

ROADMAP

Title of the initiative: **Amendment to the Investor Compensation Scheme Directive (1997/9/EC)**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG/contact person/details: DG MARKT

Expected date of adoption of the initiative (month/year): July 2010

Date of modification:

Version No:

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The Investor Compensation Scheme Directive 97/9/EC (ICSD) was adopted in 1997. Since the adoption of the Investor Compensation Scheme Directive, the regulation of financial services has witnessed major changes under the influence of the Financial Services Action Plan. As an example, the Investment Services Directive 1993/22/EC (ISD), which regulated the investment firms subject to the ICSD, has been replaced by the Markets in Financial Instruments Directive 2004/39/EC (MiFID). More importantly, the Deposit Guarantee Scheme Directive 1994/19/EC, on which ICSD had been initially aligned, has been recently modified. For reasons of coherence, alignment of ICSD with the recent legislation is desirable.

Furthermore, the European Commission services have recently received many complaints concerning the operation of compensation schemes in some Member States. Thereafter, the Commission services have issued a consultation paper with the aim of clarifying and increasing the efficiency of the operation of the Investor Compensation Scheme Directive.

The current review of the Investor Compensation Scheme Directive also constitutes a very important element of Commission response to the financial crisis, as outlined in the Commission Communication **Driving European recovery**¹, which aims at tackling the most important shortcomings in markets and at restoring investor confidence in financial services in the EU.²

¹ COM (2009)114 of 4th March 2009.

² It should be noted that parallel to this review the deposit guarantee compensation directive and existing insurance compensation schemes are also being reviewed.

What are the main problems identified?

Since its implementation by Member States in 1997, the Directive has been a first step towards increasing investor protection in Europe. Prior to the implementation of ICSD there were no common provisions providing compensation to investors when the money or assets held on their behalf by service providers were lost or when the firm was unable to return them. ICSD has broadly achieved its objectives. The Investor Compensation Scheme Directive is a legislative act that follows the minimum harmonisation method that leaves important issues, such as the funding and structure of compensation schemes, to Member States. Differences in implementation have created some possible inequalities in the quality of compensation for investors in the different Member States. Complaints to the Commission have also revealed some areas where the practical functioning of the directive needs to be improved and areas where the directive needs to be updated as it no longer provides sufficient investor protection. Furthermore, 10 years after the entry into force of the directive and under the current financial situation where malpractice and fraud are more likely to be exposed, it is the right time to examine the functioning of ICSD. Moreover, as the Deposit Guarantee Scheme Directive (DGSD) was recently amended in order to increase the compensation limit, we have to analyse at which extent we have to maintain the initial alignment between the ICSD and the DGSD.

Who is affected?

- Investors, in particular retail investors
- Investment firms
- UCITS schemes
- Operators of money market funds
- Credit institutions providing investment services
- Regulated markets
- Multilateral Trading Facilities
- Investor Compensation Schemes

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

Yes. In order to address the problems listed above, a legislative instrument is required to amend some provisions of the ICSD. The problems detected cannot be efficiently addressed at Member States level as they stem from existing EU legislation and can only be addressed through changes in EU legislation. If no action is taken at EU level the problems defined would remain without a response.

B. Objectives of EU initiative

What are the main policy objectives?

The review of the ICSD aims at (i) improving the functioning of the ICSD to ensure that it provides sufficient investor protection for clients of firms and confidence in the use of investment services; (ii) updating the ICSD in areas where it has become inadequate due to changes in the financial services industry and in the regulatory landscape; (iii) reducing gaps in the regulatory system and (iv) ensuring that recent amendments to the DGSD (upon which the ICSD was initially modelled)

do not result in unjustified differences in the protection provided to depositors and investors using investment firms.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

There is already existing EU legislation on the compensation schemes in the present version of ISCD. However, the question of extending the application field to services and instruments already regulated under EU law, but not subject to a compensation obligation under the old version of ICSD, is being analyzed.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered?

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

A number of options are being extensively considered during the preparation of the legislative proposal impact assessment. They include 'soft law' instruments, the amendment of some provisions of the Investor Compensation Scheme Directive to align the coverage of the schemes on the Deposit Guarantee Schemes, as well as measures to harmonise the structure and the funding of compensation schemes at EU level. Also, an increase in the level of compensation payable to investors and the range of circumstances in which compensation is payable under the directive.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

No.

Explain how the options respect the proportionality principle.

All solutions have been drafted bearing in mind cost-efficiency and taking into account the full respect of investor protection.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

The main sources and channels of impact of the different options are being analysed during the preparation of the legislative proposal. Expected economic impacts of the different options include impact on the capacity and the time-frame for compensation schemes to pay reimbursement where the damage has been established and its amount fixed, as well as the percentage of the real damage compared to the maximum reimbursement. Furthermore, amendments aim at increasing investor confidence and at ensuring a high level of investor protection in all Member States. There are likely to be impacts upon Member States and firms who may be required to provide funding to cover increased compensation levels and a wider range of situations in which compensation may be payable. Also, if principles are developed for increased pre funding of schemes then this may necessitate greater up front payments by firms.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

The options will not have an impact on the EU-Budget.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

The amendments could have an impact on simplification/reduction of administrative burden. No impact is expected with regard to relations with third countries.

E. Planning of further impact assessment work

When will the impact assessment work start?

Work on the impact assessment started in February 2009.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The necessary data will be gathered and processed internally, relying on stakeholder contributions. The Commission services published an open call for evidence on operation of the Investor Compensation Scheme on 9 February 2009. In addition targeted questionnaires have been sent to industry and compensation schemes in order to gather further data. Analyses of responses will be used to carry out the impact assessment.

Which stakeholders & experts have been/will be consulted, how and at what stage?

Open consultation

In order to receive more evidence on the operation of the Directive, the Commission services have launched a call for evidence on the application of the Investor Compensation Scheme Directive. The call for evidence was published on 9 February 2009 with the deadline for contributions on 8 April 2009.

Stakeholders

A questionnaire has been sent in June and November 2009 to national compensation schemes to gather further data.

The European Securities Markets Expert Group (ESME) group has been requested to provide some information to the Commission on the basis of a questionnaire.

The Commission services hosted a public hearing on 3 September 2009 with industry and investor associations and a meeting with investor compensation schemes on 9 February 2010.