

- CHAIRMAN -

European Commission  
Commissioner McCreevy  
Directorate-General Internal Market and Services  
B-1049 Bruxelles/Brussel  
Belgium

30 July 2009

Contact person: Mr Stéphane Kerjean

E-mail: [secretariat@efmlg.org](mailto:secretariat@efmlg.org)

Dear Commissioner McCreevy,

**Subject: Commission Consultation Document – Review of Directive 94/19/EC on Deposit-Guarantee Schemes**

In 1997, when examining the recourse of the Federal Republic Germany against the Directive 94/19/EC on Deposit-Guarantee Schemes<sup>1</sup> (the Directive), the European Court of Justice pointed out that the purpose of the Directive was mainly confined ‘to ensure a harmonized minimum level of deposit-guarantee, wherever those deposits were located within the Community’. The Court also observed that ‘the Community legislature was seeking to regulate an economically complex situation’ noting that, [b]efore the adoption of the Directive, deposit-guarantee schemes did not exist in all the Member States’ and that ‘most of them did not cover depositors with branches set up by credit institutions authorized in other Member States’<sup>2</sup>.

More than 15 years after the adoption of the Directive, the European financial sector is increasingly integrated and it is imperative that the rules applicable to deposit-guarantee schemes (DGS) in the EU ensure a high level protection of depositors but also ensure equal conditions of competition between national institutions and branches of institutions from other Member States in the internal market. The EFMLG notes in this respect the amendments recently introduced to the Directive which further harmonise the guarantees offered to depositors in terms of minimum coverage levels and payout delay<sup>3</sup>. However, the recent market

---

<sup>1</sup> Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, OJ L 135, 31.5.1994, p.5.

<sup>2</sup> Case C-233/94 *Federal Republic of Germany v European Parliament and Council of the European Union* [1997] ECR I-02405, paras. 55 and 82.

<sup>3</sup> Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay, OJ L68, 13.3.2009, p.3.

turmoil events have also highlighted that the uncoordinated approaches taken by national authorities to protect depositors and to ensure the stability of the banking system as well as the differences in nature and functioning of DGS in EU Member States constitute, as rightly pointed by the Commission, source of distorted competition and limit the benefits customers and banks could have if the internal market functioned properly.

Against this backdrop, the EFMLG considers that an approach based on minimum harmonization in a Directive has shown to be insufficient in order to guarantee a level playing field in the internal market, and therefore detrimental to the EU objective of market integration. As an example, the different methods of financing deposit-guarantee schemes in the Member States<sup>4</sup> 'raise doubts about the ability of schemes to function on a cross-border basis under crisis conditions, and create competitive distortions because of the unfair advantage to banks operating under schemes with lower costs'<sup>5</sup>. The EFMLG is of the view that these differences should be removed or minimized by a higher degree of harmonisation, to avoid that the insurance cost of deposit taking differs so much depending on the guarantee scheme mechanism to which the credit institution belongs. For instance, the costs for a credit institution incorporated in one jurisdiction and for a branch of a credit institution in the same jurisdiction which are respectively subject to an ex-ante and to an ex-post funding mechanism, will differ considerably, and even in a more significant extent in case of large branches. This has a very distorting effect on competition. Having a European passport means a level playing field also in this domain.

Furthermore, recent experiences have also shown that European cross-border banks wishing to consider the option of a European Company Statute for consolidation in one entity of several subsidiaries and moving to a branch structure face disproportionate restrictions *inter alia* because of the disparity between deposit insurance schemes across Member States.

The EFMLG trusts that the Commission will also explore the appropriate solutions in this field in order to remove these unacceptable obstacles to cross-border banking consolidation and financial integration in Europe.

With best regards,

Antonio Sáinz de Vicuña  
Chair of the EFMLG

---

<sup>4</sup> See recital 13 of the Directive.

<sup>5</sup> See the Commission communication concerning the review of Directive 94/19/EC on Deposit Guarantee Schemes , 28 November 2006 (Available at: [http://ec.europa.eu/internal\\_market/bank/docs/guarantee/comm9419\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/guarantee/comm9419_en.pdf)).