DIRECTIVES

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) The Council agreed on 7 October 2008 that it is a priority to restore confidence and proper functioning of the financial sector. It undertook to take all necessary measures to protect the deposits of individual savers and welcomed the intention of the Commission to bring forward urgently an appropriate proposal to promote convergence of deposit-guarantee schemes.

(2) Directive 94/19/EC of the European Parliament and of the Council [3] already provides for basic coverage for depositors. However, the ongoing financial turmoil necessitates an improvement of that coverage.

(3) The current minimum coverage level provided for in Directive 94/19/EC is set at EUR 20 000 with the option for Member States to determine higher coverage. However, this has proved not to be adequate for a large number of deposits in the Community. In order to maintain depositor confidence and attain greater stability on the financial markets, the minimum coverage level should therefore be increased to EUR 50 000. By 31 December 2010, coverage for the aggregate deposits of each depositor should be set at EUR 100 000, unless a Commission impact assessment, submitted to the European Parliament and the Council by 31 December 2009, concludes that such an increase and such harmonisation are inappropriate and are not financially viable for all Member States in order to ensure consumer protection and financial stability in the Community and to avoid distortions of competition between Member States. In the event that the impact assessment reveals that such an increase and such harmonisation are inappropriate, the Commission should submit appropriate proposals to the European Parliament and the Council.

(4) The same coverage level should apply to all depositors regardless of whether a Member State's currency is the euro or not. Member States outside the euro area should have the possibility to round off the amounts resulting from the conversion without compromising the equivalent protection of depositors.

(5) A report to be submitted to the European Parliament and to the Council by the Commission should analyse all related issues such as set-offs and counterclaims, the determination of contributions to schemes, the scope of products and depositors covered, the effectiveness of cross-border cooperation between deposit-guarantee schemes and the link between deposit-guarantee schemes and alternative means for reimbursing depositors, such as emergency payout mechanisms. For the purpose of that report, Member States should collect the relevant data and submit them to the Commission on request.

(6) Some Member States have established deposit-guarantee schemes under Directive 94/19/EC which provide full coverage for certain kinds of long-term deposits, such as claims on pensions. It is necessary to respect the rights and expectations of the depositors in such schemes.

[1] OJ C 314, 9.12.2008, p. 1.
[2] Opinion of the European Parliament of 18 December 2008 (not yet published in the Official Journal) and Council Decisions of 26 February 2009 and of 5 March 2009.
[3] OJ L 135, 31.5.1994, p. 5.

(7) Some Member States have established or plan to establish deposit-guarantee schemes under Directive 94/19/EC which provide full coverage for certain temporarily increased account balances. The Commission should assess, by 31 December 2009, whether full coverage for certain temporarily increased account balances should be maintained or introduced.

(8) The functioning of systems which protect the credit institution itself and, in particular, ensure its liquidity and solvency, thus guaranteeing protection for depositors at least equivalent to that provided by a deposit-guarantee scheme, and voluntary systems of depositors compensation which are not introduced or officially recognised by a Member State should not be affected by this Directive.

(9) Member States should encourage deposit-guarantee schemes to consider entering into agreements or improving existing agreements concerning their respective obligations.

(10) The payout delay of three months currently provided for, which can be extended to nine months, 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 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.

(11) Furthermore, in cases where the payout is triggered by a determination of the competent authorities, the decision period of 21 days currently provided for should be reduced to five working days in order not to impede rapid payout. The competent authorities should, however, first be satisfied that a credit institution has failed to repay deposits which are due and payable. That assessment should be subject to the judicial or administrative procedures of the Member States.

(12) Deposits may be considered unavailable once early intervention or reorganisation measures have been unsuccessful. This should not prevent competent authorities from making further restructuring efforts during the payout delay.

(13) Member States should aim at ensuring the continuity of banking services and access to liquidity of banks, in particular in periods of financial turmoil. For this purpose, Member States are encouraged to make arrangements as soon as possible for ensuring emergency payouts of appropriate amounts upon the application of the affected depositor, within no more than three days of such application. Since the reduction of the current payout delay of three months will have a positive impact on depositor confidence and the proper functioning of the financial markets, Member States and their deposit-guarantee schemes should ensure that the payout delay is as short as possible.

(14) Directive 94/19/EC provides the possibility for Member States to limit coverage to a specified percentage. That option has been demonstrated to undermine depositor confidence and should thus be discontinued.

(15) The measures necessary for the implementation of Directive 94/19/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

(16) In particular, the Commission should be empowered to adjust the coverage level according to inflation in the European Union on the basis of changes in the harmonised index of consumer prices published by the Commission. Since that measure is of general scope and is designed to amend non-essential elements of Directive 94/19/EC, it must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(17) Since the objectives of this Directive, namely the harmonisation of coverage levels and of payout delays, cannot be sufficiently achieved by the Member States because of the multitude of different rules existing in the legal systems of the various Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

(18) Directive 94/19/EC should therefore be amended accordingly.

[1] OJ L 184, 17.7.1999, p. 23.

(19) In accordance with point 34 of the Interinstitutional Agreement on better law-making [1], Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 94/19/EC

Directive 94/19/EC is hereby amended as follows:

1. in Article 1(3)(i), the second paragraph shall be replaced by the following:

'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';

2. Article 4 shall be amended as follows:

(a) paragraph 5 shall be replaced by the following:

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

(b) the following paragraph shall be added:

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

3. Article 7 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Member States shall ensure that the coverage for the aggregate deposits of each depositor shall be at least EUR 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 100 000 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.

1b. Member States outside the euro area that convert the amounts expressed in euro referred to in paragraphs 1 and 1a into their national currencies shall ensure that the amounts of national currencies effectively paid to depositors are equivalent to those set out in this Directive.';

(b) paragraph 3 shall be replaced by the following:

'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.';

(c) paragraph 4 shall be deleted;

(d) the following paragraph shall be added:

'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 the regulatory procedure with scrutiny referred to in Article 7a(2).';

[1] OJ C 321, 31.12.2003, p. 1.

4. the following Article shall be inserted:

'*Article 7a*

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC (*).

2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (**) shall apply, having regard to the provisions of Article 8 thereof.

(*) OJ L 3, 7.1.2004, p. 36.
(**) OJ L 184, 17.7.1999, p. 23.';

5. in Article 9, paragraph 1 shall be replaced by the following:

'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 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 cover offered by the deposit-guarantee scheme. When a deposit is not guaranteed by a deposit-guarantee scheme in accordance with Article 7(2), the credit institution shall inform the depositor accordingly. All information shall be made available in a readily comprehensible manner.

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

6. Article 10 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Deposit-guarantee schemes shall be in a position to pay duly verified claims by depositors in respect of unavailable deposits within 20 working days of the date on which the competent authorities make a determination as referred to in Article 1(3)(i) or a judicial authority makes a ruling as referred to in Article 1(3)(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.

Member States shall ensure that deposit-guarantee schemes perform regular 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.';

(b) paragraph 2 shall be deleted;

7. Article 12 shall be replaced by the following:

'*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.';

8. Annex III shall be deleted.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2009.

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the 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 this Directive, by 31 December 2010.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 March 2009.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	A. VONDRA