

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 253 final-SYN 415

Brussels, 7 June 1993

Amended proposal for a

COUNCIL DIRECTIVE

**ON DEPOSIT-GUARANTEE SCHEMES**

(presented by the Commission pursuant to Article 149(3)  
of the EEC-Treaty)

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON  
DEPOSIT-GUARANTEE SCHEMES

EXPLANATORY MEMORANDUM

I. Reminder of procedure

1. On 6 May 1992 the Commission adopted a proposal for a Directive on deposit-guarantee schemes,<sup>1</sup> which was sent to the Council by letter dated 14 June.

The Council immediately forwarded this text to Parliament and to the Economic and Social Committee, and on 14 July began to examine the proposal.

2. The Economic and Social Committee unanimously adopted an opinion on the Commission proposal at its 300th plenary meeting which took place in Brussels on 22 October.<sup>2</sup>

The European Parliament adopted the legislative resolution embodying the opinion of Parliament on the Commission proposal for a Council Directive at its sitting of 10 March 1993.

3. This amended proposal has been drafted to take account of the outcome of the consultation of these two institutions.
4. The European Parliament and the Economic and Social Committee have welcomed the proposal for a minimum degree of harmonization and recognized the justification of opting for branch depositors to be guaranteed by the home-country scheme.

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1 OJ No C 163, 30.06.1992.

2 OJ No C 332, 16.12.1992.

## II. Comments on amendments

The European Parliament has suggested two key amendments to the Directive, namely an increase in the minimum amount of the guarantee from ECU 15 000 to ECU 20 000 and the exemption from compulsory membership of a deposit-guarantee scheme of authorized institutions which receive deposits from the public but already enjoy protection because they belong to a scheme which guarantees the institutions themselves (and therefore their depositors).

In several Member States, the federative body, where it exists, belongs to the national guarantee scheme; in other Member States, this is not possible because both the guarantee scheme and the network itself are organized differently.

Parliament explains its proposal in the new recital which is partly taken over in the amended proposal; this recalls the efficiency of these schemes and observes that they satisfy the Directive's objectives even though they "pursue a slightly different protection goal".

## Comments on individual Articles

### Article 1

With greater clarity in mind, two definitions have been added to paragraph 1: these two definitions take over, unchanged, the ones already used in Article 1 of the first banking Directive.

The definition of deposits has been amended to exclude from the Directive's scope bonds of a special nature the holders of which already enjoy protection because these securities are linked to property guarantees, which gives their holder a priority right to reimbursement out of the proceeds of the sale of the mortgaged property.

This exclusion was also requested by the Economic and Social Committee.

In Article 1(2) a reference has been added to cover the case of banks which deposit in another bank "funds entrusted to it by one of its clients". In the view of Parliament, the client must not forfeit his guarantee and "the principle of the 'beneficial owner' expanded in Article 5(3) should apply, provided that the existence and identity of the beneficial owner can be established".<sup>3</sup>

## Article 2

The inclusion in Article 2 of the content of Parliament's amendments Nos 8, 10, 11 and 12, all of which relate to this Article, has required it to be redrafted more extensively than is warranted by the strict content of the amendments, because it was necessary to clarify certain points which had become necessary for the cohesiveness of the whole text.

For example, it was necessary to spell out the limits of the exemption and to amend the details of the exclusion procedure slightly in order to comply with Parliament's request for the Article to make clear that it is the guarantee scheme, or rather its managers, which undertake the exclusion. It was therefore necessary to add that they cannot do so unless authorized by national law and with the consent of the supervisory authorities; this was not explicitly stated in the initial version of the text but does not change its meaning.

The wording adopted in Article 2(1) of this amended proposal corresponds in spirit to Parliament's suggestion, stating the exemption conditions more fully (institutions must be covered by a scheme which guarantees their total solvency).

With regard to Article 2(3) the Commission had proposed that, after exclusion from a guarantee scheme, deposits (old or new) be guaranteed for a one-year period:

The Economic and Social Committee requested that this one-year guarantee be limited to deposits existing at the time of the exclusion.

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<sup>3</sup> Document PE 202.403/fin. (Explanatory statement, p.15).

Parliament requested that this guarantee be limited to existing deposits and to those placed within one month of the exclusion.

The Commission wished an intervention by the supervisory authorities to make it impossible for credit institutions not covered by a guarantee scheme to receive new deposits, and therefore supported Parliament's request for an amendment of this point.

### Article 3

Article 3 has chiefly been amended to introduce a rule which states that Member States shall take account of the coverage which may be received by branches established by credit institutions with their head office outside the Committee if they already belong to a guarantee scheme (this must be at least equivalent to the scheme in force in the Member State in which they are located).

### Article 4

Article 4 increases to ECU 20 000 the minimum level of compensation, provides that deposits of "vital importance" may be guaranteed in their entirety and adds a review clause.

For this review clause, a period of five years has been laid down (instead of the two years requested); the period could of course be shorter if necessary, but it seems to be the minimum within which some experience can be acquired. Five years might even prove insufficient in view of the experience involved since it is very desirable for recourse to the deposit-guarantee scheme to remain exceptional.

The two-year period envisaged by Parliament is somewhat unrealistic given the soundness of European institutions and the supervision to which they are subject. Any monetary readjustments that Member States might consider necessary are permitted at any time, since the Directive allows for the level of coverage to be set above the harmonized minimum.

## Article 6

Article 6 sets out the details concerning information.

None of the other amendments requested by Parliament and the Economic and Social Committee has been adopted. The two institutions have been informed of the reasons behind the rejection of their amendment request.

### III. Parliament amendments not included the amended proposal

#### 17th Recital (amendment No. 4)

This Recital concerns Article 3 (treatment of branches of third-country institutions), paragraph 1 of which has been amended in line with Parliament's amendment No 12. However, the amendment requested for this Recital concerns Article 3(2), which has not been amended: there is therefore no reason to delete, in order to satisfy Parliament, the requirement to inform depositors, which is an essential part of Article 3(2).

#### Article 1

There are six amendments to this Article. Amendment No 5 adds two definitions (credit institution and branch), which there has been no difficulty in taking over in the modified proposal, and an exception covering a particular category of bonds, defined in a previous directive, which may also be adopted. Two amendments requested by Parliament have not been able to be adopted: the last indent of the amendment refers to categories of bonds which are not covered by uniform arrangements at European level and are thus listed in the annex, with certain Member States wishing them to be covered by the Directive, with others not requiring this. The reference to "interest due and not paid" raises the problem of contractual freedom: the method of calculation described by Parliament may well be the most common one, but the contracting parties should be able to envisage others (such an addition would prohibit this, which does not seem proportionate).

Amendment No 6 would completely change the whole tenor of the Commission proposal as regards non-availability of deposits, by lengthening the ten-day period indefinitely. The ten-day limit is necessary if the provision is not to lose all effect, and it is even desirable that the guarantee should begin to be paid to depositors before the ten days have elapsed.

Amendment No. 20 refers to deposits made in order to defraud the system. There seems no point in specifying that such deposits shall not be reimbursed, precisely because they are not deposits to be repaid "under the legal and contractual conditions" applicable to them (Article 1(1)). If the fraud is discovered before payment, they will of course not be covered by the guarantee and if the fraud is discovered after payment, the sums received will have to be returned to the guarantee system, not under this Directive but under ordinary law of each Member State.

## Article 2

There are four amendments concerning this Article, two of which have been taken over in the amended proposal.

Amendment No 8 refers to postal banks, in connection with Article 3 of Directive 77/780/EEC, which specifically excludes certain of them. Their inclusion is thus erroneous.

The main point of this amendment is to loosen the requirement for all recognized institutions to join a deposit-guarantee scheme. The Commission is able to accept some very limited exceptions to the principles lying behind the Directive, but their scope must be specified in a "communautaire" way and must not be dependent exclusively on assessment by national control authorities. This is why it has been possible to adopt amendment No 21, referring to systems designed to protect institutions (the scope of the exception to be defined by the amended proposal) and not amendment No 8, which refers to "coverage which is recognized as comparable by the supervisory authority concerned".

Amendment No 9 affirms a principle of non-discrimination which derives from the Treaty and not from this Directive, and it has therefore been taken over.

Article 4a (new) amendment No 16

This amendment adds an Article to the Directive in order to enable depositors to take direct action against the deposit-guarantee scheme. There is no doubt some reason for this in those countries where only institutions which are members of the scheme will be able to have recourse to the courts. At Community level, however, the practical scope of this amendment is likely to be limited, as depositors with branches will necessarily have to exercise this right in another Member State. The Commission proposal therefore does not take over this amendment.

Article 7 amendment No 18

This amendment reduces the time limit for payment from three months to two. This touches on an essential point in the Commission proposal: the three month limit cannot be reduced, as it is in any case extremely short given the verification operations which have to be carried out before making payments. The checks may be made very long and difficult by the disorder, often encountered in the accounts of credit institutions which are in crisis.

Annex - point 6 (amendment No 19)

The purpose of this amendment is to delete pension funds from the annex and so to make it compulsory to cover them. This does not take account of the very different arrangements covering such funds. Certain countries, where pension funds are much better protected by other domestic rules, are radically opposed to bringing them within the scope of bank deposit protection schemes.



COMMISSION

Amended proposal for a Council Directive on deposit-guarantee schemes

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first and third sentences of Article 57(2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Tenth recital

Tenth recital

Whereas, however, the harmonized guarantee level must not be too low in order not to leave too great a number of deposits outside the minimum protection threshold; whereas in the absence of statistics on the amount and distribution of deposits in Community credit institutions, it seemed reasonable to take as a basis the median guarantee offered by the national systems; whereas that amount is ECU 15 000;

Whereas, however, the harmonized guarantee level must not be too low in order not to leave too great a number of depositors outside the minimum protection threshold; whereas it seems reasonable to take as a basis an amount of ECU 20 000 as the harmonized guarantee level;

INITIAL PROPOSAL

AMENDED PROPOSAL

Eleventh recital

Eleventh recital

Whereas in the six Member States which are above that median level, the guarantee schemes offer depositors a coverage of their deposits which is higher; whereas it does not seem appropriate to require that these schemes, certain of which have been introduced only recently pursuant to Recommendation 87/63/EEC, be amended on this point;

Whereas some Member States offer depositors a coverage of their deposits which is higher; whereas it does not seem appropriate to require that these schemes, certain of which have been introduced only recently pursuant to Recommendation 87/63/EEC, be amended on this point;

Fourteenth recital a (new)

Whereas harmonization of deposit-guarantee schemes in the Community must under no circumstances jeopardize schemes based on the protection of institutions, particularly as they have demonstrated their efficiency; whereas some Member States may accept that institutions participating in such schemes, which pursue a slightly different protection goal, satisfy the Directive's objectives;

HAS ADOPTED THIS DIRECTIVE:

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 1

Article 1

1. For the purpose of this Directive, the following definitions shall apply:

1. For the purpose of this Directive the following definitions shall apply:

Credit institution: an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.

Branch: 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; any number of branches set up in the same Member State by a credit institution having its head office in another Member State shall be regarded as a single branch;

Deposit: credit balances which result from funds left in accounts or from temporary situations deriving from normal banking transactions and which the credit institution must repay under the legal and contractual conditions applicable, and claims for which negotiable certificates have been issued by a credit institution;

Deposit: Credit balances which result from funds left in accounts or from temporary situations deriving from normal banking transactions and which the credit institution must repay under the legal and contractual conditions applicable, and claims for which negotiable certificates have been issued by a credit institution, with the exception of bonds which satisfy the conditions of Article 22(4) of the Directive concerning undertakings for collective investment in transferable securities (UCITS) (88/220/EEC);

The other definitions are unchanged.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 1 (end)

Article 1 (end)

2. The following shall be excluded from any repayment by the guarantee schemes:

- the obligations towards other credit institutions;
- subordinated loans in respect of which there exist binding agreements whereby such loans are not to be repaid until after settlement of all other debts in the event of the bankruptcy or liquidation of the credit institution.

2. The following shall be excluded from any repayment by the guarantee schemes;

- subject to the provisions of Article 5(3), the obligations towards other credit institutions;
- subordinated loans in respect of which there exist binding agreements whereby such loans are not to be repaid until after settlement of all other debts in the event of the bankruptcy or liquidation of the credit institution.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 2

Article 2

1. Each Member State shall ensure that on its territory one or more deposit-guarantee schemes are introduced in which all credit institutions authorized in that Member State under Article 3 of Directive 77/780/EEC must take part. The schemes shall cover the depositors of branches set up by such institutions in other Member States.

1. Each Member State shall ensure that on its territory one or more deposit-guarantee schemes are introduced. With the exception of the cases referred to in the following subparagraph, no institution authorized in that Member State under Article 3 of Directive 77/780/EEC may accept deposits unless it is a member of one of these schemes. The schemes shall cover the depositors of branches set up by such institutions in other Member States.

Nevertheless, Member States may exempt a credit institution from taking part in a deposit-guarantee scheme if that institution belongs to a scheme which protects the credit institution itself and in particular guarantees its liquid assets and its solvency, provided that:

- such protection is recognized as equivalent to that provided by the authorized scheme or schemes, and
- the protection concerned is not that granted to a public credit institution by Member States themselves or by their local authorities.

2. Unchanged.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 2 (end)

Article 2 (end)

3. If one of the credit institutions required by paragraph 1 to take part in the scheme or one of the branches granted voluntary membership under paragraph 2 does not comply with the obligations incumbent on it as a member of the deposit-guarantee scheme, the supervisory authority which issued the authorization shall be notified.

3. If one of the credit institutions required by the first subparagraph of paragraph 1 to take part in the scheme or one of the branches granted voluntary membership under paragraph 2 does not comply with the obligations incumbent on it as a member of the deposit-guarantee scheme, the supervisory authority which issued the authorization shall be notified and, in cooperation with the managers of the guarantee scheme, shall take all appropriate measures, including the imposition of penalties, to secure compliance by the credit institution with its obligations.

After taking all the measures necessary to secure compliance by the credit institution, or branch thereof, with its obligations and after noting the decisions taken by the supervisory authority (for example reorganization or withdrawal of the authorization), the guarantee scheme may exclude the credit institution or branch.

If, as a result of these measures compliance by the credit institution, or branch thereof, with their obligations is not secured, the managers of the guarantee scheme may exclude the credit institution or branch, where national law authorizes such exclusion and with the explicit consent of the supervisory authority.

In that case, the guarantee covering the institution's depositors shall be maintained for twelve months.

In that case, the guarantee covering the deposits with that institution, or branch thereof, which were placed no later than one month after the date of exclusion, shall be maintained for twelve months from the date of exclusion.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 3

Article 3

1. Subject to Article 9(1) of Directive 77/780/EEC, Member States may stipulate that the branches established by credit institutions with their head office outside the Community must join a deposit-guarantee scheme in operation on their territory.

1. Subject to Article 9(1) of Directive 77/780/EEC, Member States shall ensure that the branches established by credit institutions with their head office outside the Community receive coverage equivalent to that applicable in the Member State concerned under the terms of a guarantee scheme to which their parent institution belongs.

Failing this, Member States may stipulate that the branches established by credit institutions with their head office outside the Community must join a deposit-guarantee scheme in operation on their territory.

2. Unchanged

3. Unchanged.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 4

Article 4

1. The deposit-guarantee schemes shall stipulate that the aggregate deposits of a given depositor must be covered up to ECU 15 000 in the event of a financial crisis in a credit institution rendering deposits unavailable.

2. Unchanged.

3. This Article shall not preclude the retention or adoption of provisions which offer a higher guarantee ceiling.

4. Member States may limit the guarantee provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of the deposits. However, the percentage guaranteed must equal or exceed 90% of the aggregate deposits until the amount to be paid under the guarantee reaches ECU 15 000.

1. The deposit-guarantee schemes shall stipulate that the aggregate deposits of a given depositor must be covered up to ECU 20 000 in the event of a financial crisis in a credit institution rendering deposits unavailable.

3. This Article shall not preclude the retention or adoption of provisions which offer more comprehensive cover for depositors, in particular by extending the categories of investors protected by the guarantee or raising the maximum level of compensation, nor shall it preclude the adoption of provisions stipulating that certain deposits of vital importance such as pension funds must be guaranteed in their entirety.

4. Member States may limit the guarantee provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of the deposits. However, the percentage guaranteed must equal or exceed 90% of the aggregate deposits until the amount to be paid under the guarantee reaches ECU 20 000.



INITIAL PROPOSAL

AMENDED PROPOSAL

Article 4 (end)

5. No later than five years after the date mentioned in Article 8(1), the Commission shall present a report to the Council on the application of this Article, accompanied if necessary by proposals which in particular take account of changes in the banking sector and in the economic and monetary situation in the Community.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 5: Unchanged

Article 6

Article 6

1. Member States shall ensure that the managers of the credit institution provide depositors with the information necessary for them to identify the deposit-guarantee scheme in which the institution and its branches take part within the Community. The limits or ceilings applicable under the deposit-guarantee scheme shall be indicated in a readily-comprehensible manner.

1. Member States shall ensure that the managers of the credit institution provide depositors with the information necessary for them to identify the deposit-guarantee scheme in which the institution and its branches take part within the Community. The amount of coverage under the deposit guarantee shall be made available to depositors.

Information shall also be given at first request on the conditions for compensation and the formalities which must be fulfilled in order to obtain compensation.

2. Unchanged.

Articles 7 to 9: Unchanged.

Annex: Unchanged

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# DOCUMENTS

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