

**DIRECTIVE 97/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

of 3 March 1997

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 Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Having regard to the opinion of the European Monetary
Institute ⁽³⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽⁴⁾ in the light of the joint text
approved by the Conciliation Committee on 18
December 1996,

(1) Whereas on 10 May 1993 the Council adopted
Directive 93/22/EEC on investment services in the
securities field ⁽⁵⁾; whereas that Directive is an essen-
tial instrument for the achievement of the internal
market for investment firms;

(2) Whereas Directive 93/22/EEC lays down prudential
rules which investment firms must observe at all
times, including rules the purpose of which is to
protect as far as possible investor's rights in respect
of money or instruments belonging to them;

(3) Whereas, however, no system of supervision can
provide complete protection, particularly where acts
of fraud are committed;

(4) Whereas the protection of investors and the main-
tenance of confidence in the financial system are an
important aspect of the completion and proper func-
tioning of the internal market in this area; whereas to
that end it is therefore essential that each Member
State should have an investor-compensation scheme

that guarantees a harmonized minimum level of
protection at least for the small investor in the event
of an investment firm being unable to meet its obli-
gations to its investor clients;

(5) Whereas small investors will therefore be able to
purchase investment services from branches of
Community investment firms or on the basis of the
cross-border provision of services as confidently as
from domestic investment firms, in the knowledge
that a harmonized minimum level of protection
would be available to them in the event of an invest-
ment firm being unable to meet its obligations to its
investor clients;

(6) Whereas, in the absence of such minimum harmon-
ization, a host Member State might consider itself
justified, by considerations of investor protection, in
requiring membership of its compensation scheme
when a Community investment firm operating
through a branch or under the freedom to provide
services either belonged to no investor-compensation
scheme in its home Member State or belonged to a
scheme which was not regarded as offering equiva-
lent protection; whereas such a requirement might
prejudice the operation of the internal market;

(7) Whereas although most Member States currently
have some investor-compensation arrangements
those arrangements do not in general cover all
investment firms that hold the single authorization
provided for in Directive 93/22/EEC;

(8) Whereas, therefore, every Member State should be
required to have an investor-compensation scheme
or schemes to which every such investment firm
would belong; whereas each scheme must cover
money and instruments held by an investment firm
in connection with an investor's investment opera-
tions which, where an investment firm is unable to
meet its obligations to its investor clients, cannot be
returned to the investor; whereas this is entirely
without prejudice to the rules and procedures ap-
plicable in each Member State as regards the de-
cisions to be taken in the event of the insolvency or
winding-up of an investment firm;

(9) Whereas the definition of investment firm includes
credit institutions which are authorized to provide
investment services; whereas every such credit insti-
tution must also be required to belong to an in-
vestor-compensation scheme to cover its investment

⁽¹⁾ OJ No C 321, 27. 11. 1993, p. 15 and OJ No C 382, 31. 12. 1994, p. 27.

⁽²⁾ OJ No C 127, 7. 5. 1994, p. 1.

⁽³⁾ Opinion delivered on 28 July 1995.

⁽⁴⁾ European Parliament opinion of 19 April 1994 (OJ No C 128, 9. 5. 1994, p. 85), Council common position of 23 October 1995 (OJ No C 320, 30. 11. 1995, p. 9) and European Parliament Decision of 12 March 1996 (OJ No C 96, 1. 4. 1996, p. 28). Decision of the Council of 17 February 1997 and Decision of the European Parliament of 19 February 1997 (OJ No C 85, 17. 3. 1997).

⁽⁵⁾ OJ No L 141, 11. 6. 1993, p. 27.

business; whereas, however, it is not necessary to require such a credit institution to belong to two separate schemes where a single scheme meets the requirements both of this Directive and of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes⁽¹⁾; whereas, however, in the case of investment firms which are credit institutions it may in certain cases be difficult to distinguish between deposits covered by Directive 94/19/EC and money held in connection with investment business; whereas Member States should be allowed to determine which Directive shall apply to such claims;

- (10) Whereas Directive 94/19/EC allows a Member State to exempt a credit institution from the obligation to belong to a deposit-guarantee scheme where that credit institution belongs to a system which protects the credit institution itself and, in particular, ensures its solvency; whereas, where a credit institution belonging to such a system is also an investment firm, a Member State should also be allowed, subject to certain conditions, to exempt it from the obligation to belong to an investor-compensation scheme;
- (11) Whereas a harmonized minimum level of compensation of ECU 20 000 for each investor should be sufficient to protect the interests of the small investor where an investment firm is unable to meet its obligations to its investor clients; whereas it would therefore appear reasonable to set the harmonized minimum level of compensation at ECU 20 000; whereas, as in Directive 94/19/EC, limited transitional provisions might be required to enable compensation schemes to comply with that figure since this applies equally to Member States which, when this Directive is adopted, do not have any such scheme;
- (12) Whereas the same figure was adopted in Directive 94/19/EC;
- (13) Whereas in order to encourage investors to take due care in their choice of investment firms it is reasonable to allow Member States to require investors to bear a proportion of any loss; whereas, however, an investor must be covered for at least 90 % of any loss as long as the compensation paid is less than the Community minimum;
- (14) Whereas certain Member States' schemes offer levels of cover higher than the harmonized minimum level of protection under this Directive; whereas, however, it does not seem desirable to require any change in those schemes in that respect;
- (15) Whereas the retention in the Community of schemes providing levels of cover 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 may offer their investors the same cover as is provided by the schemes of the countries in which they are located; whereas it is appropriate that, in its report on the application of this Directive, the Commission should indicate the extent to which branches have exercised that option and any difficulties which they or the investor-compensation schemes may have encountered in implementing those provisions; whereas the possibility that home Member States' schemes should themselves offer such supplementary cover, subject to the conditions such schemes may lay down, is not ruled out;
- (16) Whereas market disturbances could be caused by branches of investment firms established in Member States other than their Member States of origin which offer levels of cover higher than those offered by investment firms authorized in their host Member States; whereas it is not appropriate that the level or scope of cover offered by compensation schemes should become an instrument of competition; whereas it is therefore necessary, at least during an initial period, to stipulate that neither the level nor the scope of cover offered by a home Member State's scheme to investors at branches located in another Member State should exceed the maximum level or scope offered by the corresponding scheme in the host Member State; whereas any market disturbances should be reviewed at an early date, on the basis of the experience acquired and in the light of developments in the financial sector;
- (17) Whereas a Member State must be able to exclude certain categories of specifically listed investments or investors, if it does not consider that they need special protection, from the cover afforded by investor-compensation schemes;
- (18) Whereas some Member States have investor-compensation schemes under the responsibility of professional organizations; whereas in other Member States there are schemes that have been set up and

⁽¹⁾ OJ No L 135, 31. 5. 1994, p. 5.

are regulated on a statutory basis; whereas that diversity of status poses a problem only with regard to compulsory membership of and exclusion from schemes; whereas it is therefore necessary to take steps to limit the powers of schemes in that area;

- (19) Whereas the investor must be compensated without excessive delay once the validity of his claim has been established; whereas the compensation scheme itself must be able to fix a reasonable period for the presentation of claims; whereas, however, the fact that such a period has expired may not be invoked against an investor who for good reason has not been able to present his claim within the time allowed;
- (20) Whereas informing investors of compensation arrangements is an essential element of investor protection; whereas Article 12 of Directive 93/22/EEC required investment firms to inform investors, before doing business with them, of the possible application of a compensation scheme; whereas, therefore, this Directive should lay down rules on informing such intending investors regarding the compensation schemes covering their investment business;
- (21) Whereas, however, the unregulated use in advertising of references to the amount and scope of a compensation scheme could affect the stability of the financial system or investor confidence; whereas Member States should therefore lay down rules to limit such references;
- (22) 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 the head office of which is in a non-member country, and in particular Directive 93/22/EEC, allow Member States to decide whether and subject to what conditions to permit 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, or the right of establishment in Member States other than those in which they are established; whereas, accordingly, a Member State admitting such branches must decide how to apply the principles of this Directive to such branches in accordance with Article 5 of Directive 93/22/EEC 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 applicable to them;
- (23) Whereas it is not indispensable in this Directive to harmonize the ways in which investor-compensation

schemes are to be financed given, on the one hand, that the cost of financing such schemes must, in principle, be borne by investment firms themselves and, on the other hand, that the financing capacities of such schemes must be in proportion to their liabilities; whereas that must not, however, jeopardize the stability of the financial system of the Member State concerned;

- (24) Whereas this Directive may not result in the Member States or their competent authorities being made liable in respect of investors if they have ensured that one or more schemes for the compensation or protection of investors under the conditions prescribed in this Directive have been introduced and officially recognized;
- (25) Whereas, in conclusion, a minimum degree of harmonization of investor-compensation arrangements is necessary for the completion of the internal market for investment firms since it will make it possible for investors to do business with such firms with greater confidence, especially firms from other Member States, and make it possible to avoid any difficulties caused by host Member States applying national investor-protection rules that are not coordinated at Community level; whereas a binding Community Directive is the only appropriate instrument for the achievement of the desired objective in the general absence of investor-compensation arrangements corresponding to the coverage of Directive 93/22/EEC; whereas this Directive effects only the minimum harmonization required, allows Member States to prescribe wider or higher coverage if they desire and gives Member States the necessary latitude as regards the organization and financing of investor-compensation schemes,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'investment firm' shall mean an investment firm as defined in Article 1 (2) of Directive 93/22/EEC

— authorized in accordance with Article 3 of Directive 93/22/EEC,

or

- authorized as a credit institution in accordance with Council Directive 77/780/EEC⁽¹⁾ and Council Directive 89/646/EEC⁽²⁾, the authorization of which covers one or more of the investment services listed in Section A of the Annex to Directive 93/22/EEC;
2. 'investment business' shall mean any investment service as defined in Article 1 (1) of Directive 93/22/EEC and the service referred to in point 1 of Section C of the Annex to that Directive,
3. 'instruments' shall mean the instruments listed in Section B of the Annex to Directive 93/22/EEC;
4. 'investor' shall mean any 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 business' shall mean investment business carried out for the account of two or more persons or over which two or more persons have rights that may be exercised by means of the signature of one or more of those persons;
7. 'competent authorities' shall mean the authorities defined in Article 22 of Directive 93/22/EEC; those authorities may, if appropriate, be those defined in Article 1 of Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis⁽³⁾.

Article 2

1. Each Member State shall ensure that within its territory one or more investor-compensation schemes are introduced and officially recognized. Except in the

(1) First Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ No L 322, 17. 12. 1977, p. 30). Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

(2) Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ No L 386, 30. 12. 1989, p. 1). Directive as last amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

(3) OJ No L 110, 28. 4. 1992, p. 52.

circumstances envisaged in the second subparagraph and in Article 5 (3), no investment firm authorized in that Member State may carry on investment business unless it belongs to 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 exempt under Article 3 (1) of Directive 94/19/EC from the obligation to belong to a deposit-guarantee scheme, provided that the protection and information given to depositors are also given to investors on the same terms and investors thus enjoy protection at least equivalent to that afforded by an investor-compensation scheme.

Any Member State that avails itself of that option shall inform the Commission accordingly; it shall, in particular, disclose the characteristics of the protective systems in question and the credit institutions covered by them for the purposes of this Directive, as well as any subsequent changes to the information supplied. The Commission shall inform the Council thereof.

2. A scheme shall provide cover for investors in accordance with Article 4 where either:

— the competent authorities have determined that in their view an instrument firm appears, for the time being, for reasons directly related to its financial circumstances, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so,

or

— a judicial authority has made a ruling, for reasons 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 shall be provided for claims arising out of an investment firm's inability to:

— repay money owed to or belonging to investors and held on their behalf in connection with investment business,

or

— return to investors any instruments belonging to them and 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 given Member State, would be subject both to this Directive and to Directive 94/19/EC shall be directed by that Member State to a scheme under one or other of those Directives as that Member State shall consider appropriate. No claim shall be eligible for compensation more than once under those Directives.

4. The amount of an investor's claim shall be calculated in accordance with the legal and contractual conditions, in particular those concerning set off and counter-claims, that are applicable to the assessment, on the date of the determination or ruling referred to in paragraph 2, of the amount of the money or the value, determined where possible by reference to the market value, of the instruments belonging to the investor which the investment firm is unable to repay or return.

Article 3

Claims arising out of transactions in connection with which a criminal conviction has been obtained 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 laundering⁽¹⁾, shall be excluded from any compensation under investor-compensation schemes.

Article 4

1. Member States shall ensure that schemes provide for cover of not less than ECU 20 000 for each investor in respect of the claims referred to in Article 2 (2).

Until 31 December 1999 Member States in which, when this Directive is adopted, cover is less than ECU 20 000 may retain that lower level of cover, provided it is not less than ECU 15 000. That option shall also be available to Member States to which the transitional provisions of the second subparagraph of Article 7 (1) of Directive 94/19/EC apply.

2. A Member State may provide that certain investors shall be excluded from cover by schemes or shall be granted a lower level of cover. Those exclusions shall be as listed in Annex I.

3. This Article shall not preclude the retention or adoption of provisions which afford greater or more comprehensive cover to investors.

4. A Member State may limit the cover provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of an investor's claim. The percentage covered must, however, be equal to or exceed 90 % of the

claim as long as the amount to be paid under the scheme is less than ECU 20 000.

Article 5

1. If an investment firm required by Article 2 (1) to belong to a scheme does not meet the obligations incumbent on it as a member of that scheme, the competent authorities which issued its authorization shall be notified and, in cooperation with the compensation scheme, shall take all measures appropriate, including the imposition of penalties, to ensure that the investment firm meets 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 12 months' notice of its intention of excluding the investment firm from membership of the scheme. The scheme shall continue to provide cover under the second subparagraph of Article 2 (2) in respect of investment business transacted during that period. If, on expiry of the period of notice, the investment firm has not met its obligations, the compensation scheme may, again having obtained the express consent of the competent authorities, exclude it.

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 to provide investment services if, before its exclusion, it made alternative compensation arrangements which ensure that investors will enjoy cover that is at least equivalent to that offered by the officially recognized scheme and has characteristics equivalent to those of that 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 imposed in paragraph 3, the competent authorities which issued its authorization shall withdraw it forthwith.

Article 6

After the withdrawal of an investment firm's authorization, cover under the second subparagraph of Article 2 (2) shall continue to be provided in respect of investment business transacted up to the time of that withdrawal.

Article 7

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

⁽¹⁾ OJ No L 166, 28. 6. 1991, p. 77.

Until 31 December 1999, neither the level nor the scope, including the percentage, of the cover provided for may exceed the maximum level or scope of the cover offered by the corresponding compensation scheme within the territory of the host Member State. Before that date the Commission shall draw up a report on the basis of the experience acquired in applying this subparagraph and Article 4 (1) of Directive 94/19/EC referred to above and shall consider the need to continue those provisions. If appropriate, the Commission shall submit a proposal for a Directive to the European Parliament and the Council, with a view to the extension of their validity.

Where the level or scope, including the percentage, of the cover offered by the host Member State's investor-compensation scheme exceeds the level or scope of the 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 cover which its investors already enjoy by virtue of its membership of its home Member State's scheme.

If a branch joins such a scheme, that scheme shall be one that covers the category of institution to which the branch belongs or most closely corresponds in its host Member State.

Member States shall ensure that objective and generally applied conditions are established concerning branches' membership of all investor-compensation schemes. Admission shall be conditional on a branch meeting the relevant membership obligations, including in particular the payment of all contributions and other charges. Member States shall follow the guiding principles set out in Annex II in implementing this paragraph.

2. If a branch which has exercised the option of voluntary membership under paragraph 1 does not meet the obligations incumbent on it as a member of an investor-compensation scheme, the competent authorities which issued its authorization shall be notified and, in cooperation with the compensation scheme, shall take all measures necessary to ensure that the branch meets the aforementioned obligations.

If those measures fail to ensure that the branch meets the obligations referred to in this Article, after an appropriate period of notice of not less than 12 months the compensation scheme may, with the consent of the competent authorities which issued the authorization, exclude the branch. Investment business transacted before the date of exclusion shall continue to be covered after that date by the compensation scheme of which the branch was a voluntary member. Investors shall be informed of the withdrawal of the supplementary cover and of the date on which it takes effect.

Article 8

1. The cover provided for in Article 4 (1), (3) and (4) shall apply to the investor's aggregate claim on the same investment firm under this Directive irrespective of the number of accounts, the currency and location within the Community.

Member States may, however, provide that funds in currencies other than those of the Member States and the ecu shall be excluded from cover or be subject to lower cover. This option shall not apply to instruments.

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

In the absence of special provisions, claims shall be divided equally amongst investors.

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), (3) and (4), be aggregated and treated as if arising from an investment made by a single investor.

3. Where an 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 or can be identified before the date of the determination or ruling referred to in Article 2 (2).

If two or more persons 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 laid down 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 determination or ruling referred to in Article 2 (2) 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 may not be less than five months from the date of the aforementioned determination or ruling or from the date on which that determination or ruling is made public.

The fact that that period has expired may not, however, be invoked by the scheme to deny cover to an investor who has been unable to assert his right to compensation in time.

2. The scheme shall be in a position to pay an investor's claim as soon as possible and at the latest within three months of the establishment of the eligibility and the amount of the claim.

In wholly exceptional circumstances and in special cases a compensation scheme may apply to the competent authorities for an extension of the time limit. No such extension may exceed three months.

3. Notwithstanding the time limit laid down in paragraph 2, where an investor or any other person entitled to or having an interest in investment business has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of Directive 91/308/EEC, the compensation scheme may suspend any payment pending the judgment of the court.

Article 10

1. Member States shall ensure that each investment firm 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 and its branches within the Community 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 cover offered by the compensation scheme and any rules laid down by the Member States pursuant to Article 2 (3). That information shall be made available in a readily comprehensible manner.

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

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

3. Member States shall establish rules limiting the use in advertising of the information referred to in paragraph 1 in order to prevent such use from affecting the stability of the financial system or investor confidence. In particular, a Member State may restrict such advertising to a factual reference to the scheme to which an investment firm belongs.

Article 11

1. Each Member State shall check whether branches established by an investment firm the head office of which is outwith the Community have cover equivalent to that prescribed in this Directive. Failing such cover, a Member State may, subject to Article 5 of Directive 93/22/EEC, stipulate that branches established by an investment firm the head office of which is outwith the Community shall join investor-compensation schemes in operation within its territory.

2. Actual and intending investors at branches established by an investment firm the head office of which is outwith the Community shall be provided by that investment firm with all relevant information concerning the compensation arrangements which cover their investments.

3. The information provided for in paragraph 2 shall be made available in the manner prescribed by national law in the official language or languages of the Member State in which a branch is established and shall be drafted in a clear and comprehensible form.

Article 12

Without prejudice to any other rights which they may have under national law, schemes which make payments in order to compensate investors shall have the right of subrogation to the rights of those investors in liquidation proceedings for amounts equal to their payments.

Article 13

Member States shall ensure that an investor's right to compensation may be the subject of an action by the investor against the compensation scheme.

Article 14

No later than 31 December 1999 the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive together, where appropriate, with proposals for its revision.

Article 15

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive no later than 26 September 1998. They shall forthwith inform the Commission thereof.

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

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

Article 16

Article 12 of Directive 93/22/EEC shall be repealed with effect from the date referred to in Article 15 (1).

Article 17

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 3 March 1997.

For the European Parliament

The President

J.M. GIL-ROBLES

For the Council

The President

M. DE BOER

ANNEX I

LIST OF EXCLUSIONS REFERRED TO IN ARTICLE 4(2)

1. Professional and institutional investors, including:
 - investment firms as defined in Article 1 (2) of Directive 93/22/EEC,
 - credit institutions as defined in the first indent of Article 1 of Council Directive 77/780/EEC,
 - financial institutions as defined in Article 1 (6) of Council Directive 89/646/EEC,
 - insurance undertakings,
 - collective-investment undertakings,
 - pension and retirement funds.Other professional and institutional investors.
2. Supranational institutions, government and central administrative authorities.
3. Provincial, regional, local and municipal authorities.
4. Directors, managers and personally liable members of investment firms, persons holding 5 % or more of the capital of such investment firms, persons responsible for carrying out the statutory audits of investment firms' accounting documents and investors with similar status in other firms within the same group as such a firm.
5. Close relatives and third parties acting on behalf of the investors referred to in point 4.
6. Other firms in the same group.
7. Investors who have any responsibility for or have taken advantage of certain facts relating to an investment firm which gave rise to the firm's financial difficulties or contributed to the deterioration of its financial situation.
8. 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 companies⁽¹⁾.

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 94/8/EC (OJ No L 82, 25. 3. 1994, p. 33).

*ANNEX II***GUIDING PRINCIPLES**

(referred to in the fifth subparagraph of Article 7(1))

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

- (a) the host Member State's 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 be entitled to verify such information with the home Member State's competent authorities;
 - (b) the host Member State's scheme will meet claims for supplementary compensation after it has been informed by the home Member State's competent authorities of the determination or ruling referred to in Article 2(2). The host Member State's scheme will retain full rights to verify an investor's entitlement according to its own standards and procedures before paying supplementary compensation;
 - (c) the host Member State's and the home Member State's schemes will cooperate fully with each other to ensure that 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) the host Member State's scheme will be entitled to charge branches for supplementary cover on an appropriate basis which takes into account the cover funded by the home Member State's scheme. To facilitate charging, the host Member State's 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.
-