

DEPOSIT GUARANTEE SCHEMES

Proposal for a Directive (recast)

BEUC position paper

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Summary

BEUC welcomes the changes to existing European rules proposed by the European Commission on 12 July which aim to improve protection for bank account holders.

We have been asking for such an initiative for a significant length of time now and are pleased to see the positive approach taken by the Commission. The function fulfilled by Deposit Guarantee Schemes (DGS) is major: it first ensures deposit protection (*raison d'être*), while providing safety to the whole financial system (preventing runs on banks) by way of providing assurance to consumers.

The Commission proposal contains many advances in comparison to the current legislation on deposit guarantee schemes; however there is room for some improvements.

The main improvements of the proposal are:

- the possibility for temporary high balances to be protected (art. 5.2);
- the abolition of compensation between liabilities of the depositor and his deposits (art. 6.4, in fine);
- the protection of the accrued, but not credited interests (art. 6.6);
- the *ex ante* funding of the DGS (art. 9);
- the obligation of cooperation between DGS: a depositor at a branch of a bank will be repaid by the DGS of his own country instead of by the DGS of the home country of the bank (art.12.2).

The main demands of BEUC are:

- registered debt certificates should remain under guarantee;
- the guarantee limit should be *per depositor* and *per brand*, instead of *per bank license*;
- there should be minimum harmonisation for temporary higher balances and the circumstances which lead to protection should be broadened;
- depositors should receive interests for the period between the failure of the credit institution and the repayment of their deposits;
- if the repayment does not occur within a 7 days delay, the depositor should be entitled to receive early repayments;
- there should not be a time limit to claim the repayment. DGS should settle a provision for all depositors whose identity is known but have not yet contacted the DGS;
- repayment of depositors should not be privileged over interventions to permit deposit transfers to another institution or to prevent failure.

BEUC Position

Scope and membership (articles 1 and 3)

Subject to the remark hereunder on the Institutional Guarantee Schemes, BEUC¹ welcomes the compulsory membership of a DGS for each Credit Institution. This will reinforce consumers' confidence in the financial market, especially in credit institutions established in other Member States.

Institutional Guarantee Schemes would have to change to:

- create a legal claim for depositors on the €100,000 guarantee despite and within their protective scheme, in case a default takes place;
- be independently monitored by a financial supervisory authority, including access to their calculations;
- make themselves compatible to help credit e.g. bail outs in foreign schemes as planned for any DGS so the running alternatives do not exclude those institutes or their overall responsibilities.

Under these conditions they should be offered a different approach towards *ex-ante* financing. Article 3 should be reviewed accordingly.

Definition of deposit (article 2, 1. (a))

Debt certificates

BEUC requests registered debt certificates to remain within the scope of the guaranteed deposit definition. Non-subordinated registered debt certificates are a popular form of savings in several Member States.

According to the current DGS Directive, a credit institution's debt evidenced by certificate may be considered as a deposit guaranteed by DGS. The new deposit's definition excludes all debt certificates from the guarantee if there is no statement of account, whether they are registered or not. This is not acceptable from the point of view of depositor's protection.

Structured deposits

The deposit's definition excludes structured deposits from the guarantee.

The definition of this category of excluded deposits should be clarified. BEUC supports the exclusion from guarantee of all deposits which are not *unconditionally repayable at par* (equivalent to the initial deposit) *by the credit institution*.

¹ WHICH?, BEUC's UK member believes that some of the institutions exempted under article 2 of Directive 2006/48/EC should also be exempted from this Directive.

Coverage level per credit institution (article 5, 1.)

The proposal aims to protect €100,000 of the aggregate deposits of each depositor. This amount applies per credit institution license and not per brand.

BEUC is in favour of a guarantee per brand. Consumers identify brands as different entities². Many consolidations occur in the financial sector, sometimes by completely merging credit institutions, sometimes not. When a complete merge occurs, it sometimes enters into force immediately after the concentration, but not always. Consequently, the situation is always shifting and not transparent for the customers involved.

Providing a specific document to consumers about the status of the brand when they open a bank account is not sufficient to avoid confusion, even if they are requested to countersign this document. Mentioning the competent DGS on consumer's statements of account is not more useful, as more and more consumers manage their accounts online and get all useful information about their transactions without reading their statements of account. Believing that consumers would be correctly informed, at any time, about all brands operated in the EU under the same credit institution agreement is entirely unrealistic.

Coverage level: temporary higher balances (article 5, 2.)

BEUC contends that high balances coverage should not be an option for the Member States, but rather a binding measure harmonised at minimum level. Circumstances which may lead to higher balances protection should be broadened.

Higher balance coverage is an important consumer protection element. Losing high balances would be disastrous for all consumers especially when those high balances are due to transactions in which the consumer has no choice as to receiving a payment in excess of the compensation limit. Circumstance examples justifying higher coverage are numerous: when selling a house, receiving an indemnity from an insurance company compensating any kind of damage (e.g. physical damage/harm, fire damage to house or property), receiving a pension capital, an inheritance, deposits in credit institutions which have merged (if the coverage would remain per credit institution), etc.

The Commission has recently launched a public consultation (white paper) on Insurance Guarantee Schemes advocating the establishment of an IGS as a last-resort mechanism in each Member State. It would be inconsistent that the payment by an insurance company of a claim, e.g. for a burnt-out property, is guaranteed by an Insurance Guarantee Scheme and that once on the account of the consumer, no more protection could apply on the paid amount.

² See Financial Services Authority Consumer Research 75: *Consumer awareness of the financial services compensation scheme*. (<http://www.fsa.gov.uk/pubs/consumer-research/crpr75.pdf>)

Determination of the repayable amount: abolition of compensation with liabilities (Article 6, 4. in fine)

BEUC welcomes and supports the abolition of compensation between deposits and liabilities. The compensation of deposits with long term liabilities such as mortgage or car loans will reduce or even eliminate the repayment by the DGS. This can lead to critical situations for consumers. If deposits and not yet payable liabilities will be set off, the depositors will make a run on their banks in order to keep some liquidity.

Determination of the repayable amount: interests (Article 6, 6.)

As defined in Article 6,6. interest not credited but accrued until the date on which the competent authority determines that the DGS will intervene, are to be covered by the DGS (within the limit of €100,000).

BEUC supports this new provision. However, the repayable amount should also be accrued including the interest between the date of the competent authority decision and the effective repayment to the depositor.

There is no sanction if the repayment occurs more than 7 days after the decision of the competent authority as defined by article 7. The DGS continues to receive interest as long as it keeps the funds.

For those reasons, the depositor should be entitled to receive interest for the period between the unavailability decision and the effective repayment.

Repayment: 7 days; early repayments (Article 7)

As defined in Article 7, Deposit Guarantee Schemes should be in a position to repay unavailable deposits within 7 days of the date on which the competent authority determines that the DGS will intervene. In a recent case, the Danish DGS managed to give access to the deposits the day after the bankruptcy. This shows that a 7 day delay is realistic.

If for any reason the repayment does not occur within the foreseen delay, early payouts should take place to allow consumers to cover urgent expenses.

Repayment: time limit to claim the repayment (article 8, 4.)

The provision allowing Member States to limit the time in which the depositors can claim the repayment of their deposits is unacceptable.

As defined by Article 8,4, Member States may limit the time in which depositors whose deposits were not repaid or acknowledged by the scheme within the deadline set out in Article 7(1) can claim the repayment of their deposits. Such time limit shall be determined by the date at which the rights to which the Deposit Guarantee Scheme has subrogated pursuant to paragraph 2 are due to be registered in a winding up procedure under national law.

This limited period to claim repayments can be short and will differ from one Member State to another.

BEUC suggests that the depositor should be entitled to claim the repayment within a period of 1 year. After that period, the DGS should settle a provision for the depositors who are not yet repaid (their identity is known, but they did not contact the DGS yet), the DGS should be allowed to be subrogated in the rights of the depositor. The depositor remains entitled to claim his deposits under the national prescription or sleeping accounts provisions.

Ex-ante financing of DGS (Article 9, 1.)

BEUC Members³ are in favour of *ex-ante* financing. It achieves a level playing field between banks from different Member States, it makes the repayment or other interventions in a short timeframe more plausible, and it does not operate not cyclically like heavy contributions in times of crisis.

However, a lower contribution should be allowed when a business model lowers the risk and makes default less likely. The Directive should not only focus on defaults but on their prevention as well.

DGS interventions to permit deposit's transfers to another institution or to prevent failure (article 9, 5.)

Repayment of depositors should not be privileged over other DGS interventions in order to finance the transfer of deposits to another credit institution or prevent the bankruptcy of a credit institution (under strict conditions to prevent competition distortion).

Those alternative interventions are more consumer-friendly because deposits stay available. Consumer confidence in the financial sector is thus less affected than when they must wait on repayment.

The conditions set by the Directive proposal to allow those interventions are too restrictive.

END

³ Except WHICH?, BEUC UK member.