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Directive 1997/9/EC on Investor-Compensation Schemes

Call for Evidence

Welcoming the idea of reassessing the European framework the management of AeW, the official body for Investor Compensation in Austria, wants to give its opinion according to the experiences over the last years as follows:

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

Yes, MTF should be excluded as they are more likely compared to stock exchanges, do not necessarily hold clients assets and are not within the scope of compensation schemes - which as a matter of fact is the key problem of the systems.

- 2) 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 autorisation would not allow holding clients assets?

No, as primarily the risk of not being able to return assets or money legally obtained should be covered by the compensation scheme. The existence of an authorization to hold clients money might justify the coverage under the directive. If only fraud can lead to the case of assets or money not returned it should not be covered by the directive. Otherwise it would represent a crime cover insurance rather than a compensation scheme".



- 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?

No, the system shall protect small, i.e. retail clients. Furthermore a compensation limited to Euro 20.000,- is not within the size of being fruitful to non-retail clients.

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

No, as this is definitely not a risk of the entities under the ICSD. If investors shall be compensated in those cases it can only be executed under the depositary's compensation scheme.

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

No, following the arguments under 4a). Furthermore UCITS are legally completely different to investment firms, so if these cases shall be compensated a new system has to be established.

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

No, these different issues should definitely not be handled under the same regulation.

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

No, generally not, maybe in case an investment firm is allowed to hold clients' assets or money – but definitely not in countries where the national regulation doesn't permit this kind of business to investment firms (as it is given in Austria).



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

No, as the process of harmonization should respect basically different market structures, grown due to different investment cultures over centuries, ICSD should not provide further principles. On the contrary ICSD should definitely allow funding by the member state in cases too big to be covered by investment firms only – this would create trust and market stability and reduce the risk of sacrificing innocent companies for third party failure.

- 8) a) Does the legislation of the Member State you know 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?

Yes, companies are obliged to pay only according to their revenues, hence securing not only investors' rights but also investment firms'. Austria established a system which now officially permits the state to fund if a case of compensation is too big to be covered by the companies itself. This action ensures clients full compensation according to the ICSD – as it would have violated constitutional law to sacrifice well behaving companies on behalf of investors.

- b) Should these kind of mechanisms be prohibited?

No, contrariwise it can be a prerequisite to secure all parties rights as illustrated under 8a).

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

No, as authorization of investment firms vary deeply a regulated process cannot provide fair treatment.



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

Yes, but only if a mode is defined thus securing repayment of money paid unjustified.

c) Irrespectively 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?

Yes, limited to a small amount for cases of social hardship and only if a mode is defined thus securing repayment of money paid unjustified.

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

Not under the regime of the ICSD as it should keep focusing on companies and not on products, also if they are structured as a legal body.

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

Firstly a sound economic basis of the investment firms should be stressed more expressively. Under no circumstances it must be possible that well behaving companies are jeopardized by risks from third parties (misbehaving companies) to the benefit of fourth ones (investors).

Secondly it should be stated clearly that ICSD covers risks only emerging under the MIFID-authorization of the investment firm, definitely not risks in the "production process" or in the "depositing sphere" (unless the investment firm is allowed to provide this kind of business).

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