will necessitate amendment of the body of the Directive and Annex I, in particular points 7 and 8, and of the impact statement on competitiveness and jobs (position of small firms).

2.8. Point 1 of Annex I should be reworded to read:

'The specifications appended to this Directive apply to the burning behaviour ...'

Done at Brussels, 22 October 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive on the Co-ordination of Laws, Regulations and Administrative Provisions relating to Deposit-Guarantee Schemes [1]

(92/C 332/07)

On 23 June 1992, the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 30 September 1992. The Rapporteur was Mr Meyer-Horn.

At its 300th Plenary Session (meeting of 22 October) the Economic and Social Committee unanimously adopted the following Opinion.

1. Introduction

1.1. In a market economy, company failures are far from uncommon. But in the credit industry they pose particular problems, since credit institutions work largely with their clients' money and are therefore more dependent on their creditors' confidence than other enterprises. A social market economy cannot accept that there should be no measures to offset the consequent risks for the majority of savers and investors. If a credit sector is to be healthy, the customers of credit institutions, or at least private individuals, must be protected from damages to an extent which is socially just and economically reasonable.

1.2. Moreover, credit institutions themselves are interested in depositors having meaningful protection and in providing corresponding client information. For if creditors, and particularly savers, suffer damages when a bank becomes insolvent, this can have a public effect. It can undermine the reputation of an entire national banking sector.

1.3. Under these circumstances, it is understandable that the supervisory authorities and the credit institutions themselves are concerned about taking precautions to provide depositors with a certain protection. The Commission, too, has proposed a directive on the matter. It takes into account the fact that a credit institution can be the victim of a financial crisis even when it is subject to very strict rules and careful supervision, particularly as competition will increase further in the Single Market as a result of Community-wide banking and the freedom to fix interest rates and conditions.

1.4. The Economic and Social Committee praises the quality of the work and the extensive preparation which the Commission has undertaken in this area. The ESC attaches great importance to the Commission's considerations and would like, with its Opinion, to make a constructive contribution which reflects the suggestions and concerns of the economic and social organizations.

[1] OJ No C 163, 30. 6. 1992, p. 6.

2. Content of the proposed directive

2.1. *Aim of the proposed directive*

2.1.1. With a view to the creation of a European single market for credit institutions, several directives which are due to come into force throughout the EC on 1 January 1993, have already been adopted; these are the so-called Second Banking Directive, the Own Funds Directive, the Solvency Ratio Directive and the Consolidation Directive [1]. The draft directive on deposit-guarantee schemes, which is to be transposed into national law by 1 January 1994, supplements these instruments. It will replace Commission Recommendation 87/63/EEC of 22 December 1986 on the same subject [2].

2.1.2. The proposal has two objectives:

— to protect, through deposit-guarantee schemes based on the joint participation of credit institutions, depositors in the event of a financial crisis in a credit institution, particularly those depositors who have insufficient financial knowledge to discriminate between sound and unsound credit institutions; and

— to maintain public confidence in the credit industry and protect it from the risk of depositors withdrawing their funds, not only from an institution in difficulty, but also from credit institutions which become the subject of unfounded rumours.

2.1.3. In future, all credit institutions must join a deposit-guarantee scheme. Guarantee funds under private law are recognized for this purpose. The setting-up and organization of the different schemes are not standardized. Certain guarantee funds are financed by annual contributions from the member institutions, and contributions generally lie between 0,03 and 0,05% of the corresponding institutional liabilities. Other guarantee funds impose an admission levy on credit institutions and, if necessary when facing particularly heavy claims, an ad hoc charge on all their members. Lastly, some guarantee funds confine themselves to ad hoc contributions in the event of claims.

2.2. *The standards proposed*

2.2.1. If access to a credit institution's deposits is no longer possible (see point 4.1.4), the guarantee schemes must ensure that depositors receive up to ECU 15 000 of their total deposits.

2.2.2. The figure of ECU 15 000 is roughly equivalent to the average coverage available in Member States which operate deposit-guarantee schemes, with the exception of Germany and Italy which provide a particularly high level of cover. The upper coverage limit is: [3] Spain ECU 11 700, Belgium and Luxembourg ECU 11 900, Ireland ECU 13 200, the Netherlands ECU 17 400, UK ECU 21 400, Denmark ECU 31 500, France ECU 57 500 and Italy above ECU 500 000. In Germany, depositors enjoy virtually complete cover. This can be up to 30% of a bank's own funds for individual depositors; savings banks and credit cooperatives provide institutional coverage.

2.2.3. Throughout the Community, the minimum guarantee of ECU 15 000 represents the absolute lower limit of cover for the total deposits of the same depositor in a single credit institution subject to the possibility of limiting the guarantee provided for to a specified percentage of the deposits on the understanding that the percentage guaranteed must equal 90% of the aggregate deposits until the amount to be paid under the guarantee reaches ECU 15 000. Guarantee schemes which provide greater or complete damage compensation may be retained.

2.2.4. The proposed directive is based on two principles:

— all authorized credit institutions must be members of a deposit-guarantee scheme; and

— branch depositors will be covered by the guarantee scheme of a credit institution's home country.

2.2.5. Legally dependent branches of credit institutions from other Member States may voluntarily join a deposit-guarantee scheme in the host Member State. In this way, they can, where appropriate, increase the level of coverage available in their home Member State to that provided in the host country.

2.2.6. Member States can exclude certain depositors or deposits mentioned in the Annex to the directive, namely deposits of insurance companies, pension and investment funds and provincial, regional, local or municipal authorities.

[1] OJ No L 386, 30. 12. 1989, p. 1, 14; OJ No L 75, 21. 3. 1992, p. 48; OJ No L 317, 16. 11. 1990, p. 60.

[2] OJ No L 33, 4. 2. 1987.

[3] As of 1 September 1992; since then the exchange rates of certain currencies have changed with the result that the amounts expressed in ECU have fallen in some cases (e.g. UK, Italy and Spain) and increased in others (e.g. to ECU 12 400 in Belgium and Luxembourg).

2.2.7. Compensation is to be paid within three months except in certain exceptional cases [listed in the Annex referred to in Article 4(2)].

3. General comments

Bearing in mind the proposed directive's goals, the ESC considers the following points important:

3.1. *Minimum harmonization*

3.1.1. The ESC is pleased that the proposed directive limits itself to minimum harmonization.

3.1.2. As it merely sets minimum standards and no upper limit, the existing guarantee level, on which depositors have based their investment decisions for decades in certain Member States, can be retained. This is in line with Article 100a(3) of the EEC Treaty, which requires the Commission to take as a base a high level of protection in its consumer protection proposals.

3.1.3. It cannot be the function of the proposed directive to compel a reduction in the existing guarantee level in certain Member States. Nor, in the interest of bank customers, must any harmonization of EC deposit-guarantee schemes be allowed to jeopardize existing schemes in the Member States which are geared to protecting the institution.

3.1.4. According to the principle which has governed all harmonization projects to date, i.e. that the EC should set only uniform minimum standards, the Member States cannot be prevented from keeping or introducing higher standards. This can particularly be seen in Article 4(3), where Member States are allowed to retain provisions which offer a higher guarantee ceiling. However, minimum harmonization means that schemes with a somewhat different guarantee objective which also fulfil the directive's deposit-guarantee requirements, especially schemes designed to protect the institution as in the case of members of a banking group, must also be deemed to conform to the directive. To increase investor confidence, the directive should expressly state that deposit-guarantee schemes ensuring more than the minimum level of protection it requires can be retained insofar as they provide full minimum protection in accordance with the directive.

3.1.5. The proposed directive does not cover financing arrangements for the different deposit-guarantee schemes, some of which have been established on a group basis by the credit institutions' professional bodies, whilst others are provided for and regulated by law. On competitive grounds, all deposit-guarantee schemes should be financed through charges or contributions paid by the credit institutions concerned and not by the public authorities.

3.2. *Home country principle*

The ESC recognizes the correctness of the Commission's logic in deciding to use the 'home country principle', whereby branch depositors will be covered by the supervisory and guarantee scheme of an institution's head office, and not, as the 1986 Recommendation still prescribed, by that of the host country.

3.2.1. The home country principle now provides the basis for the harmonization of Community legislation on credit institutions. It is particularly evident in the Second Banking Directive on the Community-wide authorization of credit institutions and supervision of branches in the institutions' home country.

3.2.2. There is no reason to depart from this home country principle in the case of deposit guarantees. Supervisory and guarantee schemes must operate in the same Member State.

3.2.3. Nevertheless, it seems difficult to reconcile the home-country principle with the principle of unrestricted competition between the banks of different Member States in the context of the Single Market. The following solution should therefore be considered. All the Member States should be free to decide whether to provide for a guarantee level above the minimum requirement laid down in the directive; this guarantee would, however, apply exclusively to deposits held in the territory of the Member State concerned; the level of guarantee available to branch depositors in the territory of another Member State under the home-country principle should not exceed the level available in that Member State (see Specific comments, point 4.2 with regard to the problems which arise when the guarantee level is higher or lower in the host than in the home country).

3.3. *ECU 15 000 coverage*

The minimum deposit guarantee of ECU 15 000 is roughly equivalent (see point 2.2) to the average maximum deposit guarantee of eight Member States.

3.3.1. The figure is thus somewhat arbitrary. But it does offer the advantage of relative compatibility with existing requirements. Only four Member States will have to raise their minimum deposit guarantees as a result of the new directive, whilst six others can retain their existing, more comprehensive coverage. (There is still no deposit-guarantee scheme covering all credit institutions in two Member States.)

3.3.2. However, the comparison with average deposits made in point 4 (fifth to eighth paragraphs) of the Explanatory Memorandum to the draft directive is not particularly convincing. Not only are the average amounts quoted (ECU 30 000 for time deposits, ECU 2 600 for current accounts and ECU 2 150 for savings accounts) subject to constant change as a result of transfers between the different types of account (end 1990: ECU 26 500, ECU 3 000 and ECU 2 200 respectively), they are also average figures supplied by the European Savings Bank Association for twelve countries and thus inevitably conceal major national differences in the 201,4 million savings accounts, 55,5 million current accounts and 2,9 million time accounts to which they relate. The average savings deposit in Portugal, for example, is approximately ECU 1 130 as against ECU 4 300 in Luxembourg. Nevertheless, a minimum guarantee of ECU 15 000 will cover the great majority of investors.

3.3.3. It would seem advisable not to retain this minimum amount indefinitely, but to adjust it in line with subsequent income growth and generally higher credit balances at fixed intervals.

4. Specific comments

The ESC would like to draw the Commission's attention to a number of points which need to be clarified or amended:

4.1. *Definitions (Articles 1 and 4)*

4.1.1. 'Deposit' and 'depositor'

This definition is very wide-ranging and includes claims for which negotiable certificates have been issued by a credit institution. But it should not include securities such as mortgage bonds and municipal bonds which already benefit from special guarantees and for which no additional cover is needed. In particular, the definition should automatically exclude debt securities which satisfy the conditions of Article 22(4) of Council Directive 88/220/EEC of 22 March 1988 amending, as regards the investment policies of certain UCITS, Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS) [1].

4.1.2. Article 1(2) excludes obligations towards other credit institutions and subordinated loans (covered by binding agreements precluding repayment until after liquidation). The exclusion of inter-bank deposits is rightly justified on the grounds that credit institutions are better placed than other depositors to evaluate the position of a crisis bank. This argument would also seem to apply to other finance companies and insurance companies which maintain similarly close business relations with credit institutions. Companies created to provide such special banking services as leasing and factoring should also be expressly excluded, together with their parent companies.

4.1.3. National deposit-guarantee schemes should first and foremost protect private individuals, i.e. consumers. 'Depositor' is not defined more precisely in the directive, with the result that legal persons and, consequently, enterprises — especially SMEs — are also covered by the term. The exceptions listed in the Annex to the directive and referred to in Article 4(2) mention neither the professions nor SMEs. The definition of this group of depositors and decisions concerning their admission to the schemes should be left to the Member States.

4.1.4. 'Unavailable deposit'

The Committee welcomes the fact that the definition given in Article 1(1) has not been linked to the uncertainties of the procedures for reorganizing and liquidating a credit institution or to the decisions of courts and administrative authorities. For a deposit to be unavailable within the meaning of the directive, it is merely necessary to establish objectively that for ten consecutive days a depositor has been deprived of the funds which should have been repaid by the credit institution. So such a pay-out can also result if, as a reorganization measure, the responsible authorities suspend all payments of an institution for a given period. It may also be asked whether deposits are not already unavailable if, at the time of clearing, a credit institution cannot meet its obligations arising from transfer and cheque transactions.

[1] OJ No L 100, 19. 4. 1988, p. 31.

4.2. *Additional cover for branch depositors in the host country [Article 2(2)]*

Article 2(2) allows branches of credit institutions from other Member States to join deposit-guaranteed schemes in the host country. The provision means that branches can bring their existing cover up to the higher level available in the host country.

4.2.1. It is, however, not without problems. The host country authorities would first have to determine the difference between the home- and host-country guarantee limits. Then there is the problem of calculating contributions. The Commission appears to be assuming that 'special conditions' will apply to this calculation if branches voluntarily join their host country's deposit-guarantee scheme. These conditions would take account of the special risk cover provided by the home-country scheme. As a result, different contributions would have to be calculated for branches from different Member States. However, the Committee approves the provision contained in Article 2(2) allowing branches of credit institutions with their head office in another Member State to join the scheme of the host country.

4.2.2. Such a provision could also oblige deposit-guarantee schemes providing a high level of cover to pay most of the compensation due from branches of foreign institutions that are merely subject to the minimum guarantee laid down in the directive. Thus, credit institutions registered in the host country would have to indemnify the depositors of branches which would, in future, be supervised only by the home-country authorities. However, the proposed systematic introduction of the home country principle into banking supervisory law will reduce the opportunities for the host-country authorities to look into and examine a branch's activities. As a result, the membership of such branches would create a virtually incalculable risk for host-country guarantee schemes.

4.2.3. The home-country concept could also systematically be made the underlying principle with regard to additional coverage for branches in other Member States. Insofar as competitive conditions render supplementary coverage indispensable in the host country, home-country schemes could be required to offer branches in another Member State a deposit guarantee at the level and against the contribution applicable in the latter.

4.2.4. At all events, a branch of a credit institution registered in another Member State should be allowed to joint a host-country guarantee scheme only under the general conditions governing admission to that scheme. Otherwise, such branches would enjoy an advantage over credit institutions wishing to join a scheme in their home country.

4.2.5. There is another side to the adjustment of cover by branches registered in Member States with lower deposit guarantees to the higher levels of a host country since, conversely, the branches of credit institutions registered in Member States with higher deposit guarantees enjoy an advantage in countries where guarantees are lower. This advantage is the result of the mutual recognition, to the greatest possible extent, of supervisory responsibilities. Similar advantages can be expected to accrue from the application by foreign branches of financing techniques developed in their home country, the inclusion of certain balance-sheet items under own capital or the calculation of minimum reserves. In the case of deposit guarantees, no distortion of competition arises when credit institutions of their own accord forgo the use of higher home-country deposit guarantees. The directive should allow Member States to oblige branches of credit institutions from another Member State to forgo the use of higher home-country guarantees in the host country. At all events, the directive should expressly forbid them to advertise in the host country advantages of their higher home-country guarantee levels applying to their branches (see point 4.7). The directive could also lay down that the deposit-guarantee schemes in the credit institutions' home country only guarantee branch deposits in other countries up to the level of deposit guarantee pertaining in the host country.

4.3. *Exclusion from a guarantee scheme [Article 2(3)]*

Under certain conditions a credit institution may be excluded from a guarantee scheme. But in such cases the guarantee has to be maintained for a period of twelve months from the date of exclusion. In the ESC's view, it should be self-evident that only claims outstanding at the date of exclusion will be covered. This should be made clear in the directive.

4.4. *Branches of credit institutions from non-EC countries [Article 3(1)]*

The home country concept should also apply, in principle, to the legally dependent branches of credit institutions from non-EC countries. The admission of branches from non-EC countries would entail considerable risks for Community deposit-guarantee schemes. In this context, it should be sufficient for depositors to be informed of the existence or non-existence of a guarantee scheme and the associated conditions.

4.4.1. A rule which leaves it up to the Member States to decide whether or not branches of non-EC credit institutions should have to join a guarantee scheme has advantages and disadvantages.

4.4.1.1. It would be an advantage if membership were waived and the non-EC country responded in kind, as this would avoid cost duplication. Moreover, the scheme would not have to pay out if, for reasons over which the host country had no control, the non-EC credit institution decided to withdraw all funds from its EC branch.

4.4.1.2. However, experience has shown that in such cases it may be essential to compensate depositors in order to avoid a scandal which could damage the reputation of the whole credit industry. This would suggest a need for compulsory membership, or at least the provision of proof that the home country had an adequate system for guaranteeing deposits.

4.4.1.3. When the advantages and disadvantages are weighed up, there is good reason not to include branches of credit institutions from third countries in the scope of the directive, particularly as the Second Banking Directive [1] also lays down no rules for branches of third-country credit institutions.

4.5. *ECU repayment*

Article 7(5) provides for payment under the guarantee to be effected either in the national currency of the Member State in which the guaranteed deposit is located or in ecus. In the French version of the Explanatory Memorandum to the draft directive, this abbreviation is written in capitals (ECU) whereas in the text of the directive — tenth recital, Articles 4(1) and (4) and 7(5) — it appears in lower case. This formal difference draws attention — however unconsciously — to the distinction between the unit of account or basket of currencies and the future common European currency. At all events, direct payment from the guarantee funds in ecus seems inconceivable before the third stage of monetary union.

4.6. *Beneficial owner [Article 5(3)]*

In practice, the account holder is not always the beneficial owner of a deposit. It is not, however, apparent to the credit institution whether the beneficial owner concealed behind the account holder is one individual or several. The guarantee should not, therefore, cover the beneficial owner but the person whose name appears at the head of the account and, where appropriate, notaries in connection with client accounts designated by them. The coverage of up to ECU 15 000 should accordingly apply not to the aggregate deposit but to each individual account, insofar as the credit institution was already aware of the justified claims of the owners of the individual accounts.

4.7. *Advertising ban*

Earlier drafts of the present proposal included a provision prohibiting the use of advertising information on guarantee schemes for the purpose of attracting deposits. The Committee regrets that the Commission has deleted this provision from the draft. The directive should impose a binding prohibition on the advertising of deposit guarantees. Such an advertising ban should not, however, restrict the provision of information to the customers of credit institutions on deposit guarantees (coverage, conditions, repayment procedure).

4.8. *Exceptions (Annex)*

4.8.1. No 9 should preferably read: 'Non-nominative deposits of anonymous depositors, i.e. depositors which the credit institution cannot identify'.

4.8.2. In the annexed list of optional exceptions provided for by Article 4(2), express reference should be

[1] OJ No L 386, 30. 12. 1989, p. 1.

made to receivables in the form of transferable certificates from credit institutions, such as bank acceptances, deposit certificates, banker's drafts, standby letters of credit and promissory notes.

Done at Brussels, 22 October 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the report on Monitoring Implementation of the Common Fisheries Policy

(92/C 332/08)

On 2 April 1992 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Communities on the report on Monitoring Implementation of the Common Fisheries Policy.

The Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 1 October 1992. The Rapporteur was Mr Strauss.

At its 300th Plenary Session (meeting of 22 October 1992), the Economic and Social Committee unanimously adopted the following Opinion.

1. General

1.1. The Committee supports the general thrust of the Commission's report. Efficacious monitoring of the Common Fisheries Policy (CFP) is in the interest of individual fishermen, the industry as a whole and consumers, who rightly expect continuity of supply. At present, overall compliance with control of the CFP leaves much to be desired.

1.2. The importance of preservation, and the need for clear and practicable rules governing the CFP, was raised by the Committee as recently as last year.

1.3. Monitoring the CFP is fundamental for the preservation of fish stocks. But monitoring will only be actively supported by fishermen, processors and distributors if they view the application of the rules as fair and sensible. In practice, this requires the Community to be more involved and to be given greater powers to determine the way in which the CFP is enforced so that enforcement methods become broadly similar. As long as these methods differ significantly, fishermen in the separate Member States will inevitably believe that they alone are dealt with severely. Greater efforts are also necessary to explain the reasons for restrictive rules so that fishermen cooperate more willingly with the authorities.

1.4. Once the necessary adjustments have been secured, the Committee can accept the principle of relative stability by which TACs and quotas are related to catches in earlier years. However, for the reasons outlined in the previous paragraph it believes that it may be difficult to reconcile the precept of subsidiarity, under which each Member State manages its own share as it sees fit, with the need to convince fishermen of the even-handedness of the CFP.

1.5. As regards the rules of the CFP — as opposed to their application — they should apply identically to all Community vessels catching fish in EC waters. So far, the degree of urgency to ensure that the rules are observed differs amongst Member States, as do the monitoring means at the disposal of their inspection departments. Greater Community involvement is