Timea Viktória Mátray

European desposit protection – the process as seen by the Hungarian EU presidency

Timea Viktória Mátray, ungarisches Wirtschaftsministerium, Budapest

Es kann freilich kein einfaches Vorhaben sein, die Einlagensicherung in ganz Europa zu harmonisieren – gerade von deutscher Warte aus stellen die Vorschläge der EU-Kommission ohnehin nicht unbedingt eine Verbesserung dar. Größter Streitpunkt auf EU-Level, so beobachtete die Autorin aus Sicht der ungarischen Ratspräsidentschaft, war dabei die Frage der Finanzierung. Unterschiedliche Vorschläge zu Target Levels, Kombinationen aus ex-ante- und ex-post-Beiträgen sowie deren Bestandteile fanden zunächst keine klare Mehrheit (siehe auch Beitrag Behnke in diesem Heft). Bezeichnend in diesem Zusammenhang ist auch ihre Erwartung, dass im anstehenden Trilog zwischen Parlament, Rat und Kommission die Gesprächsthemen die gleichen sein werden, die auch schon vor einem Jahr auf der Agenda standen: Auszahlungsfrist, Finanzierung, Mittelverwendung und Umsetzungszeitraum. (Red.)

The proposal on deposit guarantee schemes (DGS) has been published in July 2010 by the European Commission. Negotiations in the Council (one of the co-legislators) were taken up by the Hungarian Presidency from the Belgian Presidency. In this year five working party meetings were held and at the end five compromise texts were drafted. As Presidency, the Hungarian strategy was to separate the technical questions from the core ones and to close the technical ones so as to be able to focus on the critical issues.

Financing the most controversial aspect during negotiations

As financing was the most controversial, the decision on that was left to the end. The Hungarian Presidency's aim was to reach the general approach (agreement among Member States, the basis for the negotiations with the other co-legislator) as stable deposit guarantee schemes in Member States contribute to the strengthening of depositors' protection and confidence, thus supporting the financial system. Furthermore the proposed approach was to make it clear that taxpayers will not foot the bill for the failure of a bank, and also who and when will be covered by the guarantee schemes.

As it stands in the preamble of the Commission proposal, various guarantee schemes exist throughout the EU and it was a real challenge to harmonize them. The final text was approved by Member States' representatives (COREPER) on 17 June, based on which the negotiations with the European Parliament can start now.

Main elements of the approved general approach

The differences of the Member States' laws required different treatment and flexibility. That is why repayments should be generally made in the currency of the Member State where the deposit guarantee scheme is located, but can also be made in the currency of the account or in the currency of the Member State where the account is located. Furthermore Member States may decide that the lia-bilities of the depositor towards the credit institution are taken into account when calculating the repayable amount only if they have fallen due, and to the extent the set-off is possible according to the statutory and contractual provisions governing the contract between the credit institution and the depositor.

Regarding the payout deadline almost all countries insisted on keeping the 20 working days deadline (with the elimination of the extension to another ten days) as not much time has passed from the last reduction of the deadline so there is barely any practical experience with it. Nevertheless, it is certain that the cut in the repayment period requires serious technical conditions to be fulfilled by the DGS.

The Hungarian Presidency proposed various solutions to the Member States regarding the financing, with different percentages in target level, different combinations of ex-ante and ex-post contributions and with modification of the possible elements of the contribution, but none of them were able to secure the support of the majority. The same figure was often considered too low by some Member States and too high by others. Eventually it became clear that ex-ante financing and the pre-funded schemes are acceptable to all Member States.

Almost everyone agreed from the beginning that the financing should be based on the covered deposits instead of the eligible ones as they reflect better the exposure of the deposit guarantee scheme. The target level of pre-funding finally became 0,5 percent of the covered deposits but the possibility of collecting ex-post, extraordinary contributions exists in case it is needed to cover possible shortfalls after a payout. Hence it is secured that enough money is in the system in emergency situations.

Financing in details

The deadline for filling up the funds is 2027, which gives enough time for the Member States which do not have an ex-ante system at the moment. A new and more flexible form of contribution was made available, namely payment commitments. Their aim is to keep the funds in the participating banks so they can continue to earn a profit on them, but at the same time they can be drawn immediately if needed. This puts less burden on the banks, but as it is not as secure as the regular upfront contributions, its proportion should not exceed ten percent.

The negotiations resulted in a compromise whereby questions about financing were dealt with in two articles: one dealing with the collection of funds, the other with the use of funds. This latter part was strongly debated as well, as some Member States would prefer their deposit guarantee scheme to have a resolution function, too. The relation between the DGS and the resolution fund – which is still under consultation with its details still unspecified – was to be addressed by the Commission with an additional proposal on making some connections between these two funds. The challenge was to solve this issue in a manner which does not draw conclusions on the resolution funds at this early stage, but at the same time the concerns of Member States had somehow to be eased.

In the end, the proposal would allow the DGS to be used for other purposes: for financing early intervention and preventive measures, resolution process and activities, including deposit book transfer. The cost of these measures should generally not exceed the net cost of compensating depositors of the institution. However, the financial means of the DGS should primarily be used for payouts. The proposed mandatory lending system among the schemes located in different Member States has been changed to voluntary.

Calculation of individual contributions

The starting point for the calculation of the contributions was the exclusive risk-based approach. Nevertheless according to some views this cannot be the only way as banks activities are assessed in other legislative pieces on the basis of risks. Now, the contributions to the deposit guarantee scheme may comprise a risk based and a fixed element based on the amount of the covered deposits. To the previous, the European Banking Authority (EBA) will elaborate guidelines.

It is to be expected that during the three party negotiations between the European Parliament, the Council and the Commission (the trilogue) the key issues will be almost the same which were mostly debated in the Council negotiations: the payout deadline, the financing and the use of the funds and last but not least the transposition deadline.