

POSITION PAPER



ESBG response to Commission call for evidence on a possible revision of the Investor Compensation Schemes Directive

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The European Savings Banks Group (ESBG) welcomes the opportunity to comment on the possible revisions of the Investor Compensation Schemes Directive (1997/ 9/ EC). The Commission's call for evidence contains a number of questions on which the ESBG would like to present its views as follows:

1) Should the operation of Multilateral Trading Facilities be excluded from the scope of the ICSD?

Answer: The ESBG supports the exclusion of MTFs from the scope of the ICSD. MTF is a trading platform bringing together multiple third party interests in accordance with certain rules, and as such it is not comparable with the other services covered by the ICSD. The foreseen exception for MTFs under MiFID in Article 5 (2) should remain valid.

2) Currently investment firms authorized to provide investment services but not to hold clients' assets might be kept outside the scope of the Directive. Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorization to the provision of investment services, although their authorization would not allow holding clients' assets?

Answer: The ESBG sees from an investor protection point of view advantages for the inclusion in the scope of the ICSD of investment firms seeking authorization to the provision of investment services, whose authorization would not allow holding clients' assets. However, the ESBG thinks that it would be not acceptable that the ICS should have to take the responsibility and share the burden for irregularities committed by a failed firm, in case it had no license for holding the assets but nevertheless held the assets in violation of its license. Also, ICSD cannot constitute a protection for bad investment advice.

3) Currently the ICSD allows Member States to exclude certain categories of clients, such as professional and institutional investors. Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorization to the provision of investment services, although they provide their services only to non-retail clients?

Answer: The ESBG would like to stress that the protection of retail investors must remain the core of the ICSD. The ESBG does, however, not oppose to also include investment firms providing services only to non-retail clients in the scope of the ICSD.

4) a) Currently third party failure is not covered by the Directive. Should investors be able to claim compensation in the case of default of the third party where their assets had been deposited?

Answer: The ESBG agrees to the Commission's assessment that national rules as regards liability of third parties differ. Whereas in some countries the *investment firm*, being the contractual partner of the investor, is liable in case of a third-party default, in other countries it is not liable. From an investor protection perspective it is obvious that the latter case is problematic. In ESBG's view the aim should be to protect the investor, while third parties should keep their responsibilities in line with their contractual responsibilities with the *investment firm*.

4) b) Currently the scheme does neither apply to UCITS unit holders nor to UCITS depositaries. Should investors (such as UCITS or UCITS unit holders) be able to claim compensation for loss of assets under the ICSD in those cases where the UCITS depositary or the institution which has been mandated to safe keep the assets, fails to perform its duty?

Answer: In ESBG's view the default of the depositary or the institution mandated for safe keeping the assets should not be in the scope of the ICSD. The ESBG would like to highlight that the responsibilities of the depositaries are defined in the UCITS Directive. As a consequence of the Madoff scandal a clarification of these provisions might be included in the UCITS IV Level 2 implementing measures or on Level 3.

5) Currently violation of conduct of business rules is outside the scope of the Directive. Should loss events include also any losses suffered by (retail) investors as a consequence of the violation of conduct of business rules?

Answer: The ESBG agrees that loss events should also include any losses suffered by (retail) investors as a consequence of the violation of conduct of business rules. This extension of the Directive will strengthen investor protection and raise confidence in the markets.

6) The revision of the Deposit Guarantee Schemes Directive foresees an increase to 50.000 euro in a first step and 100.000 euro in a second step (subject to a Commission assessment). Do you agree with the idea that the amount covered by the ICSD should be adapted following the updating of the DGSD?

Answer: The ESBG thinks that the amount should be aligned with the DGSD. The ESBG would like to highlight, however, that the discussions as regards the DGSD are ongoing. The decision whether the 100.000 euro constitutes a minimum amount or whether there should be a full harmonization at this amount has not yet been taken. The ESBG is in principle opposed to the concept of a full harmonization of the amount of coverage. Whereas the ESBG considers minimum harmonization, as it already exists, as useful and necessary, it has strong doubts that a maximum harmonization would reflect the different situations in the Member States. In ESBG's view the economic circumstances vary from Member State to Member State, and therefore a certain amount has a different meaning in each Member State. More importantly, the ESBG believes that the existing systems should not be weakened, as this would be counterproductive for consumer confidence and could endanger financial stability.

7) The ICSD does not harmonize the funding systems of the schemes (e.g. there are ex-ante and ex-post financed systems). Should the ICSD provide for some general principles concerning the funding of the schemes?

Answer: The ESBG believes that the question of the funding systems should be left out of the scope of the ICSD. Such an approach would be in line with the DGSD. In this context the ESBG recognizes that the possible harmonization of the funding mechanisms will be subject to a Commission report.

8) a) Does the legislation of the Member State you know the best provide mechanisms aimed at limiting compensation schemes' obligations over time? If yes, how many clients saw their compensation unpaid as a result of such mechanisms?

Answer: No comment.

8) b) Should this kind of mechanisms be prohibited?

Answer: No comment.

9) a) Currently there is a deadline of three months for the reimbursement, but no deadline exists as regards the process of recognizing the eligibility of the claim. Should the process of recognizing the eligibility of the claim be regulated for the purposes of the ICSD?

Answer: The ESBG understands that investors wish to recuperate as quickly as possible their money. This being said, the ESBG believes that the processes of investor compensation claims are much more complicated than depositor claims and there needs to be sufficient time for the scheme to do all necessary steps to check the eligibility of the claim. The ESBG refers as an example to the PHOENIX case in Germany where discussions on the question whether “paper profits” have to be reimbursed took place. Due to the difficulties in this process it could, however, be good to have guidance how to process the different claims and how to calculate compensation. Such guidance could in a practical manner lead to shorter processes of recognizing the eligibility of claims. The question whether, in addition, a deadline as regards the process of recognizing the eligibility of claims should be introduced should be subject to an impact assessment, taking into account particularities related to investor claims.

9) b) Should, at least, a mechanism be introduced providing for provisional partial compensation based on a summary assessment of clients' positions?

Answer: The ESBG does not believe that the system of a provisional partial compensation should be introduced.

9) c) Irrespective of the harmonization of their funding systems, should compensation schemes ensure that they have minimum reserve funds in order to comply rapidly with any immediate needs?

Answer: The ESBG is of the opinion that the aim of avoiding pro-cyclical effects is better achieved by obliging market participants to make money available for future interventions. This can be achieved in ex-ante and ex-post systems.

10) Currently at EU level no compensation scheme exists with respect to money market funds shareholders. Do you think special attention should be given to money market funds? Should some form of guarantee or investor compensation scheme be extended to cover investment in these schemes in order to avoid competitive distortion between different types of savings or investment products? Do you think that investors in money markets funds should be compensated for any investment losses in money market funds because fund investments lose value?

Answer: The ESBG sees no pressing need for an extension of the ICSD to money market funds. Most of the monetary markets funds invest in debt instruments issued by the public sector and normally these instruments are secure.

11) Based on the concrete application of the ICSD do you see further issues other than the ones mentioned in the present document that might be of relevance to this analysis?

Answer: The ESBG has at this stage no additional comments.



About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of € 5215 billion (1 January 2006). It represents the interest of its Members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG Members are typically savings and retail banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their region. ESBG Member banks have reinvested responsibly in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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