Directive 97/9/EC on investor-compensation schemes

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Structure

1. What is ICSD ?
2. What are its main elements?
3. Experience

ICSD

- Directive adopted on 3 March 1997
- inspired by Directives 93/22/EC (ISD) and 94/19/EC (deposit-guarantee schemes)
- integral part of the framework for the establishment of a single market in financial services
- guarantees minimum level of ‘last resort’ protection for small investors when firms unable to return client funds or financial instruments

Main elements 1

- MS must establish an officially recognised compensation scheme in which all investment firms participate (Art. 2.1)
- Scheme provides cover for investors where (Art. 2.2):
  - A competent authority determines that an investment firm is unable to meet its obligations arising out of investors' claims
  - A judicial authority has made a ruling to the effect of suspending investor's ability to make claims against the firm
- Cover shall be provided for claims out of an investment firm's inability to :
  - Repay money owed to or belonging to investors
  - Return financial instruments belonging to the investors and are held by the firm
- No claim eligible for compensation more than once under this directive and Directive 94/19/EC (Art. 2.3)
- Amount of an investor's claim depends on the date of the determination/ruling and should be determined where possible by reference to the market value (Art. 2.3)
- Claims arising out of transactions in connection with money laundering are excluded from compensation (Art. 3)

Main elements 2

- Schemes must provide cover of at least 20,000 euros (Art. 4.1)
- MS may provide that certain investors are excluded (Art. 4.2, Annex I)
- clients may bear up to 10% of the loss (Art. 4.4)
- If an investment firm does not meet its obligations towards the scheme:
  - Competent authority is notified must take all measures to secure compliance (Art. 5.1)
  - If this fails, notice of exclusion (where permitted under natl. law) is given with a 12 month period
  - If no compliance after 12 months – firm is excluded from the scheme (Art 5.2)
  - All this is subject to express consent form the competent authority
  - An excluded firm may continue to provide services only where natl. law provides for this and only if the firm made alternative compensation arrangements (Art 5.3)
  - Otherwise, a firm excluded from a scheme shall have its authorisation withdrawn (Art 5.4)
  - Cover is provided to investors up to the withdrawal of authorisation (Art. 6)

Main elements 3

- Schemes must cover investors at branches set up in other MS (Art. 7.1)
- Host MS must ensure that there is a scheme which a branch may join <u>voluntarily</u> to supplement the level of cover if it differs from its home scheme (Art. 7.1)
- All branches are treated as a single entity

Main elements 4

- Schemes must inform investors when a compensation event takes place (Art. 9)
- Investors have at least five months to make a claim
- Claims must be paid as soon as possible and at the latest in three months after the establishment of eligibility

Main elements 5

- Adequate information must be given to investors on the scheme (Art. 10)
- Third-country branches must provide equivalent cover (Art. 11) or join a scheme in their home country
- Investors must have a right to take legal action against the scheme (Art. 13)

Experience

- there are considerable differences across MS (structure, governance, participation, funding, level of cover, etc.)
- overall only few cases of failure triggering the operation of investor compensation schemes
- evaluation and study available at http://www.europa.eu.int/comm/dgs/internal_market/evaluation/eval_compl_en.htm

Thank you for your attention

Questions?

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