Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 5268
Email: enquiries@fs-cp.org.uk

European Commission
Rue de la Loi 200
1049 Brussels
Belgium

12 December 2014

Dear Commissioner Timmermans,

Possible withdrawal of the proposal for an Investor Compensation Scheme Directive

I am writing on behalf of the UK's Financial Services Consumer Panel regarding the possible withdrawal by the Commission of its proposal for a Directive on investor compensation schemes (ICSD).

The Consumer Panel is an independent statutory body set up to represent the interests of consumers in the development of policy for the regulation of financial services. The Panel is listed on the EU's Transparency Register, and we work closely together with other consumer organisations throughout Europe, including BEUC.

Need for a recast of the Directive
The Panel broadly supports the consumer protection principles which underpin the proposal tabled by the Commission in 2010, although we do believe a number of amendments are required. We have concerns that failure to recast the Directive will allow detriment to retail investors to continue to occur.

In our view, the most significant defect in the current legislation is the low level of minimum compensation provided for in the Directive. In the UK, maximum pay-out by the Financial Services Compensation Scheme (FSCS) for investments is £50,000, significantly higher than the minimum of €20,000 mandated by the ICSD.

To increase protection for consumers wherever in the EEA they choose to invest, we support an increase in the minimum level of compensation under the Directive. Although the Panel could not support the Commission's original proposal for a maximum limit of €50,000 (which would have substantially lowered compensation currently available in the UK), we are satisfied that the compensation limits as envisaged by the Council[1] would provide sufficient flexibility to give consumers the freedom to invest their money elsewhere in the Single Market, while maintaining the UK's current high level of protection.

More generally, we have repeatedly raised concerns about the lack of awareness among consumers about the practical consequences for redress and compensation resulting from the EU's passporting regime. In this respect, the Panel supports the proposals put forward by the Commission on information to be given to retail investors about compensation schemes in cross-border situations. Without a clear legal obligation, we do not believe sufficient incentive exists for firms to ensure that their customers are aware of the applicable compensation regime.

[1] The Council Presidency compromise text of 18 November 2011 would require Member States to ensure that maximum compensation lies between €30,000 and €100,000.

Lastly, there is a clear need to amend the 1997 Directive for reasons of legal clarity, particularly as regards its interaction with the MiFID framework. The current legislation and its definitions have not been aligned to the existing Markets in Financial Instruments Directive since the latter's adoption in 2006, nor to the revised MiFID Directive which becomes applicable in January 2017.

A way forward
The Panel appreciates that negotiations on the Directive have come to a halt under recent Council Presidencies. However, we would recall the new Deposit Guarantee Schemes Directive (DGSD) also faced lengthy delays. The agreement on the proposal for the new DGSD reached in late 2013 shows that a successful outcome for the ICSD is also possible.

Whilst the Panel appreciates the Commission's efforts to ensure EU regulation is fit for purpose, it is difficult to see how a decision to withdraw the draft Directive would "allow for a fresh start or for alternative ways to achieve the intended legislative purpose". The issues as outlined above have not been addressed by other means, and it appears to us unlikely they will be addressed at all if the proposal is withdrawn.

Withdrawing the proposal at the current junction would not appear to be based on the overall merits of the Directive or the prospects for its successful adoption by the co-legislators within a reasonable timeframe.

It is our understanding that opposition to the proposal from a number of Member States has been centred on articles 4a and 4b on the funding of national compensation schemes, and mandatory cross-border lending between such schemes.

The Panel has not taken a position on these issues. However, we do not see the need for an EU-wide approach on funding and lending arrangements in order to address the more immediate consumer protection concerns as described above.

We would therefore encourage the Commission to restart negotiations, and to consider supporting deletion of the amendments on the funding and lending arrangements from the legal text. A more narrow focus in the negotiations may clear the way for agreement on the other issues addressed by the draft Directive.

The Panel believes the recast could significantly improve protection for retail investors across the EU. We would urge you therefore to refrain from formally withdrawing the proposal and to investigate opportunities to break the deadlock in the negotiations within the Council.

I am also copying this letter to the services of Commissioner Hill, and to Roberto Gualtieri, Chair of the European Parliament's ECON Committee. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Sue Lewis
Chair
Financial Services Consumer Panel