Investor-compensation schemes

2010/0199(COD) - 05/07/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 566 votes to 17, with 88 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes.

It adopted its position at first reading under the ordinary legislative procedure which amends the Commission proposal as follows:

Level of guarantee: although the Commission set the amount of guarantee at EUR 50 000, Parliament proposes an amount of **EUR 100 000**. It considers that a higher guarantee would facilitate cross-border competition and serve in the interest of investors.

A common minimum target fund level should be reached as soon as possible and in any event within a **five-year period** (as opposed to a delay of ten years as proposed by the Commission).

Member States shall ensure that each scheme establishes a **target fund level of at least 0.3% of the value of the monies and financial instruments held**, administered or managed by the investment firms that are covered by the protection of the investor compensation scheme.

Taking into account the value of the covered monies calculated every year and taking into account developments in the financial markets and the need to ensure effective compensation for investors, the Commission shall be empowered to adopt delegated acts amending the minimum value of the target fund level.

In any event, bytwo years from the date of entry into force of the amending Directive, the Commission shall submit to the European Parliament and Council a report on the need to adjust the target fund level.

In order allow the Commission to calculate an appropriate target fund level, every Member State shall, on an annual basis, provide the Commission and ESMA with the necessary data regarding the funding of national schemes as at 31 December.

Coverage for investors: according to the amended text, coverage shall be provided in accordance with the legal and contractual conditions applicable for claims arising out of an investment firm's inability to perform the following: the return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business, provided that the inability of the investment firm or third party is the result of **fraud, administrative malpractice, operational error or bad advice** regarding conduct of business obligations when providing investment services to clients.

Claims excluded: claims relating to the direct or indirect financing of terrorist groups shall be excluded from any compensation under investor compensation schemes.

Contribution based on the degree of risk: Members consider that the contribution to a scheme shall be determined for each member on the basis of the degree of risk incurred. To achieve a certain level of harmonisation in the application of this provision across the Member States, the Commission shall adopt delegated acts to clarify how the contribution to a scheme of each member is to be determined.

Competent authorities may **reduce contributions** for members of the scheme if additional measures to reduce the operational risk are taken voluntarily by those members and where members provide evidence that sub-custodians used by them meet the same standards to reduce operational risk.

The target fund level of the scheme shall not be affected by any reduction.

The assessment of conditions for risk-based reductions shall be based on criteria such as the volume of monies and financial instruments, capital adequacy, and stability of each member taking into account their legal status and the legal framework applicable at its seat.

ESMA shall develop draft implementing technical standards to establish the conditions for reducing the contributions to a scheme.

Increased transparency: Member States shall ensure that investor-compensation schemes, at any time and at their request, receive from their members all information necessary to prepare a repayment of investors. Investment firms shall **disclose on their websites**, all information concerning the terms and conditions regarding the coverage and the steps to be taken to receive the payment in accordance with this Directive. Member States shall ensure that the amount that an investor pays into an investor compensation scheme is clear and transparent.

UCITS: Members have excluded Undertakings for Collective Investment in Transferable Securities (UCITS) from the scope of the application of the Directive as they consider that they are sufficiently covered by other legislation.

During 2011, the Commission will make proposals to amend Directive 2009/65/EC to clarify the depositary's liability where the depositary or one of its sub-custodians defaults and is unable to return the financial instruments held in custody. After completing its review of Directive 2009/65/EC, the Commission should analyse in which situations the failure of a UCITS depositary or a sub-custodian could affect the value of the UCITS units or shares. That analysis should be submitted to the European Parliament and to the Council, together with legislative proposals if necessary.

Cooperation between Member States supervisory authorities and ESMA: this is of great importance in order to track fraud and misconduct among investment firms.National financial supervisory authorities should cooperate closely with each other and with ESMA to detect and prevent fraud, administrative malpractices and operational errors of investment firms in the Union.

Institutionalised dialogue: the Member States should encourage an institutionalised dialogue between consumer protectors, authorities, supervisory authorities and investor compensation schemes to prevent further compensation cases. They should establish a dialogue framework to detect problems at an early stage and report problems such as dysfunctional market practices, conspicuous providers, products or company structures to supervision and investor compensation schemes.

Delegated acts: the power to adopt acts should be delegated to the Commission in respect of:

- the determination of the method to calculate the target fund level to be established by the schemes and to modify this target fund level, the percentage of the determined ceiling of the funds available for lending between national compensation schemes and the procedure to deal with investors' claims;
- amendments to the percentage of funds available for lending, taking into account the developments in the financial markets.

Report by ESMA: by 31 December 2012, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and submit a report to the European Parliament, the Council and the Commission.