SENATE OF THE REPUBLIC

16th Parliament - 6th Standing Committee (Finance, treasury) - Minute no. 197 of 20 October 2010

RESOLUTION AGREED BY THE COMMITTEE
ON EU DOCUMENT COM(2010) 371 final
SUBJECT TO SUBSIDIARITY COMPLIANCE ASSESSMENT

The 6th Standing Committee, following consideration under Senate Rule 144 of the Proposal for a directive of the European Union and of the Council amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes [COM (2010) 371 final], subject to subsidiarity compliance assessment;

Has expressed the following considerations:

The European Commission's proposal is intended to update legislation governing investor-compensation schemes (Directive 97/9/EEC) and, also in the wake of the crisis, to give these schemes a greater capacity to intervene.

The Committee endorses the general goal, but harbours doubts regarding the ways in which it should be attained.

The amendment proposed by the Commission provides that all investment services and activities falling within the scope of the MIFID directive should be subject to the investor-compensation scheme: this Committee considers that it would be appropriate to state clearly that this excludes investment firms that only provide consultancy and MTF Management services, since they do not take funds from investors.

With regard to the insolvency of a third-party depositor, the proposal for a directive is acceptable with the proviso that the third depositor is a bank.

This Committee notes that, in the case of the insolvency of a depositor of an Undertaking for Collective Investment in Transferable Securities (UCITS), the management of the UCITS is not an investment service falling within the scope of MIFID, such that neither the firms nor the holders of units in them fall within the scope of application of the compensation schemes. The amendment proposed by the European Commission aims to extend protection to investor in UCITSs; it would be appropriate, however, to consider a number of issues that would arise as a result of the different levels of integration of legislation applying to the UCITS depository function, and further harmonise their responsibilities. A proposal to extend the compensation scheme to include the insolvency of the UCITS depository appears to be problematic, not only because of the charges for which participants would be liable but also because it would be necessary to identify the party responsible for this further charge, and set the amount of such charge. It would therefore be preferable to delete this proposal. It would be useful to defer this innovation until after the transposition of the new directive on Undertakings for Collective Investment in Transferable Securities.

The Commission intends to raise the level of compensation to investors to €50,000 per person (from the present €20,000) to take account of inflation and the increased propensity to invest in financial instruments following the entry into force of the ICSD, while guaranteeing maximum harmonisation in this field.

This proposal also takes account of the fact that the deposit guarantee scheme directive (DGSD) was recently amended to raise the limit to at least €50,000 for each investor per credit institution, to be increased subsequently to €100,000.

On the subject of the methods of financing the compensation schemes, the proposal intends to supersede the wide margin of discretion allowed under the present directive by imposing on the compensation schemes an *a priori* target equal to 0.5% of the potential liabilities, to be raised according to requirements by calling for subsequent supplementary contributions.

The Commission also intends to extend the coverage of the compensation schemes to include collective management (whereas at the present time the ICSD only applies to investment services), which would therefore also include the possibility of insolvency by the third-party depository of UCITS.

Comments

The proposal to raise the guaranteed amount for each individual investor to €50,000 can be endorsed because the intention is to enhance the protection offered by investor-compensation schemes in the event that an investment firm is not able to repay money or financial instruments.

Conversely, the proposal on the maximum harmonisation of the financing procedures to raise the prior target fund level of 0.5% of potential liabilities that the compensation schemes will have to bear by additional *ex post* contributions according to requirements, does not appear to be acceptable.

This financing procedure, which is currently inspired by the deposit guarantee system, does not take account of different business models.

In the case of bank deposits, the amounts deposited would be confused with the bank's own assets, leading to a sharing of the corporate risk. The financial instruments deposited by customers, on the other hand, considering the statutory separation of assets, would not support risks of this kind unless the depositors were to infringe the law in some way (failure to separate the assets, at least in Italy, is a criminal offence).

Moreover, the amounts deposited with the bank could be used to contribute to the deposit guarantee scheme, among other things, while contributions to the investor-compensation scheme would have to be paid by the intermediaries without any increase in the assets.

According to initial estimates, in Italy, where no critical situations have arisen, this approach would entail having to increase the funds of the members for the national guarantee fund from the present 7 million to several billion euros. The cost to the parties belonging to the system could lead to a substantial reduction in the number of investment firms operating on the market.

Another aspect that cannot be endorsed is the plan to extend the coverage of compensation schemes to include collective investment management. First and foremost, the rules governing collective management upstream protects the customers by keeping the depository separate from the fund manager.

In Italy, moreover, the depository must be a bank (meeting adequate asset requirements which are very closely supervised) while in other countries other parties can act as depositors (in countries where the oversight is less stringent).

Without a harmonised framework of reference (to which the Commission has promised to introduce amendments forthwith) the Italian investors would be at a competitive disadvantage in the internal market without increased protection.

The European Commission's proposal is also intended to lay down consistent financing rules for all the Member States and to introduce cooperation agreements between the national schemes, in order to guarantee improved investor protection. The procedure is based on the principle of solidarity between the national schemes, and recourse to loans between the various compensation schemes has been introduced as a mechanism to be used as a last resort. The Committee is therefore somewhat bewildered by this amendment considering the different oversight systems that exist, and the fact that Member States have different insolvency laws.

With regard to the repayment procedures, the proposal for a directive provides the possibility for partial provisional repayment. The Committee considers that it would be useful and necessary to introduce this type of repayment and that – since current Italian legislation (article 59 TUF) provides that the insolvency procedure organs must attest to the linkage between the liability claims admitted against the insolvent company and the exercise of protected investment services – it could be suspended until the transposition of that part of the directive into Italian legislation by a given deadline.