

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 394 final SYN-80

Brussels, 12 September 1989

**Amended Proposal for a
COUNCIL DIRECTIVE**

**on the coordination of laws, regulations and administrative provisions
relating to the compulsory winding up of direct insurance undertakings**

**(presented by the Commission pursuant to paragraph 3 of Article 149
of the EEC Treaty)**

EXPLANATORY MEMORANDUM

1. On 23 January 1987 the Commission presented to the Council a proposal for a Directive on the coordination of laws, regulations and administrative provisions relating to the compulsory winding up of direct insurance undertakings.¹ That Directive, referred to in the White Paper as a measure necessary for the completion of the internal market, aims to supplement the Council's First Directives on direct non-life insurance² and direct life assurance respectively.³

It lays down rules and procedures governing the compulsory winding up of direct insurance undertakings, which safeguard the rights of policyholders and the insured so as to prevent discrimination on the grounds of nationality, and consequently facilitate the creation of an internal market in insurance.

2. The Economic and Social Committee delivered its opinion on 23 September 1987.⁴ The European Parliament has completed its first reading, delivering its opinion on 14 March 1989 on the basis of the report prepared by its Legal Affairs Committee.⁵ Acting on the basis of the third paragraph of Article 149 of the Treaty, and taking account of the two opinions, the Commission hereby presents an amended version of its proposal for a Directive.
3. All the amendments recommended by Parliament have been incorporated, in spirit if not to the letter. Some of the observations formulated by the Economic and Social Committee have been taken into account. Moreover, a number of additional amendments, intended to improve and clarify the scope of certain provisions, are proposed.

1 COM(86) 768 final/2, OJ No C 71, 19.3.1987.

2 First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; OJ No L 228, 16.8.1973, p. 3.

3 First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance; OJ No L 63, 13.3.1979, p. 1.

4 OJ No C 319, 30.11.1987, p. 10.

5 PE 124.469/fin. - Rapporteur P. PRICE.

4. The amendments made to the first recital and to Article 1(1) make clear what Community provisions are in force and take account of the progress made in creating the internal market by adding a reference to the Second Council Directive 88/357/EEC on the freedom to provide services in the field of direct non-life insurance,⁶ adopted on 22 June 1988, which also amends the First Non-Life Coordination Directive.
5. As regards normal compulsory winding up (NCW), Article 5(2) has been amended on the lines proposed by the Economic and Social Committee, in order to make more clear the purpose of this provision and thereby to avoid any difficulties of interpretation.
6. Article 4(1) has also been amended in accordance with Parliament's opinion with the aim of increasing the extent to which the winding-up procedure is publicized and, consequently, of strengthening the protection of insurance creditors. Indeed, it would seem that publication of the withdrawal of authorization and of the measures taken under the procedure solely in the Official Journal of the European Communities is not enough to guarantee appropriate notice to insurance creditors, who do not always have easy access to the Official Journal.
7. The new paragraph 1 added to Article 6 lays down that where the competent authorities of the country in which the insurer has its head office decide to deprive the bodies of that undertaking which are responsible for carrying out the winding up and for appointing an administrator of their powers, as provided for by Article 5(2), they must state the grounds for such a decision. This is because it introduces a major modification to the ordinary NCW procedure, which results from an abnormal situation liable to place the very aim of NCW at risk. It therefore appears desirable that the undertaking and, where appropriate, the courts with which any appeal against a decision is lodged pursuant to Article 6(2) of the amended proposal should receive an accurate and clear indication of the reasons behind that decision.

⁶ Second Council Directive of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC; OJ No L 172, 4.7.1988, p. 1.

8. Article 8(1) incorporates the amendment proposed by Parliament. Its aim is to enhance the universality of the effects of the winding-up procedure. The proposed wording requires the Member States to take whatever steps are necessary to ensure that the winding-up procedure is completed as quickly as possible in the interests of all concerned, in particular of insurance creditors (policyholders, insured persons, victims).
9. As regards Title III of the proposal for a Directive, which governs special compulsory winding up (SCW), Article 10(2) has been amended in accordance with Parliament's opinion in the same way as Article 8(1). The aim is the same, i.e. to enhance the universal effects of any SCW ordered and carried out in the Member State in which the insolvent insurance undertaking has its head office.
10. The new paragraph 2 of Article 11 is intended to lay down the necessary conditions governing publication of the essential documents relating to the special compulsory winding up of an insurance undertaking. This requirement, which is inspired by that laid down for normal compulsory winding up (Article 5(1)), is justified by considerations concerning the protection of the creditors of the insurance undertaking and the proper implementation of the procedure, particularly where an undertaking is wound up because of insolvency.

Finally, the amendment to Article 13(1) brings this proposal for a Directive into line with the new provisions relating to the transfer of portfolios laid down by the Second Directive 88/357/EEC on the provisions of non-life insurance services.

In introducing these amendments to the proposal for a Directive, the Commission has met Parliament's wishes in full and has largely met those of the Economic and Social Committee. As for the observations made concerning application of the proposal to Lloyd's, the Commission considers that the scope of this proposal for a Directive must be the same as that of the two First Directives, which do extend to Lloyd's.

As for the observations concerning the possibility of using computerized systems for keeping the register referred to in Article 2, the text initially proposed by the Commission is sufficiently flexible to allow for that possibility without its being specifically mentioned. The same applies to the comment made on the role to be played by the supervisory authorities of Member States in which branches of an insurance undertaking undergoing special compulsory winding up are established (Article 12).

Amended Proposal for a

COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative provisions
relating to the compulsory winding up of direct insurance undertakings

Initial proposal

Amended proposal

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

and in particular Articles 57(2) and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

having regard to the opinion of the Economic and Social Committee,

Whereas coordination of the conditions governing the taking up and pursuit of the business of direct insurance has been largely implemented, as regards insurance other than life assurance, by the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance⁽¹⁾ and, as regards life assurance, by the First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit⁽²⁾ of the business of direct life assurance⁽²⁾;

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2) and 66 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee

Whereas coordination of the conditions governing the taking-up and pursuit of the business of direct insurance has been largely implemented, as regards insurance other than life assurance, by the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance,¹ as last amended by Directive 88/357/EEC², and as regards life assurance, by the First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit³ of the business of direct life assurance³;

¹ OJ L 228, 16.8.1973, p. 3.

² OJ L 63, 13.3.1979, p. 1

¹ OJ No L 228, 16.8.1973, p. 3.

² OJ No L 172, 4.7.1988, p. 1.

³ OJ No L 63, 13.3.1979, p. 1.

Unchanged

Whereas those Directives do not harmonize the rules on the role of the supervisory authorities or those governing the treatment of insurance contracts in the event of the winding up of the undertaking or the distribution of the assets representing technical reserves in that eventuality;

Whereas, however, it is in the interests not only of creditors, in particular insurance creditors, but also of the supervisory authorities, that common solutions be found to the problems raised;

Whereas harmonized provisions should therefore be adopted in so far as is necessary to take account of the specific features of insurance undertakings; whereas, for the rest, compulsory winding up remains subject to the law of the Member State in which the head office is situated;

Whereas it is not advisable to extend the scope of this Directive to insurance undertakings that are not subject to the First Coordination Directives;

Whereas direct insurance undertakings, by reason of their activities, are required to establish reserves in order to meet their future liabilities; whereas the existence of assets representing such reserves, as required by the First Coordination Directives and verified by the supervisory authorities, is an evident safeguard of the rights of insurance creditors;

Whereas the keeping of registers of such assets at the head office and in each Community agency or branch in respect of all the life and non-life direct insurance and reinsurance business managed by such head office, agency or branch on the basis both of establishment and the provision of services makes it possible to identify such assets, to verify that they are sufficient, to monitor compliance with any measures prohibiting the free disposal of assets and to create, in the event of special compulsory winding up, a separate single life and/or non-life asset fund reserved as a matter of priority for insurance creditors whose claims relate to the direct life and/or non-life insurance or reinsurance business, as appropriate, managed by the head office, agency or branch concerned;

Whereas it is necessary to distinguish **Unchanged** between cases in which an undertaking is in a situation of proven or probable insolvency (special compulsory winding up) and those in which compulsory winding up proceedings are initiated because the undertaking, for any other reason, is no longer authorized in accordance with the First Directives (normal compulsory winding up); whereas in the latter case, by its very nature, the question of the distribution of assets does not arise and only rules on jurisdiction or the effects of such winding up on insurance contracts are necessary;

Whereas it is essential that the supervisory authorities be closely associated with the implementation and supervision of the special compulsory winding up procedure, even where the opening of the procedure and the appointment of the liquidator fall within the jurisdiction of a court;

Whereas special compulsory winding up must not have the effect of depriving life or non-life policyholders of cover immediately and unilaterally; whereas however it is necessary to guarantee that winding up operations are not unduly prolonged to the detriment of the general body of creditors; whereas provision must be made for possible transfers of portfolios in this connection; whereas partial transfers may be authorized under certain conditions;

Whereas the value of indemnity insurance claims or claims resulting from reinsurance acceptances may not be known either because the loss has not yet been determined or because losses have been incurred but have not yet been reported; whereas to prevent such a situation from impeding the progress and completion of a special compulsory winding up within a reasonable period, the supervisory authorities should be allowed discretion to authorize the lodging of a sum, set aside to satisfy such claims, with a trustee responsible for satisfying the said claims, under their supervision and within a

prescribed period; whereas the lodging with a trustee of reserves in respect of losses which have been incurred but have not yet been reported should be possible under the normal compulsory winding up procedure also; Unchanged

Whereas claims, other than insurance claims, arising after the opening of the winding up represent a special category that must be satisfied prior to any distribution; whereas, on social grounds, claims in respect of wages and salaries, in so far as they cannot be satisfied from the funds resulting from the assets not entered in the register, should be accorded an entitlement to the separate funds that takes precedence over claims in respect of portions of premiums:

Whereas the agencies and branches in the Community of undertakings whose head offices are situated outside the Community are subject to the First Coordination Directives; whereas their overall solvency is subject to verification only in certain conditions laid down in the First Coordination Directives; whereas in these circumstances it is advisable to intensify cooperation between the supervisory authorities concerned when reorganization measures are taken before ordering the opening of a special compulsory winding up, which takes effect throughout the Community; whereas, on the other hand, the normal compulsory winding up of an agency or branch in the Community of such an undertaking need not entail the normal compulsory winding up of the other Community agencies or branches of that undertaking;

HAS ADOPTED THIS DIRECTIVE :

TITLE I

GENERAL PROVISIONS

Article 1

1. This Directive shall apply to insurance undertakings which come within the scope of the First Council Directive 73/239/EEC, hereinafter referred to as the First Non-life Coordination Directive, or the First Council Directive 79/267/EEC, hereinafter referred to as the First Life Coordination Directive.

2. Non-Life business (direct insurance or reinsurance) means transactions included within the classes listed in Annex A to the First Non-Life Coordination Directive, and the corresponding reinsurance transactions.

Life business (direct assurance or reinsurance) means assurance transactions included within the classes listed in the Annex to the First Life Coordination Directive and the corresponding reinsurance transactions.

Article 2

1. Every undertaking shall, in each Member State in which it has its head office or an agency or branch, keep registers of the assets representing, in accordance with national rules, the technical reserves corresponding to the direct insurance transactions and reinsurance acceptances managed by such head office, agency or branch, irrespective of the country in which the policyholder is normally resident or in which the risk is situated.

2. Where an undertaking transacts both non-life business (direct insurance or reinsurance) and life business (direct assurance or reinsurance), it shall keep separate registers in respect of each type of business at the head office, agency or branch at which both types of business are transacted.

1. This Directive shall apply to insurance undertakings which come within the scope of Directive 73/239/EEC, hereinafter referred to as the First Non-Life Coordination Directive, as amended by the Second Council Directive 88/357/EEC, hereinafter referred to as the Second Non-Life Directive, or Directive 79/267/EEC, hereinafter referred to as the First Life Coordination Directive.

2. Unchanged

Unchanged

Unchanged

Unchanged

3. The total value of the assets entered, valued in accordance with national rules, shall at all times be not less than the value of the technical reserves. The latter shall be calculated without deduction of amounts reinsured, but the assets entered shall include claims against reinsurers where the Member State concerned allows technical reserves to be covered by such claims. Unchanged

4. Where an asset entered in the register is subject to a charge in favour of a creditor or another person, so that part of the value of the asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph 3. Unchanged

5. Where an asset entered in the register is realized or where it becomes subject to a charge as provided for in paragraph 4, the undertaking shall, where necessary in order to remain in compliance with the provisions of paragraph 3, make good the resulting reduction of the total value of assets entered by entering new assets in the register. Unchanged

Article 3

Article 3

1. The registers shall be documents internal to the undertaking, subject to supervision by the supervisory authorities of the Member States in which the undertaking has its head office or an agency or branch. Unchanged

2. Where the supervisory authority restricts or prohibits the free disposal of assets pursuant to Articles 20, 22 or 27 of the First Non-Life Coordination Directive or Articles 24, 26 or 31 of the First Life Coordination Directive, this decision may be invoked as against third parties. The authority shall at the same time require the lodging of the non-life or life register, as appropriate, of the head office, agency or branch concerned. Unchanged

3. Where, pursuant to the preceding paragraph a register is lodged with the supervisory authority of the Member State in which the head office is situated or of the Member State responsible for verifying overall solvency within the meaning of Article 26 of the First Non-Life Coordination Directive or Article 30 of the First Life Coordination Directive, the registers kept in the Member States in which the undertaking has an establishment shall likewise be lodged with the appropriate authorities of those States.

Unchanged

4. During such time as the register is lodged, any modification shall be conditional on the consent of the supervisory authorities and shall be entered in the register on their responsibility.

Unchanged

Where the prohibition on the free disposal of assets is lifted, the register shall be returned to the undertaking.

Article 4

1. Where the authorization provided for in Articles 6(2)(a) and 23 of the First Non-Life Coordination Directive and in Articles 6(2)(a) and 27 of the First Life Coordination Directive is withdrawn or where the conditions for withdrawal of authorization are fulfilled, the insurance undertaking shall be automatically wound up. Such compulsory winding up shall take one of the following two forms:

Unchanged

(a) normal compulsory winding up as long as special compulsory winding up has not been ordered;

Unchanged

(b) special compulsory winding up, which shall be ordered where it appears probable that the assets of the undertaking are no longer sufficient to cover its existing liabilities, or where the undertaking is found to be insolvent or to have ceased to pay its debts.

Unchanged

2. Once authorization has been withdrawn, the undertaking may no longer be wound up voluntarily.

Unchanged

TITLE II

NORMAL COMPULSORY WINDING UP

Unchanged

Article 5

1. Normal compulsory winding up shall be carried out under the supervision of the supervisory authority of the Member State in which the head office is situated, in cooperation with the supervisory authorities of the other Member States concerned.
 2. Normal compulsory winding up shall be carried out by the bodies of the undertaking. However, where the said bodies do not carry out the winding up satisfactorily, or where there is good reason to believe that they may not do so, the supervisory authority of the Member State in which the head office is situated may, on its own initiative or at the request of the supervisory authorities of the countries in which agencies or branches are situated, in accordance with the law of the Member State, of the head office, deprive the bodies of the undertaking of their powers, wholly or in part, or propose such deprivation to the court. The said supervisory authority shall at the same time, in accordance with the law of the Member State, appoint an administrator or propose such appointment to the court.
 3. The instrument of appointment shall specify the powers of the administrator.
 4. Publication of the withdrawal of authorization and, where appropriate, of the appointment of the administrator, shall be effected by the bodies carrying out normal compulsory winding up by placing an announcement summarizing the decision concerned in the Official Journal of the European Communities.
 5. The administrator shall submit a progress report on the winding up to the authority that appointed him at least every six months and whenever the authority considers it desirable. The report shall be communicated to the supervisory authority of the Member State in which the head office is situated.
2. Normal compulsory winding up shall be carried out by the bodies of the undertaking. However, where the supervisory authority of the Member State in which the head office is situated finds, on its own initiative or at the request of the supervisory authorities of the Member States in which agencies or branches are situated, that the said bodies are not carrying out the winding up satisfactorily, or where there is good reason to believe that they may not do so, it may, in accordance with the law of the Member State of the head office, deprive the bodies of the undertaking of their powers, wholly or in part, or propose such deprivation to the court. The said supervisory authority shall at the same time, in accordance with the law of the Member State of the head office, appoint an administrator or propose such appointment to the Court.

Unchanged

4. Publication of the withdrawal of authorization and, where appropriate, of the appointment of the administrator, shall be effected by the bodies carrying out normal compulsory winding up by placing an announcement summarizing the decision concerned in the Official Journal of the European Communities and in two nationally distributed newspapers in the Member States in which there are creditors.

Unchanged

Article 6

1. The Member States shall adopt the measures necessary to enable the undertaking to appeal to the court against any decision taken pursuant to Article 5(2) depriving its bodies of their powers wholly or in part and appointing an administrator.
2. The lodging of an appeal by the undertaking shall not have suspensory effect. The court hearing the appeal may, however, decide otherwise by way of exception.
3. Where the appeal is held to be well founded, acts carried out by the administrator prior to that decision shall remain valid, unless the court hearing the appeal considers that they may be declared void without prejudicing the interests of third parties who have acted in good faith.

Article 7

1. Normal compulsory winding up shall not entail the automatic termination of insurance contracts, but shall preclude their automatic renewal. The policyholder may, however, terminate the contract when the annual premium falls due, subject to giving notice thereof.
2. The supervisory authority of the Member State in which the head office is situated shall ensure that the winding up procedure is conducted satisfactorily and shall, in particular, exercise, where necessary, the power provided for in Article 5(2) to appoint or request the appointment of an administrator.
3. The supervisory authorities shall ensure that the insurance undertaking:
 - a) seeks possible transfers of portfolios;
 - b) exercises existing rights to terminate contracts.

The supervisory authorities may impose a time limit by which the bodies acting in the winding up must exploit the said possibilities.
4. The Member States may adopt special measures to facilitate winding up in respect of long-term contracts.

Article 6

1. The grounds shall be stated for any decision taken pursuant to Article 5(2) depriving an undertaking's bodies of their powers.
2. ex 1. Unchanged
3. ex 2. Unchanged
4. ex 3. Unchanged

Article 7

Unchanged

Unchanged

Unchanged

Unchanged

Article 8

1. The normal compulsory winding up of an undertaking shall take effect in all the Member States.
2. Where one of the conditions laid down in subparagraph (b) of Article 4(1) is satisfied in the course of a normal compulsory winding up procedure, the supervisory authority of the Member State in which the head office is situated shall transform or shall request the courts of that State to transform the procedure into a special compulsory winding up under the conditions laid down in Title III.

Article 9

1. Subject to Article 8(2), the provisions of this Title shall apply pending the final settlement of all insurance obligations, which shall, inter alia, be procured by :
 - the termination or surrender of contracts, or their natural maturity;
 - satisfaction of incurred and reported claims ;
 - the lodging with a trustee of reserves in respect of claims which have been incurred but have not yet been reported;
 - the transfer of the portfolio.
2. Save as otherwise provided in special provisions contained in this Title, normal compulsory winding up shall be carried out in accordance with the law of the Member State in which the head office is situated.

Article 8

1. The normal compulsory winding up of an undertaking shall take effect in all Member States. It shall preclude the opening of any other winding-up procedure in respect of an agency or branch of the undertaking situated in another Member State.

Member States shall adopt the necessary provisions to ensure that the normal compulsory winding-up is effective in their territory.

2. Unchanged

Article 9

Unchanged

Unchanged

TITLE III

SPECIAL COMPULSORY WINDING UP

Article 10

1. Opening of the special compulsory winding up of an undertaking whose head office is situated within the Community shall be ordered either by the supervisory authority of the Member State in which the head office is situated, or by the courts of that State after consulting the supervisory authority or at its request.
2. A special compulsory winding up shall take effect in all Member States.

Article 11

1. Where a special compulsory winding up is opened, the authorities competent under the law of the Member State in which the head office is situated shall appoint one or more liquidators forthwith.
2. A special compulsory winding up shall be carried out by the liquidators under the supervision of the authorities referred to in paragraph 1, in cooperation with the supervisory authorities of the other Member States concerned.
3. The liquidators shall report to the authorities referred to in paragraph 1 on the position at the time of opening the winding up and on the progress of the winding up at least every six months and whenever those authorities consider it desirable. The report shall be communicated to the supervisory authority of the Member State in which the head office is situated.

TITLE III

SPECIAL COMPULSORY WINDING UP

Article 10

1. Unchanged
2. A special compulsory winding up, ordered in accordance with paragraph 1, shall take effect in all Member States. It shall preclude the opening of any other winding up procedure in respect of an agency or branch of the undertaking situated in another Member State.

Member States shall adopt the necessary provisions to ensure that the special compulsory winding up is effective in their territory.

Article 11

1. Unchanged.
2. Publication of the decision ordering special compulsory winding up, of the nomination of liquidators and of essential documents relating to the procedure shall be effected by the bodies carrying out winding up by placing an announcement summarizing the said decision, nomination or documents in the Official Journal of the European Communities and in two nationally - distributed newspapers in the Member States in which there are creditors.
3. ex 2. Unchanged.
4. ex 3. Unchanged.

Article 12

1. One or more assistant liquidators may be appointed in each Member State in which the undertaking has an establishment, or, where appropriate, in any other Member State.
2. The assistant liquidators shall be appointed by the liquidator, or by the authorities referred to in Article 11(1) in accordance with the law of the Member State in which the head office is situated.
3. The supervisory authority of any Member State in which the undertaking has an establishment may propose the appointment of an assistant liquidator and submit observations on his powers.
4. The assistant liquidators shall be invested with specific powers and shall act on behalf of the liquidator only in respect of the Member State for which they have been appointed.

Article 13

1. In the case of a special compulsory winding up, the liquidators shall not transfer a portfolio to one or more insurance undertakings without the prior authorization of the supervisory authority of the Member State in which the head office is situated or of the courts of that State after consulting the supervisory authority and in accordance with the conditions laid down in Article 21 of the First Non-Life Coordination Directive, or Article 25 of the First Life Coordination Directive, ~~as appropriate~~.
2. The transfer of the entire portfolio relating either to direct life assurance and life reinsurance business, or to direct non-life insurance and non-life reinsurance business, shall be permitted even where the other portfolio is not transferred.
3. The transfer of only part of the portfolio relating to life assurance and life reinsurance business or to non-life insurance and non-life reinsurance business may be permitted on condition that such transfer does not impede the satisfactory conduct of the winding up procedure or prejudice the interests of the insurance and reinsurance creditors referred to in Article 18(1) (b) (c), and in the cases provided for in Article 14(3).

Article 12

Unchanged.

Unchanged.

Unchanged.

Unchanged.

Article 13

1. In the case of a special compulsory winding up, the liquidators shall not transfer a portfolio to one or more insurance undertakings without the prior authorization of the supervisory authority of the Member State in which the head office is situated or of the courts of that State after consulting the supervisory authority and in accordance with the conditions laid down in Article 11 of the Second Non-Life Directive, or Article 25 of the First Life Coordination Directive, as appropriate.
2. Unchanged.
3. Unchanged.

Article 14

Article 14

1. Special compulsory winding up shall automatically terminate existing non-life insurance contracts 30 days after publication of the order for such winding up, where such contracts have not been transferred during that period.
2. The liquidators, may, with the consent of the supervisory authority of the Member State in which the head office is situated or of the courts of that State after consulting the supervisory authority, extend the period provided for in paragraph 1 and suspend policyholders' rights of termination if genuine negotiations concerning the transfer of an entire portfolio are in progress.
3. Member States may introduce or retain an official system for transferring the portfolio of an undertaking whose head office is situated in their territory or of an agency or branch situated therein, entailing automatic extension of the time limit provided for in paragraph 1 and the suspension of policyholders' rights of termination.

1. Unchanged.
2. Unchanged.
3. Unchanged.

Article 15

Article 15

1. Special compulsory winding up shall not entail the automatic termination of existing life assurance contracts.
2. The liquidators may, with the permission of the supervisory authority of the Member State in which the head office is situated or of the courts of that State after consulting the supervisory authority, reduce the obligations of the insurer arising from life assurance contracts, particularly with a view to effecting a transfer of portfolio.
3. Failing a transfer under the conditions laid down in Article 13, the liquidators may, after obtaining permission under the conditions laid down in the preceding paragraph, terminate the contracts in the interests of the general body of life assurance creditors. Such termination may be imposed by the supervisory authority of the Member State in which the head office is situated or by the courts of that State after consulting the supervisory authority.

- Unchanged.
- Unchanged.
- Unchanged.

In such cases, the amount of their claims shall correspond to the total value of the mathematical reserves and other benefits attaching to their contract, without deduction of administrative or termination expenses.

Article 16

Article 16

1. Contracts by virtue of which the undertaking being wound up accepts reinsurance risks shall not be renewed after the opening of a special compulsory winding up has been ordered.
2. The liquidators shall seek appropriate reinsurance cover throughout the special compulsory winding up procedure.
3. Special compulsory winding-up shall not preclude the offsetting of reinsurance claims and liabilities.

Unchanged.

Unchanged.

Unchanged.

Article 17

Article 17

1. The composition of the assets entered in accordance with Article 2 at the time when special compulsory winding up is opened in all the registers kept in respect of direct life assurance and life reinsurance business and in all the registers kept in respect of direct non-life insurance and non-life reinsurance business shall not thereafter be changed.
2. No alteration other than the correction of purely technical errors shall be made in the registers.
3. Notwithstanding paragraph 2, the liquidators shall add to the said assets the yield therefrom and the value of premiums received in respect of the class of business concerned up to the time any transfer of portfolio is effected in the case of direct life assurance and life reinsurance transactions and during the period provided for in Article 14 or up to the time any transfer of portfolio is effected in the case of direct non-life insurance and non-life reinsurance.

Unchanged.

Unchanged.

Unchanged.

Unchanged.

4. Failing transfer of the portfolio, the assets entered in all the registers kept in respect of non-life and life business shall be realized, and the proceeds therefrom shall constitute the non-life and life asset funds which shall be distributed to creditors for the claims specified in Article 18 in accordance with Article 19(1) and Article 19 (2) respectively.

Unchanged.

5. Where the proceeds of realizing the assets are less than the amount at which they are valued in the registers, the liquidators shall justify that circumstance to the supervisory authority of the Member State in which the head office is situated or to the courts of that State, which shall inform the supervisory authority accordingly.

Article 18

Article 18

1. The claims eligible to participate in the distribution of the asset funds defined in Article 17(4) shall be the following:

Unchanged.

(a) Claims, other than insurance claims, arising after the opening of the special compulsory winding up and relating to the winding-up operations in so far as they relate to costs actually incurred for the benefit of the claims referred to in subparagraphs (b) or (c); where a strict allocation is impossible, an equitable portion thereof shall be payable.

Where redundancies occur after such winding up is opened, such claims shall not include that portion of any redundancy payments due, calculated by reference to the period of employment prior to the opening.

(b) Indemnity and lump-sum insurance claims, and claims in respect of the repayment of unused portions of premiums paid arising from direct life assurance or non-life insurance business managed by the head office, or an agency or branch situated within the Community.

(c) Claims in respect of reinsurance acceptances arising from life or non-life reinsurance business managed by the head office, or an agency or branch situated within the Community insofar as they are not extinguished by offsetting pursuant to Article 16(3).

(d) Claims in respect of wages and salaries arising before or after the opening, to the extent that, in the latter case, they are not included in the claims referred to subparagraph (a), if the funds resulting from assets not entered in the registers are insufficient to satisfy them.

2. The claims referred to in subparagraphs (a) to (d) of paragraph 1 shall be satisfied out of the life and non-life asset funds according to the class of business to which they, in fact, relate or, where strict allocation is impossible in proportion to the size of the asset funds available for distribution.

Unchanged.

Article 19

Article 19

1. The non-life asset fund constituted in accordance with the conditions laid down in Article 17(4) shall be distributed among the creditors by the liquidators in satisfaction of claims relating to non-life business in the following order:

Unchanged.

- (a) claims arising after the opening of the special compulsory winding up and referred to in Article 18(1) (a) and (2) ;
- (b) indemnity insurance claims in favour of policyholders and entitled third parties or, as the case may be, guarantee funds;
- (c) claims resulting from reinsurance acceptances, subject to the limits laid down in Article 18(1)(c);
- (d) claims in respect of wages and salaries, subject to the limits laid down in Article 18(1)(d);
- (e) claims in respect of unused portions of premiums paid.

2. The life asset fund constituted in accordance with the conditions laid down in Article 17(4) shall be distributed by the liquidators in satisfaction of claims relating to life business in the following order:

Unchanged.

- (a) claims arising after the opening of the special compulsory winding up and referred to in Article 18(1)(a) and (2) ;

- (b) claims in respect of lump-sum benefits, annuities, surrender values, mathematical reserves or other benefits in favour of policyholders and beneficiaries;
- (c) claims resulting from reinsurance acceptances, subject to the limits laid down in Article 18(1)(c);
- (d) claims in respect of wages and salaries not included in subparagraph (a) subject to the limits laid down in Article 18(1)(d);
- (e) claims in respect of unused portions of premiums paid.

3. Where the value of insurance claims or claims resulting from reinsurance acceptances is not known, or where losses have been incurred but not yet reported, the liquidators shall set aside a sum to satisfy such claims. Where after payment of the other claims listed in Article 18(1), the value of such claims is still not known or losses have still not been reported, the liquidators may, with the consent of the supervisory authority of the Member State in which the head office is situated or of the courts of that State after consulting the supervisory authority, lodge that sum with a trustee appointed for the purpose who shall be responsible for satisfying the said claims under the supervision of the said authorities, on condition that such claims are made within a period which they shall prescribe.

Unchanged.

4. The creditors referred to in paragraphs (1) and (2) may participate in the distribution of the assets not entered in the registers defined in Article 2 as unsecured creditors in respect of any unsatisfied portion of their claim.

Unchanged.

5. Any residue of either of the asset funds, and any amount lodged with the trustee pursuant to paragraph (3) and not claimed within the prescribed period, shall be added to the assets not entered in the registers.

Unchanged.

Article 20

Article 20

1. This Title shall apply either to the satisfaction of claims other than those referred to in Article 18(1), nor to the realization and distribution of assets not entered in the registers referred to in Article 2.

Unchanged.

2. Save as otherwise provided in special provisions contained in this Title, the special compulsory winding up of undertakings to which this Directive applies shall be carried out in accordance with the provisions of the law of the Member State in which the head office is situated.

Unchanged.

TITLE IV

NON-COMMUNITY UNDERTAKINGS

Article 21

1. Subject to the provisions that follow, this Directive shall apply to agencies or branches established in the territory of a Member State of undertakings whose head office is situated outside the Community.
2. For the purpose of applying the provisions of Title II of this Directive to the establishments referred to in paragraph 1 "supervisory authority of the Member State in which the head office is situated" means the authority that granted the authorization referred to in Article 23 of the First Non-Life Coordination Directive and Article 27 of the First Life Coordination Directive, and "Member State in which the head office is situated" means the corresponding Member State.
3. The special compulsory winding up of an agency or branch of an undertaking whose head office is situated outside the Community shall be opened either by the supervisory authority of the Member State which withdrew the authorization or by the courts of that State after the supervisory authority has given its opinion or at that authority's request. Where Article 26 of the First Non-Life Coordination Directive or Article 30 of the First Life Coordination Directive has been applied the special compulsory winding up shall be opened either by the supervisory authority of the Member State which is responsible for supervising the solvency margin or by the courts of that State after the supervisory authority has given its opinion or at that authority's request.
4. For the purpose of applying the provisions of Title III, "supervisory authority of the Member State in which the head office is situated" means the supervisory authority referred to in the previous paragraph and "Member State in which the head office is situated" means the corresponding Member State.
5. Without prejudice to the second paragraph of Article 27 of the First Non-Life Coordination Directive and the second subparagraph of Article 31(2) of the First Life Coordination Directive, the

TITLE IV

NON-COMMUNITY UNDERTAKINGS

Article 21

Unchanged.

Unchanged.

Unchanged.

Unchanged.

Unchanged.

supervisory authority of a Member State in whose territory a non-Community undertaking has an agency or branch shall inform the supervisory authorities of the other Member States in whose territory the undertaking has an establishment of the reorganization measures it proposes to take under Articles 20 and 27 of the First Non-Life Coordination Directive and Articles 24 and 31 of the First Life Coordination Directive with a view to cooperating in the implementation of those measures.

It shall consult the same authorities before withdrawing authorization.

6. The opening of compulsory winding up or the withdrawal of authorization in respect of the head office shall necessarily entail withdrawal of the authorization granted by Member States to the agencies or branches of the undertaking in question.

Unchanged.

7. Without prejudice to the application of paragraph 6, the normal compulsory winding up of an agency or branch established in the territory of a Member State shall not entail the normal compulsory winding up of agencies and branches established in the territory of the other Member States.

Unchanged.

TITLÉ V

FINAL PROVISIONS

Article 22

Member States shall bring into force the measures necessary to comply with this Directive not later than ...
They shall forthwith inform the Commission thereof.

Article 23

This Directive is addressed to the Member States.

TITLE V

FINAL PROVISIONS

Article 22

Unchanged.

The provisions adopted pursuant to the first paragraph shall make ~~express~~ reference to this Directive.

Article 23

Unchanged.

Done at Brussels ,

For the Council

ISSN 0254-1475

COM(89) 394 final

DOCUMENTS

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Catalogue number : CB-CO-89-399-EN-C

ISBN 92-77-52849-4

Office for Official Publications of the European Communities
L-2985 Luxembourg