

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 585 final - COD 471

Brussels, 13.12.1994

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

ON INVESTOR COMPENSATION SCHEMES

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

1. BACKGROUND

On 22 September 1993 the Commission adopted a proposal for a Council Directive on investor compensation schemes.¹ This was sent to the Council by letter dated 22 October 1993.

The Council subsequently forwarded this text to Parliament and to the Economic and Social Committee and in January 1994 began its own examination of the proposal.

2. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee unanimously adopted an opinion on the Commission proposal at its 312th Plenary Session on 26 January 1994.²

This opinion, while advocating a number of technical amendments was basically supportive of the Commission proposal.

A number of the Committee's suggestions have been incorporated in this amended proposal.

¹ COM(93) 381 final - SYN 471, OJ No C 321, 27.11.1993, p. 15.

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3. OPINION OF THE EUROPEAN PARLIAMENT

The European Parliament adopted the legislative resolution embodying its opinion on the Commission proposal for a Council Directive at its sitting on 19 April 1994.³

Parliament's largely favourable opinion contained seven amendments. The Commission accepted three of these (Nos 1, 3 and 7) as proposed by Parliament. The Commission accepted the spirit of a further three amendments (Nos 4, 5 and 6). Only amendment No 2 (relating to the definition of "investor" in Article 1(4)) was rejected by the Commission since it abandoned the concept of "investment business", which the Commission considers to be a crucial element in its proposal.

4. ALIGNMENT ON THE DIRECTIVE ON DEPOSIT GUARANTEE SCHEMES

On 30 May 1994 Parliament and the Council adopted Directive 94/19/EC on deposit-guarantee schemes.⁴

This measure was thus one of the first to be adopted jointly by the two institutions under the codecision procedure of Article 189b of the Treaty:

Indeed the full procedure provided for in the codecision arrangements was used, the final joint text being agreed in the Conciliation Committee.

Accordingly it is an important consideration that Directive 94/19/EC of 30 May 1994 on deposit-guarantee schemes represents a jointly agreed view of Parliament and the Council on a number of technical issues that arise in identical or similar terms in the work on investor-compensation schemes.

From the start of its work on investor compensation schemes the Commission had recognized that there was a link with the parallel but more advanced work in the

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4 OJ No L 135, 31.5.1994, p. 5.

area of bank deposit-guarantee schemes (see Point A.5 of the Explanatory Memorandum of the initial proposal on investor compensation schemes).

Both Parliament and the Economic and Social Committee clearly recognized the need for coherence and consistency in the approach to these parallel areas of work.

In point 3.3 of its opinion the Committee stated that "it is essential that these two texts be entirely mutually coherent".

Parliament's opinion accepts that "the proposal must, in the interests of legislative coherence, be viewed in the context of other Community proposals in the financial services sector. In particular the proposal must be read in conjunction with the Commission proposal for a directive on deposit-guarantee schemes ...". (Explanatory statement, point 2, second paragraph).

Accordingly, a number of provisions in the amended proposal on investor compensation schemes have in the interests of legislative consistency been fully or partially aligned on or made consistent with the corresponding provisions of the bank deposit-guarantee Directive 94/19/EC.

Although this alignment has led to a certain re-ordering and reorganization of the provisions of this proposal and a considerable amount of redrafting it must be stressed that the changes to the basic principles underlying the Commission's initial proposal are not substantial.

Because of this extensive redrafting the full text of the amended proposal is set out in this communication.

5. COMMENTS ON AMENDMENTS

Title and citations

A number of changes have been made necessary by the transition from the cooperation procedure to the codecision procedure under Article 189b of the Treaty.

12th recital

The Directive on deposit-guarantee schemes (Directive 94/19/EC) having been adopted by Parliament and the Council on 30 May 1994, the official title, reference number, date and publication details can now be added here. Appropriate adjustments to subsequent references to Directive 94/19/EC have been made accordingly.

15th recital

It is now specified that it should not be necessary for a credit institution providing investment services to belong to two different schemes - under this directive and under Directive 94/19/EC - provided that a single scheme meets the requirements of both directives. This clarification which reflects the Commission's intention from the outset, corresponds to a wish voiced by the Economic and Social Committee, although the Committee sought this clarification in the text of the corresponding article.

18th and 19th recitals

These have been adapted to make specific reference to the proposed minimum compensation level of ECU 20 000 and to indicate that this same amount has been fixed by Parliament and the Council in Directive 94/19/EC as the harmonized Community minimum level for deposit-guarantee schemes.

21st recital

This clause, dealing with the possibility open to branches to top up their home State level of compensation to the (higher) level available in the host State has been aligned on the corresponding clause in Directive 94/19/EC.

26th recital

This clause, which deals with the regime applicable to branches of investment firms having their head office in a non-member country has been brought into line, mutatis mutandis, with the corresponding recital in Directive 94/19/EC;

27th recital

A new 27th recital has been added in line with a similar clause in Directive 94/19/EC. This deals with the question of the financing of compensation schemes. The proposal does not lay down any detailed rules but establishes the principle that investment firms should finance the schemes themselves, subject to the proviso that the burden of financing investor compensation payments resulting from the failure of investment firms should not endanger the stability of otherwise healthy firms.

This point was raised in the Opinion of the Economic and Social Committee although the Committee sought a reference in the body of the directive rather than in the preamble.

Article 1(1)

This revised definition of "Investment firm" corresponds to Parliament's Amendment No 1 which was accepted by the Commission. Parliament wished to make clear that the concept of investment firm had already been defined in the Investment Services Directive.

Article 1(5)

In its Amendment No 3, which was accepted by the Commission, Parliament called for the same definition of "branch" to be included in the investor compensation scheme proposal as was included in the Investment Services Directive.

Article 1(6)

A definition of "joint investment" has been included. Although the Commission's original proposal referred to "joint investment account" this concept was not defined. The new definition is based in part on the definition of "joint account" in Directive 94/19/EC.

Article 2

Paragraph 1

This paragraph has been aligned to some extent on Directive 94/19/EC. In particular, the Commission had accepted the spirit of Parliament's Amendment No 4, namely that it should be clear that authorization was based on the principle of home country control.

There are now two possible situations in which an investment firm may not belong to an investor compensation scheme. These are firstly where the investment firm is a credit institution which belongs to a system, based on solidarity, whereby the credit institution will not be allowed to fail. Since the intervention of an investor compensation scheme can only be triggered by the failure of an investment firm the fact that a credit institution doing investment business belongs to a system meeting the requirements of Article 3(1) of Directive 94/19/EC is sufficient to justify exemption also from the obligation to belong to an investor compensation scheme.

The second case where it is possible for an investment firm not to belong to a compensation scheme is described in the comments on Article 5.

Paragraph 2

This paragraph has also been amended to reflect more closely the provisions of Directive 94/19/EC. The underlying principle that the intervention of the scheme is triggered by a decision of the competent authorities or of a judicial authority is unchanged.

Similarly, although the three indents setting out the types of claim have been reduced to two, the same cases are covered.

In its amendment No 5 Parliament asked for the words "or managed" to be added. The Commission accepted this amendment which is logical given that the service of discretionary portfolio management is one of the services falling within the definition of "investment business" in Article 1.

Paragraph 4

The Commission's original proposal provided for two possible moments for determination of the amount of the investor's claim. For the sake of simplicity, and in line with the wishes of the Economic and Social Committee, the amended proposal refers solely to the moment of the official decision referred to in paragraph 2. The reference to the "legal and contractual conditions including those relating to set-off and counterclaim " reflects similar references in Directive 94/19/EC.

Article 3

In its opinion the Economic and Social Committee had requested that reference be made to Directive 91/308/EEC on money laundering. The Commission agrees that an article along the lines of Article 2, third indent of Directive 94/19/EC is indeed appropriate.

Article 4 (former Article 3)

No substantive change has been made to this article, although certain minor drafting amendments have been made.

Article 5

Article 5 of the Commission's initial proposal dealt with two situations, namely where an investment firm fails to comply with the obligations resulting from its membership of its home State investor compensation scheme and, secondly, where a branch availing itself of the option to join a host-State scheme on a top-up basis fails to respect the obligations of that optional membership.

These provisions have been reorganized in the amended proposal.

All of the provisions relating to the top-up arrangements have now been brought together under the new Article 7.

The new amended Article 5 now deals solely with the first of the two situations outlined above. These new provisions have been very largely aligned on Article 3 of Directive 94/19/EC. It was clear to the Commission that similar considerations applied in the context of the two directives.

Thus it should be possible for an investment firm ultimately to be expelled from a compensation scheme if that firm does not fulfil its obligations. However, such exclusion should not take place without the express consent of the competent authorities which issued the authorization. In addition Member States should be given the option of allowing an investment firm in this situation to make alternative arrangements providing investors with equivalent coverage.

The new text is in line with the spirit of Parliament's Amendment No 6.

Article 6 (new)

This new article corresponds to Article 5 of Directive 94/19/EC.

It may happen that a firm's authorization is withdrawn without its failure having been established. Continued coverage by the compensation scheme is required in case it should subsequently transpire that the firm was unable to meet its commitments to investors.

Article 7

The provisions dealing with the possibility open to a branch to join a host-State scheme to raise (top-up) its home State cover to the higher level prevailing in the host-State were previously set out in Article 4 of the Commission's initial proposal.

Given that the whole question of top-up had given rise to extensive discussions in the context of Directive 94/19/EC the Commission has preferred to align as far as possible the corresponding provisions of its amended investor compensation proposal on the text finally agreed by Parliament and the Council in the deposit-guarantee Directive.

These provisions therefore include the procedure to be followed when a branch does not comply with the obligations resulting from its top-up membership of the host State scheme.

In addition a set of guiding principles has been included as Annex II modelled closely on those in Annex II to Directive 94/19/EC. The inclusion of such an annex had been proposed in the report of the Economic and Social Committee.

Article 8

Paragraph 1 now refers to the aggregate claim rather than to the amount of money and instruments. This is more accurate.

Paragraph 2 relates to joint investment rather than joint account since it is not certain that each investor will formally hold an account as such.

The provisions covering joint investments by business partnerships, etc. and those concerning investors who are not absolutely entitled to the sums or securities held are based closely on the corresponding provisions in Article 8 of Directive 94/19/EC.

Article 9

Although the substance of Article 7 of the Commission's initial proposal has not been altered the presentation has been amended to make the intention clearer. Clearly investors have to be made aware of the decision referred to in Article 2(2) and a provision to this end has been added.

Article 10

The former Article 8 dealing with investor information has been aligned on Article 9 of Directive 94/19/EC. The substance of the provisions remains unchanged, however.

Article 11

The former Article 9 of the Commission's initial proposal, dealing with the Community branches of investment firms which have their head office outside the Community, has been aligned on the corresponding Article 6 of Directive 94/19/EC.

Article 12

This article (the former Article 10) dealing with subrogation is unchanged except that the text now refers more correctly to the compensation scheme having the right of subrogation.

Article 13

Initially the Commission had proposed in the former Article 11 that it should report to the Council on the operation of the Direction after five years.

Parliament's Amendment No 7 requested that the report be made to Parliament as well as the Council after three years.

The Commission accepted this amendment and the text has been amended accordingly.

Article 14

The Commission's initial proposal (Article 12) had envisaged that the Directive on investor compensation schemes should enter into force on 1 January 1996. This reflected the wishes of the Council, as set out in Article 12 of the Investment Services Directive.

That date now seems unrealistic and the text has been amended to require Member States to comply with the Directive by the end of 1996.

Article 15

A new article has been added to formally repeal Article 12 of the ISD, which introduced an interim investor information regime pending the adoption of a directive on investor compensation schemes. The said Article 12 will cease to be appropriate or applicable as from the entry into force of the specific directive on investor compensation schemes.

ANNEX I

This annex lists the categories of investor which Member States may decide to exclude from coverage by the investor-compensation scheme.

In item No 1 a number of categories have been grouped together under the heading of "institutional investors".

The amended proposal adds the category (new No 2) of "professional investors". This reflects a wish expressed by the Economic and Social Committee and is in line with the Investment Services Directive, which in a number of areas recognizes the different need for protection of professional and institutional investors.

In item No 3 the category of "supranational authorities" has been added.

As regards item No 8 (former No 13) the text has been reformulated rather than following the corresponding item in Directive 94/19/EC, which is not easily transposable to the investment services sector.

ANNEX II

See comments on Article 7.

**Amended proposal for a European Parliament and
Council Directive
on investor compensation schemes**

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN
UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 57(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure referred to in Article 189b of the Treaty³,

1. Whereas on 10 May 1993 the Council adopted Directive 93/22/EEC on investment services in the securities field⁴, hereinafter referred to as "the Investment Services Directive"; whereas that Directive is an essential measure for the achievement of the internal market for investment firms;
2. Whereas the Investment Services Directive secures the essential harmonization that is necessary to secure the mutual recognition of authorization and of prudential supervision systems, making possible the grant of a single authorization valid throughout the Community and the application of the principle of home Member State supervision; whereas, by virtue of mutual recognition, investment firms authorized in their home Member States may carry on any or all of the services covered by the Investment Services Directive for which they have received

¹ OJ No C 321, 27.11.1993, p.15

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⁴ OJ No L 141, 11.6.1993, p. 27

authorization throughout the Community by establishing branches or under the freedom to provide services;

3. Whereas the protection of investors and the maintenance of confidence in the financial system is an important aspect of the completion of the internal market in this area;
4. Whereas the Investment Services Directive provides for prudential rules which investment firms must observe at all times, including rules the purpose of which is to protect as far as possible investors' rights in respect of money or instruments belonging to them;
5. Whereas, however, no system of supervision can provide a complete safeguard, particularly where acts of fraud are committed;
6. Whereas it is therefore important that each Member State should have an investor compensation scheme providing a minimum level of compensation at least to the smaller investor in the event that an investment firm is unable to meet its obligations to its investor clients; whereas such is not the case at present;
7. Whereas the Commission's initial proposal for an investment services directive⁵ included in the list in Article 9 of prudential rules to be observed by investment firms and to be supervised by the home Member State's authorities membership of a general compensation scheme to protect investors; whereas, however, the Commission proposed that, pending further harmonization of compensation schemes, branches should be subject to the compensation scheme in force in the host Member State;
8. Whereas, however, this interim solution was rejected by the Member States in favour of a full home country approach, given the responsibility of the home Member State for issuing the authorization to investment firms and for their prudential supervision;

⁵ OJ No C 43, 22.2.1989, p. 7

whereas it was argued that application of the home country control principle required that the home State compensation scheme should cover the activities carried on in host Member States, through branches or via freedom to provide services;

9. Whereas it was the general view that the complex issues raised by the subject of investor compensation schemes could be adequately dealt with only in a separate proposal for a directive; whereas Article 12 of the Investment Services Directive does not require Member States to have an investor compensation scheme but merely requires that investors be informed of the compensation arrangements available, if any; whereas the Commission stated that it would submit proposals on the harmonization of compensation systems covering transactions by investment firms by 31 July 1993 at the latest;
10. Whereas the proper functioning of the internal market requires a degree of coordination in this area so that the small investor can purchase investment services from branches of Community investment firms or on a cross-frontier basis as confidently as from domestic investment firms, in the knowledge that a Community minimum level of compensation would be available in the event of the failure of the investment firm and its subsequent inability to return the investor's money or securities;
11. Whereas in the absence of such coordination host Member States may consider themselves justified for reasons of investor protection in requiring membership of the host State compensation arrangements when a Community investment firm operating via a branch or via freedom to provide services either belongs to no investor compensation scheme in its home Member State or belongs to a scheme which is not considered to offer equivalent protection; whereas any such requirement might create serious difficulties for the operation of the single market;

12. Whereas European Parliament and Council Directive 94/19/EC of 30 May 1994 on deposit-guarantee schemes⁶ introduced minimum harmonization of deposit-guarantee arrangements for credit institutions; whereas credit institutions may in certain areas be in competition with specialist investment firms;
13. Whereas although most Member States currently have some investor compensation arrangements the vast majority do not have arrangements corresponding to the scope of the Investment Services Directive;
14. Whereas therefore all the Member States should be required to have an investor compensation scheme, or schemes, to which all investment firms holding the single licence under the Investment Services Directive should belong; whereas the scheme should cover money or instruments which are held by the investment firm in connection with the conduct of investment business and which, following the failure of the firm, cannot be returned to the investor.
15. Whereas the definition of investment firm includes credit institutions which are authorized to provide investment services; whereas such credit institutions should also be required to participate in an investor compensation scheme in respect of their investment business; whereas, however, it should not be necessary for such credit institutions to belong to two separate schemes where a single scheme meets the requirements both of this Directive and of Directive 94/19/EC; whereas, however, in the case of investment firms which are credit institutions it may in certain cases be difficult to distinguish between deposits covered under Directive 94/19/EC and money held in connection with the conduct of investment business; whereas Member States should be given the possibility of themselves determining under which Directive such claims should fall;
16. Whereas Directive 94/19/EC allows Member States to dispense a credit institution from the obligation to belong to a deposit-guarantee scheme where that credit

⁶ OJ No L 135, 31.5.1994, p. 5

institution belongs to a system which protects the credit institution itself and, in particular, ensures its solvency; whereas, where such a credit institution is also an investment firm, Member States should also be authorized to dispense it from the obligation to belong to an investor compensation scheme;

17. Whereas the cost of investor protection has to be met by investment firms but is ultimately passed on to the investor; whereas therefore it is undesirable to introduce throughout the Community a very high level of protection; whereas in addition to encourage the investor to take due care in the choice of an investment firm it is reasonable to allow Member States to require the investor to bear a proportion of any loss; whereas, however, the investor should be covered for at least 90% of his loss until the compensation payment reaches the Community minimum;

18. Whereas, however, a harmonized minimum level of compensation should be sufficient to protect the interests of the smaller investor in the event of the failure of an investment firm; whereas it would appear reasonable to set the harmonized minimum guarantee level at ECU 20 000;

19. Whereas this same level was adopted by Parliament and the Council in Directive 94/19/EC;

20. Whereas the schemes of certain Member States currently offer higher levels of cover, whereas, however, it does not seem appropriate to require that those schemes should reduce the cover they offer;

21. Whereas the retention in the Community of schemes providing cover for investors which is higher than the harmonized minimum may, within the same territory, lead to disparities in compensation and unequal conditions of competition between national investment firms and branches of firms from other Member States; whereas, in order to counteract those disadvantages, branches should be authorized to join their host countries' schemes so that they can offer their investors the same coverage as is offered by the schemes of the countries in which they are located; whereas it is not

ruled out that home Member State schemes should themselves offer such complementary cover, subject to the conditions such schemes may lay down;

22. Whereas the objective of this Directive is to ensure a minimum level of protection for small investors, including small and medium-sized enterprises, who have the greatest need of protection; whereas, however, Member States should be allowed to exclude from coverage certain other categories of investors who have a lesser need of such protection.
23. Whereas a number of Member States have investor compensation schemes under the responsibility of professional organizations; whereas other schemes may be set up and administered on a statutory basis; whereas this variety of status poses a problem only with regard to compulsory membership of and exclusion from the scheme; whereas it is therefore necessary to take steps to limit the powers of schemes in this area;
24. Whereas the investor should receive compensation without excessive delay once he has established a valid claim; whereas the compensation scheme itself should be allowed to fix a reasonable period during which claims should be presented; whereas, however, the fact that such a period has expired should not be invoked against an investor who for a good reason has not been able to present his claim on time;
25. Whereas investor information on compensation arrangements is an essential element in investor protection and must therefore also be the subject of a minimum number of binding provisions;
26. Whereas in principle this Directive requires every investment firm to join an investor compensation scheme; whereas the Directives governing the admission of any investment firm which has its head office in a non-member country, and in particular the Investment Services Directive, allow Member States to decide whether and subject to what conditions to permit the branches of such investment firms to operate within their territories; whereas such branches will not enjoy the freedom to provide

services under the second paragraph of Article 59 of the Treaty, nor the right of establishment in Member States other than those in which they are established; whereas, accordingly, a Member State admitting such branches should decide how to apply the principles of this Directive to such branches in accordance with Article 5 of the Investment Services Directive and with the need to protect investors and maintain the integrity of the financial system; whereas it is essential that investors at such branches should be fully aware of the compensation arrangements which affect them;

27. Whereas it is not indispensable in this Directive to harmonize the methods of financing schemes compensating investors given, on the one hand, that the cost of financing such schemes must be borne, in principle, by investment firms themselves and, on the other hand, that the financing capacity of such schemes must be in proportion to their liabilities; whereas this must not, however, jeopardize the stability of the financial sector of the Member State concerned;

28. Whereas in conclusion a minimum harmonization of investor compensation arrangements appears necessary in order to complete the internal market for investment firms by giving investors confidence to deal with firms from other Member States as well as locally incorporated firms and by avoiding the difficulties that might arise from the application by host Member States of their uncoordinated domestic investor protection requirements; whereas a binding Community directive is the only suitable instrument to achieve the desired objective in the general absence of investor compensation arrangements corresponding to the coverage of the Investment Services Directive; whereas this measure restricts itself to the minimum harmonization that is required, allows Member States freedom to provide wider or higher coverage if they desire and also allows Member States considerable freedom as regards the organization and financing of investor compensation schemes,

HAVE ADOPTED THIS DIRECTIVE :

Article 1

For the purposes of this Directive the following definitions shall apply :

1. "Investment firm" shall mean an investment firm as defined in Article 1(2) of the Investment Services Directive and authorized in accordance with Article 3 of the Investment Services Directive, or a credit institution the authorization of which, under Directives 77/780/EEC⁷ and 89/646/EEC⁸, covers one or more of the investment services listed in Section A of the Annex to the Investment Services Directive;
2. "Investment business" shall mean an investment service as defined in Article 1(1) of the Investment Services Directive and the service referred to in point 1 of Section C of the Annex to the Investment Services Directive;
3. "Instruments" shall mean the instruments listed in Section B of the Annex to the Investment Services Directive;
4. "Investor" shall mean a person who has entrusted money or instruments to an investment firm in connection with investment business;
5. "Branch" shall mean a place of business which is a part of an investment firm, which has no legal personality and which provides investment services for which the investment firm has been authorized; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;
6. "Joint investment" shall mean an investment made in the context of investment business, or money placed with an investment firm for investment business, in the names of two or more persons or over which two or more persons have rights that may operate against the signature of one or more of those persons.

⁷ OJ No L 322, 17.12.1977, p. 30.

⁸ OJ No L 386, 30.12.1989, p. 1.

Article 2

1. Each Member State shall ensure that within its territory one or more investor compensation schemes are established and officially recognized. Except in the circumstances envisaged in the second subparagraph and in Article 5 no investment firm authorized in that Member State may carry on investment business unless it participates in such a scheme.

A Member State may, however, exempt a credit institution to which this Directive applies, from the obligation to belong to an investor compensation scheme where that credit institution is already exempted in accordance with Article 3(1) of Directive 94/19/EC from belonging to a deposit guarantee scheme.

2. The scheme shall provide cover to investors in accordance with Article 4 where either:
 - (i) the relevant competent authorities have determined that in their view an investment firm appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to meet its obligations resulting from investors' claims; or
 - (ii) a judicial authority has made a ruling for reasons which are directly related to an investment firm's financial circumstances which has the effect of suspending investors' ability to make claims against it;

whichever is the earlier.

Cover must be provided for claims resulting from the inability of an investment firm to :

- repay money owed to investors or belonging to investors and held on their behalf in connection with investment business, or
- return to investors any instruments belonging to them and physically held, administered or managed on their behalf in connection with investment business.

in accordance with the legal and contractual conditions applicable.

3. Any claim under paragraph 2 on a credit institution which, in a Member State, would be subject to this Directive and Directive 94/19/EC shall be allocated to a scheme under one or other of these Directives as that State shall consider appropriate. No claim in respect of the same amount shall be eligible for compensation under both Directives.
4. The amount of an investor's claim shall be calculated according to the legal and contractual conditions, including those relating to set-off and counterclaims applicable to the claim on the basis of the amount of money or the value of the instruments belonging to the investor which the investment firm is unable to repay or return at the time of the decision referred to in paragraph 2.

Article 3

Claims relating to transactions in connection with which there has been a criminal conviction for money laundering as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering⁹, shall be excluded from any compensation from investor compensation schemes.

Article 4

1. Member States shall ensure that the scheme provides for coverage of not less than ECU 20 000 per investor in respect of the claims referred to in Article 2(2).
2. Member States may provide that certain investors shall be excluded from the coverage of the scheme or shall be granted a lower level of coverage. Those exclusions are listed in Annex I.
3. This Article shall not preclude the retention or adoption of provisions which offer a higher or more comprehensive cover for investors.

⁹ OJ No L 166, 28.6.1991, p. 77.

4. Member States may limit the cover provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of the investor's claim. However, the percentage covered must be equal to or exceed 90% of the claim until the amount to be paid under the scheme reaches ECU 20 000.

Article 5

1. If an investment firm required by Article 2(1) to take part in a scheme does not comply with the obligations incumbent on it as a member of an investor compensation scheme, the competent authorities which issued the authorization shall be notified and, in collaboration with the compensation scheme, shall take all appropriate measures, including the imposition of sanctions, to ensure that the investment firm complies with its obligations.

2. If those measures fail to secure compliance on the part of the investment firm, the scheme may, where national law permits the exclusion of a member, with the express consent of the competent authorities, give not less than twelve months' notice of its intention of excluding the investment firm from membership of the scheme. If, on the expiry of the notice period, the investment firm has not complied with its obligations, the compensation scheme may, again having obtained the express consent of the competent authorities, proceed to exclusion.

3. Where national law permits, and with the express consent of the competent authorities which issued its authorization, an investment firm excluded from an investor compensation scheme may continue its activities if, before its exclusion, it has made alternative compensation arrangements which ensure that investors will benefit from a coverage at least equivalent to that offered by the officially recognized scheme.

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 prescribed in

paragraph 3, then the competent authorities which issued its authorization shall revoke it forthwith.

Article 6

Investors with an investment firm when the authorization is withdrawn shall continue to be covered by the investor compensation scheme.

Article 7

1. Investor compensation schemes established and officially recognized in a member State in accordance with Article 2(1) shall cover the investors at branches set up by investment firms in other Member States.

Where the level and/or scope, including the percentage of cover offered by the host member State investor compensation scheme exceeds the level and/or scope of cover provided in the Member State in which an investment firm is authorized, the host Member State shall ensure that there is an officially recognized scheme within its territory which a branch may join voluntarily in order to supplement the guarantee which its investors already enjoy by virtue of its membership of its home Member State scheme.

The scheme to be joined by the branch shall cover the category of institution to which it belongs or most closely corresponds in the host Member State.

Member States shall ensure that objective conditions relating to the membership of these branches form part of all investor compensation schemes. Admission shall be conditional on fulfilment of the relevant obligations of membership including in particular payment of any contribution and other charges. Member States shall follow the guiding principles set out in Annex II in implementing this paragraph.

2. If a branch granted voluntary membership under paragraph 1 does not comply with the obligations incumbent on it as a member of an investor compensation scheme, the competent authorities which issued the authorization shall be notified and, in collaboration with the compensation scheme, shall take all appropriate measures to ensure that the aforementioned obligations are complied with.

If those measures fail to secure the branch's compliance with the aforementioned obligations, after an appropriate period of notice of not less than twelve months the compensation scheme may, with the consent of the competent authorities which issued the authorization, exclude the branch. Investors shall be informed of the withdrawal of the supplementary cover.

Article 8

1. The coverage referred in in Article 4(1), (3) and (4) shall apply to the aggregate claim of the investor under this Directive irrespective of the number of accounts, the currency and the location within the Community.

2. The share of each investor in a joint investment shall be taken into account in calculating the coverage provided for in Article 4(1), (3) and (4).

In the absence of special provisions the compensation shall be divided equally between the investors in the joint investment.

Member States may provide that claims relating to a joint investment to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, may be aggregated and treated as if made by a single investor for the purpose of calculating the limits provided for in Article 4(1), (3) and (4).

3. Where the investor is not absolutely entitled to the sums or securities held, the person who is absolutely entitled shall receive the compensation provided that that person has been identified or is identifiable before the date referred to in Article 2(2). If there are

several persons who are absolutely entitled, the share of each under the arrangements subject to which the sums or the securities are managed shall be taken into account when the limits provided for in Article 4(1), (3) and (4) are calculated.

This provision shall not apply to collective investment undertakings.

Article 9

1. The compensation scheme shall take appropriate measures to inform investors of the decision referred to in Article 2(2) and shall be allowed to fix a period or not less than six months during which investors may be required to submit their claims.

However, the expiry of such a period may not be invoked by the scheme in order to deny compensation to an investor who has been unable to assert his claim under the compensation scheme in time.

2. The scheme shall pay investors' claims as soon as possible and at the latest three months after the eligibility and the amount of the claim have been established.

Article 10

1. Member States shall ensure that investment firms take appropriate measures to provide actual and intending investors with the information necessary for the identification of the investor compensation scheme of which the investment firm and its branches are members within the Community or any alternative arrangement provided for in Article 2(1) second subparagraph or Article 5(3). The investors shall be 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. That information shall be made available in a readily comprehensible manner.

Information shall also be given on request on the conditions governing compensation and the formalities which must be fulfilled in order to obtain compensation.

2. The information referred to in paragraph 1 shall be made available in the manner provided by national law in the official language or languages of the Member State in which a branch is established.

Article 11

1. Member States shall check that branches established by an investment firm which has its head office outside the Community have cover equivalent to that prescribed in this Directive. Failing that, Member States may, subject to Article 5 of the Investment Services Directive, stipulate that branches established by an investment firm which has its head office outside the Community must joint investor compensation schemes in operation within their territories.
2. Actual and intending investors at branches established by an investment firm which has its head office outside the Community shall be provided by the investment firm with all relevant information concerning the compensation arrangements which cover their investments.
3. The information referred to in paragraph 2 shall be made available in the official language or languages of the Member State in which the branch is established in the manner prescribed by national law and shall be drafted in a clear and comprehensible form.

Article 12

Without prejudice to any other rights which it may have under national law, an investor compensation scheme which pays investors' claims shall have the right of subrogation to the rights of the investors in the liquidation proceedings for an amount equivalent to its payment.

Article 13

No later than three years after the date mentioned in Article 14(1), the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.

Article 14

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1996. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the main laws, regulations and administrative decisions which they adopt in the field covered by this Directive.

Article 15

Article 12 of Directive 93/22/EEC shall be repealed as from the date referred to in Article 14(1).

Article 16

This Directive is addressed to the Member States.

Done at Brussels,

For the Parliament,
The President

For the Council,
The President

LIST OF THE EXCLUSIONS REFERRED TO IN ARTICLE 4(2)

1. Institutional investors including :

- Investment firms as defined in Article 1(2) of the Investment Services Directive.
- Credit institutions as defined in the first indent of Article 1 of Directive 77/780/EEC.
- Financial institutions as defined in Article 1(6) of Directive 89/646/EEC.
- Insurance undertakings.
- Collective investment undertakings.
- Pension or retirement funds.

Other institutional investors.

2. Professional investors
3. Supranational, Government and central administrative authorities.
4. Provincial, regional, local or municipal authorities.
5. Directors and managers of and members personally liable in the investment firm, holders of at least 5% of the capital of the investment firm, persons responsible for carrying out the statutory audits of the investment firm's accounting documents and investors with similar status in other companies in the same group.
6. Close relatives and third parties acting on behalf of the investors referred to at point 5.

7. Other companies in the same group.
8. Investors who have any responsibility for, or have directly or indirectly profited from events relating to the investment firm or its business which gave rise to the firm's financial difficulties.
9. Companies which are of such a size that they are not permitted to draw up abridged balance sheets under Article 11 of the Fourth Council Directive (78/660/EEC) of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies¹⁰.

¹⁰ OJ No L 222, 14.8.1978, p. 11. Directive as last amended by Directive 94/8/EC of 21.3.1994 (OJ No L 82, 25.3.1994, p. 33)

GUIDING PRINCIPLES

Where a branch applies to join a host Member State scheme for supplementary cover, the host Member State scheme will bilaterally establish with the home Member State scheme appropriate rules and procedures for paying compensation to investors at that branch. The following principles shall apply both to the drawing up of those procedures and in the framing of the membership conditions application to such a branch (as referred to in Article 7(1)) :

- a. the host Member State scheme will retain full rights to impose its objective and generally applied rules on participating investment firms; it will be able to require the provision of relevant information and have the right to verify such information with the home Member State's competent authorities;
- b. the host Member State scheme will meet claims for supplementary compensation after it has been informed by the home Member State's competent authorities of the decision referred to in Article 2(2). The host Member State scheme will retain full rights to verify an investor's entitlement according to its own standards and procedures before paying supplementary compensation;
- c. home Member State and host Member State schemes will co-operate fully with each other to ensure investors receive compensation promptly and in the correct amounts. In particular, they will agree on how the existence of a counterclaim which may give rise to set-off under either scheme will affect the compensation paid to the investor by each scheme;
- d. host Member State scheme will be entitled to charge branches for supplementary cover on an appropriate basis which takes into account the guarantee funded by the home Member State scheme. To facilitate charging, the host Member State scheme

will be entitled to assume that its liability will in all circumstances be limited to the excess of the cover it has offered over the cover offered by the home Member State regardless of whether the home Member State actually pays any compensation in respect of claims by investors within the host Member State's territory.

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