

24.09.2010

Decision
of the Bundesrat

**Draft Directive of the European Parliament and the Council on
Deposit Guarantee Schemes (recast)****COM (2010) 368 final.**

In its 874th session on 24th September 2010 the Bundesrat adopted the following Resolution pursuant to Article 12 Point b TEU:

1. The Bundesrat considers that the draft directive is not compatible with the subsidiarity principle. Pursuant to Article 5 TEU, the EU may only act if and insofar as the aims pursued in the envisaged measures cannot be achieved to a sufficient degree by the Member States at the national, regional or local level. The specific measures comprised in the draft Directive (e.g. limiting the coverage level to 100 000 Euro) are questionable in the light of the subsidiarity principle.

The Commission's proposals would have far-reaching ramifications for the entire banking sector in Germany. The proposals do not appear to be acceptable in the current form, as they would encroach to a significant extent upon existing structures in the banking industry and would have a pronounced negative impact on such structures. Deposit guarantee schemes do not fall within the scope of EU exclusive competences. In the Bundesrat's view the draft Directive constrains scope for national decision-making and action.

2. The three-pillar structure of the German banking system has proved to be particularly crisis-resistant thanks to its specific characteristics and its regional links. Although the draft directive does refer to German banking sector institutional warranties (i.e. institutions provide security to associated institutions) and to the preventive effect of this scheme, this system is however not recognised as fully equivalent to statutory deposit guarantee schemes. An obligation to participate in the European deposit guarantee schemes could constitute an undue burden, in particular for those banks that participate in the institutional warranties scheme and which have strong roots in the regions. Thanks to the institutional warranties scheme, these banks can avail themselves of structures which protect deposits of private customers (with no upper limit imposed) and also protect other investment instruments issued by these financial institutions. The draft directive would above all affect the regional and local dimensions of the subsidiarity principle.

3. The Bundesrat recalls that on 19th December 2008 the Bundesrat called in particular for both deposit guarantee schemes and the existing institutional warranties schemes of the cooperative and saving banks in Germany to be taken into account when harmonising deposit protection measures (BR Official Document 778/08 (Decision), Point 6). The Bundesrat therefore takes a critical approach to several points in the draft directive, as the existing provisions in Germany in the field of deposit guarantee schemes are not taken into account sufficiently and the provisions envisaged in the directive would result in a reduction in the level of protection currently afforded to investors:
 - In the case of Germany the proposed mandatory membership of a statutory deposit protection scheme, combined with the proposal to scrap the option of an exemption for credit institutions from this obligatory membership – provided that they belong to a system offering at least an equal degree of protection – would be counterproductive. Deleting this option would mean – and this would be contrary to the objectives pursued in the directive – that the existing institution-based voluntary protection schemes in Germany, namely the joint liability scheme of the Savings Bank Finance Group (Sparkassen-Finanzgruppe) and the protection scheme of the Federal Association of Cooperative Banks (Sicherungseinrichtung des Bundesverbandes der Deutschen Volksbanken und Raiffeisenbanken e. V.)

would not be taken into account: these schemes have been recognised by EU Member States to provide an equal level of protection and these systems have proved their worth up to the present day. With the exception of the notion of lower contribution payments to be paid by members of existing protection schemes based on institutional warranties, the proposal, in requiring compulsory membership of a statutory deposit guarantee scheme, does not take account of the fact that members of institutional warranties schemes would not need to draw on the statutory deposit guarantee system. The aims of these institutions and the options for measures hence available to them in terms of institutional warranties – for example capital support measures, warranties, mergers – makes it possible to avoid scenarios in which indemnification would be required. If German banking institutes wished to maintain their institution-based protection system in the future, their role would thus be limited to paying contributions into the statutory deposit guarantee scheme without deriving benefits from this scheme; furthermore they might in some circumstances have to provide support via the proposed mutual credit facility for the risky business models of other credit institutions – right across the EU. For that reason the institutional warranties schemes should continue to be exempted from obligatory membership of a deposit guarantee scheme. In this context the pre-requisite here will continue to be that these systems would have to make any adjustments required should they not comply fully with European provisions.

- Furthermore the Bundesrat considers that the proposal to set the coverage level for all deposits held by a single investor at 100 000 Euro is not acceptable. Transposing this provision would mean that the existing protection schemes in Germany would have to revise the level of deposit protection they provide “downwards”, which would not be in keeping with the trust placed in them by investors. The existing voluntary systems – irrespective of whether they provide institutional warranties or deposit protection - de facto offer protection of deposits with no upper limit stipulated. In addition, deposits of non-financial undertakings would also be covered in the future, irrespective of their volume: in this case a level of protection greater than the proposed coverage level is generally required.

4. Maximum harmonisation in the form of an EU-wide limitation of the coverage level for deposit guarantee schemes to a maximum of 100 000 Euro would, in the opinion of the Bundesrat, also limit the efficiency of national and regional systems, particularly the systems of the Savings Bank Finance Group and of cooperative banks. Existing deposit guarantee systems already provide a much higher level of protection than could be provided by the draft directive. Limiting protection of deposits to 100 000 Euro would therefore create a significantly worse situation for consumers in Germany.