Basic information

1993/0471(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Financial services: investor-compensation schemes **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments	

Key players

European Parliament

Former committee responsible	Former rapporteur	Appointed
JURI Legal Affairs, Citizens' Rights	JANSSEN VAN RAAY James L. (PPE)	26/07/1994

Council of the European Union

Council configuration	Meetings	Date
General Affairs	1922	1996-05-13
Economic and Financial Affairs ECOFIN	1874	1995-10-23
Economic and Financial Affairs ECOFIN	1846	1995-05-22
Economic and Financial Affairs ECOFIN	1987	1997-02-17

Key events

Date	Event	Reference	Summary
22/09/1993	Legislative proposal published	COM(1993)0381	Summary
16/11/1993	Committee referral announced in Parliament, 1st reading		
05/04/1994	Vote in committee, 1st reading		Summary
19/04/1994	Debate in Parliament		
14/12/1994	Modified legislative proposal published	COM(1994)0585	Summary
23/10/1995	Council position published	09637/1/1995	Summary
14/12/1995	Committee referral announced in Parliament, 2nd reading		
21/02/1996	Vote in committee, 2nd reading		Summary
21/02/1996	Committee recommendation tabled for plenary, 2nd reading	A4-0047/1996	
12/03/1996	Debate in Parliament		Summary

13/05/1996	Parliament's amendments rejected by Council		Summary
18/12/1996	Formal meeting of Conciliation Committee		
18/12/1996	Final decision by Conciliation Committee		
28/01/1997	Joint text approved by Conciliation Committee co-chairs	3602/1997	
12/02/1997	Report tabled for plenary, 3rd reading	A4-0047/1997	
17/02/1997	Decision by Council, 3rd reading		
18/02/1997	Debate in Parliament		
03/03/1997	Final act signed		
03/03/1997	End of procedure in Parliament		
26/03/1997	Final act published in Official Journal		

Technical information

Procedure reference	1993/0471(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (before Amsterdam) E 057-p2
Stage reached in procedure	Procedure completed
Committee dossier	CODE/4/07873

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A3-0209/1994 OJ C 128 09.05.1994, p. 0010	05/04/1994	
Text adopted by Parliament, 1st reading/single reading		T3-0218/1994 OJ C 128 09.05.1994, p. 0036-0085	19/04/1994	Summary
Committee recommendation tabled for plenary, 2nd reading		A4-0047/1996 OJ C 078 18.03.1996, p. 0004	21/02/1996	
Text adopted by Parliament, 2nd reading		T4-0113/1996 OJ C 096 01.04.1996, p. 0017-0028	12/03/1996	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A4-0047/1997 OJ C 085 17.03.1997, p. 0005	12/02/1997	
Text adopted by Parliament, 3rd reading		T4-0044/1997 OJ C 085 17.03.1997, p. 0055-0063	19/02/1997	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	09637/1/1995 OJ C 320 30.11.1995, p. 0009	23/10/1995	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1993)0381 OJ C 321 27.11.1993, p. 0015	22/09/1993	Summary
Reconsultation	COM(1993)0570	10/11/1993	
Modified legislative proposal	COM(1994)0585 OJ C 382 31.12.1994, p. 0027	14/12/1994	Summary
Commission communication on Council's position	SEC(1995)1898	28/11/1995	Summary
Commission opinion on Parliament's position at 2nd reading	COM(1996)0169	08/05/1996	Summary
Follow-up document	COM(2000)0081	16/02/2000	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0098/1994 OJ C 127 07.05.1994, p. 0001	26/01/1994	Summary
CSL/EP	Joint text approved by Conciliation Committee co-chairs	3602/1997	28/01/1997	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 1997/0009
OJ L 084 26.03.1997, p. 0022 — Summary

Financial services: investor-compensation schemes

1993/0471(COD) - 03/03/1997 - Final act

OBJECTIVE: to supplement and ensure the smooth operation of the single market in investment services by the establishment of an investor compensation scheme to cover bankruptcy or debt. COMMUNITY MEASURE: Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes. SUBSTANCE: the directive provides that each Member State must ensure that within its territory one or more investor-compensation schemes are introduced and officially recognized. No investment firm authorized in a Member State may carry on investment business unless it belongs to such a scheme. The scheme should provide cover for debts arising from the inability of an investment company to repay money or return instruments to investors. The scheme must provide cover of not less than ECU 20 000 for each investor (Until 31 December 1999 Member States in which, when this Directive is adopted, cover is less than ECU 20 000 may retain that lower level of cover, provided it is not less than ECU 15 000). The implementation of the directive will be subject to the principle of checks by the country of origin. Investor-compensation schemes introduced and officially recognized in a Member State shall also cover investors at branches set up by investment firms in other Member States. However, until 31 December 1999, the level of cover provided for may not exceed the maximum level of cover offered by the corresponding compensation scheme within the territory of the host Member State. Member States must ensure that the investment firms provide their investors with all the information necessary for the identification of the investor-compensation scheme of which the investment firm and its branches within the Community are members. They must establish rules limiting the use in advertising of this information. ENTRY INTO FORCE: 26/03/1997 DEADLINE FOR TRANSPOSITION: 26/09/1998

Financial services: investor-compensation schemes

1993/0471(COD) - 19/04/1994 - Text adopted by Parliament, 1st reading/single reading

Parliament adopted the report by Mr COONEY on investor compensation schemes.

Financial services: investor-compensation schemes

1993/0471(COD) - 22/09/1993 - Legislative proposal

OBJECTIVE: to protect investors following the failure of an investment firm. CONTENT: this Directive is a necessary supplement to the single authorisation system based on supervision by the home country introduced by Council Directive 93/22/EEC on investment services in the securities field. It requires Member States to set up one or more investor compensation schemes. All investment firms supplying investment services must belong to this scheme or schemes (credit institutions may be exempted if they already belong a protection scheme which guarantees protection at least equivalent to that provided under a compensation scheme and if they fulfil certain specific conditions). The Directive therefore confirms the principle of supervision by the home country in the matter of investor compensation: the scheme(s) of the home country is (are) to cover investment activities performed by domestic companies in other Member States, whether or not transactions are performed by branches or as a result of the freedom to provide cross-border services. The compensation scheme operates when it is determined that an investment firm is unable, or may no longer be able, to meet its obligations arising out of investors' claims. If the investment firm is also a credit institution, the home Member State decides which Directive should apply to money claims: the above-mentioned Directive or the Directive governing deposit-guarantee schemes. No claim in respect of a single amount is eligible for compensation under both Directives. The Directive sets a Community minimum level of compensation per investor, in principle of ECU 20 000, while at the same time authorising Member States to provide for a higher level of compensation if they so wish. However, certain categories of investors may be excluded by Member States from the scheme's coverage or may be afforded a lower level of coverage. The arrangements for organising and financing schemes are left to the discretion of the Member States. Procedures are to be followed where an investment firm fails to comply with the obligations incumbent on it as a member of a scheme (going as far as exclusion). The coverage applies to the investor's aggregate claim, irrespective of the number of accounts, the currency and the location in the Community. In principle, joint accounts are divided equally among the investors. An investor's claim must be met within three months of the date of establishment of the non-availability of the funds. Investors may be liable to submit their claims within six months of this same date. The fact that this period has expired may not, however, be invoked by the scheme to deny cover to an investor. The Commission is required to submit a report on the application of this Directive by 31 December 1999 at latest. Source: European Commission - Info92 08/95

Financial services: investor-compensation schemes

1993/0471(COD) - 16/02/2000 - Follow-up document

Directive 97/9/EC on investor-compensation schemes (ICS Directive or ICSD)aims toprovide a European passport to investment firms authorised in one of the Member States. It lays down prudential rules which investment firms must observe at all times, including organisational provisions aimed at preventing investment firms from using instruments and money belonging to investors.

The report recalls that the ICSD is modelled after Directive 94/19/EC on deposit-guarantee schemes (DGSD).The purpose of this is to grant a minimum protection to depositors in the event of the closure of an insolvent credit institution. But, whereas in the DGSD a protection is provided for deposits arising from normal banking transactions, money claims arising from investment business carried out with a credit institution can be covered according to the provisions of the ICSD.

This report complements the one prepared for the DGSD on the same subject. Under the terms of the ICSD, the Commission is required to report on the export prohibition clause and to discuss the opportunity to extend its validity beyond 1999, which is the purpose of this report.

A basic principle set out in the ICSD is that if an investment firm belongs to a scheme, the scheme will also cover its investors at branches set up in other Member States. This provision extends to investment-compensation schemes the general principle of “mutual recognition”. In other words, the

home country provisions applied to the head office of an investment firm are extended also to its EU branches. The assumption is that these form, within the Internal Market, a single entity subject to single authorisation and centralised supervision of its activities. However, the Directive itself imposes two important exceptions to this principle:

-the first is that, at least during a transitory period, and in order to avoid possible market disturbances, a scheme offering a higher or wider protection must downgrade its cover at branches located in other Member States where ICS are less generous. This clause, known as “export-ban” or “export prohibition clause”, exists also for deposit-guarantee schemes;

-the second exception, known as the “topping-up” clause, is that an investment firm belonging to a scheme offering a lower or narrower protection will have the right to adhere to a host scheme in order to upgrade its cover at branches located in other Member States where ICS are more generous. A similar clause also exists for deposit-guarantee schemes.

Both clauses aim at avoiding unequal conditions of competition based on the cover offered to investors. The relevant difference is that the export prohibition clause reduces the level of protection for some investors, who would otherwise receive a higher protection, whereas the topping-up works in favour of an upgrade of the protection (though the decision to effectively increase the cover remains with the investment firm itself, which may decide not to join the host country scheme).

The export-ban clause represents a relevant exception to the principle of the Single Market for investment services, in that it discriminates between investors of the same investment firm in case of insolvency. In addition, it is estimated that market disturbances may be expected only for a short period of time. That is why the “export prohibition clause” is envisaged in the Directive only as a transitory measure and is due to expire at the end of 1999, unless the European Parliament and the Council decide otherwise, following a proposal from the Commission to extend its validity.

The Commission looks at various justifications for maintaining the export prohibition clause and at the justifications for not extending it.

The report states that the investor compensation schemes in Member States have now been harmonised according to the principles and objectives of the Directive. Against this background, it seems disproportionate to prolong the export prohibition clause in order to avoid market disturbances that nobody could estimate or specify and which seem highly unlikely to happen.

A prolongation of the export prohibition clause would mean that the protection for such a remote risk would be considered more important than the completion of the Single Market for financial services.

The Commission is aware that not all the Member States have implemented the ICSD early enough to have benefited from practical experience with the operation of its provisions. In this respect, the strong links between the ICSD and the DGSD should be considered.

First of all, because the ICSD is actually a transposition of the DGSD rules and principles in the securities field. Not only are the two directives complementary in some aspects (the 97/9/EC on investor-compensation schemes also applies to banks as far as investment services are concerned); they are also identical with regard to the articles concerning the cross-border provision of services. This is why any experience of problems or questions arising from the banks’ side might be used to supply useful information for investment firms.

Secondly, European regulator should have a comprehensive picture of how the “twin” directives work. In this regard, it is important to keep in mind that, though the DGSD was approved in 1994 and the ICSD only in 1997, the deadline for the Commission to produce the reports on the export-ban clause is the same (31/12/1999).

Moreover, the Commission is of the opinion that consistency with the DGSD should be preserved. Here, on the basis of the report adopted by the Commission on DGSD, the export-ban clause is going to expire for deposit-guarantee schemes. It would be difficult to justify, after 1999, the “export-ban” clause in the ICSD and not in the DGSD. As far as customers’ protection is concerned, considering that some schemes cover deposits and investors’ claims, discrimination would be introduced between depositors and investors of the same foreign branch of an institution.

However, after the clause has expired, the Commission will closely monitor the evolution of the situation, with particular attention to serious market disturbances, on the basis of elements supplied by the national authorities of Member States according to their preferences. The Commission can then consider the possibility of proposing appropriate legislative measures.

Financial services: investor-compensation schemes

1993/0471(COD) - 26/01/1994 - Economic and Social Committee: opinion, report

Financial services: investor-compensation schemes

1993/0471(COD) - 19/02/1997 - Text adopted by Parliament, 3rd reading

In adopting the report by Mr James JANSSEN van RAAY (UPE, NL) Parliament approved the joint text achieved in conciliation with the Council on a directive providing for the establishment of an investment compensation scheme intended to protect investors in the event of bankruptcy or fraud. A minimum level of protection is to be assured (ECU 20 000) for investors, in particular small investors, in the event of failure of an undertaking for reasons not associated with the investment itself. The system would be financed by the firms. The implementation of the directive will be subject to the principle of checks by the country of origin. The proposed directive seeks also to harmonize the levels of protection. Parliament ensured that the provisions of the directive are largely in line with those of another directive on the deposit guarantee schemes and the deletion of the export ban clause which prevents firms from offering the level of protection of the Member State of origin when it is higher in another Member State providing a lower level of protection. Lastly, a compromise was reached which will apply to the two directives and will be implemented for the end of 1999. Compromise

was also reached on three other amendments concerning the calculation of the claim, the speed of payment of the compensation and a rapid review procedure in the event of disturbances on the market.

Financial services: investor-compensation schemes

1993/0471(COD) - 14/12/1994 - Modified legislative proposal

The amended proposal took account of the opinion of Parliament which, with a view to achieving consistency, had stressed that the proposal should be considered with reference to other proposals for Community legislation in the financial services sector. As a result of this, certain measures contained in the amended proposal relating to investor-compensation schemes had been brought into line with the corresponding provisions in Directive 94/19 /EC on deposit guarantee schemes. Without making any significant changes to the essential principles underlying the initial proposal, the amendments introduced by the Commission incorporated, wholly or in part, the amendments which Parliament had put forward in respect of the following points: - the definition of the "investment firm" was revised, it being stated that this concept was already defined in the Directive on investment services; - the definition of a "branch", as contained in the investment services Directive, was included in the proposal; - a definition was added for "joint investment"; - authorization was to be based on the home-country control principle; - it was no longer to be necessary for a credit institution which provided investment services to adhere to two different schemes, namely that provided by the present Directive and that established by Directive 94/19/EC, once a single system was set up which met the conditions of both Directives; - the minimum harmonized level for compensation was fixed at ECU 20,000 per investor; - the option for branches to supplement the level of cover provided in their Member State of origin in order to attain the (higher) level of cover existing in the host Member State; - investment companies should themselves finance the compensation schemes, provided that the cost burden for the payment of compensation to investors, in the event of default of the investment companies, did not compromise the stability of firms which were in other respects financially sound.

Financial services: investor-compensation schemes

1993/0471(COD) - 23/10/1995 - Council position

The Council's common position adopted the approach retained by the Commission in its amended proposal, in other words bringing the provisions into line with the corresponding provisions in Directive 94/19/EC on deposit guarantee schemes. The Council retained Parliament's amendments concerning, in particular: the concept of "investment firm", the addition of the definition of a "branch", the application of the home country control principle, the inclusion of a reference to the return to investors of "negotiated" instruments belonging to them and the need to work actively to combat financial fraud. Furthermore, with a view to ensuring as much coherence as possible with Directive 94/19/EC and improving the transparency of the text, the Council included the following provisions in its common position: - transitional measures were authorised in certain cases, increasing the level of cover from ECU 15 000 to ECU 20 000; - if a compensation scheme had notified one of its members of its intention to exclude it, it should nevertheless guarantee its cover during the period of notice; - the host Member State may, during a limited period, prevent branches of investment firms of other Member States from offering a higher level of investment cover than that proposed by the local system; - the supplementary cover linked to the supplementary scheme would continue to apply even if the investment firm was excluded from the scheme in the host Member State where supplementary cover was sought; - the Member States may exclude from cover funds (but not instruments) in currencies other than those of the Member States or the ecu; - in exceptional circumstances, a compensation scheme may apply to the competent authorities for a three-month extension of the time limit fixed for paying investors' claims, which was normally restricted to three months; - if an investor was charged with laundering money, the compensation scheme may suspend any payment of a claim by this investor pending a judgement; - Member States should limit the use in advertising of information relating to compensation schemes; - Member States should ensure that investors had the right to bring actions against compensation schemes; - the definition of the concept of "joint investment business" replaced that of "joint investment"; - in order to represent an acceptable alternative to an investment compensation scheme, systems based on solidarity which guaranteed the solvency of certain credit establishments should respect certain conditions; - the minimum period that the compensation scheme may fix for the submission of claims may not be less than five months.

Financial services: investor-compensation schemes

1993/0471(COD) - 23/10/1995

Following the decision as to substance of 22 May 1995, the Council formally adopted by a qualified majority - the German delegation voting against - the common position on investor-compensation schemes. This common position will be forwarded to the European Parliament in the context of the codecision procedure.

Financial services: investor-compensation schemes

1993/0471(COD) - 28/11/1995 - Commission communication on Council's position

The Commission accepted that the directive on investor-compensation schemes should be brought into line with the parallel directive on deposit guarantee schemes. It therefore advised the EP to approve the common position.

Financial services: investor-compensation schemes

1993/0471(COD) - 13/05/1996

Noting that it was not possible to take over the eight amendments to the common position as voted for by Parliament at second reading during its sitting of the previous March, the Council decided to convene the Conciliation Committee under the terms of Article 189b(3) of the Treaty.

Financial services: investor-compensation schemes

1993/0471(COD) - 12/03/1996 - Text adopted by Parliament, 2nd reading

In adopting the report by Mr James JANSSEN van RAAY (EPP, NL) the European Parliament adopted several amendments to the common position of the Council, including an amendment adopted at first reading introducing a definition of the term "branch". The other amendments adopted essentially require that: - the investor-compensation schemes introduced have the power to determine whether or not an investment firm appears to be unable to meet its obligations; - the value of an investor's claim is calculated in accordance with current market rates: - the exclusion of a firm from membership of an investor protection scheme be immediate (as opposed to the twelve-month period provided for by the common position); - investors be compensated as soon as possible: the three-month period referred to in Article 9(2) should run from the date of the determination that the investment company was unlikely to meet its obligations.

Financial services: investor-compensation schemes

1993/0471(COD) - 08/05/1996 - Commission opinion on Parliament's position at 2nd reading

The Commission rejected all eight amendments proposed by the European Parliament at second reading. The Commission's opinion was motivated by the need to ensure that this proposal was consistent with the directive on the deposit guarantee schemes.