



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08 05 1996  
COM(96) 169 final - COD 471

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty  
on the European Parliament's amendments  
to the Council's common position regarding the

proposal for a  
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**ON INVESTOR COMPENSATION SCHEMES**

OPINION OF THE COMMISSION  
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EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE  
ON INVESTOR COMPENSATION SCHEMES

**1. STAGE REACHED IN THE PROCEDURE**

- a) On 22 September 1993 the Commission adopted a proposal for a Council Directive on investor compensation schemes<sup>1</sup>. This proposal was forwarded to the Council on 22 October 1993.

The Council forwarded this text to Parliament and to the Economic and Social Committee and on 14 January 1994 began its own examination of the proposal.

- b) The Economic and Social Committee unanimously adopted an opinion on the Commission proposal at its 312th Plenary Session on 26 January 1994<sup>2</sup>.
- c) The European Parliament adopted the legislative resolution embodying the opinion of Parliament on the Commission proposal at its sitting on 19 April 1994<sup>3</sup>.
- d) The European Monetary Institute delivered an opinion on this proposal on 28 July 1995.
- e) On 13 December 1994 the Commission adopted an amended proposal<sup>4</sup> in the light of its consultation of Parliament and of the Economic and Social Committee.
- f) On 23 October 1995 the Council adopted the common position which is the subject of this communication.
- g) In the plenary session of 14 December 1995 the President of the Parliament acknowledged receipt of the common position.

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<sup>1</sup> COM(93)381 final, OJ N° C 321, 27.11.1993, p. 15

<sup>2</sup> OJ N° C 127, 7.5.1994, p. 1

<sup>3</sup> OJ N° 128, 9.5.1994, p. 86

<sup>4</sup> COM(94) 585 final, OJ N° C 382, 31.12.1994, p. 27

h) On 12 March 1996 the European Parliament adopted unanimously eight amendments to the common position<sup>5</sup>.

In accordance with the procedure described in Article 189 b (2) of the Treaty, the Commission has to deliver an opinion on these amendments.

## **2. POSITION TAKEN BY THE COMMISSION REPRESENTATIVE AT THE PLENARY SITTING**

The Commission representative rejected all the eight amendments.

## **3. COMMISSION OPINION ON THE AMENDMENTS VOTED BY THE EUROPEAN PARLIAMENT**

### **a) Purpose of the amendments**

#### **Amendment N° 1 (Recital N° 16)**

Its aim is to eliminate the "export-ban" clause.

#### **Amendment N° 2 (Article 2.2, 1st indent)**

Its aim is twofold. On the one hand, the rapporteur considers that schemes should compensate investors not only when the investment firm is in financial difficulties, but in all circumstances. On the other hand, the rapporteur considers that the schemes should have the same power as the competent authorities to determine when investors must be compensated.

#### **Amendment N° 3 (Article 2.2, 2nd indent)**

Its aim and scope is similar to that of amendment N° 2. The only difference is that the reference is to a judicial authority rather than to competent authorities.

#### **Amendment N° 4 (Article 2.4)**

It seeks to ensure that the value, to be stipulated by the scheme, of the securities belonging to investors will be their market value.

#### **Amendment N° 5 (Article 5.2)**

The twelve months' notice to exclude a firm from a scheme is considered too long. It is considered more appropriate to have immediate exclusion.

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<sup>5</sup> Text not yet published in the Official Journal

**Amendment N° 6 (Article 7.1, 2nd subparagraph)**

The same objective as amendment N° 1.

**Amendment N° 7 (Article 7.2, 2nd paragraph)**

The same as amendment N° 5 but applying to the case of branches which have become members of a scheme of a host Member State in order to top-up their coverage.

**Amendment N° 8 (Article 9.2)**

Its aim is to start counting the three months' period to compensate investors from the date the investment firm has been considered unable to meet its obligations (if the eligibility and the amount of the claim have been established).

b) Need for consistency with the Deposit Guarantee Schemes Directive (DGSD)

The text of the common position is very similar to that of the DGSD. The Commission initial proposal differs in several aspects from the final text of the DGSD because when it was adopted (22.9.93) the DGSD was still under negotiation. The DGSD was adopted on 30.5.94 by co-decision (after passing through the conciliation committee). This means that the DGSD reflects both Council and Parliament's opinion on compensation schemes.

The need for consistency between the proposal and the DGSD has been stressed not only by the Council and the Commission. It has also been requested by the Parliament<sup>6</sup>, by the ECOSOC<sup>7</sup>, and by Industry representatives (the Banking Federation of the EU).

The need for legislative coherence between the proposal and the DGSD is particularly evident in the case of credit institutions because Article 2.3 of the common position allows them to belong to just one scheme to comply with both directives. Lack of consistency may produce undesirable distortions.

c) Commission position

For the Commission, the concern for consistency with the DGSD is an important argument, in addition to those developed below, to reject amendments N° 1, 2, 3, 5, 6 and 7.

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<sup>6</sup> Section B-2, Report A3-0209/94. First Reading.

<sup>7</sup> Point 3.3 of the ECOSOC opinion (CES 98/94)

#### **Amendments N° 1 and 6 (not acceptable)**

The text in the common position is equivalent to that in Recital N° 14 and in Article 4.1 of the DGSD. The elimination of the export-ban clause, whereby branches in host Member States will not be allowed to offer a higher protection than that offered by domestic scheme(s), would in principle increase the competition between, and presumably the efficiency of, the investment firms. This is in line with the philosophy underlying the single market. However, it may also produce unwanted volatility and instability in the financial markets. To strike a balance between a higher degree of competition and a higher degree of volatility is not easy "a priori". That is why it seems advisable to establish a short transitory period (in this case until 31.12.99) to watch developments closely.

#### **Amendments N° 2 and 3 (not acceptable)**

The text in the Common Position is equivalent to that in Articles 1.3.i and 1.3.ii of the DGSD. Parliament proposes to go back to Article 2.2 of the initial Commission proposal.

On the one hand, during the discussions in the Council with the Member States it became clear that only investment firms in financial difficulties should trigger the intervention of the scheme because if the investment firm is still financially sound it would be up to it to repair the damage caused to investors. Therefore the wording in the common position would cover, in practice, all common causes (fraud, etc.) for compensation.

On the other hand, it seems more prudent to leave it up to the competent authorities (or judicial authorities) alone to decide when the scheme should intervene. This, in addition, will eliminate the risk of having disputes in case both the authorities and the scheme were allowed to make such a decision.

#### **Amendment N° 4 (not acceptable)**

Parliament proposes to go back to the concept of "market" value inserted in Article 2.4 of the initial proposal. In the DGSD there is nothing equivalent because securities are not covered there.

The concept of market value seems in principle attractive, and useful in some specific cases, but often in practice it may be very difficult to apply. In some cases there are several markets for the same instrument. In others, when securities are highly illiquid, the market value is unavailable. Frequently, there is no organised market for the relevant security. In the case of some derivatives (futures and options) the contracts may have already expired.

Given these difficulties, with the use of market value as a general rule, it seems more advisable to give Member States some leeway to devise the precise methods to calculate the most appropriate value in each situation.

**Amendments N° 5 and 7 (not acceptable)**

The text in the common position is equivalent to that in Articles 3.3 and 4.4 of the DGSD. Parliament proposes to go back to Article 5 of the initial Commission proposal.

In the case of amendment N° 5, the immediate exclusion of an investment firm from a scheme will not be to the benefit of the current investors because it will entail the immediate removal of the authorization (the European passport) of the investment firm and therefore it will have to cease immediately its operations. In the case of amendment N° 7, it does not produce the removal of the authorization but it will deprive investors of an extra coverage ("top-up") in case they had to be compensated.

**Amendment N° 8 (not acceptable)**

Parliament proposes to go back to the text in Article 10 of the initial Commission proposal. The text in Article 10 of the DGSD is not directly applicable here because "investment" in relation to "deposit" is a less standardised and more sophisticated activity.

The text proposed by Parliament does not carry, in practice, any real additional protection to investors because the compensation is still conditional on the fact that the "eligibility and the amount of the claim have been established" and experience shows that in the case of securities it takes a long time (sometimes years) to determine the precise liabilities.

# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/1

## AMENDMENT 1

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING

(A4-0047/96)

Rapporteur: Mr Janssen Van Raay

INVESTOR-COMPENSATION SCHEMES

Common position of the Council

(C4-0523/95 - 00/0471(COD))

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Common position of the Council

Amendment

(Amendment 1)

Recital 16

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 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 after a number of years, on the basis of the experience acquired and in the light of developments in the financial sector;

Deleted

# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/2

## AMENDMENT 2

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING

(A4-0047/96)

Rapporteur: Mr Janssen Van Raay

INVESTOR-COMPENSATION SCHEMES

Common position of the Council

(C4-0523/95 - 00/0471(COD))

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Common position of the Council

Amendment

(Amendment 2)

Article 2(2), 1st subparagraph, 1st indent

- |  |  |
|--|--|
| - the competent authorities have determined that in their view an investment firm appears, for the time being, <u>for reasons directly related to its financial circumstances</u> , to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so, or | - the competent authorities <u>or investor-compensation scheme</u> have determined that in their view an investment firm appears, for the time being, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so, or |
|--|--|

PE 197.378/2

Or. en



# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/3

## AMENDMENT 3

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING

(A4-0047/96)

Rapporteur: Mr Janssen Van Raay

INVESTOR-COMPENSATION SCHEMES

Common position of the Council

(C4-0523/95 - 00/0471(COD))

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Common position of the Council

Amendment

(Amendment 3)

Article 2(2), 1st subparagraph, 2nd indent

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|--|--|
| - a judicial authority has made a ruling, <u>for reasons directly related to an investment firm's financial circumstances</u> , which has the effect of suspending investors' ability to make claims against it, | - a judicial authority <u>or investor-compensation scheme</u> has made a ruling which has the effect of suspending investors' ability to make claims against it, |
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# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/4

## AMENDMENT 4

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING

(A4-0047/96)

Rapporteur: Mr Janssen Van Raay

INVESTOR-COMPENSATION SCHEMES

Common position of the Council  
(C4-0523/95 - 00/0471(COD))

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Common position of the Council

Amendment

(Amendment 4)

Article 2(4)

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 of the instruments belonging to the investor which the investment firm is unable to pay or return.

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 market value of the instruments belonging to the investor which the investment firm is unable to pay or return.

PE 197.378/4

Or. en

# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/5

## AMENDMENT 5

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING

(A4-0047/96)

Rapporteur: Mr Janssen Van Raay

INVESTOR-COMPENSATION SCHEMES

Common position of the Council  
(C4-0523/95 - 00/0471(COD))

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Common position of the Council

Amendment

(Amendment 5)  
Article 5(2)

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. 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, proceed to exclusion.

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 exclude the investment firm from membership of the scheme. The coverage of money or instruments belonging to investors and held by the investment firm or branch thereof at the date of exclusion shall be maintained for twelve months from the date of exclusion.

PE 197.378/5  
Or. en

# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/6

AMENDMENT 6

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING  
Rapporteur: Mr Janssen Van Raay

(A4-0047/96)

INVESTOR-COMPENSATION SCHEMES

Common position of the Council  
(C4-0523/95 - 00/0471(COD))

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Common position of the Council

Amendment

(Amendment 6)

Article 7(1), 2nd subparagraph

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 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.

Deleted

PE 197.378/6  
Or. en

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# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/7

## AMENDMENT 7

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING

(A4-0047/96)

Rapporteur: Mr Janssen Van Raay

### INVESTOR-COMPENSATION SCHEMES

Common position of the Council  
(C4-0523/95 - 00/0471(COD))

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#### Common position of the Council

#### Amendment

(Amendment 7)

Article 7(2), 2nd paragraph

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.

If those measures fail to ensure that the branch meets the obligations referred to in this Article, 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.

PE 197.378/7  
Or. en

# EUROPEAN PARLIAMENT

5 March 1996

A4-0047/8

## AMENDMENT 8

tabled by the Committee on Legal Affairs and Citizens' Rights

RECOMMENDATION FOR SECOND READING

(A4-0047/96)

Rapporteur: Mr Janssen Van Raay

INVESTOR-COMPENSATION SCHEMES

Common position of the Council

(C4-0523/95 - 00/0471(COD))

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Common position of the Council

Amendment

(Amendment 8)

Article 9(2), 1st subparagraph

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

2. The scheme shall be in a position to pay an investor's claim within three months of the date of the determination or ruling referred to in Article 2(2) if the eligibility and the amount of the claim have been established.

PE 197.378/8

Or. en

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