five years. If appropriate, the Commission shall submit to the European Parliament and to the Council a proposal for a Directive to adjust the amount referred to in paragraph 1, taking account in particular of developments in the banking sector and the economic and monetary situation in the Union. The first review shall not take place before 31 December 2015 unless unforeseen events necessitate an earlier review.

##### *Amendment*

6. The amount referred to in paragraph 1 shall be reviewed periodically by the Commission at least once every five years. If appropriate, the Commission shall submit to the European Parliament and to the Council a proposal for a Directive to adjust the amount referred to in paragraph 1, taking account in particular of developments in the banking sector and the economic and monetary situation in the Union, ***and notably of currency fluctuations***. The first review shall not take place before 31 December 2015 unless unforeseen events necessitate an earlier review.

### **Amendment 23**

#### **Proposal for a directive Article 6 – paragraph 1**

##### *Text proposed by the Commission*

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.

##### *Amendment*

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. ***Where national law allows a credit institution to operate under different brands the depositors shall be informed if they have more than one deposit within the same credit institution. Member States may decide that the deposits within the same***

*credit institution are to be aggregated when calculating the amount covered and in case the amount of the aggregated deposits exceeds the coverage level per depositor set out in Article 5(1) then the contributions under Articles 9 and 11 shall be raised accordingly. Credit institutions from Member States that apply this provision cannot offer such coverage in their branches operated in Member States that do not allow credit institutions to operate under different brands.*

#### *Justification*

*This amendment allows the protection also for those consumers who have several deposits in financial institutions with different brands but with the same owner, i.e. under the same licence. These consumers will be compensated up to 100 000 Euros for each deposit, if the Member State decides that the DGS coverage shall apply to the deposits placed with each distinct brand entity operated by one credit institution.*

### **Amendment 24**

#### **Proposal for a directive**

#### **Article 7 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

1. Deposit Guarantee Schemes shall ***be in a position to*** repay unavailable deposits within ***7 days*** of the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

##### *Amendment*

1. Deposit Guarantee Schemes shall repay unavailable deposits within ***7 working days*** of the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

### **Amendment 25**

#### **Proposal for a directive**

#### **Article 9 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

Deposit Guarantee Schemes shall raise the available financial means by regular

##### *Amendment*

Deposit Guarantee Schemes shall raise the available financial means by regular

contributions from their members ***on 30 June and 30 December of*** each year. This shall not prevent additional financing from other sources. One-off entry fees may not be requested.

contributions from their members ***at least once*** each year. This shall not prevent additional financing from other sources. One-off entry fees may not be requested.

#### *Justification*

*It should be left to the DGSs to decide how frequently to collect contributions. Since the calculation and collection of contributions is a burdensome operation, it is amply sufficient for it to be done only once a year. Since the basis for calculating contributions must be a sound one, it would normally be the certified annual accounts. This is a further reason why contributions should be collected once a year.*

### **Amendment 26**

#### **Proposal for a directive Article 9 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

#### *Justification*

*The limit of 5% could cause some problems in small and medium-sized Member States. Other limits concerning low-risk investments of the schemes should provide stable protection.*

### **Amendment 27**

#### **Proposal for a directive Article 9 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***They*** may however ***also be used*** in order to

***Member States*** may however ***decide to use***

finance the transfer of deposits to another credit institution, provided that the costs borne by the Deposit Guarantee Scheme do not exceed the amount of covered deposits at the credit institution concerned. In this case, the Deposit Guarantee Scheme 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.

*them* in order to finance the transfer of deposits to another credit institution, provided that the costs borne by the Deposit Guarantee Scheme do not exceed the amount of covered deposits at the credit institution concerned. In this case, the Deposit Guarantee Scheme 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.

#### *Justification*

*Proposed modification will not change meaning of the proposed article. It will however make the text clear and consistent with the next subparagraph which also deals with usage of DGSs funds.*

### **Amendment 28**

#### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 3 – point a**

##### *Text proposed by the Commission*

(a) a scheme's financial means exceed **1**% of eligible deposits after such measure;

##### *Amendment*

(a) a scheme's financial means exceed **0,75**% of eligible deposits after such measure;

#### *Justification*

*In order to protect consumers more effectively the DGS should be able to use their funds for early intervention so that the effects of a potential bank default on customers and the economy are minimised.*

### **Amendment 29**

#### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 4**

##### *Text proposed by the Commission*

On a case by case basis and subject to authorisation by the competent authorities following a reasoned request by the Deposit Guarantee Scheme concerned, the

##### *Amendment*

On a case by case basis and subject to authorisation by the competent authorities following a reasoned request by the Deposit Guarantee Scheme concerned, the

percentage referred to in (a) may be set between **0,75** and **1** %.

percentage referred to in (a) may be set between **0,5** and **0,75**%.

*Justification*

*In order to protect consumers more effectively the DGS should be able to use their funds for early intervention so that the effects of a potential bank default on customers and the economy are minimalised.*

**Amendment 30**

**Proposal for a directive**

**Article 9 – paragraph 5 – subparagraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***On a case by case basis and subject to authorisation by the competent authorities following a reasoned request by the Deposit Guarantee Scheme concerned, the percentage referred to in (a) may be set at a value below 0,5% provided that the guarantee scheme has put in place a suitable system for monitoring the risk situation of its members and can bring sufficient influence to bear.***

*Justification*

*Going below the proposed limit should be allowed in cases where it can be established that the guarantee schemes have appropriate systems in place to monitor the risk situation of their members and can bring sufficient influence to bear, and have adequate alternative financing arrangements in place to enable them to obtain short-term refinancing where necessary to meet claims against them (this includes payout if the bank failure could not be averted).*

**Amendment 31**

**Proposal for a directive**

**Article 10 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. A scheme shall have the **right** to borrow from **all** other Deposit Guarantee Schemes referred to in Article 1(2) within the Union provided that all of the following

1. A scheme shall have the **option** to borrow from **the** other Deposit Guarantee Schemes referred to in Article 1(2) within the Union provided that all of the following

conditions are met:

conditions are met:

### *Justification*

*Mutual borrowing between the systems from different Member States could potentially help or transfer a crisis from one country to another, the rapporteur proposes to shift this provision from obligation to the model framework, which can be used if needed, and it would depend on the Member States if they participate in such system (e.g. by signing the appropriate cross-border agreements).*

## **Amendment 32**

### **Proposal for a directive Article 11**

#### *Text proposed by the Commission*

1. The contributions to Deposit Guarantee Schemes referred to in Article 9 shall be determined for each member on the basis of the degree of risk incurred by it. ***Credit institutions shall not pay less than 75% or more than 200% of the amount that a bank with an average risk would have to contribute.*** Member States may decide that members of Schemes referred to in Article 1(3) and (4) pay lower contributions to Deposit Guarantee Schemes ***but not less than 37.5% of the amount that a bank with an average risk would have to contribute.***

2. The determination of the degree of risk incurred and the calculation of contributions shall be ***based on the elements referred to in Annex I and II.***

3. ***Paragraph 2 shall not apply to Deposit Guarantee Schemes referred to in Article 1(2).***

***4. In order to ensure specify the elements of definitions and methods under Annex II Part A, powers are delegated to the***

#### *Amendment*

1. The contributions to Deposit Guarantee Schemes referred to in Article 9 shall be determined for each member on the basis of the degree of risk incurred by it.

Member States may decide that members of Schemes referred to in Article 1(3) and (4) pay lower contributions to Deposit Guarantee Schemes.

2. The determination of the degree of risk incurred and the calculation of contributions shall be ***decided by the Member States.***

3. ***Member States may decide that members of Schemes referred to in Article 1(3) and (4) and building savings banks pay lower contributions to Deposit Guarantee Schemes.***

*Commission. These draft regulatory standards shall be adopted in accordance with Articles 7 to 7d of [EBA Regulation]. The European Banking Authority may develop draft regulatory standards for submission to the Commission.*

*5. By 31 December 2012, the European Banking Authority shall issue guidelines on the application of Annex II Part B pursuant to [Article 8 of the EBA Regulation].*

#### *Justification*

*The system of risk based calculation of contributions should be left to Member States, as the national provisions can be better tailored to the needs of consumers (e.g. in case of widespread deposits by special financial institutions, such as the building saving banks).*

### **Amendment 33**

#### **Proposal for a directive Article 14 – paragraph 1**

##### *Text proposed by the Commission*

1. Member States shall ensure that credit institutions make available to actual and intending depositors *the* information necessary for the identification of the Deposit Guarantee Scheme of which the institution and its branches are members within the Union . . . When a deposit is not guaranteed by a Deposit Guarantee Scheme in accordance with Article 4, the credit institution shall inform the depositor accordingly.

##### *Amendment*

1. Member States shall ensure that credit institutions make available to actual and intending depositors *sufficient* information necessary for the identification of the Deposit Guarantee Scheme of which the institution and its branches are members within the Union. When a deposit is not guaranteed by a Deposit Guarantee Scheme in accordance with Article 4, the credit institution shall inform the depositor accordingly *and in that case depositors shall be offered the possibility to withdraw their deposits without incurring any penalty fees, and with the right to all accrued interest and benefits.*

#### *Justification*

*Firstly, depositors should be sufficiently informed in such case and should have the possibility to withdraw their deposits without any sanction fees, and with all attained interests and benefits.*

## Amendment 34

### Proposal for a directive Article 14 – paragraph 3

#### *Text proposed by the Commission*

3. Information to actual depositors shall be provided on their statements of account. This information shall consist of a confirmation that the deposits are eligible pursuant to Article 2(1) and Article 4. Moreover, reference shall be made to the information sheet in Annex III **and where it can be obtained**. The web site of the responsible Deposit Guarantee Scheme **may** also be indicated.

#### *Amendment*

3. Information to actual depositors shall be provided on their statements of account. This information shall consist of a confirmation that the deposits are eligible pursuant to Article 2(1) and Article 4. Moreover, reference shall be made to the information sheet in Annex III. **That information sheet shall be attached to one of their statements of account at least once a year**. The web site of the responsible Deposit Guarantee Scheme **shall** also be indicated.

#### *Justification*

*Sufficient information on the Deposit Guarantee Scheme coverage for the actual depositors is crucially important and it should not constitute for financial institution a big burden to attach the information sheet in Annex III to one of its statements.*

## Amendment 35

### Proposal for a directive Article 14 – paragraph 4

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 grant that request, in other languages**.

#### *Justification*

*This amendment aims to provide more flexible solution, which will be agreed by both parties, to provide necessary information also in other languages. Such an option will be welcomed in border regions, by expats and will increase cross-border competition in the Internal Market.*

## Amendment 36

### Proposal for a directive Article 14 – paragraph 6

#### *Text proposed by the Commission*

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 would after the merger be aggregated in order to determine their coverage under the Deposit Guarantee Scheme.

#### *Amendment*

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 would after the merger be aggregated in order to determine their coverage under the Deposit Guarantee Scheme. ***Depositors will be given a three-month period following the notification of the merger to have the opportunity to transfer their deposits exceeding the coverage guaranteed in Article 5(1) to another bank or bank brand without incurring any penalty fees, and with the right to all accrued interest and benefits. During this three-month period, if the amount set out in Article 5(1) is exceeded, the protection will be extended by multiplying the amount set out in Article 5(1) by the number of credit institutions which have merged.***

#### *Justification*

*Depositors should be not only properly informed, but they should also have the possibility without penalties to transfer the unguaranteed deposits to another credit institution, as they should not "suffer" from lower coverage due to the merger of their credit institution.*

## Amendment 37

### Proposal for a directive Article 14 – paragraph 7

#### *Text proposed by the Commission*

7. If a depositor uses internet banking, the information required to be disclosed by this

#### *Amendment*

7. If a depositor uses internet banking, the information required to be disclosed by this

Directive shall be communicated by electronic means in a way that brings it to the attention of the depositor.

Directive shall be communicated by electronic means in a way that brings it to the attention of the depositor *or on paper if the depositor chooses*.

## **Amendment 38**

### **Proposal for a directive Article 19 – paragraph 5**

#### *Text proposed by the Commission*

5. The Commission, supported by the [European Banking Authority], shall submit to the European Parliament and to the Council by 31 December 2015 a report on the progress towards the implementation of this Directive. This report should cover notably *the possibility to determine the target level on the basis of covered deposits, without diminishing the protection of depositors*.

#### *Amendment*

5. The Commission, supported by the [European Banking Authority], shall submit to the European Parliament and to the Council by 31 December 2015 a report on the progress towards the implementation of this Directive. This report should cover notably the *advantages and disadvantages of raising the coverage level to EUR 150 000*.

## **Amendment 39**

### **Proposal for a directive Annex I**

#### *Text proposed by the Commission*

#### *Amendment*

*Annex I is deleted*

#### *Justification*

*This amendment is linked to the change made in Article 11.*

## **Amendment 40**

### **Proposal for a directive Annex II**

#### *Text proposed by the Commission*

#### *Amendment*

*Annex II is deleted*

### *Justification*

*This amendment is linked to the change made in Article 11.*

## **Amendment 41**

### **Proposal for a directive Annex III – paragraph 1**

#### *Text proposed by the Commission*

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

#### *Amendment*

If **your** deposit which is due and payable has not been paid by **your** credit institution for reasons which are directly related to its financial circumstances, **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 covered by the responsible Deposit Guarantee Scheme **in accordance with Directive 2011/.../EU of the European Parliament and of the Council on Deposit Guarantee Schemes (recast)\***.

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**\* OJ: add directive number and publication reference.**

### *Justification*

*This Amendment aims at providing more consumer-comprehensive language and simplifies the terminology used in the Annex III (Depositor Information Template).*

## **Amendment 42**

### **Proposal for a directive Annex III – paragraph 2**

#### *Text proposed by the Commission*

This repayment covers at maximum EUR 100 000 per bank. This means that all deposits at the same bank are aggregated in order to determine the coverage level. If, **for instance** a depositor holds a savings account with EUR 90 000 and a current

#### *Amendment*

This repayment covers at maximum EUR 100 000 per bank. This means that all **your** deposits at the same bank are aggregated in order to determine the coverage level. **For example:** if a depositor holds a savings account with EUR 90 000 and a current

account with EUR 20 000, he or she will only be repaid EUR 100 000.

account with EUR 20 000, he or she will only be repaid EUR 100 000.

*Justification*

*This Amendment aims at providing more consumer-comprehensive language and simplifies the terminology used in the Annex III (Depositor Information Template).*

**Amendment 43**

**Proposal for a directive  
Annex III – paragraph 3**

*Text proposed by the Commission*

[Only **where** applicable]: This method will also be applied if a bank operates under different **trading** names. The [insert name of the account-holding credit institution] also trades under [insert all other brands of the same credit institution]. This means that all deposits with one or more of these brand names are **in total** covered up to EUR 100 000.

*Amendment*

[Only applicable **if a Member State decides not to apply the provisions in Article 6(1)**]: This method will also be applied if a bank operates under different **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** covered up to EUR 100 000.

*Justification*

*This amendment applies the change made in Article 6 – paragraph 1.*

**Amendment 44**

**Proposal for a directive  
Annex III – paragraph 6**

*Text proposed by the Commission*

In general, **all retail** depositors **and businesses** are covered by Deposit Guarantee Schemes. Exceptions for certain deposits are stated on the web site of the responsible Deposit Guarantee Scheme. Your bank **will** also inform you on request whether certain products are covered or not. If deposits are covered, the bank shall

*Amendment*

In general, depositors (**private or business**) 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 DGS**]. Your bank also **has to** inform you on request whether certain products are covered or not. If

also **confirm** this on **the** statement of account.

deposits are covered, the bank shall also **specify** this on **your** statement of account.

#### *Justification*

*This Amendment aims at providing more consumer-comprehensive language and simplifies the terminology used in the Annex III (Depositor Information Template).*

### **Amendment 45**

#### **Proposal for a directive Annex III – paragraph 7**

##### *Text proposed by the Commission*

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**.

##### *Amendment*

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 **7 working days**.

#### *Justification*

*This Amendment aims at providing more consumer-comprehensive language and simplifies the terminology used in the Annex III (Depositor Information Template).*

### **Amendment 46**

#### **Proposal for a directive Annex III – paragraph 8**

##### *Text proposed by the Commission*

If you have not been repaid within these deadlines, you should take contact with the Deposit Guarantee Scheme since the time to claim reimbursement **may be** barred after a **certain** time **limit**. Further information can be obtained under [insert web site of the responsible DGS].

##### *Amendment*

If you have not been repaid within these deadlines, you should take contact with the Deposit Guarantee Scheme since the time to claim reimbursement **is** barred after a **[insert relevant time period applicable in the Member State and the exact reference of the national law and the particular article, which governs these provisions]**. Further information can be obtained under [insert web site of the responsible DGS].

### *Justification*

*This Amendment aims at providing more consumer-comprehensive language and simplifies the terminology used in the Annex III (Depositor Information Template). Time periods for claiming the reimbursement differ according to the Member States and it is more practical that the credit institution offers this information to its customers, rather than the individual consumers having to search for it.*

## **Amendment 47**

### **Proposal for a directive Annex III – paragraph 9**

#### *Text proposed by the Commission*

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

#### *Amendment*

[Only where applicable:] Your deposit is guaranteed by an Institutional Guarantee Scheme. This means that all banks that are members of this scheme mutually support each other in order to avoid a bank failure. However, if a bank failure would nevertheless occur, your deposits will be repaid up to EUR 100 000.

### *Justification*

*This Amendment aims at simplifying the terminology used in the Annex III (Depositor Information Template).*

## PROCEDURE

<b>Title</b>	Deposit guarantee schemes (recast)
<b>References</b>	COM(2010)0368 – C7-0177/2010 – 2010/0207(COD)
<b>Committee responsible</b>	ECON
<b>Opinion by</b> Date announced in plenary	IMCO 7.9.2010
<b>Rapporteur</b> Date appointed	Zuzana Roithová 14.10.2010
<b>Discussed in committee</b>	10.2.2011
<b>Date adopted</b>	13.4.2011
<b>Result of final vote</b>	+: 34 -: 0 0: 3
<b>Members present for the final vote</b>	Pablo Arias Echeverría, Adam Bielan, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Iliana Ivanova, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Matteo Salvini, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, Róza Gräfin von Thun und Hohenstein, Kyriacos Triantaphyllides, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler
<b>Substitute(s) present for the final vote</b>	Ashley Fox, María Irigoyen Pérez, Constance Le Grip, Pier Antonio Panzeri, Konstantinos Poupakis, Sylvana Rapti, Olle Schmidt

23.3.2011

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Economic and Monetary Affairs

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

Rapporteur: Dimitar Stoyanov

### **SHORT JUSTIFICATION**

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

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

### **AMENDMENTS**

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

#### **Amendment 1**

**Proposal for a directive**  
**Recital 26**

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

*Reducing the payout delay to one week would either make it impossible for the schemes to meet the deadline in practice or would lead to payment errors or considerable administrative costs. Before any future reduction in this period is envisaged, experience with the four-week deadline under Directive 2009/14/EC should be assessed.*

**Amendment 2**

**Proposal for a directive**

**Article 2 – paragraph 1 – point a – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***For the purpose of calculating a credit balance, Member States shall apply the rules and regulations relating to set-off and counterclaims according to the legal and contractual conditions applicable to a deposit.***

*Justification*

*Set-off arrangements regarding claims and counterclaims by banks and depositors, with payment to depositors of credit balances only, facilitates the settlement of claims and counterclaims on either side. If this practice were ended, the future settlement of claims by depositors and recovery by them of all unsettled claims would be made harder.*

**Amendment 3**

**Proposal for a directive**  
**Article 5 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Member States shall ensure that ***Deposit Guarantee Schemes do not deviate from*** the coverage level laid down in paragraph 1. However, Member States may decide that the following deposits are covered provided that the costs for such repayments are not subject to Article 9, 10 and 11:

*Amendment*

2. Member States shall ensure that ***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:

**Amendment 4**

**Proposal for a directive**  
**Article 5 – paragraph 4**

*Text proposed by the Commission*

4. Deposits shall be paid out in the currency in which the account was maintained. If the amounts expressed in euro referred to in paragraph 1 are converted into other currencies, the amounts effectively paid to depositors shall be equivalent to those set out in this Directive.

*Amendment*

4. Deposits shall be paid out in the currency in which the account was maintained. If the amounts expressed in euro referred to in paragraph 1 are converted into other currencies, the amounts effectively paid to depositors shall be equivalent to those set out in this Directive.

***With the authorisation of the competent authorities, the Deposit Guarantee Scheme may pay out deposits in the currency of the Member State if the deposit cannot be paid out in the currency in which the account was maintained, by the deadline set in Article 7(1). In that event, the exchange rate used shall be that for the type of currency in which the deposit was maintained up to the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or when the judicial authority makes the ruling referred to in Article 2(1)(e)(ii).***

*Justification*

*The funds cumulated within DGSs should be invested by them in duly authorised low-risk assets. While the requirement exists for the investment to be low risk, there is no requirement*

*for the DGS to invest in a specified type of currency. The requirement that the deposit be paid in the currency in which it has also been maintained might result in significant difficulties and losses for the DGS in view of the new and shorter payout deadline. In order also to protect to the full the interests of depositors and of DGSs, the amendment provides for the possibility of an on-the-spot payout. That possibility would be subject to prior authorisation from the competent authorities and take effect only when there was a danger of the payout deadline not being respected.*

## **Amendment 5**

### **Proposal for a directive**

#### **Article 7 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

Deposit Guarantee Schemes shall be in a position to repay unavailable deposits within **7 days** of the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

##### *Amendment*

Deposit Guarantee Schemes shall be in a position to repay unavailable deposits within **four weeks** 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).

## **Amendment 6**

### **Proposal for a directive**

#### **Article 9 – paragraph 2**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

##### *Justification*

*The DGS are entitled to invest the funds cumulated in them, because only money in*

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

## **Amendment 7**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 1**

##### *Text proposed by the Commission*

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.

##### *Amendment*

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

##### *Justification*

*The objective should be to seek to prevent insolvencies rather than compensating depositors only after they occur.*

## **Amendment 8**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 2**

##### *Text proposed by the Commission*

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 Deposit Guarantee Scheme do not exceed the amount of covered deposits at the credit institution concerned. In this case, the Deposit Guarantee Scheme 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.

##### *Amendment*

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 Deposit Guarantee Scheme do not exceed the amount of covered deposits at the credit institution concerned. In this case, the Deposit Guarantee Scheme shall, within one month from the transfer of deposits, submit a report to the **relevant national banking authority** proving that the limit referred to above was not exceeded.

##### *Justification*

*It is the responsibility of Member States to ensure that Deposit Guarantee Schemes have the necessary means to determine their potential obligations. It should accordingly be compulsory to report to the national banking authorities.*

## **Amendment 9**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 3 – introductory part**

##### *Text proposed by the Commission*

***Member States may allow Deposit Guarantee Schemes 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:***

##### *Amendment*

***Guarantee schemes may use their financial means **also** in order to avoid a bank failure without being restricted to financing the transfer of deposits to another credit institution, provided that the **guarantee schemes intended to monitor the risk situation of their members can have adequate alternative financing arrangements in place to enable them to obtain short-term funding where necessary to meet claims against them.*****

##### *Justification*

*Guarantee schemes limited to the payout of deposits in case of insolvency and institutional guarantee schemes which use funding fully or in part to prevent insolvencies must be equally valid options.*

## **Amendment 10**

### **Proposal for a directive**

#### **Article 9 – paragraph 5 – subparagraph 3 – point a**

##### *Text proposed by the Commission*

***(a) a scheme's financial means exceed 1% of eligible deposits after such measure;***

##### *Amendment*

***deleted***

##### *Justification*

*Guarantee schemes limited to the payout of deposits in case of insolvency and institutional guarantee schemes which use funding fully or in part to prevent insolvencies must be equally valid options.*

## Amendment 11

### Proposal for a directive

#### Article 9 – paragraph 5 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

***On a case by case basis and subject to authorisation by the competent authorities following a reasoned request by the Deposit Guarantee Scheme concerned, the percentage referred to in (a) may be set between 0.75 and 1 %.***

***deleted***

#### *Justification*

*Guarantee schemes limited to the payout of deposits in case of insolvency and institutional guarantee schemes which use funding fully or in part to prevent insolvencies must be equally valid options.*

## Amendment 12

### Proposal for a directive

#### Article 10 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

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 Deposit Guarantee Schemes established in the same Member State.

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 *EBA* thereof. Member States may decide if and how the lending scheme is reimbursed by other Deposit Guarantee Schemes established in the same Member State. ***In cases where the national schemes do not reach agreement on the designation of one of them as the lending scheme of the Member State concerned, EBA shall make the designation based on the creditworthiness of the individual systems.***

## Amendment 13

### Proposal for a directive

#### Article 10 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Within two working days of reception of the confirmation and information referred to in paragraph 3, second sub-paragraph, any of the lending Deposit Guarantee Schemes may request EBA to exempt them from the commitment to pay the loan. Exemption shall be granted only where:***

***(a) the lending Deposit Guarantee Scheme has had recourse to extraordinary contributions under Article 9(3), or***

***(b) the lending Deposit Guarantee Scheme, in its request for exemption from its commitment, produces grounds which, in combination with the payment of the loan, would result in its being unable to pay out depositors pursuant to this Directive within the deadline set in Article 7(1), in the event of the deposits guaranteed by it being unavailable.***

***EBA shall immediately notify all the borrowing schemes of the exemption requests received and, after having assessed what the effects of granting exemption for one or more Guarantee Deposit Schemes would be on all the remaining schemes, shall rule on the requests within three working days of their reception. EBA may not refuse an exemption in the circumstances referred to in point a) of the above subparagraph.***

***If all the requests are rejected, the lending Deposit Guarantee Schemes shall pay the sum specified, in accordance with the confirmation and information, as well as the deadline, set in paragraph 3, as from the day on which their request is refused.***

***Where one or more requests for exemption have been granted, EBA shall, as well as forwarding its decision, notify the lending Deposit Guarantee Schemes***

*not exempted from their commitment of the amounts to be lent by each scheme not granted exemption, as calculated pursuant to paragraph 2(a), and of the initial interest rate pursuant to paragraph 2(c) and the duration of the loan. The Deposit Guarantee Schemes not granted exemption shall pay the sums to the borrowing scheme no later than two working days after receiving notification of the amount calculated. No further requests shall be made under this paragraph for exemption from paying the loan.*

#### *Justification*

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

### **Amendment 14**

#### **Proposal for a directive Article 11 – paragraph 1**

##### *Text proposed by the Commission*

1. The contributions to Deposit Guarantee Schemes referred to in Article 9 shall be determined for each member on the basis of the degree of risk incurred by it. Credit institutions shall not pay less than 75% or more than 200% of the amount that a bank with an average risk would have to contribute. Member States may decide that members of Schemes referred to in Article 1(3) and (4) pay lower contributions to Deposit Guarantee Schemes but not less than 37.5% of the amount that a bank with an average risk would have to contribute.

##### *Amendment*

1. The contributions to Deposit Guarantee Schemes referred to in Article 9 shall be determined for each member on the basis of the degree of risk incurred by it. Credit institutions shall not pay less than 75% or more than 200% of the amount that a bank with an average risk would have to contribute. Member States may decide that members of Schemes referred to in Article 1(3) and (4) pay lower contributions to Deposit Guarantee Schemes but not less than 37.5% of the amount that a bank with an average risk would have to contribute, **or 20% for deposits with mortgage banks.**

#### *Justification*

*Mortgage banks are subject to much stricter rules than commercial banks (loans to depositors only, accorded on an extremely selective basis, fund investment restrictions), substantially reducing the risk of insolvency and justifying a lower threshold than that generally applicable.*

## **Amendment 15**

### **Proposal for a directive Article 18 – paragraph 1**

#### *Text proposed by the Commission*

(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***.

#### *Amendment*

(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 ***two months***.

## **Amendment 16**

### **Proposal for a directive Annex III – paragraph 7**

#### *Text proposed by the Commission*

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***.

#### *Amendment*

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 ***four weeks***.

#### *Justification*

*See justification to Amendment 1.*

## PROCEDURE

<b>Title</b>	Deposit guarantee schemes (recast)
<b>References</b>	COM(2010)0368 – C7-0177/2010 – 2010/0207(COD)
<b>Committee responsible</b>	ECON
<b>Opinion by</b> Date announced in plenary	JURI                      JURI 7.9.2010
<b>Rapporteur</b> Date appointed	Dimitar Stoyanov 27.10.2010
<b>Discussed in committee</b>	27.1.2011
<b>Date adopted</b>	22.3.2011
<b>Result of final vote</b>	+ :                      13 - :                      2 0 :                      6
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Jan Philipp Albrecht, Luis de Grandes Pascual, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Angelika Niebler

## PROCEDURE

<b>Title</b>	Deposit guarantee schemes (recast)		
<b>References</b>	COM(2010)0368 – C7-0177/2010 – 2010/0207(COD)		
<b>Date submitted to Parliament</b>	12.7.2010		
<b>Committee responsible</b> Date announced in plenary	ECON 7.9.2010		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	IMCO 7.9.2010	JURI	JURI 7.9.2010
<b>Rapporteur(s)</b> Date appointed	Peter Simon 6.9.2010		
<b>Rule 51 – joint committee meetings</b> Date announced in plenary			
<b>Legal basis disputed</b> Date of JURI opinion	JURI		
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<b>Result of final vote</b>	+: –: 0:	34 5 1	
<b>Members present for the final vote</b>	Burkhard Balz, Godfrey Bloom, Sharon Bowles, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Vicky Ford, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Othmar Karas, Wolf Klinz, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Astrid Lulling, Hans-Peter Martin, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Ivo Strejček, Kay Swinburne, Marianne Thyssen		
<b>Substitute(s) present for the final vote</b>	Robert Goebbels, Thomas Mann		
<b>Date tabled</b>	14.6.2011		