

European Commission
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EAPB comments on the Commission's call for evidence on the Investor Compensation Schemes Directive

The EAPB is grateful for the opportunity to comment on the Commission's call for evidence on the review of the application of the Investor Compensation Schemes Directive (ICSD).

In the following, please find our answers to the questions set out in the call for evidence.

1) Should the operation of multilateral trading facilities be excluded from the scope of the ICSD?

The ICSD's primary objective was to introduce investor-compensation schemes that guarantee a harmonized minimum level of protection in particular for small investors in the event of an investment firm being unable to meet its obligations to its investor clients. According to Art 4 (2) of the ICSD in particular professional and institutional investors may be excluded from cover by schemes.

As set out in the call for evidence, a Multilateral Trading Facility (MTF) is a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments. Only professional parties have access to MTFs. The MTF's services are furthermore not comparable to the services delivered by investment firms.

Therefore, MTFs should not be covered by the ICSD.

2) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although their authorisation would not allow holding clients' assets?

The EAPB members are in favour of including all authorised investment firms, also those not holding client's assets.

The major goal of the ICSD, as stated above, is the protection of small retail clients. Excluding clients from the protection of an investor compensation scheme for the only reason that the investment firm holds clients' assets only *de facto* is not sensible and undermines investor protection. A fraud, e.g. committed by a portfolio manager, should not be to the detriment of a client who entrusted its financial instruments to this firm. Excluding some investments from the scope of the protection would not contribute to building trust in the financial market industry.

In some Member States, investment firms not holding clients' assets are already covered by the national regulations on investor compensation schemes.

- 3) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although they provide their services only to non-retail clients?**

The ICSD should in general concentrate on the protection of small retail investors. According to the MiFID, professional clients should possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that it incurs. Therefore, generally, professional clients require less protection.

On the other hand, all investment firms regardless of their client base benefit from the confidence building capacity of investor compensation schemes, which could justify including also investment firms providing services exclusively to professional clients.

- 4a) Should investors be able to claim compensation in the case of default of a third party where their assets had been deposited?**
- 4b) Should investors (such as UCITS or a 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 hold the assets, fail to perform its duty.**

In our member's view, the depositary or the institution mandated for holding the assets should not be in the scope of the ICSD. The ICSD should only cover the case where investment firms providing investment services are unable to compensate the clients.

- 5) Should loss events include also any losses suffered by retail investors as a consequence of the violation of conduct of business rules?**

The objective of the ICSD is to protect investor's money and financial instruments in the case where the insolvency or the default events result in the inability of the investment firm to return the funds or the financial instruments to the investors.

Compensation for losses suffered by clients caused by a "violation of conduct of business rules" is not in accordance with the philosophy of the ICSD. Allowing for compensation for cases of violation of conduct of business rules would also spur moral hazard, for both, clients and investment firms.

On the other hand however, such an extension could strengthen investor protection and raise confidence in the markets.

6) Do you agree with the idea that the amount covered by the ICSD should be adapted following the updating of the DGSD?

Given that the amount of coverage has not been adjusted since 1997 and the minimum coverage for deposit guarantee schemes has been increased considerably, the adaptation of the coverage under the ICSD could be considered.

However, when adapting the coverage, differences between deposits and financial instruments should be taken into account.

7) The ICSD does not harmonize the funding systems of the schemes. Should the ICSD provide for some general principles concerning the funding of the schemes?

A harmonisation of funding mechanisms is from our point of view not necessary, as in particular the level of protection and ultimately investor's confidence do not depend on the funding system.

In some Member States the funding mechanism for investor compensation schemes is linked to the one for deposit guarantee schemes. Therefore, any changes should be undertaken in parallel. Therefore, if any changes to the funding system are envisaged, it is important to align the principles with those of the funding rules for deposit guarantee schemes.

8a) Does the legislation of the Member States 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?

8b) Should this kind of mechanisms be prohibited?

Our members are not aware of such limitations.

In the interest of enhancing investor confidence prohibiting limitations of compensation scheme's obligation over time seems to be advisable.

9a) Should the process of recognizing the eligibility of the claim be regulated for the purposes of the ICSD?

The EAPB believes that the process of recognizing the eligibility of claims should not be regulated under the ICSD. In our view, the process to verify investor claims is much more complex than establishing justification of depositor's claims. This is due to the fact that not only the claim as such has to be verified but also an estimation of the value of the financial instrument has to be made.

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

According to the new rules on deposit guarantee schemes, emergency payouts should be foreseen by Member States upon application by the depositor in order to guarantee that the depositor can meet its obligations (e.g. pay rent), buy food etc.

The scope of the ICSD covers financial instruments. Typically, spare financial means are invested in financial instruments. Therefore, usually financial instruments of retail investors are not the investor's only assets. In case of a bankruptcy of an investment firm, emergency payouts are therefore not necessary.

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

We do not deem minimum reserve funds to be necessary as typically immediate needs do not arise in case of investment in financial instruments, as opposed to deposits (see reasoning under 9 b).

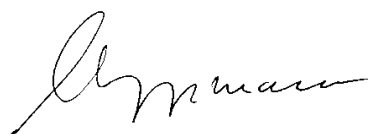
10) Do you think special attention should be given to money market funds?

Money market funds have a lot of things in common with deposits. Nevertheless, it goes too far to say that for these reasons, they should enjoy the same protection as deposits. Money market funds are still financial instruments although they have things in common with deposits.

The aim of the protection scheme for financial instruments is to return the financial instruments in case of default of the investment firm. Its aim is not to protect the value of the financial instruments. For this reason we are convinced that it is not necessary to raise the protection for money market funds.

Should you have any questions, please do not hesitate to contact us.

Kind regards,

A handwritten signature in black ink, appearing to read 'Schoppmann'.

Henning Schoppmann
EAPB

A handwritten signature in black ink, appearing to read 'Hemetsberger'.

Walburga Hemetsberger
EAPB

The European Association of Public Banks (EAPB) represents the interests of 32 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.