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José Maria Roldán Alegre
Chairman of the Committee of European Banking
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Dear José Maria,

Subject: Call for Advice (No. 3) from the Committee of European Banking Supervisors (CEBS) regarding Directive 94/19/EC on Deposit Guarantee Schemes

I am very pleased to send to you the Commission's official call for advice from the Committee of European Banking Supervisors (CEBS) concerning the Directive 94/19/EC on Deposit Guarantee Schemes.

At the meeting of the Banking Advisory Committee on 23 November 2004, BAC Members called on the Commission to conduct a **wide-ranging** review of the Directive on Deposit Guarantee Schemes to cover notably the practical workings of Member States' deposit guarantee systems, the level of protected deposits in the Directive, financing arrangements, the division of home and host country responsibilities and information exchange arrangements between supervisory authorities and schemes. As you know, Directive 94/19/EC provides only for **minimum** harmonisation at the EU level, which has resulted in a number of differences between Member States in the legal set-up, statutory powers and financing arrangements of their national deposit protection schemes.

I would be grateful if CEBS could carry out a number of pieces of work to inform the Commission, notably regarding the division between home- and host-country responsibilities, the cooperation and exchange of information between home and host supervisory authorities as well as between the schemes and supervisors in other Member States. Furthermore, advice is sought on the level of coverage of the deposit guarantee schemes, on possible changes to improve the functioning and take-up of topping-up arrangements and on provisions regarding entry and exit of the schemes including the transferability of paid-in funds.

Yours sincerely,

Alex Schaub

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Encl. Call for advice No. 3

CALL FOR TECHNICAL ADVICE (NO. 3) FROM THE COMMITTEE OF EUROPEAN BANKING SUPERVISORS (CEBS)

Subject: Report on Directive 94/19/EC

1. Background

At the meeting of the Banking Advisory Committee on November 23rd, 2004, BAC members called on the Commission to conduct a wide-ranging review on the Directive on Deposit Guarantee Schemes (94/19) that should look at the practical workings of deposit guarantee systems as well as information exchange arrangements between supervisory authorities and schemes. The Commission's review will therefore cover:

- the level of coverage provided by the Directive;
- the definition of deposits;
- "topping-up" arrangements;
- financing arrangements, notably the implications of operating a mix of ex-ante and ex-post schemes in the EU;
- the division of home and host country responsibilities, including information-sharing arrangements and crisis management procedures.

The Commission is therefore seeking the technical advice of CEBS on a number of these issues to feed into its review. The Commission intends to report to the Financial Stability Table of the Economic and Financial Committee by early September. Before then, however, the Commission will draft a paper for public consultation. An impact assessment will also be undertaken by the Commission.

2. Specific call for technical advice

- **Home/host responsibilities, information exchange, crisis management procedures**

There is clearly a benefit in maintaining close links between the local supervisor and the deposit guarantee scheme, notably in order to facilitate communication in times of crisis. Appropriate and timely exchanges of information are critical in order to ensure that both supervisors and schemes are able to operate effectively.

It is also important that information exchange arrangements are satisfactory on an ongoing basis, both within jurisdictions and on a cross-border basis.

CEBS is asked to consider the following:

a) are exchange of information arrangements between home and host supervisory authorities on deposit guarantee issues satisfactory, as well as between the schemes and supervisors in other Member States? What is current practice? If information exchange arrangements are not satisfactory, how could they be improved?

b) are there reasons, given the link with crisis management procedures and day-to-day supervision of branch operations by the home Member State authorities, to concentrate all responsibility for deposit guarantees with the home country scheme?

c) are there nevertheless reasons that could justify in some instances a change from home to host country responsibility for guaranteeing deposits in order to take account of the possibility that more systemically significant branches may result from any increase in cross-border banking activity or consolidation?

3. Further areas on which advice from CEBS is welcome

- **Level of coverage**

The Commission will conduct an impact assessment that will look at the effect of the rise in prices, income levels and average balances on deposit since 1994. It will also attempt to develop a model that could help in determining an “optimum” level of deposit protection, based on historical loss data.

CEBS may consider, from a supervisory point of view:

a) should deposit guarantee schemes seek to protect the wealth of depositors or simply transaction funds?

b) based on an analysis of the above question, are there reasons which may suggest that the €20,000 minimum level of protection is currently too low or too high. If so, how should the €20,000 minimum level of protection be adapted?

c) what are the implications of harmonising the guarantee level?

d) should the definition of deposits be further harmonised?

- **“Topping-up” arrangements**

When the Commission adopted the original proposal for a directive it concluded that the home country principle – which sets out that the guarantee of the parent institution for deposits is also valid for its branches in other Member States – needed to be tempered by a provision that enabled branch depositors to enjoy the advantages of the host country’s guarantee scheme in cases where the level of coverage provided by the host country was higher.

CEBS may wish to consider the following:

a) how are topping-up arrangements working in practice? Is there adequate exchange of information between home and host country supervisory authorities? Are supervisory authorities satisfied with their level of involvement in such procedures? Do the guidelines set out in Annex II of the Directive meet the needs of supervisors?

b) could “topping-up” arrangements be successfully managed by the home country? What exchange of information requirements would be necessary to make a success of such arrangements?

- **Financing of schemes**

The Directive left the organisational and legal structure of deposit guarantee schemes, as well as any funding arrangements (including provisions on the possibility to exit the schemes), to the Member States. Partly as a result of this, guarantee schemes in the EU are largely heterogeneous.

CEBS is asked to consider, from a supervisory point of view, the merits and demerits of *ex-ante* and *ex-post* schemes. In particular:

a) should all schemes be funded on an *ex-ante* basis, at least in part, to ensure that funds are immediately available in the jurisdiction? Should target levels of funds be harmonised, or left to national discretion? Should contributions to an *ex-ante* fund be risk-based?

b) does the potential for increased cross-border consolidation in the European banking market necessitate harmonisation of provisions on entry/exit of schemes and transferability of funds?

c) should provision be made to allow funds collected in an *ex-ante* fund to cover part or all of the costs of any possible bank restructuring process? Alternatively, should the funds collected be used solely for the restitution of deposits?

CEBS may also wish to put forward additional issues on its own initiative.

4. Timetable

CEBS is invited to provide advice on the above issues by September 16, 2005 in order to allow the Commission to take its views into account as it prepares for a discussion of the review of the Directive with Member State authorities on September 21, 2005.

MAIN RELEVANT LEGAL PROVISIONS

Level of coverage

(Art. 7 of Dir. 94/19/EEC)

1. Deposit-guarantee schemes shall stipulate that the aggregate deposits of each depositor must be covered up to ECU 20 000 in the event of deposits' being unavailable.

Until 31 December 1999 Member States in which, when this Directive is adopted, deposits are not covered up to ECU 20 000 may retain the maximum amount laid down in their guarantee schemes, provided that this amount is not less than ECU 15 000.

2. Member States may provide that certain depositors or deposits shall be excluded from guarantee or shall be granted a lower level of guarantee. Those exclusions are listed in Annex I.

3. This Article shall not preclude the retention or adoption of provisions which offer a higher or more comprehensive cover for deposits. In particular, deposit-guarantee schemes may, on social considerations, cover certain kinds of deposits in full.

4. Member States may limit the guarantee provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of deposits. The percentage guaranteed must, however, be equal to or exceed 90 % of aggregate deposits until the amount to be paid under the guarantee reaches the amount referred to in paragraph 1.

5. The amount referred to in paragraph 1 shall be reviewed periodically by the Commission at least once every five years. If appropriate, the Commission shall submit to the European Parliament and to the Council a proposal for a Directive to adjust the amount referred to in paragraph 1, taking account in particular of developments in the banking sector and the economic and monetary situation in the Community. **The first review shall not take place until five years after the end of the period referred to in Article 7 (1), second subparagraph.**

6. Member States shall ensure that the depositor's rights to compensation may be the subject of an action by the depositor against the deposit-guarantee scheme.

“Topping-up” and “set-off” arrangements

(Art. 4 and Annex II of Dir. 94/19/EEC)

1. Deposit-guarantee schemes introduced and officially recognized in a Member State in accordance with Article 3 (1) shall cover the depositors at branches set up by credit institutions in other Member States. Until 31 December 1999 neither the level nor the scope, including the percentage, of cover provided shall exceed the maximum level or scope of cover offered by the corresponding guarantee scheme within the territory of the host Member State. Before that date, the Commission shall draw up a report on the basis of the experience acquired in applying the second subparagraph and shall consider the need to continue those arrangements. If appropriate, the Commission shall submit a proposal for a Directive to the European Parliament and the Council, with a view to the extension of their validity.

2. Where the level and/or scope, including the percentage, of cover offered by the host Member State guarantee scheme exceeds the level and/or scope of cover provided in the Member State in which a credit institution is authorized, the host Member State shall ensure that there is an officially recognized deposit-guarantee scheme within its territory which a branch may join voluntarily in order to supplement the guarantee which its depositors already enjoy by virtue of its membership of its home Member State scheme. The scheme to be joined by the branch shall cover the category of institution to which it belongs or most closely corresponds in the host Member State.

3. Member States shall ensure that objective and generally applied conditions are established for branches' membership of a host Member State's scheme in accordance with paragraph 2. Admission shall be conditional on fulfilment of the relevant obligations of membership, including in particular payment of any contributions and other charges. Member States shall follow the guiding principles set out in Annex II in implementing this paragraph.

4. If a branch granted voluntary membership under paragraph 2 does not comply with the obligations incumbent on it as a member of a deposit-guarantee scheme, the competent authorities which issued the authorization shall be notified and, in collaboration with the guarantee scheme, shall take all appropriate measures to ensure that the aforementioned obligations are complied with. If those measures fail to secure the branch's compliance with the aforementioned obligations, after an appropriate period of notice of not less than 12 months the guarantee scheme may, with the consent of the competent authorities which issued the authorization, exclude the branch. Deposits made before the date of exclusion shall continue to

be covered by the voluntary scheme until the dates on which they fall due. Depositors shall be informed of the withdrawal of the supplementary cover.

5. The Commission shall report on the operation of paragraphs 2, 3 and 4 no later than 31 December 1999 and shall, if appropriate, propose amendments thereto.

ANNEX II

Guiding principles

Where a branch applies to join a host Member State scheme for supplementary cover, the host Member State scheme will bilaterally establish with the home Member State scheme appropriate rules and procedures for paying compensation to depositors at that branch. The following principles shall apply both to the drawing up of those procedures and in the framing of the membership conditions applicable to such a branch (as referred to in Article 4 (2)):

(a) the host Member State scheme will retain full rights to impose its objective and generally applied rules on participating credit institutions; it will be able to require the provision of relevant information and have the right to verify such information with the home Member State's competent authorities;

(b) the host Member State scheme will meet claims for supplementary compensation upon a declaration from the home Member State's competent authorities that deposits are unavailable. The host Member State scheme will retain full rights to verify a depositor's entitlement according to its own standards and procedures before paying supplementary compensation;

(c) home Member State and host Member State schemes will cooperate fully with each other to ensure that depositors receive compensation promptly and in the correct amounts. In particular, they will agree on how the existence of a counterclaim which may give rise to set-off under either scheme will affect the compensation paid to the depositor by each scheme;

(d) host Member State schemes will be entitled to charge branches for supplementary cover on an appropriate basis which takes into account the guarantee funded by the home Member State scheme. To facilitate charging, the host Member State scheme will be entitled to assume that its liability will in all circumstances be limited to the excess of the guarantee it has offered over the guarantee offered by the home Member State regardless of whether the home Member State actually pays any compensation in respect of deposits held within the host Member State's territory.