

DEPOSIT PROTECTION IN THE SLOVAK REPUBLIC AND COUNTRIES OF THE EUROPEAN UNION

Ing. Peter Oravec

Through Directive no. 94/19/EC of the European Parliament and Council of 30th May, 1994 on deposit insurance (guarantee) schemes, which is the legal framework for deposit protection in EU countries, the European Union obligated all member states several years ago to implement guarantee systems for the protection of deposits in banks. The Directive, which sets out only the basic principles of deposit protection, prescribes compulsory membership of all credit institutions in the system of deposit protection. Each member state is responsible for setting up such a system. According to the Directive deposits in one credit institution are to be protected up to the amount of € 20,000, where each member state is given the right to limit the level of reimbursement to 90% of the amount of the deposit.

The basic principles of the Directive are as follows:

- A deposit is any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable, and any debt evidenced by a certificate issued by a credit institution. From a deposit-guarantee scheme are excluded the reimbursement payments of deposits of other credit institutions made on their own behalf and for their own account, of the credit institutions' capital and deposits arisen from operations, in the case of which a criminal conviction for money laundering (the legalisation of revenues from criminal activity) has been made.
- Each member state is to ensure the implementation and recognition of a single or several deposit-guarantee schemes; no credit institution (other than for certain exceptions) may accept deposits, unless it is a member of such a system.
- Deposit-guarantee schemes in some member states protect depositors in branches established by credit institutions in other member states. If the level or the scope of deposit protection of the host state exceeds the level or scope of protection provided in the member state in which the credit institution is licensed, the host state shall ensure that a deposit-guarantee scheme functions in its territory, and which the branch may freely join. The Directive prescribed that by 31st December, 1999 foreign branches of banks in one EU member state may not offer depositors cover higher than competing domestic banks.
- Member states shall verify whether branches established by a credit institution registered outside the EU have insurance protection equivalent to the protection stipulated by this Directive; where this is not the case they must join one of the deposit-guarantee schemes operating in the state's territory.
- The aggregate of all a depositor's deposits must be insured up to the level of € 20,000. The maintaining or adoption of regulations providing a higher form of or more complete protection of deposits is not precluded.
- Member states may limit insurance to a certain percentage of the amount of a deposit, which must however be at least 90% of all the deposits. Limits relate to the sum of deposits at the one credit institution regardless of the number of such deposits, their currency and the place of their depositing in the EU. (If a depositor has, for example, at a bank € 20,000 and the bank goes into bankruptcy, so they will receive reimbursement according to EU law only in the amount of 90% of their € 20,000, i.e. € 18,000. A client of a bank who had a deposit in the amount of € 30,000 will get back € 20,000.)
- Member states shall ensure that credit institutions provide the necessary information to current as well as potential future depositors for identifying which deposit-guarantee scheme they are a member of. Depositors must be informed in an easily comprehensible manner of the provisions of the deposit-guarantee scheme including the level and scope of protection.
- Deposit-guarantee schemes must be able to pay out liabilities to depositors within three months as of the date when the respective authorities ascertain that a credit institution is no longer able to pay out a deposit and does not have prospects that it will be able to do so (i.e. at latest within 21 days of the time when it first ascertains that a credit institution has not paid out payable and enforceable deposits), or within three months of the date when a judicial authority issues a ruling having the effect of suspending depositors' ability to make claims against this institution. In special cases a deposit-guarantee scheme may request an extension of this period, which however may not be longer than three months; the respective authorities may provide at maximum two further extensions, each at maximum of three months.



A deposit-guarantee scheme is generally understood to mean several guarantee funds, the precise naming of which varies in different countries (deposit security, guarantee funds, reimbursement schemes, etc). Banks licensed in the EU provide, on the basis of the mentioned EU directive, security up to the deposit level of € 20,000 per client. Each member state may independently decide whether instead of the deposit protection in the amount of the € 20,000 required by the Directive, a higher level of depositor protection is necessary, and may prescribe this in its national regulation to the respective credit institutions. The respective supervisory authority of each EU state at the same time shall check whether a credit institution belongs to a deposit-guarantee scheme. A credit institution may perform business in the EU only where this is so.

As regards deposit security in branches of credit institutions registered in a different EU member state, the deposit protection valid in the country in which the main office of the financial institution is located applies. If such an institution establishes a branch in a different member state, the deposit protection applied is not that of the country of the branch's head office, but rather that of the country of the bank's head office. The amount and scope of deposit protection thus applies also for branches of credit institutions that are established in other EU states. However a credit institution may establish not simply a branch in a different member state, but also a new bank. The new bank will have its head office in the host state and in this case it is the deposit protection of the host state which applies. It is not important that this new bank is actually merely a subsidiary of a financial institution from a different state. At present banks exist which perform activity only via the Internet (or telephone and post). From the aspect of deposit protection it is also in this case important for the depositor to know where the head office of the financial institution is, in order to know the level of deposit security.

Deposit protection concerns deposits in banks and savings banks and does not relate to deposits in the case of which banks act merely as intermediaries. A typical example of such a deposit are mutual funds, where the bank is only a broker-intermediary between an investment company and depositor. The same applies for shares and other securities, for which no deposit protection exists. The system of deposit protection thus has two main functions:

- Preventive – it reduces the risk of panic withdrawals of deposits from banks by the public, if negative information on a bank's financial situation spreads, or
- Remedial – ensures the return of deposits for depositors.

Country	Sum guaranteed in EUR	Cover (%) of this sum
Belgium	20 000	100
Denmark	40 000	100
Finland	25 000	100
France	70 000	100
Greece	20 000	100
Holland	20 000	100
Ireland	20 000	90
Luxembourg	20 000	90
Germany	30% of a bank's capital	100
Portugal	33 750	100
Austria	20 000	100
Spain	20 000	100
Sweden	25 000	100
Italy	103 291.38	100
Great Britain	22 222	90

Deposit protection in EU member states

Since European law through the cited Directive sets only the minimum principles of deposit protection, individual EU states in creating a deposit-guarantee scheme and setting the amount or scope of deposit protection have sufficient freedom. Deposit protection is therefore solved differently in the individual EU member states. France and Italy have the highest level of deposit protection. A special form of deposit protection applies in Germany. Most other EU countries have set the minimum prescribed scope of deposit protection in line with the Directive.

Deposit protection applies for all credit institutions subject to Belgian legislation and for Belgian branches of banks registered outside the EU. In Belgium one deposit-guarantee scheme exists (the IRG). The IRG system, to which all Belgian credit institutions are connected, is based on contracts with the credit institutions.

In Finland there had existed until recently various guarantee funds, which were then merged into a single deposit protection fund. All institutions accepting deposits are connected to this fund. Credit institutions are obliged to provide information on deposit protection and any possible changes in regulations.

Credit institutions registered in France accepting deposits must belong to one of two deposit-guarantee schemes. The first system insures banks affiliated to the professional association, AFB. Mutual and co-operative banks and savings banks have a separate system of mutual assistance intended for guaranteeing the liquidity and solvency of affiliated institutions. French banking supervision provides a maximum peri-



od for reimbursement of four years following the ascertaining of the unavailability of deposits.

All credit institutions licensed to accept deposits and perform banking activities in Greece must be members of the Deposit Protection Fund. Postal savings banks, so-called loan and deposit offices and, on a transitional basis, also co-operative banks have an exemption from compulsory membership. Credit institutions freed from compulsory membership in the Deposit Protection Fund are obliged to explicitly highlight this fact to existing as well as potential clients.

Credit institutions founded and registered in Holland; branches of credit institutions from third countries that are obliged to participate in a deposit-guarantee scheme, where the system in the institution's domestic country does not provide equivalent protection to the branch's depositors; and branches of credit institutions from other member states that have joined the Dutch system in the interest of supplementing their insurance must participate in deposit protection. Reimbursement may be requested at the Dutch central bank. The insured sum as a rule is paid out within three months.

Irish credit institutions must deposit in the deposit protection account at the Irish central bank 0.2% of their deposits, but this security serves only for an emergency case. Banks are obliged to join one of the deposit-guarantee schemes. Credit co-operatives and mutual unions are freed from obligatory membership. Deposit-guarantee schemes must pay heed to the basic insurance required by the EU; mostly however they provide a higher level of protection.

All credit institutions founded pursuant to Luxembourg law and Luxembourg branches of banks registered outside the EU are obliged to participate in the deposit-guarantee scheme. Luxembourg according to the legal status applicable profitably offers only the basic insurance required by the EU Directive. All financial institutions registered in Luxembourg however belong to an association for deposit protection, which insures all deposits up to an unlimited amount.

In Germany all banks accepting deposits (with a few exceptions) are subject to deposit protection. Special systems of deposit protection exist for insuring commercial banks (private banks), savings banks, so-called central giro institutions and credit co-operatives (co-operative banks). In consequence of the legislative pressure, whereby several decades ago banks were threatened with the adoption of strict legal regulation, the security for most credit institutions operating in Germany is more extensive than that in the EU, providing almost full deposit protection. The majority of private banks founded a so-called fire-fighting fund, which guarantees to each client of a bank connected

to this fund that his deposit is guaranteed at minimum up to the amount of 30% of the bank's registered capital. Since the minimum capital of a bank must be 6 million Deutschmark (naturally recalculated to euro), security is in the amount of at minimum 1.8 million Deutschmark per depositor. Deposits as well as interest payments are protected. Banks not belonging to the deposit protection fund are registered in the federal union of German banks, where the minimum deposit protection required under EU law applies. The deposit-guarantee scheme for German central giro institutions provides essentially the same protection. Savings banks and co-operative banks have their own system of solidarity security, which primarily protects the solvency of its members and thus indirectly fully protects also their deposits and thereby gives practically unlimited deposit protection. If problems occur in one institution, the others must perform on its behalf. The minimum EU requirements for deposit protection therefore fall well short of German standards.

The legal bases of the deposit-guarantee scheme in Portugal have a number of exemptions. Credit institutions must provide clients with data on deposit-guarantee schemes (reimbursement amounts and terms). If reimbursement should be higher than € 33,750, the amount above € 33,750 is divided into three parts, where the first part will be compensated to 100%, the second to 75% and the third to 50%. In principle a 20-year statute of limitations for reimbursement claims applies.

Spanish credit institutions must be participants of a deposit-guarantee scheme. Three deposit protection institutions operate in Spain as public-legal entities with their own legal personalities, where these are for banks, savings banks and credit co-operatives respectively.

All credit institutions established under Italian law must participate in one of two deposit-guarantee schemes, of which one is intended for mutual (co-operative) banks. Both systems must protect the deposits of Italian banks with branches in Italy and in the EU and may protect the deposits of Italian banks with branches outside the EU. Participation in the Italian system is required for branches of banks registered in the EU or outside the EU, where these foreign banks wish to increase the support provided by their domestic system, or where their domestic system is not equivalent to the Italian system.

Under the British Banking Act banks established in Great Britain, including their branches in the EU; certain banks established in other EU states that are connected to the British deposit-guarantee scheme for reason of supplementing the protection available in the framework of the system operating in their domestic country as regards deposits made in their British



branches; and banks established outside the EU with regard to deposits made in their British branches, unless they have received permission to not participate in the British system (this is admissible only if deposits in their British branches are protected by a system in the domestic state at least at a level equivalent to that provided by the British deposit-guarantee scheme) are subject to deposit protection.

Country	Sum guaranteed	Cover (%) of this sum
Switzerland	100 000 Swiss francs	100
USA	100 000 USD	100
Canada	60 000 Canadian \$	100
Japan	10 000 000 yen	100
Czech Republic	25 000 EUR – equivalent	90
Poland	up to € 1 000 – equivalent	100
	above € 1 000 to € 22 500 – equivalent	90
Hungary	1 million forints	100
Slovenia	4 200 000 toliars	100
Lithuania	up to 10 000 litas	100
	above 10 000 to 45 000 litas	90

In Switzerland all banks accepting deposits, as well as credit co-operatives and mutual credit co-operatives are subject to deposit protection.

Deposit protection in the USA is provided by two deposit-guarantee schemes. The FDIC insures federal and state banks and savings banks, the NCUA insures credit unions. A foreign bank must accept deposits via an insured banking subsidiary company incorporated in the USA.

In Canada all federal and local banks and credit companies are subject to deposit protection, where these must request membership in a deposit-guarantee scheme. The application must be approved by the board of the Canadian Deposit Insurance Company (CDIC). Local credit institutions, besides this, must be licensed in their area. Branches and subsidiaries of foreign banks essentially must participate in the deposit-guarantee scheme.

Japan has two deposit-guarantee schemes. One system insures commercial banks, credit co-operatives and labour credit unions; the other system insures agricultural and fishery co-operatives.

In the Czech Republic bank deposits are protected by means of the Deposit Claims Insurance Fund, the activity of which is governed by the Banking Act (Act No. 21/1991 Zb. on Banks as amended). The Fund creates financial reserves from the contributions of banks and branches of foreign banks, which may be used to pay out deposits in the case of the bankruptcy of

a bank due to insolvency. All non-anonymous deposits of natural persons and artificial legal entities held in Czech koruna as well as foreign currencies are subject to protection. The amount of reimbursement is calculated from the total volume of insured deposits of one depositor in the respective bank. Branches of foreign banks do not have to participate in the deposit-guarantee scheme, if they can prove to the Czech central bank and concurrently notify the public that the deposit-guarantee scheme in the respective bank's domestic state relates also to the bank's branch abroad and is for the depositor at least as beneficial as the deposit-guarantee scheme in the Czech Republic.

Deposits in Polish banks are secured by means of the Bank Guarantee Fund.

Deposits in banks and co-operative savings banks are protected in Hungary by means of the National Deposit Insurance Fund. Credit co-operatives accepting deposits and providing credit only to their members may not be a member of this fund.

In Lithuania deposits in commercial banks and branches of foreign banks are insured by means of the state company, the Deposit and Investment Insurance Company. The maximum amount of insurance at present is 45,000 litas, from 1st January, 2004 this amount will be increased to 50,000 litas and as of 2008 to the equivalent of € 20,000.

Legislative regulation of deposit protection in the SR

The deposit-guarantee scheme in the Slovak Republic is governed by Act no. 118/1996 of the Digest of Laws on Deposit Protection and on the amendment to and supplementing of certain acts of 20th March, 1996. On the basis of this act the Deposit Protection Fund was established with effect as of 1st July, 1996 as an artificial legal entity incorporated in the Commercial Register. The Fund gathers financial contributions of banks and branches of foreign banks for providing reimbursement for deposits made in banks and in branches of foreign banks and manages them in accordance with this act. The fund is not a state fund pursuant to the Act on budgetary rules.

Previously (up until 1st July, 1996) the state had guaranteed the deposits of natural persons at selected banks (Slovenská sporiteľňa, Všeobecná úverová banka and Investičná a rozvojová banka), pursuant to § 44 of Act No. 21/1992 Zb. on Banks of 20th December, 1991 as amended. The termination of the state guarantee for deposits at these banks thus created a level playing field in the deposit protection of natural persons at all banks operating in the SR.



Up until 2001 the fund provided deposit protection only to natural persons, where the deposits of natural persons – entrepreneurs established for the purposes of conducting business were excluded from the deposit protection. The last amendment to the Deposit Protection Act No. 492/2001 of the Digest of Laws of 9th November, 2001, which came into force on 1st December, 2001, extended the statutory protection of bank deposits to all natural persons, i.e. also to natural persons -entrepreneurs. The statutory protection has been extended to include also the bank deposits of selected non-profit non-business artificial legal entities, i.e. the deposits of foundations, non-investment funds, not-for-profit organisations providing generally beneficial services, civic associations and associations of owners of apartments and non-residential premises. Deposit protection of artificial legal entities, with exceptions in accordance with the EU Directive, will come into force on the date of the Slovak Republic's Treaty of Accession to the EC and EU entering into force. Through the last amendment to the Deposit Protection Act (No. 492/2001 of the Digest of Laws) there was removed the double level of deposit protection at building societies (60-times the average monthly wage level in the SR) compared to deposit protection at banks (30 times). The provision on the amount of reimbursement that the Deposit Protection Fund provides for unavailable bank deposits protected by the Act has also been amended. The Deposit Protection Fund will provide reimbursement only in the amount of 90% of the nominal value of the deposits of one depositor at one bank. The maximum possible amount of reimbursement for an unavailable deposit was set in the last amendment as follows:

- as of 1st December, 2001 to 30th June, 2002 in the amount of 30 times the average monthly wage in the SR;
- from 30th June, 2002 onwards in the amount of 40 times the average monthly wage in the SR;
- as of the date of the Slovak Republic's Treaty of Accession to the EC and EU entering into force at maximum in the amount corresponding to € 20,000 in Slovak koruna according to the exchange rate declared by the NBS as at the date when deposits in the bank became unavailable.

Through the amendment to the Act the upper limit of the range of contribution rates due for banks and branches of foreign banks into the Deposit Protection Fund, which is set by the fund for all banks in advance for the whole year was also increased. The upper limit was increased from 0.3% to 0.75% of the value of deposits in a bank protected by the Deposit Protection Act according to the average balance of deposits for the preceding quarter.

Amendments to the Deposit Protection Act

The Slovak parliament passed the government draft amendment to the Deposit Protection Act. The current legal regulation for deposit protection in the Slovak Republic respects Directive no. 94/19/EC of the European Parliament and Council. The presented amendment to the Deposit Protection Act brings, besides a series of legislative-technical changes, in particular harmonisation of the Act with the requirements of the World Bank stated in its FSAP (Financial Sector Assessment Programme) report, the aim of which is to refine sensitive provisions and increase the guarantee of deposit protection.

In the Act passed, amending and supplementing the Act of Parliament no. 118/1996 of the Digest of Laws on deposit protection and on the amendment to and supplementing of certain acts as amended, the main changes are as follows:

- In the list of deposits not protected by the Deposit Protection Act are included deposits that are a bank's own source of financing. Already the amendment to the Commercial Code valid as of 21st December, 2001 in § 179 (2) stipulates that a joint-stock company may not return shareholders their deposits. These provisions are in accordance with Article 2 of Directive no. 94/19/EC.

- In the text of the Act it has been added that through the lapsing of a depositor's claim against a bank equaling the paid-out reimbursement from the Fund there it is not affected the depositor's right to recover from the Bank, in which the deposits became unavailable, reimbursement of that part of the deposit for which reimbursement has not been provided from the Fund. This right of the depositor is not governed in Directive no. 94/19/EC, because Article 11 of the Directive concerns only the right of the deposit-guarantee schemes to intervene in depositors' rights in liquidation proceedings up to the amount of their payments.

- In the list of the Fund's sources are included returnable financial aid and subsidies from the state budget for supporting the fulfilment of the Fund's tasks and the system of deposit protection according to the Deposit Protection Act, in the scope and under the conditions stipulated by the Act on budgetary rules, the Act on state debt and state guarantees and the Act on the state budget for the respective budgetary year. In connection to this the Act is also supplemented by the text that for loans provided to the Fund the state may take a state guarantee in accordance with the Act on state debt and state guarantees. The introduction of returnable financial aid and subsidies from the state budget among possible sources of the Fund does not ensue from Directive no. 94/19/EC, but from the World Bank's requirements.



- From the calculation of the possibilities to use the Fund's financial resources, the option of providing loans to banks in the case of forced administration has been dropped and replaced by the possibility of repaying returnable financial aid provided for supporting the fulfilment of the Fund's tasks.

- The composition of the Fund's board is governed so that the board continues to be composed of seven members (as before), only the numbers of members elected or appointed by individual institutions are changed, and this as follows: three members (originally five) of the Fund's Board are elected and recalled by bank representatives. Two members (originally one) of the Fund's board are representatives of the National Bank of Slovakia, who are appointed and recalled by the Governor of the NBS. Two members (originally one) of the Fund's board are representatives / employees of the Ministry of Finance of the SR, who are appointed and recalled by the Minister of Finance. The proposed composition of the Fund's board should ensure (on the basis of the World Bank's requirement), that the Fund does not fall under the control of bank representatives, which could lead to a conflict of interests.

- Similarly the composition of the Fund's supervisory board is amended, which is expanded to seven members (originally five members). Three members of the Fund's supervisory board are representatives of banks. Two members (originally one) of the Fund's supervisory board are representatives of the

National Bank of Slovakia and two representatives (originally one) of the Fund's supervisory board are representatives of the Ministry of Finance SR. The proposed composition of the Fund's supervisory board has the same reasoning as that of the Fund's board.

The valid Deposit Protection Act fully respects the EU Directive. Deposit protection is thus harmonised and compatible with the EU legal system, where it is necessary to state that full harmonisation will be achieved only upon the Slovak Republic's accession to the European Union, when certain principal provisions of the Deposit Protection Act will enter into force.

Sources:

1. Act of Parliament no. 118/1996 of the Digest of Laws on deposit protection and on the amendment to and supplementing of certain acts.
2. Draft act, amending and supplementing Act of Parliament no. 118/1996 of the Digest of Laws on deposit protection and on the amendment to and supplementing of certain acts as amended.
3. Directive no. 94/19/EC of the European Parliament and Council of 30th May, 1994 on deposit-guarantee schemes.
4. Act No. 21/1991 Zb. on banks as amended (for the Czech Republic).
5. www.nbs.sk
6. www.bfg.pl