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Article 41a

Staff and resource of ESMA

By 31 December 2011, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

Article 42

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [1 July 2012].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Investor-compensation schemes *I**

P7_TA(2011)0313

European Parliament legislative resolution of 5 July 2011 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))

(2013/C 33 E/37)

(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 Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to the reasoned opinions, submitted, within the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament and the United Kingdom House of Commons, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Central Bank ⁽¹⁾,

⁽¹⁾ OJ C 99, 31.3.2011, p. 1.

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- 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.

P7_TC1-COD(2010)0199

Position of the European Parliament adopted at first reading on 5 July 2011 with a view to the adoption of Directive 2011/.../EU of the European Parliament and of the Council amending Directive 97/9/EC on investor-compensation schemes

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) At the request of the Commission, a report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crisis and recommended far-reaching reforms to the structure of supervision of the financial sector in the European Union, including the creation of a European System of Financial Supervisors, comprising three European Supervisory Authorities, one for the securities sector, one for the insurance and occupational pensions sector and one for the banking sector, and the creation of a European Systemic Risk Board. The Commission Communication of 4 March 2009, "Driving European Recovery", proposed to strengthen the Union's regulatory framework for financial services, and, in particular, to enhance investor protection. The Commission put forward, in September 2009, the legislative package for the creation of the new authorities, including the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾, in particular to contribute to a consistent application of Union law and to the establishment of high-quality common regulatory and supervisory standards and practices.

⁽¹⁾ OJ C 99, 31.3.2011, p. 1.

⁽²⁾ Position of the European Parliament of 5 July 2011.

⁽³⁾ OJ L 331, 15.12.2010, p. 84.

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- (2) It is necessary to amend Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes ⁽¹⁾ in order to maintain confidence in the financial system and to better protect investors in view of the developments in the legal framework of the Union, the evolution in the financial markets and the problems experienced in the application of that Directive in Member States where investment firms are unable to return assets held on behalf of clients.
- (3) At the time of its adoption, Directive 97/9/EC complemented Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ⁽²⁾ to ensure that each Member State would set up an investor-compensation system to guarantee a harmonised minimum level of protection, at least for small investors, in the event of an investment firm being unable to meet its obligations to its clients. When Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽³⁾ repealed Directive 93/22/EEC, it introduced a new list of investment services and activities in order to encompass the full range of investor-oriented activities and to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Union. Therefore, it is necessary to align Directive 97/9/EC with Directive 2004/39/EC in order to ensure that the provision of all investment services and activities continue to be adequately covered under schemes.
- (4) At the time of its adoption, Directive 97/9/EC took into account the coverage and the functioning of deposit-guarantee schemes as regulated under Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes ⁽⁴⁾. Consequently, it is appropriate to continue taking into account any amendment to Directive 94/19/EC.
- (5) Investors may not be aware of ~~any limits~~ **lacking or limited authorisations** of investment ~~firms'~~ **authorisations firms**, thus it is necessary to protect them in situations in which investment firms act **without, or** in breach of their authorisation, in particular by holding client assets or providing services to a particular type of client **without, or** in breach of, 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. [Am. 1]
- (6) 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 ⁽⁵⁾ allows investment firms to deposit financial instruments held on behalf of clients into accounts opened with a third party. The third party is not necessarily subject to specific regulation and supervision. Notwithstanding compliance with Directive 2006/73/EC, failure of the third party may affect investors' rights if that third party is not able to return the financial instruments to the investment firm. In order to strengthen investor confidence, it is appropriate to extend compensation under Directive 97/9/EC, without prejudice to applicable national liability regimes, to the inability of an investment firm to return client financial instruments due to the failure of a third party where the financial instruments have been deposited by the investment firm or by its custodians.

⁽¹⁾ OJ L 84, 26.3.1997, p. 22.

⁽²⁾ OJ L 141, 11.6.1993, p. 27.

⁽³⁾ OJ L 145, 30.4.2004, p. 1.

⁽⁴⁾ OJ L 135, 31.5.1994, p. 5.

⁽⁵⁾ OJ L 241, 2.9.2006, p. 26.

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- (7) Directive 2006/73/EC requires investment firms to place any client funds they receive into one or more accounts opened with a third party. Those third-parties comprise central banks, credit institutions or banks authorised in a third country, or a qualifying money market fund. The strict regime ensured by Directive 2006/73/EC makes it unnecessary to extend coverage to the failure of a third party where funds have been deposited.
- (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 could be covered by Directives 94/19/EC or 97/9/EC, investors~~ should be compensated under Directive 94/19/EC. [Am. 2]
- (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; ~~or 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 diminish the responsibility of investment firms ~~or UCITS~~ to recover assets from a depositary or custodian. [Am. 3]
- (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) ⁽¹⁾ requires the UCITS' assets to be held in safekeeping by a depositary. ~~If 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, 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. 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. A report on that analysis should be submitted to the European Parliament and to the Council, together with legislative proposals if necessary.~~ [Am. 4]
- (11) Directive 97/9/EC already excludes from any compensation under investor-compensation schemes claims arising out of transactions where a criminal conviction has been obtained for money laundering within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ⁽²⁾. It is also appropriate to exclude any claim for compensation where the assets concerned result from conduct prohibited under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽³⁾ in which the claimant has been involved.
- (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~~ **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. [Am. 5]

⁽¹⁾ OJ L 302, 17.11.2009, p. 32.

⁽²⁾ OJ L 309, 25.11.2005, p. 15.

⁽³⁾ OJ L 96, 12.4.2003, p. 16.

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- (13) In order to ensure investors receive the compensation provided for under Directive 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 investor-compensation 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 ~~ten-year~~ **five-year** period. [Am. 6]
- (14) Where necessary, exceptional calls for contributions to the members of the scheme or access to borrowing sources, such as from commercial banks or public institutions on commercial grounds, should ensure a timely coverage of any needs which is not covered by the funds collected from members prior to the occurrence of loss events.
- (15) The functioning of the schemes is currently highly differentiated across 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** ~~should be empowered to adopt delegated acts on in respect of~~ certain essential features of the functioning of schemes ~~in accordance with Article 290 of the Treaty~~. In particular delegated acts should be adopted in respect of the method to determine the potential liabilities of the schemes, the factors to be considered in assessing the ability of additional contributions not to jeopardise the stability of the financial system of a Member States, the alternative funding arrangements that schemes must have in place to be able, where necessary, to obtain short-term funding, and the criteria to determine the contributions by entities covered by the schemes. ~~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~~ **The power to adopt acts in accordance with Article 290 of the TFEU should also be delegated to the Commission** to determine the method **by which** to calculate the target fund level to be established by the schemes and to modify that target fund level, the percentage of the determined ceiling of the funds available for lending between investor-compensation schemes, procedures by which 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,~~ amendments to the percentage of funds available for lending taking into account the developments in the financial markets. [Am. 7 and Am. 12]
- (15a) In order to ensure uniform conditions of application of the provisions concerning the financing of the schemes, ESMA should develop **draft implementing** technical standards regarding the details to be made public by the schemes. [Am. 7]
- (16) In order to ensure that investors receive compensation in due time, a last resort borrowing mechanism among investor-compensation schemes in the Union should be established. The system should include the possibility for investor-compensation schemes to borrow funds from other schemes in the exceptional case they face a temporary lack of funding. For this purpose, a portion of ex-ante funding in each scheme should be available for lending to other investor-compensation schemes.
- (16a) **Competent 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.** [Am. 8]

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- (16b) *The Member States should encourage an institutionalised dialogue between consumer-protection organisations and authorities, competent authorities and investor-compensation schemes to prevent further compensation cases arising. The Member States should establish a framework for dialogue in order to detect problems at an early stage and report problems such as dysfunctional market practices, suspect providers, products or company structures to supervision and investor compensation schemes.* [Am. 9]
- (17) The borrowing mechanism should not impinge on any fiscal responsibility of the Member States. The borrowing schemes should be able to have 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 Directive 97/9/EC are fulfilled and should state, within the strict limits set by that 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 the competent authorities. It should inform the other investor-compensation schemes of their obligation to lend. [Am. 10]
- (18) In order to simplify the lending process, if more than one scheme is established in a Member State, the Member State should designate one scheme acting as the lending scheme of that Member State and should inform ESMA accordingly. Borrowing should be limited to the coverage of compensation deriving from Directive 97/9/EC.
- (19) It is necessary to ensure that the overall funds available for lending may be used to satisfy a plurality of requests from borrowing schemes. For this purpose, no loan should exceed a pre-determined threshold of funds available for lending.
- (20) In order to accelerate the compensation process, the determination by a competent authority of the fact that an investment firm is not able to meet its obligations arising out of investors' claims should be made as soon as possible.
- (21) The procedures necessary to establish the validity and the amount of a compensation claim, often depending on national administrative and insolvency laws, may cause long delays in the payments to investors. In order to shorten payment delays, it is necessary to ensure that, in systems or situations where the validity and the amount of the claim depends on insolvency or judicial procedures regarding the entities failing to meet their obligations, the schemes should be able to participate in those procedures. In addition, the obligation to grant a provisional payout of partial compensation should be provided for in the case of delays longer than 12 months in order to allow investors to receive a portion of the compensation claimed. Mechanisms to return the money to the schemes in case it is established that the claim was not valid should be envisaged.
- (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, to large undertakings, Directive 97/9/EC should refer to investors who are considered as

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professional clients according to Directive 2004/39/EC. ***In order to ensure an appropriate level of protection for all relevant investors, Member States should be able to bring micro-entities, non-profit organisations and public local authorities within the scope of Directive 97/9/EC.*** [Am. 11]

(23) [Content of Recital 23 moved to Recital 15]

(24) Directive 97/9/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 97/9/EC

Directive 97/9/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) points 2, 3 and 4 are replaced by the following:

"2. 'investment business' shall mean investment services and activities as defined in Article 4(1)(2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (*) and the ancillary service referred to in point 1 of Section B of the Annex I to that Directive;

3. 'instruments' shall mean the instruments listed in Section C of Annex I to Directive 2004/39/EC; [Am. 13]

4. 'investor' shall mean, in relation to investment business, any ***natural or legal*** person, ***including micro-entities, non-profit organisations and public local authorities***, who has entrusted money or instruments to an investment firm, ~~and in relation to the activities of UCITS, a unit holder or share holder in a UCITS (hereafter "unit holder");~~ [Am. 14]

(*) OJ L 145, 30.4.2004, p. 1.;

(b) [Content of point (b) moved to point (a)]

(c) point 7 is replaced by the following:

"7. 'competent authorities' shall mean 'competent authority' as defined in Article 4(1)(22) of Directive 2004/39/EC ~~and in Article 2(1)(h) of Directive 2009/65/EC of the European Parliament and of the Council (*)~~. [Am. 15]

Where this Directive refers to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (**) (ESMA) investor-compensation schemes shall, for the purpose of that regulation, be considered competent authorities under Article 4(3)(iii) thereof;

(*) ~~OJ L 302, 17.11.2009, p. 32.~~

(**) OJ L 331, 15.12.2010, p. 84.;

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(d) the following points are added:

"8. ~~'UCITS' means an undertaking as defined in Article 1(2) and (3) of Directive 2009/65/EC;~~
[Am. 15]

9. ~~'depository' means in relation to UCITS activities, an institution as defined in Article 2(1)(a) of Directive 2009/65/EC;"~~ [Am. 16]

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; ~~in relation to a UCITS business, an institution with whom a UCITS depository has entrusted assets on behalf of the UCITS;~~ [Am. 17]

11. 'low-risk assets' shall mean asset items falling into one of the categories set out in the first and second category of Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (**) but excluding asset items defined as qualifying items in point 15 of that Annex.

(*) OJ L 241, 2.9.2006, p. 26.

(**) OJ L 177, 30.6.2006, p. 201.";

(e) ~~The following paragraph 2 is added:~~

~~"2. The provisions of this Directive applying to investment firms shall apply to management companies authorized in accordance with Directive 2009/65/EC, where their authorization also covers the services listed in Article 6(3) of that Directive."~~[Am. 15]

(2) Article 2 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

"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 ~~or UCITS authorized in that Member State~~ shall carry on investment business ~~or carry on activities as a UCITS~~, unless it belongs to such a scheme."; [Am. 18]

(b) paragraph 2 is replaced by the following:

"2. An investor-compensation scheme shall provide coverage for investors in relation to investment business in accordance with Article 4 where one of the following conditions is met:

(a) the competent authorities have determined that an investment firm appears 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 monies that do 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

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- (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 **or monies that do not fall within the scope of Directive 94/19/EC** 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. [Am. 19]

Member States shall ensure that competent authorities make the determination referred to in point (a) of the first subparagraph as soon as possible and in any event within three months after first becoming aware that an investment firm has failed to meet its obligations arising out of investors' claims.

2a. The coverage referred to in paragraph 2 shall be provided in accordance with the legal and contractual conditions applicable for claims arising out of an investment firm's inability to perform either of the following:

- (a) repay money owed or belonging to investors and held on their behalf in connection with investment business;
- (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.** [Am. 20]

Member States shall ensure that investor-compensation schemes provide coverage where financial instruments or monies are held, administered or managed for or on behalf of an investor, irrespective of the type of investment business being carried on by the firm and of whether or not the firm is acting in accordance with any restriction set out in its authorisation.

~~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:~~

- ~~(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. [Am. 21]~~

~~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:~~

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

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~~(b) return to the UCITS any instruments belonging to it and held or administered on its behalf in connection with UCITS activities"; [Am. 22]~~

(c) [Content of point (c) as amended moved to point (b)]

(d) paragraph 3 is replaced by the following:

"3. Any claim referred to in paragraph 2a on a credit institution which, in a given Member State, would be valid both under this Directive and under Directive 94/19/EC shall be dealt with under Directive 94/19/EC alone. No claim shall be valid more than once under those directives."

(3) Article 3 is replaced by the following:

"Article 3

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(2) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (*), ~~or~~;

(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 (**), ~~shall be excluded from any compensation under investor-compensation schemes; and~~

(c) **those relating to the direct or indirect financing of terrorist groups, which is the subject of Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups (***)**.

(*) OJ L 309, 25.11.2005, p. 15.

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

(***) OJ C 373, 23.12.1999 p. 1". [Am. 23]

(4) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall ensure that investor-compensation schemes provide for coverage of ~~EUR 50 000~~ **EUR 100 000** for each investor in respect of the claims referred to in Article 2(2a) ~~or~~ (2e).

Members States in which the coverage is more than ~~EUR 50 000~~ **EUR 100 000** on ... (*) may maintain that level of coverage for no longer than three years from that date. Thereafter, those Member States shall ensure that the level of coverage is ~~EUR 50 000~~ **EUR 100 000**.

Member States which convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on... (*).

Member States may round off the amounts resulting from the conversion, provided that such rounding off does not exceed EUR 2 500.

(*) Date of entry into force of the amending Directive.

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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~~ **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."; [**Am. 22, 25 and 26 and point 1 of the corrigendum** ⁽¹⁾]

(b) the following paragraph is inserted:

"1a. The Commission ~~may adjust by means of~~ **shall be empowered to adopt** delegated acts **in accordance with Article 13a to adjust** the coverage referred in paragraph 1, taking into account the following parameters: [**Am. 27**]

(a) inflation in the Union, on the basis of changes in the harmonised index of consumer prices published by the Commission;

(b) average amount of funds and financial instruments held by investment firms on behalf of retail investors.";

(c) paragraph 2 is replaced by the following:

"2. A Member State may provide for certain investors to be excluded from coverage by investor-compensation schemes for claims referred to in Article 2(2a) ~~or (2c)~~ or to be granted a lower level of coverage. Those exclusions shall be as listed in Annex I."; [**Am. 22**]

(d) paragraph 4 is deleted.

(5) The following articles are inserted:

"Article 4a

1. Member States shall ensure that investor-compensation schemes have in place adequate systems to determine their potential liabilities. Member States shall ensure that investor-compensation schemes are adequately financed in proportion to their liabilities. **Member States shall provide ESMA on a regular basis with relevant information concerning the potential liabilities and the correlated proportional financing.** [**Am. 28**]

2. Member States shall ensure that each investor-compensation scheme establishes a target fund level of at least ~~0.5 %~~ **0,3 %** 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 annually as at ~~1 January~~ **31 December**. [**Am. 29**]

The Commission shall **be empowered to 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 by which 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.~~

⁽¹⁾ P7_TA-PROV(2011)0313(COR01).

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Taking into account the value of the covered monies calculated annually 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 also be empowered to adopt delegated acts in accordance with Article 13a to amend the minimum value of the target fund level. 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 investor-compensation schemes in their territory 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. [Am. 30]*

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 target level of funding for each investor-compensation scheme is reached ~~within a ten-year period after the entry into force of this Directive by ... ⁽⁺⁺⁾~~ and that each investor-compensation scheme adopts and complies with an appropriate planning in order to fulfil this objective. [Ams. 21 and 31]

Contributions collected to reach the target fund level shall be invested only in cash deposits and low-risk assets with a residual term to financial maturity of 24 months or less, which can be liquidated within a time limit not exceeding one month.

3a. *Each member's contribution to an investor-compensation scheme shall be determined on the basis of the degree of risk incurred. To achieve a certain level of harmonisation in the application of this paragraph across the Member States, the Commission shall adopt delegated acts in accordance with Article 13a to clarify how the contribution of each member to an investor-compensation scheme is to be determined. [Am. 32]*

3b. *Competent authorities may reduce the contributions of members of the investor-compensation scheme that voluntarily take additional measures to reduce the operational risk.*

⁽⁺⁾ Two years from the date of entry into force of the amending Directive.

⁽⁺⁺⁾ Five years from the date of entry into force of the amending Directive.

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

The target fund level of the investor-compensation scheme shall not be affected by any such reduction. [Am. 33]

3c. In order to ensure uniform conditions of application of paragraph 3b, ESMA shall develop draft implementing technical standards to establish the conditions for reducing the contributions to an investor-compensation scheme.

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

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with 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 its legal status and the legal framework applicable at its seat. [Am. 34]

4. Member States shall allow the investor-compensation schemes to make additional calls for contributions by the members of the scheme where 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 %~~ **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 (*).** [Am. 35]

5. Member States shall ensure that investor-compensation 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~~ **commercial lending arrangements and lending** facilities from commercial banks. ~~They may also include borrowing facilities from~~ **and** public institutions, **including from the Member States**, provided that those facilities are based on commercial grounds. [Am. 36]

6. Member States shall ensure that the cost of financing investor-compensation schemes is ultimately borne in relation to investment business **and only** 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~~ that are covered by the scheme. Regular contributions by members shall be raised annually. [Am. 37]

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

(a) the schemes are able to levy their members in order to make payments within the period laid down 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. [Am. 38]

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7. Member States shall annually inform the ESMA of the target fund level, as referred to in paragraph 2, and the level of funding, as referred to in paragraph 3, of the investor-compensation schemes in their territory. This information shall be confirmed by the competent authorities and shall, accompanied by this confirmation, be transmitted to the ESMA annually by 31 January.

Member States shall ensure that the information referred to in the first subparagraph is published on the web-site of the investor-compensation schemes at least on an annual basis.

7a. Member States shall ensure that investor-compensation schemes receive from their members, at any time and in any event at their request, all information necessary to prepare a repayment of investors. [Am. 39]

8. Member States shall ensure that ~~10 %~~ **5 %** of the ex-ante funding amount of the investor-compensation schemes referred to in paragraph 2 is available for lending to other investor-compensation schemes under the conditions established in ~~Article 4~~ **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. [Am. 40]~~

9. The Commission shall adopt delegated acts in accordance with Article 13a to determine:

- (a) the method to determine the potential liabilities of investor-compensation schemes as referred to in paragraph 1 **and the risk-based contributions; [Am. 41]**
- (b) the factors to be considered in assessing the ability of additional contributions as referred to in paragraph 4 to not jeopardise the stability of the financial system of a Member State;
- (c) the alternative funding arrangements as referred to in paragraph 5 that investor-compensation schemes must have in place to be able to obtain short term funding if necessary;
- (d) the criteria to determine the contributions by entities covered as referred to in paragraph 6.

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 **implementing** technical standards to the Commission by 31 December 2012.

Power is conferred on the Commission ~~may to~~ adopt the ~~draft~~ **implementing** technical standards referred to in the first subparagraph in accordance with ~~Article 7e~~ **Article 15** of Regulation (EU) No 1095/2010. **[Am. 42]**

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Article 4b

1. **After ...** ⁽⁺⁺⁺⁾, an investor-compensation scheme ~~shall have the right to~~ **may** borrow from all other investor-compensation schemes referred to in Article 2 within the Union subject to the following conditions: **[Am. 43]**

- (a) the borrowing investor-compensation scheme is not able to fulfil its obligations under Article 2(2a) ~~or (2e)~~ because of previous payments made to fulfil those obligations; **[Am. 22]**
- (b) **the borrowing investor-compensation scheme** ~~the situation referred to in point (a) is due to a lack of funds as previously reached the target fund level referred to in Article 4a(3)~~ **Article 4a(2);** **[Am. 44]**
- (c) the borrowing investor-compensation scheme has made recourse to additional contributions referred in Article 4a(4);
- (d) the borrowing investor-compensation scheme has undertaken the legal commitment that the borrowed funds will be used in order to pay claims under Article 2(2a) ~~and (2e)~~; **[Am. 22]**
- (e) **[Point moved down as a new third subparagraph]**
- (f) the borrowing investor-compensation scheme has established the amount of money requested;
- (g) the borrowing investor-compensation scheme has informed ESMA, without delay, that it intends to borrow from another investor-compensation scheme, stating how the conditions set out in points (a) to (f) are fulfilled and the amount of money it intends to borrow.

The amount referred to in point (f) of the first subparagraph shall be determined as follows:

[amount of claims to be paid under Article 2(2a) ~~and 2(2e)~~] – [level of funding as referred to in Article 4a(7)] + [maximum amount of additional contributions referred to in Article 4a(4)] **[Am. 22]**

The borrowing investor-compensation scheme that has not repaid a loan to other schemes under this Article shall neither borrow from nor lend to other investor-compensation schemes.

The other investor-compensation schemes shall act as lending schemes. For this purpose, Member States in which more than one scheme is established shall designate one scheme to act as its lending scheme and shall inform the 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 investor-compensation schemes established in the same Member State. **[Am. 45]**

2. The loan shall be granted subject to the following conditions:

- (a) subject to the limit established in the second subparagraph, each investor-compensation scheme lends the amount proportionate to the amount of covered monies and financial instruments in each scheme without taking account of the borrowing investor-compensation scheme and the amount is calculated pursuant to the latest information referred to in Article 4a(2);

⁽⁺⁺⁺⁾ Five years from the date of entry into force of the amending Directive.

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- (b) the borrowing investor-compensation scheme repays the loan within five years; **[Second sentence converted into a third subparagraph]**
- (c) the interest rate **during the credit period** is equivalent to the marginal lending facility rate of the ~~European Central Bank during the credit period~~ **central bank issuing the currency in which the loan was made.** **[Am. 46]**

The total amount lent to each borrowing investor-compensation scheme shall not exceed the 20 % of the total amount of the funds available at Union level for lending as referred to in Article 4a(8).

Repayment under point (b) of the first subparagraph may be made in annual instalments and interest shall be due only at the time of repayment.

3. ESMA shall confirm that the conditions referred to in paragraph 1 have been met, state the amounts to be lent by each investor-compensation scheme as calculated pursuant to paragraph 2(a) and the initial interest rate pursuant to paragraph 2(c) as well as the duration of the loan.

ESMA shall transmit its confirmation, together with the information referred to in paragraph 1(g), to the lending schemes within 15 working days of receipt of that information from the borrowing schemes. The lending schemes shall, without delay, but in any event within 15 working days of receipt of the confirmation and information from ESMA, effect payment of the loan to the borrowing investor-compensation scheme.

4. Member States shall ensure that the contributions levied by the borrowing investor-compensation scheme are sufficient to reimburse the amount borrowed and to re-establish the target fund level as soon as possible and in any event within ~~ten-year~~ **five years** of receipt of the loan. **[Am. 47]**

All other claims shall be subordinate to that of the investor-compensation scheme which granted the loan. Such an investor-compensation scheme shall be considered to be a preferred creditor and shall have first rank of priority among creditors. **[Am. 48]**

Without prejudice to the second subparagraph, Member States may establish other priorities in preference between different categories of creditors. **[Am. 49]**

5. In order to facilitate effective cooperation between investor-compensation schemes, the schemes, or, where appropriate, the competent authorities, shall ~~have~~ **conclude** 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 **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** (**). **[Am. 50]**

The competent authorities shall notify ESMA of the existence and the content of the agreements referred to in the first subparagraph. ESMA may issue opinions on such agreements under Article 8(2)(g) and Article 34 of Regulation (EU) No 1095/2010. If competent authorities or investor-compensation schemes cannot reach an agreement or if there is a dispute about the interpretation of such an agreement, ESMA shall settle disagreements pursuant to Article 19 of Regulation (EU) No 1095/2010.

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The absence of the agreements referred to in the first subparagraph shall not affect the claims of investors under Article 2(2a) ~~or (2e)~~. [Am. 22]

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

(**) ~~OJ L 084, 26/03/1997, p. 22.~~ *OJ L 281, 23.11.1995, p. 31."*

(6) Articles 5 and 6 are replaced by the following:

"Article 5

1. If an investment firm, ~~UCITS, depositary~~ or third party required by Article 2(1) to belong to a scheme does not meet its obligations as a member of that scheme, the competent authorities which issued the investment firm authorisation ~~or the UCITS authorization~~ shall be notified and, in cooperation with the investor-compensation scheme, shall take all measures appropriate, including the imposition of penalties, to ensure that the investment firm, ~~UCITS, depositary~~ 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, depositary~~ or third party, the investor-compensation scheme may, subject to the express consent of the competent authorities, give not less than ~~12 months~~ **six months** notice of its intention of excluding the investment firm, ~~UCITS, depositary~~ or third party from membership of the scheme. The investor-compensation scheme shall continue to provide the coverage referred to in ~~Article 2(2a) and (2e)~~ **Article 2(2)** in respect of investment business ~~or UCITS activities~~ carried on during that period. If, on expiry of that period, the investment firm, ~~UCITS, depositary~~ or third party has still not met its obligations, the investor-compensation scheme may, subject to obtaining the express consent of the competent authorities, exclude that investment firm.

3. An investment firm, ~~UCITS, depositary~~ 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, the investment firm or third party made alternative compensation arrangements ensuring that investors ~~and UCITS~~ would enjoy cover that is at least equivalent to that offered by the officially recognised scheme and that the characteristics of such alternative compensation arrangements are equivalent to those of the officially recognised scheme;

(b) the competent authority responsible for the authorisation of the investment firm ~~or UCITS~~, has confirmed that the conditions referred to in point (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 authorisation 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~~ **that authorisation** without delay.

5. If ~~a depositary 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. [Am. 51]

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Article 6

After withdrawal of an investment firm's authorisation ~~or UCITS' authorization~~, the coverage referred to in ~~Article 2(2a) and (2e)~~ **Article 2(2)** shall continue to be provided in respect of investment business transacted up to the time of that withdrawal". [Am. 52]

(7) Articles 8 and 9 are replaced by the following:

"Article 8

1. The coverage 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. [Am. 53]

2. Each investor's share in joint investment business shall be taken into account in calculating the coverage provided for in Article 4(1) and (3).

~~In the absence of special provisions, claims shall be divided equally amongst investors.~~ [Am. 54]

An investor whose claim cannot be fully covered shall benefit from the same rate of coverage for the aggregate claim. [Am. 55]

Member States may provide that claims relating to joint investment business to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature which has no legal personality may, for the purpose of calculating the limits provided for in Article 4(1) and (3), be aggregated and treated as if arising from an investment made by a single investor.

3. Where an investor is not entitled to the sums or ~~securities~~ **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)~~ **Article 2(2)**.

If two or more persons are entitled, the share of each under the arrangements subject to which the sums or ~~the securities~~ **instruments** are managed shall be taken into account when the limits laid down in Article 4(1) and (3) are calculated. [Am. 56]

Article 9

1. The investor-compensation scheme shall take appropriate measures to inform investors of a determination or ruling referred to in Article 2(2) ~~and (2b)~~ and, if they are to be compensated, to compensate them as soon as possible. It may fix a period during which investors shall be required to submit their claims. That period shall not be less than five months from the date of the determination or ruling referred to in Article 2(2) ~~and (2b)~~ or from the date on which that determination or ruling is made public.[Am. 21]

The fact that the period referred to in the first subparagraph has expired shall not be invoked by the investor-compensation scheme to deny **full** coverage to an investor who has been unable to assert his right to compensation in time. [Am. 57]

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. [Am. 58]

2. The investor-compensation scheme shall be in a position to pay an investor's claim as soon as possible and in any event within three months of the establishment of the validity and the amount of the claim.

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In exceptional circumstances an investor-compensation scheme may apply to the competent authorities for an extension of the time limit. Such an extension shall not exceed three months. Competent authorities shall immediately inform ESMA of any extension granted to an investor-compensation scheme and the circumstances justifying such extension.

Member States shall ensure that investor-compensation schemes may participate in insolvency or judicial procedures that may be relevant in establishing the validity and the amount of a claim.

The third subparagraph shall be without prejudice to investor-compensation schemes being able to adopt other methods to determine the validity or amount of a claim.

If final payment has not been made within nine months of the determination or ruling referred to in Article 2(2) ~~or (2b)~~, Member States shall ensure that the investor-compensation scheme provides, within three months of that determination or ruling, for a provisional payout of partial compensation of not less than one-third of the claim based on an initial assessment of the claim. The balance shall be paid out within three months of the establishment of the validity and the amount of the claim. Member States shall ensure that the investor-compensation scheme has the means to recover amounts provisionally paid out if it is established that the claim was not valid. [Am. 21]

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).~~ [Am. 59]

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, ***in relation to money that is the subject of this Directive***, with an offence arising out of or in relation to money laundering as defined in Article 1(2) of Directive 2005/60/EC, arising out of conduct that is prohibited under Directive 2003/6/EC, or ***relating to the direct or indirect financing of terrorist groups which is the subject of Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups***, the investor-compensation scheme may suspend any payment pending the judgment of the court or determination of a competent authority.". [Am. 60]

(8) In Article 10, paragraph 1 is replaced by the following:

"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 informed of the provisions of the investor-compensation scheme or any alternative arrangement applicable, including the amount and scope of the coverage offered by the investor-compensation scheme and any rules laid down by the Member States in this regard). That information shall be made available in a readily comprehensible manner. [Am. 61]

Information shall also be given on request concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

The information provided shall be fair, clear and not misleading and in particular shall explain the situations and claims covered by the relevant investor-compensation scheme and how it applies in cross border situations. The information provided should also give examples of situations and claims not covered under the scheme.

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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." [Am. 62]

(9) Article 12 is replaced by the following:

"Article 12

1. Without prejudice to any rights under national law, investor-compensation schemes which make payments in order to compensate investors may subrogate to the rights of those involved ~~investors~~ in liquidation proceedings for amounts equal to their payments. [Am. 63]

2. In the case of a loss due to the financial circumstances of a third party that holds financial instruments belonging to an investor in relation to investment business, as referred to in Article 2(2), investor-compensation schemes which make payments in order to compensate investors may subrogate to the rights of the investor or investment firm in liquidation proceedings for amounts equal to their payments.

~~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. [Am. 64]~~

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~~ ~~is~~ is located in a third country in which the judiciary system does not allow the investor-compensation scheme 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 investor-compensation scheme amounts equal to any payments it receives in the liquidation proceedings". [Am. 65]

(10) The following Article is inserted:

"Article 13a

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

1a. The power to adopt delegated acts referred to in Article 4(1a), subparagraphs 2 and 3 of Article 4a(2), Article 4a(3a), the third subparagraph of Article 4a(3c), Article 4a(9) and the sixth subparagraph of Article 9(2) shall be conferred on the Commission for an indeterminate period of time four years from ...^(†). The Commission shall draw up a report in respect of the delegation of power not 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.

1b. The delegation of power referred to in Article 4(1a), subparagraphs 2 and 3 of Article 4a(2), Article 4a(3a), the third subparagraph of Article 4a(3c), Article 4a(9) and the sixth subparagraph of Article 9(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

^(†) Date of entry into force of the amending Directive.

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

2a. A delegated act adopted pursuant to Article 4(1a), subparagraph 2 and 3 of Article 4a(2), Article 4a(3a), the third subparagraph of Article 4a(3c), Article 4a(9) and the sixth subparagraph of Article 9(2) shall enter into force only if no objection has been expressed either 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 of the Council.

~~3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 13b and 13c.~~

~~Article 13b~~

~~1. The delegation of power referred to in Article 4a(2), Article 4a(8) Article 4a (9) and Article 9(2) may be revoked by the European Parliament or by the Council.~~

~~2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.~~

~~3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.~~

~~Article 13c~~

~~1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.~~

~~2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.~~

~~The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.~~

~~3. If the European Parliament or the Council objects to the adopted delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act."~~
[Am. 66]

(11) The following Article is inserted:

"Article 14a

The Member States may conclude cooperation agreements on exchange of information with the competent authorities of third countries in accordance with Article 63 of Directive 2004/39/EC and Article 102 of Directive 2009/65/EC."

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(12) Annex I is amended as follows:

(a) point 1 is replaced by the following:

"1. Professional investors referred to in points 1 to 4 of section I of Annex II of Directive 2004/39/EC on markets in financial instruments.";

(b) points 2, 3 and 8 are deleted.

Article 2

Transposition

1. Member States shall adopt and publish, by ... (*), the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures and a correlation table between those provisions and this Directive.

They shall apply those measures from ... (**) save for those measures transposing Article 4b, which shall be applied from 31 December 2013.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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. [Am. 67]

Article 2a

Report and review

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.

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. [Am. 68 and point 2 of the corrigendum ⁽¹⁾]

(*) 12 months after the entry into force of this Directive.

(**) 18 months after the entry into force of this Directive.

⁽¹⁾ P7_TA-PROV(2011)0313(COR01).

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Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

Possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory *I**

P7_TA(2011)0314

European Parliament legislative resolution of 5 July 2011 on the proposal for a regulation of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory (COM(2010)0375 – C7-0178/2010 – 2010/0208(COD))

(2013/C 33 E/38)

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0375),
- having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0178/2010),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) and Article 192(1) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 9 December 2010 ⁽¹⁾,
- having regard to the opinion of the Committee of the Regions of 28 January 2011 ⁽²⁾,
- having regard to Rules 55 and 37 of its Rules of Procedure,
- having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Agriculture and Rural Development (A7-0170/2011),

⁽¹⁾ OJ C 54, 19.2.2011, p. 51.

⁽²⁾ OJ C 104, 2.4.2011, p. 62.