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EUROPEAN COMMISSION

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COM(2010)368 final

2010/0207 (COD)

Proposal for a

**DIRECTIVE .../.../EU OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

on Deposit Guarantee Schemes [recast]

COM(2010)369
SEC(2010)835
SEC(2010)834

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

No bank, whether sound or ailing, holds enough liquid funds to redeem all or a significant share of its deposits on the spot. This is why banks are susceptible to the risk of bank runs if depositors believe that their deposits are not safe and try to withdraw them all at the same time. This can seriously affect the whole economy. If, despite the high level of prudential supervision, a bank has to be closed, the relevant Deposit Guarantee Scheme (DGS) reimburses depositors up to a certain ceiling (the ‘coverage level’), thereby meeting depositors’ needs. DGSs also save depositors from having to participate in lengthy insolvency proceedings, which usually lead to insolvency dividends that represent only a fraction of the original claim.

Following the Commission communication in 2006 concerning the review of Directive 94/19/EC on Deposit Guarantee Schemes¹, events in 2007 and 2008 showed that the existing, fragmented DGS system has not delivered on the objectives set by Directive 94/19/EC on Deposit Guarantee Schemes, in terms of maintaining depositors’ confidence and financial stability in times of economic stress. The current about 40 DGS in the EU which cover different groups of depositors and deposits up to different coverage levels, impose different financial obligations on banks and therefore limit the benefits of the internal market for banks and depositors. Moreover, schemes have proved to be underfinanced in times of financial stress.

On 7 October 2008, the Council of the European Union agreed confidence in the financial sector had to be restored and encouraged the Commission to bring forward an appropriate proposal to promote convergence of DGSs. This led to the adoption of Directive 2009/14/EC². However, given that the need for swift negotiations precluded tackling all the open issues, this Directive was only an emergency measure to maintain depositors’ confidence, in particular by increasing the coverage level from €20 000 to €100 000 by the end of 2010. Directive 2009/14/EC therefore contained a clause providing for a broad review of all aspects of DGSs. The need to reinforce DGSs by presenting appropriate legislative proposals was reiterated in the Commission communication of 4 March 2009 *Driving European recovery*³.

The main elements of this proposal are:

- Simplification and harmonisation, in particular as to the scope of coverage and the arrangements for payout;
- Further reduction of the time limit for paying out depositors and better access for DGS to information about their members (i.e. banks);
- Sound and credible DGSs that are sufficiently financed;

¹ COM(2006) 729.

² Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on DGS as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

³ COM(2009) 114, p. 4.

- Mutual borrowing between DGSs, i.e. a borrowing facility in certain circumstances.

The elements of the review which, in the Commission's view, should not (or not yet) be subject to legislation are set out in the report accompanying this proposal. The report and the proposal are part of a package on guarantee schemes in the financial sector, which also comprises a review of investor compensation schemes (Directive 97/9/EC) and a white paper on insurance guarantee schemes.

2. CONSULTATION OF INTERESTED PARTIES AND EXTERNAL EXPERTISE

A public consultation was held from 29 May to 27 July 2009. All 104 contributions and a summary report were published in August 2009⁴ and stakeholders' views were in general taken into account. Four issues were raised by many respondents (mainly banks and their associations, consumers and their associations, Member States and DGSs) and therefore merit particular attention:

- Nearly all respondents were in favour of simplification and harmonisation of eligibility criteria for depositors. This has been taken into account.
- A clear majority of respondents was against further reducing the deadline for payout; many argued that experience with the new deadline of 4-6 weeks set out in Directive 2009/14/EC should first be assessed before a further reduction is envisaged. The Commission maintains that the current deadline is too long to prevent bank runs and to meet depositors' financial needs. A clear majority of respondents supported involving DGSs at an early stage when it becomes likely that the DGS is triggered. This was considered essential for a shorter payout deadline and is reflected in the proposal.
- A large majority of respondents was in favour of ex-ante funding of schemes, and of risk-based contributions to DGSs. This has been taken into account.
- Opinions were divided on whether or not mutual guarantee schemes should be covered by the Directive. These are schemes which protect the credit institution itself and, in particular, ensure its liquidity and solvency. Such systems guarantee a different protection for depositors in comparison to the protection provided by a Deposit Guarantee Scheme. If, due to the support of a mutual scheme, a bank does not fail and its services are provided continuously, it is not necessary to reimburse depositors. In contrast to this, a Deposit Guarantee Scheme is only triggered when a bank fails. However, the current proposal leaves the stabilising function of mutual schemes intact, but improves the position of depositors, who will now have a claim against them if they cannot prevent the failure of a member.

External expertise was used to prepare this proposal. In March 2009, an informal roundtable with experts was held⁵. Member States' expertise was provided at the three meetings of the Working Group on Deposit Guarantee Schemes (DGSWG), in June and November 2009 and in February 2010. The Commission's Joint Research Centre (JRC) submitted reports on the coverage level (2005), possible harmonisation of funding mechanisms (2006 and 2007), the efficiency of deposit guarantee schemes (2008) and possible models for introducing risk-

⁴ See: http://ec.europa.eu/internal_market/consultations/2009/deposit_guarantee_schemes_en.htm.

⁵ See: http://ec.europa.eu/internal_market/bank/guarantee/index_en.htm#roundtable.

based contributions in the EU (2008 and 2009)⁶. This work was supported by the European Forum of Deposit Insurers (EFDI), which in 2008 also finalised several reports on specific issues⁷. This work has been taken into account in drafting the current proposal. The ECB was also closely involved in the preparation of this proposal.

3. IMPACT ASSESSMENT

A directive amending the current directive is the most appropriate instrument. The Commission is aware of the cumulative effects of current and future legislative measures concerning the banking sector.

3.1. Preferred options

Altogether, over 70 different policy options were assessed. The main options identified as preferable are:

- Simplifying and harmonising the scope of coverage;
- Reducing the payout deadline to seven days;
- Ending the practice of setting off depositors' liabilities against their claims;
- Introducing an information template to be countersigned by a depositor and a mandatory reference to DGSs in account statements and advertisements;
- Harmonising the approach to the funding of DGSs;
- Setting a target level for DGS funds;
- Fixing the proportions of ex-ante and ex-post bank contributions to DGS;
- Introducing risk-based elements for bank contributions to DGS;
- Restricting the use of DGS funds for broader bank resolution purposes benefiting of all creditors of a bank;
- Having the host country DGS act as a single point of contact for depositors at branches in another Member State.

3.2. Social impact

The proposal will ensure that, in the event of a bank failure, depositors are reimbursed up to €100 000 by a DGS within seven calendar days. This will make the intervention of social welfare systems almost unnecessary. The impact assessment report is available at: http://ec.europa.eu/internal_market/bank/guarantee/index_en.htm. A summary is attached to this proposal.

⁶ All reports can be downloaded from http://ec.europa.eu/internal_market/bank/guarantee/index_en.htm.

⁷ The relevant reports issued by the EFDI in May 2008 are available at www.efdi.eu.

3.3. Administrative burden

The proposal will not entail any significant administrative burden and simplifies the eligibility criteria for depositors. The impact assessment report contains additional information.

4. MONITORING AND EVALUATION

Since bank failures are unpredictable and are avoided if possible, the functioning of DGSs cannot be regularly monitored on the basis of how real bank failures are handled. However, there should be regular stress tests of DGSs to show whether they are capable of meeting the legal requirements, at least in an exercise scenario. This should be part of a peer review conducted by the European Forum of Deposit Insurers (EFDI)⁸ and the future European Banking Authority (EBA).

5. LEGAL ELEMENTS OF THE PROPOSAL

A directive amending the current directive is the most appropriate instrument. Since Directive 2009/14/EC amending Directive 94/19/EC has not been completely implemented, both Directives should be consolidated and amended by means of a recast.

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.

In accordance with the principles of subsidiarity and proportionality set out in Article 5 TFEU, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore be better achieved by the EU. Its provisions do not go beyond what is necessary to achieve the objectives pursued. Only EU action can ensure that credit institutions operating in more than one Member State are subject to similar requirements for DGSs, and thereby ensure a level playing field, avoid unwarranted compliance costs for cross-border activities and promote further integration in the EU market. EU action also ensures a high level of financial stability in the EU. Harmonising coverage and payout deadlines, in particular, cannot be sufficiently achieved by Member States because it means bringing into line a multitude of different rules under the legal systems of various Member States, and can therefore be better achieved at EU level. This has been acknowledged in the existing Directives on DGSs⁹.

6. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

⁸ See www.efdi.eu.

⁹ Recital 17 of Directive 2009/14/EC and (unnumbered) recitals of Directive 94/19/EC.

7. DETAILED EXPLANATION OF THE PROPOSAL

The recast gave the Directive a better and more comprehensive structure. Many outdated references were amended. Article headings make it easier to read. Articles on the scope of the Directive and a number of new definitions make it easier to understand. The Directive describes the features of DGSs, before laying down coverage levels. Articles dealing with payout are followed by rules on financing and on the information to be given to depositors.

7.1. Scope, definitions and supervision (Articles 1-3)

The Directive now encompasses all credit institutions and all schemes, without distinction. All banks must join a DGS; they cannot be exempted. This ensures that depositors always have a claim against a scheme and that all schemes must be soundly financed.

Mutual guarantee schemes protect depositors by protecting the credit institution itself (see chapter 2). Since all banks must now join a DGS, mutual guarantee schemes can either be recognised as DGSs and in this case must meet the requirements set out in Directive 2006/48/EC in order to ensure consistency in EU law. Alternatively, mutual schemes and DGS could be set up separately. In the latter case, a dual membership of a bank in both schemes and the additional safeguard role of mutual schemes can be taken into account when the contributions to the DGS are set.

Deposits are now defined more clearly. Only entirely repayable instruments can be deemed deposits, not structured products, certificates or bonds. This prevents DGSs from taking unpredictable risks with investment products.

All DGSs must now be supervised on an ongoing basis and they must perform regular stress tests of their systems. DGSs now have the right to obtain information from banks at an early stage in order to enable fast payout. Member States are now explicitly allowed to merge their DGSs. Credit institutions now have to be given one month's notice, not 12 months', before they can be excluded from a DGS.

7.2. Eligibility criteria and determination of the repayable amount (Articles 4-6)

Depositors' eligibility has been simplified and harmonised. Most discretionary exclusions have become mandatory, in particular the exclusion of authorities and financial institutions of any kind. On the other hand, deposits in non-EU currencies are covered under the law and so are the deposits of all non-financial companies.

The coverage level of EUR 100 000 (to be implemented by end of 2010 under Directive 2009/14/EC) has not been amended. However, Member States may decide to cover deposits arising from real estate transactions and deposits relating to particular life events above the limit of EUR 100 000 , provided that the coverage is limited to 12 months.

It is now stipulated that interest due but not credited at the time of failure must be repaid, provided that the coverage level is not exceeded. Depositors must now be paid out in the currency in which the account was managed. Setting off claims against the depositor's liabilities is no longer permitted after an institution fails.

7.3. Payout (Articles 7 and 8)

The DGS must now act to repay depositors within one week. Depositors do not need to submit an application. Any information they are given must be in the official language(s) of the Member State where the deposit is located. The Directive now stipulates that depositors' unacknowledged or unpaid claims against DGS can only be time-barred to the extent that the DGS's claims in the liquidation or reorganisation proceedings are time-barred.

In order to meet such a short payout deadline, the competent authorities are obliged to inform DGSs by default if a bank failure becomes likely. Moreover, DGSs and banks must exchange information on depositors, domestically and across borders, unfettered by confidentiality requirements. Credit institutions must also be in a position to provide the aggregated deposits of a depositor ('single customer view') at any time.

7.4. DGS financing and borrowing between DGS (Articles 9 and 10)

The Directive now ensures that DGSs' available financial means are proportionate to their potential liabilities. These financial means are safeguarded against potential losses by restrictions on investment similar to those for electronic money institutions under Article 7 of Directive 2009/110/EC¹⁰ and UCITS under Article 52 of Directive 2009/64/EC¹¹, taking into account the need for lower risk and higher liquidity. The financing of DGS will be based on the following subsequent steps:

First, in order to ensure sufficient funding, DGSs must have 1.5% of eligible deposits on hand after a transition period of 10 years (this is referred to as the 'target level'). If these financial means turn out to be insufficient in the event of a bank failure, the second and third steps below must be taken.

Second, banks must pay extraordinary ('ex-post') contributions of up to 0.5% of eligible deposits if necessary. (If making this payment jeopardises a bank, it may be exempted by the competent authorities on an individual basis.) Consequently, ex-ante funds will account for 75% of DGSs' financing and ex-post contributions 25%.

Third, a mutual borrowing facility allows a DGS in need to borrow from all other DGSs in the EU, which, altogether, must, if needed, lend to the DGS a maximum of 0.5% of its eligible deposits in need on short notice, proportionate to the amount of eligible deposits in each country. The loan must be repaid within five years and new contributions to the DGS must be raised to reimburse the loan. To secure repayment, the lending DGSs have the right to subrogate into the claims of depositors against the failed credit institution and these claims will rank first in the liquidation procedure of the credit institution whose failure depleted the borrowing DGS.

¹⁰ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

¹¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (Text with EEA relevance) (OJ L 302, 17.11.2009, p. 32).

As a fourth and last line of defence against taxpayers' involvement, DGSs must have in place alternative funding arrangements, recalling that those arrangements must comply with the monetary financing prohibition laid down in Article 123 TFEU.

Only after 10 years, this four-step mechanism will become operational. In order to adapt the target level to schemes' potential liabilities, it will be recalibrated on the basis of covered deposits (i.e. taking into account the coverage level), but without diminishing the level of protection.

DGS funds should principally be used for paying out depositors. This, however, does not prevent their use for bank resolution purposes in accordance with state aid rules. However, to avoid the depletion of funds for the benefit of a bank's uninsured creditors, such use must be limited to the amount that would have been necessary to pay out covered deposits. Given that bank resolution and payout have different purposes, DGS funds should be ring-fenced already when the target level is build up, ensuring that the primary function of DGSs, i.e. deposit payout, is not impeded. This is without prejudice to the future Commission policy concerning bank resolution funds.

7.5. Risk-based contributions to DGSs (Article 11 and Annex I and II)

Contributions from credit institutions to DGSs must be calculated according to their risk profiles in a harmonised way. In principle, contributions consist of both non-risk and risk-based elements. The latter will be calculated on the basis of several indicators reflecting the risk profiles of each credit institution. The proposed indicators cover the key risk classes commonly used to evaluate the financial soundness of credit institutions: capital adequacy, asset quality, profitability and liquidity. The data necessary to compute those indicators are available under existing reporting obligations.

Taking into account differences between banking sectors in Member States, the Directive ensures some flexibility by developing a set of core indicators (mandatory for all Member States) and another set of supplementary indicators (optional for Member States). The core indicators consist of commonly used criteria such as capital adequacy, asset quality, profitability and liquidity. Core indicators weigh 75% and supplementary indicators 25%.

This approach to calculating risk-based contributions relies on the Commission (Joint Research Centre) reports of 2008 and 2009, and also reflects current approaches in some Member States¹². In general, the Directive requires that the total amount of contributions to be collected by DGS should first be determined in line with the target level for DGS funds; then the amount should be apportioned among DGS member banks according to their risk profiles. Consequently, the Directive provides incentives for sound risk management and discourages risky behaviour by clearly differentiating between the levels of contribution paid by the least and most risky banks (from 75% to 200% of the standard amount, respectively).

As to the non-risk element, the contribution base is the amount of *eligible deposits*, as is currently the case in most Member States. However, over time, *covered deposits* (i.e. eligible deposits not exceeding the coverage level) will become the contribution base in all Member States as they better reflect the risk to which DGSs are exposed.

¹² See JRC reports at http://ec.europa.eu/internal_market/bank/docs/guarantee/risk-based-report_en.pdf and http://ec.europa.eu/internal_market/bank/docs/guarantee/2009_06_risk-based-report_en.pdf.

A full harmonisation of the calculation of risk-based contributions should be achieved at a later stage.

7.6. Cross-border cooperation (Article 12)

In order to facilitate the payout process in cross-border situations, the host country DGS acts as a single point of contact for depositors at branches in another Member State. This includes not only communication with depositors in that country (acting as a ‘post box’) but also paying out on behalf of the home country DGS (acting as a ‘paying agent’). Agreements between DGSs will facilitate this function.

Schemes have to exchange relevant information with each other. Mutual agreements will facilitate this.

Banks reorganising themselves in a way that causes their membership of one DGS to cease and entails membership in another DGS will be reimbursed their last contribution so that they can use these funds to pay the first contribution to the new DGS.

7.7. Depositor information (Article 14 and Annex III)

Depositors are now better informed about whether their deposits are covered and about how a DGS functions. To this end, before making a deposit, depositors must now countersign an information sheet based on the template set out in Annex III, which contains all relevant information about the coverage of the deposit by the responsible DGS. Existing depositors must be informed accordingly on the statements of account. Advertising on deposit products must be limited to a factual reference to coverage by the DGS, in order to avoid using the DGS as a marketing argument.

The regular disclosure of specific information by DGSs (ex-ante funds, ex-post capacity, results of regular stress testing) ensures transparency and credibility, leading to enhanced financial stability with insignificant costs (see impact assessment report for more details)..

7.8. New supervisory architecture

On 23 September 2009, the Commission adopted proposals for Regulations establishing the European System of Financial Supervisors, including the creation of the three European supervisory authorities and the European Systemic Risk Board. The new European Banking Authority should, within the powers conferred to it by the Regulation, collect information on the amount of deposits, conduct peer review analyses, confirm whether a DGS can borrow from other DGSs, and settle disagreements between DGSs.

Proposal for a

**DIRECTIVE .../.../EU OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

of [...]

on Deposit Guarantee Schemes [recast]

(Text with EEA relevance)

↓ 94/19/EC (adapted)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular ~~the first and third sentences of~~ Article 53(1) ~~57(2)~~ thereof,

Having regard to the proposal from the European Commission¹³,

Having regard to the opinion of the European Central Bank,¹⁴

Having regard to the opinion of the European Data Protection Supervisor¹⁵ ~~Economic and Social Committee~~¹⁶,

After transmission of the proposal to the national Parliaments,

Acting in accordance with the ordinary legislative procedure ~~referred to in Article 189b of the Treaty~~¹⁷,

Whereas:

¹³ ~~OJ No C 163, 30.6.1992, p. 6 and OJ No C 178, 30.6.1993, p. 14.~~

¹⁴ ~~OJ C [...]~~

¹⁵ ~~OJ C [...]~~

¹⁶ ~~OJ C [...], p. [...], OJ No C 332, 16.12.1992, p. 13.~~

¹⁷ ~~OJ No C 115, 26.4.1993, p. 96 and Decision of the European Parliament of 9 March 1994 (OJ No C 91, 28.3.1994).~~

↓ new

- (1) A number of substantial changes are to be made to European Parliament and Council Directive 94/19/EC of 30 May 1994^{*}. In the interests of clarity, that Directive should be recast.

^{*} OJ L 135, 31.5.1994, p. 5.

↓ 94/19/EC, Recital 1 (new)

- (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. ~~Whereas, in accordance with the objectives of the Treaty, the harmonious development of the activities of credit institutions throughout the Community should be promoted through the elimination of all restrictions on the right of establishment and the freedom to provide services, while increasing the stability of the banking system and protection for savers;~~

↓ 94/19/EC, Recital 2 (new)

- (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. ~~Whereas, when restrictions on the activities of credit institutions are eliminated, consideration should be given to the situation which might arise if deposits in a credit institution that has branches in other Member States become unavailable; whereas it is indispensable to ensure a harmonized minimum level of deposit protection wherever deposits are located in the Community; whereas such deposit protection is as essential as the prudential rules for the completion of the single banking market;~~

↓ new

- (4) Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay¹⁸ required the Commission, if appropriate, to put forward proposals to amend Directive 94/19/EC. This encompasses the harmonisation of the funding mechanisms of deposit-guarantee schemes, possible models for introducing risk-based contributions, the benefits and costs of a possible introduction of a Union-wide Deposit Guarantee Scheme, the impact of diverging legislations as

¹⁸ OJ L 68, 13.3.2009, p. 3.

regards set-off and counterclaims, on the efficiency of the system, the harmonisation of the scope of products and depositors covered.

↓ 94/19/EC, Recital 8 (new)

- (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. ~~Whereas harmonization must be confined to the main elements of deposit guarantee schemes and, within a very short period, ensure payments under a guarantee calculated on the basis of a harmonized minimum level;~~
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↓ new

- (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.
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↓ 94/19/EC, Recital 3

- (7) ~~Whereas~~ in the event of the closure of an insolvent credit institution the depositors at any branches situated in a Member State other than that in which the credit institution has its head office must be protected by the same guarantee scheme as the institution's other depositors.
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↓ 94/19/EC, Recital 15 (adapted)

- (8) ~~Whereas~~ in principle this Directive requires every credit institution to join a deposit-guarantee scheme; ~~whereas the Directives governing the admission of any credit institution which has its head office in a non-member country, and in particular the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (1) allow Member States to decide whether and subject to what conditions to permit the branches of such credit institutions to operate within their territories; whereas such branches will not enjoy the freedom to provide services under the second paragraph of Article 59 of the Treaty, nor the right of establishment in Member States other than those in which they are established; whereas, accordingly, a Member State admitting such branches ☒ of a credit institution having its head office in a third country ☒ should decide how to apply the principles of this Directive to such branches ☒ and take account of ☒ in accordance with Article 9 (1) of Directive 77/780/EEC and with the need to protect depositors and~~

maintain the integrity of the financial system. ~~It is~~ ~~whereas~~ it is essential that depositors at such branches should be fully aware of the guarantee arrangements which affect them.

↓ new

(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.

(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)¹⁹ 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.

(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 time.

↓ 2009/14/EC, Recital 4

⇒ new

(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.

¹⁹ OJ L 177, 30.6.2006, p. 1.

↓ 94/19/EC, Recital 16 (adapted)

- (13) ~~Whereas, on the one hand, the minimum guarantee level prescribed in this Directive should not leave too great a proportion of deposits without protection in the interest both of consumer protection and of the stability of the financial system; whereas, on the other hand, it would not be appropriate to impose throughout the Community a level of protection which might in certain cases have the effect of encouraging the unsound management of credit institutions; whereas the cost of funding schemes should be taken into account. It, whereas it would therefore appear reasonable to set the harmonized minimum guarantee level at EUR 100 000. ECU 20 000; whereas limited transitional arrangements might be necessary to enable schemes to comply with that figure;~~
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↓ 94/19/EC, Recital 20 (adapted)

- (14) ~~Whereas the principle of a harmonized minimum limit per depositor rather than per deposit has been retained. It, whereas it is therefore appropriate to take into consideration the deposits made by depositors who either are not mentioned as holders of an account or are not the sole holders; whereas the limit must therefore be applied to each identifiable depositor. It, whereas that should not apply to collective investment undertakings subject to special protection rules which do not apply to the aforementioned deposits.~~
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↓ new

- (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.
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↓ 94/19/EC, Recital 23 (new)

⇒ new

- (16) ~~Whereas it is not indispensable, in this Directive, to harmonize the methods of financing schemes guaranteeing deposits or credit institutions themselves. On, given on the one hand, that the cost of financing such schemes should be borne ⇒ principally ⇐ in principle by credit institutions themselves; and on the other hand, that the financing capacity of such schemes must be proportionate in proportion 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 harmonised at a high level. ⇐ This, however, should; whereas this must not jeopardize the stability of the banking system of the Member State concerned.~~

↓ new

- (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 part and those whose existence can only be proven by a certificate.
- (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.
- (19) Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering²⁰ provides a definition for money laundering. On the basis of this definition, depositors should be excluded from payments by Deposit Guarantee Schemes.

↓ 94/19/EC, Recital 4

- (20) ~~Whereas~~ the cost to credit institutions of participating in a guarantee scheme bears no relation to the cost that would result from a massive withdrawal of bank deposits not only from a credit institution in difficulties but also from healthy institutions following a loss of depositor confidence in the soundness of the banking system.

↓ new

- (21) It is 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.
- (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 aid rules. This is without prejudice to the future Commission policy concerning the establishment of national bank resolution funds.

²⁰ OJ L 166, 28.6.1991, p. 77.

(23) Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)²¹ assigns risks to certain asset items. This annex should be taken into account in order to ensure that Deposit Guarantee Schemes only invest in low-risk assets.

(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.

↓ 94/19/EC, Recital 25 (new)
⇒ new

(25) ~~Whereas~~ deposit protection is an essential element in the completion of the internal market and an indispensable supplement to the system of supervision of credit institutions on account of the solidarity it creates amongst all the institutions in a given financial market in the event of the failure of any of them.~~;~~ ⇒ Therefore, Deposit Guarantee Schemes should be able to lend money to each other in case of need. ⇐

↓ 2009/14/EC, Recital 10
(adapted)
⇒ new

(26) The payout delay of ~~three months currently provided for, which can be extended to nine months~~ ☒ 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. ⇐ ~~20 working days. That period should be extended only under exceptional circumstances and after approval by the competent authorities. Two years after the entry into force of this Directive the Commission should submit to the European Parliament and to the Council a report on the effectiveness and delays of the payout procedures assessing whether a further reduction of the delay to 10 working days would be appropriate.~~

↓ new

(27) Deposit Guarantee Schemes in Member States where a credit institution has established branches or where it directly provides services, should inform and repay depositors on behalf of the Scheme in the Member State where the credit institution has been authorised. The Deposit Guarantee Schemes that may be concerned should enter into agreements in advance in order to facilitate these tasks.

²¹ OJ L 177, 30.6.2006, p. 201.

↓ 94/19/EC, Recital 21
⇒ new

(28) ~~Whereas information is an essential element in depositor protection and must therefore also be the subject of a minimum number of binding provisions;~~ ⇒ . 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. ⇐ ~~Whereas, however, 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; whereas Member States should therefore lay down rules to limit such references;~~ ⇒ . 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. ⇐

↓ new

(29) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²² applies to the processing of personal data carried out pursuant to this Directive.

↓ 94/19/EC, Recital 24

(30) ~~Whereas~~ this Directive may not result in the Member States' or their competent authorities' being made liable in respect of depositors if they have ensured that one or more schemes guaranteeing deposits or credit institutions themselves and ensuring the compensation or protection of depositors under the conditions prescribed in this Directive have been introduced and officially recognized.²³

↓ new

(31) The Commission in its Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority of 23 September 2009²³ brought forward draft legislation creating a European System of Financial Supervisors and provided details about the architecture of such a new supervisory framework including the creation of a European Banking Authority.

²² OJ L 281, 23.11.1995, p. 31.

²³ Proposal for a Regulation of the European parliament and of the Council establishing a European Banking Authority - COM(2009) 501.

- (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.
- (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.
- (34) In order to ensure efficient and effective functioning of Deposit Guarantee Schemes and a balanced consideration of their positions in different Member States, the Authority should be able to settle disagreements between them with binding effect.
- (35) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of Article 5(5).
- (36) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, the objectives of the action to be taken, namely the harmonisation of rules concerning the functioning of Deposit Guarantee Schemes, can be only achieved at Union level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (37) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (38) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex IV,

↓ 94/19/EC

HAVE ADOPTED THIS DIRECTIVE:

↓ new

Article 1

Subject matter and scope

1. This Directive lays down rules concerning the functioning of Deposit Guarantee Schemes.
 2. This Directive shall apply to all Deposit Guarantee Schemes on a statutory or contractual basis and to institutional protection schemes recognized as Deposit Guarantee Schemes.
 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.
 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.
-

↓ 94/19/EC, Article 1.1 (new)

Article 2

Definitions

1. For the purposes of this Directive:
 - (a) ~~1.~~ 'deposit' ~~shall~~ 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 a credit institution.~~

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

~~Bonds which satisfy the conditions prescribed in Article 22 (4) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Ucits)²⁴ shall not be considered deposits.~~

²⁴ ~~OJ No C 163, 30. 6. 1992, p. 6 and OJ No C 178, 30. 6. 1993, p. 14.~~

~~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;~~

↓ new

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

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

its principal is not repayable at par;

its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party; ⇐

(b) 'eligible deposits' are deposits that are not excluded from protection according to Article 4;

(c) 'covered deposits' are eligible deposits that do not exceed the level of coverage referred to in Article 5;

↓ 94/19/EC, Article 1.2

~~(d)2~~ 'joint account' ~~shall~~ means an account opened in the names of two or more persons or over which two or more persons have rights that may operate against the signature of one or more of those persons;

↓ 94/19/EC, Article 1.3

~~(e)2~~ 'unavailable deposit' ~~shall~~ means a deposit that is due and payable but has not been paid by a credit institution under the legal and contractual conditions applicable thereto, where either:

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

↓ 2009/14/EC Art. 1.1

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

- (ii) a judicial authority has made a ruling for reasons which are directly related to the credit institution's financial circumstances which has the effect of suspending depositors' ability to make claims against it, should that occur before the aforementioned determination has been made;

~~(f)4.~~ 'credit institution' ~~shall~~ means an undertaking ~~the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account~~ ⇒ defined under Article 4(1) of Directive 2006/48/EC ⇐ ;

~~(g)5.~~ 'branch' ~~shall~~ means a place of business which forms a legally dependent part of a credit institution and which conducts directly all or some of the operations inherent in the business of credit institutions;

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

(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);

(j) 'low-risk assets' are asset items falling into one of the categories set out in the first and second category of Table 1 of point 14 of Annex I to Directive 2006/49/EC but excluding other qualifying items as defined in point 15 of that Annex;

(k) 'home Member State' means the Member State in which a credit institution has its head office;

(l) 'host Member State' means the Member State in which a credit institution has a branch or in which it provides services;

(m) 'competent authorities' means competent authorities defined under Article 4(4) of Directive 2006/48/EC;

2. Where this Directive refers to the [EBA regulation], bodies which administer Deposit Guarantee Schemes shall, for the purpose of this regulation, be considered competent authorities under Article 2(2) of the [EBA regulation].

↓ 94/19/EC, Article 3
→₁ 2005/1/EC, Article 2
⇒ new

Article 3

Membership and supervision

1. Each Member State shall ensure that within its territory one or more ~~D~~deposit-~~G~~uarantee ~~S~~schemes are introduced and officially recognized.

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

~~Except in the circumstances envisaged in the second subparagraph and in paragraph 4, no credit institution authorized in that Member State pursuant to Article 3 of Directive 77/780/EEC may take deposits unless it is a member of such a scheme.~~

~~A Member State may, however, exempt a credit institution from the obligation to belong to a deposit-guarantee scheme where that credit institution belongs to a system which protects the credit institution itself and in particular ensures its liquidity and solvency, thus guaranteeing protection for depositors at least equivalent to that provided by a deposit-guarantee scheme, and which, in the opinion of the competent authorities, fulfils the following conditions:~~

~~the system must be in existence and have been officially recognized when this Directive is adopted,~~

~~the system must be designed to prevent deposits with credit institutions belonging to the system from becoming unavailable and have the resources necessary for that purpose at its disposal,~~

~~the system must not consist of a guarantee granted to a credit institution by a Member State itself or by any of its local or regional authorities,~~

~~the system must ensure that depositors are informed in accordance with the terms and conditions laid down in Article 9.~~

~~Those Member States which make use of this option shall inform the Commission accordingly; in particular, they shall notify the Commission of the characteristics of any such protective systems and the credit institutions covered by them and of any subsequent changes in the information supplied. The Commission shall inform the →₁ European Banking Committee ← thereof.~~

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

3. If those measures fail to secure compliance on the part of the credit institution, the scheme may, where national law permits the exclusion of a member, with the express consent of the competent authorities, give not less than \Rightarrow 1 \Leftarrow ~~12~~ month's notice of its intention of excluding the credit institution from membership of the scheme. Deposits made before the expiry of the notice period shall continue to be fully covered by the scheme. If, on the expiry of the notice period, the credit institution has not complied with its obligations, the guarantee scheme \Rightarrow shall \Leftarrow ~~may, again having obtained the express consent of the competent authorities,~~ proceed to exclusion.

~~4. Where national law permits, and with the express consent of the competent authorities which issued its authorization, a credit institution excluded from a deposit guarantee scheme may continue to take deposits if, before its exclusion, it has made alternative guarantee arrangements which ensure that depositors will enjoy a level and scope of protection at least equivalent to that offered by the officially recognized scheme.~~

~~5. If a credit institution the exclusion of which is proposed under paragraph 3 is unable to make alternative arrangements which comply with the conditions prescribed in paragraph 4, then the competent authorities which issued its authorization shall revoke it forthwith.~~

\Downarrow 94/19/EC, Article 5 (adapted)

4. Deposits held when the authorization of a credit institution authorized pursuant to Article \boxtimes 6 of Directive 2006/48/EC \Leftarrow ~~3 of Directive 77/780/EEC~~ is withdrawn shall continue to be covered by the guarantee scheme.

\Downarrow new

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.

\Downarrow 2009/14/EC Article 1.6(a)
(new)

6. Member States shall ensure that Deposit Guarantee Schemes perform tests of their systems and that, ~~if appropriate,~~ 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.

↓ new

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

The European Banking Authority shall periodically conduct peer reviews pursuant to Article 15 of the [EBA regulation] in this regard. Deposit Guarantee Schemes shall be bound to professional secrecy referred to in Article 56 of that Regulation when exchanging information with the European Banking Authority.

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.

↓ 94/19/EC, Article 2 (adapted)

Article 4

Eligibility of deposits

1. The following shall be excluded from any repayment by Deposit-Guarantee Schemes:
- (a) subject to Article ~~68~~(3), deposits made by other credit institutions on their own behalf and for their own account,
 - (b) all instruments which would fall within the definition of 'own funds' in Article ~~57~~ of Directive 2006/48/EC ~~2~~ of Council Directive ~~89/299/EEC~~ of 17 April 1989 on the own funds of credit institutions²⁵,
 - (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

↓ new

- (d) deposits by financial institutions as defined in Article 4(5) of Directive 2006/48/EC;

²⁵ ~~OJL 124, 5.5.1989, p. 16~~

- (e) deposits by investment firms as defined in Article 4(1)(1) of Directive 2004/39/EC;
- (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,
- (g) deposits by insurance undertakings,
- (h) deposits by collective investment undertakings,
- (i) deposits by pension and retirement funds,
- (j) deposits by authorities,
- (k) debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes.

2. Member States shall ensure that credit institutions mark deposits referred to in paragraph 1 in a way that allows an immediate identification of such deposits.

↓ 2009/14/EC Article 1.3(a)
(adapted)

Article 5

Coverage level

1. Member States shall ensure that the coverage for the aggregate deposits of each depositor shall be ~~at least~~ EUR 100 000 ~~50 000~~ in the event of deposits being unavailable.

~~1a. By 31 December 2010, Member States shall ensure that the coverage for the aggregate deposits of each depositor shall be set at EUR 100000 in the event of deposits being unavailable.~~

~~If, in its report referred to in Article 12, the Commission concludes that such an increase and such harmonisation are inappropriate and not financially viable for all Member States in order to ensure consumer protection and financial stability in the Community and avoid cross-border distortions between Member States, it shall present to the European Parliament and the Council a proposal to amend the first subparagraph.~~

↓ new

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:

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

(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.

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.

↓ 2009/14/EC Article 1.3(a)
(new)

~~41b.~~ ⇒ Deposits shall be paid out in the currency in which the account was maintained. If ~~Member States outside the euro area that convert~~ the amounts expressed in euro referred to in paragraphs 1 and 1a ⇒ are converted ⇐ into ⇒ other ⇐ ~~their national currencies, Member States shall ensure that the amounts of national currencies effectively paid to depositors are~~ ⇒ shall be ⇐ equivalent to those set out in this Directive.

↓ new

5. Member States who convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on the date of entry into force of this Directive.

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

Without prejudice to the preceding subparagraph, Member States shall adjust the coverage levels converted into another currency to the amount referred to in paragraph 1 every five years. Member States may make an earlier adjustment of coverage levels, after having consulted the Commission, following the occurrence of unforeseen events such as currency fluctuations .

↓ 94/19/EC, Article 7.2 (new)

~~2.~~ ~~Member States may provide that certain depositors or deposits shall be excluded from guarantee or shall be granted a lower level of guarantee. Those exclusions are listed in Annex I.~~

↓ 2009/14/EC Article 1.3(b)
(new)

~~3. Paragraph 1a shall not preclude the retention of provisions which offered before 1 January 2008, notably for social considerations, full coverage for certain kinds of deposits.~~

↓ 2009/14/EC Art. 1.3(c)

↓ 94/19/EC, Article 7.5 (adapted)
⇒ new

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 Community. The first review shall not take place before 31 December 2015 until five years after the end of the period referred to in Article 7 (1), ~~second subparagraph~~ ⇒ unless unforeseen events necessitate an earlier review. ⇐.

↓ 2009/14/EC Article 1.3(d)
(new)

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

That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with Article 16 ~~the regulatory procedure with scrutiny referred to in Article 7a(2).~~

Article 6

Determination of the repayable amount

1. The limits referred to in Article ~~57~~ (1), ~~(3)~~ and ~~(4)~~ 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 Community.
2. The share of each depositor in a joint account shall be taken into account in calculating the limits provided for in Article ~~57~~ (1), ~~(3)~~ and ~~(4)~~.

In the absence of special provisions, such an account shall be divided equally amongst the depositors.

Member States may provide that deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, may be aggregated and treated as if made by a single depositor for the purpose of calculating the limits provided for in Article ~~57~~ (1), ~~(3)~~ and ~~(4)~~.

3. Where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which the competent authorities make the determination described in Article ~~2~~ (1) (e) ~~1~~ ~~(3)~~ (i) or the judicial authority makes the ruling described in Article ~~2~~ (1) (e) ~~1~~ ~~(3)~~ (ii). If there are several persons who are absolutely entitled, the share of each under the arrangements subject to which the sums are managed shall be taken into account when the limits provided for in Article ~~57~~ (1), ~~(3)~~ and ~~(4)~~ are calculated.

4. The reference date for the calculation of the repayable amount shall be the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or when the judicial authority makes the ruling referred to in Article 2(1)(e)(ii). Liabilities of the depositor against the credit institution shall not be taken into account when calculating the repayable amount.
5. Member States shall ensure that Deposit-Guarantee Schemes may at any time request credit institutions to inform them about the aggregated amount of deposits of every depositor.
6. Interest on deposits which has accrued until but has not been credited at the date on which the competent authorities make the determination referred to in Article 2(1)(e)(i) or the judicial authority makes the ruling referred to in Article 2(1)(e)(ii) shall be reimbursed by the Deposit Guarantee Scheme. The limit referred to in Article 5(1) shall not be exceeded.

If interest depends on the value of another financial instrument and can therefore not be determined without jeopardising payout within the deadline referred to in Article 7(1), the reimbursement of such interest shall be limited to the default interest rate under national law.

7. Member States may decide that certain categories of deposits fulfilling a social purpose defined by national law, for which a third party has given a guarantee that complies with state aid rules, are not taken into account when aggregating the deposits held by the same depositor with the same credit institution as referred to in paragraph 1. In such cases the third party guarantee shall be limited to the coverage established by Article 5 (1).

~~4. This provision shall not apply to collective investment undertakings.~~

↓ 2009/14/EC Article 1.6(a)
(new)

Article 7

Repayment

1. Deposit ~~G~~ guarantee ~~S~~ schemes shall be in a position to repay ~~duly verified claims by depositors in respect of~~ unavailable deposits within $\Rightarrow 7 \Leftarrow 20$ working days of the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

~~That time limit includes the collection and transmission of the accurate data on depositors and deposits, which are necessary for the verification of claims.~~

~~In wholly exceptional circumstances, a deposit guarantee scheme may apply to the competent authorities for an extension of the time limit. Such extension shall not exceed 10 working days.~~

~~By 16 March 2011, the Commission shall submit to the European Parliament and to the Council a report on the effectiveness and delays of the payout procedures assessing whether reduction to 10 working days of the delay referred to in the first subparagraph could be implemented.~~

↓ 2009/14/EC Article 1.6(b)

2

↓ new

Member States may decide that deposits referred to in Article 6(3) are subject to a longer repayment period. However, that period shall not exceed 3 months from the date on which the competent authorities make a determination as referred to in Article 2(1)(e)(i) or a judicial authority makes a ruling as referred to in Article 2(1)(e)(ii).

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

2. Depositors shall be repaid without a request to Deposit Guarantee Schemes being necessary. For this purpose, the credit institution shall transmit the necessary information on deposits and depositors as soon as requested by the Scheme.

↓ 94/19/EC, Article 10 (new)

~~3. The time limit laid down in paragraphs 1 and 2 may not be invoked by a guarantee scheme in order to deny the benefit of guarantee to any depositor who has been unable to assert his claim to payment under a guarantee in time.~~

~~34. ⇒ Any correspondence between the Deposit Guarantee Scheme and the depositor ⇐ The documents relating to the conditions to be fulfilled and the formalities to be completed to be eligible for a payment under the guarantee referred to in paragraph 1 shall be drawn up in detail in the manner prescribed by national law 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. ⇐~~

~~45. Notwithstanding the time limit laid down in paragraphs 1 and 2, 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.~~

↓ 94/19/EC, Article 7.6

Article 8

Claims against Deposit Guarantee Schemes

1. Member States shall ensure that the depositor's rights to compensation may be the subject of an action by the depositor against the ~~De~~posit ~~G-~~uarantee ~~S-~~cheme.

↓ 94/19/EC, Article 11
⇒ new

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.

↓ new

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

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

Rights subject to the right of subrogation referred to in this paragraph shall have the first rank after the right of depositors referred to in paragraph 1 and before all other rights against the liquidator.

4. Member States may limit the time in which depositors whose deposits were not repaid or acknowledged by the scheme within the deadline set out in Article 7(1) can claim the repayment of their deposits. Such time limit shall be determined by the date at which the rights to which the Deposit Guarantee Scheme has subrogated pursuant to paragraph 2 are due to be registered in a winding up procedure under national law.

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

↓ new

Article 9

Financing of Deposit Guarantee Schemes

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

Deposit Guarantee Schemes shall raise the available financial means by regular contributions 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.

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.

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

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.

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

They may however also be used in order to finance the transfer of deposits to another credit institution, provided that the costs borne by the 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.

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:

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

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 %.

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

7. 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.

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.

↓ new

Article 10

Borrowing between Deposit Guarantee Schemes

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:

(a) the borrowing scheme is not able to fulfil its obligations under Article 8(1) because of previous payments within the scope of the first and second subparagraph of Article 9(5).

(b) the situation referred to in point (a) of this subparagraph is due to a lack of available financial means referred to in Article 9.

(c) the borrowing scheme has made recourse to extraordinary contributions referred in Article 9(3)

(d) the borrowing scheme undertakes the legal commitment that the borrowed funds will be used in order to pay claims under Article 8(1).

(e) the borrowing scheme is not currently subject to an obligation to repay a loan to other Deposit Guarantee Schemes under this Article.

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

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

(h) the borrowing scheme informs without delay the European Banking Authority and states the reasons why the above conditions are fulfilled and the amount of money requested.

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

[amount of covered deposits to be repaid under Article 8(1)] – [available financial means + maximum amount of extraordinary contributions referred to in Article 9(3)]

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.

Deposit Guarantee Schemes being obliged to repay a loan to other Deposit Guarantee Schemes under this Article shall not lend to other Deposit Guarantee Schemes.

2. The loan shall be subject to the following conditions:

(a) each scheme shall lend the amount proportionate to the amount of eligible deposits at each scheme without taking account of the borrowing scheme and Deposit Guarantee Schemes referred to under point (a). The amounts shall be calculated pursuant to the latest confirmed monthly information referred to in Article 9(7).

(b) the borrowing scheme shall repay the loan at the latest after 5 years. It may repay the loan in annual instalments. Interest shall be due only at the time of repayment.

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

3. 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.

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.

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

Article 11

Calculation of contributions to Deposit Guarantee Schemes

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 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].
-

Article 12

Cooperation within the Union

1. ~~Deposit-guarantee Schemes introduced and officially recognized in a Member State in accordance with Article 3 (1)~~ shall cover the depositors at branches set up by credit institutions in other Member States.

~~Until 31 December 1999 neither the level nor the scope, including the percentage, of cover provided shall exceed the maximum level or scope of cover offered by the corresponding guarantee scheme within the territory of the host Member State.~~

~~Before that date, the Commission shall draw up a report on the basis of the experience acquired in applying the second subparagraph and shall consider the need to continue those arrangements. If appropriate, the Commission shall submit a proposal for a Directive to the European Parliament and the Council, with a view to the extension of their validity.~~

~~2. Where the level and/or scope, including the percentage, of cover offered by the host Member State guarantee scheme exceeds the level and/or scope of cover provided in the Member State in which a credit institution is authorized, the host Member State shall ensure that there is an officially recognized deposit guarantee scheme within its territory which a branch may join voluntarily in order to supplement the guarantee which its depositors already enjoy by virtue of its membership of its home Member State scheme.~~

~~The scheme to be joined by the branch shall cover the category of institution to which it belongs or most closely corresponds in the host Member State.~~

~~3. Member States shall ensure that objective and generally applied conditions are established for branches' membership of a host Member State's scheme in accordance with paragraph 2. Admission shall be conditional on fulfilment of the relevant obligations of membership, including in particular payment of any contributions and other charges. Member States shall follow the guiding principles set out in Annex II in implementing this paragraph.~~

~~4. If a branch granted voluntary membership under paragraph 2 does not comply with the obligations incumbent on it as a member of a deposit guarantee scheme, the competent authorities which issued the authorization shall be notified and, in collaboration with the guarantee scheme, shall take all appropriate measures to ensure that the aforementioned obligations are complied with.~~

~~If those measures fail to secure the branch's compliance with the aforementioned obligations, after an appropriate period of notice of not less than 12 months the guarantee scheme may, with the consent of the competent authorities which issued the authorization, exclude the branch. Deposits made before the date of exclusion shall continue to be covered by the voluntary scheme until the dates on which they fall due. Depositors shall be informed of the withdrawal of the supplementary cover.~~

↓ 2009/14/EC Art. 1.7 (adapted)

Article 12

~~1. The Commission shall submit to the European Parliament and to the Council by 31 December 2009 a report on:~~

~~(a) the harmonisation of the funding mechanisms of deposit guarantee schemes addressing, in particular, the effects of an absence of harmonisation in the event of a cross-border crisis, in regard to the availability of the compensation payouts of the deposit and in regard to fair competition, and the benefits and costs of such harmonisation;~~

~~(b) the appropriateness and modalities of providing for full coverage for certain temporarily increased account balances;~~

~~(c) possible models for introducing risk-based contributions;~~

~~(d) the benefits and costs of a possible introduction of a Community deposit-guarantee scheme;~~

~~(e) the impact of diverging legislations as regards set-off, where a depositor's credit is balanced against its debts, on the efficiency of the system and on possible distortions, taking into account cross-border winding-up;~~

~~(f) the harmonisation of the scope of products and depositors covered, including the specific needs of small and medium enterprises and local authorities;~~

~~(g) the link between deposit-guarantee schemes and alternative means for reimbursing depositors, such as emergency payout mechanisms.~~

~~If necessary, the Commission shall put forward appropriate proposals to amend this Directive.~~

~~2. Member States shall inform the Commission and the European Banking Committee if they intend to change the scope or level of coverage for deposits and on any difficulty encountered when cooperating with other Member States.~~

↓ 2009/14/EC Article 1.2(a)
(new)

~~5. In the cases referred to in paragraphs 1 to 4, Member States shall ensure that deposit-guarantee schemes shall cooperate with each other.~~

↓ 2009/14/EC Article 1.2(b)
(new)

~~6. The Commission shall review the functioning of this Article at least every two years and, if appropriate, propose amendments thereto.~~

↕ new

2. Depositors at branches set up by credit institutions in other Member States or in Member States where a credit institution authorised in another Member State operates shall be repaid by the scheme of the host Member State on behalf of the scheme in the home Member State. The home scheme shall reimburse the host scheme.

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

3. If a credit institution ceases to be member of a scheme and joins another scheme, the contributions paid during the 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).

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

5. In order to facilitate an effective cooperation between Deposit Guarantee Schemes, with particular regard to this Article and Article 10, the Deposit Guarantee Schemes, or, where appropriate, the competent authorities, shall have written cooperation agreements in place. Such agreements shall take into account the requirements set out in Directive 95/46/EC.

The European Banking Authority shall be notified of the existence and the content of such agreements. It may issue opinions on such agreements under Articles 6(2)(f) and 19 of the [EBA regulation]. If competent authorities or Deposit Guarantee Schemes cannot reach an agreement or if there is a dispute about the interpretation of such agreement, the European Banking Authority shall settle disagreements pursuant to [Article 11 of the EBA regulation].

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

↓ 94/19/EC, Article 6 (adapted)
⇒ new

Article 13

Branches of credit institutions established in third countries

1. Member States shall check that branches established by a credit institution which has its head office ~~outside~~outwith the Union Community have ~~cover~~ ⇒ protection ⇐ equivalent to that prescribed in this Directive.

Failing that, Member States may, subject to Article 38(1) of Directive 2006/48/EC ~~9(1) of Directive 77/780/EEC~~, stipulate that branches established by a credit institution which has its head office ~~outside~~outwith the Union Community must join ~~De~~posit ~~G-g~~uarantee ~~Ss~~chemes in operation within their territories.

2. Actual and intending depositors at branches established by a credit institution which has its head office ~~outside~~outwith the Union Community ⇒ and is not member of a scheme operating in a Member State ⇐ shall be provided by the credit institution with all relevant information concerning the guarantee arrangements which cover their deposits.

3. The information referred to in paragraph 2 shall be made available in the official language or languages of the Member State in which a branch is established in the

manner prescribed by national law and shall be drafted in a clear and comprehensible form.

↓ 2009/14/EC Article 1.5 (new)

Article 14

Depositor information

1. Member States shall ensure that credit institutions make available to actual and intending depositors the information necessary for the identification of the Deposit Guarantee Scheme of which the institution and its branches are members within the ~~the~~ ~~Union~~ ~~Community~~ or any alternative arrangement provided for in the second subparagraph of Article 3(1) or in Article 3(4). ~~The depositors shall be informed of the provisions of the deposit guarantee scheme or any alternative arrangement applicable, including the amount and scope of the coverage offered by the deposit guarantee scheme.~~ When a deposit is not guaranteed by a Deposit Guarantee Scheme in accordance with Article ~~4~~ ~~7(2)~~, the credit institution shall inform the depositor accordingly.
2. ~~All~~ information ⇒ to intending depositors ⇐ shall be made available ~~in a readily comprehensible manner~~ ⇒ before entering into a contract on deposit-taking and shall be countersigned by intending depositors. The template in Annex III shall be used. ⇐
3. Information to actual depositors shall be provided on their statements of account. This information shall consist of a confirmation that the deposits are eligible pursuant to Article 2(1) and Article 4. Moreover, reference shall be made to the information sheet in Annex III and where it can be obtained. The web site of the responsible Deposit Guarantee Scheme may also be indicated.

~~Information about the conditions for compensation and the formalities which must be completed to obtain compensation shall be given on request.~~

↓ 94/19/EC, Article 9
⇒ new

4. The information provided for in paragraph 1 shall be made available in the manner prescribed by national law in the official language or languages of the Member State in which the branch is established.
5. Member States shall ~~establish rules~~ limiting the use in advertising of the information referred to in paragraph 1 ~~in order to prevent such use from affecting the stability of the banking system or depositor confidence. In particular, Member States may restrict such advertising to a factual reference to the scheme to which a credit institution belongs.~~ ⇒ guaranteeing the product to which the advertisement refers. ⇐

↓ new

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.

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.
 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.
-

↓ 2009/14/EC Article 1.7
(adapted)

Article 12

~~1. The Commission shall submit to the European Parliament and to the Council by 31 December 2009 a report on:~~

- ~~(a) the harmonisation of the funding mechanisms of deposit guarantee schemes addressing, in particular, the effects of an absence of harmonisation in the event of a cross border crisis, in regard to the availability of the compensation payouts of the deposit and in regard to fair competition, and the benefits and costs of such harmonisation;~~
- ~~(b) the appropriateness and modalities of providing for full coverage for certain temporarily increased account balances;~~
- ~~(c) possible models for introducing risk based contributions;~~
- ~~(d) the benefits and costs of a possible introduction of a Community deposit guarantee scheme;~~
- ~~(e) the impact of diverging legislations as regards set off, where a depositor's credit is balanced against its debts, on the efficiency of the system and on possible distortions, taking into account cross border winding up;~~
- ~~(f) the harmonisation of the scope of products and depositors covered, including the specific needs of small and medium enterprises and local authorities;~~
- ~~(g) the link between deposit guarantee schemes and alternative means for reimbursing depositors, such as emergency payout mechanisms.~~

~~If necessary, the Commission shall put forward appropriate proposals to amend this Directive.~~

~~2. Member States shall inform the Commission and the European Banking Committee if they intend to change the scope or level of coverage for deposits and on any difficulty encountered when cooperating with other Member States.~~

↓ 94/19/EC, Article 13 (adapted)

Article 15

List of authorized credit institutions

In the list of authorized credit institutions which it is required to draw up pursuant to Article ~~3~~ ~~(7) of Directive 77/780/EEC~~ ~~⊗~~ 14 of Directive 2006/48/EC ~~⊗~~ the Commission shall indicate the status of each credit institution with regard to this Directive.

↓ new

Article 16

Exercise of the delegation

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 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.

Article 17

Revocation of the delegation

1. The delegation of power referred to in Article 16 may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 18

Objections to delegated acts

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

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

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 19

Transitional provisions

1. Contributions to Deposit Guarantee Schemes referred to in Article 9 shall be distributed as evenly as possible until the target level referred to in the third subparagraph of Article 9(1) is reached.
2. Depositors holding debt securities issued by the same credit institution and liabilities arising out of own acceptances or promissory notes, deposits whose existence can only be proven by a certificate other than a statement of account, deposits whose principal is not repayable at par; or whose principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party shall be informed that their deposits would not be covered anymore under a Deposit Guarantee Scheme.
3. Where certain deposits cease to be covered wholly or partially by Deposit Guarantee Schemes after the transposition of this Directive or Directive 2009/14/EC into national law, Member States may allow such deposits to be covered until 31 December 2014 if those deposits were paid in before 30 June 2010. After 31 December 2014, Member States shall ensure that no scheme grants higher or more comprehensive guarantees than those provided for in this Directive, regardless when the deposits were paid in.

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

↓ 94/19/EC, Article 14
⇒ new

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary ~~for them~~ to comply with ~~this Directive~~ ⇒ 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 ~~inform the Commission thereof~~. ⇒ communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. ⇐

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with the third subparagraph of Article 9(1), Article 9(3) and Article 10 by 31 December 2020.

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with 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.

When Member States adopt those provisions, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. ~~The methods of making such reference shall be laid down by the Member States.~~ ⇒ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ⇐

2. ~~The~~ Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field ~~governed~~ covered by this Directive.
-

↓ new

Article 21

Repeal

Directives 94/19/EC together with its successive amendments, are repealed with effect from 31 December 2012, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex IV.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

↓ 94/19/EC, Article 15 (adapted)
⇒ new

Article 22

Entry into force

This Directive shall enter into force on the ⇒ twentieth ⇐ day ⇒ following that ⇐ of its publication in the Official Journal of the European Union Communities.

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

↓ 94/19/EC, Article 16

Article 23

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX I

Determination of risk-based contributions to Deposit Guarantee Schemes

1. The following formulas shall be used:

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

$$C_i = TC * RS_i$$

(b) the risk share of a member

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

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

$$RA_i = CB * \beta_i$$

where:

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

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

RS_i the risk share for the i -th member

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

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

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

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

2. The following formulas shall be used:

(a) the total composite score of a member

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

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

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

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

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

where:

ρ_i the total composite score of the i -th member

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

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

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

x the symbol of a given core or supplementary indicator.

↓ new

ANNEX II

Indicators, scores and weights for calculating risk-based contributions

PART A

Core indicators

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

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

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

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

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

Element	Symbol (x)	$\rho^x = 1$	$\rho^x = 2$	$\rho^x = 3$	$\rho^x = 4$	$\rho^x = 5$
Capital adequacy	CA	$x > 12.3\%$	$12.3\% \geq x > 9.6\%$	$9.6\% \geq x > 8.2\%$	$8.2\% \geq x > 7\%$	$x \leq 7\%$
Asset quality	AQ	$x \leq 1\%$	$1\% < x \leq 2.1\%$	$2.1\% < x \leq 3.7\%$	$3.7\% < x \leq 6\%$	$x > 6\%$
Profitability	P	$x > 1.2\%$	$1.2\% \geq x > 0.9\%$	$0.9\% \geq x > 0.7\%$	$0.7\% \geq x > 0.5\%$	$x \leq 0.5\%$
Liquidity	L	Member States may determine the thresholds for each ρ^x subject to Article 11(4)				

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

Composite score (ρ)	$1 < \rho \leq 1.5$	$1.5 < \rho \leq 2.5$	$2.5 < \rho \leq 3.5$	$3.5 < \rho \leq 4.5$	$4.5 < \rho \leq 5$
Risk coefficient (β)	75%	100%	125%	150%	200%

PART B

Supplementary indicators

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

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

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

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

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

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

Composite score (ρ)	$1 < \rho \leq 1.5$	$1.5 < \rho \leq 2.5$	$2.5 < \rho \leq 3.5$	$3.5 < \rho \leq 4.5$	$4.5 < \rho \leq 5$
Risk coefficient (β)	75%	100%	125%	150%	200%

ANNEX III

Depositor information template

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

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

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

In case of joint accounts, the limit of EUR 100 000 applies to each depositor.

[Only where applicable:] However, deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of EUR 100 000.]

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

The responsible Deposit Guarantee Scheme is [*insert name and address, telephone, e-mail and web site*]. It will repay your deposits (up to EUR 100 000) within six weeks at the latest, from 31 December 2013 within one week.

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

[Only where applicable:] 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.

ANNEX IV

PART A

Repealed Directives together with their successive amendments (referred to in Article 21)

Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes

Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay

PART B

Deadlines for transposition (referred to in Article 21)

Directive	Deadline for transposition
94/19/EEC	1.7.1995
2009/14/EC	30.6.2009
2009/14/EC (second paragraph of point 3(i) of Article 1, Article 7(1a) and (3) and Article 10(1) of Directive 94/19/EC as amended by Directive 2009/14/EC)	31.12.2010

↓ new

ANNEX V

Correlation Table

This Directive	Directive 2009/14/EC	Directive 94/19/EEC
Article 1	-	-
Article 2(1)(a)		Article 1(1)
Article 2(1)(d)		Article 1(2)
Article 2(1)(e)	Article 1(1)	Article 1(3)
Article 2(1)(f)		Article 1(4)
Article 2(1)(g)		Article 1(5)
Article 3(1)		Article 3(1)
Article 3(2)		Article 3(2)
Article 3(3)		Article 3(3)
Article 3(4)		Article 5
Article 3(6)	Article 1(6)(a)	
Article 4(1)(a)-(c)		Article 2
Article 4(1)(d)		Article 7(2), Annex I (1)
Article 4(1)(f)		Article 7(2), Annex I (10)
Article 4(1)(g)		Article 7(2), Annex I (2)
Article 4(1)(h)		Article 7(2), Annex I (5)
Article 4(1)(i)		Article 7(2), Annex I (6)
Article 4(1)(j)		Article 7(2), Annex I (3), (4)
Article 4(10)(k)		Article 7(2), Annex I (12)
Article 5(1)	Article 1(3)(a)	Article 7(1)
Article 5(4)	Article 1(3)(a)	

This Directive	Directive 2009/14/EC	Directive 94/19/EEC
Article 5(6)		Article 7(4), 7(5)
Article 5(7)	Article 1(3)(d)	
Article 6(1)-(3)		Article 8
Article 7(1)	Article 1(6)(a)	Article 10(1)
Article 7(3)		Article 10(4)
Article 7(4)		Article 10(5)
Article 8(1)		Article 7(6)
Article 8(2)		Article 11
Article 12(1)		Article 4(1)
Article 13		Article 6
Article 14(1)-(3)	Article 1(5)	Article 9(1)
Article 14(4)		Article 9(2)
Article 14(5)		Article 9(3)
Article 15		Article 13
Article 16-18	Article 1(4)	

ANNEX I

~~List of exclusions referred to in Article 7 (2)~~

- ~~1. Deposits by financial institutions as defined in Article 1 (6) of Directive 89/646/EEC.~~
- ~~2. Deposits by insurance undertakings.~~
- ~~3. Deposits by government and central administrative authorities.~~
- ~~4. Deposits by provincial, regional, local and municipal authorities.~~
- ~~5. Deposits by collective investment undertakings.~~
- ~~6. Deposits by pension and retirement funds.~~
- ~~7. Deposits by a credit institution's own directors, managers, members personally liable, holders of at least 5 % of the credit institution's capital, persons responsible for carrying out the statutory audits of the credit institution's accounting documents and depositors of similar status in other companies in the same group.~~
- ~~8. Deposits by close relatives and third parties acting on behalf of the depositors referred to in 7.~~
- ~~9. Deposits by other companies in the same group.~~
- ~~10. Non-nominative deposits.~~
- ~~11. Deposits for which the depositor has, on an individual basis, obtained from the same credit institution rates and financial concessions which have helped to aggravate its financial situation.~~
- ~~12. Debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes.~~
- ~~13. Deposits in currencies other than:
— those of the Member States,
— ecus.~~
- ~~14. Deposits by companies which are of such a size that they are not permitted to draw up abridged balance sheets pursuant to Article 11 of the Fourth Council Directive~~

~~(78/660/EEC) of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies²⁶;~~

↓ 94/19/EC, Annex II (new)

ANNEX II

Guiding principles

~~Where a branch applies to join a host Member State scheme for supplementary cover, the host Member State scheme will bilaterally establish with the home Member State scheme appropriate rules and procedures for paying compensation to depositors at that branch. The following principles shall apply both to the drawing up of those procedures and in the framing of the membership conditions applicable to such a branch (as referred to in Article 4 (2)):~~

~~(a) the host Member State scheme will retain full rights to impose its objective and generally applied rules on participating credit institutions; it will be able to require the provision of relevant information and have the right to verify such information with the home Member State's competent authorities;~~

~~(b) the host Member State scheme will meet claims for supplementary compensation upon a declaration from the home Member State's competent authorities that deposits are unavailable. The host Member State scheme will retain full rights to verify a depositor's entitlement according to its own standards and procedures before paying supplementary compensation;~~

~~(c) home Member State and host Member State schemes will cooperate fully with each other to ensure that depositors receive compensation promptly and in the correct amounts. In particular, they will agree on how the existence of a counterclaim which may give rise to set-off under either scheme will affect the compensation paid to the depositor by each scheme;~~

~~(d) host Member State schemes will be entitled to charge branches for supplementary cover on an appropriate basis which takes into account the guarantee funded by the home Member State scheme. To facilitate charging, the host Member State scheme will be entitled to assume that its liability will in all circumstances be limited to the excess of the guarantee it has offered over the guarantee offered by the home Member State regardless of whether the home Member State actually pays any compensation in respect of deposits held within the host Member State's territory.~~

↓ 2009/14/EC Art. 1.8

²⁶ ~~OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).~~