



FEDERATION
BANCAIRE
FRANÇAISE

April 8th, 2009

EUROPEAN COMMISSION - CALL FOR EVIDENCE

**REVIEW OF THE DIRECTIVE 1997/9/EC
ON INVESTOR-COMPENSATION SCHEMES**

Comments by FBF

(In association with the **French Deposit Guarantee Fund**)

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. FBF member banks have more than 25,500 permanent branches in France. They employ 500,000 people in France and around the world, and service 48 million customers.

The European Commission launched a public consultation concerning the possible revision of the Directive 1997/9/CE on investor-compensation schemes.

This consultation concerns the scope of the guarantee, the amount of the compensation, the financing of the systems of guarantee, the delay and in certain cases even the transfer of the payment of these compensations. Furthermore, this consultation has concerns with some UCITS specific issues.

As universal banks, French credit institutions are directly impacted by the possible revision of the Directive 1997/9/CE on investor-compensation schemes and hence interested with the results of this consultation.

Therefore, the FBF worked together with the **French Deposit Guarantee Fund** to elaborate the following answer.

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EUROPEAN COMMISSION - Internal Market and Services DG
FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS
Securities markets
DIRECTIVE 1997/9/EC ON INVESTOR-COMPENSATION SCHEMES
CALL FOR EVIDENCE

Scope - Investment services covered by the ICSD and loss events (Article 1, point.2 and Article 2 (2) of the ICSD)

3.1.1. MTFs

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

The MTF is an entity which does not have the legal personality. For this reason, there is no reason to include a MTF in the scope of the ICSD.

However, under French law, an investment firm has to adhere to the ICSD protection scheme. This is the reason why the investment firm managing a MTF must adhere to this scheme and hence pay a fixed contribution even though it does not hold any clients' assets.

Nevertheless, the term "operation" should be defined as the role of the manager of a MTF is only to match orders received from the clients.

3.1.2. Loss covered

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?

Except for the portfolio asset managers which do not hold any assets for third parties, investment firms should adhere to the scheme. Any investment firm should adhere to a scheme even if they don't hold securities on behalf of clients (in solidarity with other investment firms).

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?

Institutional investors should be excluded from the benefit of the ICSD.

However, the corporate investor should benefit from this protection as well as retail clients or individuals.

4a) Should investors be able to claim compensation in the case of default of the third party where their assets had been deposited?

There is no need to protect the clients from the failure of the subcontractor as the first level contracting party only should be held liable vis-à-vis the investor.

4b) Should investors (such as UCITS or a UCITS unit holder) be able to claim compensation for loss of assets under the ISCD in those cases where the UCITS depositary or the institution which has been mandated to safe keep the assets, fail to perform its duty?

While the FBF considers that the investor in shares (or securities) of UCITS should fully benefit from the guarantee which should only be a guarantee of restitution, the FBF does not consider that the UCITS itself, as an “institutional investor”, should be guaranteed because it would not make any sense.

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

No, they should not as the objective is not to implement insurance for mismanagement (this is not a third-party insurance), and certainly not to cover the loss in value of the assets.

The only restitution concerned is the one of these assets.

3.2. The amount of compensation (Article 4 of the ICSD)

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

We recommend remaining homogeneous with the DGSD, hence there should be a full harmonization of the guarantee schemes: the level of coverage should first be of EUR 50.000 (minimum) and then of EUR 100.000 (minimum and maximum) by the end of 2010.

3.3. Funding of the investor compensation schemes (Recital 23 of the ICSD)

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?

It is too early to answer this question.

We should therefore wait for the result of the European Commission studies on the DGSD to answer this question on the ICSD.

3.4. The restrictions on the carryover of unpaid reimbursement debts

8a) 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?

We recommend that the procedures of compensation be accelerated as such compensation should intervene within a reasonable period of time.

8b) Should this kind of mechanisms be prohibited?

Yes it should. These questions should be harmonized.

3.5. The reduction of payout delay (Article 9 (2) of the ICSD)

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

Because of the complexity of the procedures confirming the eligibility of a client's claim, the time limit for compensation should not start before the date on which this right for compensation is legally acted.

Besides, a distinction should be made between cash accounts (where the ICS should be the same as the DGSD) and securities accounts (where the eligibility procedure should be maintained).

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

The FBF does not support such a provisional partial compensation which could finally increase delays of the ICS.

Besides, how would a mistaken partial compensation finally be treated? How could a compensation made by mistake be then recovered?

The more the compensation scheme will be complex, the more there will be risks of a slowing down of the compensations.

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?

It is too early to answer this question.

We should therefore wait for the result of the European Commission research on the DGSD to answer this question on the ICSD (see DGSD, article 12).

4. OTHER ISSUES TO BE DISCUSSED: MONEY MARKET FUNDS

4.1 Custodian risk or claims arising from operational failure/default of institutions holding investor assets

4.2 Investment risk

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

As it is the case today, the ICS should only cover the risk of assets' restitution. It should not cover the risk of depreciation of these assets or any other risk of civil liability. Indeed, as Stated above, the ISC should not be turned into a guarantee of value of the assets.

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?

We currently have no real example related to the failure of an ICS.

Nevertheless, we think that the final objective is to obtain a maximal harmonization of the ICSs within the European Union, and then get homogenous schemes across the EU.

Other questions should be studied:

- How would other currencies (as Yen or USD, for example) be treated in such ICS?
- What about the impact of any set-off procedure?