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Committee on Legal Affairs

2010/0207(COD)

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

PA_Legam

SHORT JUSTIFICATION

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

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

AMENDMENTS

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

Amendment 1

Proposal for a directive Recital 26

Text proposed by the Commission

(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

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 ***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

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:*

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

Amendment

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

Title	Deposit guarantee schemes (recast)
References	COM(2010)0368 – C7-0177/2010 – 2010/0207(COD)
Committee responsible	ECON
Opinion by Date announced in plenary	JURI JURI 7.9.2010
Rapporteur Date appointed	Dimitar Stoyanov 27.10.2010
Discussed in committee	27.1.2011
Date adopted	22.3.2011
Result of final vote	+: 13 -: 2 0: 6
Members present for the final vote	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
Substitute(s) present for the final vote	Jan Philipp Albrecht, Luis de Grandes Pascual, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Angelika Niebler