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"I" ITEM NOTE

from :	Presidency
to :	Permanent Representatives Committee (Part 2)
No. Cion prop. :	12346/10 EF 81 ECOFIN 458 CODEC 708 – COM(2010) 371 final
Subject :	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 - Progress report

I. INTRODUCTION

1. The Commission's proposal for a Directive of the European Parliament and of the Council amending Directive 97/9/EC on investor-compensation schemes was transmitted to the Council on 12 July 2010.

2. Building on the progress made by the Belgian Presidency, the proposal was examined by the Working Party on Financial Services at four meetings during the Hungarian Presidency (28 January, 24 February, 18 March, 12 April 2011). During the discussions and in order to take into account Member States' concerns, the Hungarian Presidency tabled three compromise texts[1].

[1] Doc. 5633/11 EF 7 ECOFIN 28 CODEC 98; doc.7659/11 EF 28 ECOFIN 134 CODEC 403; and doc. 8174/11 EF 38 ECOFIN 163 CODEC 502.

3. The Committee on Economic and Monetary Affairs of the European Parliament adopted its report on 13 April 2011 and the European Parliament has indicated its intention to vote its position at first reading.

II. STATE OF PLAY

4. In general, Member States welcomed the aim of the Commission's proposal to improve investors' protection. However, during the Working Party meetings some proposed provisions were subject to strong reservations and are still under discussion. The main concerns are related to the increase of the coverage level and the harmonisation of funding principles.

Coverage level

5. The views of Member States on this issue varied to a large extent. While a number of Member States questioned the necessity of the increase from the current level of at least 20 000 EUR, others were ready to introduce a maximum harmonised level and accept the Commission proposal of 50 000 EUR. A few Member States already offer a higher amount of protection than the proposed level. In order to accommodate all of the needs, the Presidency proposed to maintain the minimum harmonisation principle and introduced a coverage level of 30 000 EUR in its compromise text.

Harmonisation of funding principles

6. The opinions of the Member States regarding the necessity and the extent of harmonisation of funding of investor compensation schemes (ICS) are divergent. Some Member States would welcome a harmonised pre-funded system, claiming that an *ex ante* system is essential in order to protect the interests of investors. Other Member States expressed the view that each Member State should remain responsible to determine and ensure adequate financing methods of their ICS (*ex ante*, *ex post* or a combination of both).

7. In order to offer an alternative to *ex ante* financing and in order to ensure adequate financial guarantees, the Presidency introduced the concept of payment commitments. These could combine the advantages of prefunding financing in terms of security, with the advantage of investment firms receiving the interest due on the payment commitment in a similar way to *ex-post* financing.

Target fund level

8. Several Member States found the target fund level too high for the ICS. A large majority of Member States expressed that the target level must be established at a substantially lower level than proposed by the Commission. Therefore, to make the proposal more acceptable to the Member States, the Presidency proposed that the target funds should be composed of available financial means of at least 0,5% of the value of the monies and of at least 0,05% of the value of the financial instruments held, administered or managed by the investment firms that are covered by the scheme.

Borrowing between national schemes

9. As nearly all Member States were strongly opposed to a mandatory borrowing mechanism proposed by the Commission, the Presidency proposed to modify this provision to a borrowing on a voluntary basis.

Alignment with the Markets in Financial Instruments Directive (MIFID)

10. With regard to the scope and alignment with MIFID, some Member States were of the opinion that widening the scope to include investment firms not authorised to hold clients' assets is unnecessary. In order to keep these situations within the scope of the proposal, the Presidency proposed an obligation of an annual fixed contribution for these firms. However, some further discussion on this issue might be necessary.

Extension of coverage in case of failure of a UCITS depository

11. As most Member States raised serious concerns about the extension of coverage in case of failure of a UCITS depository, the Presidency deleted this provision from its compromise text. The possible extension can be further examined taking into account the forthcoming proposal on the UCITS depositories' liability regime.

Extension of coverage in case of failure of a third party custodian

12. With regard to covering the cases of failure of third party custodians, Member States expressed reservations related to the uncertainty about which entities should be members of and contribute to the ICS. The Presidency amended its text determining the investment firm as the only entity in the custodian chain to pay contribution to the ICS. Member States nevertheless had some doubts about the necessity of extending the coverage for failure of third party custodians, so these provisions could be evaluated further.

Partial payout

13. Since large number of the Member States were opposed to the idea of the provisional payout proposed by the Commission, the Hungarian Presidency introduced the definition of partial payment in its latest compromise text. Partial payout could be based on the establishment of the eligibility of a part of the claim. Although this principle seemed to be supported by most Member States, some fine-tuning of the procedures is still required.

III. CONCLUSION

14. Based on this document, the Permanent Representatives' Committee is invited to:

- take note of progress achieved with regard to the above-mentioned proposal; and
- invite the incoming Polish Presidency to continue work on this proposal, taking into account the latest compromise text of the Hungarian Presidency (doc. 8174/11 EF 38 ECOFIN 163 CODEC 502), with a view to reaching a final agreement.