COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 188 final - SYN 415
Brussels, 4 June 1992

Proposal for a

COUNCIL DIRECTIVE

on deposit-guarantee schemes

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. General considerations

(1) Main objectives of the proposal

This proposal for a Directive has a dual objective: to protect the depositors of each credit institution and to ensure the stability of the banking system as a whole.

Deposit-guarantee schemes, which are based on a system of solidarity between credit institutions, protect depositors in the event of a financial crisis in an institution and in particular those depositors who have insufficient financial knowledge to discriminate between sound and unsound credit institutions.

But, by the same token, guarantee schemes also protect the banking system from the risk resulting from the withdrawal of their funds by depositors, not only from an institution in difficulty, but also from banks in relatively sound condition which may be the subject of unfounded rumours.

One of the principles underlying the establishment of such guarantee schemes is therefore that the costs or possible distortions caused by introducing such schemes are outweighed by potential economic costs to society as a whole of a "run" on the banking system.

(2) Need for deposit-guarantee schemes

At the end of 1986, the Commission was already convinced of the desirability of credit institutions of all Member States belonging to a deposit-guarantee scheme and had published a Recommendation to this end, 87/63/EEC,[1] since it considered that this instrument, although not binding, was sufficient to persuade those Member States which did not have a guarantee scheme at the time to introduce one.

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1 OJ No L 33, 4.2.1987.

Despite this Recommendation, some Member States are not yet convinced of the need for all their credit institutions to be required to belong to a deposit guarantee scheme, and two Member States have not yet introduced one at all.

It is certain that the strengthening of national and international prudential measures is designed to avoid financial crises in credit institutions.

However, in the same way as prudential rules, a deposit-guarantee scheme is an element in the safety net with which the Commission and the supervisory authorities are endeavouring to surround credit institutions in preparation for the extension of their activities which will start in 1993.

This guarantee meets the need of foreseeing that, although it may be subject to very strict rules and severe prudential controls, a credit institution can experience financial difficulties.

In this case, the cost of compensating depositors will have to be weighed against that of reorganization measures which might be essential in order to rescue the institution.

The provisions of this proposal for a Directive therefore meet a need and take account of the experience acquired during the implementation of the abovementioned Recommendation 87/63/EEC and at the time of recent crises in institutions that had branches in several Member States. The proposal tries to satisfy the wishes expressed on this subject by the European Parliament in its opinion[1] on the proposal for a Directive COM(88)4[2] concerning the reorganization and the winding-up of credit institutions and deposit-guarantee schemes and by the Banking Advisory Committee, in its opinion of 4 July 1991.[3]

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1 Opinion of the European Parliament at first reading of 13 March 1987, OJ No C 99, 13.4.1987, p. 211.
2 OJ No C 36, 8.2.1988, p. 3.
3 Report of the Chairman 1988-91, Annex C.

(3) Principle of guarantee by the scheme of the credit institution's home Member State

Protection is based on the principle that branch depositors will be guaranteed by the scheme existing, for this category of institution, in the Member State where the institution has its head office (home Member State).

On completion of the internal market, all the activities exercised by a credit institution in the Community through its branches will be subject to a single accounting system, balance sheet and profit and loss account, and a system of monitoring solvency.

According to the opinion of the Banking Advisory Committee, failure to respect the home country principle, in a field as closely linked to bank supervision as deposit guarantee schemes, would have created a dangerous precedent for the realization of the Internal Market in banking services.

This will lead to the coexistence on the same territory of several deposit-guarantee schemes. But the experience of Member States in which, for many years, various types of credit institutions have been exercising their activities, while being covered by different guarantee schemes, proves that this can work very well, especially if the minimum level of coverage set by the proposal ensures that small depositors are compensated in all Member States.

(4) Choice of minimum level of coverage

Recommendation 87/63/EEC did not suggest a harmonized level of coverage. Yet it seems essential in the run-up to completion of the single market for depositors to be given basic protection, regardless of whether their deposits are in an office of a home-country bank or in an office of a bank based in another Member State.

The minimum level of coverage set for the Community should not be too high in order to avoid what has occurred in the United States in particular, where the risks taken by individual depositors have been lowered so much that such depositors have become virtually indifferent to the soundness of their credit institutions.

In addition, managers of credit institutions have been encouraged to hold risky portfolios, without market discipline requiring them to pay their guarantee scheme high premiums because of the increased risk of bankruptcy which such investments represented for the institution. In this way institutions benefited from taking risks while losses were borne by the guarantee scheme.

Conversely, coverage must not be too low and leave too many deposits outside the minimum threshold of protection.

The only unaggregated data readily available to the Commission relate to the average size of deposits held at Community savings banks.

The average for such deposits is about ECU 2 500, which reflects a weighted average of ECU 30 000 for time deposits, ECU 2 600 for current accounts and ECU 2 150 for savings accounts.

Unfortunately averages alone do not provide an answer to the question of what proportion of deposits or depositors would have balances above or below any particular minimum level of protection.

Without direct empirical evidence on the size and distribution of accounts, it seemed reasonable to try to establish a minimum level of coverage in the Community, based roughly on the levels of coverage now chosen by guarantee schemes in Member States. If the two Member States with extremely high levels of coverage (Germany and Italy) are excluded, together with those where there is no protection at all (Greece and Portugal), the median of existing levels is approximately ECU 15 000, which is why this figure has been chosen.

When the proposal was being prepared, the question arose of whether it might be preferable to set a percentage limit for repayment which would be more egalitarian but less protective of small depositors. This solution was not adopted because it would have led to very major changes in some solidarity schemes which take responsibility for rescuing the failing institution and therefore compensate its depositors in full.

The compromise solution finally adopted makes it possible to limit the guarantee to a percentage of the deposit but requires that this covers at least 90% of deposits, up to a payment of ECU 15 000. Above this limit, Member States or schemes remain free to provide for lower payment ratios or even to refuse any guarantee whatsoever.

(5) Setting very limited time limits for payment

Most of the existing guarantee schemes provide for a prompt payout to depositors, but until now, this payout has very often been tied to the progress of liquidation procedures and to the diligence of liquidators appointed by the courts.

This has often led to delays causing depositors very understandable distress. It is also a source of numerous disputes which can make payout operations even slower.

This proposal permits a starting point for the time-limit which is not linked to insolvency procedures: the length of time for which the deposit is unavailable has been taken into consideration and if it is more than ten consecutive days procedures for paying out the guarantee can be started; these must be completed within a three-month time limit unless there are special circumstances.

This three-month time-limit results from the practical experience of managers of guarantee schemes. In most of the cases where it has not been possible to observe such a time limit, a legal procedure was under way and the valuation of deposits for the purposes of the guarantee was not distinguished from the valuations necessary for liquidation which relate to all the assets and are bound to take more time.

(6) Depositor information

The priority goal of depositor protection suggests that the depositor should be fully informed of the extent of coverage of his funds.

Complete information is also important in reducing systemic risk: in particular, the greater the depositor's awareness of risk, the greater care he will take to discover whether the institution to which he entrusts his deposits is well-managed, and the less sensitive he will be to unjustified rumours.

(7) Questions not dealt with in the proposal

Several points have not been the subject of harmonized provisions; the main ones are:

(a) the legal status of guarantee schemes

As already stated in the Recommendation,[1] it was necessary to acknowledge the coexistence in the Community, and sometimes in the same Member State, of deposit protection schemes set up by private institutions and schemes administered on a statutory basis; most private schemes are set up under the responsibility of professional organizations, but they are just as effective as the schemes managed by or with the assistance of the public authorities.

It was therefore considered advisable not to change this state of affairs and not to compel Member States and credit institutions to adopt a specific statute for their deposit guarantee schemes.

1 Fourth recital of Recommendation 87/63/EEC.

(b) financing mechanism

there are also wide differences in the financing of schemes. The main difference is whether or not a guarantee fund exists. If it does, credit institutions pay contributions to the said fund at specific intervals of time; these contributions are based on the value of the deposits insured or on other parameters; the funds are managed by the guarantee schemes themselves.

In other cases, the guarantee scheme is funded by commitments to pay on the part of the member credit institutions; no payments are made into the scheme except in the event of a claim. Lastly, some schemes are mixed (funds plus commitments or possibilities of exceptional contributions in the event of a claim).

After receiving the assurance that the financing arrangements were sufficiently sound to pay off all depositors covered, including those at branches in another Member State, it was not considered necessary to harmonize rules which are closely linked with the management of the schemes in question.

The question of whether the public sector would be able to provide assistance for guarantee schemes in emergency situations of exceptional gravity and when the schemes' resources have been exhausted, has been raised in order to enable them to respect their commitments to depositors.

It did not seem appropriate, in the proposal for a Directive, to prohibit such assistance, which could prove necessary in practice, although it is not desirable as a general rule and could not be allowed to contravene the rules of the Treaty concerning state aid.

B. Commentary on the Articles

Article 1

Article 1 gives a few definitions which are necessary for the Directive to be understood properly. In order not to make this list of definitions too long, those already contained in several Directives have not been repeated; these include "credit institutions" and "branches" which can be found in Directive 77/780/EEC,[1] and "home Member State" or "host Member State", which can be found in Directive 89/646/EEC.[2]

Paragraph 1

The idea of deposit as it appears in paragraph (1) has been envisaged from the depositor's point of view. The depositor has a "credit balance" or "claim" whereas in the Directives relating to annual accounts, this naturally appears in the credit institution's accounts in the form of "debt" or "loan". This terminology has, on the other hand, been adopted in paragraph 2, which deals with non-repayable funds.

Guaranteed deposits are those which result from funds left in accounts either permanently or temporarily, or from claims for which negotiable certificates have been issued.

The idea of "credit balance" is relatively clear: in particular it is used for current accounts but it is supplemented by the idea of "funds left in accounts", which is intended to indicate savings books or accounts or any other instrument in which funds generally remain for longer than in current accounts.

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1 OJ No L 322, 17.12.1977.
2 OJ No L 386, 30.12.1989.

On the other hand, in order to understand the idea of "claims for which negotiable certificates have been issued" it has to be seen in the context of Articles 19 and 20 of Directive 86/635/EEC[1] on annual accounts, the first of which deals with "amounts owed to customers" while the second uses this formula and spells it out in detail: "debts for which negotiable certificates have been issued, in particular deposit receipts, 'bons de caisse' and liabilities arising out of own acceptances and promissory notes".

The above Directive distinguishes these debts from debt securities which appear in a separate heading. This distinction is not retained in the definition, but debt securities may be excluded from the guarantee if Member States do not wish to cover them (option 11 of the Annex).

The definition does not specify that deposits have to be nominative; here too an option is possible and Member States may provide for bearer deposits to be excluded from the guarantee (point 9 of the Annex).

It was necessary to define the idea of joint account, because of the option chosen of a limit per depositor, so as not to disadvantage holders of such accounts (Article 5(2)).

Lastly, the idea of unavailable deposit has been defined; in order to speed up the payout of the guaranteed amount, it was decided not to link this payout with the uncertainties of the procedures of reorganizing and liquidating the credit institution but to keep to an objective observation, namely that for ten consecutive days a depositor has been deprived of the funds which should have been repaid by the credit institution.

This period of ten days should normally make it possible, in most Member States, to obtain a decision by a judicial or administrative authority establishing that payments have ceased. The period will be shorter if such a decision results in the closure of banks since, in that case, the payout time limit (three months) will count from the day of the decision.

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1 OJ No L 372, 31.12.1986, p. 8.

Paragraph (2)

Some deposits are excluded from the guarantee. First of all, interbank deposits: the main justification for this is that banks are supposed to know the crisis bank's situation better than other persons in a business relationship with it.

With regard to subordinated loans, the existence of the clause recalled in the definition contractually excludes them from the guarantee, since by their nature they are not to be repaid until the liquidation is completed and repayment depends on its results.

Article 2

Paragraph (1)

Paragraph (1) of this Article contains two fundamental principles:

(a) The principle that all authorized institutions must take part in a deposit-guarantee scheme. The introduction of at least one deposit-guarantee scheme in each Community Member State had already been the subject of recommendation 87/63/EEC, mentioned above; not only does the proposal for a Directive repeat this requirement (still not satisfied in two Member States), but it makes it compulsory for all authorized institutions to belong to the schemes set up in this way.

This requirement is the counterpart of the freedom of establishment of branches and the freedom to provide services.

Since credit institutions enjoy these freedoms, it is absolutely necessary for depositors of branches located in other Member States and not supervised by local authorities, and depositors who entrust deposits to banks not established in the country where they reside, to be protected against any risk of financial crisis in the institution in question.

This will be an innovation in several States where membership is optional, even though most credit institutions do in fact take part in a deposit-guarantee scheme.

(b) The principle that the guarantee scheme of the home Member State shall cover the deposits of branches.

This principle is the logical result of supervision by the Member State where the head office is located. Once the competent authority of the home country is responsible for issuing authorizations making it possible to open branches and engage in activity with the freedom to provide services throughout the Community, and supervision of such activity, in particular the monitoring of solvency, take place at the head office, the implications for guarantee schemes have to be recognized.

Since the credit institution and its branches are considered to be a single unit, from both the legal and the banking point of view, it seems natural for this institution to take part in the solidarity scheme for credit institutions in the country where its head office is established. The links between this institution and host country for its branches will be far looser than they are now when branches are "authorized" in the same way as local institutions and have to respect the requirements of the Member State in which they are located:

Paragraph (2)

This principle of belonging to the home country scheme, vigorously stated in paragraph (1), has to be tempered by the provision in paragraph (2), the purpose of which is to enable branch depositors to enjoy the advantages of the host country's guarantee scheme.

This is not strictly speaking a derogation from the principle of belonging to the home country scheme since the latter is still required to guarantee branch depositors up to the amount offered to depositors with the institution's head office but it is, as it were, an additional guarantee which must be available whenever branch managers consider it appropriate to extend it to their customers in order not to suffer a competitive disadvantage.

Guarantee schemes which provide a high level of protection will, in order to enable branches to belong, have to find solutions to problems which are different from those they have had to settle in order to guarantee the institutions that have their head office on their territory.

These schemes will probably have to avail themselves of the disclosure of information as mentioned in Article 12(5) of Directive 77/780/EEC, amended by Article 16 of Directive 89/646/EEC[1] in order to obtain data which will be useful to them on the activity and solvency of the institution whose branch will be applying for membership.

They will probably have to stipulate special conditions for contributing to their guarantee scheme in keeping with the risks taken, since part of the risk will already be covered by the head office guarantee.

These technical difficulties should not conceal the essential advantage of this provision in preventing distortions of competition between institutions and differences in protection levels, which depositors of the same country would find difficult to accept.

Paragraph (3)

Since some of the deposit-guarantee schemes which exist in the Community are schemes set up under private law contracts, the fact that all institutions are required to take part in deposit guarantee schemes will lead to a constraint not envisaged so far, but which should not create undue problems. On the other hand keeping them in the scheme if they do not comply with its contractual requirements, for example with regard to financial contributions or information, is liable to prove very difficult.

1 OJ No L 386, 30.12.1989, p. 8.

The fact that a guarantee scheme will be allowed to exclude an institution means that depositors will be deprived of the protection to which they are entitled under the Directive or that the public authorities will be compelled to withdraw authorization; such withdrawal will therefore depend on the decision of a private body, which is unacceptable in principle and in some cases unduly severe if the breach of obligations is a minor one.

As a way out of this dilemma, the proposal for a Directive accepts the possibility of exclusion when all measures to secure the defaulting institution's compliance with its obligations have been fruitless, but requires the guarantee to be maintained for one year after exclusion, whatever the decision taken by the supervisory authority.

This measure will enable the credit institution's supervisory authorities not to resort to the extreme sanction of withdrawing authorization too automatically and to find, where appropriate, another solution for safeguarding the rights of the excluded institution's depositors.

Article 3

This Article establishes that branches of institutions that have their head office outside the Community cannot be compulsorily required to observe the rule of belonging to the home country scheme as are Community institutions.

As a result, depositors of these branches could be entirely deprived of protection if Member States did not take the necessary steps to secure their membership of the local scheme where they are not covered by another guarantee scheme, for example in their home country.

This is why paragraphs (2) and (3) of this Article require the depositors of these branches to be provided with information; this is in fact an application, adapted to this particular case, of the rules on providing depositors with information which are contained in Article 6 of the proposal for a Directive and relates to institutions that have their head office in the Community.

Article 4

This essential provision of the Directive specifies the minimum level of protection for depositors which has to be guaranteed within the Community.

Paragraph (1)

Paragraph (1) specifies that the lower limit of coverage per depositor, for his aggregate deposits, is ECU 15 000, which is a little higher than the maximum coverage provided in Spain (11.700 ECU), Belgium and Luxembourg (11.900 ECU), Ireland (13.200 ECU), and a little lower than the coverage provided in the Netherlands (17.400 ECU) and the United Kingdom (21.400 ECU).

This minimum guarantee will cover total deposits of less than ECU 15 000 and the sum paid to a depositor will therefore be ECU 15 000 for total deposits of ECU 15 000, ECU 12 000 for total deposits of ECU 12 000, ECU 10 000 for total deposits of ECU 10 000, etc.

But, in order to take account of the anxieties, in particular of economists and financial experts who would like part of the risks to be borne by depositors, in order to encourage them to take an interest in the soundness of the institution to which they entrust their deposits (even if the latter are not considerable), paragraph (4) allows the minimum coverage to be set in the form of a percentage and not in the form of a fixed amount.

As a result, the ECU 15 000 minimum will not be paid out to repay a ECU 15 000 deposit but a larger deposit - namely ECU 16 650 - if the percentage guaranteed is 90% of total deposits. For total deposits of ECU 15 000, the same depositor will receive only ECU 13 500, still on the assumption that the percentage guaranteed is equal to 90% of the total; this is the minimum percentage which has to be observed within the limits of minimum coverage.

It is important to note that the introduction of a percentage, within the limits specified in paragraph (4), will not have the effect of reducing the minimum payout due from the scheme which is still ECU 15 000; however, in order to arrive at this amount, in a scheme where each depositor is repaid only a percentage of his deposits, it is clear that the amount to be taken into account, in order to establish the minimum limit of deposits to be covered for each depositor, will have to be higher than ECU 15 000 (and, depending on the payout ratio chosen, will have to range from ECU 15 000 to ECU 16 650).

Paragraph (2) and Annex

Paragraph (2) provides that Member States may authorize the exclusion from the guarantee of certain depositors or certain deposits listed in the Annex.

These exclusions relate mainly to the deposits of financial institutions, insurance companies, central and local authorities, and other depositors which can hardly be considered as meriting protection because of their lack of economic expertise or economic weakness. However, the number of these institutions and persons is fairly large and the appraisal of whether it is advisable to exclude them varies from one Member State to another.

This is why it has not been possible to achieve fuller harmonization on this point because the arrangements covering these different institutions and depositors very largely depend on the guarantee amount which the scheme provides and on national practice. In this way several schemes in certain circumstances take bearer deposits into consideration because they are used by the smallest savers (non-nominative savings books) whereas most other countries wish to exclude them.

The list contained in Annex I is limitative and Member States may exclude from the guarantee only the institutions and persons mentioned therein, with any other exclusion contravening the Directive.

Paragraph (3)

Paragraph (3) however permits the retention or adoption of provisions raising the guarantee ceiling on which there is no maximum limit.

This provision will permit the retention of certain schemes which provide depositors with full compensation; these are the result of a solidarity arrangement designed to avoid member institutions being put into liquidation and which therefore provides, in the event of closure, for the full repayment of all deposits.

Disregarding this extreme case of the 100% repayment of deposits, schemes such as the Danish, French or Italian ones, which under the guarantee pay out amounts higher than the minimum contained in the proposal for a Directive will be able to maintain their present level of repayment.[1]

Article 5

This Article states the principle of a guarantee per depositor and not per deposit with a view to avoiding abuse, as is the case in the United States, and makes some provision for special cases which have given rise to difficulties in some countries and have been solved in a variety of ways.

Paragraph (2) lays down a supplementary rule for joint accounts and paragraph (3) provides for the case of special accounts where the account holder acts on behalf of the beneficial owners who are the real owners of the funds deposited in the account.

Classic cases are those of property managers who receive the tenants' rents before handing them over to the owners, lawyers, who pass certain sums intended for their customers through their accounts and trustees who act on behalf of their beneficial owners.

Guarantee schemes will be able to lay down certain formalities enabling them to ascertain the identity and rights of depositors.

1 Denmark: 31.500 ECU
France: 57.500 ECU
Italy: 511.000 ECU per deposit.

In some countries these formalities precede the provision of the guarantee. The proposal for a Directive does not take a position on this question; this depends on national practice in relation to these accounts which is far from being standardized.

Article 6

This Article lays down the rules relating to the necessity to inform customers of credit institutions.

Such information must be full and accurate because the schemes which the branches of the same Member State will join may be far more numerous than they are at present. It is therefore important, especially if the branch depositors do not enjoy supplementary coverage by the local scheme, as provided for in Article 2(2), for these depositors to be well informed of the advantages and disadvantages of the guarantee scheme covering the institution to which they entrust their deposit.

Article 7

This Article represents one of the main results to be achieved by the proposal, namely that of permitting the promptest possible payout of the guarantee provided for by the scheme.

In order to achieve this, a three-month time limit (renewable only once) is set for payouts.

This period will normally count from a decision by the supervisory authorities or a court which often act very rapidly once the solvency of a credit institution is called into question.

However, in order to save depositors and especially small depositors from having, as is sometimes the case, to endure a delay during which a reorganization solution is sought and implemented without the institution returning to normal activity, or a lengthy procedure of legal liquidation, the proposal provides for a ten-day period of unavailability at the end of which, if no decision has been taken as to the institution's activity, the depositor is entitled to payment of the guaranteed amount and the scheme is required to comply with the three-month time limit.

Paragraphs (2) and (3)

Nevertheless, there is provision for the time-limit to be extended, but only in the event of difficulties encountered in the settlement of particular cases, e.g. difficulties in proving the amount of the deposit (case of joint accounts or accounts where the account holder is not the beneficial owner), and difficulties in identifying the depositor, or even in finding him (if he has changed his address or is living in another country).

The very short time limits are stipulated in order to favour depositors and should not operate against their interests; the proposal therefore sets no time-limit within which they have to enforce their rights.

Paragraph (4) supplements the provisions relating to depositor information contained in Article 6 by information to be provided at the time of the claim.

Lastly, paragraph (5) states that the payment shall be effected in national currency or in ecu; it is necessary to make this clear because the guarantee is not confined to deposits in Community currencies or in ecu, but also covers deposits in third-country currencies, in keeping with Article 5(1).

Article 8

The first subparagraph of paragraph 1 calls upon Member States to comply with the Directive on 1 January 1994.

The second subparagraph provides that, where Member States adopt the necessary provisions of national law, the latter are to contain a reference to this Directive or are to be accompanied by such reference on the occasion of their official publication.

The second paragraph deals with the requirement to communicate to the Commission the main provisions of national law adopted by Member States.

Article 9

This Article contains the usual formula that this Directive is addressed to all the Member States.

Proposal for a

COUNCIL DIRECTIVE

on deposit-guarantee schemes

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,

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 any restrictions on freedom of establishment and the freedom to provide services while increasing the stability of the banking system and the protection of savers;

Whereas, at the same time as restrictions on their activities are eliminated, consideration should be given to the situation which might arise if a credit institution that has branches in other Member States suffers a financial crisis; whereas it is indispensable to ensure a harmonized minimum level of deposit protection wherever in the Community deposits are located; whereas such deposit protection is as essential as the prudential rules for the completion of the single banking market;

Whereas, in the event of the closure of an insolvent credit institution, the depositors of branches situated in a Member State other than that where the credit institution has its head office must be protected by a guarantee scheme, in the same way as all the institution's other depositors;

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 solidity of the banking system;

Whereas only ten Member States have a guarantee scheme in accordance with Commission Recommendation 87/63/EEC of 22 December 1986 concerning the introduction of deposit-guarantee schemes in the Community[1]; whereas this situation may prove prejudicial to the proper functioning of the Single Market;

Whereas the Second Council Directive 89/646/EEC[2], as amended by Directive 92/30/EEC[3] provides for a system for authorizing and supervising credit institutions which will enter into force on 1 January 1993;

Whereas branches will no longer require authorization in host Member States, because they will be granted a single authorization valid throughout the Community, and their solvency will be monitored by the competent authorities of the home Member State; whereas this situation justifies all branches, set up in the Community, of the same credit institution in belonging to a single guarantee scheme; whereas this scheme can only be the one which exists, for this category of institution, in the state where the head office is situated, in particular because of the link which exists between supervision of a branch's solvency and its membership of a deposit-guarantee scheme;

Whereas harmonization must be confined to the elements necessary and sufficient to ensure, within a very short period, a payment under the guarantee calculated on the basis of a harmonized minimum level;

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1 OJ No L 33, 4.2.1987, p. 16.
2 OJ No L 386, 30.12.1989, p. 1.
3 OJ No L 110, 28.4.1992, p. 52.

Whereas, for economic reasons, it is undesirable to introduce throughout the Community a very high level of protection which is liable to encourage the reckless management of institutions; whereas, in addition, in the event of a serious claim, contributions to the funding of the scheme could become too burdensome for the member institutions;

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 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 the retention in the Community of schemes providing coverage of deposits which is higher than the harmonized minimum may lead on the same territory to disparities in compensation which are prejudicial to depositors and unequal conditions of competition between national institutions and the branches of institutions of other Member States; whereas, in order to counteract these disadvantages, branches should be authorized to join the host country scheme so that they can offer their depositors the same guarantees as those offered by the scheme of the country where they are located;

Whereas, in order to speed up payments under the guarantee, the initiation of insolvency proceedings should not be awaited, unless the latter take place within ten days of the deposits becoming unavailable because a credit institution finds it impossible to comply with the obligation of refunding them in accordance with the legal and contractual provisions applicable to them;

Whereas a number of Member States have deposit-protection schemes under the responsibility of professional organizations; whereas other Member States have schemes set up and administered on a statutory basis and whereas some schemes, although set up on a contractual basis are partly administered on a statutory basis; whereas this variety of status poses a problem only with regard to compulsory membership of and exclusion from the scheme; whereas it is therefore necessary to take steps to limit the powers of schemes in this area;

Whereas one of the objectives of the harmonized minimum protection laid down by the Directive is to ensure depositor protection up to a certain amount, while excluding from such protection only deposits of other credit institutions and claims which are the subject of special conditions such as subordinated deposits; whereas it should, however, be possible for each Member State to limit such protection to depositors who are unable to evaluate the financial policy of the institutions to which they entrust their deposits, by enabling certain categories of depositors or of deposit to be excluded from the guarantee;

Whereas the principle of a harmonized minimum limit per depositor and not per deposit has been retained; whereas it is therefore appropriate to take into consideration the deposits made by depositors who either are not mentioned as holders of the account or are not the sole holders; whereas the limit must therefore be applied to each identifiable depositor; whereas the same does not apply to collective investments in transferable securities made via financial institutions and subject to special protection rules which do not exist for the abovementioned deposits;

Whereas in compliance with the Directives governing the admission of credit institutions having their head office in third countries, and in particular Article 9(1) of Council Directive 77/780/EEC[1], as last amended by Directive 89/646/EEC, Member States are to decide whether and on what conditions to admit the branches of such credit institutions to operate on their territory; whereas such branches will not benefit from the free

1 OJ No L 322, 17.12.1977, p. 30.

provision of services by virtue of Article 59, second paragraph of the Treaty, nor from freedom of establishment in Member States other than the one in which they are established; whereas accordingly a Member State admitting such branches may decide to oblige or permit such branches access to the guarantee system in place on their territory; whereas, however, it is appropriate that such branches should be required to inform their depositors of whether or not they belong to any guarantee system and of the extent and limits of any such guarantees;

Whereas depositor information is an essential element in their protection and must therefore also be the subject of a minimum number of binding provisions;

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 between all the institutions in a given financial market in the event of one of then failing,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

   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.

Joint account: an account opened in the name 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.

Unavailable deposit: a deposit which a credit institution experiencing a financial crisis is unable to repay under the legal and contractual conditions applicable to such repayment.

This suspension of payments need not necessarily be declared or decided by a judicial or administrative authority; it is sufficient for it actually to last for ten consecutive days.

At the end of that period, the deposit shall be deemed to be unavailable.

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.

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.

2. A branch of a credit institution authorized in another Member State may apply to join voluntarily the scheme covering the category of institution to which it belongs in the Member State in which it is established in order to supplement the guarantee which its depositors already enjoy by virtue of their obligatory coverage by the scheme referred to in paragraph 1.

   Member States shall ensure that objective conditions relating to the membership of these branches form part of all deposit-guarantee schemes.

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.

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

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.

2. In any event, the managers of foreign branches shall provide their depositors with information enabling them:

   - either to identify the guarantee scheme to which the branch belongs and to be aware of the limits or ceilings which exist in that scheme;

   - or to note the absence of any such guarantee.

3. The information referred to in paragraph 2 shall be made available in the official language(s) of the Member State in which the branch is established and shall be drafted in a clear and comprehensible form.

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. Member States may provide that certain depositors or deposits shall be excluded from the guarantee or shall be granted a lower level of guarantee. The exceptions are listed in the Annex.

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.

Article 5

1. The limits referred to in Article 4(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 Community.

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

   In the absence of special provisions, the account shall be divided equally between the depositors.

3. Where an account holder is not the beneficial owner of the sums held in the account, it is the beneficial owner who shall be covered by the guarantee. If there are several beneficial owners, the share of each owner shall be taken into account in calculating the limits provided for in Article 4(1), (3) and (4).

   This provision shall not apply to collective investments in transferable securities.

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.

2. The information provided for in paragraph 1 shall be available in the official language(s) of the Member State in which the branch is established and the guarantee limits or ceilings and the level of payments shall be expressed in ecus and in national currency.

Article 7

1. Payments under the guarantee provided for in Articles 4 and 5 shall be effected within three months of the date on which the deposit becomes unavailable, or of a court or other authority finding that payment has ceased if this has occurred prior to that date.

2. For justified reasons, relating solely to certain depositors or certain deposits, the guarantee scheme may request the supervisory authority for an extension of the time limit. Such extension may not exceed three months.

3. The time limits referred to in paragraphs 1 and 2 may not be invoked by the guarantee scheme in order to deny the benefit of the guarantee to a depositor who, due to absence or for any other justified reason, has been unable to assert his claim to a payment under the guarantee in time.

4. The documents relating to the conditions and formalities to be fulfilled in order to benefit from a payment under the guarantee referred to in paragraph 1 shall be drawn up in detail in the official language(s) of the Member State in which the guaranteed deposit is located.

5. Payment under the guarantee shall be effected in the national currency of the Member State in which the guaranteed deposit is located or in ecus irrespective of the currency in which the deposits are denominated.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1994. They shall forthwith inform the Commission thereof.

   When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the text of the main laws, regulations and administrative decisions which they adopt in the field governed by this Directive.

Article 9

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX

List of deposits referred to in Article 4(2)

1. Deposits of financial institutions within the meaning of Article 1(6) of Directive 89/646/EEC.
2. Deposits of insurance companies.
3. Deposits of the government and central administrative authorities.
4. Deposits of provincial, regional, local or municipal authorities.
5. Deposits of undertakings for collective investment in transferable securities.
6. Deposits of pension or retirement funds.
7. Deposits of directors, managers, members personally liable, holders of at least 5% of the capital of the credit institution, members of the external auditing bodies and depositors with similar status in subsidiaries.
8. Deposits of close relatives and third parties acting on behalf of the depositors referred to at point 7.
9. Non-nominative deposits.
10. Deposits for which the depositor has, on an individual basis, obtained from the credit institution rates and financial concessions which have helped to aggravate the financial situation of that credit institution.
11. Debt securities issued by the credit institution.

STATEMENT OF IMPACT ON COMPETITIVENESS AND EMPLOYMENT

Title of the proposal: Coordination of laws, regulations and administrative provisions relating to deposit-guarantee schemes.

1. What is the main reason for introducing the measure?

The main reason is the need to ensure throughout the Community that, in the event of a financial crisis in a credit institution having its head office in the Community, all depositors receive a payment of up to ECU 15 000 within three months.

This minimum protection is also intended to prevent massive withdrawals of funds where rumours emerge (whether or not justified) about a bank's solvency.

2. Features of the businesses concerned

The businesses required to join a guarantee scheme are credit institutions, i.e. a category of licenced businesses subject to prudential supervision.

Apart from the exceptions given in an exhaustive list, deposit coverage extends to all deposits of less than ECU 15 000 made by depositors, whether natural or legal persons.

3. What direct obligations does this measure impose on business?

The businesses concerned, i.e. credit institutions, must join their head office's guarantee scheme in order to cover their depositors and those of their branches situated in the Community. They also have a duty to inform their depositors.

The businesses benefiting from the deposit guarantee have no obligations imposed on them by the Directive itself.

4. What indirect obligations are local authorities likely to impose on business?

The branches of credit institutions having their head office outside the Community might be obliged to join the guarantee scheme of their host country.

5. Are there any special measures in respect of SMEs? If so, what are they?

There is no provision in the directive that deals specifically with SMEs but, to the extent that the deposits of legal persons are covered in the same way as those of natural persons, they will benefit from this extension of the guarantee to legal persons (not provided for in some existing schemes).

6. What is the likely effect on:
   (a) the competitiveness of business?
   (b) employment?

There should be no direct effect on competitiveness or employment. This measure comes into play when the solvency of the credit institution is seriously compromised and its recovery is, under normal circumstances, no longer possible.

7. Have both sides of industry been consulted? What are their views?

The various European federations of credit institutions have been consulted, as has EUROFIET, the body representing the employees of credit institutions.

All the associations concerned are in favour of introducing a minimum payment of ECU 15 000 by way of a guarantee. They have submitted comments on some of the detailed rules governing that guarantee.

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