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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes
(COM(2010)0371 – C7-0174/2010 – 2010/0199(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Olle Schmidt

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes
(COM(2010)0371 – C7-0174/2010 – 2010/0199(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0371),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0174/2010),
 - having regard to the reasoned opinion of the Swedish Riksdag and the British House of Commons,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to the opinion of the European Central Bank¹,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0167/2011),
1. Adopts its position at first reading hereinafter set out;
 - 2.. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 - 3.. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 5

¹ OJ C 99, 31.3.2011, p. 1.

Text proposed by the Commission

(5) Investors may not be aware of **any limits** of investment **firms' authorisations**, thus it is necessary to protect them in situations in which investment firms act in breach of their authorisation notably by holding client assets or providing services to a particular type of client contrary to the conditions of their authorisation. Therefore, schemes should cover clients' assets which are de facto held by investment firms in connection with any investment business.

Amendment

(5) Investors may not be aware of **lacking or limited authorisations** of investment **firms**, thus it is necessary to protect them in situations in which investment firms act **without or** in breach of their authorisation notably by holding client assets or providing services to a particular type of client **without or** contrary to the conditions of their authorisation. Therefore, schemes should cover clients' assets which are de facto held by investment firms in connection with any investment business.

Amendment 2

**Proposal for a directive
Recital 8**

Text proposed by the Commission

(8) **As the compensation coverage under Directive 94/19/EC is now higher than the one under this Directive, it is necessary to provide the highest protection to investors** in cases where **both Directives 94/19/EC and 97/9/EC could cover** assets held by banks. **Therefore, in those cases, the investor** should be compensated under Directive 94/19/EC.

Amendment

(8) In cases where assets held by banks **could be covered by Directives 94/19/EC and 97/9/EC, investors** should be compensated under Directive 94/19/EC.

Amendment 3

**Proposal for a directive – amending act
Recital 9**

Text proposed by the Commission

(9) In order to be able to recover the funds paid for compensation, schemes making payments to compensate investors for failure of a depositary or a third party should have the right of subrogation to the

Amendment

(9) In order to be able to recover the funds paid for compensation, schemes making payments to compensate investors for failure of a depositary or a third party should have the right of subrogation to the

rights of the investor, investment firm *or undertakings for collective investment in transferable securities (hereinafter referred to as "UCITS")* in liquidation proceedings for amounts equal to their payments. This Directive should not be intended to diminish the responsibility of investment firms *or UCITS* to recover assets from a depositary or custodian.

rights of the investor *or* investment firm in liquidation proceedings for amounts equal to their payments. This Directive should not be intended to diminish the responsibility of investment firms to recover assets from a depositary or custodian.

Amendment 4

Proposal for a directive – amending act Recital 10

Text proposed by the Commission

(10) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) requires the UCITS' assets to be safe kept by a depositary. *If* the depositary or one of its *subcustodians* defaults and is unable to return the financial instruments held in custody, *this affects the value of the UCITS units or shares. In order to increase protection in this situation, unit and share holders in UCITS should benefit from the same level of protection as if they were investing directly into the financial instruments concerned, should the entity holding the financial instruments become unable to return them. Unit holders and share holders in UCITS should receive compensation for the loss of value of the UCITS. At the same time, they should be able to keep the UCITS units or shares in order to preserve their right to redeem them when they consider this is adequate.*

Amendment

(10) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) requires the UCITS' assets to be safe kept by a depositary. *During 2011, the Commission will make proposals to amend Directive 2009/65/EC to clarify the depositary's liability where* the depositary or one of its *sub-custodians* defaults and is unable to return the financial instruments held in custody. *After completing its review of Directive 2009/65/EC, the Commission should analyse in which situations the failure of a UCITS depositary or a sub-custodian could affect the value of the UCITS units or shares. That analysis should be submitted to the European Parliament and to the Council, together with legislative proposals if necessary.*

Justification

The scope of coverage for UCITS is not specified in cases of fraud. Amendments to

depositories' liabilities are expected to be proposed by the Commission in the course of 2011. The need to extend the scope of ICSD to cover UCITS funds requires further investigation with regard to the amended UCITS Directive.

Amendment 5

Proposal for a directive – amending act Recital 12

Text proposed by the Commission

(12) The minimum level of compensation was established in 1997 and has not been modified since then. This level should be increased to **EUR 50 000** in order to take into account developments in the financial markets and in the Union legislative framework. This amount takes into account the effects of inflation in the Union and the need to better align the level of compensation with the average value of investments held by retail clients in the Member States. In order to increase the protection provided to investors, it is necessary to remove the existing option for Member States to limit or exclude from cover funds in currencies other than those of the Member States.

Amendment

(12) The minimum level of compensation was established in 1997 and has not been modified since then. This level should be increased to **EUR 100 000** in order to take into account developments in the financial markets and in the Union legislative framework. This amount takes into account the effects of inflation in the Union and the need to better align the level of compensation with the average value of investments held by retail clients in the Member States. In order to increase the protection provided to investors, it is necessary to remove the existing option for Member States to limit or exclude from cover funds in currencies other than those of the Member States.

Justification

Consumer protection should be raised. A higher guarantee would facilitate cross-border competition and serve in the interest of investors. If the compensation threshold is “maximum harmonized” and set at EUR 100 000 only one EU country would be forced to lower the present maximum compensation amount. If the amount was set at EUR 50 000, three countries would have to lower their maximum compensation amounts.

Amendment 6

Proposal for a directive Recital 13

Text proposed by the Commission

(13) In order to ensure investors receive the compensation provided for under *this*

Amendment

(13) In order to ensure investors receive the compensation provided for under *Directive*

Directive and a comparable level of investor protection across Member States, it is necessary to introduce common rules governing the funding of the schemes. The schemes should be financed in proportion to their liabilities. An appropriate level of pre-funding should be ensured and the schemes should have in place adequate arrangements to assess and reach their target funding level prior to the occurrence of any loss event relevant under Directive 97/9/EC. A common minimum target fund level should be reached within a *ten-year* period.

97/9/EC and a comparable level of investor protection across Member States, it is necessary to introduce common rules governing the funding of the schemes. The schemes should be financed in proportion to their liabilities. An appropriate level of pre-funding should be ensured and the schemes should have in place adequate arrangements to assess and reach their target funding level prior to the occurrence of any loss event relevant under Directive 97/9/EC. A common minimum target fund level should be reached *as soon as possible and in any event* within a *five-year* period.

Amendment 7

Proposal for a directive – amending act Recital 15

Text proposed by the Commission

(15) The functioning of the schemes is currently highly differentiated in Member States and this Directive aims at introducing further harmonisation while leaving some flexibility to Member States as to the detailed organisation of the schemes. The Commission should be empowered to adopt delegated acts on certain essential features of the functioning of schemes in accordance with Article 290 of the Treaty. In particular the delegated acts should be adopted in respect of the method to determine the potential liabilities of the schemes, the alternative funding arrangements that schemes must have in place to be able, where necessary, to obtain short term funding, the criteria to determine the contributions by entities covered by the schemes and the factors to be considered in assessing the ability of additional contributions to not jeopardise the stability of the financial system of a Member States. In order to determine the conditions of application of the provisions concerning the financing of the schemes,

Amendment

(15) The functioning of the schemes is currently highly differentiated in Member States and this Directive aims at introducing further harmonisation while leaving some flexibility to Member States as to the detailed organisation of the schemes. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of certain essential features of the functioning of schemes. In particular, delegated acts should be adopted in respect of the method to determine the potential liabilities of the schemes, the alternative funding arrangements that schemes must have in place to be able, where necessary, to obtain short term funding, the criteria to determine the contributions by entities covered by the schemes and the factors to be considered in assessing the ability of additional contributions to not jeopardise the stability of the financial system of a Member State. In order to determine the

the European Securities and Markets Authority established by *Regulation .../... of the European Parliament and of the Council [ESMA]* should develop technical standards relative to the details to be made public by the schemes.

conditions of application of the provisions concerning the financing of the schemes, the *European Supervisory Authority (European Securities and Markets Authority)* established by *Regulation No 1095/2010 of the European Parliament and of the Council*¹ (ESMA) should develop **draft implementing** technical standards relative to the details to be made public by the schemes.

¹ OJ L 331, 15.12.2010, p. 84.

Justification

Alignment with ESMA Regulation.

Amendment 8

Proposal for a directive – amending act Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) National financial supervisory authorities should cooperate closely with each other and with ESMA to detect and prevent fraud, administrative malpractices and operational errors of investment firms in the Union.

Justification

Cooperation between Member States supervisory authorities and ESMA is of great importance in order to track fraud and misconduct among investment firms.

Amendment 9

Proposal for a directive – amending act Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) The Member States should encourage an institutionalised dialogue

between consumer protectors, authorities, supervisory authorities and investor compensation schemes to prevent further compensation cases. The Member States should establish a dialogue framework to detect problems at an early stage and report problems such as dysfunctional market practices, conspicuous providers, products or company structures to supervision and investor compensation schemes.

Amendment 10

Proposal for a directive – amending act Recital 17

Text proposed by the Commission

(17) The borrowing mechanism should not impinge any fiscal responsibility of the Member States. The borrowing schemes should be able to make recourse to the borrowing possibility provided for in this directive after exhausting the funds collected to reach the target fund level and the additional calls for contribution to their members. While respecting the supervision of investor-compensation schemes by Member States, ESMA should contribute to the achievement of the objective of making it easier for investment firms *and UCITS* to pursue their activities while at the same time ensuring effective protection for investors. To that end, ESMA should confirm that the conditions of borrowing between investor-compensation schemes laid down in *this Directive* are fulfilled and state, within the strict limits set by this Directive, the amounts to be lent by each scheme, the initial interest rate as well as the duration of the loan. In this respect, ESMA should also collect information on investor-compensation schemes, in particular on the amount of covered monies and financial instruments in each scheme, confirmed by competent authorities. It

Amendment

(17) The borrowing mechanism should not impinge any fiscal responsibility of the Member States. The borrowing schemes should be able to make recourse to the borrowing possibility provided for in this directive after exhausting the funds collected to reach the target fund level and the additional calls for contribution to their members. While respecting the supervision of investor-compensation schemes by Member States, ESMA should contribute to the achievement of the objective of making it easier for investment firms to pursue their activities while at the same time ensuring effective protection for investors. To that end, ESMA should confirm that the conditions of borrowing between investor-compensation schemes laid down in *Directive 97/9/EC* are fulfilled and state, within the strict limits set by this Directive, the amounts to be lent by each scheme, the initial interest rate as well as the duration of the loan. In this respect, ESMA should also collect information on investor-compensation schemes, in particular on the amount of covered monies and financial instruments in each scheme, confirmed by competent

should inform the other investor-compensation schemes about their obligation to lend.

authorities. It should inform the other investor-compensation schemes about their obligation to lend.

Amendment 11

Proposal for a directive Recital 22

Text proposed by the Commission

(22) Directive 97/9/EC allows Member States to exclude professional and institutional investors from cover but the relevant list is not aligned with the classification of clients of investment firms under Directive 2004/39/EC. In order to ensure consistency between Directives 97/9/EC and 2004/39/EC, to simplify the assessment for compensation schemes and to limit the possible exclusion, in the case of enterprises, only to large undertakings, Directive 97/9/EC should refer to investors who are considered as professional clients according to Directive 2004/39/EC.

Amendment

(22) Directive 97/9/EC allows Member States to exclude professional and institutional investors from cover but the relevant list is not aligned with the classification of clients of investment firms under Directive 2004/39/EC. In order to ensure consistency between Directives 97/9/EC and 2004/39/EC, to simplify the assessment for compensation schemes and to limit the possible exclusion, in the case of enterprises, only to large undertakings, Directive 97/9/EC should refer to investors who are considered as professional clients according to Directive 2004/39/EC. ***In order to ensure an appropriate level of protection for all relevant investors, Member States should have the right to include micro-entities, non-profit organisations and public local authorities in order to bring them within the scope of Directive 97/9/EC.***

Amendment 12

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

(23) *The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, the delegated acts should be adopted in respect of the determination of the method to calculate the target fund*

Amendment

(23) *The power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of the determination of the method to calculate the target fund level to be established by the schemes and to modify*

level to be established by the schemes and to modify this target fund level, the percentage of the determined ceiling of the funds available for lending between national compensation schemes, the procedure to deal with investors' claims **and the technical criteria to calculate the loss of value of a UCITS in the circumstances covered by this Directive**. The Commission should also be empowered to amend, by means of delegated acts, the percentage of funds available for lending taking into account the developments in the financial markets.

this target fund level, the percentage of the determined ceiling of the funds available for lending between national compensation schemes **and** the procedure to deal with investors' claims. *The power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission also in respect of amendments to the percentage of funds available for lending, taking into account the developments in the financial markets.*

Amendment 13

Proposal for a directive – amending act

Article 1 – point 1 – point a a (new)

Directive 97/9/EC

Article 1 – point 3

Text proposed by the Commission

Amendment

(aa) Point 3 is replaced by the following:

"3. 'instruments' shall mean the instruments listed in Section C of Annex I to Directive 2004/39/EC;"

Justification

The definition of the instruments should also be updated in accordance with MiFID.

Amendment 14

Proposal for a directive – amending act

Article 1 – point 1 – point b

Directive 97/9/EC

Article 1 – point 4

Text proposed by the Commission

Amendment

4. 'investor' means, in relation to investment business, any person who has entrusted money or instruments to an investment firm, **and in relation to the**

4. 'investor' shall mean, in relation to investment business, any **natural or legal** person, **including micro-entities, non-profit organisations and public local**

activities of UCITS, a unit holder or share holder in a UCITS (hereafter "unit holder");

authorities, who has entrusted money or instruments to an investment firm;

Justification

UCITS is already a highly regulated product with an extremely low default rate, as the only practical possibility for a failure is linked to a criminal behavior of the depositary. According to law, UCITS assets have to be kept separately and would, in case of insolvency, not form part of the bankruptcy assets. Furthermore, UCITS V will address questions related to depositaries and third party sub-custodians, which will raise the level of investor protection.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 1 – point d

Directive 97/9/EC

Article 1 – point 8

Text proposed by the Commission

Amendment

8. 'UCITS' means an undertaking as defined in Article 1(2) and (3) of Directive 2009/65/EC;

deleted

Amendment 16

Proposal for a directive – amending act

Article 1 – point 1 – point d

Directive 97/9/EC

Article 1 – point 9

Text proposed by the Commission

Amendment

9. 'depositary' means in relation to UCITS activities, an institution as defined in Article 2(1)(a) of Directive 2009/65/EC;

deleted

Amendment 17

Proposal for a directive – amending act

Article 1 – point 1 – point d

Directive 97/9/EC

Article 1 – point 10

Text proposed by the Commission

10. 'third party' *means*, in relation to investment business, an institution with whom an investment firm has deposited financial instruments held by it on behalf of its clients as referred to in Article 17 of Directive 2006/73/EC or with whom such an institution has sub-deposited the financial instruments; ***in relation to a UCITS business, an institution with whom a UCITS depositary has entrusted assets on behalf of the UCITS;***

Amendment

10. 'third party' *shall mean*, in relation to investment business, an institution with whom an investment firm has deposited financial instruments held by it on behalf of its clients as referred to in Article 17 of *Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive** or with whom such an institution has sub-deposited the financial instruments;

* OJ L 241, 2.9.2006, p. 26.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 2 – point a

Directive 97/9/EC

Article 2 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Each Member State shall ensure that within its territory one or more investor-compensation schemes are introduced and officially *recognized*. Except in the circumstances envisaged in the second subparagraph and in Article 5(3), no investment firm *authorized* in that Member State ***or UCITS authorized in that Member State*** may carry on investment business ***or carry on activities as a UCITS***, unless it belongs to such a scheme.

Amendment

1. Each Member State shall ensure that within its territory one or more investor-compensation schemes are introduced and officially *recognised*. Except in the circumstances envisaged in the second subparagraph *of this Article* and in Article 5(3), no investment firm *authorised* in that Member State may carry on investment business unless it belongs to such a scheme.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 97/9/EC

Article 2 – paragraph 2 – point a

Text proposed by the Commission

(a) the competent authorities have determined that an investment firm appears, for the time being, for reasons directly related to the financial circumstances of the investment firm or the financial circumstances of any third party with whom financial instruments have been deposited by the investment firm, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so,

Amendment

(a) the competent authorities have determined that an investment firm appears, for the time being, for reasons directly related to the financial circumstances of the investment firm or the financial circumstances of any third party with whom financial instruments ***or money that does not fall within the scope of Directive 94/19/EC*** have been deposited by the investment firm, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so; *or*

Justification

If money is not covered by Deposit Guarantee Schemes they should be protected by this Directive.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 2 – point c

Directive 97/9/EC

Article 2 – paragraph 2a – subparagraph 1 – point b

Text proposed by the Commission

(b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business.

Amendment

(b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business, ***provided that the inability of the investment firm or third party is the result of fraud, administrative malpractice, operational error or bad advice regarding conduct of business obligations when providing investment services to clients.***

Amendment 21

Proposal for a directive – amending act

Article 1 – point 2 – point c

Directive 97/9/EC

Article 2 – paragraph 2b

Text proposed by the Commission

Amendment

2b. A scheme shall also provide coverage for UCITS unit holders in accordance with Article 4 where either of the following conditions is met first:

deleted

(a) the competent authority has determined that a depositary or a third party to whom the assets of the UCITS are entrusted is unable to meet its obligations to a UCITS, for the time being, for reasons directly related to the financial circumstances of the depositary or the third party and has no early prospect of being able to do so;

(b) a judicial authority has made a ruling, for reasons directly related to the financial circumstances of the depositary or any third party to whom assets of the UCITS are entrusted, which has the effect of suspending the UCITS' ability to make claims against the depositary or the third party.

Member States shall ensure that the competent authorities make the determination referred to in point (a) of the first subparagraph as soon as possible and in any event within 3 months, after first becoming aware that a depositary or a third party to whom the assets of the UCITS are entrusted has failed to meet its obligations arising out of the UCITS' claims.

Amendment 22

Proposal for a directive – amending act

Article 1 – point 2 – point c

Directive 97/9/EC

Article 2 – paragraph 2c

Text proposed by the Commission

Amendment

2c. The coverage referred to in paragraph 2b shall be provided in accordance with the legal and contractual conditions applicable for a claim by a UCITS unit holder for the loss of value of the UCITS unit due to the inability of a depositary or a third party to whom the assets of the UCITS have been entrusted, to perform either of the following:

deleted

(a) repay money owed to or belonging to the UCITS and held on its behalf in connection with UCITS activities,

(b) return to the UCITS any instruments belonging to it and held or administered on its behalf in connection with UCITS activities.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 3

Directive 97/9/EC

Article 3

Text proposed by the Commission

Amendment

Claims arising out of transactions in connection with which a criminal conviction has been obtained for money laundering, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council, **or** arising out of conduct that is prohibited under Directive 2003/6/EC of the European Parliament and of the Council, shall be excluded from any compensation under

The following claims shall be excluded from any compensation under investor-compensation schemes:

(a) those arising out of transactions in connection with which a criminal conviction has been obtained for money laundering, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use

investor-compensation schemes.

of the financial system for the purpose of money laundering and terrorist financing;*

*(b) those arising out of conduct that is prohibited under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation**; and*

*(c) those relating to the direct or indirect financing of terrorist groups as defined in Council Recommendation of 9 December 1999***.*

* OJ L 309, 25.11.2005, p. 15.

** OJ L 96, 12.4.2003, p. 16.

*** OJ C 373, 23.12.1999 p. 1.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 97/9/EC

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that schemes provide for coverage of **EUR 50 000** for each investor in respect of the claims referred to in Article 2(2a) or (2c).

Amendment

1. Member States shall ensure that schemes provide for coverage of **EUR 100 000** for each investor in respect of the claims referred to in Article 2(2a) or (2c).

Justification

Consumer protection should be raised. A higher guarantee would facilitate cross-border competition and serve in the interest of investors. If the compensation threshold is “maximum harmonized” and set at EUR 100 000 only one EU country would be forced to lower the present maximum compensation amount. If the amount was set at EUR 50 000, three countries would have to lower their maximum compensation amounts.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 97/9/EC

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Members States which provide for coverage of more than **EUR 50 000** at the time of adoption of this Directive, may maintain that level of coverage for no longer than 3 years from *the date for the transposition of this Directive*. After that date, those Member States shall ensure that the level of coverage is **EUR 50 000**.

Amendment

Members States which provide for coverage of more than **EUR 100 000** at the time of adoption of this Directive, may maintain that level of coverage for no longer than 3 years from ...*. After that date, those Member States shall ensure that the level of coverage is **EUR 100 000**.

** OJ: please insert the date of entry into force of the amending Directive.*

Justification

Consumer protection should be raised. A higher guarantee would facilitate cross-border competition and serve in the interest of investors. If the compensation threshold is “maximum harmonized” and set at EUR 100 000 only one EU country would be forced to lower the present maximum compensation amount. If the amount was set at EUR 50 000, three countries would have to lower their maximum compensation amounts.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 97/9/EC

Article 4 – paragraph 1 – subparagraph 5

Text proposed by the Commission

Without prejudice to the fourth subparagraph, Member States shall adjust the coverage levels converted into another currency to the amount referred to in this paragraph every **five years**. Member States may make an earlier adjustment of coverage levels, after having consulted the Commission, following the occurrence of unforeseen events such as currency

Amendment

Without prejudice to the fourth subparagraph, Member States shall adjust the coverage levels converted into another currency to the amount referred to in this paragraph every **two years**. Member States may make an earlier adjustment of coverage levels, after having consulted the Commission, following the occurrence of unforeseen events such as currency

fluctuations.

fluctuations.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 4 – point b

Directive 97/9/EC

Article 4 – paragraph 1a – introductory part

Text proposed by the Commission

1a. The Commission may adjust by means of delegated acts the amount referred in paragraph 1, taking into account the following parameters:

Amendment

1a. The Commission *shall be empowered to adopt* delegated acts ***in accordance with Article 13a***, to adjust the amount referred in paragraph 1, taking into account the following parameters:

Amendment 28

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that schemes have in place adequate systems to determine their potential liabilities. Member States shall ensure that compensation schemes are adequately financed in proportion to their liabilities.

Amendment

1. Member States shall ensure that schemes have in place adequate systems to determine their potential liabilities. Member States shall ensure that compensation schemes are adequately financed in proportion to their liabilities. ***Member States should provide ESMA on a regular basis with relevant information concerning the potential liabilities and the correlated proportional financing.***

Amendment 29

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall ensure that each scheme establishes a target fund level of at least **0.5%** of the value of the monies and financial instruments held, administered or managed by the investment firms *or UCITS* that are covered by the protection of the investor compensation scheme. The value of the covered monies and financial instruments shall be calculated every year as at **1 January**.

Amendment

2. Member States shall ensure that each scheme establishes a target fund level of at least **0,3%** of the value of the monies and financial instruments held, administered or managed by the investment firms that are covered by the protection of the investor compensation scheme. The value of the covered monies and financial instruments shall be calculated every year as at **31 December**.

Justification

The proposed minimum target fund level of 0,5 % is - based on an analysis of data from claims of compensation schemes in Member States - too high. It must be considered that investors will ultimately have to bear the costs. It is important that the minimum fund level is justifiable in relation to the risks involved and to ensure that claims can be met.

Amendment 30

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 2 – subparagraph 2

Text proposed by the Commission

The Commission shall adopt, *by means of* delegated acts in accordance with Article 13a *and subject to the conditions of Articles 13b and 13c*, measures to determine the method to calculate the value of monies and financial instruments covered by the protection of the investor compensation schemes in order to determine the target fund level to be established by the schemes **and to modify the target fund level taking account of the developments in financial markets**.

Amendment

The Commission shall *be empowered to* adopt delegated acts in accordance with Article 13a to determine the method to calculate the value of monies and financial instruments covered by the protection of the investor compensation schemes in order to determine the target fund level to be established by the schemes.

Taking into account the value of the covered monies calculated every year as referred to in the first subparagraph, and taking into account developments in the financial markets and the need to ensure

effective compensation for investors, the Commission shall be empowered to adopt delegated acts in accordance with Article 13a amending the minimum value of the target fund level. In any event, by ..., the Commission shall submit to the European Parliament and Council a report on the need to adjust the target fund level provided for under this paragraph.*

In order allow the Commission to calculate an appropriate target fund level as referred to in the third subparagraph, every Member State shall, on an annual basis, provide the Commission and ESMA with the necessary data regarding the funding of national schemes as at 31 December. Member States shall submit that data to the Commission by 31 March of the following year.

Member States shall also provide the Commission and ESMA with data concerning:

- (a) the amount of covered securities and monies held in investment firms on behalf of the investors;*
- (b) the value of the covered monies and financial instruments held or managed;*
- (c) the number of clients;*
- (d) the revenues or income generated by investment businesses;*
- (e) the level of capital of each investment firm;*
- (f) the maximum amount of compensation per client;*
- (g) the average turnover of the securities sale and purchase transactions;*
- (h) the number of approved persons or traders.*

** OJ: please insert date: two years from the date of entry into force of the amending Directive*

Justification

Due to the cases of fraud and the outcome of different cases of fraud there is no need to suggest any higher funding level. A study should be undertaken before such a change is made to the ICSD. However, the current review of the Directive provides an important opportunity to start harmonising funding levels.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. The target fund level shall be financed prior to and irrespective of the occurrence of any event relevant under Article 2(2) or (2b). Member States shall ensure that the level of funding for each scheme is reached within a **ten-year period after the entry into force of this Directive** and that each scheme adopts and complies with an appropriate planning in order to fulfil this objective.

Amendment

3. The target fund level shall be financed prior to and irrespective of the occurrence of any event relevant under Article 2(2) or (2b). Member States shall ensure that the level of funding for each scheme is reached *by...** and that each scheme adopts and complies with an appropriate planning in order to fulfil this objective.

** OJ: please insert the date: 5 years from the date of entry into force of the amending Directive*

Justification

Ten years is too long for implementation. To ensure an effective implementation of the Directive and to secure the protection of investors and consumers, the rules aiming a level of funding shall be reached within five years.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a– paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The contribution to a scheme shall be determined for each member on the basis of the degree of risk incurred. To achieve a certain level of harmonisation in the application of this provision across the Member States, the Commission shall adopt delegated acts in accordance with Article 13a to clarify how the contribution to a scheme of each member is to be determined.

Justification

The funding needs to be sustainable and fair in order to provide for a harmonized level of investor protection thus avoiding competitive distortion and regulatory arbitrage among investment firms. The requirement that individual contributions shall be determined for each member on the basis of the degree of risk incurred mirrors the provision of schemes to be adequately financed in proportion to their liabilities and will help to ensure a level playing field among members of the same scheme as well as across different schemes on Member State and on internal market level.

Amendment 33

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 3 – subparagraph 2 b (new)

Text proposed by the Commission

Amendment

Competent authorities may reduce contributions for members of the scheme if additional measures to reduce the operational risk are taken voluntarily by those members.

Competent authorities may also reduce contributions where members provide evidence that sub-custodians used by them meet the same standards to reduce operational risk.

The target fund level of the scheme shall not be affected by any reduction.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 3 – subparagraph 2 c (new)

Text proposed by the Commission

Amendment

ESMA shall develop draft implementing technical standards to establish the conditions for reducing the contributions to a scheme, as referred to in the fourth subparagraph.

ESMA shall submit those draft implementing technical standards to the Commission on an annual basis.

The Commission may adopt the draft implementing technical standards in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

The assessment of conditions for risk-based reductions shall be based on criteria such as the volume of monies and financial instruments, capital adequacy, and stability of each member taking into account their legal status and the legal framework applicable at its seat.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall ensure that the schemes may make additional calls for contribution to the members of the scheme in case the target fund level is insufficient to meet the payment of the compensation claims referred to in Article 9(2). Those additional contributions shall not exceed

4. Member States shall ensure that the schemes may make additional calls for contribution to the members of the scheme in case the target fund level is insufficient to meet the payment of the compensation claims referred to in Article 9(2). Those additional contributions shall not exceed

0.5% of the covered monies and financial instruments as referred to in paragraph 2 of *this Article*. Those additional contributions shall not jeopardise the stability of the financial system of the Member State concerned and be based on affordability criteria.

0,3% of the covered monies and financial instruments as referred to in paragraph 2. Those additional contributions shall not jeopardise the stability of the financial system of the Member State concerned and be based on affordability criteria. ***Member States may call for additional contributions after having consulted ESMA and the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board****.

* *OJ L 331, 15.12.2010, p. 1.*

Amendment 36

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that schemes have in place adequate alternative funding arrangements to enable them to obtain short term funding to meet claims against the scheme once the pre-funded amount has been exhausted. Those arrangements may include ***borrowing facilities*** from commercial banks. ***They may also include borrowing facilities from*** public institutions provided that those facilities are based on commercial grounds.

Amendment

5. Member States shall ensure that schemes have in place adequate alternative funding arrangements to enable them to obtain short term funding to meet claims against the scheme once the pre-funded amount has been exhausted. Those arrangements may include ***commercial lending arrangements and lending facilities*** from commercial banks ***and*** public institutions, ***including from the Member States,*** provided that those facilities are based on commercial grounds.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 5

Text proposed by the Commission

6. Member States shall ensure that the cost of financing schemes is ultimately borne in relation to investment business by the investment firms ***or third party custodians covered by the scheme and in relation to UCITS activities, by UCITS or their depositaries or third parties who are covered by the scheme.*** Regular contributions by members shall be raised annually.

Amendment

6. Member States shall ensure that the cost of financing schemes is ultimately borne in relation to investment business ***and only*** by the investment firms. Regular contributions by members shall be raised annually.

Justification

Due to possible uncertainties arising from the way contributions would be required along the chain of market participants, including the UCITS management company it is appropriate to leave the allocation of costs for the ICS to the market.

Amendment 38

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 6 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In order to further assist the operation of schemes, Member States shall ensure that:

(a) they are able to levy their members in order to make payments with the period defined in Article 9(2), in anticipation of payments and after payments have been made, as appropriate;

(b) competent authorities have the power to take action against any firm that fails to pay a levy on request.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Member States shall ensure that investor-compensation schemes, at any time and at their request, receive from their members all information necessary to prepare a repayment of investors.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 8

Text proposed by the Commission

Amendment

8. Member States shall ensure that **10%** of the ex-ante funding amount of the schemes referred to in *Article 4a (2)* is available for lending to other schemes under the conditions established in **Article 4c**.

8. Member States shall ensure that **5%** of the ex-ante funding amount of the schemes referred to in *paragraph 2* is available for lending to other schemes under the conditions established in **Article 4b**. ***Such a funding method shall be used only when ordinary means of financing are not available.***

The Commission may amend, by means of delegated acts in accordance with Article 13a and subject to the conditions of Articles 13b and 13c, the percentage of the ex-ante funding amount to be made available for lending to other schemes, taking into account the developments in financial markets.

Justification

The borrowing mechanism, based on the principle of solidarity, can facilitate the coordination between national compensation schemes. The borrowing mechanism will also lead to more harmonised practices and procedures in administering compensation schemes. The potential problems regarding moral hazard will be reduced by harmonised regulation of

investor compensation schemes across the Member States and through changed requirements and inventive-compatible conditions.

Amendment 41

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 9 – subparagraph 1 – point a

Text proposed by the Commission

(a) the method to determine the potential liabilities of schemes as referred to in paragraph 1;

Amendment

(a) the method to determine the potential liabilities of schemes **and the risk-based contributions** as referred to in paragraph 1;

Justification

The funding needs to be sustainable and fair in order to provide for a harmonized level of investor protection while avoiding competitive distortion and regulatory arbitrage among investment firms. The requirement that individual contributions shall be determined for each member on the basis of the degree of risk incurred mirrors the provision of schemes to be adequately financed in proportion to their liabilities and will help to ensure a level playing field among members of the same scheme as well as across different schemes on member state and on internal market level.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4a – paragraph 10

Text proposed by the Commission

10. In order to ensure uniform conditions of application of paragraph 7, subparagraph 2, *the European Securities and Markets Authority established by Regulation .../... of the European Parliament and of the Council [ESMA] (hereinafter referred to as "ESMA")* shall develop draft technical standards to specify the details of the information to be published by the schemes.

ESMA shall submit *the* draft technical

Amendment

10. In order to ensure uniform conditions of application of *the second subparagraph* of paragraph 7, ESMA shall develop draft **implementing** technical standards to specify the details of the information to be published by the schemes.

ESMA shall submit *those* draft

standards referred to in the first subparagraph to the Commission by 31 December 2012.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in **Article 7e** of Regulation .../.... [ESMA].

implementing technical standards to the Commission by 31 December 2012.

The Commission may adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with the procedure laid down in **Article 15** of Regulation No 1095/2010.

Justification

Alignment with ESMA Regulation.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4b – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. A scheme shall have the right to borrow from all other schemes referred to in Article 2 within the Union provided that all of the following conditions are met:

Amendment

1. **After ...***, it shall be possible for a scheme to borrow from all other schemes referred to in Article 2 within the Union provided that all of the following conditions are met:

*** OJ: please insert the date: 5 years from the date of entry into force of the amending Directive.**

Amendment 44

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4b – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) the situation referred to in point (a) of this subparagraph **is due to a lack of funds** as referred to in Article 4a(3);

Amendment

(b) **the scheme which finds itself in** the situation referred to in point (a) of this subparagraph **had previously reached the target fund level** referred to in Article

4a(2);

Amendment 45

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4b– paragraph 1 – subparagraph 3

Text proposed by the Commission

The other schemes shall act as lending schemes. For this purpose, Member States in which more than one scheme is established shall designate one scheme acting as the lending scheme of this Member State and inform the ESMA thereof. Member States may decide if and how the lending scheme is reimbursed by other *Schemes* established in the same Member State.

Amendment

The other schemes shall act as lending schemes. For this purpose, Member States in which more than one scheme is established shall designate one scheme acting as the lending scheme of this Member State and inform ESMA thereof. Member States ***shall undertake all necessary steps to ensure that all stakeholders are informed about which scheme is the lending scheme and how it works. Member States*** may decide if and how the lending scheme is reimbursed by other *schemes* established in the same Member State.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4b– paragraph 2 – point c

Text proposed by the Commission

(c) the interest rate *shall* be equivalent to the marginal lending facility rate of the ***European Central Bank during the credit period.***

Amendment

(c) the interest rate ***during the credit period must*** be equivalent to the marginal lending facility rate of the ***central bank issuing the currency in which the loan was made.***

Amendment 47

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4b – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the contributions levied by the borrowing scheme are sufficient to reimburse the amount borrowed and to re-establish the *target level fund* as soon as possible and at latest within a **ten-year** period after the reception of the loan.

Amendment

4. Member States shall ensure that the contributions levied by the borrowing scheme are sufficient to reimburse the amount borrowed and to re-establish the *target fund level* as soon as possible and at latest within a **five-year** period after the reception of the loan.

Justification

The borrowing mechanism, based on the principle of solidarity, can facilitate enhanced coordination between national compensation schemes and lead to more harmonised practices and procedures in administering compensation schemes. This amendment provides for a harmonised regulation of schemes across Member States and will reduce potential problems with moral hazard. This amendment attempts to address the risk of moral hazard through changed requirements and incentive-compatible conditions.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

All other claims shall be subordinate to that of the compensation scheme which granted the loan. The scheme shall be considered to be a preferred creditor and shall have first rank of priority among creditors.

Justification

Because a loan from another compensation scheme is a measure of last resort and an exceptional one, and because this compensation scheme is a foreign party, this loan should be repaid first.

Amendment 49

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 4 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Without prejudice to the second subparagraph, Member States may establish other priorities in preference between different categories of creditors.

Justification

Because a loan from another compensation scheme is a measure of last resort and an exceptional one, and because this compensation scheme is a foreign party, this loan should be repaid first.

Amendment 50

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

5. In order to facilitate an effective cooperation between investor-compensation schemes, the schemes, or, where appropriate, the competent authorities, shall **have** written cooperation agreements **in place**. Such agreements shall take into account the requirements set out in Directive 95/46/EC of the European Parliament and of the Council.

5. In order to facilitate an effective cooperation between investor-compensation schemes, the schemes, or, where appropriate, the competent authorities, shall **conclude** written cooperation agreements. Such agreements shall take into account the requirements set out in Directive 95/46/EC of the European Parliament and of the Council **of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data***.

****OJ L 281, 23.11.1995, p.31.***

Justification

It should be clear that the cooperation agreements between the schemes are mandatory and not optional.

Amendment 51

Proposal for a directive – amending act

Article 1 – point 6

Directive 97/9/EC

Article 5

Text proposed by the Commission

Article 5

1. If an investment firm, **UCITS**, **depository** or third party required by Article 2(1) to belong to a scheme *do* not meet *their* respective obligations incumbent on it as a member of that scheme, the competent authorities which issued the investment firm *authorization or the UCITS authorization* shall be notified and, in cooperation with the compensation scheme, shall take all measures appropriate, including the imposition of penalties, to ensure that the investment firm, **UCITS**, **depository** or third party meets its obligations.

2. If the measures referred to in paragraph 1 fail to secure compliance on the part of the investment firm, **UCITS**, **depository** or third party, the scheme may, with the express consent of the competent authorities, give not less than **12** months' notice of its intention of excluding the investment firm, **UCITS**, **depository** or third party from membership of the scheme. The scheme shall continue to provide the coverage referred to in Article 2(2a) **and (2c)** in respect of investment business **or UCITS activities** carried on during that period. If, on expiry of the period of notice, the investment firm, **UCITS**, **depository** or third party has not

Amendment

Article 5

1. If an investment firm or third party required by Article 2(1) to belong to a scheme *does* not meet *its* respective obligations incumbent on it as a member of that scheme, the competent authorities which issued the investment firm *authorisation* shall be notified and, in cooperation with the compensation scheme, shall take all measures appropriate, including the imposition of penalties, to ensure that the investment firm or third party meets its obligations.

2. If the measures referred to in paragraph 1 fail to secure compliance on the part of the investment firm or third party, the scheme may, with the express consent of the competent authorities, give not less than **six** months' notice of its intention of excluding the investment firm or third party from membership of the scheme. The scheme shall continue to provide the coverage referred to in Article 2(2) in respect of investment business carried on during that period. If, on expiry of the period of notice, the investment firm or third party has not met its obligations, the compensation scheme may, again having obtained the express consent of the

met its obligations, the compensation scheme may, again having obtained the express consent of the competent authorities, exclude it.

3. An investment firm, *UCITS*, *depository* or third party, excluded from an investor-compensation scheme, may continue to carry on investment business, *its UCITS activities* or be entrusted with investors' *and UCITS* financial instruments under the following conditions:

a) before its exclusion, it had made alternative compensation arrangements ensuring that investors *and UCITS* would enjoy cover that is at least equivalent to that offered by the officially recognized scheme and that the characteristics of such alternative compensation arrangements would be equivalent to those of the officially *recognized* scheme;

b) the competent authority responsible for the authorization of the investment firm *or UCITS*, has confirmed that the conditions referred to in *letter a)* are met.

4. If an investment firm *or a UCITS*, the exclusion of which is proposed under paragraph 2 is unable to make alternative arrangements which comply with the conditions imposed in paragraph 3, the competent authorities which issued its *authorization* shall:

(a) with respect to the investment firm for which it has issued the authorization, withdraw the authorization without delay;

(b) with respect to the UCITS it has approved, withdraw the authorization without delay.

5. Where *a depository or* a third party, the exclusion of which is proposed under paragraph 2 is unable to make alternative arrangements which comply with the conditions imposed in paragraph 3, it shall not be allowed to be entrusted with investors' *or UCITS* assets.

competent authorities, exclude it.

3. An investment firm or third party, excluded from an investor-compensation scheme, may continue to carry on investment business or be entrusted with investors' financial instruments under the following conditions:

(a) before its exclusion, it had made alternative compensation arrangements ensuring that investors would enjoy cover that is at least equivalent to that offered by the officially recognized scheme and that the characteristics of such alternative compensation arrangements would be equivalent to those of the officially *recognised* scheme;

(b) the competent authority responsible for the authorization of the investment firm has confirmed that the conditions referred to in *point (a)* are met.

4. If an investment firm, the exclusion of which is proposed under paragraph 2 is unable to make alternative arrangements which comply with the conditions imposed in paragraph 3, the competent authorities which issued its *authorisation* shall withdraw *it* without delay.

5. Where a third party, the exclusion of which is proposed under paragraph 2, is unable to make alternative arrangements which comply with the conditions imposed in paragraph 3, it shall not be allowed to be entrusted with investors' assets.

Amendment 52

Proposal for a directive – amending act

Article 1 – point 6

Directive 97/9/EC

Article 6

Text proposed by the Commission

After the withdrawal of an investment firm's *authorization or UCITS' authorization*, the coverage referred to in Article 2(2a) **and (2c)** shall continue to be provided in respect of investment business transacted up to the time of that withdrawal.

Amendment

After the withdrawal of an investment firm's *authorisation*, the coverage referred to in Article 2(2) shall continue to be provided in respect of investment business transacted up to the time of that withdrawal.

Amendment 53

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 8 – paragraph 1

Text proposed by the Commission

1. The cover provided for in Article 4(1) and (3) shall apply to the investor's aggregate claim on the same investment firm **or the same UCITS** under this Directive irrespective of the number of accounts, the currency and location within the Union.

Amendment

1. The cover provided for in Article 4(1) and (3) shall apply to the investor's aggregate claim on the same investment firm under this Directive irrespective of the number of accounts, the currency and location within the Union.

Amendment 54

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In the absence of special provisions,

Amendment

deleted

claims shall be divided equally amongst investors.

Amendment 55

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 8 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

An investor whose claim cannot be fully covered shall benefit from the same rate of coverage for the aggregate claim.

Justification

The pro-rata principle should be written in an unequivocal way.

Amendment 56

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 8 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

Where an investor is not entitled to the sums or *securities* held, the person who is entitled shall receive the compensation, provided that that person has been or can be identified before the date of the determination or ruling referred to in Article 2(2) **and (2b)**.

Where an investor is not entitled to the sums or *instruments* held, the person who is entitled shall receive the compensation, provided that that person has been or can be identified before the date of the determination or ruling referred to in Article 2(2).

Amendment 57

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The fact that that period has expired may not be invoked by the scheme to deny coverage to an investor who has been unable to assert his right to compensation in time.

Amendment

The fact that that period has expired may not be invoked by the scheme to deny **full** coverage to an investor who has been unable to assert his right to compensation in time.

Amendment 58

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 9 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Investment firms shall disclose on their websites, all information concerning the terms and conditions regarding the coverage and the steps to be taken to receive the payment in accordance with this Directive.

Amendment 59

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 9 – paragraph 2 – subparagraph 6

Text proposed by the Commission

Amendment

The Commission shall adopt, *by means of* delegated acts in accordance with Article 13a *and subject to the conditions of* Articles 13b and 13c, measures to determine the procedure to deal with investors' claims ***and the technical criteria to calculate the loss of value of a UCITS as a result of the events mentioned under Article 2(2b) and (2c).***

The Commission shall adopt delegated acts in accordance with Article 13a to determine the procedure to deal with investors' claims.

Amendment 60

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 9 – paragraph 3

Text proposed by the Commission

3. Notwithstanding the time limit laid down in the first subparagraph of paragraph 2, where an investor or any other person entitled to or having an interest in investment business has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of Directive 2005/60/EC or is the subject of action for contravention of Directive 2003/6/EC, the compensation scheme may suspend any payment pending the judgment of the court or determination of a competent authority.

Amendment

3. Notwithstanding the time limit laid down in the first subparagraph of paragraph 2, where an investor or any other person entitled to or having an interest in investment business has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of Directive 2005/60/EC ***in relation to money that is the subject of this Directive or in relation to the direct or indirect financing of terrorist groups as defined in Council Recommendation or***, is the subject of action for contravention of Directive 2003/6/EC, the compensation scheme may suspend any payment pending the judgment of the court or determination of a competent authority.

Amendment 61

Proposal for a directive – amending act

Article 1 – point 8

Directive 97/9/EC

Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that each investment firm ***or UCITS*** takes appropriate measures to make available to actual and intending investors the information necessary for the identification of the investor-compensation scheme of which the investment firm ***or UCITS*** and its branches within the Union are members or any alternative arrangement provided for under the second subparagraph of Article 2 (1) or Article 5 (3). Investors shall be

Amendment

1. Member States shall ensure that each investment firm takes appropriate measures to make available to actual and intending investors the information necessary for the identification of the investor-compensation scheme of which the investment firm and its branches within the Union are members or any alternative arrangement provided for under the second subparagraph of Article 2(1) or Article 5(3). Investors shall be informed of the provisions of the investor-

informed of the provisions of the investor-compensation scheme or any alternative arrangement applicable, including the amount and scope of the cover offered by the compensation scheme and any rules laid down by the Member States pursuant to Article 2(3). That information shall be made available in a readily comprehensible manner.

compensation scheme or any alternative arrangement applicable, including the amount and scope of the cover offered by the compensation scheme and any rules laid down by the Member States pursuant to Article 2(3). That information shall be made available in a readily comprehensible manner.

Amendment 62

Proposal for a directive – amending act

Article 1 – point 8

Directive 97/9/EC

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that the amount that an investor pays into an investor compensation scheme is clear and transparent. The amount that each individual investor is charged for a scheme, either as a percentage of their investment or as an amount in addition to the investment, shall be made clear to that actual or intending investor.

Justification

Ultimately, it is investors, who will pay for compensation schemes. There should be a high level of transparency as to exactly how much investors pay for compensation schemes to exist.

Amendment 63

Proposal for a directive – amending act

Article 1 – point 9

Directive 97/9/EC

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

1. Without prejudice to any other rights which they may have under national law, schemes which make payments in order to compensate investors shall have the right

1. Without prejudice to any other rights which they may have under national law, schemes which make payments in order to compensate investors shall have the right

of subrogation to the rights of those *investors* in liquidation proceedings for amounts equal to their payments.

of subrogation to the rights of those in liquidation proceedings for amounts equal to their payments.

Justification

Those being in the liquidation procedure are the investment firms, the depositary or the third party, and not the investors.

Amendment 64

Proposal for a directive – amending act

Article 1 – point 9

Directive 97/9/EC

Article 12 – paragraph 3

Text proposed by the Commission

Amendment

3. In the case, provided for in Article 2(2c), of losses due to the financial circumstances of a depositary or third party to whom the assets of the UCITS have been entrusted, schemes which make payments in order to compensate UCITS unit holders shall have the right of subrogation to the rights of the UCITS holder or UCITS in liquidation proceedings for amounts equal to their payments.

deleted

Amendment 65

Proposal for a directive – amending act

Article 1 – point 9

Directive 97/9/EC

Article 12 – paragraph 4

Text proposed by the Commission

Amendment

4. If the third party that holds financial instruments belonging to an investor in relation to investment business *or the depositary or third party to whom the assets of the UCITS have been entrusted* are located in a third country in which the judiciary system does not allow the scheme

4. If the third party that holds financial instruments belonging to an investor in relation to investment business *is* located in a third country in which the judiciary system does not allow the scheme to subrogate to the rights of the investment firm, Member States shall ensure that the

to subrogate to the rights of the investment firm *or the UCITS* Member States shall ensure that the investment firm *or the UCITS* return to the scheme amounts equal to their payments in case they receive any amount in the liquidation proceedings.

investment firm return to the scheme amounts equal to their payments in case they receive any amount in the liquidation proceedings.

Amendment 66

Proposal for a directive – amending act

Article 1 – point 10

Directive 97/9/EC

Article 13a

Text proposed by the Commission

Article 13a

1. The powers to adopt delegated acts referred to in Article 4a(9) and Article 9(2) shall be conferred on the Commission for *an indeterminate* period of *time*.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Amendment

Article 13a

1. *The power to adopt delegated acts is conferred to the Commission subject to the conditions laid down in this Article.*

2. *The delegation of power referred to in Article 4(1a), subparagraph 2 and 3 of Article 4a(2), subparagraph 2a of Article 4a(3), Article 4a(9) and Article 9(2) shall be conferred on the Commission for a period of **four years from ...***. **The Commission shall draw up a report in respect of the delegation of power no later than six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension.***

3. *The delegation of power referred to in Article 4(1a), subparagraphs 2 and 3 of Article 4a(2), subparagraph 2a of Article 4a(3), Article 4a(9) and Article 9(2) may be revoked at any time by the European Parliament or by the Council.*

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 4(1a), subparagraph 2 and 3 of Article 4a(2), subparagraph 2a of Article 4a(3), Article 4a(9) and Article 9(2) shall enter into force only if no objection has been expressed by the European Parliament or the Council within a period of three months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

** OJ: please insert the date of entry into force of the amending Directive.*

Justification

Alignment with latest Prospectus revision wording.

Amendment 67

**Proposal for a directive – amending act
Article 2 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. By derogation from paragraphs 1 and 2, Member States that benefit under the Accession Treaties from transitional periods regarding the transposition of Article 4 of Directive 97/9/EC shall comply with paragraphs 1 and 2 of that Article from the date when their respective transitional periods expire.

Justification

It is necessary that the amendments to this directive to consider the situation of the Member States which benefit of transitional periods, due to the fact that such periods are mentioned in the Accession Treaties.

Amendment 68

Proposal for a directive – amending act Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Report by ESMA

By 31 December 2012, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and submit a report to the European Parliament, the Council and the Commission.

Justification

Alignment with AIFMD.

Amendment 69

Proposal for a directive – amending act Article 2 b (new)

Text proposed by the Commission

Amendment

Article 2b

Review of the Investor-Compensation Scheme system and treatment of UCITS

By 31 July 2012, the Commission shall, after an open consultation with the stakeholders, submit to the European Parliament and Council a report analysing the advantages and disadvantages of introducing a system of insurance contracts as a complement or replacement of existing investor-compensation scheme .

In order to ensure the same level of

protection for investors, whether they invest directly through investment firms or indirectly through UCITS, the report shall also, in light of the forthcoming Commission proposal on UCITS depositaries and after an open consultation with stakeholders, identify regulatory gaps, including regarding equivalent compensation, and assess the costs and benefits of extending the scope of Directive 97/9/EC to UCITS. If necessary, that report shall include legislative proposals on the practical arrangements for the extension of its scope to UCITS.

Justification

It is not clear what specific cases the extension of the scope of coverage to UCITS is meant to cover, all the more in view of the amendments to depositaries' liabilities that are expected to be proposed by the Commission in the course of 2011. The need to extend coverage of the ICSD to UCITS requires further investigation and should be made in full consideration of the amended UCITS Directive.

EXPLANATORY STATEMENT

1. The way forward

The new EU legislation should increase the harmonisation and integration of the Single European market, strengthen the consumer's protection and create more confidence for the consumers and depositors and enhance financial stability.

The rapporteur has three main objectives:

a. To increase consumer protection through a higher coverage. The changes in ICSD should aim at increasing the investor protection. There is a need for better consumer protection and for stronger common rules especially concerning the funding of the schemes at national level. Investors with cross border investments should have the same level of protection in all Member states.

The consumer's right should be strengthened through improved coverage, faster and better payouts and wider protection. If an investment firm is holding financial instruments on behalf of the consumer, investor compensation should be in place.

b. To improve the single European market for financial services and create European harmonisation of investor compensation schemes in the Union.

This will strengthen investor protection and contribute to a level playing field. There is a need for more and better EU harmonisation of the current legislation. The rules must enhance the internal market for financial services and create a stronger Single European market.

The proposal from the Commission states that all investment services and activities covered under MiFID should be subject to the ICSD and that if firms de facto hold client assets, clients should be entitled to compensation under the ICSD. The rapporteur supports the alignment with MIFID as to definitions and distinction between retail and professional investors.

c. To put forward long term robust financing principles for investor compensation schemes.

The contributions to the schemes should function as a mutual insurance mechanism and not be at such a high level as it can be regarded as a tax or as a payment of a fiscal nature. The risk based approach should be applied consistently among schemes and the calculation of contributions should be based on the potential compensation risk incurred by a firm.

2. Broadening the scope – failure of a third party custodian and UCITS depositary

The Commission proposes that the coverage of the investor compensation schemes be extended to firms authorised to carry on any investment services in any form and to UCITS unit holders in case of failure of UCITS depositary, sub-custodian and third party custodian.

The rapporteur is in favour of broadening the scope to include failure of third party custodians, but does not support broadening the scope to include UCITS.

The consumer has protection today in provisions in UCITS and MIFID Directives. The UCITS Directive provides a high degree of protection of unit-holders through the requirements it imposes on depositaries' activities. The current investor compensation schemes also covers losses of - in the context of the MiFID- non-core services of safekeeping and administration of assets. Units or shares in units are covered against fraud in UCITS, as long as they are held in an investment company.

UCITS funds have no assets other than the portfolio of financial instruments managed for their unit holders. As a consequence, fees or costs, charged to the UCITS will automatically impact the UCITS unit holders by reducing the net asset value of their units. If depositaries have to contribute to the funding of the schemes, the investors will bear the costs. Asking the UCITS to contribute to the schemes will lead to the result that UCITS unit holders will pay twice for the same protection.

Furthermore it is important in the law making process to ensure that there is consistency between the new provisions in the Directive on Alternative Investment funds (AIFMD), the forthcoming Commission proposal on the depositary function of the UCITS directive (UCITS V) and the review of MiFID. The usefulness of broadening the scope at this point in time must therefore be questioned.

Consumer protection should be raised and therefore third party custodians should be included in the scope of the Directive. The rapporteur supports the proposal to cover the failure of the depositor or custodian chosen by the investment firm who is not able to return the financial instruments. The consumer can choose another Investment firm, but has no responsibility for the firm's choice of custodian - chosen by the Investment firm - and should not be responsible if it fails.

The rapporteur proposes the following changes:

- The possible extension of the coverage in ICSD to UCITS and their depositaries should be analysed in the upcoming review of UCITS Directive on the UCITS depositary liability's regime when all considerations of the Directive are taken in to account. There should not be a separate legislation for UCITS in this Directive.

3. Degree of harmonisation on the level of compensation

The Commission proposes a higher level of minimum compensation for each investor, EUR 50 000 instead of EUR 20 000 in the current legislation. However there are countries that have higher limits for compensation; United Kingdom (£ 50 000), Spain (EUR 100 000) and France (EUR 70 000).

The rapporteur is in favour of full harmonisation - as opposed to minimum harmonisation - at a fixed level of compensation of EUR 100 000 (a higher limit would also be permitted). This fixed level of compensation increases consumer protection, gives investors stronger protection

and creates no risk of arbitrage between Member States.

The rapporteur is of the view that no Member States should be obliged to lower their level of compensation. The effect would be lower protection for consumers.

Customers that choose to invest their money on the market through an investment firm should have the same protection as if they would have invested the money through a bank or other credit institutions. Money that is deposited by the investment firm must be protected the same way as money deposited in a bank account.

The rapporteur proposes the following changes:

- A higher level of minimum compensation for each investor, EUR 100 000 instead of EUR 50 000.

4. Funding principles and mechanism – Harmonisation of how the schemes should be funded

Harmonisation of the financing of the compensation schemes is welcomed, and the rapporteur favours a minimum target fund level and ex ante funding.

The Commission has made their simulation based on the amount of covered securities and monies which they think are the most appropriate calculation base to calculate the amount of the target fund level. The Commission has based its calculations on schemes from only 10 Member states. The lack of data at the national schemes level makes the calibration of an appropriate target fund level very difficult.

There is however strong evidence to suggest that the proposed target fund level of 0,5% is too high, especially since the funds should be covering cases of mismanagement and fraud in the deposited securities.

One study of the claims made on the UK Financial Services Compensation Scheme during recent years shows that the claims have been relatively low. The study suggests that a pre-funding contribution should be set at no more than 0,2% (20 basis points). Based on historical experience in my home country, Sweden, a fund level of 0,05% would be sufficient.

The economist and independent advisor, István Farkas analyses the target level in his briefing paper "Safeguarding investors' interests by ensuring sound financing of ICS: Funding principles and mechanisms: "According to the OXERA report between 1999 and 2003 in the EU15, the total number of claims was around 61.000. The average size of claims did not exceed EUR 20.000 Applying this as a guidance we can say that the Investment Compensation Schemes target level should be treated as sufficient where it covers around 200.000 cases, each of them valued at EUR 50.000. 200.000 claims would represent 1-3 large (medium sized) investment firms' failure or a couple of dozen small companies in trouble. On that basis, the target level would be EUR 10 billion. Although the calculation of the 0,5% of the covered assets as a coverage level is not very clear, using a rough estimation and the reactions of the contributions of market participants to the Call for Evidence it might be around EUR 50 billion i.e. at least 5 times higher." Farkas concludes that "the coverage level

as of 10 basis points of the assets managed by investment firms on behalf of eligible clients should be treated as sufficient".

The rapporteur also proposes to include a risk-based principle in the ICSD that the contribution to a scheme shall be determined for each member on the basis of the degree of risk incurred by the firm.

The rapporteur proposes the following changes:

- The contribution to a scheme shall be determined for each member on the basis of the degree of risk incurred.
- The proposed ex-ante funds should be in place and have reached the target fund level in all Member States in five years instead of ten years.
- The level of funding, the contributions, should be reduced to a justifiable level. Member States shall ensure that each scheme establishes a target fund level of at least 0.3% of the value of the monies and financial instruments held, administered or managed by the investment firms.

5. Borrowing mechanism between national schemes

The proposed borrowing mechanism is a mechanism of solidarity between Member States and should therefore be welcomed as an idea. However the Member States shall continue to have the responsibility to have appropriate financing mechanisms in place.

In order to avoid that some Member States would undersize their funds the rapporteur proposes that the borrowing mechanism should not be launched before all the schemes have sufficient money in their funds.

Most Member States should be able to find other resources for lending and therefore the compulsory lending mechanism should aim for a lower percentage of the available financial means than proposed by the Commission; at a level of 5% instead of 10%.

The rapporteur proposes the following changes:

- The obligatory lending mechanism should not start before all the schemes are funded at target fund level.
- After the five year period a scheme shall have the right to borrow from all other schemes within the Union provided that the scheme which finds itself in the situation had previously reached the target fund level.
- The level of obligatory lending is reduced from ten to five percent of the scheme. Member States shall ensure that 5% of the ex-ante funding amount of the schemes is available for lending to other schemes.

23.3.2011

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes
(COM(2010)0371 – C7-0174/2010 – 2010/0199(COD))

Rapporteur: Sebastian Valentin Bodu

SHORT JUSTIFICATION

Directive 97/9/EC on Investor-Compensation Schemes (ICSD) was adopted in 1997 to complement the Investment Services Directive (the last one was replaced later by the Markets in Financial Instruments Directive (MiFID)).

Ten years after the ICSD entered into force, and immediately after the financial crisis, it is the right time to review the functioning of the ICSD.

The review of this directive is a consequence of the fact that numerous complaints from investors about its application were submitted to the Commission, sometimes involving large losses suffered by them. Also, this review considers the objective set at G-20 level of addressing any loopholes in the regulatory and supervisory system and the objective of restoring investor confidence in the financial system.

The objectives of the proposal cannot be sufficiently fulfilled by the Member States. The current EU framework only provides for some minimum harmonisation principles leaving it up to Member States to develop it further. However, problems encountered in some Member States demonstrate that additional and notably more extensive harmonisation at EU level is necessary in order to ensure that the objectives of the Directive are fulfilled within the EU.

The proposal aims at improving the proper functioning of a single market for investment services, increasing investor protection and investor confidence in the EU. In particular, it aims at improving the practical functioning of the ICSD, at clarifying the scope of the ICSD taking into account the financial crisis and recent changes in the EU regulatory landscape, at reducing gaps in the regulatory system and disparities between the protection of clients of the

brokerage firms and of banking depositors. In the light of the existing differences in the functioning of the schemes at national level, the proposal introduces common rules to ensure a degree of harmonisation in the funding of the schemes and in the day-to-day practice; this is also the basis for the provision of a borrowing mechanism among national schemes as a last resort tool to compensate any temporary needs from schemes, subject to a rigorous assessment carried out by the European Securities and Markets Authority and to the obligation to repay any loan within the maximum period of five years.

The proposal respects the principle of proportionality as all solutions have been assessed against its cost-efficiency and they respect the particularities of markets in Member States. The proposal does not go beyond what it is necessary to achieve the objectives pursued, in particular, it keeps minimum harmonisation principles where pertinent, for instance concerning the modalities according to which the members of the compensation schemes have to contribute to the scheme. The introduction of a borrowing system between the national schemes is consistent with the proportionality principle in that it does not impinge any fiscal responsibility of Member States, it is a last resort measure subject to the previous use of other funding mechanisms (ordinary and additional contributions from members), it only introduces a lending possibility subject to the payment of interests and to a repayment obligation from the borrowing scheme and it is limited in time and size.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment **1**

Proposal for a directive – amending act

Article 1 – point 1 – point a

Directive 97/9/EC

Article 1 – point 2

Text proposed by the Commission

2. 'investment business' shall mean investment services and activities as defined in Article 4(1)(2) of Directive 2004/39/EC and the ancillary service referred to in point 1 of Section B of the Annex I to Directive 2004/39/EC of the European Parliament and of the Council;

Amendment

2. 'investment business' shall mean **any of the** investment services and activities as defined in Article 4(1)(2) of Directive 2004/39/EC and the ancillary service referred to in point 1 of Section B of the Annex I to Directive 2004/39/EC of the European Parliament and of the Council;

Amendment 2

Proposal for a directive – amending act

Article 1 – point 1 – point a a (new)

Directive 97/9/EC

Article 1 – point 3

Text proposed by the Commission

Amendment

(aa) Point 3 is replaced by the following:

"3. 'instruments' shall mean the instruments listed in Section C of Annex I to Directive 2004/39/EC;"

Justification

The definition of the instruments should also be updated in accordance with MiFID.

Amendment 3

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 97/9/EC

Article 2 – paragraph 2 – point b

Text proposed by the Commission

(b) a judicial authority has made a ruling, for reasons directly related to the financial circumstances of the investment firm or the financial circumstances of any third party with whom financial instruments have been deposited by the investment firm, which has the effect of suspending investors' ability to make claims against the firm or the firm's ability to make claims against the third party.

Amendment

(b) a judicial authority has made a ruling ***which is enforceable, in accordance with the Member State's legislation***, for reasons directly related to the financial circumstances of the investment firm or the financial circumstances of any third party with whom financial instruments have been deposited by the investment firm, which has the effect of suspending investors' ability to make claims against the firm or the firm's ability to make claims against the third party.

Justification

A court decision could, also, be subject to appeals or simply enforceable. This provision should refer only to enforceable ones.

Amendment 4

Proposal for a directive – amending act

Article 1 – point 4 – point d

Directive 97/9/EC

Article 4 – paragraph 4

Text proposed by the Commission

(d) Paragraph 4 is ***deleted***.

Amendment

(d) Paragraph 4 is ***replaced by the following***:

"4. A Member State may limit the cover provided for in *this Directive* to a specified percentage of an investor's claim. The percentage covered *shall*, however, be equal to or exceed 80 % of the claim as long as the amount to be paid under the *compensation* scheme is lower than *that provided for in this*

Directive."

Justification

Considering that funding the compensation scheme is made out of the members contributions, which pose a serious financial burden on them, it is equitable that part of the potential loss to be borne also by the investors (as in good insurance). 20% should be a fair percentage.

Amendment 5

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 1 – point b

Text proposed by the Commission

(b) the situation referred to in point (a) of this subparagraph is due to **a lack** of funds as referred to in Article 4a(3);

Amendment

(b) the situation referred to in point (a) of this subparagraph is due to **the fact that the target level** of funds as referred to in Article 4a(3) **has not been reached**;

Justification

For a better clarification.

Amendment 6

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 3 – subparagraph 2

Text proposed by the Commission

ESMA shall transmit its confirmation together with the information referred to in paragraph (g) to the lending Schemes. They shall receive this confirmation and information within 15 working days. The lending schemes shall, without delay but at the latest within further **15 working days** after reception effect payment of the loan to the borrowing scheme.

Amendment

ESMA shall transmit its confirmation together with the information referred to in paragraph (g) to the lending Schemes. They shall receive this confirmation and information within 15 working days. The lending schemes shall, without delay but at the latest within further **30 working days** after reception effect payment of the loan to the borrowing scheme.

Justification

30 days is more realistic term.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

All other claims shall be subordinate to that of the compensation scheme which granted the loan. The scheme shall be considered to be a privileged creditor and shall have first rank of preference.

Justification

Because a loan from another compensation scheme is a measure of last resort and an exceptional one, and because this compensation scheme is a foreign party, this loan should be repaid first.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 4 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Without prejudice to the second subparagraph, Member States may establish other priorities in preference between different categories of creditors.

Justification

See the justification to AM 7.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 5

Directive 97/9/EC

Article 4 b – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. In order to facilitate an effective cooperation between investor-compensation schemes, the schemes, or, where appropriate, the competent authorities, shall **have** written cooperation agreements **in place**. Such agreements shall take into account the requirements set out in Directive 95/46/EC of the European Parliament and of the Council.

Amendment

5. In order to facilitate an effective cooperation between investor-compensation schemes, the schemes, or, where appropriate, the competent authorities, shall **conclude** written cooperation agreements. Such agreements shall take into account the requirements set out in Directive 95/46/EC of the European Parliament and of the Council **of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data**.

Justification

It should be clear that the cooperation agreements between the schemes are mandatory and not optional.

Amendment 10

Proposal for a directive – amending act

Article 1 – point 6

Directive 97/9/EC

Article 5 – paragraph 2

Text proposed by the Commission

2. If the measures referred to in paragraph 1 fail to secure compliance on the part of the investment firm, UCITS, depositary or third party, the scheme may, with the express consent of the competent authorities, give not less than **12 months'** notice of its intention of excluding the investment firm, UCITS, depositary or third party from membership of the scheme. The scheme shall continue to

Amendment

2. If the measures referred to in paragraph 1 fail to secure compliance on the part of the investment firm, UCITS, depositary or third party, the scheme may, with the express consent of the competent authorities, give not less than **six months'** notice of its intention of excluding the investment firm, UCITS, depositary or third party from membership of the scheme. The scheme shall continue to

provide the coverage referred to in Article 2(2a) and (2c) in respect of investment business or UCITS activities carried on during that period. If, on expiry of the period of notice, the investment firm, UCITS, depositary or third party has not met its obligations, the compensation scheme may, again having obtained the express consent of the competent authorities, exclude it.

provide the coverage referred to in Article 2(2a) and (2c) in respect of investment business or UCITS activities carried on during that period. If, on expiry of the period of notice, the investment firm, UCITS, depositary or third party has not met its obligations, the compensation scheme may, again having obtained the express consent of the competent authorities, exclude it.

Justification

6 months is a more appropriate term for this extreme situation.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In the absence of special provisions, claims shall be divided equally amongst investors.

deleted

Amendment 12

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 8 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In the event that an investor's claim cannot be fully covered, that investor shall benefit from the same rate of coverage for the aggregate claim.

Justification

The pro-rata principle should be written in an unequivocal way.

Amendment 13

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 8 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Where an investor is not entitled to the sums or *securities* held, the person who is entitled shall receive the compensation, provided that that person has been or can be identified before the date of the determination or ruling referred to in Article 2(2) and (2b).

Amendment

Where an investor is not entitled to the sums or *instruments* held, the person who is entitled shall receive the compensation, provided that that person has been or can be identified before the date of the determination or ruling referred to in Article 2(2) and (2b).

Amendment 14

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The fact that that period has expired may not be invoked by the scheme to deny coverage to an investor who has been unable to assert his right to compensation in time.

Amendment

The fact that that period has expired may not be invoked by the scheme to deny coverage to an investor who has been unable to assert his right to compensation in time, *save in the situation of negligence on the part of the investor.*

Amendment 15

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 9 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Investment firms and UCITS shall disclose on their websites, or make available in writing, all information concerning the terms and conditions

regarding access to the compensation scheme and the procedure for obtaining payment thereunder.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 7

Directive 97/9/EC

Article 9 – paragraph 3

Text proposed by the Commission

3. Notwithstanding the time limit laid down in the first subparagraph of paragraph 2, where an investor or any other person entitled to or having an interest in investment business has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of Directive 2005/60/EC or is the subject of action for contravention of Directive 2003/6/EC, the compensation scheme may suspend any payment pending the judgment of the court or determination of a competent authority.

Amendment

3. Notwithstanding the time limit laid down in the first subparagraph of paragraph 2, where an investor or any other person entitled to or having an interest in investment business has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of Directive 2005/60/EC *in relation to money that is the subject of this Directive*, or is the subject of action for contravention of Directive 2003/6/EC, the compensation scheme may suspend any payment pending the judgment of the court or determination of a competent authority.

Justification

It is clearly stated that not any compensation is rejected but that compensation that is subject to the money laundry.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 9

Directive 97/9/EC

Article 12 – paragraph 1

Text proposed by the Commission

1. Without prejudice to any other rights which they may have under national law, schemes which make payments in order to compensate investors shall have the right

Amendment

1. Without prejudice to any other rights which they may have under national law, schemes which make payments in order to compensate investors shall have the right

of subrogation to the rights of those *investors* in liquidation proceedings for amounts equal to their payments.

of subrogation to the rights of those in liquidation proceedings for amounts equal to their payments.

Justification

Those being in the liquidation procedure are the investment firms, the depositary or the third party, and not the investors.

Amendment 18

**Proposal for a directive – amending act
Article 2 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. By derogation from paragraphs 1 and 2, Member States that benefit under the Accession Treaties from transitional periods regarding the transposition of Article 4 of Directive 97/9/EC shall comply with paragraphs 1 and 2 from the date when their respective transitional periods expire.

Justification

It is necessary that the amendments to this directive to consider the situation of the Member States which benefit of transitional periods, due to the fact that such periods are mentioned in the Accession Treaties.

PROCEDURE

Title	Amendment of Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes
References	COM(2010)0371 – C7-0174/2010 – 2010/0199(COD)
Committee responsible	ECON
Opinion by Date announced in plenary	JURI 7.9.2010
Rapporteur Date appointed	Sebastian Valentin Bodu 27.10.2010
Discussed in committee	2.12.2010 27.1.2011
Date adopted	22.3.2011
Result of final vote	+: 12 -: 10 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Jan Philipp Albrecht, Luis de Grandes Pascual, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Angelika Niebler

PROCEDURE

Title	Amendment of Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes		
References	COM(2010)0371 – C7-0174/2010 – 2010/0199(COD)		
Date submitted to Parliament	12.7.2010		
Committee responsible Date announced in plenary	ECON 7.9.2010		
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 7.9.2010	JURI 7.9.2010	
Not delivering opinions Date of decision	IMCO 2.9.2010		
Rapporteur(s) Date appointed	Olle Schmidt 6.9.2010		
Legal basis disputed Date of JURI opinion	JURI 27.1.2011		
Discussed in committee	9.11.2010	14.2.2011	22.3.2011
Date adopted	13.4.2011		
Result of final vote	+: 35	–: 0	0: 5
Members present for the final vote	Burkhard Balz, Sharon Bowles, Udo Bullmann, Nikolaos Chountis, George Sabin Cutaş, Rachida Dati, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Elisa Ferreira, Vicky Ford, Ildikó Gáll-Pelcz, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Íñigo Méndez de Vigo, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Theodor Dumitru Stolojan, Ivo Strejček, Kay Swinburne, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool		
Substitute(s) present for the final vote	François Alfonsi, Elena Băsescu, Pervenche Berès, David Casa, Robert Goebbels, Carl Haglund, Thomas Händel, Krišjānis Kariņš		
Date tabled	19.4.2011		