



EUROPEAN COMMISSION
Impact Assessment Board

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Opinion

Title

Impact Assessment accompanying the proposal for a Directive amending Directive 1997/9/EC on investor-compensation schemes

(draft version of 24 February 2010)

(A) Context

The Directive 97/9/EC on Investor-Compensation Schemes (ICSD) was adopted in 1997 to complement the Investment Services Directive (ISD). The ISD has since been replaced by the Markets in Financial Instruments Directive (MiFID) (its review is foreseen for 2010). The review of the ICSD is an element, together with the review of the DGSD (Deposit Guarantee Scheme Directive) and the examination of protection for insurance policy holders, of the Commission's policy to strengthen the EU regulatory framework for financial services as set out in the Communication on "Driving European recovery" in response to the recent financial crisis. It also considers the objective set at G-20 level of addressing any loopholes in the regulatory and supervisory system and the objective of restoring investor confidence in the financial system.

(B) Overall assessment

The Board is of the view that the impact assessment needs to strengthen significantly the evidence base to justify EU legislative action in this area. In particular, the report needs to substantiate the various problems arising from insufficient harmonisation of the operation, coverage and the level of protection offered by investor compensation schemes and explain more convincingly why those issues cannot be sufficiently addressed at Member State level. Secondly, the report needs to assess the costs of the proposed measures, how they would be distributed by Member State and size of the firms, and how many investors would benefit from the proposed changes. Finally, it should justify better why the proposed measures (such as setting the compensation limit at €50000) are considered proportionate and assess whether non-legislative action could address the problems sufficiently.

In the IAB meeting, DG MARKT agreed to revise the impact assessment on this basis. Given the fundamental nature of these recommendations, the Board would like to examine a revised version of the report on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Provide evidence for the various problems arising from insufficient harmonisation of the operation of compensation schemes and discuss why they cannot be sufficiently addressed at Member State level.

While the report points to the issues of distortions of competition, regulatory arbitrage, investor confidence in investment services, proper functioning of the internal market and the efficient flow of capital to justify the need for EU action, it should provide evidence to substantiate the scale of these problems by referring to concrete indicators, comparisons, examples of costs or complaints. It should also show that these problems are linked to the current differences in the operation, coverage and the level of protection offered by investor compensation schemes. This improved problem definition should also be the basis for developing more concrete and measurable objectives which in turn would facilitate the monitoring and evaluation of this initiative.

While the report illustrates the weaknesses of the current system of investors' compensation by pointing to the problems faced by concrete schemes (e.g. Amis, Phoenix), it should assess the relative scale of those problems in terms of the percentage of retail investors affected. It should also discuss the cross-border aspects of these cases. The report should also explain more fully how the existing arrangements of these schemes for assessing the target funding level, the balance between pre and post funding and the degree of diversification of funding sources, have contributed to the problems they faced.

Given that Member States have already taken action which addressed some of the problems identified, the report should explain for each of the problems and objectives why they cannot be sufficiently addressed at national level.

(2) Assess the costs of the proposed measures, how they would be distributed by Member State and size of the firms, and how many investors would benefit from the proposed changes.

For each of the options, the report should better describe and assess the magnitude of one-off and on-going costs, and indicate systematically for which stakeholders they would be relevant (e.g. compensation schemes, investment firms, firms providing custody services, UCITS depositaries, money market funds). It should also indicate how many investors would benefit from the proposed options. The report should assess the extent to which the costs for firms of the compensation schemes would differ depending on the Member State and on the size of firms. In particular, the report should clarify whether raising the compensation limit to €50.000 would expose investment firms in Member States with lower income levels to disproportionate costs with respect to their protection needs. In this context, the report should respond to calculations provided by German and Irish schemes (e.g. according to the latter, the increases of the compensation limit to €50000 would result in compensation costs rising by 15% to 31% while benefiting 2.9% of investors).

The report should identify the information obligations that are added by the proposed options and assess their cost using the EU Standard Cost Model (e.g. the obligation for schemes to publish details about their funding position, explicit information for investors about what the schemes compensate for).

The report should also be clearer about social impacts resulting from the options, for example whether they lead indirectly to a loss/creation of jobs (currently, the report mentions only the gender policy aspect).

(3) Justify better why the proposed measures are considered proportionate and explain whether non-legislative action could address the problems.

The report should present the proposed principles for funding of schemes, explain to what extent they draw on the experience of Member States, and clarify why the liquidity risks of schemes could not be sufficiently addressed by those principles alone (without recourse to the cross-border solidarity principle).

Given that the current average retail investment in insurance schemes for the EU-27 is €21000, the report should explain better the rationale for increasing the level of compensation from €20000 to €50000. As the range of values of these retail investments seems to be very wide, it also needs to explain whether the median holding would be a better basis than the average for determining the optimal level of the compensation limit.

For each of the issues identified, the report should discuss whether they could be addressed by non-legislative action such as exchanging best practices, issuing a recommendation from the Commission or by technical standards developed by the European Securities and Markets Authority (ESMA), or a combination of these.

For each of the preferred options the report should be transparent about the position of Member States.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

It appears that all procedural requirements have been complied with. A glossary defining the acronyms should be provided.

(E) IAB scrutiny process	
Reference number	2009/MARKT/061
External expertise used	No
Date of IAB meeting	10 March 2010